Advancement of Loyola Law School, including the ability to sustain our educational mission, achieve academic productivity and impact, advance student and faculty recruitment on a national and international level, and increase academic peer recognition, is dependent upon the growth of our institutional endowment.

Funds raised over the last 30 years have helped to establish one of the most technologically advanced, and architecturally interesting and inspirational campuses anywhere in the country. This achievement warrants the pride of all alumni. Now our emphasis must shift to increasing the endowment. It is a simple fact that private legal educational institutions must rely heavily on the philanthropy of their alumni.

The endowment fund is prudently managed with five percent of its annual investment yield applied to academic programs, including the support of faculty and scholarships. Allowing the institution to build for the future, it becomes a powerful fund. A generous endowment will provide for less dependence on current tuition revenues and allow for the recruitment and retention of faculty, the creation of nationally recognized academic programs, the reduction of class sizes, and increased support for student scholarships.

Endowment is NOW!

The time for expanding our endowment resources has arrived. Contributions made to Loyola today will have an impact in as little as five or six years and beyond. By developing our endowment, we are providing both for immediate needs and for the long-term future of Loyola Law School. Alumni, law firms, community corporations and foundations are invited to make pledges of support to endow faculty positions, academic programs and scholarship resources through annual support, or through the process of estate, planned giving and charitable gift philanthropy.
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**LOYOLA LAWYER** Loyola Law School - Loyola Marymount University  
Fall 2003  

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**About the Cover:** Graphic Artist Bob Zingmark, from Missoula, Montana illustrates the architect Frank O. Gehry-designed Loyola Law School campus within its downtown Los Angeles, California setting. The colorful and modern campus is a significant part of the downtown Los Angeles culture.
Over the past three years, many of you have heard me speak about the significant juncture at which our law school now finds itself. For the last 25 years, we have been building the physical dimension of our law school by acquiring property and constructing facilities. With the dedication last year of the Girardi Advocacy Center, we are now in the enviable position of being able to enter a new stage in our institutional growth, a stage in which our focus will be on people, not property and buildings. I am pleased to report that we have “turned the corner” and have begun the lengthy process of enriching our already robust academic program. Let me highlight a few of these enrichments:

- We have successfully established an LL.M. Program in Taxation under the leadership of Professors Ellen April! and Theodore Seto. This graduate program offers first-rate tax education through our permanent faculty and our high-caliber adjunct faculty. Our applicants continue to be talented and academically accomplished—and are growing in numbers.

- The Fritz B. Burns Foundation endowed the Dean’s Chair at Loyola Law School, The Fritz B. Burns Dean and Professor of Law Chair. The Foundation’s continued generosity spearheads our efforts to secure 3-5 endowed faculty chairs over the next few years.

- Under the direction of Professor Laurie Levenson, we have established the Loyola Center for Ethical Advocacy. This program allows us to expand the course offerings in the area of advocacy. Additionally, thanks to the sponsorship of the law firm of Mannatt, Phelps & Phillips, the Center will sponsor an annual Trial Institute that will present leading lawyers from around the country discussing cutting edge issues and techniques in trial practice. The Center will also support a “Litigator-in-Residence” for several weeks each year who will bring a wealth of experience-honed skills to campus, and who will mentor students intending to be civil litigators.

- We now also sponsor annually—with the law firm of Greene, Broillet, Panish & Wheeler—the National Civil Trial Competition. This competition, administered by Professor Susan Poehls, involves fourteen of the top trial advocacy teams from law schools around the country. The teams compete at our law school. Last year’s inaugural competition was a tremendous success, and we are convinced this will become the premier trial advocacy competition each fall.

- We have successfully implemented a long-term plan to reduce the size of the incoming day class each year. Thus far, we have reduced the incoming day class from 345 to 320. This reduction leads to smaller first-year class sizes and a lower student-faculty ratio, thereby enhancing our ability to improve the instructional program.

We are indeed excited, as we know that we have just begun. Over the next several years, we will undertake several additional academic initiatives.

- We are working to broaden our already successful program in Law & Technology that we offer in conjunction with Cal Tech. We hope to obtain permanent funding for this program to support the faculty resources necessary to insure the program’s continued success.

- We plan to establish an Institute for Corporate and Business Law. Our goal is to expand both theory-based and skills-based course offerings in Corporate/Business Law and to secure funding for a fully endowed faculty chair in this area.

- We plan to hire two new faculty members each year over the next three years. These new faculty members will be recruited nationally. They will be selected based on their potential to strengthen our existing programs as well as their potential to add to Loyola’s growing national reputation.

Our goal underpinning all of these efforts is to provide the next generation of lawyers with the finest legal education possible within the rich Loyola Law School tradition. Thank you for your continued support in our efforts.
Loyola's Girardi Advocacy Center
Opened September 23, 2002
(See page 65)
THE TROUBLED

Changes on the

[Image of a dollar sign with a jagged line behind it]
ECONOMY:
Has it Affected Loyola Alumni?

For the legal community, 2003 has been a mixed bag—a good year for some, a bad one for many, and a mediocre year for the ones in between. The financial picture remains obscure if not depressed. Law firms are merging and closing, state budgets are cutting back, and the stock market is latent. At the same time, the country's low interest rates are opening numerous doors. The economy appears to have frozen. Nobody seems to agree on the same forecast, except to say that we are currently in an early hibernation.

THE GOOD

The gains by Los Angeles' largest law firms mimic the generally strong performance of large firms nationwide. *The Los Angeles Business Journal* reports that revenues at six of the county's biggest law firms totaled $2.5 billion in 2002, a 13 percent jump from 2001. Equity partners at Gibson, Dunn & Crutcher brought home $1.18 million last year, while equity partners at O'Melveny & Myers hit the $1 million mark for the first time. Many analysts credit these increases to strong litigation and bankruptcy practices in addition to cost-cutting measures, slashing of associate salaries, and converting partners from equity to non-equity status.

The prominent firm of Paul, Hastings, Janofsky & Walker decided to cope using a different strategy. "I can't imagine anybody not being worried. In some sense, we worry because there are new challenges on a yearly basis. We knew that we would have to work very hard to ensure success," said Anton Mack, the managing director of recruiting for the firm.

The first thing on the firm's agenda was improving client service. "At a time when business is tighter, we felt we had to give the best service that we possibly could," Mack said of the corporate clientele. "That way, clients would come back. That would also draw in more clients." The firm then took a bolder step toward diversifying and expanding its practice. Last year, the firm doubled the size of its Latin America practice. Just this March, a new office was opened in San Diego. Paul Hastings is also looking to establish itself in Shanghai, China.

While big firms worked hard to preserve their corporate clients, attorneys specializing in the bankruptcy field found...
it much easier to weather the storm. Lawyer Alan Tippie '79 of SulmeyerKupetz saw a small increase in business.

“It has created more business opportunities for all the professionals in the insolvency field,” said Tippie, who works in the bankruptcy sector. “Accountants, liquidators, and auctioneers are all seeing an increase.” Although many of the major corporations are headquartered on the East Coast, Tippie’s firm has helped liquidate 60 to 70 dot-coms. He added that the economy is not always the cause of a financial failure. “Mismanagement is another cause. When it’s coupled with a bad economy, we get an increased number of financial failures. It doesn’t disappear when the economy isn’t doing well.”

Smaller firms also do not seem to be experiencing a downturn in business. “I don’t know of too many small practices that are doing poorly,” said Ron Berman ’70. His 20-lawyer firm, Berman, Berman & Berman, has been steadily growing in the past decade. The firm recruits an average of two to three lawyers a year.

P. Christopher Ardalan ’00, who heads Ardalan & Associates, believes that attorneys will always be in demand, especially at a “consumer firm” such as his.

“In the go-go days of the late nineties, we had a lot of business from start-ups. Right now, there’s not a lot of that going on.”

Ardalan handles mostly family, criminal, and divorce law cases. “I don’t feel the economy has chilled,” Ardalan said. He cites an increase in his family law cases. “A lot of times upsets in the economy cause tremendous economic hardships. That causes marital problems and that may or may not lead to a divorce. The spouse may stop paying child support, for example. There will always be a need for a lawyer.”

However, Ardalan points out that a war sometimes causes people to rethink filing lawsuits. “Fear may create inaction,” he warns. “One is bound to ask himself some serious questions: ‘If so many things are happening in the world, why would I want to file a lawsuit and create more personal problems for myself right now?’”

THE BAD

Without a doubt, the economy is negatively impacting those in the real estate, technology, and public sectors.

Regardless of the economy, patent attorney Wesley Monroe ’90 began to see that his business was headed for a slowdown in the middle of 2001. “The biggest thing that has affected our business is the amount of work from start-up companies. That’s largely dried up,” said Monroe, who practices at Christie, Parker & Hale. “In the go-go days of the late nineties, we had a lot of business from start-ups. Right now, there’s not a lot of that going on.”

The main reason behind the “slowdown” is the Y2K phenomenon. “The technology bubble has burst. People spent lots of money on information technology and it kind of pumped up the technology bubble. That fever stopped, however, and that’s what led us to having a harder fall. It was not an easy letdown,” said Monroe, who believes that the country was in a small recession before 9/11 hit. “We were starting to rebound and then 9/11 put an end to our recovery.”

Monroe has also noticed that his clients are simply maintaining a more frugal position, “but they recognize that IP is a long-term asset and that cutting corners will have negative connotations when the economy comes back to life.” Two years ago, a merger brought 10 attorneys into the practice. A year ago, 20 left. Fifty remain.

Few attorneys believe that the economy will dip lower than the recession that occurred in the nineties.

“The recession in real estate during the early nineties was created by owners and landlords who built too much commercial space. This recession is more tenant-driven,” said Christopher Reising ’96, of Cushman Realty Corporation. The difference, Reising notes, is in the circumstances. “The real estate business is a transactional business. People make fewer transactions when they’re worried about what’s going to happen,” he said. “During the nineties we had a bunch of landlords without tenants. This time, landlords built buildings with tenants in hand and a year’s worth of rent. But over the last two years, landlords have found all that income is drying up.”
Even though Reising and Monroe see themselves in a standstill economy, many in the public sector fear that the economy is turning for the worse. Brenda Shockley '71, who runs Community Build, a non-profit that provides education to at-risk youth in Los Angeles, says she may have to begin layoffs for the next fiscal year. "I'm frightened," she said. "The issues we represent barely get addressed when the economy is robust. When things are at risk, the philanthropic community tightens up and our government funding gets cut." Many of her donors have lost a tremendous amount in the stock market. Private foundations from which Shockley had previously received funding have advised her to seek other sources. The discretionary funds from the Governor's Office, that enabled her to run a youth program, have disappeared. "We're not okay. I have 32 full-time employees and no new grants," Shockley said. "Right now, people are just cautious."

In an internal memo, the Los Angeles District Attorney's office announced in March that it might be laying off some of its approximately 2,000 lawyers. "They've talked about closing hospitals. Sooner or later, they'll talk about cutting healthcare or laying off county employees," said Assistant District Attorney Robert Grace '87 of the county's $2 billion shortfall.

"We have rising costs of living. California has an increasing population but decreasing revenue," Grace notes. "However, we do have a stronger economy than most states." Grace believes the economy will "bounce back" in "two or three years."

He still holds reservations about the second coming of the recession. "We had a period in the 1980s that was pretty bad. It was pretty bad during the whole Reagan Administration. Everybody who was in their early twenties during that time knows what I'm talking about."

THE JOB MARKET
This past academic year, 133,800 people took the LSAT, a 22.7 percent increase from the year before. According to the American Bar Association (ABA), the average number of applications to ABA-approved law schools has risen by 18.5 percent. Law schools are seeing applications at a record level, and with good reason. A Juris Doctor may not guarantee employment, but it does guarantee a useful skill.

"I've never regretted going to law school. It's a skill that I practice everyday," says Brenda Shockley, who stopped practicing law almost 20 years ago.

Skill aside, new lawyers will face stiffer competition for the right jobs. Los Angeles has a particularly saturated legal job market, as there are five law schools—Loyola, Pepperdine, Southwestern, UCLA and USC.

There is only one sensible solution: good grades. "In good times and bad, the answer depends on what you study and where you rank," said Graham Sherr, the dean of Career Services at Loyola. "The legal market is a food chain, and it cares about where you went and what you do there."

The most preferred law student to recruit into summer programs is still the second-year. Many consider first-years to be inexperienced, according to Sherr. "Employers like to hire students between their second and third year, with an eye toward extending them an offer. Employers want to live with you before marrying."
S herr observes that the economy has led to a contraction in hiring, which he believes is hurting the top students, particularly those in the top 10 to 15 percent. These students are the cream of the crop and the target of big firms such as Jones Day, Paul Hastings and O’Melveny. The good students may be coerced into taking less prestigious jobs.

While hiring in the public sector has gone down, hiring in the private sector remains stable. “I do see that many law firms are cutting back [in terms of recruitment],”

"Build a network.

So much of this life in terms of job hunting is getting lucky...”

states Lynne Traverse, the manager of legal recruiting for Bryan Cave, which consists of 830 lawyers and 17 offices worldwide. Traverse maintains that for a big firm, hers has always been “conservative” in the recruiting realm. “We’re very careful with our numbers. We don’t go with a large number in our summer program. If we have them commit to us, we want to hire them,” she said. “It’s great to say we have 10; let’s choose five. We don’t do it that way.” This year, Traverse helped recruit three new lawyers to the Irvine office, six to Phoenix, and four to Santa Monica.

News of the poor economy has stimulated students into being so aggressive that it has made hiring very difficult for Mack. “We have had to be more selective as to who would make the callbacks,” said Mack, who has seen a 24 percent increase in the number of applicants. He has also observed a record-number of students showing up at his firm’s 22 recruiting receptions.

THE BOTTOM LINE? PASS THE BAR AND YOU’LL EVENTUALLY BE HIRED.

“Typically we’ve had 95 to 97 percent of our graduating class employed within nine months of graduation,” Sherr said of his crop of Loyola grads.

Until he knew the results of his Bar exam, Roger Backler ’02 remained apprehensive. Backler, who ranked fourth out of 96 in the evening division, took the Bar in February and had no job offers. “Nothing had happened,” said Backler of the firm he worked at until May. “It’s a small firm and they just don’t have openings.” Backler stresses that the firm had been incredibly supportive of him and had provided him with good legal experience.

In addition to studying, Sherr advises students to be active in the community through volunteer and pro bono work. “Build a network,” he said. “So much of this life in terms of job hunting is getting lucky once, inspiring one person to take an interest in you. [Volunteering] is a wonderful light to be seen in.”

If all else fails, Ardalan suggests forging your own path. “When I did my clerkship at a big firm, I realized that it would take a number of years before I could get courtroom experience,” Ardalan recalls. “I wanted instant gratification.” Upon graduation, Ardalan set up his own practice. Within a year, he won a $1.2 million settlement for a client. He smiles, recalling the moment. “There was no greater thrill.”

Few can predict how the economy will impact the legal sector for the remaining months of 2003. Until transactions resume, things will remain static for the legal sector, particularly lawyers dependent on real estate and large corporate accounts suffering from the stock market backlash. Those reaping the benefits of the economic downturn still stride clothed in caution. Many hope that time will be able to restore confidence.
RISING Consumer Debt, DEEP Economic Trouble and BAD Legislation

By Daniel S. Schechter, Professor of Law

Because of the inevitable lag time that accompanies publication, you are reading this article in the latter half of 2003. I am writing it in March of 2003, during the build-up to the war in Iraq. By the time this article hits the newsstands, I hope that most or all of my predictions are laughably incorrect. But I fear that we are in for a devastating economic storm that will trigger a flood of consumer bankruptcies.

THE PARADE OF HORRIBLES

- The threat of war has already begun to discourage investment in business expansion and in capital spending. The overall economy, which had shown signs of recovery from the post-9/11 slump, appears to be heading for a “double dip” recession, and the second dip might be worse than the first.

- Oil prices have just begun to spike, imposing a huge extra “tax” on virtually every aspect of the economy. Gasoline prices are nearly over $2 per gallon for the first time in history. Relatively little of the money generated by this “tax” stays in the United States; most of it flows overseas, and some of it flows to nations that are known to use oil revenue to support terrorism. The oil tax will provide an additional drag on the economy. If the oil-producing states (perhaps even including Russia) retaliate against us for waging war on Iraq, supply may dwindle rapidly, and prices could approach $3 per gallon. The tourism industry, along with the airlines, would be devastated. For the rest of us, just driving to work will drain our wallets.

- In the wake of the war, we can expect a renewed wave of retaliatory terrorism, both at home and abroad, as disaffected groups seek revenge. Obviously, those acts of terrorism will not help the economy very much.

- The Bush Administration is vigorously advocating deep additional tax cuts, primarily benefiting the wealthiest corporate and individual taxpayers, and those tax cuts appear likely to pass in some form. The Administration justifies those tax cuts on the theory that they will stimulate additional spending, thus jump-starting the economy; but the beneficiaries of the tax cuts are those taxpayers who are least likely to spend each additional dollar of discretionary income. (Under the familiar Keynesian concept of “marginal propensity to consume,” lower-income consumers spend almost every penny of extra income. Wealthier people don’t.)
Although the economic impact of the tax cuts is doubtful, their only certain effect will be to increase the federal deficit to its largest level in history. In turn, the federal government will have to borrow additional money by selling bonds. And in turn, that borrowing will divert the purchasers of those bonds away from other competitive debt instruments, such as corporate bonds. The net effect of an increased demand for borrowed funds is to increase interest rates. Those increased interest rates will percolate throughout the economy, affecting new fixed mortgages, all adjustable mortgages, and credit card debt.

- Within California, we are also facing historically huge deficits. In the absence of substantial additional taxes (which appears unlikely), we will have to cut spending and increase borrowing, in the form of municipal bonds. The spending cuts will inevitably mean a decline in public services, especially health care and education. As the business climate deteriorates, we can expect a continuing erosion of the employer base.

- All over the nation (and especially in California), housing prices are at record levels, especially in terms of the ratio between prices and median income. As the economy continues to deteriorate, mortgage defaults will inevitably increase; but if interest rates go up at the same time (as seems likely), the housing bubble may pop with a loud noise. When mortgage rates increase, demand for existing housing drops, as fewer people qualify for mortgages. Housing prices move at the margin: if the supply of houses for sale is constant, but the pool of available buyers shrinks, prices will drop.

- If home prices and values drop sharply, many recently purchased homes will be “underwater”; i.e., the mortgages will exceed the values. Historically, that phenomenon greatly increases the frequency of mortgage defaults, as discouraged borrowers walk away from their homes. Lenders are then forced to foreclose and must dispose of excess inventory. In turn, widespread dumping of foreclosed properties reinforces the downward spiral of the market.

- Even though we have been in a recession for several years, consumer debt is still (paradoxically) at historically high levels; one would have expected that consumer spending would have fallen by now. But if the economy really takes a sharp downturn, consumer spending will surely dry up, leading to additional economic contraction and job losses. Many consumers have used credit cards to finance their ongoing spending; interest rate increases would only exacerbate their debt service obligations.

Putting together all of the plausible events described in the preceding “parade of horribles,” I predict that we are going to see an unprecedented tsunami of consumer bankruptcies, probably shortly after Christmas of 2003.

**HERE COMES THE BILL**

Judging by the current composition of Congress, it appears that the next wave of bankruptcies will be governed by the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2003,” which should be enacted soon and which should go into force on January 1, 2004.

(For purposes of this article, we have to select an acronym for this legislation, but “BAPCPA” just isn’t good enough. It’s unpronounceable, and it looks like a Russian nickname. “Bankruptcy Reform Act”? That also gives rise to an unacceptable acronym. Since the current version of the legislation is about 150 pages long in 10 point type, perhaps “Big Bankruptcy Bill” or “The Bill” would be adequate.)

The Bill is a disaster, in my opinion. I am not an expert in consumer insolvency, but I have been involved in the Bill at several different stages of its long march through Congress, and it is astonishingly one-sided. It was drafted primarily by credit card companies, which have been stung by instances of bankruptcy abuse, in which some credit card customers have run up huge debts and then have filed bankruptcy petitions to discharge their debts.

But there is just no evidence of widespread bankruptcy abuse. It is true that bankruptcy filings have increased. Is this increase attributable to credit card debt? Perhaps. But the credit card companies brought this on themselves with their aggressive marketing tactics, such as the indiscriminate issuance of new cards to marginal customers. Also, there are statistical studies showing that about 90 percent of all bankruptcies are filed not by credit card abusers but by people who get sick, laid off, or divorced. The credit card industry can only document that three percent of all filers may qualify as “abusers.”
Nevertheless, justified or not, the primary goal of the Bill is to introduce the idea of "means testing," under which many debtors seeking relief under Chapter 7 would instead be forced into Chapter 13 payment plans. To oversimplify, Chapter 7 provides for liquidation of the debtor's assets and the discharge of the debtor's obligations without any payment by the debtor, while Chapter 13 provides for the filing of a plan for the payment over time of all or part of the debtor's obligations.

At some level, access to Chapter 7 probably should be "needs based" or "means tested." Poor filers should be permitted to use Chapter 7; higher-income filers ought to be forced into Chapter 13. But where do we draw the line? The Congressional debate over that issue resembles a famous incident involving George Bernard Shaw, who was seated next to a pompous lady at a dinner party. Idly, he asked her, "Would you spend the night with me for a million pounds?" She pondered his rhetorical question and said that yes, she probably would. He followed up: "Would you do so for five pounds?" She was shocked: "What kind of a woman do you think I am?" Shaw replied, "We've already established what you are, madam; we're merely haggling over the price."

In a slightly less risqué vein, everyone would agree that a wastrel with a very high income and very large credit card debts should not be permitted simply to declare bankruptcy under Chapter 7 and walk away from debts, but should be forced to pay off creditors over time in a Chapter 13 plan. Everyone would also agree that a moderate-income family that had incurred crushing medical bills should be permitted to file Chapter 7 to obtain a fresh start, instead of being forced into Chapter 13.

But that's not what the Bill provides. Instead, anyone with more than $166 in net monthly income (after deducting certain items of expense) would be forced into Chapter 13. And the Bill handcuffs the bankruptcy judges, eliminating their authority to review a debtor's unique circumstances unless the debtor can fully document extraordinary expenses. The means-testing criteria are based on rigid IRS standards not drafted for bankruptcy purposes, and they do not take into account individual circumstances. Judge Eugene Wedoff of Chicago, in materials prepared for the American Bankruptcy Institute, explained the effect of that proposal: "For example, a debtor with medical bills totaling $200,000 and disposable income [greater than the minimum amount] would be found to have made an abusive Chapter 7 filing, even though less than three percent of the unsecured debt could be paid in a five-year Chapter 13 plan."

Following every bankruptcy filing, the court-appointed trustee would be required to review the debtor's financial records and to move to dismiss any "abusive" Chapter 7 filings. The debtor, already in distress, would then have the additional burden of overcoming that motion, often without professional or legal help.

I think that this Bill sets the bar far too low, sweeping in thousands of families with modest incomes and forcing them to pay off their debts in protracted and burdensome Chapter 13 plans, rather than obtaining a fresh start. And overinclusion is not only harsh, it is also impractical. Many people forced into Chapter 13 will seek permission from the bankruptcy courts to escape back into Chapter 7, where they belong, and the courts will be overwhelmed with those motions.

Beyond the sheer number of "escape" motions, the courts will be burdened by the muddy and imprecise IRS standards contained in the Congressional "means-testing" formula. Imprecise standards are not only difficult to administer, they also encourage litigation since they do not lead to predictable results. Nor will the problem end when the debtors are forced into Chapter 13. Under current law, two-thirds of all existing Chapter 13 plans fail and are converted to Chapter 7, even though the debtors have voluntarily chosen Chapter 13. Forcing thousands of marginal debtors into Chapter 13 will greatly increase the failure rate, at great expense to all involved.

The gatekeepers to Chapter 13 are the trustees in bankruptcy, who are already underpaid, receiving approximately $60 for each "no asset" case that they handle. Adding an extra burden to their load will ensure that the job will not get done.
Finally, the Bill contains a number of other pro-creditor provisions in both consumer and commercial contexts. The corporate insolvency provisions will make it significantly harder to reorganize struggling businesses.

**WHAT CONGRESS SHOULD HAVE DONE (AND MIGHT DO NEXT TIME)**

In prior publications (and during my involvement with the legislation itself), I have urged Congress to abandon the mean-spirited means test and to try another solution. I have clearly lost this particular round, but I am hopeful that another Congress will revisit the issue and clean up the mess created by the Bill. The solution is obvious in principle but difficult to define: the bar should be set at a realistic level, rather than forcing low-income filers into Chapter 13. A successful Chapter 13 repayment plan depends upon the availability of discretionary income to pay off a percentage of the old debts, while the debtor tries to rebuild his life. A person with $166 in net income who is shackled to a repayment plan will not be able to make a fresh start.

Rather than using an arbitrary, and wrong, "$166 in net income" test, is there a more principled way to choose the cutoff point? In statistics, there is a concept called "standard deviation," a measure of the spread of the familiar bell-shaped curve. Given a normal distribution, about two-thirds of any given statistical sample should be within one standard deviation of the mean. Individuals more than one standard deviation above or below the mean are, by definition, out of the ordinary. Congress could require Chapter 13 plans for all debtors whose incomes are more than one standard deviation above the mean, thus forcing upper-income debtors into Chapter 13, while still permitting ordinary moderate-income debtors to stay in Chapter 7.

My statistical research indicates that families earning more than one standard deviation above the mean are those earning more than $75,000 per year. Almost everyone would agree that families who file bankruptcy with incomes of $75,000 or more should be forced into Chapter 13, absent extraordinary circumstances such as big medical bills. The figure of $75,000 is about five times the Federal poverty guideline. For the sake of simplicity, I suggest using a five-fold multiple of the most recently published local poverty guideline as the benchmark for access to Chapter 7.

Rather than using an arbitrary, and wrong, "$166 in net income" test, is there a more principled way to choose the cutoff point? In statistics, there is a concept called "standard deviation," a measure of the spread of the familiar bell-shaped curve. Given a normal distribution, about two-thirds of any given statistical sample should be within one standard deviation of the mean. Individuals more than one standard deviation above or below the mean are, by definition, out of the ordinary. Congress could require Chapter 13 plans for all debtors whose incomes are more than one standard deviation above the mean, thus forcing upper-income debtors into Chapter 13, while still permitting ordinary moderate-income debtors to stay in Chapter 7.

A clear and reasonable benchmark tied to local poverty standards will solve a lot of problems: It is not overinclusive, avoiding both harsh results and court congestion. It is easy to administer, so that both courts and litigants can resolve disputes quickly. A clear standard enables litigants to predict the outcome of litigation, avoiding many fruitless motions. It takes account of regional differences in the cost of living and it changes over time, unlike the current Congressional formula.

The only other "fix" necessary to complete the package is some additional compensation for trustees-cum-gatekeepers to Chapter 7. Since their efforts will increase the number of Chapter 13 plans and will therefore increase the payouts to the creditors of Chapter 13 debtors, a very small percentage of those payments should be set aside and pooled to pay for their services.

**REALISTICALLY, HERE IS WHAT WE CAN EXPECT**

So much for high-minded suggestions that have no chance of adoption. For the next several years, the bankruptcy courts will struggle through the debris of the bankruptcy storm. Here is what I think we will see:

The flood of consumers involuntarily shunted into Chapter 13 will result in a counter-flood of motions seeking permission to file under Chapter 7. Almost all of those consumer filers will be pro se. Under current law, relatively few competent practitioners represent consumers. The Bill
will exacerbate that shortage, since it forces lawyers to verify the debtors’ papers, risking personal liability and sanctions if the facts described in the papers turn out not to be true. Reputable attorneys will be even less willing to do consumer work.

No competent professionals will step up to fill that gap. The tide of incompetent pro se filings, already a burden on the courts, will inundate the courts. The judges will be forced to wade through the papers; instead of being knee-deep, as is now the case, the judges will be neck-deep. The bankruptcy courts will be choked with consumer work. The bankruptcy bench, which is already viewed as something less than a plum position (because of its inordinate workload), will have even more trouble attracting new recruits. Commercial insolvency cases will be bumped to the back of the calendar, just as civil cases are in District Court (as the result of the voluminous criminal caseload).

Consumer bankrupts themselves will see huge delays; many will become discouraged by the congestion and will drop out of the bankruptcy process. Many of those who stick with Chapter 13 will find it very onerous.

In the context of corporate reorganization, the pro-creditor aspects of the Bill will mean that many more struggling companies will be liquidated under Chapter 7, instead of rearranging their debts under Chapter 11. Salvageable companies will die.

**SO WHAT?**

At the end of all of this, who cares? So what if life gets a lot tougher for bankrupts? A small change in the bankruptcy laws may indeed have little effect on society as a whole. But to illustrate why we ought to care about a big change in the fate of bankrupts, imagine what life would be like if there were no such thing as bankruptcy. Would that be so terrible? Yes, it would. If consumers knew that they could never escape their debts, no matter what, they would behave very cautiously. They would incur little or no debt, paying for everything in cash. The economy would be many times smaller than its current size. Individuals would be afraid to take any entrepreneurial risk, for fear of incurring contingent liability. Small business formation would dry up.

Paradoxically, the absence of bankruptcy courts would make collection much riskier for creditors, since we would no longer have an orderly system of liquidation and distribution. Creditors would have to become much more conservative. Instead of taking nonpossessory security interests, they would have to take possession of tangible collateral, as in feudal times.

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**A small change in the bankruptcy laws may indeed have little effect on society as a whole.**

The unavailability of bankruptcy would engender the same sorts of problems for struggling commercial enterprises. Businesses that could have been reorganized would be liquidated piecemeal. The “going concern” value of the assets would be lost, to be replaced by fire-sale values, killing the Golden Goose. Jobs would be lost; tax revenues would drop. Instead of maximizing the total return to the creditors over time, the assets of the business would be quickly exhausted as the vultures grabbed whatever they could reach.

Even for moribund businesses, the unavailability of court-supervised liquidation would lead to grossly unequal treatment among the creditors. There would be no way to prevent or rectify fraudulent misappropriation by the insiders, as in the Enron case, or by creditors holding the insiders’ personal guaranties. To protect themselves against these risks, creditors would demand very conservative loan-to-value ratios, with ample collateral, thus further starving the credit market. It is a bleakly Darwinian scenario: Mad Max in business suits.

I have seen economies (in Eastern Europe) that closely resemble the dystopia described in the preceding paragraphs, and it is not a pretty sight. I am not saying that the pending Bill will lead to the end of the world as we know it, but it pushes us in the wrong direction, with unknown consequences.

I hope that all of the doom and gloom in this article is just the fevered ranting of an isolated law professor. I hope that by the time this hits print, the sun will have come out, the Golden Nineties will have returned, and the Dow will be back at 11,000.

