9-1-2002

Loyola Lawyer

Loyola Law School - Los Angeles

Repository Citation
Loyola Law School - Los Angeles, "Loyola Lawyer" (2002). Loyola Lawyer. 3.
http://digitalcommons.lmu.edu/loyola_lawyer/3
Loyola’s Corporate Law Program

Keeping in Line with Corporate Times

Do Lawyers Matter?
Corporate Excellence

a tradition of corporate and business leadership
Loyola Law School graduates do not necessarily gravitate to the attorney/law firm path one would expect of them. For many alumni, their juris doctor started their journey to careers in business and corporate law.

PICTURED FROM LEFT TO RIGHT:
John E. Anderson, Sr. '50
James H. Kindel, Jr. '40
Sheila Prell Sonenshine '70
John T. Gurash '39
Leonard Cohen '51
Elbert T. Hudson '53
Daniel A. Seigel '68
H. Bruce Carter '89
Roxanne E. Christ '85
Leonard Cohen '51
John T. Gurash '39

John E. Anderson, Sr. '50
Headquartered in Century City, California, Anderson's Topa Insurance Company was originally owned by Sperry and Hutchinson (S&H Green Stamps). In 1984, the Company was acquired by Anderson and it became part of his billion-dollar Topa Equities Ltd. business. Earlier in his career, Anderson co-founded the Los Angeles firm Kindel & Anderson (1953). Anderson later founded Ace Beverage Co. in 1956—which distributed Budweiser. Anderson then went on to own numerous businesses in real estate, savings and loan, and insurance. Anderson quietly gave $1.5 million to UCLA in 1987 to establish the Anderson School of Business and established the Anderson Chair in Taxation at Loyola Law School in 1981.

H. Bruce Carter '89
As executive counsel for the Walt Disney Company, H. Bruce Carter has managed litigation for the Burbank studio's offices since 1993. An active member of the Loyola Law School community, Carter is a past member of the Loyola Law School Alumni Association Board of Governors and presently serves on the law school's Board of Overseers.

Roxanne E. Christ '85
Roxanne E. Christ serves as partner in the Corporate Department of Latham & Watkins' Los Angeles office. A member of the firm's Venture and Technology Practice Group, Christ's practice focuses on technology and intellectual property—licensing and strategic alliance transactions for companies in the industries of software, video games, music, film, credit card, electronic funds transfer, publishing and education. Her clients include large, established companies in their Internet and other electronic ventures. Earlier in her legal career, Christ was in-house counsel at ARCO, where she handled licensing transactions and domestic and international antitrust matters.

Leonard Cohen '51
Leonard Cohen, now retired from the corporate arena but still very active in his everyday business, was president and co-founder of National Medical Enterprises, Inc., now known as Tenet Healthcare Corporation. An attorney and certified public accountant, Cohen is a former partner of the law firm of Ervin, Cohen & Jessup. Today, he is involved in and is a benefactor of various philanthropic activities, and enjoys retirement as the father of four grown children and 11 grandchildren.

Lloyd Greif '84
President and chief executive officer of the Los Angeles investment banking firm Greif & Co., Lloyd Greif founded the firm at the age 36 to meet the corporate financial needs of middle-market and emerging-growth companies. Greif engineered the $70 million acquisition of Mrs. Gooch's Natural Food Markets, the $210 million sale of Bumble Bee Seafoods and the $240 million sale of Data Transmission Network Corporation. A noted philanthropist, Greif gave $5 million to USC's Marshall School of Business to endow the Lloyd Greif Center for Entrepreneurial Studies.

John T. Gurash '39
John T. Gurash is the retired chairman and chief executive officer of INA Corporation, a holding company for Insurance Company of North America and other corporations, with headquarters in Philadelphia. The company is known today as CIGNA Corporation. Presently, Gurash holds executive capacities with several major companies. He is chairman of the board for CertainTeed Corporation, Household International Inc., Purex Industries, Inc., and Saint-Gobain Corporation. During his business career, Gurash served on the board of directors of Lockheed Corporation, Lloyds Bank of California, Security Title Insurance Company and Pic 'N Save Corporation.
Patrick C. Haden '82
Patrick C. Haden serves as general partner with the investment firm of Riordan, Lewis & Haden (RLH), which invests equity capital in privately held businesses. RLH manages in excess of $150 million in capital from its headquarters in Los Angeles and Irvine, California. A Rhodes Scholar, Haden's early fame came as quarterback for the USC Trojans and then the Los Angeles Rams.

Elbert T. Hudson '53
Son of H. Claude Hudson '31, Loyola's first African-American alumnus, Elbert T. Hudson is the retired chief executive officer of Broadway Federal in Los Angeles, and continues to engage in the practice of law. Presently chairman of the executive committee of the board for Broadway Federal, Hudson also serves on the boards of Golden State Mutual Life Insurance Company, Angeles Funeral Home Pre-Need Fund, and the Los Angeles Trade Technical College Foundation.

James H. Kindel, Jr. '40
James H. Kindel, Jr. co-founded the Los Angeles law firm Kindel & Anderson in 1953. Kindel & Anderson was one of the premier corporate law firms in Los Angeles—handling accounting, tax, and law. Kindel began his career as a CPA in Los Angeles and Orange Counties in 1945, and is a retired partner of Coopers & Lybrand. His professional involvement is extensive, and includes having chaired the Committee on Legal Economics and the Committee on Taxation of the State Bar of California.

Liam E. McGee '84
Liam E. McGee is president of Bank of America, California, and is also its national consumer banking executive. As head of California's largest bank, McGee manages the company's activities in its largest and most profitable market, overseeing nearly 40,000 associates. A native of Ireland, McGee is the chairman of the United Way of Greater Los Angeles, and a past chairman of Junior Achievement of Southern California.

Stephen F. Page '68
Stephen F. Page is director and vice chairman of the board for United Technologies Corporation (UTC). Prior to his appointment this year, Page was chief financial officer, and most recently president, of UTC's Otis Elevator Company. UTC provides a broad range of high-technology