But I doubt it. ✤

Daniel S. Schechter is professor of law at Loyola Law School. Schechter joined the Loyola faculty in 1980. Prior to teaching, Schechter practiced law in Los Angeles in the areas of insolvency, commercial finance, and business litigation. He is highly regarded as a specialist in the area of corporate insolvency (particularly failed or failing leveraged buyouts).
EDUCATING ETHICAL BUSINESS LAWYERS in a POST-ENRON WORLD

By Therese H. Maynard, Professor of Law

As a parent of four teenage daughters, I can assure you that the more the world changes, the more it stays the same. I have been reminded often of this old adage as I have reflected on the events of the past year.

A year ago, I penned an article for the *Loyola Lawyer* that posed the question: Do Lawyers Matter? That was before—before WorldCom melted down; before the well-known lawyer, Mark Belnick, then serving as Tyco’s general counsel, was indicted; before his boss, Dennis Kozlowski, was forced to resign as CEO of Tyco; before Congress passed the landmark reform legislation known as the Sarbanes-Oxley Act; before the demise of the Big Five accounting firm of Arthur Anderson; before Harvey Pitt was forced to resign his position as SEC chairman; before Attorney General Spitzer flexed his muscle under state securities law to clean up alleged abuses on Wall Street; and before the SEC adopted a detailed set of professional responsibility rules for securities lawyers as mandated by the Sarbanes-Oxley legislation.

Without overstating the case, the business world is a vastly different place today than it was a year ago. Yet (as the parent of any teenager knows), the more the world changes, the more it stays the same. Many of the scandals that we have witnessed over the past year seemingly are attributable to root causes that are not all that novel: greed, power, conflicts of interest. This certainly seems to be the conclusion drawn from reading the Powers Report (which is the report of the independent committee of the Enron board of directors that investigated the events that led to that company’s bankruptcy filing), as well as the testimony and documents that were publicized as part of the congressional investigations into Enron and WorldCom (which ultimately led Congress to adopt the Sarbanes-Oxley reform measures).

At the outset of these congressional investigations into the financial scandals of the past year, seasoned observers were heard to say that the scope of reforms proposed in the Sarbanes-Oxley legislation would never become law. At least that was the conventional wisdom until the scope and number of financial scandals grew to such proportions that it precipitated a crisis in shareholder confidence in U.S. financial markets. In an effort to restore investor confidence, Congress aggressively pursued a package of legislative reforms of financial market practices and within publicly traded companies—addressing, among other
things, the structure and function of audit committees, the regulation of the accounting profession, and the accountability of chief executive and chief financial officers. It certainly was not surprising, at least not to me, that Congress would eventually ask the question: Where were the lawyers? Why didn’t or couldn’t the legal advisors to these public companies take steps to prevent these scandals from occurring?

And Congress certainly possessed some very compelling evidence indicating a need for legislative reform of the legal profession in order to prevent future financial scandals—scandals on a national scale not seen since the Great Depression. As the new SEC chairman, William H. Donaldson, observed in a speech delivered in March 2003, at the annual “SEC Speaks Conference,” in Washington, D.C., “In my opinion, we are in the midst of one of the most challenging times for the corporate and financial community since the events that led to the bust of 1929, which gave way to the reforms of 1933 and 1934 and the very establishment of the agency. It is time to get serious [about pursuing corporate reform].”

As a political matter, therefore, it certainly is no surprise that Congress took legislative action to respond to allegations that the advice of Enron’s outside law firm, Vinson & Elkins, purportedly facilitated Enron’s use of special purpose entities to move debt off the company’s balance sheet in an apparent effort to camouflage the true state of financial affairs within the company, or, to refer to yet another high-profile example that Congress could ill afford to ignore, the summer of 2002 brought widespread publicity of allegations that Mark Belnick failed to disclose on the company’s Director and Officer questionnaires that he was indebted to his employer, Tyco, for approximately $14 million in loans that were apparently used by Mr. Belnick, then Tyco’s general counsel, to refurbish his Manhattan residence and his vacation home in Utah.

In the face of such widely publicized allegations of attorney misconduct as part of the financial scandals that have precipitated the ongoing crisis in investor confidence, it is not surprising to me that Congress felt compelled to respond with legislation intended to strengthen the professional obligations of those attorneys who represent public companies such as Enron and Tyco. Indeed, as I watched the scandals of the past year unfold, my reaction was reminiscent of the parent of a teenager whose son or daughter has just received a driver’s license. The parents of a recently licensed teenage driver will, at some point, come to trust their teenager and give permission to their teenage driver to use the family car for the evening. The parents, of course, impose a midnight curfew. When the teenager is late by a few minutes, they let it slide rather than run the risk of an ugly encounter over a minor curfew infraction. Then, the next weekend, they again allow their teenager to use the family car. This time, however, the teenager is late not by just a few minutes, but by an hour. This curfew violation, of course, provokes a strongly worded warning from the parents, but no draconian measures, such as complete loss of all driving privileges, are taken. Several weekends later, the teenage driver, feeling invincible as all teenagers presumably feel at some point, decides to stay out way past curfew. Not surprisingly, on his way home very late at night, the sleepy teenager weaves across lanes into incoming traffic, hitting another car, injuring himself and the driver of the other car. The parents’ reaction is swift, immediate and dramatic: they revoke all driving privileges, require the teenager to pay for all the vehicle damage, and insist that the teenager demonstrate responsible behavior before any driving privileges will be restored. The teenager must earn back the trust of his parents in order to regain the privilege of driving the family car.

So how is this story relevant to the financial scandals involved at Enron, WorldCom and Tyco, to name but a few? In the wake of last year’s financial scandals of devastating proportions, Congress, like the good parent, responded with comprehensive legislation designed to reform the conduct of a broad cross section of participants in our financial markets—CEOs, CFOs, accountants and auditors, investment bankers, financial analysts and, not surprisingly, lawyers. As the parent of a teenage driver, I would expect nothing less of Congress. Much like the distressed parent, Congress felt the pressure to do something in order for public companies and their managers and legal advisors to earn back the trust and confidence of investors.
The reaction of many in the Bar, however, has been quite critical of many of these reform efforts, particularly of the SEC's new professional responsibility rules. I am of the view, however, that, at least for those practicing lawyers fortunate enough to have been educated here at Loyola Law School, the new rules require nothing more than what any damn good business lawyer (from LLS) already believed to be a fundamental part of their professional obligations to their corporate clients.

Long before it became fashionable to preach and teach high ethical standards, Loyola emphasized to our students the importance of adhering to the highest standards of professional conduct. An integral part of this educational mission has always been to educate our students as to the importance of the lawyer's reputation as an independent professional. So, although much of the buzz and publicity associated with the SEC's efforts to satisfy its rulemaking obligations under the Sarbanes-Oxley legislation has apparently caused many practicing lawyers to worry about how to bring their conduct into compliance with the new rules, I believe that lawyers who have been educated at Loyola will find that there is little in the conduct of their day-to-day practice that they must change in order to bring their professional response to evidence of client misconduct into line with the SEC's new rules. In fact, my colleague, Professor Cindy Archer, and I recently offered an ethics workshop that analyzed the SEC's recently adopted rules of professional responsibility. As part of our presentation we compared the obligations imposed by the SEC's new rules to the current standards imposed on lawyers practicing in California. Without minimizing the differences—which do exist—the bottom line of our presentation is that business lawyers who have the good fortune to be educated here at Loyola already are conducting themselves substantially in accordance with the mandate of the SEC's new professional responsibility rules.

Briefly summarized, the key principle to be implemented by the detailed, and somewhat complex, provisions of the SEC's new professional responsibility rules is widely referred to as the "up the ladder" rule. Under the SEC's new rules, if a lawyer for a publicly traded company becomes aware of "evidence of a material violation" of the federal securities laws, the lawyer must disclose the matter to the company's chief legal office (CLO) or to the CLO and the company's CEO. [Alternatively, the lawyer may make disclosure to a qualified legal compliance committee (QLCC). In the event that the lawyer refers the matter to a QLCC, the obligations under the SEC's new rules are very different.] The CLO then must conduct an investigation into the matter forming the basis for the "evidence of a material violation" of the federal securities laws.

If the attorney who originally reported the violation fails to obtain an appropriate response, the attorney must go up the chain—taking the matter to the board of directors, if necessary. (The more controversial aspect of the SEC rules as originally proposed—known as the "noisy withdrawal rule"—was not adopted as part of the SEC's newly-enacted professional responsibility rules; instead, this rule was re-proposed by the SEC and put out for further comment. Although the comment period has expired, no final action had been taken by the SEC as of the date this essay was finalized for publication.)

As adopted, the SEC's new rule clearly is designed to implement the congressional mandate of Sarbanes-Oxley, which had its impetus in the widely held sentiment that corporate advisers, including company counsel, who become aware of misconduct within the corporation, should be held accountable. As is the case with reforming
the errant ways of teenage drivers, only time will tell whether these congressional reform measures will evoke the desired result of rehabilitating the corporate governance practices of public companies and restoring investor confidence in our markets. Nonetheless, that Congress should react to corporate scandals such as Enron and Tyco by legislating mandates that hold company managers and their legal advisors responsible for their conduct should come as no surprise. It is a natural outgrowth of the scandals of the past year, in much the same way we expect parents to impose consequences on their teenage drivers to hold them accountable for their misconduct while driving.

But what of all those careful teenage drivers who do not err—whose driving does not lead to tragedy? In the aftermath of any tragedy with disastrous consequences, the rest of the community must be careful not to label all teenagers as bad drivers. Likewise, in the wake of recent financial scandals, the legal and financial community must resist the temptation to label all lawyers as indifferent to—or even worse, ignoring—their professional responsibilities.

I must confide, however, that I do find it deplorable that this core principle of accountability requires the kind of detailed rulemaking found in the SEC’s new professional responsibility rules. This is especially deplorable when damn good business lawyers should appreciate that their legal advice must ensure not only technical compliance with the requirements of the law, but also must promote the spirit of the law—to implement the underlying public policy objectives of a particular legal rule, regulation or doctrine.

In fact, I am of the view that most lawyers do take seriously their obligations as independent legal advisors. In my classroom, the developments of the past year, including the landmark Sarbanes-Oxley legislation, have presented a significant opportunity to consider the meaning of being a lawyer—an independent professional legal advisor—and the very essence of the attorney-client relationship. In the process, I use the events of the past year to stress to my students the importance of the lawyer’s good judgment.

In this post-Enron era, I am quite explicit in my message to my students: the exercise of sound professional judgment is of vital importance to both lawyers and their clients, the corporation. I emphasize to my students that the damn good business lawyer “adds value” to the corporation’s daily functioning and decision-making through the exercise of professional judgment. I use the events of the past year to emphasize to my students that the exercise of professional judgment requires more than mere expertise as to the substance of the law. Good judgment also requires the
And may that client have the great fortune to entrust his legal problems to the damn good business lawyer.

capacity and experience to apply the detailed terms of the legal rules to the problem at hand to fulfill the spirit of the law as well as to comply with its express terms. Even more important in our post-Enron world, I use the events of the past year to illustrate that sound professional judgment is the unique offering that damn good business lawyers can provide to their clients. As such, I teach my students that judgment is the lawyer’s most precious asset, and I implore my students to resist any pressure to compromise their exercise of sound professional judgment.

Which brings me back to my theme: the more the world changes, the more it stays the same! Of course, there will have to be some changes in professional conduct to take account of the new professional responsibility rules. I believe, however, these measures are native to the damn good business lawyer, although they may be setting a higher and more demanding bar for those lawyers who may have lost sight of the fundamental ethical obligations of their profession. Today, in light of the detailed rules adopted by the SEC, when securities lawyers become aware of “evidence of a material violation of the federal securities laws,” it will be important for them to document their efforts to comply with the professional obligations imposed by the SEC’s new rules. But the core standards of professional responsibility imposed by the Sarbanes-Oxley legislation and the SEC’s implementing rules—that lawyers who advise public companies do not stand by idly while corporate insiders engage in serious misbehavior—do not vary significantly from the standards that have traditionally formed the core of legal education here at Loyola.

So, in a year in which scandals have come to dominate the headlines of the financial press, I tell my students that I believe these are exciting times to be a corporate lawyer. In the midst of the current turmoil is the very real possibility for a damn good business lawyer to make a difference. Now, more than ever, I really mean it when I tell my corporate law students, “The world desperately needs damn good business lawyers!”

By way of conclusion, I would like to repeat a quote that many readers may recognize if they remember their Corporations class with me here at Loyola. In these financially troubled times, that are made all the more complicated and difficult by the conflict in Iraq, I return to find strength and purpose in the words originally penned a number of years ago by a fellow colleague, Professor James Gordon, III, who teaches corporate and securities law at Brigham Young University, J. Reuben Clark Law School:

Good lawyers must have the skills required for professional competence. But this is not enough. They must know how to carry the burdens of other people on their shoulders. They must know of pain, and how to help heal it. Lawyers can be healers. Like physicians, ministers, and other healers, lawyers are persons to whom people open up their innermost secrets when they have suffered or are threatened with serious injury. People go to them to be healed, to be made whole, and to regain control over their lives. These are large and important tasks, and they require all that we have to offer. They require both good minds and good hearts—not only mental acuity and professional skill, but also compassion, righteousness, mercy, and strength to suffer and carry pain. That is what it takes to be a truly good lawyer. And the world desperately needs truly good lawyers.

To this I can only add...Amen!! And may that client have the great fortune to entrust his legal problems to the damn good business lawyer who has been educated by Loyola Law School.

Therese H. Maynard is professor of law and Leo J. O’Brien Fellow at Loyola Law School. She joined the Loyola faculty in 1983. Maynard, who practiced securities litigation with the Los Angeles law firm of Gibson, Dunn & Crutcher, publishes extensively in the area of securities law.

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The American legal system and a deep appreciation for individual rights and democracy have always fascinated Lawton. While at Loyola he was mentored by Tom Girardi '64, at whose firm he worked for his first six years of practice. It was there that he developed an appreciation for the responsibility lawyers have when entrusted with their clients' personal and financial futures and the satisfaction lawyers can achieve by thinking creatively in order to make a difference in their clients' lives.

In addition to practicing law, Lawton is a world-renowned fine arts photographer, writer and visual artist, whose work has been collected, exhibited and published throughout the world. His interest in photography began after taking the Bar exam, when he traveled through Europe while waiting for the Bar results. He packed along a camera and photographed foreign cultures and ancient sites. Upon his return four months later, Lawton began receiving recognition for his photographs.

After practicing law with Girardi for the next six years, Lawton decided to take some time off to travel and explore the world. He set off with two cameras and an abiding curiosity, and traveled for three years through 75 countries in the South Pacific, Asia, Africa, the Middle East and Europe. He returned with a body of work that expressed not only what he had seen, but also what he had experienced. He resumed his law practice and also began to exhibit his photographs.

Eric Lawton proactively affects the world around him. In his Century City practice, he concentrates on complex civil litigation involving business, insurance, tort, real estate and construction defect matters, as well as acting as a private mediator. His clients range from individuals to major corporations. He was first inspired to practice civil litigation by his torts professor, Frederick Lower, Jr., who emphasized the philosophical foundations of America's system of rights and privileges that empower those who might not otherwise have a voice.

Many were published in magazines, and used in multi-media productions and theatrical performances.

Lawton feels he has achieved a balance of his law practice, his art and his family. His art has led to many other forms of expression, including exhibitions, theatrical performances, magazine assignments, advertising campaigns and books. His art appears in numerous private, corporate and public collections, including the Skirball Museum, the International Museum of Photography, the New York Public Library and the Bibliothèque Nationale in Paris. In 2001, his solo exhibition, Photographs from Earth, was displayed at Los Angeles City Hall. His work has appeared in The New York Times Magazine, Fortune and Conde Nast Traveler, as well as worldwide advertising campaigns.
for Citigroup and Motorola. Actress Susan Sarandon quoted from Eric Lawton’s book “The Soul Aflame” in introducing the “In Memoriam” section of the 75th Annual Oscars presentation in March 2003 (seen on television by an estimated one billion people worldwide): “As photographer Eric Lawton reflects: ‘What is a life? What do we leave behind that can’t be worn down by wind, or time, or fire? It is the trace we leave on memory.’”

Through his travels to developing countries, Lawton has discovered a new appreciation for the American legal system of freedoms, rights and remedies, including the right to inherent human dignity. He also learned a great deal about human nature. Lawton says, “As I spent time observing the world’s many traditions, their elements began to merge into one another. Within the many unique ways of coping with life on this planet, fundamental patterns clearly shine through.”

He also sees a parallel between his law practice and his art: “In each case, whether I’m presented with a legal problem or whether I’m considering a visual subject, I’m presented with a world in chaos. There is a certain disharmony and incoherence at the initial stages. The art of photography, like the art of law, is to discern the underlying theme—to find the story that is buried within the chaos and express it in a clear, compelling way.” It is no surprise that his central theme in life is focus. He says that the balance between both careers and his family is an art in itself, but focus helps him to make the most of his time. “By giving a voice to our creative side, we become better lawyers,” he says, “and that makes all the difference.”

As lawyers face the challenges of leading a balanced life between the demands of the profession and those of their personal and creative lives, Lawton may have found a peace that transcends the many facets of life. He has found a way to give back to the world. Lawton’s book of photographs, The Soul of the World (HarperCollins), is in its third printing. Currently, he is helping create a multi-dimensional book entitled, Nishmat Tzedek, Hebrew for “A Righteous Soul,” dedicated to the victims of terrorism. It will include a music CD of an original choral symphony, along with written passages from writers and philosophers including Nobel Prize winner Elie Weisel, matched with Lawton’s photographs. It will be published in mid-2003.

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![El Mololo Boy, El Mololo Island, Lake Turkana, Kenya 1977](image1)

![Two Women, Machapuchare, Nepal 1978](image2)

![Pond, Palace of Fine Arts, San Francisco, California 1997](image3)
Mark J. Geragos ’82
In the Spotlight

Mark Geragos ’82 has always had a passion for law. One could say that he was programmed to be a defense lawyer. Since the age of five, when he spent summer vacations following his lawyer father around the courthouse, he was exposed to the passionate world of criminal defense.

After graduating from Loyola, he became a partner in his father’s law firm Geragos & Geragos. Since then, he has broken ground in the criminal defense field and has earned a national reputation successfully representing his political and entertainment clientele. The Los Angeles Criminal Courts Bar Association named him “Trial Lawyer of the Year,” and he was also tabbed as one of the “100 Most Influential Attorneys in California” by California Law Business. Geragos maintains that one of his great motivators is his passion for winning. Besides his day job, he is a regular commentator on CNN and Fox, providing legal commentary on contemporary legal topics. Geragos also raises and races thoroughbred horses. As much as he may be a sure bet these days in the courtroom, don’t be surprised to see one of his horses posting at Hollywood or Santa Anita.

Darren Levine ’88
Prosecution and the Art of Defense

Darren Levine ’88 is a deputy district attorney with the Los Angeles County District Attorney’s Office. He is currently assigned to the Crimes Against Peace Officers Section (CAPOS), an elite unit responsible for prosecuting murders and attempted murders of police officers.

Levine has prosecuted 80 felony jury trials, including many challenging, high-profile murder cases involving the slaying of on-duty peace officers. His motto is “protect the protectors.” He has a 100 percent conviction rate. He was named “Prosecutor of the Year” in 2003 by the Los Angeles County Association of Deputy District Attorneys. Levine’s passion comes from working closely with the surviving family members of officers killed in the line of duty. While at Loyola, Levine was employed by local, state and federal law enforcement agencies to teach self defense and officer survival tactics. An expert in police use of force, Levine was encouraged by police administrators to become a prosecutor. Standing up to do the right thing seems inherent in his philosophy of life. Levine is a true hero for these times—when violence is treated as entertainment and remorse has become an outdated virtue. He balances his law practice with being a founding partner in the Krav Maga National Training Center, the largest training facility in the world, featuring the fighting system of the Israeli military and anti-terrorist units. He is the U.S. chief instructor of Krav Maga and actively teaches police SWAT teams and military special operation units in the U.S. and abroad.
Snow coats the shops of the Champs-Élysées; Deidre Beckett '86 hurries by the store windows. She may have luxury goods on her mind, but shopping is not on her agenda. Beckett is senior counsel for the American subsidiary of Paris-based LVMH Moët Hennessy Louis Vuitton Inc.

Deidre Beckett '86
The Law of Luxury

LVMH's stated goal is to "represent the most refined qualities of Western 'Art de Vivre' around the world." It globally disseminates good taste through such brands as Dom Perignon, Givenchy, Donna Karan, Christian Dior and TAG Heuer.

To Beckett, though, her employer's luxury goods just make the workday fun. It is the opportunity to work in-house that really excites Beckett. As a corporate counsel of LVMH, she is closely tied to the business. "Understanding the priorities of LVMH is essential," she says. Beckett feels this intimate collaboration between attorney and client is a welcome contrast to larger firms where attorneys often work in a "vacuum." Beckett guides LVMH chiefly in employment disputes. Yet, because of the small size of the legal department, she may find herself pouring over wine and spirits regulatory restrictions one day and advising LVMH on antitrust matters the next. This variety originally attracted Beckett to the position. (The job opening serendipitously crossed her desk when she worked as a legal headhunter.) However, Beckett admits the frequent trips to Paris, Los Angeles and San Francisco, as well as her Manhattan office nicely situated within walking distance of her home, are pleasant perks too. ❖
Amy Solomon '87
From the Heart

The doors of Orange County courtrooms stand like battlements against plaintiffs bringing medical malpractice suits. Recently, Amy Solomon '87 found herself inside such a fortified courtroom preparing her client for the worst. Still, Solomon was hopeful, because "I really felt the case came from my heart," she remembers.

In a victorious break from tradition, the court listened to her sincere advocacy and decided in her client's favor. Once again, Solomon slung the rock that felled Goliath. Solomon, a partner at Girardi and Keese, has made a career of defending "consumers or people who have been injured by defendants with much greater power than the plaintiff." In February of 2000, she won a settlement for a boy who suffered serious injuries after becoming pinned under a Disneyland ride. Similar tragic injuries and long odds often characterize Solomon's cases; her voice still lingers, laden with emotion, when certain cases are recalled. Yet, Solomon prevails, with support from an unflagging belief in her clients.

Solomon complements conviction with an affinity for the mental rigor of the practice of law. She pursued a professional ballet career until injuries heralded retirement. Craving rigorous mental exercise similar to the strictures of ballet training, Solomon turned to law school and a career in law. She began clerking for Girardi and Keese as a second year student. Solomon feels like part of a family at Girardi and Keese. "I've grown up here, and I see myself growing old here...if they'll have me," she laughs.

Certainly her success foretells a long career with the esteemed firm. Solomon's successful substitution of the stage with the courtroom was a natural switch; only the absence of exuberant curtain calls distinguishes her legal performances from those of a more graceful variety. Her ability to communicate emotion to an audience, regardless of the medium, is the same.

Catherine B. Hagen '78 is a trial lawyer practicing employment law for O'Melveny and Myers, where she has worked since her graduation from Loyola.

Catherine B. Hagen '78
A Balanced Life
On November 12, 1892, a man was paid $500 to play football for the Allegheny Athletic Association in a game against the Pittsburgh Athletic Club. With Pudge Heffelfinger’s paycheck, professional football was born, and the seeds of a venerable institution were sown. The National Football League now has 32 teams, each licensed and marketed by NFL Properties LLC. Enter David Weinberg ‘93, Associate Counsel in the Business and Legal Affairs Department of NFL Properties.

David Weinberg ‘93
He’s Got Game

In that role, Weinberg views himself as a facilitator of business rather than a law monger. “I look for solutions to facilitate an agreement, while staying in focus of league goals and protecting league assets,” Weinberg says. Thus, all of Weinberg’s transactional work—retail licensing, corporate and international sponsorship deals, or media negotiations—is tinged with the knowledge that the NFL is ultimately assembling a product that millions of fans passionately view.

However, Weinberg is not new to tremendous and very public undertakings. Weinberg started his career in the Legal Department for the 1994 World Cup organizing committee. As the world watched, waiting for the American organization’s effort to collapse, the event ran beautifully.

After a year of practicing civil litigation, Weinberg returned to the sport as Legal Counsel for Major League Soccer. Naturally, starting a new soccer league in the midst of America’s overcrowded sports field was a difficult mission. Yet, Weinberg emerged—career intact—to assume his present position as facilitator for the league that keeps millions of fans glued to their armchairs each Sunday.

Hagen’s motivation to practice law comes from the challenges and intellectual stimulation of representing employers in an increasingly complex workplace, where her practice requires working with people on many sides of many issues. She advises employers on complying with a myriad of laws—most of which did not exist when she was in law school. Hagen enjoys unraveling the mystery in every situation applying to law. After being out of college for 11 years, she went back to law school as a mother of two, which challenged her and presented an “intellectual focus in my life that hadn’t been there before.” Loyola was her choice of law schools. It gave her the flexibility to make her way through her studies that other competitive schools could not provide. Her success is drawn from combining hard work, mental discipline and a sense of knowing how people think and work. Hagen balances her practice with a vineyard she owns with her husband in Santa Barbara. They began producing Chardonnay and Pinot Noir in 2000, under the name Clos Pepe. It is the physical work that creates the balance with her intellectual life of law.
Just east of the San Francisco Bay, a man rides an orchard tractor through the gentle hills of Livermore Valley, one of the nation’s oldest grape growing regions. Sblend Sblendorio may have a lot on his mind; after all, his chief occupation is the acquisition and finance of intellectual property from bankrupt businesses. Yet, the weekends and evenings are times to be with his vineyard and his tractor, the vineyard’s only tractor.

Sblendorio has owned, managed and run the Sblendorio Estate and Vineyard since 1996. The decision to become a grape grower came naturally to Sblendorio; his family owns vineyards in their native Italy, and he grew up on a fruit farm in Orange County. As a young man, Sblendorio helped his family run their RV storage company. This experience instilled in Sblendorio a keen interest in business; during law school his favorite classes were tax, bankruptcy, and practically any other course where the U.C.C. held sway.

Despite a successful and busy legal career, Sblendorio could still hear the earth calling to him. So he decided to get his hands dirty and till the land like his family has done for generations. Today, Sblendorio's vineyard produces grapes for Chardonnay, Zinfandel, and Petite Sirah. Sblendorio's agricultural dedication has resulted in his appointment as president of the Livermore Valley Winegrowers Association.

Ann Rundle ’95 wanted to be a lawyer since the fourth grade. That’s when she read Inherit the Wind, a book that inspired her to a life of justice. According to Rundle, it was an easy step from that childhood dream to eventually choosing Loyola for her education.

At Loyola, the late Professor Bill Hobbs was instrumental in showing her how to be a lawyer, by applying the knowledge acquired in the classroom to the courtroom. Along with Hobbs, Rundle considers her mother to be a great inspiration. She used to accompany her mother to her teaching jobs in South Los Angeles. Through that experience, Rundle was exposed to the inner city and public service, and she realized she wanted to practice law for public service. Upon graduating cum laude with the Order of the Coif, Rundle joined the Los Angeles County District Attorney’s Office and now serves as a deputy district attorney. She has prosecuted many high-profile cases involving media coverage. But her greatest satisfaction has come from prosecuting homicide cases. Being able to stand up in court and argue is one of her greatest joys. By combining the opportunities in her life and the desire to be the best she can be, Rundle has succeeded as a public servant and a trial attorney.
If you ask, Martin Stone '51 will gladly give you his two cents' worth of advice. But make no mistake, this savvy businessman's two cents is worth much more than that. At age 75, Stone has amassed a fortune running companies in the last half century, most notably Los Angeles-based Monogram Industries, Inc., a manufacturer of aircraft components. When Stone arrived, the company had sales of $6 million and was losing $300,000 per year. In only a few years, he turned Monogram into a $180 million-a-year conglomerate with an annual profit of $25 million.

Martin Stone '51
Patience, Persistence, Determination and Will

Born in St. Louis in 1928, Stone moved with his family to Los Angeles when he was six. He still has vivid memories of the Great Depression. “My family drove across the country from St. Louis to Los Angeles so my dad could try and find a job. We just piled all our belongings into an old Buick and drove to California, hoping there was work there. We were a family that lived in a non-cash environment. It was a very tough existence.”

Stone says those hard times shaped his character. “It made me very security conscious, and it drove me to try and accumulate enough wealth so that I would never have to be as financially insecure as my parents were.”

After graduating from Fairfax High School in 1945, Stone attended UCLA, earning his B.A. in economics and political science in 1948. Then he entered Loyola. “Law school turned out to be of monumental importance to me. It gave me credentials, but it also trained me in a way of thinking and a way of analyzing issues that have been vital to my business career and to the rest of my life.”

An avid sports enthusiast, Stone prides himself on his lifelong fitness regime that includes running, hiking, tennis, skiing, baseball and, most recently, golf. And even though his pro baseball ambitions were cut short by a bad knee, he did find himself in the major leagues—pitching batting practice for 16 years for teams like the Boston Red Sox and the Los Angeles Dodgers. “I had a rubber arm and I eventually developed incredible control. I could throw every pitch in the book,” he says. Today, Stone is an owner of the Tucson Sidewinders, AAA Baseball Club Affiliate of the Arizona Diamondbacks.

Stone says his greatest accomplishment is his family. “I have five kids who really like and respect me, and I feel the same about them. They're good people. There's nothing else in my life that I enjoy taking as much credit for, and it is a credit that my wife and I share,” he says.

As for Stone's strategy for success, he offers four words: persistence, patience, determination and will. “I think if you have those things you can be successful at almost anything you do.”
Mark Geragos '82, Scott Peterson's attorney, believes Loyola plays such prominent roles because the "type of student who is attracted to Loyola comes in with certain life experiences that lend themselves to courtroom settings. Loyola nurtures and instills trial advocacy unlike most law schools that emphasize traditional Socratic learning." He continues, "Loyola produces lawyers who are the quickest on their feet. There is an emphasis on this in law school, a give and take in the classroom which translates to the courtroom." On his role in the Peterson trial, Geragos told the Sacramento Bee, "I'm facing a case where I've been advised by everyone not to take it—told it is career suicide, told I'm clinically insane. Why do it? I do take seriously the idea that you're not supposed to turn down a case just because of its notoriety."

Two other Loyola graduates also sit on the defense side working with Geragos. Matthew Dalton '89 is a 12-year veteran of the district attorney's office, having handled several death penalty cases. Nareg Gourjian '02 is a recent graduate and is gaining valuable experience in the Peterson trial. He is developing his own skills as a criminal defense lawyer. A Loyola alumnus, Joseph Distaso '92 is senior deputy district attorney, who along with David Harris, is prosecuting Scott Peterson. To add more Loyola alumni to the case, Gloria Allred '74 is representing Amber Frey, the woman who was allegedly having an affair with Scott Peterson. More than 27 years ago, Allred started the law firm, Allred, Maroko & Goldberg along with two other Loyola classmates. She is representing Frey because she wants to "protect the integrity of her testimony." Allred told the CBS News Early Show, "Victims are entitled to attorneys, as are witnesses. And, of course, it's not unusual in high-profile cases for witnesses to have attorneys to advise them and to help explain the criminal justice system to them."

There may not be one particular attribute that sets Loyola Law School apart in the criminal law area. But looking at the caliber of trial attorneys Loyola has produced, from Johnnie Cochran, Jr. '62, Nancy Cohen '78, and Thomas Girardi '64, to Walter Lack '73, and Robert Shapiro '68, it is hard not to be impressed. Whether it is the faculty, the curriculum, or the practical nature of a Loyola education, one thing is clear: Loyola alumni are competent and highly sought out as trial lawyers.
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INTRODUCTION

The uniformed officer dismounted his black and white motorcycle and approached the lone male motorist whom he had just pulled over after observing a broken tail light on the driver's late model pickup truck. As he slowly walked to the driver's side of the vehicle in order to write a fix-it-ticket, he noticed the occupant discreetly attempting to stuff a brown paper bag beneath the unoccupied passenger seat. Since the stop had taken place in an area known for high drug trafficking, the officer asked if the motorist would mind showing him what he was apparently attempting to hide.

The driver, in an angry tone and with the aid of much profanity, refused the officer's request, responding in substance that he could not think of any good reason why the officer would be justified engaging in such an intrusion. The officer smiled wryly and answered that he really didn't need permission to enter the vehicle and search the bag. The very attempt to conceal it from the policeman's potential view had given him reasonable cause to believe that the driver may have had something criminal to hide and thus provided him with justification for a search.

The Alice in Wonderland logic of this encounter could seemingly exist, of course, only in some alternate universe concocted from the imagination of Lewis Carroll, or perhaps Ray Bradbury. Why should the very act of attempting to prevent a governmental intrusion into a private area be the conduct which gives the police the right to invade that very privacy?

Yet, in Illinois v. Wardlow, 528 U.S. 119 (2000), the Supreme Court's 5-4 decision does at least open for debate the possibility that this type of furtive gesture (the attempt to hide one's self or one's property from the prying eyes of the government) may be usable by the state as part of the justification for some types of police intrusions.
ILLINOIS V. WARDLOW

Shortly after noon on September 9, 1995, four police cars converged in what the officers suspected was an area of high drug trafficking on the west side of Chicago. The officers were there to investigate possible illicit drug activity. The occupants of the last of these police vehicles, Officers Nolan and Harvey, noticed an African American man, later identified as William Wardlow, carrying an opaque bag.

Upon seeing these last two officers arrive, Mr. Wardlow attempted to flee the scene through a nearby alley. Though the suspect had not appeared to be violating any laws, Officers Nolan and Harvey briefly pursued, caught and conducted a protective pat-down of Mr. Wardlow for weapons. Prior to this frisk, the officers asked the suspect no questions, nor did they state the purpose of the forcible stop.

As part of the pat-down, Officer Nolan squeezed the opaque bag that the suspect was carrying and, upon feeling a hard heavy object with a shape similar to that of a gun, opened the bag and discovered a .38 caliber handgun and five rounds of live ammunition. Mr. Wardlow was arrested and, after the .38 was successfully offered into evidence against him, convicted by the trial court of unlawful use of a weapon by a felon.

The Illinois Supreme Court ordered the case dismissed on the grounds that the police lacked reasonable suspicion to stop and frisk Mr. Wardlow. In spite of the high crime nature of the area, the Illinois court concluded, in the absence of reasonable articulable suspicion to detain, a pedestrian has the right to simply ignore and walk away from even an attempted police stop. The court stated that flight, such as that of the suspect here, was merely the exercise of this right to walk away “at top speed.”

In reversing Illinois’ high court, the majority of the Supreme Court declined to hold that fleeing the police in and of itself was either sufficient or insufficient to justify a “stop and frisk.” The Court, however, did conclude that based upon the “totality of the circumstances” of the particular case before it, the pat-down and search of the bag was constitutionally permissible.

Brief detentions, based upon less than probable cause, were first recognized as constitutionally permissible by the Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968). There, a seasoned veteran of over 30 years on the police force observed three men acting suspiciously in a manner which the officer, based upon his long experience, recognized as consistent with persons on the verge of committing a robbery. In possession of this articulable suspicion, he approached the men and inquired about what they were doing. When they failed to respond clearly, the officer, fearing they might be armed, patted the outside of one suspect’s clothing. Feeling a revolver, he retrieved it. The same procedure was repeated with respect to the other two men, resulting in the discovery of one more weapon.

In analyzing the officer’s behavior, the Court first concluded that the Fourth Amendment does protect individuals from being seized and patted down, just as it protects them from being arrested or searched. Yet the Court, for the first time, found that this type of intrusion could be justified based upon the type of reasonable suspicion that had existed here, even though it was less than full “probable cause.” The officer had conducted himself in conformity with constitutional demands. The Court did warn, however, that not all suspicion rises to the level of the “reasonable suspicion” constitutionally required for such Terry-type “stop and frisk.”

What was it then about William Wardlow’s behavior that gave the officers such “reasonable suspicion”? To what extent is the Court’s analysis of the furtive gesture of flight analogous to, and therefore precedent for, the similar use of other furtive acts? To answer these questions it is first necessary to understand the basis for the Wardlow decision. The particular circumstances of the case and

After all, how many of us wander the streets carrying non-opaque containers?

Crystal Stimpson, OK “Snake Dream” acrylics
its holding can be summarized in one short sentence: There are three suspicious factors identified as justifying the stop and frisk: the bag, the neighborhood, and the flight.

**THE BAG**

In writing for the five-vote-majority, Chief Justice Rehnquist noted that the “bag” the suspect was initially observed to be carrying was “opaque.” Rehnquist never actually specifies that this was one of the reasons why the stop and frisk was constitutionally permissible. Yet one cannot ignore his choice not to refer to the object by any other term, such as shopping bag, briefcase, back pack, or purse. 143, 147-48 (1984). Yet, even in such a neighborhood, not all suspicious behavior is sufficient to permit police detention.

Arthur Keigney, MA “Bull Pen” acrylics

The exclusive reference to an “opaque bag” appears to have been a less-than-subtle attempt to remove this object from the day-to-day commonplace and suggest a sinister quality. The Chief Justice may be suggesting that in an area of heavy drug trafficking, someone carrying a non-transparent bag could be using it for the transportation of contraband or even weapons.

If indeed this fact played a part in the majority’s holding, then the Court’s ruling would be subject to some obvious criticism. After all, how many of us wander the streets carrying non-opaque containers? For example, luggage made of cellophane has for various reasons proven not to be as popular as those constructed of sturdier materials.

D

does this then signal a new trend? Are all who carry non-translucent closed containers now to be suspect? Perhaps the less-than-compelling nature of this as an element of suspicion is the reason why, even though the majority begins by noting its opaque nature, the opinion concludes without specifically listing the bag itself as one of the factors giving the officers the right to detain or pat-down. Clearly, this must be viewed, at most, as only a minor contribution to the “totality of the circumstances.” Rather, it is the particular circumstances surrounding the suspect’s carrying of this bag (such as the neighborhood and the flight) which are seemingly most important to the Court’s holding.

**THE “HOOD”**

How significant a factor is it that the defendant was stopped in an area the arresting officers identified as known for heavy drug trafficking? The high crime nature of the area in which a suspect is observed has often played a part in justifying a police intrusion. Adams v. Williams, 407 U.S.

This was made clear by the Supreme Court in Sibron v. New York, 392 U.S. 40 (1988). In Sibron, an officer observed the eventual defendant associating with a group of six to eight known drug addicts for a period of several hours. The suspect later entered a restaurant, where he started a conversation with three other known addicts. At this point, the officer ordered him to exit the restaurant and told the suspect, “You know what I am after.” The defendant mumbled something and reached into one of his pockets. The officer then placed his hand in that same pocket and recovered a quantity of heroin.

The officer had been unable to hear any of the conversations between the suspect and the alleged addicts, nor had he observed any exchange taking place, which could have been a drug transaction. The Supreme Court concluded that the officer had failed to articulate sufficient suspicion to justify the intrusion.

Similarly, in Brown v. Texas, 443 U.S. 47 (1979), two police officers patrolling an area known for heavy drug activity observed Brown, whom the officers had never seen in the area before, and another man walking away from each other in an alley. One of the officers, believing that their arrival had interrupted a drug transaction, exited their patrol car and asked Brown to identify himself and explain his presence. Brown refused and complained that the officer had no right to stop him. As a result of police observations and the suspect’s behavior, Brown was frisked. Finding nothing, the officers nonetheless arrested Brown under a Texas law which, at the time (though declared unconstitutional in later cases), provided that it was a crime to refuse an officer’s request for name and address during a “lawful” police stop.

Given the facts in Brown, the Supreme Court concluded that, even though the events had occurred in a high drug trafficking area, the officers had failed to express particular conduct on Brown’s part sufficient to justify their belief that he had been engaged in criminal conduct or was armed. The Court noted that, “the appellant’s activity was no different from the activity of other pedestrians in that neighborhood.” Though Brown’s behavior may have been
somewhat suspect, as was the case in Sibron, it did not rise to the level needed to allow a constitutional "stop and frisk." Thus, in and of itself, "presence in a high crime neighborhood is a fact too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry."

Judge Alex Kozinski has expressed an even more basic concern. He opined that the most important question arising out of Wardlow is not whether or when the high crime nature of an area should be taken into consideration, but rather how its high crime nature can be constitutionally established. U.S. v. Montero-Camargo, 208 F.3d 1122, 1143 (2000) (Kozinski, J., concurring):

Just as a man with a hammer sees every problem as a nail, so a man with a badge may see every corner of his beat as a high crime area. Police are trained to...look at the world with suspicious eyes. This is a good thing.... But to rely on every cop's repertoire of war stories to determine what is a "high crime area" and on that basis to treat otherwise innocuous behavior as grounds for reasonable suspicion strikes me as an invitation to trouble.... I would be most reluctant to give police the power to turn any area into a high crime area based on their unadorned personal experiences.

"Police are more likely than civilians to misinterpret events because of their training and past experience,"

Judge Kozinski's concerns of too readily deferring to law enforcement intuition are apparently born out by empirical evidence, which suggests that police are often too eager to identify as suspicious behavior which is in reality quite innocuous.

Researchers have asked police officers and lay observers to watch films that portray people engaging in somewhat ambiguous behaviors, and to report the number of suspected crimes they identify as having been committed. "They have found that when viewing such films the trained officers...err more consistently in finding that crimes have been committed, [than] do lay observers. 'Police are more likely than civilians to misinterpret events because of their training and past experience,' which is directly contrary to the operative assumptions about the deference owed police judgments concerning reasonable suspicion." James R. Acker, Social Sciences and the Criminal Law: The Fourth Amendment, Probable Cause, and Reasonable Suspicion, 23 Crim. L. Bull. 49, 78-79 (1987).

The "overactive nature of police imaginations when attempting to identify criminal behavior" was the subject of Robert Berkeley Harper's article: Has the Replacement of Probable Cause with Reasonable Suspicion Resulted in the Creation of the Best of All Possible Worlds?, 22 13, 38 (1988). He concluded that an officer's propensities to see as suspect that which is in reality innocuous was most likely to deprive the economically disadvantaged and minorities of their civil liberties since they tend to populate so-called "high crime areas."

It is thus in poorer neighborhoods, where the police presence is likely to be greater, where the citizens' demeanor toward the police may be interpreted as offensive, and where the people with whom the police interact generally lack resources and other indicia of social power, that the police are less likely to refrain from stopping citizens for investigation. It is in just such areas that "[a] delicate balance must be struck between the right of the often-victimized innocent ghetto inhabitant to adequate, unhampered police protection and the rights guaranteed to him under the Fourth Amendment." U.S. v. Davis, 458 F.2d 819, 822 (D.C. Cir. 1972). How then should courts treat the nature of the neighborhood in which the suspect's behavior is taking place when evaluating the police right to intrude into otherwise constitutionally protected areas?

One federal circuit court has written that: "Although decisions of...court[s] count this as a relevant factor...[they should be] concerned that officers not be encouraged to attach suspicion too readily to the activities of the residents of those neighborhoods simply because they are slum or ghetto areas." U.S. v. Thomas, 551 F.2d 347, 348 (D.C. Cir. 1976). Some years later, another panel of that same circuit court elaborated on this point by writing:

The citing of an area as 'high crime' requires careful examination by the court, because such a description, unless properly limited and factually based, can easily serve as a proxy for race or ethnicity.... We must be particularly careful to ensure that a "high crime" area factor is not used with respect to entire neighborhoods or communities in which members of minority groups regularly go about their daily business.... U.S. v. Montero-Camargo, 208 F.3d at 1138.
There are plenty of suspicious things that people do every day that do not justify an arrest, a search, or even a “stop and frisk.”

It is thus best to use the factor of high crime area with great caution. It should be used sparingly and only when there are other significant circumstances pointing to criminality. Under any lesser standard, we run the risk of treating far differently the innocent inhabitants of economically depressed, minority areas than those of more affluent neighborhoods.

Is flight upon seeing the police just such a significant circumstance which, when taken together with the high crime nature of the area, justifies a “stop and frisk”?

THE FLIGHT

In a neighborhood fraught with illicit drug transactions, it is clearly suspicious behavior to run upon seeing a police officer. However, is this behavior so out of the ordinary that it rises to the level of the suspicion legally needed to justify an intrusion into otherwise constitutionally protected privacy? There is in fact an even more fundamental question presented by the Wardlow decision: When, if ever, is an otherwise seemingly innocent individual free to turn and flee the sight of law enforcement?

There have been hints over the years that some members of the Court might support the conclusion that flight from officers is by itself sufficient to justify detention for investigation. Justice Scalia, for example, once opined in dicta that the flight of a youth upon seeing an officer would justify a police stop. See California v. Hodari D., 499 U.S. 621, 623 n.1 (1991). Similarly, Justice Kennedy noted in Michigan v. Chesternut, 486 U.S. 567, 576 (1988) (Kennedy, J., concurring), that “unprovoked flight gave police ample cause to stop” an otherwise unsuspicious individual. Yet, until the majority opinion in Wardlow, no Supreme Court case had ever held that attempting to avoid contact with the police could justify a constitutional intrusion such as “stop and frisk.”

Continued on page 97
During the evening of the Grand Reunion in April, Dean David W. Burcham '84 presented Loyola Law School's "DISTINGUISHED ALUMNI AWARDS" for 2003 to the Honorable Kathryn Doi Todd '70 and Thomas J. Nolan '75.

Judge Doi Todd of the California Court of Appeal, Second Appellate District. Nolan is managing partner of Howrey, Simon, Arnold and White in Los Angeles, and specializes in antitrust, intellectual property, securities litigation and white-collar criminal defense.

On the same evening as the Grand Reunion, the Alumni Association "Board of Governors Recognition Awards" for 2003 were presented at an awards ceremony to: l to r] Brian Nutt '83 of Thon, Beck, Vanni, Phillips & Nutt; Cristina Armenta '94 of Skadden, Arps, Slate, Meagher & Flom LLP; Patricia D. Phillips '67 of Morrison & Foerster LLP; and Robert A. Cooney, former associate dean for business affairs—pictured here with Dean David W. Burcham '84 (c).

During the evening of the Grand Reunion, members of the Class of 1953 were recognized. The graduates celebrated the 50th anniversary of their graduation from Loyola Law School, which was known during their student years as Loyola University School of Law.

The Robinson Family Courtroom, located in the newly completed Albert H. Girardi Advocacy Center, was home to its first "real world" trial in January 16, 2003. While mock trials, classes and speaking events are the usual fare for the newly completed courtroom, this time Loyola Law School was honored to host the site for an all-day session of the California Court of Appeal, complete with research attorneys, bailiffs and clerks. Presiding were the Honorable Daniel Curry '60, Norman Epstein, J. Gary Hastings and Charles Vogel.

U.S. Supreme Court Associate Justice Anthony M. Kennedy gives a lecture in Constitutional Law to a class at Loyola Law School during his visit in September 2002.
“Religious Law and the Other: How Do Religious Laws Deal with Outsiders?” was the topic of a panel held at Loyola Law School in February. Teresa Watanabe of the Los Angeles Times served as moderator. Among the three panelists was Rabbi Yitchok Adlerstein (pictured), who presented his perspectives on religious law from the Jewish tradition. Adlerstein, who is an adjunct professor at Loyola and holds the Law School’s Chair in Jewish Law, and is director of the Jewish Studies Institute, Yeshiva of Los Angeles and Simon Wiesenthal Center.

The “Religious Law and the Other” panel also was comprised of two local religious law scholars: Professor Charles Frazee (l) of the Department of Religious Studies at California State University, Fullerton, and Mairaj Syed of Islamic Studies at UCLA (r).

Dean’s Forum DINNER

Lloyd Greif ’84 and John E. Anderson ’50 at the Dean’s Forum dinner.

Los Angeles Chief of Police William J. Bratton [l] was the special guest of Dean David W. Burcham ’84 [c] at the annual Dean’s Forum Dinner honoring Loyola’s notable donors, held last February at The California Club. Chief Bratton oversees the operations of one of the largest major municipal law enforcement agencies in the United States. During the evening, Alumnus Dennis B. Kass ’88 [r] was named Loyola Law School’s “Trial Lawyer of the Year” for 2003. He is a founding partner of Manning & Marder, Kass, Ellrod & Ramirez LLP in Los Angeles, a law firm well-known in the community for its support of the Los Angeles Police Department. In recent years, Kass has received numerous honors for his trial skills, including the “2001 California Lawyer Attorney of the Year for Litigation” and the “1999 IASIU Southern California Chapter Defense Attorney of the Year.”

Dean’s CHAIR

On April 15, 2003, the founding of the Fritz B. Burns Dean and Professor of Law Chair was officially observed. Dean David W. Burcham ’84 [r] is the first dean to hold the Chair. The endowment of the dean position strengthens Loyola Law School’s ability to attract the most qualified and talented academic leaders to serve in this vital position. The Fritz B. Burns Foundation, which endowed the Chair, was represented during the evening by W.K. Skinner [2nd l] and Joseph E. Rawlinson ’58, president [3rd l]. Dean Burcham and Robert B. Lawton, S.J., president of Loyola Marymount University [l], in thankful recognition of the gift, presented the members of the Foundation with the Sedes Sapientiae Medallion. The medallion honors the donors of endowed chairs.

In early February, International Law Weekend - West 2002 was held at Loyola Law School for the first time. [l] Professor of Law Laurence Helfer, who teaches copyright, torts and international law at Loyola, co-chaired the conference along with Professor William Aceves [r] of California Western School of Law. David J. Scheffer [c] gave the keynote address. Scheffer is senior vice president of the United Nations Association of the United States of America, and former U.S. ambassador-at-large for war crimes. The biennial conference brings together legal practitioners and academics to discuss cutting-edge issues in public and private international law. The panelists, who addressed a wide-range of issues emphasizing the impact of globalization on the practice of law, included attorneys from Morrison & Foerster, LLP; Munger Tolles & Olson; and Stroock & Stroock & Lavan.
The Program for Law & Technology at Loyola Law School and the California Institute of Technology presented the 4th Annual "At the Crossroads Conference" on November 1, 2002. The conference, "Patenting a Human Genome," was comprised of a mock trial on appeal before the Supreme Court of the United States: Salvadore Dolly v. Nugenera, Inc.

Members of the judiciary presiding were the Honorable Kim Wardlaw, and the Honorable Alex Kozinski of the United States Court of Appeals for the Ninth Circuit, and Associate Justice Ming W. Chin of the California Supreme Court.

Law Day was held on the Loyola Law School campus on April 30, 2003.

St. Thomas More Society is co-chaired by Dean David W. Burcham '84; [pictured l to r] Gerald T. McLaughlin, professor of law and dean emeritus; the Honorable Lawrence Waddington, retired, Los Angeles Superior Court; and Roger M. Sullivan '52 of Sullivan, Workman & Dee. Recently, the Society was honored by the Los Angeles Archdiocese for its dedication to the law and to the Church.

SHARK bites Lawyer

Alumnus Michael Casey '80 looked straight into the jaws of death late last year—literally. The avid surfer was waiting for the next big wave on Thanksgiving morning, 2002, while he floated about 150 yards offshore near his home in Santa Rosa. While Casey's fin-shod legs dangled in the near-freezing water, a 16-foot Great White circled slowly beneath. "All of a sudden, from out of nowhere, I got slammed with an incredible force," he recalled. The next thing he remembered was seeing "the open jaws, a fin—and lots of blood." Although the shark bit Casey, luckily for him it backed off. "I saw it withdraw from my leg and go underneath the water." Reports confirm that Casey's experience follows the typical shark-attack pattern: they bite their victim, back off and then wait for the victim to die in order to finish the job. However, Casey avoided such a horrific ending as several nearby surfers helped him make it safely to shore. Scared? Naw! The private-practice attorney and Santa Rosa deputy city attorney remains undaunted. He recently returned from surf expeditions in Hawaii and Costa Rica. "$I'm absolutely passionate about surfing," he insists.

This past spring, Loyola Law School's Black Law Students Association (BLSA) Moot Court Team was named the 2003 National Black Law Students Association Western Region Champions. The team is pictured here with Dean David W. Burcham '84 [l. front] and Professor Gary Williams, coach. The team participated successfully in two competitions. [l to r] Zakiya Glass and Elizabeth Powell served as witnesses for the trial advocacy competition. In the Thurgood Marshall Mock Trial Competition, Charlyn M. Bender and Earnah Counts won First Place. In the Frederick Douglass Moot Court Competition, Second Place was taken by Jaron R. Hicks and Jasmine J. Watkins; and First Place and Best Brief was taken by Danielle M. Butler (Best Oral Advocate) and Kristi E. Belcher '03.
Graduating members of the Black Law Students Association (BLSA) celebrated the conclusion of their law studies at Loyola Law School—then the day prior to Commencement 2003. This year, the student organization honored alumnus Jess J. Araujo '76 for his support of Loyola Law School and his dedication to the greater Los Angeles Latino community. Araujo, pictured here with new graduates Carmen Vasquez '03 [l] and Nadia Chinchilla '03 [r], is a partner at DiMarco, Araujo & Montevideo in Santa Ana.

La Raza de Loyola held its annual graduation party the day prior to Commencement 2003. The student organization honored alumnus Wayne Anderson '82, chief justice of the California Supreme Court, who delivered the commencement address before the Class of 2003; and Robert B. Lawton, S.J., president of Loyola Marymount University.

The 82nd Commencement Ceremony for Loyola Law School was held on May 18, 2003 at the Loyola Marymount University campus in Westchester. More than 6,000 friends and family attended the festivities and witnessed the conferral of nine master of laws in taxation, 10 juris doctor/master of business administration and 437 juris doctor degrees; more students graduate from Loyola Law School than any other law school in the Western United States. Presiding over the ceremonies were [l to r] David W. Burcham '84, dean of Loyola Law School; the Honorable Ming W. Chin, associate justice, California Supreme Court—who delivered the commencement address before the Class of 2003; and Robert B. Lawton, S.J., president of Loyola Marymount University.

Several events marked the opening of the new Albert H. Girardi Advocacy Center in September 2002, including the inauguration of two lecture series now an integral part of Loyola Law School’s Ethical Advocacy Program: the Stephen E. O’Neil Memorial Lecture and the William J. Landers Lecture. At the O’Neil Lecture, the Honorable Ronald M. George [pictured above], chief justice of the California Supreme Court, gave the address, “Judicial Independence.”

At the Landers Lecture, the Honorable Stephen S. Trott of the United States Ninth Circuit Court of Appeals gave the address, “Prosecutorial Ethics.”

Alumnus Dwayne A. Anderson '02 [r], pictured here with Dean David W. Burcham '84, was among 41 graduates from the Class of 2002 who last December were inducted into the prestigious Order of the Coif—the national legal honor society. Students qualify by attaining a cumulative grade point average that places them within the top 10 percent of their graduating class.

**Ethical Advocacy Program**

**Lectures Established**

**LOYOLA in print**

**Book Reviews**

**JONATHAN KIRCH '76**
Kirsch is the author of the bestselling King David: The Real Life of the Man Who Ruled Israel, a biography published by Ballantine Books, that addresses one of the most crucial and controversial figures in the Hebrew Bible. King David shows David to be a compelling but disturbingly complex man who was also a voracious lover, a troubled father, and a merciless warrior. Kirsch also recently wrote Moses: A Hero for Our Time and The Harlot By the Side of the Road. A columnist and book critic for the Los Angeles Times, and literary correspondent for National Public Radio affiliate KPCC-FM, Kirsch is in private practice with the law firm of Kirsh & Mitchell, where he specializes in intellectual property issues.

**JOHNNIE L. COCHRAN, JR. '62**
His second book, A Lawyer’s Life, looks at a slice of Cochran’s fascinating background, including a look into the reasons behind his intense passion for advocacy. A Lawyer’s Life details some of the procedural changes and famous key cases that Cochran was instrumental in implementing. Included are chapters detailing the Reginald Denny case and Mincy v. City of Los Angeles, a case that effectively put a stop to the brutal police chokehold. Plus, Cochran’s work in other police brutality cases is included, involving plaintiffs such as Abner Louima, Amadou Diallo, Patrick Dorismond and Ron Settles. A Lawyer’s Life is co-authored by David Fisher and is available from St. Martin’s Press.

**YXTA MAYA MURRAY, Professor of Law**
Yxta Maya Murray, a previous winner of the Whiting Award for publishing, has come out with a new novel entitled The Conquest, published by Rayo. A mystery and a love story, The Conquest is also a story within a story. It focuses on the life of Sara Gonzales, a restorer of rare books and manuscripts for the J Paul Getty Museum. Sara is bent on answering the unsolved mystery of authorship of a 16th century manuscript about the scandal behind an Aztec princess captured by Cortes and sent to Europe to entertain the Pope. Sara is in love with Karl, with whom she had an affair spanning years—even while she is married to another and must face the societal pressures and moral dilemma caused by loving the two men.
Alumni [Newsworthy & Notable]

Law students from across the nation participate each July and August in Loyola Law School's Summer Abroad Program, co-sponsored with the Brooklyn Law School in New York. Participants select one of three destinations: Beijing, China, Costa Rica or Bologna, Italy. During Summer Session 2002, law students took memorable breaks away from their studies at Beijing's prestigious University of International Business and Economics to visit notable sites such as Tian'anmen Square and The Great Wall [pictured].

Summer Abroad Program

Professor Laurie Levenson, director of the Center for Ethical Advocacy, held a networking reception in her home this past April for alumni working in the District Attorney's Office. More than 50 Loyola Law School graduates and their co-workers attended.

In honor of Black History Month, the Black Law Students Association (BLSA) invited the Loyola Law School community for conversation with the Reverend James Lawson [c], who spoke on "Spirituality, Non-violence and the Pursuit of Justice." Lawson, pictured here with Professor Gary Williams [l] and evening law student Helen Ekeke [r], worked with Dr. Martin Luther King, Jr. in the South during the 1960s as a leader in the civil rights movement.

Amy V. Silverman '87 [center] and husband Robert A. Cooney—for whom Loyola's annual golf tournament is named—presented a check in the amount of $10,000 to the Cancer Legal Resource Center. The Center's Director Barbara Ullman Schwerin '87 gratefully accepted the gift, which will help fund the Center's office expenses and the staffing of its telephone assistance line and community outreach.

PASSINGS alumni and friends Remembered

CHARLES R. REDMOND '74, a retired executive vice president of the Times Mirror Co. and former vice chairman and chief financial officer of the Board of Governors of the Los Angeles Music Center, died of cancer September 30, 2001, at the age of 75. Redmond, who retired in 1992, joined Times Mirror in 1964 as corporate director of personnel. He was president and chief executive of the Times Mirror Foundation until 1995 and chairman of the Pfaffinger Foundation, which assists needy former Times Mirror employees. Redmond also served as vice chairman of the board of trustees of Loyola Marymount University and chairman of its finance committee, and served on several boards for such organizations as the Salvation Army and the Los Angeles Convention and Visitors Bureau. Born in New Brunswick, New Jersey on September 19, 1926, Redmond earned his bachelor's degree in Economics cum laude from Rutgers College in 1950, his master of business administration from the University of Southern California in 1960, and his juris doctor from Loyola Law School in 1974.

Linda Sue Hitchens, '82, of Long Beach joins U.S. Supreme Court Justice Sandra Day O'Connor at the national leadership conference in Philadelphia. Ms. Hitchens represented the Joseph Ball, Clarence Hunt Inn of Court of Long Beach. Approximately 220 lawyers and judges attended the conference from around the country.

In the tradition of bringing notable attorneys to campus to address students on careers in the law, the Student Bar Association (SBA) honored Black History Month by hosting the visit of Carl Douglas, a prominent Los Angeles civil and criminal defense lawyer. Douglas is a former associate of Loyola's own graduate, Johnnie L. Cochran, Jr. '62.

JOHN J. GUERIN '49, born March 26, 1925, passed away on May 20, 2003. Guerin was born in Los Angeles. Following high school, he was drafted into the U.S. Navy officer's training program in June 1946, and was sent to the University of Colorado. Guerin then joined the U.S. Army in 1950, and the Air Force 15 years later. He was honorably discharged from all three branches. As WWII ended, he returned to Los Angeles and attended Loyola Law School, the second generation of his family to attend. Guerin married and moved to...
Alumna Ami V. Silverman ’76 is the spouse of former Associate Dean Robert A. Cooney, who recently retired following more than 20 years of service to Loyola Law School. Under Cooney’s watch, the campus was transformed from a single structure (the William M. Rains Building) into the academic village designed by Frank O. Gehry.

Swearing IN Program

the dais included: [1 to r] Associate Dean Gold; Fr. Robert Scholla, S.J., campus chaplain, who gave the invocation; Professor Theodore P. Seto, who extended congratulations to the new attorneys on behalf of the faculty; the Honorable Carol Williams Elswick ’83 of the Los Angeles Superior Court, who gave the judicial address; Hon. Carla M. Wehrle ’77; the Honorable Thomas O. Ong ’83 of the Los Angeles Superior Court, who administered the oath; Dean David W. Burcham ’84, who gave the keynote address; and the Honorable John V. Meigs ’78, president of the 2002-03 Alumni Association Board of Governors, who extended congratulations.

“Perspectives on a Just War: Reflections from the Faculty” was the subject of a panel held in November 2002. Moderated by Professor Edith Friedler (etc.), the panelists included (front) Professor Gerald T. McLaughlin, dean emeritus, Friedler; and Professor Jeffrey Atik; and (back) Professor Allan Ides, Professor Robert Benson and Robert Scholla, S.J., campus chaplain.

ALBERT H. GIRARDI, passed away on February 6, 2003, at the age of 92. Girardi was an electrical engineer for more than 30 years. His work took him to the South Pacific during WWII as a civilian aboard naval ships and carriers. Girardi retired at age 65, but for the next 27 years he helped his sons Tom Girardi ’64 and John (Jack) Girardi ’72, as office manager for their law firm of Girardi & Keese. Albert’s grandson, Matthew Girardi, continued the family tradition by graduating from Loyola in 2000. The Girardi family made possible the new 15,141-square-foot advocacy center, which opened on September 23, 2002. The Center was named for Mr. Girardi by his oldest son Tom, who noted, “He did everything for me. He wanted me to be a lawyer.”
The Future of Campaign Finance Reform in the Hands of the Supreme Court

By Richard L. Hasen, Professor of Law and William M. Rains Fellow

In the Winter 2001 issue of Loyola Lawyer, I wrote an article entitled "The Campaign Finance Mess." The article discussed how complex and convoluted campaign finance law has become. It also noted that major issues in the field—including rules related to campaign finance disclosure, soft money and issue advocacy—were the subject of conflicting (and confusing) court opinions and scholarly commentary.

The Supreme Court has agreed to decide its most important campaign finance case of a generation this fall. In McConnell v. Federal Election Commission, No. 02-1674 (and 11 consolidated cases), probable jurisdiction noted June 5, 2003, the Supreme Court will consider the constitutionality of the Bipartisan Campaign Reform Act of 2002 (or "BCRA"), more commonly known as the McCain-Feingold law. It has set a special argument date of September 8, 2003, a month before the Court normally returns from recess for arguments on the First Monday in October.

Whether the Court's opinion in McConnell will replace the complex, convoluted, conflicting and confusing world of campaign finance law with clarity does not appear likely. But the ramifications of the Court's decision could set off a political earthquake.

LOWER COURT CONFUSION

Pursuant to expedited procedures set forth in the BCRA itself, the Supreme Court will be reviewing directly a lower court decision by a special three-judge panel of two district court judges and one Court of Appeals judge from the D.C. Circuit. The lower court panel was so split on the constitutionality of the law's major provisions that the three judges issued four opinions: one opinion was a per curiam (unsigned) opinion concurred in by two of the three judges. The four opinions totaled 1,638 pages, and featured a five-page chart that was supposed to clarify how a shifting majority of the lower court had ruled on the many constitutional challenges brought by about 80 plaintiffs.

The chart and opinions were so confusing that it took days to sort it out. The day after the opinion was issued, a San Francisco Chronicle headline proclaimed: "Court Kills Ban on Soft Money," while a Los Angeles Times headline announced: "Soft Money Ban Upheld." In a sense, they were both right. A majority of the Court had voted to uphold certain provisions of the BCRA's ban on formerly unregulated funds raised by political parties, but it did so in a way that made the ban easy to evade.

Within days, the three-judge court had stayed its own ruling, with the effect being that the BCRA went back into effect, even those provisions struck down by all three
judges on the court (such as a ban on campaign contributions to federal candidates by minors). Chief Justice Rehnquist declined to reverse the stay order pending the Supreme Court’s resolution of the appeal, leaving the law in effect until the Supreme Court issues its final ruling on the case, most likely in late fall or early winter.

The issues presented in McConnell would be difficult enough for the Supreme Court even if it had to review a unanimous (and shorter!) opinion from the lower court. But the review is complicated by the lack of factual findings joined in by a majority of the lower court judges. The Supreme Court does not defer to legal decisions made by lower courts, but it is supposed to accept findings by lower courts unless the findings are “clearly erroneous.”

Moreover, although individuals were limited to how much they could contribute to political parties to pay for express advocacy by the parties, there was no limit to the amount of “soft money” that individuals, corporations or unions could contribute to pay for party issue advocacy and other activities. Six and sometimes even seven-figure donations flowed to the political parties.

B CRA attempts to limit the amount of soft money that can be raised by parties, and seeks to redefine what counts as an election ad for purposes of disclosure rules and the corporate and union restrictions. At the heart of the McConnell case is the extent to which BCRA’s attempts run afoul of the First Amendment’s rights of free speech and association.

...let us hope that the Court does not feel compelled to review the over 100,000 pages of evidence in the case from the beginning.

Here, there are no majority findings on a number of issues; let us hope that the Court does not feel compelled to review the over 100,000 pages of evidence in the case from the beginning.

WHAT IS AT STAKE IN THE BCRA LITIGATION

The two largest constitutional issues involve BCRA’s provisions regulating soft money and sham issue advocacy. Briefly explained, lower courts had interpreted the Supreme Court’s last earth-shattering campaign finance case, Buckley v. Valeo, 424 U.S. 1 (1976), so as to leave unregulated campaign advertisements run near the time of an election, but lacking words of “express advocacy” such as “vote for” or “defeat.” These advertisements would typically criticize a candidate and end not with “Vote against Smith,” but instead with something like “Call Smith, and tell her what you think of her plan to ruin Medicare.”

A dvertisements using express advocacy were subject to disclosure rules, and could not be run using corporate or labor union money. (Corporations and unions could set up special PACs to pay for these advertisements with donations from others.) Identical advertisements lacking express advocacy were characterized as “issue advocacy” and not subject to any disclosure rules or the corporate/labor restrictions.

The amount of unregulated issue advocacy rose from approximately $135 to $150 million in the 1995-96 election cycle to between $230 million and $341 million during the 1997-98 period and to over $500 million in the 2000 election cycle.

A CAMPAIGN FINANCE EARTHQUAKE?

Judging from other recent campaign finance decisions, the Supreme Court is closely divided on the constitutional questions presented in McConnell. If the Court does not uphold BCRA’s attempt to regulate these “issue advertisements,” it may be all but impossible to have effective campaign finance laws on the federal, state or local level. Entities could simply avoid even disclosing their expenses intended to influence elections by avoiding words of express advocacy. Without effective disclosure, all other campaign finance laws are unworkable.

The issues before the Court are difficult and the law is complex. The questions go to the heart of disputes about the role money can and should play in the structuring of our rules for democratic competition. May the government, in the name of preventing corruption and the appearance of corruption, require effective disclosure of campaign finances? May it effectively limit large contributions by individuals to political parties for advertisements intended to influence elections? May it confine corporate and union involvement in election financing to separate PACs?

We may soon find out. Then again, we may not. Check the headlines the day after the Supreme Court issues McConnell and see if anyone has figured it out yet.

Richard L. Hasen is professor of law and William M. Rains Fellow at Loyola Law School. A nationally recognized expert in election law and campaign finance regulation, Hasen is the co-author of a leading casebook on election law and co-editor of the quarterly peer-reviewed publication, Election Law Journal.
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Helping Your Law School: REAL ESTATE GIFTS

If you have appreciated real estate—especially property you are no longer using—you may want to consider the benefits of using this asset to make a charitable gift. There are several ways you can proceed; here are four possibilities to consider:

1. Give the Entire Property
Since Loyola Law School is a qualified charitable organization, it can sell real estate gifts without incurring tax on the appreciation. For example, in 1980, Mr. and Mrs. X purchase a piece of land for $10,000. It was recently appraised at $50,000. If they sell it, they will have to pay tax on the appreciation. However, if they give the deed to Loyola, they will be free of the tax and also escape the hassles of having to sell the property. They will also receive a charitable income tax deduction for the appraised value of the property.

2. Give a Portion of the Property
Many people cannot afford to give an entire parcel of real estate, but they can give part of it. A good solution is to give an undivided interest in the property, say 50 percent. Loyola then works with the donor to market and sell the property. Each party—the donor and Loyola—then receives one-half of the proceeds from the sale. A bonus for the donor is that he or she can use the income tax charitable deduction for the gift portion to help offset any taxes due on the other portion.

3. Give the Property and Obtain Income
Some real estate owners need additional income. Yet they also want to make a major charitable gift to Loyola Law School. One possibility is to use real estate to establish a charitable trust. The trustee will then sell the property and invest the proceeds in a balanced portfolio that will provide income to the donors for as long as they live. After they are gone, whatever is left in the trust will go to Loyola Law School.

There are several advantages to doing this and it may be just the thing if you have appreciated property, need additional income and want to help Loyola in the process.

4. Give Your House and Continue to Live There
Some donors want to make a major gift to Loyola Law School by giving their homes. However, they still need a place to live, so they arrange what is called a life estate gift. This simply means that they give their residence to Loyola, obtain a charitable income tax deduction and retain the right to live there as long as they want. This arrangement removes the property from their estate and relieves them or their personal representatives from having to dispose of the house later.

Free Information
Would you like additional information on giving real estate to Loyola Law School? We have a free brochure we would be happy to send you. Also, Joan Pohas, our director of planned giving, is available to talk with you confidentially and without obligation. She can help you understand the various options and, if you decide to proceed, assist you in completing your gift. Call Joan Pohas at 310.338.3068.

With interest rates low and the real estate market booming, many people are finding that their real estate holdings are becoming more valuable. Other investments may be down, but real estate values are rising. This has created an unusual opportunity for using a building, raw land or even a vacation property to fulfill one’s philanthropic dreams. For example, taxable property that has appreciated in value can be given without incurring tax on the appreciation. Thus, the value of the gift may be substantially more than it might be were the property first sold and the after-tax proceeds then given to charity.
Loyola Law School Board of Overseers

Works Diligently Toward Goals for Law School

By Elizabeth Fry, Senior Development Officer

The Loyola Law School Board of Overseers was formed originally in 1982 as the Board of Visitors and was chaired by John E. Anderson ’50 of Kindel & Anderson. The current board of 40 members is composed of preeminent attorneys, prominent alumni, and corporate and civic leaders from the legal and business communities. Board members serve as advisors to the dean of the Law School, and when called upon, give generously of their time and resources to assist in developing and implementing the ideals and principles upon which Loyola Law School was founded.

Members meet twice annually with Dean Burcham and the development staff to strategize on the overall fundraising efforts of the Law School, including capital needs pertaining to Loyola Law School and the law school reach its goal of national preeminence as an academic legal institution. “I am confident that the leadership of this board will inspire others to work diligently toward achieving our goals for Loyola,” Dean Burcham states. “In addition to being very encouraged about our progress to date, I am particularly delighted with the active role the Board of Overseers is taking in helping the law school reach its goal of national preeminence as an academic legal institution.”

Members of the Board are invited to social and special events pertaining to Loyola Law School and in conjunction with Loyola Marymount University. “I appreciate all of the members for offering to serve and play a more active role on the board. We have some hard work ahead of us, but I am sure we all feel that it is well worth our time,” says James P. Lower ’68, chair of the 2003-04 Board:

2003 - 2004 Loyola Board of Overseers

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There probably is no other area of law in which more people are both absolutely sure and absolutely wrong about what the law demands than in the area of constitutional religious freedom.

This may be due in part to certain misconceptions about the original meaning of the Constitution. It is almost certainly due in part to a dramatic shift in the Supreme Court's interpretation of the religion clauses of the First Amendment. In this essay I will address the three most common misconceptions about law and religion and conclude with a short summary of the Court's current approach to matters of church and state.

**MISCONCEPTION #1: THE ORIGINAL ESTABLISHMENT CLAUSE PREVENTS RELIGIOUS ESTABLISHMENTS**

Wrong. The original Establishment Clause was meant to protect religious establishments.

It is common place to read in newspaper opinion pages essays extolling the Founders' desire for a land of religious freedom—a land where the government favored no religion over another and no one was forced to support any particular form of religion. To this end, the essayist
generally claims, the Founders adopted the religion clauses of the First Amendment that declare that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Thus, concludes the essay, the First Amendment was adopted to prevent government-established religion.

**NOTHING COULD BE FURTHER FROM THE TRUTH**

In 1791, when the Bill of Rights was added to the Constitution, there were a variety of popular views regarding the appropriate relationship between religion and the government. True, men like James Madison and Thomas Jefferson believed that civil government had no legitimate reason to interfere in religious matters, and both men believed that the First Amendment embraced a broad principle of separation. In his "Detached Memoranda," Madison wrote that the Constitution forbids "everything like" an establishment of religion. Thomas Jefferson, in his letter to the Danbury Baptist Association, wrote that the religion clauses built "a wall of separation between church and state."

However, in 1791 most people did not agree with Madison and Jefferson that church and state had separate concerns. Founders like George Washington and the legislators in almost every state believed that government had a duty to promote and support the religious beliefs of the people. State laws at the time contained everything from religious qualifications for public office, to tax assessments for churches and ministers, to criminal prosecutions for religious blasphemy. The same Congress that proposed the First Amendment also instituted the practice of opening legislative sessions with prayers, delivered by a chaplain, paid for at taxpayer expense. Despite the arguments of Madison and Jefferson, most people in 1791 were quite comfortable with the idea of allowing state governments the power to establish religion.

On the other hand, all of the Founders agreed that power over subjects like religion, speech, and the press should be kept out of the hands of the federal government. The First Amendment thus binds only the federal Congress, as in “Congress shall make no law.” Just to underline the state-protective nature of the original Bill of Rights, the Tenth Amendment, reserves to the states power over non-delegated subjects like religion. In this way, the original First Amendment embraced the separation of federal and state responsibilities, not the separation of church and state. The Establishment Clause thus protected the rights of states to establish religion as much as they wished.

Now, of course, just because the Founders originally were more concerned with federal than state religious establishments, this does not mean this is the end of the story. Later constitutional amendments, in particular the 14th Amendment, prohibit states from abridging the “privileges or immunities” of U.S. citizens or violating the right to due process of law. The Supreme Court has interpreted the 14th Amendment’s Due Process Clause to prohibit state religious establishments (thus “incorporating” the original establishment clause against the states). Today, neither state nor federal governments may establish an official religion. Nevertheless, this was not the purpose of the original Establishment Clause.

**MISCONCEPTION #2: THE CONSTITUTION ERECTS A WALL OF SEPARATION BETWEEN CHURCH AND STATE**

False.

The above makes clear that the Constitution originally separated federal and state power, not church and state. The text itself, of course, nowhere calls for a wall of separation between church and state. The phrase entered the common lexicon of religious liberty by way of a letter written by Thomas Jefferson. Although the Constitution originally forbade federal religious establishments, we know the Founders believed state governments could involve themselves with religion as much as they wished. This being the case, how did the phrase “constitutional separation of church and state” become a commonly accepted shorthand for describing religious freedom in the United States?

In his famous letter to the Danbury Baptist Association, Thomas Jefferson wrote, “I contemplate with sovereign reverence that the act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and state.”

Jefferson’s letter reflected his own extremely critical views of the roll of religion in society. This view was embraced for a time by the modern Supreme Court and, for a while, the phrase “separation of church and state” became more important than the actual language of the Establishment Clause. In a series of cases decided in the 1960s and ‘70s, the Court not only required the government to stop favoring religion (thus striking down school prayer), the government was not even allowed to treat religion equally with non-religion.
The original Constitution said nothing about the separation of church and state. Although the modern Supreme Court for a while embraced Jeffersonian separation, the current Supreme Court embraces equality.

For example, in the 1971 case, Lemon v. Kurtzman, the Court struck down state educational assistance programs that aided religious, as well as secular, private schools. In doing so, the Court announced the infamous three-part "Lemon test:" Government actions must have a secular purpose; they cannot have a primary effect of advancing or inhibiting religion; and government regulation must not excessively entangle church and state. The programs in Lemon were struck down because equal funding of religious institutions created the risk that education funds might be used to advance religion, and efforts to ensure that religion was not advanced would excessively entangle church and state. Thus, even if the educational program was not intended to advance religion, if the government aid had that effect—or threatened to have that effect—such aid violated the Establishment Clause.

Since the 1980s, however, the Court has moved away from the "separation of church and state" positions and moved toward an "equal treatment" analysis. Over the past ten years or so, the Court has upheld a variety of programs that equally aid religious and secular institutions—most often when the aid is available to a broad class of beneficiaries or when the religious institution receives the aid by way of private choice. Under this equal treatment approach, the Court has upheld government aid to religion in the form of sign language interpreters, vocational education funds, and printing subsidies for religious publications. Most recently, the Supreme Court upheld state school voucher programs which allow parents to use government subsidies for tuition costs at either religious or secular schools.

The original Constitution said nothing about the separation of church and state. Although the modern Supreme Court for a while embraced Jeffersonian separation, the current Supreme Court embraces equality.

MISCONCEPTION #3: THE FREE EXERCISE OF RELIGION CLAUSE PROTECTS THE FREE EXERCISE OF RELIGION
Believe it or not, no.

As described above, the Court has embraced the concept of equality in its interpretation of the Establishment Clause. Equality, however, is a two-edged sword.

Prior to the 1990s, most scholars assumed that religious exercise received special protection under the Free Exercise Clause of the Constitution. A number of Supreme Court cases seemed to strictly scrutinize any law that had the

Continued on page 105
Frederic S. Bongard, M.D., FACS, is a student at Loyola, with a primary interest in patents and liability law in the field of biotechnology, and the process of academic research to application and market. He is a professor of surgery, Chief Division of Trauma and Critical Care, and director of surgical education at Harbor-UCLA Medical Center, UCLA School of Medicine. He is also an instrument-rated commercial pilot and Aviation Medical Examiner (AME). So, one would ask, what is he doing going to law school at night? He claims it is like a disease—either you have it or you don’t. It doesn’t matter if you are a surgeon, a lawyer, a teacher—you will find the time to do what drives you to live. Bongard credits law school with opening new ways of reasoning that are based on factual generalizations-to-specifics, the opposite of medical study, in which facts are assembled into larger applications. Bongard has always been interested in the science of how things work and maintains success is having a goal and having the dedication, ability and fortitude to carry it through. His father often said to him, “Anything worth doing, is worth doing well.” But believe it—Dr. Bongard is not done yet.
A Born Leader

Second-year student Demetria Graves thinks lawyers get a bad rap. “We’re seen as unethical and selfish and we’ll do anything for the dollar.” The outspoken 23-year-old says flatly that she is none of those things. She is one of the “good gals.”

Pasadena-born Demetria is the first in her family to attend law school. As a social welfare major at U.C. Berkeley, she started planning her next career move while still in her sophomore year.

“I researched many schools and visited a lot of campuses, and at Loyola I just felt right at home. When I got here I really felt welcomed.” So far, the experience has been a rewarding one for Graves. “At Loyola they go out of their way to help you. They want to see you get through. They don’t just want to take your money and push you through the system.”

Now just a year away from graduation, Graves has some advice for incoming Loyola students. “Be willing to get help. Don’t think you can do it all by yourself. It’s not like college; you can’t cram when it’s time for finals.” She also encourages new students to continue to follow their dreams, even though the road will often get bumpy.

Graves describes herself as a strong, courageous young woman with focus and determination to attain her goals. In short, she is a natural leader. Aggressive and assertive, she thrives in the competitive atmosphere at Loyola. Graves is currently president of Loyola Law School’s Black Law Students Association (BLSA) and is also southern sub-regional director of BLSA. “The diversity here is one of the things that attracted me to Loyola. It is more diverse than most law schools.” During her time at Loyola she has also been a tutor/mentor for the Academic Support Program.

Graves says that her Loyola law degree will lead her in a direction she has always dreamed. “I’ve long wanted to be responsible for making important decisions that would benefit the lives of others.” Her future plans are still undecided, but Graves is leaning toward a career in family law. “Success for me will eventually be defined by the lives I touch and those that I help.”
Always Looking for the Next Big Thing

MICHAEL E. ADLER ’05

Michael E. Adler, 39, is president and managing director of Calabasas-based Informa Research Services, Inc., a competitive intelligence company that researches rates, fees and best practices at over 5,000 financial institutions nationwide. Adler and his team of 125 employees sell their findings to 2,500 clients, including all of the nation’s largest financial institutions. This year, the company he co-founded in 1983, while attending USC on financial aid and working 40 hours a week at McDonald’s, is on track to exceed $10 million in revenue.

Given his deep pockets and successful business acumen, Adler might be expected to live in year-round vacation mode. Instead, he is quite content working long hours every day and being knee deep in textbooks at night and on weekends. “I really think of myself as not like most people. I’m always trying to do the next thing, to keep learning. I know most people would probably take an easier way out, relax, or go into early retirement. But that’s not me.”

With time at a premium, Adler realized that the bumper-to-bumper commute from his Agoura Hills home to the downtown Los Angeles campus was wasting valuable time. “There just wasn’t enough time in the day to run a company, be an awesome husband and father, and excel in school.” Ten hours a week on the freeways was too much to squander, so he hired a chauffeur. “Now I am able to study, work, talk on the phone or sleep—all of which increases my productivity and allows me to accomplish my goals. In fact, it has worked so well that I recently bought an executive van that seats eight. It includes a conference table, leather reclining chairs, and AC power for the laptop, DVD player, VCR and stereo.”

Micha E. Adler, 39, is president and managing director of Calabasas-based Informa Research Services, Inc., a competitive intelligence company that researches rates, fees and best practices at over 5,000 financial institutions nationwide. Adler and his team of 125 employees sell their findings to 2,500 clients, including all of the nation’s largest financial institutions. This year, the company he co-founded in 1983, while attending USC on financial aid and working 40 hours a week at McDonald’s, is on track to exceed $10 million in revenue.

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Adler graduated summa cum laude from USC in 1986 and received an Executive M.B.A. (summa cum laude) from USC in 1992. He graduated with distinction from Stonier Graduate School of Banking in 1998. Adler says his experience at Loyola has been a great one. “So far, it’s been a blast. The professors are great, the students are great, and the friendships will last a lifetime.”

Mr. India!

Beauty, brains and a law degree? There is proof: Pankit Doshi. At the tender age of 14, Doshi started college. By 19, he was crowned Mr. India USA. At 22, he is one of the youngest graduates of Loyola Law School.

After earning his degree in political science from Cal State Los Angeles, the teen decided that he needed a break. So, on a whim, he signed up for the first-ever Mr. India California pageant.

Doshi stresses that the contest was not some run-of-the-mill beauty pageant. “It had more taste than that,” says the Los Angeles native. “I wasn’t parading around in a swimsuit.” The event required Doshi to compete in four categories: Indian formal wear, Western wear, athletic wear and talent. He shocked audiences with a 2½-minute dance routine in which he dressed as a janitor and danced with a broom in one hand and a boom box in the other. The performance helped
Derrick Rostagno is known as the "Giant Killer." And for those not in the know, that's a good thing. As a star on the pro tennis circuit in the late 1980s, Rostagno boasted multiple wins over such superstars as Boris Becker, Ivan Lendl, John McEnroe, Jimmy Connors and Mats Wilander. He is also one of only five people to have beaten Pete Sampras at Wimbledon.

So how does a person who represented the United States at the 1984 Olympics and by 1990 was ranked the 13th best tennis player in the world end up at Loyola Law School? Rostagno just smiles. He likes to say he is predictably unpredictable. While many retiring tennis pros would have glided comfortably into the coaching ranks, Rostagno took the road less traveled.

DERRICK ROSTAGNO '05

Rostagno, 37, has never been one to fly with the flock. Following his noteworthy nine years on the pro circuit, he returned to Stanford to finish off the degree that tennis had interrupted. Earning a B.A., the Stanford All-American then completed an M.B.A at UCLA's Anderson School of Business. He has just finished his second year in Loyola's four-year evening program. His day is spent as a law clerk at Stone and Hiles, a civil defense firm in Westwood.

While law might seem like an unlikely career choice for a former pro tennis player, Rostagno explains that his legal ambitions come from following in his attorney father's footsteps. His first choice was Loyola. "It's a very open-minded school, with great diversity in the programs and the student groups. The people I met on my campus visit were so impressive that I went right over to the admissions office and picked up an application."

Nowadays, the "Giant Killer" spends most of his time conquering textbooks rather than tennis opponents. But when his schedule permits, he still gets out on the court.

However, Doshi knew that he wanted to move beyond the fame and glamour. Turning down a modeling contract, he chose to attend Loyola Law School so he could pursue his interest in law and the entertainment business. While at Loyola, he was selected for Loyola of Los Angeles Law Review and the Moot Court team.

Doshi is currently in post-production on Filmmaking in the Beginning, a film that he helped produce under his shingle, Indo-American Films, Inc. It is a story about a group of South Asians who make their own film.

Inspired by the success of films such as American Desi, Monsoon Wedding and Bend It Like Beckham, Doshi and his partners believe that they can help American audiences understand what Indian culture is about. He also hopes to dispel some stereotypes. "I want my community to see that as South Asians, we don’t have to listen to our parents, that being an actor and just pursuing your dream is okay."

(For more information on Indo-American Films, go to www.indoamericanfilms.com.)
Making The Political Scene

PHILIP KOEBEL '04

Last March, one law student couldn't wait to become a lawmaker. Philip Koebel wanted to be the first Loyola Law School student to be elected to public office. He lost to a popular incumbent in Pasadena’s March 2003 mayoral election, but Koebel, 37, sees the experience positively. “Although I was 'in it to win it,' there were many victories in our campaign,” he says.

Koebel burst onto the local political scene. With very little financing, his campaign team of dedicated volunteers and teenagers from his after-school basketball program canvassed neighborhoods, trumpeting their slogan, “One United Pasadena—Una Pasadena Unida: Fair Rents & Fair Profits and City Money for Schools.” His grassroots campaign earned the backing of Pasadena's weekly newspaper, Pasadena Weekly.

When the ballots were counted, Koebel finished with 1,785 votes, or 15% of the vote, a number he wears with pride. “Before I ran, we had zero,” he says. His next goal is to multiply those votes to put a “Fair Rents & Fair Profits” initiative on the November 2003 ballot. “We always said this election was a launching pad to bring laws to Pasadena that will protect our 70,000 renters and educate Pasadena’s school kids.”

Koebel is studying to be a civil rights lawyer and is more than halfway through Loyola’s three-year program. “Loyola is the best, no doubt about it. It’s got tremendous diversity, the public interest program is brilliant, and my professor, Gary Williams, heads the Southern California ACLU!” Upon graduation, Koebel plans to set up shop in “NeW” Pasadena (his name for the underserved northwest area of Pasadena), where he lives. “People are waiting for me to pass the bar. We just need to figure out how to pay back my school loans.”

As for his political ambitions, Koebel puts a new spin on the old adage that you can’t fight city hall. “You MUST fight city hall,” he says matter-of-factly. “People have a lot more power than we’re led to believe. Democracy, in fact, means we have all the power. We need to practice democracy every day of our lives.”

Putting The PRO In Pro Bono

JAMES GILLIAM '03

Anyone who thinks one person can’t make a difference needs only to meet James Gilliam '03. Gilliam (pronounced Gill-um) is a major reason why Loyola’s commitment to public service remains strong.

The project Loyola’s Public Interest Law Foundation (PILF) does with Public Counsel to advocate on behalf of the homeless started with James—by himself—going out one day a month during his first year to advocate for the homeless. The program now has over 50 volunteers from Loyola who rotate their weeks of advocacy.

Gilliam has completed over 400 hours of pro bono work while at Loyola.
Kevin Lipeles exudes confidence, and for good reason. By night, he has just completed his first of four demanding years at Loyola. By day, the charismatic 29-year-old holds an unlikely job—he is a well-respected boxing agent. Whether Lipeles decides to go to work for someone else after graduation, or continue to serve his clients, his night classes will serve him well.

He Loves A Good Fight

KEVIN LIPELES '06

As president of Lipelco Management, an international sports and entertainment company, Kevin has rubbed shoulders with some of the world's most famous celebrities and athletes. And in his capacity as a manager and promoter, he has gone toe-to-toe with a few of boxing's most ruthless promoters. Lipeles says, “Right now we are concentrating on boxing, but we have some big music deals on the horizon.”

Lipeles has made a name for himself guiding fighters’ careers and helping many get released from one-sided contracts. “Boxing is a dirty business and a lot of the managers are unscrupulous. Most people will take advantage of you if they get the chance. But I don’t...and won’t...do business that way. I am fair and honest in my dealings and I've earned a solid reputation throughout the industry. And in sports, integrity is a rare commodity.”

To date, Lipelco has promoted two nationally televised fights and has taken several fighters to world championship fights. Lipeles manages two fighters in South Africa, and because he is fluent in Spanish (self-taught), he’s managed Latin fighters and actually worked with high-ranking government officials in Latin America.

For many, the extreme demands of managing fighters from around the world and promoting fights on a global scale would be an all-consuming job. But Lipeles has taken his passion to the next level. “I have seen more than my fair share of lawsuits and contracts in the sports and entertainment business, and it was that part of my job that fascinated me the most. I’ve been involved in numerous contract negotiations, television deals, consumer affairs, endorsement deals—you name it. I’ve also successfully tried two arbitrations in front of the California attorney general. My Loyola law degree will allow me to better help my clients.”

As for his choice of law schools, Lipeles sings Loyola’s praises. “Loyola was the best option for me. They have what’s considered to be the number one night program, and I figured if I’m going to do it, I’m going to do it right.”

“I think pro bono is a commitment that ought to be mandatory for every lawyer. It’s key,” Gilliam says. “There are far too many people who don’t have the representation they need. The only way out of that problem is if those of us who’ve been privileged enough to have this education start sharing some of our talents.”

Gilliam has become the “go-to guy” for many of Loyola’s faculty. With so many projects on his plate, he could teach a course in time management. “People often ask me how I do all the things I do, but I guess it just comes naturally. I came to law school to be an activist, and at Loyola there is always an issue that needs to be addressed,” he says.

Gilliam chose Loyola primarily because of the diverse student body. “That and the full scholarship,” he adds. But a wrenching turn of events almost changed his decision. “My mother died three weeks before I was to begin at Loyola, and at that point I didn’t know what to do with my life. I called to tell Anton Mack, the dean of admissions at the time, that I couldn’t accept the scholarship. But he encouraged me to come to law school rather than sit at home and wallow in misery. If I hadn’t started law school three weeks later, I don’t think I ever would have.”

Upon graduation, Gilliam, 32, will become a litigation associate at Paul, Hastings, Janofsky & Walker, and he plans to serve as pro bono cooperating counsel for the organizations with which he has completed externships. His ultimate goal is to serve agencies that need lawyers and to encourage others to do the same. Says Gilliam, “The day I sign my contract to come back to Loyola to teach, I’ll know I’m a success.”
Congress and the "en•force•ment" of equal protection: what's in a word?

By William D. Araiza, Professor of Law

Even if judges, lawyers, and academics often disagree on what the Constitution means, it's normally thought that at least they agree on who gets to decide: the courts, and, in particular, the Supreme Court. We learned from *Marbury v. Madison* that it is "emphatically the duty and province of the courts to say what the law is."

Since the Constitution is emphatically law—indeed, the highest law—it should be emphatically the power of the courts to say what the Constitution "is." Regardless of what one might think of judicial review, it would seem that the practice is unquestioned in our legal system.

Or maybe not. Written into the Civil War Amendments – the 13th (banning slavery), the 14th (guaranteeing rights to due process and equal protection) and the 15th (protecting voting rights)—are provisions authorizing Congress to "enforce" those rights "by appropriate legislation." The scope of this power (sometimes called "the Section 5 power" because it is located in Section 5 of the 14th Amendment, the amendment that gets the most scholarly attention of these three) is hotly contested today. Because these amendments (especially the 14th) so alter the federal-state balance, the scope of Congress' power to "enforce" that alteration has been one of the pillars of the Court's recent focus on federalism issues. But to a greater degree than other recent battlefields of federalism, the issue of Congress' Section 5 power also raises profound questions of separation of powers, as it requires us to consider what role Congress should have in determining what constitutional rights actually mean. Indeed, as I will argue, Section 5 requires us to consider an even more basic question: What does a court really do when it interprets the Constitution?
The Section 5 power has become a major issue only relatively recently. After an initial burst of legislative action during the reconstruction period, the Section 5 power underwent a century-long hibernation, as Congress lost interest in protecting civil rights. Section 5 came into its own only in the 1960s, when Congress enacted a variety of civil rights laws aimed at state governments. Sometimes these laws prohibited conduct the Court itself had held was constitutionally acceptable. For example, in 1959 the Court rejected an equal protection attack on English literacy tests for voters, if the test was applied in a non-discriminatory way. In the 1965 Voting Rights Act, however, Congress required that Puerto Ricans educated to the sixth grade level in Spanish be allowed to vote, even if they couldn't read English. In *Katenbach v. Morgan* the Court upheld the law.

How could the Court uphold, as a means of “enforcing” the 14th Amendment, a statute that prohibited conduct that the Court had held was consistent with that amendment? One justification it offered, modest if a little indirect, was that Congress might have been aiming at different discrimination than that directly reflected by the literacy test, namely, the discrimination that occurs when a disenfranchised community is ignored (i.e., treated unequally) in the provision of government services. This rationale is reasonable enough; a government’s failure to respond to a community’s needs constitutes fundamentally unequal treatment, and enfranchising at least some of that community thus would help “enforce” the equal protection clause’s promise.

But the Morgan Court also offered a more controversial reason for upholding the law. It suggested that Congress was entitled to have a different view of what equal protection required in a given case—a different view, that is, than the one the Court had. So much for Marbury’s statement about the power of courts to say what the law is! And, indeed, commentators viewed that aspect of Morgan as potentially revolutionary. But maybe there’s a way to harmonize that startling statement with Marbury. Perhaps we can view a Section 5-justified statute as reflecting Congress’ better fact-finding capabilities. Perhaps Congress is better able to examine the facts and determine when equal protection is being violated. Courts routinely defer to legislative determinations that are grounded in conclusions about empirical facts, since it is clear that courts are incompetent to second-guess legislatures on such determinations. Why not here as well?

Perhaps Congress is better able to examine the facts and determine when equal protection is being violated.
When courts review equal protection claims, they seek to make that very determination. But note that, except in limited cases such as race classifications, courts examine these issues against a backdrop of deference as there's a "rational basis" supporting it. Why this deference? In part, it's because most groups (again, except race, gender and a couple of others) are presumed capable of defending their interests in the political process. In part, however, it is because determining the equivalency of groups (earners of income versus capital gains recipients, truckers versus airlines) is simply beyond judicial ken.

Note what this deference means. Legislative classifications may actually fail to reflect actual differences, but still survive equal protection challenges because of the deferential standard of review courts use. The fact that judicial humility would lead courts to uphold such a classification does not mean that the classification, in some abstract way, provides equal protection. But Congress need not be so humble in its review of state laws: it is a politically accountable, representative institution that should be at least as competent as state legislatures to determine when a state law's classification does not actually treat similarly situated people "equally." Why not see the Section 5 power as a grant of power to the federal institution that is institutionally capable of "knowing equality when it sees it"?

What would this understanding of Section 5 mean in practice? Most importantly, it would mean that Congress would not be limited to addressing discrimination against so-called "suspect classes" (most notably race and gender). If suspect-class analysis is really more about how far courts can legitimately go in ensuring equal protection, and less about what equal protection actually means, then Congress' enforcement authority should not be limited to situations where the courts have expressed confidence about being able to spot inappropriate differential treatment.

Fundamentally, the equal protection guarantee prohibits government from treating groups differently simply because of dislike. This rule against "animus" is bedrock equal protection law, and it should guide Congress, in "enforcing" the clause, as well as the courts, in adjudicating equal protection claims made in courts. In considering a claim that a federal law constitutes an "inappropriate" enforcement statute, a court should be able to make use of its own thoughts about the classification—e.g., how obvious animus seems on the face of the state action being countermanded by Congress—in determining whether Congress has in fact gone too far. Courts should also be able to use common sense in determining the likelihood that a given classification was motivated by animus. Earners of ordinary income, recipients of capital gains, truckers and airlines are all mainstream members of our society; for Congress to determine that one of them was harmed because the state legislature hated them would be a difficult proposition to defend.

In one sense this approach is not all that different from the Court's current Section 5 doctrine, which asks whether the federal statute is "congruent and proportional" to the underlying constitutional violation. But it would expand Congress' authority beyond current doctrine, by recognizing that state laws may reflect animus even when the harmed group has not been recognized by courts as a suspect class. One concrete example would be the mentally challenged, who are not a suspect class; yet, even the Court itself has recently recognized they may be the victim of animus.

Would there be any limits to the Section 5 power then? There should be; after all, Section 5 was not intended to give Congress a blank check to rewrite any state law it dislikes. And, of course, Congress is only given power to "enforce" equal protection, not to "interpret" that phrase. Is there a core meaning of equal protection that can cabin Congress' Section 5 authority? Perhaps.

Continued on page 107
Loyola Law School has established a long tradition of providing graduates to the judiciary since the 1920s. Service on the judiciary is service to the community at large and the legal profession.

OUR ALUMNI SERVING IN THE JUDICIARY INCLUDE:

**ARIZONA MUNICIPAL COURT**
Hon. Peter C. Rosales '86

**CALIFORNIA COURT OF APPEAL**
Hon. Patricia Ramattre-Manoukian '77
Hon. Eve Cohen '65 (ret.)
Hon. Lynn D. Compton '49 (ret.)
Hon. Daniel A. Curry ‘60
Hon. Kathryn Dui Todd ‘70
Hon. Margaret A. Grignon ‘77
Hon. Patt S. Kitting ‘74
Hon. Manuel A. Ramirez ‘74
Hon. William F. Rylaarsdam ‘64
Hon. Sheila P. Sonenshine ‘70 (ret.)
Hon. Gertrude K. Wilson ‘73
Hon. N. Fred Woods ‘63

**CALIFORNIA SUPREME COURT**
Hon. Louis H. Burke ‘26
Hon. Otto M. Kaus ‘49

**CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD**
Hon. Roberta W. Lee ‘70
Hon. John P. Martin ‘84
Hon. Anthony T. Ross ‘71

**DEPARTMENT OF JUSTICE**
Hon. Darlene R. Seligman ‘79 (ret.)

**EMPLOYMENT DEVELOPMENT DEPARTMENT APPEALS BOARD**
Hon. Martin E. Aguilar ‘69
Hon. Deborah L. Terry-Walton ‘79

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**
Hon. Pamela C. Sellers ‘74

**JEFFERSON CIRCUIT COURT, KENTUCKY**
Hon. Joan L. Byer ‘81

**NEVADA SUPERIOR COURT**
Hon. Mark W. Gibbons ‘74
Hon. Robert W. Nagby '83
Hon. John M. Naim '49
Hon. Michael Nash '74
Hon. James E. Nelson '53 (ret.)
Hon. Roy L. Norman '58
Hon. Robert C. Nye '48 (ret.)
Hon. Richard J. Oberholzer '70
Hon. Joanne O'Donnell '83
Hon. Sam O. Oltra '89
Hon. Dan T. Oksi '77
Hon. Charlene O. Olmedo '89
Hon. Tomson O. Ong '83
Hon. Eugene Osiko '72 (ret.)
Hon. John Ouderkirk '77
Hon. John S. Pasco '57 (ret.)
Hon. Robert J. Perry '72
Hon. Suzanne E. Person '75
Hon. Victor H. Person '71
Hon. Anthony Peters '88
Hon. Jan A. Phim '73
Hon. Peter J. Polos '90
Hon. William R. Pounds '69
Hon. Ronald H. Prender '56*
Hon. George L. Puglissi '66 (ret.)
Hon. Anthony J. Rackauckas '71 (ret.)
Hon. J. Wesley Reed '52 (ret.)
Hon. Pamela Rhodes-Rogers '78 (ret.)
Hon. Raymond R. Roberts '48 (ret.)
Hon. Mark P. Robinson, Sr. '50*
Hon. Gary P. Ryan '72 (ret.)
Hon. Judith M. Ryan '70 (ret.)
Hon. Eric T. Sanders '75 (ret.)
Hon. James S. Satt '53 (ret.)
Hon. Michael T. Sauer '62
Hon. Philip E. Schaefler '64 (ret.)
Hon. Floyd H. Schenk '50 (ret.)
Hon. Patricia M. Schroepe-Oppenheim '77
Hon. Steven D. Sheldon '74
Hon. John A. Shidler '35*
Hon. Stephen D. Sittikoff '82 (ret.)
Hon. Valerie L. Skea '88
Hon. Warren F. Slaughter '42 (ret.)
Hon. Kimberly K. Sloan-Menniger '85
Hon. Peter S. Smith '60 (ret.)
Hon. Thomas R. Sokolow '68
Hon. Philip L. Soto '86
Hon. D. Joseph Spada '53 (ret.)
Hon. Richard E. Spehn '74 (ret.)
Hon. James D. Tant '48*
Hon. Meredith G. Taylor '73
Hon. Ross G. Tharp '52 (ret.)
Hon. W. Jean Thomas '78*
Hon. Raul M. Thorbourne '76
Hon. Robert C. Todd '57 (ret.)
Hon. Richard F. Toohey '76
Hon. Thomas N. Townsend '68
Hon. Rolf M. Treu '74
Hon. Jack B. Tso '60*
Hon. James K. Turner '54*
Hon. Kenneth E. Vassie '61 (ret.)
Hon. David C. Velasquez '78
Hon. Aiden R. Victor '67
Hon. Richard G. Vogel '68
Hon. Richard F. Walkmark '84
Hon. Henry J. Walsh '70
Hon. Fumiko H. Wasserman '79
Hon. Lauren L. Weis Birnstein '77
Hon. William R. Weisman '73
Hon. Carl J. West '78
Hon. Elizabeth A. White '81
Hon. Randall D. White '78
Hon. Thomas L. Willhite '79
Hon. Ernest G. Williams '54 (ret.)
Hon. J. Steve Williams '50
Hon. Mark Wood '49
Hon. James S. Yip '58 (ret.)
Hon. D. Zeke Zedler '91
Hon. Thomas Zeiger '52 (ret.)

TEXAS STATE JUDICIAL COURT
Hon. Keith Dean '81

UNITED STATES AIR FORCE
Hon. Howard P. Sweeney '68 (ret.)

UNITED STATES BANKRUPTCY COURT
Hon. Richard Mednick '66 (ret.)
Hon. Geraldine Mund '77

UNITED STATES DISTRICT COURT
Hon. William M. Byrne '29*
Hon. William B. Enright '50
Hon. Gregory H. Hollows '79
Hon. John R. Kronenberg '58 (ret.)
Hon. Alex R. Munson '75
Hon. Manuel F. Real '51
Hon. Carolyn Tarchin '79
Hon. John F. Walter '69
Hon. Carla M. Weehle '77

WORKER'S COMPENSATION APPEALS BOARD
Hon. Alvin R. Barrett '71
Hon. David B. Brotman '80
Hon. Valerie S. Chapla '75
Hon. Louis M. Daraban '72 (ret.)
Hon. Maury D. Gentile '52 (ret.)
Hon. Michael D. Lecover '76
Hon. John K. Mah '75
Hon. Frank T. Quinones '80
Hon. Peter C. Robbins '80 (ret.)
Hon. Rafael E. Vivero '73
Hon. Robert E. Welch '89 (ret.)
Hon. Russell G. Zarett '72

OTHER (Court Unknown)
Hon. Maripaul S. Baier '55 (ret.)
Hon. Julian Beck '35*
Hon. Walter S. Binns '39*
Hon. Desmond J. Bourke '50*
Hon. L. Harold Chaible '49*
Hon. Antonio E. Chavez '59*
Hon. Joseph T. Ciano '31*
Hon. Peter Cook '47*
Hon. Gerald R. Corbett '26*
Hon. Robert L. Corfman '39*
Hon. James E. Cunningham '41*
Hon. George A. Dockweiler '26*
Hon. Burch Donahue '46*
Hon. Milton A. Eckenfild '53*
Hon. Albert M. Felix '47*
Hon. Charles L. Ferguson '69*
Hon. Helen L. Gallagher '55*
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Hon. Robert H. Keefe '68*
Hon. James A. Madden '38*
Hon. Diana R. Marsel '73 (ret.)
Hon. Thomas R. McCarry '33*
Hon. Eugene Mcclosky '51*
Hon. Paul S. McCormick '37*
Hon. Edward A. Quaresma '31*
Hon. Christine E. Stanell '89
Hon. John C. Teal '61*
Hon. Albert E. Wheatcroft '29*

* Deceased

Note: List compiled from best available data. We apologize in advance for omissions or mistakes.

Municipal Court Service listed under Superior Court and former Judges coded (ret.).

Updates 213.736.1046
GIRARDI ADVOCACY CENTER OPENS
Opened in September of 2002, the New Albert H. Girardi Advocacy Center was named through the generosity of Thomas V. Girardi '64 of Girardi & Keese in honor of his father, who passed away in February 2002. The soaring three-story structure of burnt orange, designed by renowned architect Frank O. Gehry, was constructed at a cost of more than $7 million. It is dedicated to advocacy skills and home to Loyola's Ethical Advocacy Program.

Following record number of alumni participating

By Elizabeth Fry, Senior Development Officer

Within its 15,141 square feet, the advocacy center contains 90-person trial courtroom and jury deliberation room, a 70-person appellate courtroom, a 36-person ethical advocacy classroom and video training labs, as well as state-of-the-art presentation technology on all floors. More than 2,000 alumni participated in fundraising efforts to complete the center. Some of the most notable efforts of support from various alumni are acknowledged here with great appreciation. "This impressive educational facility, housing two major classrooms and the ethical lawyering training facilities, will serve as an invaluable resource for our students who wish to develop critical courtroom skills," Dean David Burcham stated.

The Courtroom of the '90s naming campaign resulted in over $300,000 in pledges and gifts from more than 600 alumni—a significant component of the building campaign. "Our new program in ethical advocacy will offer courses taught by outstanding trial lawyers, as well as masters courses in trial advocacy, offering advanced training. I am personally grateful to the alumni from the classes of the ‘90s for their contribution to one of the most impressive and technologically advanced courtroom teaching facilities in the country," expressed Professor Laurie Levenson, director of the ethical advocacy program. Campaign Chair Daniel A. Sonenshine '9
expressed his gratitude for the active participation and generous responses, saying, "The graduates of the '90s who participated in the campaign have left their mark on Loyola Law School."

MARK E. MINYARD '76 of the Orange County firm of Minyard and Morris, LLP and his wife Barbara, generously contributed to the naming of the MINYARD TOWER of the Girardi Advocacy Center. The Minyard Tower represents an architectural design element that serves as the entrance to the center. Standing three stories tall, it features unique glass floor plates, and stainless angel hair steele sheathing that mirrors the blue skies of downtown Los Angeles.

EDISON H. MIYAWAKI, M.D. AND SALLIE Y. MIYAWAKI of Honolulu, Hawaii, made a most generous pledge to support the construction of the new Girardi Advocacy Center. The couple was recognized for their gift by Dean Burcham and Professor Christopher May at the Second Annual Hawaii Alumni Reunion held in conjunction with the Fifth Annual Loyola Law School & Edison H. Miyawaki Moot Court Competition. The April 5, 2003 events were held at the Mid-Pacific Institute High School, where Lieutenant Governor James R. Aiona, Jr. served as judge for the competition.
A generous gift from MARK P. ROBINSON, JR. '72 of the Newport Beach law firm of Robinson, Calcagnie & Robinson, Inc. named the courtroom on the first floor—a 90-person trial moot court classroom and an ancillary jury room. The ROBINSON COURTROOM, as well as all classroom/courtrooms throughout the Advocacy Center, are equipped with state-of-the-art audio-visual equipment. Mark is the son of the late Hon. Mark P. Robinson, Sr. '50 and the father of Daniel S. Robinson '03.

A charitable grant from the WEINGART FOUNDATION was received in February 2002. Chief Administrative Officer Fred J. Ali, along with the Weingart Foundation directors, conveyed their best wishes for the success of Loyola's advocacy program. Support from the Foundation helped to complete the construction and furnishing of the new classroom facility. Dean David W. Burcham extended his appreciation to all of the board members of the Foundation for the thoughtful gift, stating, “The training that our students will receive in the new WEINGART FOUNDATION LABORATORY FOR ETHICAL LAWYERING will increase their effectiveness and support Loyola's commitment to educate lawyers with the capacity to meet ethical challenges.”
More than 60 members of the Judiciary who are also alumni of Loyola Law School participated in supporting the construction of the new Girardi Advocacy Center. Contributing members were honored by having their names installed on a plaque which is prominently displayed on the bench in the courtroom of the center. Their valued support will help Loyola to establish a nationally recognized advocacy program and provide one of the most sophisticated teaching environments in the nation.

To conclude the physical environment of the Law School, the FRITZ B. BURNS FOUNDATION pledged a significant gift to create the FRITZ B. BURNS PLAZA, designed by Frank O. Gehry & Associates to link the new Advocacy Center to the campus. “The students, faculty, alumni, administration and staff are immensely grateful to each of the members of the Foundation—Don Freeberg, Joseph E. Rawlinson '58, Rex J. Rawlinson '74, W.K. Skinner, Edward F. Slattery and the late J. Robert Vaughan '39—for their vision and philanthropic leadership and their desire to maintain and enhance the Law School’s mission toward excellence,” stated Dean Burcham.

Loyola Law School’s Information Technology Department employs 15 full-time staff members, and is one of the largest information technology departments of any comparable law school. However, understanding the technical jargon that describes Loyola’s information technology services can be intimidating. From terabytes to gigabits, it would be the same for a lawyer explaining res ipsa loquitur and comparative negligence to his client. People’s eyes inevitably glaze over as the more complex explanation pours forth. So, it is easy to take for granted the amount of work and dedication that goes into running these campus services.

The Information Technology Department at Loyola Law School is continuing to evolve rapidly to keep up with the School’s classroom, research and administrative needs. Supporting these services is a state-of-the-art cabling infrastructure, providing approximately 2500 network ports. Fourteen hundred of these ports are currently active, with 1100 ready in reserve to meet future needs. The network backbone includes 64-gigabit ports supporting current services. These ports will be capable of supporting future high-bandwidth use, including network distributed high-definition multimedia presentations originating from the Girardi Trial Advocacy Center, or other locations on campus. In addition to the cable-based network, the Law School has purchased wireless network equipment that is being set up on an experimental basis.

Although the majority of students bring their own laptop computers to connect to the campus network, there are 400 modern personal computers on campus. There is also a wide range of digital services available from both on and off campus, including email, calendaring, network storage, printing, remote access, streaming digital audio and video, student information systems, and extranet/intranet class web services. Delivering these services are 25 high-performance servers that provide over 3.2 terabytes (3.2 million megabytes) of network-based storage. Everyone in ITD is responsible for keeping Loyola’s computer network running and up-to-date; their work and dedication speaks for itself.
It is a pleasure to join the Loyola Law School community. As the new assistant dean of admissions, I look forward to building on an already admirable national reputation. Loyola is well recognized for its student interaction, high-quality academic programs, 320 students in the day division and 80 evening students. Faculty members and staff were instrumental in showing the pride of the Law School to prospective applicants by conducting campus tours, seminars and informative panel discussions. Faculty members were encouraged to reach out to students to provide information on our highly acclaimed academic programs. The strength of our institution rests with its students, faculty and alumni. This is why our commitment to build a strong channel of communication among our constituency has remained an essential priority. Communication is the key to success. Every applicant, organization and alumnus can provide innovative suggestions on methods to improve our law school.

We have reemphasized our efforts in creating a qualified and diverse student body. This law school is a microcosm of the city it resides in. Los Angeles has so much to offer progressive students searching for a personalized law school within a downtown environment. Our reach in legal education will expand as we continue to develop new ways of telling others about our vibrant law school and city. I have tremendous pride in what we have been able to accomplish as a law school—a pride that will continue as we focus on the path of excellence in legal education.

SONEL SHROPSHIRE joined Loyola Law School in July 2002 after having been assistant dean of admissions at Texas Wesleyan University School of Law. He received his juris doctor from the University of Florida College of Law in 1997.
It's a question I am asked frequently in troubled economic times. Truth be known, I am asked this question often throughout all phases of the business cycle; boom, bust and in between. I suppose it's most people's way of asking “How's business?” In considering my response, I often think of a presentation made at Loyola by legal career author Kimm Walton (author of *Guerilla Tactics for Finding the Legal Job Of Your Dreams*). She said law students frequently (and anxiously) ask “How's the market?” as though that macroeconomic question somehow bears direct relevance on their individual job searches. Walton observed that if you've got a job, the market is great; if not, well, then it's lousy. Another way to put it is that students should worry less about the market and more about actually conducting their job searches. My own response to students is usually that it depends on what you're looking for and how well you've done in law school. In reality, the market has various segments—some of which are available to some students and not others.

I must confess that as director of Loyola's career services office, I am never satisfied with the state of the market, even at its most robust, because we in career services are always striving for more for our students and graduates—more opportunities, more quickly, paying more money. These are certainly trying times in which to strive for more because the economic downturn has affected all three major legal employment sectors: private firms, government and public interest agencies. During the 2002-03 school year alone, we have seen two leading firms dissolve entirely and a third close its branch office in Los Angeles. What's more, the trend toward consolidation of large firms through mergers or acquisitions continues unabated. Despite these developments, during each of the last three or four years, the percentage of Loyola graduates employed within nine months of graduation (the standard benchmark) was well into the 90th percentile. The reasons are manifold and include the market's continuing recognition that Loyola graduates are ready to practice law. So often, our students return from summer clerkships and report that some of their peers from more “elite” law schools are ill-prepared to perform even the most fundamental clerking task of preparing a legal memo.

How's the market?

By Graham Sherr, Assistant Dean, Career Services

Ultimately, it doesn’t really matter how the market is because there is no alternative to looking for a job. To employers and alumni, I often respond that the market is not as bad as one might think from press reports of firm layoffs and even closures, though it is also not as robust as I would like. Another reason for our students’ success is the dedicated effort of our Assistant Director Marla Najbergier, whose sole mission is assisting graduates in securing employment. This is a luxury few law schools choose to afford, but one which Dean Burcham believes is vital to our graduates and the Law School. With solid grounding in the employment industry, and a true passion for helping students and graduates find jobs, Marla has been a godsend to our new graduates and our department. Her efforts could not be fully realized, however, without the response of our alumni who faithfully “reach back” to hire our students and graduates. As I write, the pleasant memory of the recent alumni Grand Reunion is still very fresh in my mind. For those of us who are fortunate enough to work at Loyola, it is always a pleasure to encounter former students and learn of their success. As a former headhunter, I find it especially rewarding when graduates report securing employment as a result of contact with the career services office. At this year’s event, a graduate greeted me and reported his satisfaction with the firm to which I had referred him following his bankruptcy court clerkship. A short while later the long-time alumni Board of Governors member who alerted me to that opening in the first place thanked me for having referred the graduate, who was a welcome addition to her firm. As I often do, I replied, “That’s why I get up in the morning!” And it is. When you get right down to it, the market is really just an aggregation of countless encounters such as the “match” I just described. With the continued support of Loyola’s vast and growing alumni network, I am confident that we can provide a good market to all our students.
our alumni office was busy this past year hosting many alumni events. These events included a Women of Loyola Law School Dinner, an Alumni & Student Mentor BBQ, a Latino "Fiesta," the Bob Cooney Golf Tournament, a Small and Sole Practitioner Reception, several Entertainment Luncheons, an African American Alumni and Student Jazz Mixer, an Orange County Alumni Reunion, an Asian American Alumni Get-Together, Brunch at the Magic Castle, the Grand Reunion, and a District Attorney Reception. Regional and out-of-state events were held in Palm Springs, Sacramento, San Diego, San Francisco, Arizona and Hawaii. An alumni gathering was also hosted during the California State Bar’s annual meeting in Monterey.

The alumni office also launched a monthly electronic newsletter, Alumni InBrief, in May 2002. Alumni InBrief is designed to keep alumni informed about fellow alumni and current Law School and community activities—in an easy-to-read format. A free e-mail forwarding service was also made available to alumni. Approximately 5000 alumni are receiving the electronic newsletter or taking advantage of the e-mail forwarding service. If you would like to receive Alumni InBrief or take advantage of the free e-mail service, please visit the alumni Web site at http://alumni.lls.edu.

This summer we launched an online alumni community. LAWnet includes an online directory allowing alumni to locate fellow alumni by class year, area of practice and even by geographic location. LAWnet is a convenient resource and communications tool. Alumni determine how much information they want to make available on LAWnet. Only alumni will have access to LAWnet, which is password protected and maintained on the server. I hope you take full advantage of the Web community and its many benefits, including networking and referral opportunities.

All alumni events and services are designed to give you an opportunity to stay connected with fellow alumni and the law school. Our goal is to get you involved and actively participating in alumni activities. At the end of the last fiscal year, which ended on May 31, 2003, 20 percent of alumni attended a law school event or made a gift to the law school. Our goal is to increase the percentage of alumni donors every year. Alumni participation is extremely important because it is a measurable indicator demonstrating how much alumni value their alma mater. Alumni support sends a strong message to non-alumni donors that the graduates of Loyola Law School value their education.

The most important asset of any great law school is its alumni and the value that they place on their alma mater. Your participation and support brings great value to the Law School and even greater value to you as a graduate of Loyola Law School. It is through your support that Loyola’s name will be recognized in both the legal and academic worlds as the great law school that it is.

I encourage you to contact the alumni office and let us hear how we can better serve you.
http://alumni.lls.edu/

Loyola Alumni Community

Stay Connected with Fellow Alumni and Loyola Law School

213.736.1046 or e-mail: alumni.office@LLS.edu
I

oyola Law School has in its hold a trinity of success and academic achievements. The three law reviews, each with its distinct field, enhance Loyola's reputation with both dedication and hard work. The student-run publications cleave three separate and distinct categories, all finding their way through the tangle of real world issues. The goal of law review is to give reasoned opinions on topics that will create discussion and an open forum of thought. Each distinct law review may have its own subject matter; however, the reviews come together to form a trinity, building Loyola's reputation.

Each review selects staff members through the annual Write-On Competition. Competitors write an essay of approximately twelve pages based on a packet of supplied research materials. This essay is submitted along with the application packet and is reviewed by the current law review editors.

Jerry C. Chow, executive editor of the Loyola of Los Angeles Law Review for 2003-04, takes pride in the fact that he is a member of a law review. Chow considers "membership on law review as one of the most prestigious honors that a law student can achieve." Law review is "important" because it offers students "new academic challenges and enables students to improve and perfect their own writing styles." According to Chow, "Members also have the opportunity to interact with professors and practicing attorneys, allowing students to establish both personal and professional contacts outside the bounds of school."

LOYOLA OF LOS ANGELES LAW REVIEW
To foster the idea of having an open forum, the Loyola of Los Angeles Law Review (Law Review) adopted a faculty-edited symposium format in 2002, which puts together a collection of articles on a particular issue. The new format allows symposium editors to bring together top legal experts and specialists from other disciplines for an in-depth look at emerging legal issues. This format also generates a broader range of ideas.

Jerry White, editor-in-chief for 2002-03, states, "Where previously someone researching a particular topic might have found one article helpful in any given issue, he will now have a variety of articles to choose from, each with a different angle and insight." Additionally, White is pleased that the all-symposium format has encouraged intellectual debate between scholars and authors. In fact, the format has worked so well that several other law reviews across the country have contacted the Law Review editors and staff to learn more about switching to an all-symposium format.

TRINITY OF THOUGHT
rights to Pluto, Goofy and Donald Duck were also in danger of expiring. Coming to Disney’s aid, Congress passed the Sonny Bono Copyright Term Extension Act (CTEA), and rescued Mickey and his gang from the public domain.

The staff cut their production time almost in half to publish their symposia of articles on Eldred v. Ashcroft. ILR even pre-published the page proofs in a binder format and shipped them directly to the Supreme Court before it heard the case. In a 7-2 decision, the Supreme Court concluded that Congress’s extension of the existing copyright terms did not exceed its power under the Copyright Clause or violate the First Amendment.

The student-run publications cleave three separate and distinct categories, all finding their way through the tangle of real world issues.

A YEAR OF CHANGE

LOYOLA OF LOS ANGELES INTERNATIONAL AND COMPARATIVE LAW REVIEW

Amy Freeman, editor-in-chief for 2002-03 of Loyola’s International and Comparative Law Review (ILR), realized ILR’s need for growth. Turning to the faculty for input, Freeman gained perspective on the future of ILR. Freeman recognized that the ILR editors and staff must focus on the challenge of keeping the articles current through publication.

In response to faculty input, Freeman worked with ILR editors and staff to adjust the production process. The first step was to redefine the roles of its journal members. After clarifying each role, the production process was redefined in relation to those roles. As a result, the staff decided to cut production from four to three issues a year. With a longer production cycle, more articles could be evaluated and developed, resulting in a higher-quality journal.

The journal then concentrated on seeking articles from professors and alumni. “Receiving articles and ideas from alumni and respected professors from all over the country boosts the quality and relevance of the issues we publish,” notes Freeman. In a recent issue, Robert Shapiro ’68 authored an article entitled, “The Impact of the Denmark-U.S. Extradition Treaty on Tax Evasion.”

In 2003, Loyola Law School presented International Law Weekend, a two-day conference that brings together legal practitioners and academics to discuss current issues in public and private international law. The conference focused on the following key issue: How globalization impacts the practice of law. Selected papers from the conference will be published in a forthcoming ILR.

LOYOLA OF LOS ANGELES ENTERTAINMENT LAW REVIEW

The Loyola of Los Angeles Entertainment Law Review (ELR) recently began posting articles on its web site. Kent Lowry, editor-in-chief for 2002-03, explained the change as an effort to continue meeting the needs of ELR’s readers. Posting articles on its web site, Lowry explains, “maximizes accessibility and overall interest in the journal.”

The focus of ELR is dictated by its subject matter. ELR prides itself on publishing current articles written by distinguished academics, members of the Bar, and entertainment and sports industry commentators.

On February 22nd of this year, the Law School conducted its Fourth Annual Entertainment Law Symposium, titled “Tune In, Turn On, Cop Out? The Media and Social Responsibility.” The symposium focused on various media law issues, including media liability for acts of audience violence, investigative journalism, and the legal issues surrounding television’s newest darling — “reality” shows. The symposium, organized by Professor Jay Dougherty, brought national scholars, top local media and constitutional law litigators to the Loyola campus for a day of panel arguments over hypothetical fact patterns based on real-world cases.

Other topics discussed at the event included whether violence in the media causes violent behavior, the changing conception of who a journalist is in the world of the Internet, and the implications of that for traditional journalists and their ethical standards.

Lowry describes his work as exciting. “We strive to appeal to both the academic and the practical side of the law.” The law is a balance between theory and real world interpretation, and ELR strives to give its readers a diversity of issues. This not only creates a high-quality journal, but it also gives professors and lawyers a continuing education on today’s legal issues.
How time does fly! The Cancer Legal Resource Center (CLRC), a joint program of Loyola Law School and the Western Law Center for Disability Rights, recently entered its sixth year of service, providing information and education on cancer-related legal issues to the cancer community. The CLRC is a clearing house, providing information on cancer in the workplace, access to healthcare, changes in health insurance law, government benefits, estate planning and other issues of importance to cancer patients and others impacted by the disease.

Since 1997, the CLRC has reached almost 24,000 cancer patients/survivors, their families, friends and employers through its Telephone Assistance Line, community outreach programs, workshops, conferences and other activities. Its founding director, Barbara Ullman Schwerin '87, speaks nationally on legal issues of importance to cancer survivors and their families. The office is staffed by two additional attorneys, J. Cai Ryan ’97 and Joanna Fawzy ’02. Joanna is a Loyola Law School post-graduate public interest law fellow on a two-year fellowship from Loyola Law School. Additionally, the CLRC is staffed with Loyola Law School student externs, who are the “front door” to the program and handle the Telephone Assistance line under the supervision of the CLRC attorneys. There were 15 students externing at the CLRC in Spring 2003. More than 100 LLS students served as externs at the CLRC since its inception.

The CLRC also has a panel of attorneys who volunteer their time to provide more in-depth legal information and counsel to numerous callers to the CLRC. Approximately 50 attorneys and other professionals volunteer their time for CLRC callers, sometimes simply by providing information over the telephone, other times by writing letters or making telephone calls on the caller’s behalf. Without the help of these volunteer attorneys, our CLRC callers would have nowhere else to turn. In addition, Loyola Law School offers a course in cancer law as part of the curriculum.

If you are interested in volunteering your time at the CLRC, or know of attorneys in other parts of California who might be interested in serving on its volunteer panel, please contact Barbara Ullman Schwerin, Director, Cancer Legal Resource Center, 919 S. Albany St., Los Angeles, CA 90015-1211, telephone: 213.736.1435; e-mail: Barbara.Schwerin@lls.edu
Fourteen ABA-accredited law schools participated in the National Civil Trial Competition, which ran November 14-November 16, 2002. Elimination rounds took place at the U.S. Courthouse in Los Angeles. Campbell University, Loyola Law School, Syracuse and the University of Florida competed in the semi-finals, with Syracuse and the University of Florida pairing up against each other in the final round; all of which were argued at Loyola’s Albert H. Girardi Advocacy Center. Each school sent a four-person team and argued a hypothetical wrongful termination case based on the Federal Rules of Evidence. Syracuse received the finalist trophy, with semi-finalist trophies awarded to Loyola Law School and Campbell University.

The University of Florida team was named champion of Loyola Law School’s first annual National Civil Trial Competition. They were awarded a permanent trophy for their school, as well as a traveling trophy that will be passed on to future champions. Ryan Kerwin, from Syracuse University College of Law, was named Best Advocate/Final Rounds; and Christine Ducat, from Temple University James E. Beasley School of Law, was named Best Advocate/Preliminary Rounds.

All judging was done anonymously. Judges were drawn from the Los Angeles legal community, with many of them Loyola Law School alumni. Participating were Los Angeles Superior Court Judge Tomson T. Ong ’83 and U.S. Magistrate Judge Carla Woerle ’77 of the US District Court, Central District of California, who judged the semi-final rounds. Retired Superior Court Judge Frederick J. Lower, Jr. ’64 presided over the final round.

"...exposure to courtroom dynamics at the law school level will result in better lawyers."

Timothy Wheeler, partner
Greene, Broillet, Panish & Wheeler LLP

Fall 2002 marked the inauguration of Loyola Law School's National Civil Trial Competition, made possible through the sponsorship of Greene, Broillet, Panish & Wheeler, LLP of Santa Monica, Calif. "Loyola Law School is pleased to be the first law school to host a tournament of this caliber on the West Coast," says Associate Clinical Professor Susan Poehl ’89, the tournament’s director and coach of the Loyola’s Byrne Trial Advocacy Team—which participated in the competition. Poehl is pictured here with the firm’s partners Browne Greene, Bruce A. Broillet and Adam Shea ’93, who served as judges in the semi-final rounds. Brian J. Panish, Mark Quigley, Christine Spagnoli ’86 and Timothy J. Wheeler ’78 of the firm also participated as judges. Wheeler, a managing partner, stated, "We are pleased to sponsor [the tournament] because we are convinced that early exposure to courtroom dynamics at the law student level will result in better lawyers. Our hope is that this competition will encourage the nation’s law schools to follow Loyola’s example by adding more hands-on training to their curricula, and by holding regional competitions that encourage trial advocacy skills."

Loyola Law School’s Byrne Trial Advocacy Team nabbed third place at the first trial competition ever held at the downtown Los Angeles law school. The National Civil Trial Competition was held in mid-November 2002. Pictured are members of the Loyola team with members of the law firm: [l to r] Marcus Musante (team), Larry Lawrence (team), Emily Terrell (team), Browne Greene, Sheri Webb (team), Kris Dudio (team), Marty Pritskin (coach), John Henry (coach) and Bruce Broillet.
Helping more than 17,000 Los Angeles-area residents resolve sometimes difficult issues is no small task. “We are busy helping our community avoid costly legal battles year round,” says Marta Gallegos, associate director for the Law School’s public interest center. After 10 years of service to the community, the Center has saved Los Angeles residents hundreds of thousands of dollars in litigation fees, and has assisted thousands of people in finding solutions to everyday problems.

The Center provides mediation, conciliation and facilitation services to hundreds of satisfied clients daily. Mediation is a process where the parties work together toward a resolution that tries to meet every party’s interests. The parties to the conflict voluntarily meet face to face and with the help of a neutral mediator, try to resolve their conflict by talking directly to each other. The mediator does not decide how the dispute is to be resolved; the parties do. Any conflict might be resolved in this way if the parties are willing to try. The Center also provides convenient conciliation. This type of conflict resolution involves a neutral conciliator who helps the parties resolve their conflict by talking to the parties separately, often on the telephone. Facilitation is not a kind of conflict resolution but rather a way to avoid potential conflicts. Neutral Center facilitators are available to attend meetings to help parties talk to each other in ways to try to avoid conflicts.

The Center regularly conducts trainings in mediation, conciliation and facilitation skills on site or at the Law School. The Center has, to date, assisted in training more than 250 community groups to demonstrate how their programs can benefit from using ADR problem-solving techniques.
Loyola Law School and the firm of Manatt, Phelps & Phillips, LLP have created an annual trial institute to address current issues facing trial lawyers and their clients. “The Trial Institute presenters will include the nation’s best civil and criminal lawyers, prosecutors, trial judges, jury consultants, corporate lawyers, legislators and technical advisors,” says Dean David W. Burcham ’84.

The main theme for the initial presentation will be “Corporation as Litigant” and is planned for November 7, 2003, in the Robinson Courtroom at the Law School. Director of Loyola’s Ethical Advocacy Program, Professor Laurie Levenson, will serve as institute coordinator. The day-long event will begin with breakfast and registration and include three panels, lunch and keynote speaker address, and conclude with a cocktail reception. Speakers and panelists will include nationally recognized trial lawyers, government officials and corporate leaders.

“I am exceedingly grateful to Paul Irving ’80 and Craig de Recat ’82 as well as the firm of Manatt, Phelps & Phillips for making this series of annual advocacy events possible,” expressed Burcham.

Southern California. It is only appropriate that Loyola Law School, which is recognized as producing many of the finest trial lawyers in the country, sponsor such an important event,” said Craig J. de Recat, co-chair of Manatt, Phelps & Phillips’s national litigation practice.

“Corporation as Litigant”
November 7, 2003
ROBINSON COURTROOM
LOYOLA LAW SCHOOL

Approximately 200 Loyola students participated in the Volunteer Income Tax Preparation externship this year. Students provided over 4,400 hours of tax preparation services to ten VITA sites throughout the Los Angeles area, and prepared more than 2,500 returns for mostly low-income and elderly citizens, saving taxpayers an average of $45 to $65 per return, had they needed the services of traditional preparers.
As the arbiter of the Barry Bonds 73rd home run ball dispute, San Francisco Superior Court Judge Kevin McCarthy struck out with his decision that Alex Popov and Patrick Hayashi had to arrange, by Dec. 30, 2002, to sell the ball and split the anticipated $1 million. Contrary to media blandishments, McCarthy is no Solomon. Indeed, neither Popov nor Hayashi has been willing to go along with his order, so the case continues to languish.

When Bonds knocked his record-breaking home run into the right field stands in October 2001, Popov caught the ball into the upper part of his glove’s webbing, only to be set upon by a mob of competitors, struggling to grab it away. Hayashi, felled by the same stampede, managed to spot the ball on the ground and to pocket it. Popov sued, arguing that his stopping the ball was sufficient to constitute legal possession. McCarthy could have succeeded in establishing complete control over the ball, if not for the illegal and violent actions of a mob. That mob needs to hear a strong message of disapproval. On the other hand, he was convinced that Hayashi—who emerged with unequivocal control of the ball—had done nothing wrong.

McCarthy rightly rejected suggestions that the limited steps Popov took to possess the ball themselves constituted legal possession: To catch a baseball requires more than blocking its progress. Popov never had possession and thus never acquired title.

Having convinced himself that each claimant has an equally reasonable and equally incomplete argument, McCarthy turned to Roman law for a save and relied on the equitable remedy of division to resolve competing claims that are “equally strong,” which comports with what one instinctively feels to be fair.

This is not Solomonic. Solomon offered to divide the contested baby not because he shrugged his legal shoulders, but rather as a psychological ploy to tease out the facts. Solomon never intended to split the baby, and a modern-day Solomon should not have ordered the ownership of the baseball to be divided.

A HIGHER AUTHORITY
Equity is meant to address gaps in the law, to be used when individual circumstances, or unclean hands of one party, prevent the law from performing the way it was designed. Neither of these considerations applied to our disputed baseball. Equity should not have been invoked.

Judge McCarthy would have been better served going to a more major-league rule book: the Talmud (ancient rabbinic writings). Jewish law, the oldest continuously practiced legal system known to man, would have provided him with far more incisive and nuanced guidance. A third century Mishna (early redaction of rabbinic law) opens with a discussion of two people, each of whom has spotted an abandoned garment. They arrive in court, each holding on to an end and claiming full ownership as the first to pick it up. Further discussion yields what one could call the laws of intractable and insoluble dilemmas.

The Talmud introduces a variety of tools. Courts can sometimes walk away from the decision process (insufficient evidence of claim on either side). They can send contested property into a judicial limbo (as a disincentive to false claims). They can, on rare occasions, summarily award contested property to an individual litigant (through extrajudicial weighing of truthfulness, as Solomon did).
They can also divide the trophy. But division is appropriate only if both parties have physical possession, either in whole or in part, directly or by proxy. There must exist at least the possibility that the division ordered by the court could match a factual scenario—both parties could have found the item at the same time, and taken legal title simultaneously, making them joint owners. Neither of these criteria obtained in the baseball case; either Popov or Hayashi is the “real” owner, but not both.

Possession, according to Jewish law, not the phantom of “prepossessory interest,” is critical. Hayashi wound up with clear possession. Popov could trump that in Jewish law only by showing that Hayashi’s possession was illegal, in that Popov had satisfied the legal requirements for possession first. Popov would have to demonstrate that, but for the interference of the crowd, the ball would have completely and fully lodged in his mitt. (This “but for” standard for legal possession is assumed by another third century Mishna, and falls halfway between the poles of absolute, complete control and that of partial control, both offered by the completing legal lights that McCarthy consulted.) Because Popov could, or can, do nothing of the sort, Hayashi’s claim should prevail.

Jewish law insists on at least a stab at “fairness.” The court is instructed to attempt to coax the litigants to arrive at a solution through compromise, for the sake of communal peace and tranquility. But if the parties wish to know what the law says, they—and society—should be able to hear it, loudly and clearly. “Let the law pierce the mountain,” says the Talmud. Neither compromise nor equity should substitute for the rule of law.

Barry Bond’s home run generated a judge’s dilemma, somewhat akin to a fielder who cannot decide whether to throw to first or second. Throwing it halfway between the bases is not an option.

Yitzchok Adlerstein holds the Sydney M. Irmas Chair in Jewish Law and Ethics at Loyola Law School. Michael Broyde is a law professor at Emory University School of Law and academic director of its law and religion program.
We are primed to accept the familiar. Patterns recur in our perceptions almost because we will them to do so. This is as true in constitutional law as it is in everyday life. Occasionally, however, our brains escape the habits of familiarity and allow us to perceive something old in a new way.

This is usually the result of some random, inexplicable occurrence. Consider this essay as the product of such an accident, an intellectual bump in the night. Suddenly, after teaching the 9th Amendment for 19 years, the familiar began to look different. This is what occurred to me.

A FAMILIAR VIEW OF THE 9TH AMENDMENT

In Griswold v. Connecticut, Justice Goldberg’s concurring opinion relied in part on the 9th Amendment as a basis for establishing the unconstitutionality of Connecticut’s contraceptive ban. See 381 U.S. 479, 486 (1965). Goldberg did not treat the 9th Amendment as an independent repository of judicially enforceable rights, but as a liberal rule of construction inviting the judiciary to construe enumerated rights broadly, including the liberty protected by the due process clause. The essence of his opinion was that the 9th Amendment, although creating only a rule of construction, was a rights-oriented vehicle through which the judiciary could discover and enforce non-textual rights.

Justices Black and Stewart objected strongly to this view. Id. at 507, 520 (Black, J., dissenting); Id. at 527, 529-530 (Stewart, J., dissenting). The 9th Amendment, according to them, was to be read along with the 10th Amendment as reflecting nothing more than an obvious principle of federalism, namely, that the federal government could exercise only those powers granted to it.

Goldberg’s opinion has an immediate appeal to it. The 9th Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The reference to “rights not enumerated” strongly suggests—promises would not be too strong a word—that these rights have a constitutional status similar to those found elsewhere in the Constitution and the Bill of Rights. Indeed, on one reading, Goldberg may not have gone far enough when he simply treated the 9th Amendment as a liberal rule of construction. The language of the 9th Amendment could easily be construed to embrace a body of “unenumerated” substantive rights that are enforceable by the judiciary in the same manner as enumerated rights, and at certain points Goldberg’s opinion suggests as much. That broader possibility aside, the remarks made by James Madison in proposing the measures that eventually became the Bill of Rights confirm Goldberg’s basic premise that the 9th Amendment created a constitutional guarantee that rights not enumerated in the Constitution were nonetheless protected:

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow by implication, that those rights which were not singled out, were
intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution (the 9th Amendment). I Annals of Congress 439 (Gales and Seaton ed. 1834).

To the extent that this vision invites a type of freewheeling judicial activism, however, it may foster legitimate concerns regarding the proper scope of judicial review within our system of representative democracy.

The more circumscribed approach suggested by Black and Stewart surely derives from such concerns. Their interpretation of the relevant provisions, however, downplays the obvious textual differences between the 9th and 10th Amendments. The 10th Amendment articulates the precise reserved powers principle credited by Black and Stewart. It speaks in terms of reserved powers: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The 9th Amendment, on the other hand, refers to rights and responds to a very different concern, namely, the fear that a specification of rights might be read to disparage something. And was Goldberg so clearly right? It certainly is not obvious that the 9th Amendment was intended to invite the judicial enforcement of non-textual rights. It may have been, but why foreclose other plausible alternatives? Why not assume, for purposes of curiosity if nothing else, that Black and Stewart were right (or at least less wrong than a first reading suggests) and see where that takes us?

A DIFFERENT PERSPECTIVE

Our new working premise: The 9th and 10th Amendments create a coordinated response to the fear that the Constitution established a central government with virtually unlimited powers. The 9th speaks in terms of retained rights, while the 10th refers to reserved powers. Both are addressed toward the national government, the source of the fear motivating their adoption. Taken together, these amendments represent a microcosm of the frequently intersecting themes of structure and rights that permeates the constitutional text. They are designed to ensure that the national government stays within its assigned sphere of authority and competence. That sounds nice, but how does this coordinated model work without rendering the 9th Amendment a redundancy? To answer this we must first trace the source of American political power and then examine how “retained rights” operate within a system in which that power is both shared and withheld.

All power within our constitutional system can be divided into two types, the powers granted to the national government and those reserved under the 10th Amendment.

others left unmentioned. As such, the 9th Amendment says something quite different from the 10th. Yet, under the Black/Stewart thesis, the text of the former appears to have no independent meaning. It apparently does no more than establish the same principle of federalism that is implicit in the text of the Constitution and explicitly described in the 10th Amendment—the national government is a government of limited powers. Or so it would appear.

The Black/Stewart thesis seems so obviously flawed as a matter of textual interpretation that one’s instinct is to ignore it entirely. But this off-handed dismissal may have been premature. Whatever we may say of them, Black and Stewart were not ciphers who lacked the ability to read and compare passages of constitutional text. We may be missing and those reserved under the 10th Amendment. Since the people are the sovereigns of both the federal and state governments, it follows that the reserved powers, just like the granted powers, find their authority in the people. The text of the 10th Amendment implicitly embraces this premise. The powers not granted are reserved to the “States respectively, or to the people,” the order suggesting that the people are the font of all political power. The reservation to the states simply recognizes that the people have ceded some of that authority to their respective states. Therefore, just as the people have defined the range of federal power, the people of each state are free to determine what quantum of reserved powers may be exercised by their respective state government. Seen in this light, the 10th Amendment is not simply a protection of abstract federalism, but a
recognizes the people's right to determine the proper allocation and reservation of governmental powers at both the national and state level. In other words, it is premised on liberty.

As to the retained rights, it's perfectly clear that the people of a state can limit the exercise of the reserved powers to protect individual liberties against state incursion. They can do this by withholding power, as suggested above, or by imposing specific limitations on the powers they choose to vest in their state governments. Thus, as to the latter, a state constitution may include a bill of rights that limits the exercise of the powers vested in the state. But the retained rights referred to in the 9th Amendment are rights held in opposition to the exercise of national power and state constitutions are not usually thought of as designed to check federal power. So these observations do not take us very far toward understanding the interrelationship between the 9th and 10th Amendments. We still must determine how the retained rights work in tandem with the reserved powers to protect the invasion of those rights by the national government.

One plausible explanation is that the reserved powers embrace an authority to resist federal transgressions of the retained rights. Stated somewhat differently, the purpose of the reservation of the "unenumerated" powers is to ensure the retention of the "unenumerated" rights. I am assuming here that the reservation of powers was not premised on an abstract desire to preserve state sovereignty, but at least in part on a pragmatic desire to protect liberty through a vertical dispersal of power. Madison suggested as much in the Federalist Papers: "The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people...." The Federalist, No. 45, at 292-293 (James Madison) (Rossiter ed. 1961). If that is so, the rights retained by the people may well be those rights that the people define through the exercise of their reserved powers. Indeed, how else are those rights to be given constitutional stature vis-à-vis the federal government? (We have implicitly set aside the Goldberg solution.)

In essence, the above explanation gives the people of each state a potential trump on the exercise of federal power. Certainly this is quite different from the orthodox view of national supremacy. Is such a regime even possible or have we (I) fallen through a constitutional rabbit hole?

Before answering that question, an example may help us see how this restructured constitutional regime might operate. Suppose the people of a state, through a proper resort to the initiative process, enact a measure legalizing the medical use of marijuana by persons for whom the drug will provide the only means of relief from excruciating pain, nausea, or the like. Such use is, of course, contrary to the federal Controlled Substances Act ("CSA") which makes the possession of marijuana a felony. Assume the federal government seeks to enforce the CSA against an individual who qualifies to use marijuana under the above state law. What role might the 9th and 10th Amendments play in that individual's defense?

If we follow the standard model, the defendant would use the 9th Amendment as part of her substantive due process argument, hoping for a generous construction of the word "liberty." Here the defendant would have to establish that the victim of animus.3

Continued on page 107
Beyond campus lecture halls, the Loyola Law School faculty share their expertise with the world—through their published works in law journals and casebooks, through their paper and symposium presentations, through their bar association committee work, and through volunteer involvement for the public's benefit. Here is an update on their recent professional accomplishments.

PROFESSOR ELLEN APRILL, John E. Anderson professor of tax law and director of the Tax LL.M. program, published an article entitled "Personage and Tax Policy: Rethinking the Exclusion," in 96 Tax Notes 1243 (2002). Aprill authored the entry on the Federal Unemployment Tax Act for a three-volume work entitled Major Acts of Congress. She has joined the Editorial Board for a forthcoming textbook series designed for Tax LL.M. courses, and has been appointed to the Planning Committee of the University of Southern California Institute on Federal Taxation. Aprill spoke at a seminar on Advanced Issues for California Tax-Exempt Organizations and at the West Coast Women's Forum of the Georgetown University Law Center, and moderated presentations at conferences of the Los Angeles County Bar and American Bar Association Tax Sections. In addition, Aprill heads the planning committee for the Fifth Annual Western Conference on Tax-Exempt Organizations, and continues her participation in the American Bar Association's Section of Taxation as a member of the Executive Committee of the Teaching Tax Committee, of the Section's Nominating Committee—and its Judicial Deference Task Force. She also continues to serve as a member of the Investment Policy Oversight Group of the Law School Admissions Council, and the Academic Advisory Board of the Tannewald Foundation for Excellence in Tax Scholarship.

ASSOCIATE CLINICAL PROFESSOR CINDY I.T. ARCHER, professor of Ethics, Negotiations, and Writing, gave a Continuing Legal Education (CLE) presentation with Professor Therese Maynard, "Ethical Business Lawyers in a Post-Enron World," before a group of Orange County alumni this past spring. The program provided an overview of the SEC's new professional responsibility rules, and compared and contrasted them to the current obligations of a California lawyer. Archer was recently awarded a research grant to study the roles of lawyers and clients in legal negotiations, the effect of technology, and the ethical dilemmas that arise as a result of divergent training and roles of lawyers and clients.

PROFESSOR WILLIAM D. ARAIZA participated in the Constitutional Law Professors Roundtable on the First Amendment at Brandeis School of Law, University of Louisville in Louisville, Kentucky, last November. The same month, Araiza published The First Amendment: Cases, Dialogues and Comparative Perspectives (Anderson Publishing Co., 2002). Araiza served as a visiting professor at the University of Western Ontario in London, Ontario, Canada, in January; as a panelist at the Socio-Legal Studies Association Conference in Leeds, England, in April; and as a visiting lecturer at the University of Mainz in Mainz, Germany, also in April. More recently, Araiza spoke at Macquarie University and the University of Western Sydney, both in Sydney, Australia, on "Hate Speech and Free Speech;" and his paper "Tales from the Net: Captive Audiences, Children and the Home" was recently listed on Social Science Research Network's (SSRN) "Top Ten" download list for "Constitutional Law Recent Hits" and "Cyberspace Law Recent Hits."

PROFESSOR JEFFERY C. ATIK (Sayre MacNeil Fellow) has been appointed by the United States Trade Representative (USTR) and the Canadian Department of Foreign Affairs and International Trade to a five-member binational panel to review the imposition of anti-dumping duties by the United States on softwood lumber imported from Canada. Atik also continues to serve on a U.S./Mexican binational panel reviewing anti-dumping duties imposed on certain Mexican steel products. During fall 2002, Atik taught international law at UCLA School of Law. In March 2003, Atik and his Loyola NAFTA seminar students traveled to Tijuana, Mexico to participate with faculty and students of the law school at Universidad Iberoamericana—Tijuana in a bilingual discussion of a NAFTA investment case. In April, Atik moderated a panel discussion, "Is the International Trade Regime Fair to Developing States?" at the annual meeting of the American Society of International Law in Washington, D.C. During summer 2003, Atik taught in Loyola's summer program in Bologna, Italy, and in Suffolk Law School's summer program in Lund, Sweden. His forthcoming publications include "The Weakest Link—Demonstrating

ASSOCIATE CLINICAL PROFESSOR SUSAN SMITH BAKHSHIAN ’91 served as a presenter at the Rocky Mountain Regional Legal Writing Conference in Albuquerque, New Mexico, in March 2003. Bakhshian’s presentation addressed the process of crafting legal writing problems that encourage integration of written and electronic legal research skills.

PROFESSOR ROBERT W. BENSON, in his role as director of the pro bono International Law Project for Human, Economic and Environmental Defense (HEED), helped organize the Los Angeles community’s participation in the United Nation’s World Summit on Sustainable Development in Johannesburg, South Africa, in September of 2002. Stanford Law School’s public interest law program invited Benson to make a presentation at its annual “Shaking the Foundations” winter conference. He also was a speaker and organizer for the National Lawyers Guild Annual Convention, addressing the topics of “Recolonization of the Third World” and “Recruitment Women and Latinos into the Battle Against Free Trade.” Working with the Foundation for Taxpayer and Consumer Rights, Benson drafted the Corporate Three Strikes Act (S.B.335), introduced in the California legislature by State Senator Gloria Romero. The bill would revoke the corporate charters of companies convicted of three felonies within any 10-year period. Later in the academic year, Benson testified in Sacramento before the State Senate Judiciary Committee and the Senate Government Organization Committee on the Act he drafted, and another corporate reform bill. Both bills were reported out of committee favorably.

CLINICAL PROFESSOR BARBARA A. BLANCO, the faculty externship director at Loyola Law School, presented a panel at the conference “Externships: Learning from Practice” in March at the Catholic University of America, Columbus School of Law. The panel addressed the issue of promoting effective off-campus externship supervision of experience in the field, and a paper on the subject is to follow. In November 2002, Professors Blanco and Sande Buhai presented an ethics seminar for legal services lawyers at Bet Tzedek Legal Services in Los Angeles. Blanco continues to be active in pro bono activities involving her community free clinic, as well as with equestrian organizations and horse rescue groups.

ASSOCIATE CLINICAL PROFESSOR JEAN BOYLAN ’86 wrote the article, “Crossing the Divide: Why Improving Success for Nontraditional Law Students Requires Summer Programs at Every Law School,” has been published in St. Mary’s L. Rev. on Minority Issues, (Spring 2003); and “Abandonment of Contract Doctrine in Construction Disputes” has been republished in the Legal Handbook for Architects, Engineers, and Contractors, edited by Albert Dibb. The book selects cutting-edge articles in construction litigation for republication. In addition, Boylan gave a presentation last summer at the National Academic Support Conference on “Designing a Bar Preparation Program to Enhance Success in Bar Passage.”

CLINICAL PROFESSOR SANDE BUHAI ’82, faculty public interest law director at Loyola Law School, gave a presentation with Professor Barbara Blanco entitled “Ethics for Legal Services Attorneys” at Bet Tzedek in Los Angeles, November 2002. She also presented “The Ethics of Getting and Keeping Clients and Getting Paid” before the Women Lawyer’s Association of Los Angeles in January 2003. Buhai participated in a panel discussion of “Promoting Effective Supervision” at Catholic University’s Externship Conference in March. Her most recent article, “Honor Thy Mother and Father: Preventing Elder Abuse through Education and Litigation,” has been published in the 36 Loy. L.A. L. Rev. (Winter 2003). Buhai continues to serve on the board of directors of the Western Law Center for Disability Rights and UnCommon Good.

Faculty

You Rooting For? Transnationalism, the World Cup, and War,” at the Conference on Transnationalism, Ethnicity and the Public Sphere at the Center for Critical Theory and Transnational Studies, at the University of Oregon in February 2003; and he served as a presenter on “(Racial) Profiles in Courage, or Can We Be Heroes, Too?” at the symposium “Confronting Realities: The Legal, Moral, and Constitutional Issues Involving Diversity” at Albany Law School, New York City, in November 2002.

PROFESSOR BRIETTA R. CLARK will be publishing her article entitled “When Free Exercise Exemptions Undermine Religious Liberty and the Liberty of Conscience: A Case Study of the Catholic Hospital Conflict” in the Oregon Law Review (January 2004). In addition, Clark hosted and moderated a panel discussion at Loyola Law School last spring entitled “Healthcare Professionals Shortage: California in Crisis,” sponsored by the Los Angeles County Bar Association—Health Law Section. She also continues to serve on two boards at the California Hospital Medical Center: the Institutional Review Board, which reviews proposals for research on human subjects, and the Biomedical Ethics Committee, which advises on ethical conflicts relating to end-of-life issues.


PROFESSOR MARY B. CULBERT, director of the Loyola Law School Center For Conflict Resolution, presented numerous community seminars on mediation skills throughout the year and two 25 to 30-hour mediation trainings in November 2002 and June 2003 that satisfy the requirements to mediate in court and community programs. More than 500 individuals and organizations participated in these trainings throughout the year. Culbert also hosted the California Dispute Resolution Council’s (CDRC) Seventh Annual Conference entitled “The New World of ADR Regulation: How It Will Affect Your ADR Practice” (November 2002). At that conference she presented on a panel with Judge David Rothman, Heather Anderson (staff attorney with the Administrative Office of the Courts), and Ellen Miller (co-chair of the ABA’s Dispute Resolution Section Court ADR Committee and director of the Civil Mediation Program for the San Diego Superior Court) regarding “New Ethical Rules for Court Mediators.” Culbert specifically addressed a new case law circumscribing mediation confidentiality and its impact on the rules. Culbert also presented a training on mediation confidentiality entitled “Is Your Mediation Confidential?” (February 2003), and is presenting on a panel on mediation confidentiality at the State Bar Conference in Anaheim this September. She published an article entitled “Confidentiality Protection Afforded Mediation Reports, Writings and Other Physical Evidence Severely Compromised by Rojas v. Los Angeles County Superior Court” in the CDRC Statewide Newsletter. Culbert currently sits as a CDRC board member and advisor to the State Bar Alternative Dispute Resolution (ADR) Committee.

PROFESSOR F. JAY DOUGHERTY’S latest article, “All the World’s Not a Stooge: The ‘Transformativeness’ Test for Analyzing a First Amendment Defense to a Right of Publicity Claim Against Distribution of a Work of Art,” will be published in Columbia Journal of Law & the Arts this fall. Dougherty has also co-authored a new edition of a casebook on entertainment law which was released by Lexis Publishing this summer. Dougherty organized and moderated a panel on “The Roles of Attorneys, Agents and Managers” at the California Lawyers for the Arts Annual Film & Media Law Seminar, and helped organize and moderate a panel at the Sundance Film Festival entitled “Artists Rights and Wrongs,” dealing with recent cases involving technologies that permit objectionable material to be deleted in viewing films. Dougherty spoke at McGeorge Law School on “Who Owns Your Digital Creations? The Arts, Teaching, Public Agencies and Digital Copyright.” His talk was part of a panel on “The Digital Copyright Debate for Creative Artists.” Dougherty organized and hosted two Loyola entertainment law alumni luncheons, one featuring alumna Pamela Kirsh ’90, senior vice president of motion picture production legal affairs for Warner Bros., and the other featuring alumnus Jeffrey S. Robin ’70, head of business affairs for the William Morris Agency. As part of those programs, Dougherty gave presentations on the recent Supreme Court decision, Eldred v. Ashcroft,
and on legal ethics in transactional practice. In addition, Dougherty hosted and moderated two panel discussions at the law school last spring, "A Day in the Life of an Entertainment Lawyer" and "Practice in the Areas of Film and Television." Dougherty was awarded tenure in April.

PROFESSOR ROGER W. FINDLEY (Fritz B. Burns Chair of Real Property) published the sixth edition of Findley, Farber and Freeman, Cases and Materials on Environmental Law (West Group, June 2003). Also in June, he taught International Environmental Law at the University of San Diego's summer abroad program, held at the University of Barcelona in Spain.

PROFESSOR EDITH Z. FRIEDLER, director of summer abroad programs, also directed the University of San Diego summer program in Barcelona, Spain. She was invited by the University of Granada (Spain) to give a lecture to faculty and students of the law school on "Highlights of U.S. Immigration Law."

PROFESSOR VICTOR GOLD, associate dean for academic affairs and William M. Rains Fellow, published 2003 updates for the four books he co-authored with the late Charles Alan Wright in the multi-volume treatise, Federal Practice and Procedure. Gold and Professor David Leonard have completed the manuscript for their new casebook, Evidence: A Structured Approach, which will be published by Aspen in 2004.


PROFESSOR PAUL T. HAYDEN (Jacob Becker Fellow) has published "Putting Ethics to the (National Standardized) Test: Tracing the Origins of the MPRE" in 71 Fordham L. Rev. 1299 (2003).

PROFESSOR LAURENCE R. HELFER (Lloyd Tevis Fellow) has been awarded a research fellowship from Princeton University's Program in Law and Public Affairs for the 2003-04 academic year. The program is a joint venture of the Woodrow Wilson School, the University Center for Human Values, and the Princeton Politics Department. Helfer's research project will focus on "Exit, Escape and Commitment in International Governance." His recent publications include "Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes," 102 Colum. L. Rev. 1832 (Nov. 2002); and "Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking," 29 Yale J. Int'l L. (forthcoming Winter 2004). In April 2003, Helfer presented "Preserving the Global Genetic Commons: Intellectual Property Rights and the International Treaty on Plant Genetic Resources for Food and Agriculture" at a Duke University Law School conference and at the American Society of International Law's Annual Meeting in Washington, D.C. In March, he presented two papers at Cardozo Law School—"The UDRP and International Lawmaking," and "Regime Shifting: The TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking,"—the latter presented as part of Cardozo's intellectual property speaker series. In January, Helfer presented "Human Rights and Intellectual Property: Conflict or Coexistence?" at the Association of American Law Schools annual meeting in Washington, D.C. Helfer also served as co-chair of the International Law Weekend—West conference held at Loyola Law School.

PROFESSOR BRYAN D. HULL, along with Professor Lary Lawrence of Loyola Law School and Professor William McGovern of the University of Richmond, is authoring a new book, The Need for 'Regime Change': The Supreme Court and Election Law. Hull is co-authoring the book with Richard L. Hasen.

Professor of Law and William M. Rains Fellow Richard L. Hasen claims a number of distinctions: he earned both a J.D. and a Ph.D. in political science; he held a clerkship following law school with the Honorable David R. Thompson of the United States Court of Appeals for the Ninth Circuit; and he co-edits the peer-reviewed publication, Election Law Journal. Hasen's most unusual distinction, however, is as the proud owner of a voting machine used in the Florida 2000 notorious presidential election, complete with its "hanging chads." The purchase, on display in his office, was a natural fit for Hasen, a nationally recognized expert in election law and campaign finance regulation. Hasen, who joined Loyola's faculty in 1997 as a visiting professor and became a member of the full-time faculty in 1998, is co-author of a leading casebook on election law and author of the forthcoming The Supreme Court and Election Law: Judging Equality from Baker v. Carr to Bush v. Gore (NYU Press 2003). Frequently quoted in the New York Times, Washington Post, and other publications, Hasen has taken his hand to direct publishing of a web log (or "blog") devoted to election law issues. (Check out www.electionlaw.blogspot.com.) Earlier in his career, Hasen worked as a civil appellate lawyer at the Encino firm of Horvitz and Levy, and taught at the Chicago-Kent College of Law. A member of the advisory board of the Campaign Legal Center, Hasen was recently named one of the "20 Top Lawyers in California Under Age 40" by the Los Angeles/San Francisco Daily Journal.
In Appreciation: Judith Heinz ’94 on Professor Laurie Levenson

"Professor Laurie Levenson inspired me to ‘do justice,’ and that, above all else, is what I strive to do as an Assistant United States Attorney. I entered Loyola Law School in August 1991. Like all first-year students, I found myself enrolled in (ACI)-Administration of Criminal Justice. My teacher, Professor Levenson, a woman of boundless energy and enthusiasm, was obviously devoted to two things: her students and fostering justice. It wasn’t enough to know what the law was; Professor Levenson wanted us to care about the reason for the law, and ultimately, whether it was fair.

After just a few weeks in Professor Levenson’s class, I fell in love with criminal law. As I read case after case, Professor Levenson inspired me to think about not just the rule, but whether the rule was a just one ... whether application of the rule in the specific instance was just... whether application of the rule in other instances would be just.

As I progressed in law school, Professor Levenson’s door was always open. The semester that I was working in the District Attorney’s Office as part of the late-Professor Hobbs’ trial advocacy class I came to her after ‘losing’ my first trial. Acknowledging that I appropriately felt bad at “losing,” she directed my focus to the process—did the criminal adjudication process work properly? ... was justice done? ... or thwarted? ... Why?... If justice was thwarted, at what cost to the community?

The best thing about my job as an Assistant United States Attorney is my obligation, above all else, to ‘do justice.’ My ability to do that, I owe, in large part, to Professor Laurie Levenson.”

UCLA School of Law, published the contracts casebook, Contracts and Sales: Contemporary Cases and Problems (second edition, Lexis/Nexis Matthew Bender).


PROFESSOR LISA CHIYEMI IKEMOTO published an essay, “Redefining Reproductive Freedom to Build Multicultural Coalition,” in the Berkeley Women’s Law Journal, 2002. In fall 2002 she made two presentations. With activist/scholar Ann Cheantham, Ikemoto presented “Participatory Action Research and Development of the Reproductive Freedom Agenda” at the UCLA Schools of Public Health and Nursing. She also addressed “Racism, Sexism and Heterosexism in Law Schools” at the 2002 annual meeting of the State Bar of California, in Monterey. Last March, Ikemoto gave a plenary presentation on the women’s rights movement and intersectionality theory at a conference sponsored by Seattle University. Last April, she participated as a speaker at the St. Louis University symposium on racial disparities in health care. She also continued her work as board chair of Asians and Pacific Islanders for Reproductive Health, as an advisory committee member of the California Women’s Law Center Breast Cancer Legal Project, as a member of the Law School Admissions Council Test Development and Research Committee, and as a member of the LACMA/LACBA Joint Bioethics Committee.

PROFESSOR KURT T. LASH (Joseph Ford Fellow) presented a paper entitled “Sources of Constitutional Interpretation” at the International Law West conference at Loyola Law School (January 2003). In March, Lash was a panelist for the lunchtime presentation on “Law and the War in Iraq.”

PROFESSOR LARRY LAWRENCE (Harriet L. Bradley Chair of Contract Law), along with Professor Bryan Hull of Loyola Law School and Professor William McGovern of the UCLA School of Law, has published the contracts casebook, Contracts and Sales: Contemporary Cases and Problems (second edition), published by Lexis/Nexis Matthew Bender. Lawrence has also published Volumes 3 and 3A of Lawrence’s Anderson on the Uniform Commercial Code.

PROFESSOR DANIEL E. LAZAROFF (Leonard E. Cohen Chair in Law and Economics) has published the article, “Golfers’ Tort Liability—A Critique of an Emerging Standard,” in Hastings Communications & Entertainment L. J. Lazaroff also served as an arbitrator for the Tenth Annual Willem C. Vis International Commercial Arbitration Moot in Vienna, Austria, in April 2003.


PROFESSOR CHRISTOPHER N. MAY (James P. Bradley Chair of Constitutional Law) and Professor Allan Ides ’79 have published their book, Civil Procedure: Cases and Problems (Aspen 2002). May just completed his 30th year of full-time teaching at Loyola Law School. He joined the faculty in the summer of 1973, at the inception of the Hon. Frederick J. Lower’s ’64 deanship, after having worked for three years with the San Francisco Neighborhood Legal Assistance Foundation.

PROFESSOR THERESE H. MAYNARD’S article, “Law Matters. Lawyer Matters.” was published as part of a symposium on corporate social responsibility, at 76 Tulane L. Rev. 1501 (2002), and her article, “Spinning in a Hot IPO: Breach of Fiduciary Duty or Business as Usual?”—originally published in 43 Wm. & Mary L. Rev. 203 (2002)—was reprinted in Aspen Publishers’ annual Securities Law Reviews, as well as the peer-edited journal, Corporate Practice Commentator. In addition, Maynard published a short article, “Spinning in a Hot IPO: A Matter of Business Ethics,” last November in InSights: Corporate & Securities Law Advisor. Over the past year, Maynard has spoken on numerous occasions on issues related to the corporate governance reforms adopted by Congress, as part of the Sarbanes-Oxley Act enacted in July 2002. Her speaking engagements on the topic included a CLE presentation, “Ethical Business Lawyers in a Post-Enron World,” made before a group of Orange County alumni, in which she provided an overview of the SEC’s new professional responsibility rules.
In addition, Maynard has spoken to various Bar groups over the past year on the topic of “Legal Education for Business Lawyers: The Marriage of Theory and Practice.” She is currently writing a casebook, Mergers & Acquisitions: Cases and Materials, to be published by Aspen Publishers, Inc. During summer 2003, Maynard continued to travel around the country as a national lecturer for BARBRI Bar Review, Inc.

PROFESSOR JOHN T. MCDERMOTT is speaking this September at a conference of the Law Association for Asia and the Pacific in Tokyo. McDermott is part of a panel of lawyers and law professors from Japan, China and Korea. The panel discusses the enforcement of foreign judgments in business disputes.


PROFESSOR YXTA MABA MURRAY’S third novel, The Conquest, was published by Rayo Press, an imprint of Harper Collins Publishers. It has been chosen for the “Discover Great New Writers” series of Barnes and Noble, and has also been chosen as a recommended selection by the independent bookseller’s organization, Book Sense ‘76.

PROFESSOR JOHN T. NOCKLEY published an online textbook entitled Privacy in Cyberspace through the Harvard Law School’s Berkman Center for Law & Technology, at https://eon.law.harvard.edu/privacy/ (2002). The text was then used as the basis of a cybercourse which attracted over 1,200 participants from more than 35 states and 64 countries. Nockley’s revised text, Cyberprivacy, will be published online by the Berkman Center beginning October 2003. Nockley also published an article, “What’s Wrong with a National ID?” in last year’s Loyola Lawyer (Fall 2002). More recently, working with two film directors who are also third-year Loyola Law School students, Nockley has begun creating and producing short films on law. The films are designed to surface issues of cultural conflict in law, and focus attention on race, class and gender perspectives. Thus far, one film, Staffing?, has been completed, and a second on damages, Life’s Worth, is nearing completion. Nockley gave a talk on “Privacy and First Amendment Issues in Cyberspace” to the UCLA Graduate School of Education & Information Studies. He presented his paper, “The Structure of Tort Argumentation,” at a Faculty Colloquium at Loyola Law School. Nockley is currently at work on a torts textbook with Professor Duncan Kennedy of Harvard Law School.

PROFESSOR SAMUEL H. PILLSBURY (J. Howard Ziemann Fellow) published an article in the Buffalo Criminal Law Review entitled “A Problem in Emotional Due Process: California’s Three Strikes Law.” Pillsbury gave an address entitled “The Rev. King and Our Call to Justice” as part of Loyola Law School’s fourth annual celebration of Martin Luther King, Jr’s birthday, on January 15, 2003. For spring semester 2003, he created a new class for the Law School curriculum, “Public Speaking for Lawyers,” which focuses on developing speaking skills appropriate for a variety of settings outside the courtroom.


PROFESSOR THEODORE P. SETO recently published three articles. The first, entitled “The Morality of Terrorism,” appeared in 35 Loy. L.A. L. Rev. 1227 (2002); the second, “Preface: The
"Professor Dougherty taught me copyright law when I was a student at Loyola Law School and he remains a friend to this day. Jay is a tremendous teacher. He does not bombard students with the Socratic method or lecture ad infinitum. Rather, Jay uses his real world experience to show students how and why the law is relevant to their future practices. As a business lawyer, I use the lessons that Jay taught me on a daily basis. But perhaps the best lesson that I learned from Jay is that you can be cool AND be a lawyer. Jay is the modest expert, ready relaxed and brilliant. The best lesson that Jay taught me on a daily basis. But perhaps the best lesson that I learned from Jay is that you can be cool AND be a lawyer. Jay is the modest expert, ready relaxed and brilliant. The modest expert, ready relaxed and brilliant The modest expert, ready relaxed and brilliant The modest expert, ready relaxed and brilliant."

**Professors Sande Buhai '82 and Theodore Seto have their arms full these days.**

In addition to managing their career obligations as academics at Loyola Law School, the husband and wife are also balancing the rearing of twins: Samantha Elizabeth Seto and Genevieve Danielle Seto who were born on June 28, 2002.

Fundamental Problem of International Taxation" (with Michael Lebovitz), was published in Loy. L.A. Int'l. & Comp. L. Rev. 529 (2001); the third, "Reframing Evil in Evolutionary and Game Theoretic Terms," appeared as a chapter in Understanding Evil: An Interdisciplinary Approach, (Breen, ed. 2003) and in abridged form in the Loyola Lawyer (2002). In addition, on January 7, 2003, Seto delivered a two-hour presentation entitled "A General Theory of Normativity" at a conference on Justice and Evolution sponsored by the law faculty of the University of Muenster, Germany. Seto's articles on "The Morality of Terrorism" and "Intergenerational Decision Making: An Evolutionary Perspective" made the Social Science Research Network's "Top Ten" Downloads for Jurisprudence & Legal Philosophy, Criminal Law, and International Law.

PROFESSOR MARCY STRAUSS, during the fall of 2002, finished a draft of an article entitled "Torture," which considers both constitutional and policy arguments against the use of torture during interrogation. The article will be published in November 2003 in the New York Law Review as the lead article in a symposium on terrorism. In January 2003, Strauss spoke at the Association of American Law Schools Conference in Washington, D.C. on the topic of the First Amendment and Anti-Discrimination Laws.

PROFESSOR PETER M. TIERSMA (Joseph Scott Fellow) has published the articles: "The Linguist on the Witness Stand: Forensic Linguistics in American Courts," in 78 Language 221 (2002) (the official journal of the Linguistic Society of America) with Lawrence Solan of Brooklyn Law School; "Hearing Voices: Speaker Identification in Court," (also with Lawrence Solan) in 54 Hastings L.J. 373 (2003); "Jury Questions: An Update to Kalven and Zeisel," appeared in 39 Criminal Law Bulletin 10 (2003); and "The Language and Law of Product Warnings" in Language in the Legal Process (J. Cotterill, ed. 2002). Tiersma was invited to speak last spring about forensic linguistics for a conference at the Universitat Pompeu Fabra in Barcelona, Spain. Earlier during the 2002-03 academic year, Tiersma made a presentation on "Law as Text" to the faculty at Chicago-Kent College of Law; and in February 2003 spoke about jury instructions on causation before the annual meeting of the American Association for the Advancement of Science in Denver, Colo. He also submitted an amicus brief to the Alaska Supreme Court (on behalf of the Linguistic Society of America) in a case challenging the constitutionality of that state's recently-enacted Official English law: Kritz v. Alaskans for a Common Language. Tiersma continues to work on the California Judicial Council Task Force on Jury Instructions and recently agreed to assist the judges of Vermont in drafting a new set of pattern jury instructions for that state (sponsored by the National Center for State Courts).

PROFESSOR DAVID C. TUNICK'S article, "Passive Internet Websites and Personal Jurisdiction," has been accepted for publication by the Oklahoma City University School of Law's Law Review.

PROFESSOR GEORGENE M. VAIRO wrote several articles during the past year, including: "Remedies for Victims of Terrorism," 35 Loy. L.A. L. Rev. 1265 (2002), which discussed possible civil remedies for the victims of the 9/11 attacks; "Trends in Federalism and Their Implications for State Courts," Trial (November 2002), which focused on developments at the federal level that have affected the jurisdiction of state courts; and "Thank You, John," 70 Fordham L. Rev. 2191 (2002)—a tribute to Dean John D. Feerick, who retired after 20 years as dean of Fordham Law School. Vairo was the featured speaker at the UBS Warburg Asbestos Litigation Conferences in February and November 2003, and presented a paper on "Trends in Federalism and Their Implication for State Courts" at the Roscoe Pound Institute for State Court Judges in July 2002, and also spoke at two American Law Institute-American Bar Association (ALI-ABA) Advanced Federal Civil Practice programs on summary judgment, Rule 11 and other sanctions tools, forum selection problems, and federalism problems. In addition, Vairo wrote six columns on forum selection issues for the National Law Journal, and revised her chapters in Moore's Federal Practice on venue and removal. Vairo also participated in Death Ride, which is a one-day, 130-mile bicycle event that covers over 16,000 feet of climbing in five passes of the Eastern Sierra Mountains.

PROFESSOR GARY WILLIAMS presented a lecture in Wilmington, North Carolina, to the judges of the Fourth Circuit on "Current Trends and Issues in First Amendment Law," Williams is presently in his second year as president of the board of directors of the ACLU of Southern California, and was named by the Loyola Law School Student Bar Association as "Professor of the Year" (Day Division 2003).
Beginning this fall
Loyola Law School
has added two new faculty members:

ALEXANDRA NATAPOFF graduated with distinction from Stanford Law School in 1995. Prior to joining the Loyola Law School faculty, Natapoff worked with the Office of the Public Defender in Baltimore, Maryland, as assistant federal public defender. She clerked for the Honorable David S. Tatel of the U.S. Court of Appeals for the District of Columbia. Natapoff was also a judicial clerk for The Honorable Paul L. Friedman of the U.S. District Court for the District of Columbia. She has served as Issues Director and Environmental Coordinator for the National Rainbow Coalition in Washington, DC. Her teaching interests include criminal law and criminal procedure.

FREDERICK TUNG is a Harvard Law School graduate where he graduated cum laude. Tung joins the Loyola Law School faculty from the University of San Francisco School Of Law, where he has been since 1994. He will be teaching Corporations and advanced corporate law courses, including securities regulation. Tung also teaches in the areas of corporate reorganization and international trade. Prior to joining the faculty, Tung practiced with the international law firm of Gibson, Dunn & Crutcher in Los Angeles and San Francisco. He was a law clerk to the Hon. Stanley A. Weigel in the United States District Court in San Francisco, and in 1988-89 was a Lecturer in Law at Peking University.

“All our new professors were heavily recruited by or already working at first-tier law schools. Our success in hiring these highly sought-after candidates shows how far we have progressed in building a national reputation for academic excellence.”

- Victor Gold /Associate Dean
The clients of Moshe Kushman, a graduate of Loyola Law School, circumnavigate the Pacific Rim—Los Angeles, Palo Alto, San Francisco, Beijing, Hong Kong, Tokyo, Singapore, Sydney and Melbourne. A dedicated practitioner of the law, the partner at Skadden, Arps, Slate, Meagher & Flom LLP seeks out the corporate world's transaction hotspots: mergers, acquisitions, spinoffs, business formations and restructurings. Kushman's clients, including investment bankers and multinational corporations, frequently stand on the threshold of complex, sometimes perplexing, cross-border financial transactions. Kushman assists with the structuring of such transactions in order to enable the parties to achieve the optimal U.S. and foreign tax-efficient results in light of the negotiated allocation of tax risk among the parties.

Kushman derives great inspiration from standing before his class of LL.M. candidates and law students and helping them to make sense of a body of tax law that is, according to Kushman, "concatenated, disjointed, arbitrary, unfair and capricious." He often says, "To teach is to learn twice." No doubt, Kushman's courses are mutually inspirational. His students have the privilege of learning from a frequent lecturer for the Tax Executive's Institute, Practicing Law Institute, and Council for International Tax Education, as well as a member of the Tax Planning Committee for the USC Law School Institute on Federal Taxation. Kushman is also a contributing author for the Practicing Law Institute's Federal Income Tax Seminars.

The notable list of speaking engagements aside, Kushman's true teaching credential is his approach to reading the successive layers of revenue enactments that now comprise the Internal Revenue Code. Kushman reflects felicitously upon the Code as a "love story" between the government and taxpayers..."but, to be sure, a story of unrequited love." As his prospect for a career in the practice of U.S. federal income taxation became more prominent, Kushman determined to endure law school for the sake of becoming a tax lawyer. Years later, he continues to be absolutely delighted with the practice of tax law. When he speaks, Kushman's innate appreciation for taxation bubbles to the surface, and words like cross-border mergers, enterprise formations and restructurings come alive.
A southeastern European nation's wartime looting of cultural treasures stands exposed. The fate of precious artwork hangs in the balance. The tension of the characters is palpable. Yet, this drama is not unfolding on the silver screen—this is the drama that colors the law practice of Christine Steiner. Steiner, formerly assistant general counsel of the Smithsonian and general counsel of the J. Paul Getty Trust, is a major name in art law.

Professor Steiner stands before a classroom discussing an attempt by cat burglars to enter the New York Metropolitan Art Museum encased in a Greco-Asian statue of a horse. But the episode is not from a case handled by Professor Steiner. Instead, she is recapping the plot from the “Thomas Crowne Affair” for the students in her Art and the Law class. Her students have the unfortunate pleasure of issue-spotting while they watch the film.

WHERE LEFT AND RIGHT BRAINS COLLIDE

Art and the Law Professor / Christine Steiner

The distinction between Professor Steiner’s practice and Hollywood’s portrait of the art world may not always be so blurry, but the similarities between her chosen field of law and the subject matter of her classes are always clear. “My teaching enhances my practice, and my practice informs my teaching,” Professor Steiner quips. In the same way, Professor Steiner’s love for art—contemporary art, in particular—and her enthusiasm for her vocational immersion in the art industry complement each other. The pleasant result of that symbiosis is that her work environs are the masterpiece-speckled galleries and museums of the art world.

Professor Steiner enriches her Art and the Law class with both her legal acumen and appreciation of art. “Through teaching, I am able to express my love for art in my language, the legal language.” Thus, students are given the opportunity to encounter an aesthetically pleasing area of law, yet they also extensively study the minutiae of art law. A range of topics is covered, including copyright law, contractual rights of artists, the ethics governing the collection and retention of art, and the illegal export and theft of artworks. Professor Steiner’s authority in this area is exceptional; she is the general editor of the one book museum counsels keep in their back pockets: A Museum Guide to Copyright and Trademark. Still, the conferring of practical legal knowledge aside, Professor Steiner acknowledges that her true goal in teaching Art and the Law may be to break down the isolation of law students and push them out into the world.
Dusty streets, high noon, the tinny notes of a player piano, and cyber squatters. To the untutored attorney, each of these is indicative of a wild frontier: the Old West on one hand, Internet law on the other. However, James Jenal contends the Internet is not the “moral equivalent of the Old West with respect to law...even trespass to chattels is a viable cause of action.”

For the fifth year, Jenal is teaching the class he created—Internet Law and Technology. The class’s enrollment swelled with the dotcom boom and ebbed during the subsequent cooling, yet a range of ripe topics has the classroom full again. “Students want to see how law and the Internet coincide,” Jenal says. Issues like cyber-terrorism and the Department of Defense’s Total Information Awareness Program, a program linking government databases to construct a massive profile of individuals, are drawing students to Jenal’s classroom. The O’Melveny & Myers counselor lectures on these topics and also enhances the technological savvy of his students—one week of the course is entitled “Electronic Discovery & the Wired Courtroom.”

The “wired” attorney is a concept Jenal virtually introduced to O’Melveny & Myers. Besides creating the firm’s original web site, Jenal and one other colleague pitched the idea of an Internet law department to the firm. Soon afterward, the firm’s Internet Law Practice Group was born. Jenal handled the Central District’s first anti-spam lawsuit, and he has become the firm’s connoisseur of Internet best practices, the safe proofing of the Internet for corporate use.

Jenal’s motivation to start the cyber-law group was not merely his interest in the field; he knew the quality of life at a big firm improved with the creation of “niche value.” He passes this message on to his students: “Knowledge of the Internet is an inherent advantage for young lawyers. It’s an area where individuals fresh out of law school can go into a firm and be an authority.”

Beware, cyber-terrorists, these sheriffs are pinned with a Juris Doctor.
The Loyola course catalog reads: Civil Procedure II: Practice and Procedure, R 8:10—10:10, Adjunct Professor Mike Stein. What unseen horrors lie behind such an ominous course description? To the intrepid student the suspense is over quickly. Within the first few minutes of class, Professor Stein tells his quavering students, “You were brave enough to sign up for this class. Your reward is we will never talk about collateral estoppel, res judicata or ancillary jurisdiction.” Instead, Professor Stein guides students through a minute and hands-on scrutiny of the process of moving a case through state court. Students have the opportunity to draft a complaint, prepare a motion and conduct an actual deposition, all with an emphasis on understanding and applying court rules and procedures to enable students to experience how law is actually practiced. To enhance this practical skills emphasis, Stein invites other lawyers and judges to speak to the class on a variety of subjects including client development, the comparison of large and small firm practice, and fully understanding the judicial decision-making process. Jurors from one of Professor Stein’s trials advise students about what they liked and disliked about the attorneys’ presentations, and a lawyer who previously had his license suspended provides a first-hand illustration of the grave importance of ethics.

Yet, the students’ greatest reward is the opportunity to soak up Professor Stein’s passion for the law. He recounts his first visit to a courtroom. He was 14 at the time but in recalling the event almost three decades later, his voice quakes with adolescent fervor. Professor Stein remembers the courtroom vividly, he recalls the judge’s name, but most of all he recalls the fiery banter of the attorneys in their incomprehensible dialect. Paralyzed by awe, the teenaged Stein was invited into the judge’s chambers. There, surrounded by the “beautiful” law books, the young man realized his calling. Today, everything from hearing the bailiff call the courtroom to attention before the beginning of an important trial to appearing at a quickly forgettable status conference cause Stein to brim with the satisfaction in knowing that he is toiling in the occupation he was destined to have.

Unsurprisingly, such passion has translated into a long and successful career as a commercial litigator and trial lawyer at the firm of Tisdal & Nicholson LLP. In their privileged position as his students, Professor Stein’s proteges experience the drama of that career vicariously. Only hours after encountering a fresh twist in trial techniques in his practice, Professor Stein proclaims to his evening class, “Ladies and gentleman, there is a new way to skin a cat!” Thus, current knowledge is bequeathed and the future attorneys are spared the agonizing feeling of holding an exotic motion in their hands and asking a partner, “What does this thing do?” Years later, former students still call Professor Stein and recount their first harrowing deposition or court hearing, situations which Stein confesses were the same experiences that caused him to endure sleepless nights in his first few years of practice. However, the students often continue their tales, explaining that a little angel resembling Professor Stein sat upon their shoulders, guiding them to safety.
Financial Aid resources are needed to assist our students.

An ideal gift, in support of Loyola Law School, would be the endowment of a named scholarship.

A scholarship can be established with a single gift or pledged over the course of five years.*

Make an impact on the future generations of lawyers—establish a scholarship at Loyola Law School.

For information, contact Kenneth Ott, Office of Development: 213.736.1025

* A scholarship can be endowed for a gift of $25,000.
The narrow Wardlow majority enters this new constitutional territory cautiously. It does not create a per se rule that flight upon seeing a police officer alone can constitute the basis for “reasonable suspicion.” Rather, its decision is said to be based upon the particular facts of the case before it. Flight is (along with being in a high crime area and perhaps the possession of an opaque bag) merely a relevant factor in reaching a common sense evaluation of whether “reasonable suspicion” actually existed. This led Wardlow dissenters to interpret the majority as having concluded that:

[while] the innocent explanations surely do not establish that the Fourth Amendment is always violated whenever someone is stopped solely on the basis of an unprovoked flight, neither do the suspicious motivations establish that the Fourth Amendment is never violated when a Terry stop is predicated on that fact alone. 528 U.S. at 136 (Stevens, J., dissenting).

In spite of this, however, the majority opinion goes so far as to state that “[h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.” “Flight by its very nature is not ‘going about one’s business’; in fact, it is just the opposite.” This conclusion can be read as inapposite to a principle which the Supreme Court had recognized for more than a century:

It may, in fact, be arguably less suspicious to run from a possible law enforcement encounter in a high crime area than to attempt to flee from the presence of the police in less ominous locations.

It is a matter of common knowledge that men who are entirely innocent do sometimes fly from the scene of a crime through fear of being apprehended as the guilty parties, or...as witnesses.... Innocent men sometimes hesitate to confront a jury—not necessarily because they fear that the jury will not protect them, but because they do not wish their names to appear in connection with criminal acts, are humiliated at being obliged to incur the popular odium of an arrest or at least that the officers, fearing danger, might be prone to draw and use their weapons.

This may be especially true in some minority-populated inner cities. “Black leaders [have] complained that innocent people [in predominantly black neighborhoods are] picked up in drug sweeps.... Some teenagers [are] so scared of the [police drug] task force that they run even if they weren’t selling drugs.” Numerous studies have supported these concerns by demonstrating that the rate at which young African American males are detained and frisked and yet not arrested may be considerably greater than the equivalent rate for Caucasians.

Police use Terry stops aggressively in high crime neighborhoods; as a result, African Americans and Latinos are subjected to a high number of stops and frisks. Feeling understandably harassed, they wish to avoid the police and act accordingly. This evasive behavior in (their own) high crime neighborhoods gives the police that much more power to stop and frisk. David A. Harris, Factors for
The revelations of a major corruption scandal surrounding the Los Angeles Police Department’s Rampart Division, which had already received considerable national publicity by the time the Supreme Court rendered its Wardlow decision, provides an illustration of the kind of neighborhood in which Wardlow most likely will be applied. Rampart is considered by the officers who patrol it to be an area of high crime and heavy drug trafficking. Predominately Hispanic, it is only three percent white and has a mean income of less than half of that of Los Angeles taken as a whole.

Perhaps the socioeconomic background and status of the Justices who populate our High Court makes it difficult for some of them to understand why many an honest, law-abiding citizen with nothing to hide might prefer to avoid any contact with those entrusted with the power to protect and serve.

As a consequence of Wardlow, it is in just these neighborhoods that constitutional protection from random intrusion may be at its weakest. In reaching their conclusion, the members of the Wardlow majority may have opened themselves up to criticism that they chose to treat rather cavalierly the rights to be free from unreasonable government intrusion amongst that portion of the citizenry that is in the weakest position to successfully seek proper redress.

This is analogous to the concerns that have been voiced over the subjectivity in defining an area as “high crime.” As Judge Kozinski cautioned, the definition of a high crime or heavy drug activity area is often established by the highly personal conclusions of the police, and is difficult to reduce to a general test.

In attempting to establish a constitutionally acceptable definition of either flight or “high crime area,” neither the officer’s background nor experience should be sufficient alone to supply the basis for establishing reasonable suspicion. This may be why the Court in Terry wisely noted that the “reasonable suspicion” officers must articulate “becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness...”
This issue of judicial scrutiny is particularly relevant when applied to the issue of running from the police. As the Michigan State Supreme Court has concluded:

Certainly it is reasonable to conclude that the defendant's flight away from the vehicle carrying the police officers might reasonably have heightened the officers' general suspicion that the defendant must have had something to hide and wished to avoid contact with the occupants of the vehicle. But heightened general suspicion occasioned by the flight of a surveillance subject does not alone supply the particularized, reasoned, articulable basis to conclude that criminal activity was afoot that is required to justify the temporary seizure approved in Terry.


There are plenty of suspicious things that people do every day that do not justify an arrest, a search, or even a "stop and frisk."

**The Stop**

In both Sibron and Brown v. Texas, 443 U.S. 47, 47 (1979), as well as in Terry itself, the Supreme Court expressed the concern that officers should not be permitted to intrude into constitutionally protected regions based upon a mere suspicion or hunch. In Brown, the unanimous Court emphasized that to comply with the Fourth Amendment, seizures must either "be based on specific, objective facts" or "be carried pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."

Similarly, in Terry, the Court noted that suspicion sufficient to justify a "stop and frisk" must not be merely an inchoate and unperticularized suspicion or "hunch." "Rather, constitutionally sufficient suspicion must be grounded in facts sufficient to support 'specific reasonable inferences' that justify such an intrusion. Officers conducting a Terry stop must be prepared to provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."

There are plenty of suspicious things that people do every day that do not justify an arrest, a search, or even a "stop and frisk." Unfortunately, a natural tension exists between this cause with Reasonable Suspicion Resulted in the Best of All Possible Worlds?, 22 Akron L. Rev. 13, 36.

The Wardlow dissenters, for example, believed that the defendant's allegedly suspicious conduct should have been deemed a constitutionally insufficient justification for the stop, let alone the more intrusive pat-down which immediately followed.

In part, their concern was an outgrowth of the fact that the actual circumstances
That the Court even reached the question of the scope of the frisk, however, implies that the majority may not have been troubled by either the "stop" or the initial "pat-down."

The latter point is the most important unknown fact. If Wardlow had first seen any of the other police vehicles, then why would he have started running only upon noticing the officers in the fourth and final patrol car? His failure to react (flee) immediately upon observing any of the first three vehicles would suggest that he may not have been running from the police
presence. It at least casts doubt upon the reasonableness of the detaining officer’s conclusion that Wardlow was running away from them.

**THE FRISK**

Assume that Mr. Wardlow was attempting to avoid the police and that this constituted sufficient grounds to stop him. Once they had stopped him, the very first thing the officers did was to pat down the bag he was carrying. The justification for believing that there might be a weapon from which the officers would have to protect themselves appears to have come from a two-step process. First, having run from the police in an area known for drug trafficking, the runner had revealed himself to be a narcotics suspect. Second, it is reasonable to conclude that narcotic suspects are often armed and dangerous.

This approach appears to find unarticulated support in the Court’s earlier handling of *Minnesota v. Dickerson*, 508 U.S. 366 (1993). There, officers observed Dickerson walking in their direction immediately after he had exited a known “crack house.” Upon noticing the police, he appeared to change directions and began walking towards an alley. It was at this point that the officers chose to stop and, without posing any questions, frisk him.

The Court found that the search exceeded constitutionally acceptable bounds because the officer’s manipulation of the eventually retrieved package of drugs from inside the suspect’s clothing had gone beyond the scope of a valid frisk.

Together, the two cases could represent a formidable deviation from Supreme Court precedent. Until these cases, the right of an innocent bystander not otherwise under suspicion, to simply leave in order to avoid an undesired and potentially intrusive government encounter, had probably been felt by many to be one of those inalienable rights we take for granted.

This seems no longer to be the case. Rather, in order to justify a Terry “stop and frisk” the police may now merely have to state that the suspect had attempted to evade them in an area they claim is known for heavy drug trafficking or other criminal activity. As a prerequisite to the authority to “stop and frisk,” should not the police be required to articulate more evidence of criminality in the suspect’s behavior? If no other suspicious circumstances are required, then where else might the logic of *Wardlow* apply?

**THE SLIPPERY SLOPE**

When we consider how general and easily equaled the objective criteria justifying the police action in *Wardlow* were, we are led to the conclusion that the ruling may be more than just another incremental increase in the power of the state to stop and question.

The majority appears to be advising us that if we have nothing to hide, it would be best to simply let the police see whatever it is they are interested in seeing. The Court, using the context of high crime area flight, for the first time has told us that the more we try to keep private from police prying, the more the government may have the right to invade the very privacy we are attempting to protect.
attempts to protect. Police on the streets and prosecutors in lower courts may come to believe that the logic of Wardlow can be expanded to include furtive gestures other than flight. It could prove to be merely the first of a series of expansions condoned, if not actively encouraged, by the Supreme Court itself.

Those who suggest that the Wardlow case could not possibly have such far-reaching implications should be reminded that the genius of our jurisprudence is the ease with which our precedent can evolve. A decision, which is first applied to running is soon readily expanded to other forms of would-be concealment. It is exactly this manner in which the Court has expanded police powers in the Burger/Rehnquist era of the past three decades.

In the criminal procedure area, the Court has consistently carved out modest exceptions to general prohibitions against unconstitutional police practices only to incrementally, over the course of the years, and even decades, expand the scope of these exceptions until they have become the rules. Narrow exceptions to the warrant requirement, the Miranda warnings, standing requirements, the scope of the exclusionary rule itself, and many other principles have slowly grown to swallow up most of the original doctrines.

This pattern has become so common that Justice Scalia, one of this procedure's foremost exponents, has been on the lecture circuit suggesting that since many of the so-called "general rules" of constitutional criminal procedure are really no longer the "rules" at all, but have themselves become merely narrow exceptions, they should be recognized as such. Among other issues the Justice noted:

The general rule is that a search and seizure is unconstitutional unless a warrant is first obtained. There are exceptions that have been created by our opinions, exceptions to that supposed rule for exigent circumstances searches, car searches, stop and frisk searches, searches incident to arrest, school searches, searches of employee offices, etc.

Quite obviously it would be a much more accurate description of the law to say that a warrant is generally required to search a home and is sometimes required elsewhere. But we continue to say that warrantless searches are generally illegal. Perhaps because it makes us feel better about ourselves. Justice Antonin Scalia, Sixth Annual Burns Lecture, May 5, 1998, Loyola Law School (Los Angeles).

"reasonable suspicion" by citing Wardlow as precedent for upholding an automobile stop. At about 2:15 p.m. on the afternoon of January 19, 1998, in a "remote portion of rural southeastern Arizona" about 30 miles from Mexico and the town of Douglas, Arizona (population 13,000), a border patrol officer observed a Toyota minivan traveling legally on a canyon road at 50 to 55 miles per hour. There were two adults, the male driver and a female passenger, in the front seat and three children in the back. The road was unpaved beyond the 10-mile stretch leading out of Douglas and is rarely traveled on, except by local ranchers and forest service personnel, as it leads into a National Forest. Arrests of smugglers had
occasionally taken place in the general area. The officer grew suspicious because the driver had slowed down, stiffened his posture, and failed to acknowledge the law enforcement officer’s presence after apparently sighting him. The patrolman testified that drivers in the area habitually “give us a friendly wave.”

Deciding to follow the vehicle, he ran a vehicle registration check, which revealed nothing untoward or unusual except that the address of the owner was in a neighborhood known, according to the officer, for heavy drug trafficking and alien smuggling. (It is perhaps a fair surmise that the neighborhood so described may not be the sort of place where giving an officer a “friendly wave” was the most likely reaction to a patrol vehicle pulling up alongside a local motorist.) As a result of this information, however, as well as the driver’s behavior, the border patrolman pulled over the minivan. After consent to search was obtained (later unsuccessfully disputed by the defendant at trial), a duffel bag filled with marijuana was discovered.

A Ninth Circuit panel, in a unanimous opinion authored by Judge Reinhardt, found the stop and consequently the subsequent search unconstitutional as a result of insufficient reasonable articulable suspicion. Judge Reinhardt postulated that while “conduct that is not necessarily indicative of criminal activity may, in certain circumstances, be relevant to the reasonable suspicion calculus,” “factors that have such a low probative value that no reasonable officer would have relied on them to make an investigative stop must be disregarded as a matter of law.” Similar to what Justice Stevens noted in his Wardlow dissent about flight, the Court of Appeal found that the fact the driver of the minivan had slowed down upon seeing the police vehicle, stiffened and failed to make eye contact were all common examples of
human nature and easily susceptible of innocent, non-criminal explanations. It was thus inappropriate for this or any reasonable officer to have considered them as elements in a "reasonable suspicion calculus."

In overruling this Ninth Circuit decision, the Court held that the driver's behavior was unusual enough in its context to constitute legally sufficient reasonable suspicion to the local officer. The Court first stated that when making determinations of what constitutes sufficient reasonable suspicion, reviewing courts must look to the "totality of the circumstances" of each case. The Court reiterated that simply because each of numerous stated reasons for a stop may be more susceptible to an innocent than an illicit explanation, it does not mean that when taken together they cannot constitute reasonable suspicion. More controversial, however, is the context in which the officer observed him engaging in other suspicious behavior. Judicial validation of the stop in Ariztú may have given us reason to fear that it will prove easier for an inhabitant to leave a "hood" than to escape its legal stigma. (Like Hester's scarlet "A," once so branded, its recipients wear it whence they travel; though this time upon the bumper, rather than the breast.)

Additionally, the Court's consideration of a suspect's home address as a factor in reaching reasonable suspicion is a variation on the norm. Until this case, the inferences of criminality which courts have sometimes allowed to be drawn from high drug trafficking areas were limited to situations in which the suspect was actually present in one at the time the officers observed him engaging in other suspicious behavior. Judicial validation of the stop in Ariztú may have given us reason to fear that it will prove easier for an inhabitant to leave a "hood" than to escape its legal stigma. (Like Hester's scarlet "A," once so branded, its recipients wear it whence they travel; though this time upon the bumper, rather than the breast.)

The Ariztú opinion may prove an anomalous consequence of the site of the stop (adjacent to a border) and the date of its issuance (only four months after the foreign terrorist destruction of the World Trade Center and the attack on the Pentagon). These factors could account for the absence of separate opinions from any of the Wardlow dissenters. Yet the decision may itself soon be cited as precedent for potentially new and ever more expansive bases for stops in a multitude of different contexts.

CONCLUSION

I am not suggesting that it is inevitable, or perhaps even probable, that the Wardlow case will result in turning the entire logic of the law of privacy on its head and make the act of attempting to exercise one's rights justification for invading them. However, Wardlow's deviation from precedent is a potential first step. Based merely upon the nature of the area and the attempt of an otherwise unsuspicous individual to evade the police, the holding of Wardlow (particularly when combined with unarticulated dicta of Dickerson and the implications of Ariztú), empowers law enforcement to "stop and frisk." It seems but a short step to apply this same logic to other forms of furtive conduct.

What would happen, for example, if a trial court judge is confronted with the case with which we began this article? An officer observes the driver of a motor vehicle whom he has just pulled over because of a broken...
In the trial court, the defense moves to suppress the search on the grounds that the officer lacked probable cause to retrieve and open the bag. The prosecution, however, argues that under the rationale of *Wardlow* the suspect's having attempted to hide the bag from the officer's view was sufficient evidence that the suspect was trying to hide something of a criminal nature.

A trial court might conclude that the suspect's conduct was a furtive gesture much like running. *Wardlow* could thus be seen as furnishing not merely reasonable suspicion, but probable cause justifying the search. In fact, it is not out of the question that the *Wardlow* majority might itself agree. Even if one were prepared to concede that no Supreme Court case may ever condone this Orwellian syllogism (a concession which may not be justified), it must be remembered that police behavior on the streets and decisions by trial courts often exist for years (if not decades) before review by the nation's High Court.

If this could happen, how far does this strange logic take us? Given judicial acquiescence to such an example of law enforcement suspicion, the average officer on the street may interpret this as justification for a whole new class of stops and searches. How long before the Fourth Amendment can be explained only through Alice's looking glass?  

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by the 1990s, however, the Court had moved away from *Yoder*'s strict scrutiny test, and toward the same kind of "equal treatment" analysis it was developing for the Establishment Clause. The watershed year was 1990, when the Court handed down its decision in *Employment Division v. Smith*. In *Smith*, Galen Black and Alfred Smith were fired from their jobs as drug counselors after it was discovered that they had ingested peyote at a ceremony of the Native American Church. They were denied unemployment benefits on the grounds that they had engaged in work-related misconduct. The plaintiffs appealed to the Supreme Court, claiming that application of the unemployment statute in their case unjustifiably burdened their right to practice their religious beliefs. The Supreme Court, however, rejected their claim and held that neutral and generally applicable laws, in all but the narrowest of circumstances, do not require strict scrutiny under the Free Exercise Clause. As long as such laws applied to everyone, the effect of the law on religious exercise was irrelevant.

**The current state**

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This leads to a number of remarkable conclusions. First of all, it means that if a city or county bans the consumption of alcohol, the Free Exercise Clause will not protect one's right to consume wine at Holy Communion or at Seder. It also means that the Free Exercise Clause really does nothing at all. The Equal Protection Clause already protects us from discrimination on the basis of religion, and the Court had long prohibited religious discrimination as a forbidden form of government-imposed religious establishment. After *Smith*, whatever was unique about the Free Exercise Clause was read out of the Constitution.

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Some might conclude, given the above analysis of the Court's current approach to religious liberty, that the Court's approach to these issues is a mess. Nothing could be further from the truth. The current state of the law actually is quite clear and easily applied.

Indeed, it was the Court's convoluted case law prior to the 1990s that was a mess. During this time, the Court seemed to want to simultaneously treat religion as both specially protected and specially forbidden. The Court's approach to school aid was especially confusing: The government could not provide equal aid to religious and non-religious schools if the aid was a globe or a map. Equal provision of schoolbooks, however, was allowed. This left legislators wondering what to do about atlases. Likewise, although the Court's approach to the Free Exercise Clause seemed to promise substantial protection, in fact, the Court almost invariably ruled against religious objectors.

By the 1990s, substantial criticism was leveled at the Court from both the left and right, demanding clear guidelines regarding the appropriate relationship between church and state. The current Court has complied.

This provides us with either an occasion to give thanks or to reflect on the old adage that one should be careful what one wishes for.

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The real-world effect of this theory would be to allow Congress to ensure the equal treatment of such groups, which may potentially be such victims, which the Court may hesitate to bestow the potentially far-reaching status of “suspect class.” Courts may have good reasons for such hesitancy; suspect class status subjects every law about that group to strict scrutiny, even though, for example, laws singling out the mentally retarded may actually benefit that group, or reflect real differences between it and the rest of society. In short, suspect class status is a blunt tool that may not suit all occasions. But that fact does not mean laws about that group never reflect animus. In those cases, Congress should be able to step in.

By explicitly allowing for Congress to give meaning to perhaps the vaguest phrase in the Constitution—“equal protection”—this approach would recognize that the drafters intended for Congress to have a significant role in guaranteeing 14th Amendment rights, beyond that of the courts, with their wide but still limited institutional competence. At least with regard to equal protection, a concept that really has no uniquely “legal” meaning, that role, as a matter of institutional competence, must include the power to determine what “equality” really is.

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2 The “congruence and proportionality standard was first enunciated in City of Boerne v. Flores, 521 U.S. 507 (1997). Boerne dealt with a statute justified as an enforcement of the due process clause, but since then the Court has used the same standard to review federal laws justified as means of enforcing the equal protection clause. See, e.g., Bd. of Trustees v. Kineh, 528 U.S. 29 (2000).
3 See City of Cleburne v. Cleburne Living Center, 473 U.S. 432 (1985) (denying suspect class status to the mentally challenged, yet striking down a law as reflecting animus against that group).
government, creating a topsy-turvy constitutional world in which state law trumps the exercise of federal power. In the familiar constitutional world, valid federal law trumps state law to the contrary. A constitutional interpretation that runs afoul of this principle is not likely to survive an evening's parlor chat. But as the astute reader has already surmised, the key word in our definition is "valid." And to be valid a federal law must be the legitimate product of an enumerated power and consistent with applicable constitutional limitations.

So that the coordinated 9th and 10th Amendments violate federal supremacy begs the very question that the amendments seek to resolve, namely, whether the federal enactment transgresses a retained right. If so, the federal law is not valid, and the Supremacy Clause is of no import.

Still, although an application of the coordinated model would not technically run afoul of the Supremacy Clause, the model itself may subvert the basic structure of our constitutional system by creating a black hole in the supremacy matrix. This, of course, assumes a certain state of affairs, namely, one in which the national sovereign must always prevail over contrary state law despite what may appear to be legitimate spheres of intersecting power and interest between central and local authority. Our familiarity with that hierarchical state of affairs, however, should not foreclose the possibility of another, somewhat more fluid approach in which the resolution of such power conflicts is less certain. For example, in our medical use hypothetical, while the national government may have a strong interest in prohibiting interstate commerce in marijuana, the people of a state have an equally strong claim to shield themselves and their fellow residents from excruciating but unnecessary pain. Which of these incommensurate interests is to prevail? Need the Constitution foreclose the possibility of allowing the people of a state to assert a retained privilege or immunity from federal intervention under all circumstances? Madison's theory of counteracting ambitions (or powers. Since state governments are the traditional and exclusive means through which the people exercise their reserved powers, one characteristic of a retained right is that it must be created through some apparatus of state law. A private group cannot, therefore, use the reserved powers to create a retained right. Another characteristic is that the exercise of reserved powers is such that it can be characterized as a right of the people, not merely a structural impediment to federal power, i.e., a retained right is an individual right, not a state right.

Next, since we are talking about creating retained rights through exercise of the reserved powers, it would seem to follow that a retained right is

In the familiar constitutional world, valid federal law trumps state law to the contrary. A constitutional interpretation that runs afoul of this principle is not likely to survive an evening's parlor chat.
something that must be affirmatively established, and which will not be inferred from silence. The people must assert themselves. One might also demand that the retained right achieve a certain status under the hierarchy of state law. Perhaps it should be embodied in the state constitution, or adopted through a process of higher lawmaker. Finally, retained rights, being products of state action, can not violate other provisions of the Constitution, such as the Article IV Privileges and Immunities Clause or the provisions of the 14th Amendment.

As to the clash between federal power and retained rights, we might be tempted to adopt an ad hoc balancing test through which to compare the relative weights of the federal and state interests. The benefit of such a test is ease of description. Weigh one interest against another and explain the result. Yet balancing is more likely to create a doctrinal morass than it is a coherent body of precedent. To begin with, the interests to be balanced are likely incommensurate. How, for example, does one balance a federal interest in regulating interstate sales of marijuana and the reserved power interest in providing relief from pain? Any choice between the two would have to be based largely on subjective factors or policy considerations having no anchor in the Constitution. Moreover, the balancing test seeks to answer the wrong question. Although the practical conflict may be between a federal “interest” and a state “interest,” that is not the constitutional conflict. The constitutional conflict is between countervailing exercises of power, both of which in the abstract have a claim to constitutional legitimacy. The initial task, therefore, is to measure these assertions of constitutional legitimacy in the real world context in which they arise and to determine which has the stronger claim to legitimacy under the circumstances.
One way to undertake this measurement might be to examine federal power and retained rights along a "counteracting" continuum of descending and ascending constitutional authority, the goal being to determine at what point the constitutional strength of one might overwhelm the relative constitutional weakness of the other. I realize that such an approach is somewhat mechanical, but working our way through this continuum may shed some new light on how to think about conflicts between federal power and retained rights. For present purposes, I will assume that there are four key points on the continuum, beginning with the apex of federal power and the nadir of reserved powers, and ending with the nadir of federal power and the apex of the reserved powers.

The first point on our continuum includes those exercises of the federal power that are premised on the literal language of an enumerated power—a regulation of commerce among the states, the coining of money, the creation of a post office or postal road, and the like. Here the federal authority is overwhelmingly predominant, if not exclusive. This is so because when Congress operates within the unaided text of a granted power, it exercises precisely that power and only that power that the Constitution specifically confers. By contrast, the reserved power within this realm is limited at best. The reason is simple. One cannot reserve that which has been granted. Hence, there is no reserved power vehicle through which to assert a counteracting retained right. As a consequence, the standard model of federal supremacy can be applied without reference to the coordinated 9th and 10th Amendments. Federal law trumps state law to the contrary, including any purported assertion of a retained right.

At the second point in our continuum, the exercise of federal power depends on the coupling of an express grant of authority with the Necessary and Proper Clause. That clause vests Congress with the authority to undertake measures "for the carrying into Execution" of the enumerated powers. In other words, relying on the literal language of the clause, Congress may adopt measures designed to assist or facilitate the national government in executing its enumerated powers. Congress could, for example, regulate the intrastate sale of a product to facilitate regulation of the interstate market, or Congress could provide for the purchase of mines to ensure an adequate supply of a certain metal for coins, or condemn property for the construction of a post office, and so forth. Given that these exercises of authority are not literally within the scope of the underlying enumerated power, there may well be a greater residuum of power reserved under the 10th Amendment and available for the assertion of a retained right. Certainly, there is no presumption of federal exclusivity. Yet, given the structural need to allow the federal government the ability to execute its granted authority in a meaningful and effective manner, any counteracting retained right will be on a relatively weak footing. Of course, given the constitutional conflict, the federal government might be expected to establish at least a reasonable basis for characterizing its action as facilitative, and a court could find degrees of facilitation that may alter the strength of the presumption. Certainly, a pretext to facilitate should be treated as such and move the federal action lower on the continuum of power.

Moving to the third point on the continuum, the connection between the granted power and the activity regulated is proximate and not facilitative. The statute at issue in United States v. Lopez, (1995) provides a good example. See 514 U.S. 549. The regulation of gun possession in a school zone was said to be proximately related to various aspects of interstate commerce, but was not in any fashion designed to assist Congress in the actual regulation of anything interstate. Authority over such proximately connected activities is not granted by the text of any enumerated power and not literally within the scope of the Necessary and Proper Clause. As a consequence, such matters fall squarely within the expected and promised, albeit nebulous, range of the reserved powers. One can say that the very purpose of the 9th and 10th Amendments was to prevent the undermining of liberty within this "ungranted" territory in which Congress sometimes roams. Thus a retained right created within this terrain should carry a strong presumption of constitutional legitimacy. Perhaps the national government could rebut that presumption by establishing a tight proximate relationship between the activity regulated and some matter within the plenary.
authority of Congress. Or the national government could argue that the proximate connection actually does facilitate the exercise of a granted power, convincing the Court to reverse the presumption, essentially moving the conflict back into the second category. Otherwise the presumption of legitimacy should favor the retained right.

Finally, at the bottom of the scale, federal power is non-existent and even in the absence of a retained right the federal law must fall. Just as the reserved powers have no legitimate application at the first point of our power hierarchy, federal power has none in the last.

The critical realm in our continuum is the realm that embraces the second and third points, where the presumption of legitimacy shifts from the exercise of national power (point two) to the protection of a retained right (point three). There is no certain line of demarcation between these two points. A loose “facilitation” starts to look like more like a proximate connection, and as a connection becomes more clearly proximate, it may also be more properly characterized as facilitative. Nonetheless, the continuum at least provides an initial take on the relative constitutional strengths of the counteracting ambitions of federal and reserved power. If, after careful analysis, the counteracting ambitions are in equipoise, i.e., somewhere in between the second and third points on the continuum, the only recourse may be a statutory construction that either avoids the conflict or pares it down to a minimal abrasion.

Let’s briefly revisit the medical use hypothetical. The “medical use” right was affirmatively created through “a proper resort” to a state’s initiative process, a clear exercise of reserved powers. Whether its status in the hierarchy of state laws is constitutionally adequate cannot be resolved, since it is unclear whether or to what extent such status might matter for these purposes. I will assume that as an initiative measure, the status of the right to medical use is satisfactory. Next, we must consider whether this retained right violates any applicable constitutional principle aside from federal supremacy. None occur to me, though if the retained right were limited to residents or if it included a durational residency requirement there could be potential Article IV and 14th Amendment issues to contend with. Assuming that is not the case, the state’s provision for medical use would appear to be a retained right of constitutional stature.

There is, of course, a conflict between this retained right and the CSA. The question is where that conflict falls on our continuum. The CSA’s proscription of possession is not a regulation of interstate commerce. Congress may regulate possession, if at all, only if necessary and proper to facilitate the regulation of some interstate activity or if it bears a proximate connection with interstate commerce. Assuming that Congress does have some power to determine precisely where to place this conflict, and therefore how to resolve it, but it should be clear what questions need to be considered: Does the prohibition of possession facilitate the regulation of interstate commerce? If so, how and to what degree? Is the prohibition necessary to accomplish Congress’s interstate ends or merely collateral to those ends? Would an exception that protects the retained right undermine the facilitation? Has Congress considered such an exception? Assuming either no or minimal facilitation, what, if any, is the proximate connection between possession and interstate commerce? Has Congress examined the factual basis for any claimed proximate connection? Is there a proximate connection between medical use and interstate commerce? Has Congress considered that proximate connection? Obviously, these questions are not dispositive, but they should indicate the nature of the basic inquiry when a court is called on to accommodate federal power with a retained right.

CONCLUDING OBSERVATIONS

This returns us to a question I ducked earlier. Should a “retained right” ever be allowed to supplant otherwise constitutional federal legislation? I don’t know. I believe I’ve shown that allowing a retained right to operate as counteracting ambition to federal power may well serve high principles of constitutional structure and liberty. Whether it will undermine other important constitutional values remains to be seen. I look forward to a dialogue examining the possibilities.

Allan Ides ’79 is professor of law and William M. Rains fellow at Loyola Law School. Ides served as a law clerk to the Honorable Clement F. Haynsworth, Jr., chief judge of the United States Court of Appeals for the Fourth Circuit and for the Honorable Byron R. White, associate justice of the United States Supreme Court. His scholarship is principally in the area of constitutional law.
### QUOTATIONS ON LAW & LOYOLA

"When I'm talking to a jury, I try to communicate so that there are two or three points people can get out of it. It's not always, 'If it doesn't fit, you must acquit,' but it's something they can remember. I tell people there are three keys to success: preparation, preparation, and preparation."

- Johnnie L. Cochran Jr. '62

"All of us must work to turn around the public's perception of our profession. We live in interesting times. Rather than fall into a comfort zone, I hope my students will judge themselves on the effort they make in making our society and our world a better, more just, and less dangerous place to be."

- Georganne M. Vairo
  Professor of Law and William M. Reins Fellow

"As a practicing attorney you must protect and guard your reputation. One key is to remember to never borrow your client's conscience. Your reputation as a lawyer is built up slowly over time. It can be damaged or even destroyed in a matter of minutes, say in a telephone call or a letter or an e-mail."

- Hon. Frederick J. Lower, Jr. '64

"The exciting thing about law is that it can be a powerful instrument to do something about the social and environmental crisis the world is in. Some lawyers are lucky enough to have jobs in which they take their consciences to the office with them and work for social justice every day."

- Robert W. Benson
  Professor of Law

"Father Donovan: I don't recall his formal title; but remember him vividly as a person. He once chastised me for wearing shorts when I was at school on a Saturday to procure books from my office."

- George C. Garbesi
  Professor Emeritus

"Loyola was the beginning of an exciting adventure; rescued us from mediocrity; changed us from nobody to someone; delivered us into a new, exciting world; gave us understanding and ability to comprehend it; made us a part of a high calling; and, allowed us to participate as if equals in that workplace where the greatest of intellects past and present struggle to achieve justice."

- David Daar '56

"My not-so-hidden agenda, which I announce at the beginning of my classes, is to have my students lie awake at night worrying about the people with whom my courses are concerned: children and people with mental disabilities. Ideally, some of the students will decide to dedicate their legal careers to representing these other disenfranchised people. But at a minimum, I hope to make all my students unpopular at dinner parties and family reunions, because they will no longer be satisfied with 'sound bite' descriptions of social problems or with simplistic solutions."

- Jan C. Costello
  Professor of Law

### The 50s
- In 1950, tuition at Loyola had risen to $450 a year.

### The '60s
- In 1964, Louis Burke '26 was appointed a Justice of the California Supreme Court, the first graduate of Loyola Law School to sit on the High Court of California.

### The '70s
- By 1973, the Loyola graduating class numbered 350 students and the size of the Law School library collection had expanded to 156,600 volumes, up from 38,500 volumes only a decade earlier. In 1976, Father Donovan's health began to fail and he passed away at the age of 86. Thomas V. Girardi '64 recalls that on an average day at the Law School, you might find a California Supreme Court Justice, a nun and a homeless person all sitting on a bench waiting to see Father Donovan. He was truly remarkable in the breadth of his caring.

### The '80s
- In 1981, Otto M. Kaus '49 was appointed a Justice of the California Supreme Court, the second graduate of Loyola Law School to sit on the High Court of California. In 1984, Menfield, South Hall (rededicated in 1989 as Donovan Hall) and the Chapel were completed.

### The '90s
- In 1992, the Law School faculty voted to require all Loyola students, beginning with the 1994 entering class, to contribute 40 hours of uncompensated legal service to the disadvantaged in Southern California.

### Then and Now

50 YEARS AGO
- Students take studying seriously in the Loyola Law School Library in 1953. During this period in the Law School's history, the downtown Los Angeles campus was located at another site, on Grand Avenue.

IN 2003
- With the onset of the new millennium, studying the law is taken as seriously as 50 years ago, yet students have the benefit of new tools aiding them in the study of law, namely, the trusted laptop computer.

His favorite saying to prospective students was, "What makes you think you want to be a lawyer?" However, after graduation he became a student's strongest advocate and helped to obtain jobs for many graduates.

- Roger M. Sullivan '52
  on Father Joseph J. Donovan, S.J. Founding Regent
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Statistics

FACULTY
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Ranked 12th in the Nation in books published by major legal publishers. (Leiter 1999)

LAW SCHOOL LIBRARY
Ranked 9th in the Nation, immediately behind NYU and Yale, in the amounts spent annually on acquisition of books and computer-based information. (ABA 2003)

ADVOCACY
Ranked 11th in the Nation for its Advocacy program. (US News 2003)

LAW REVIEW
42nd most-cited general law review in US. (Doyle 2003)
Cited last term by the US Supreme Court in Eldred v. Ashcroft.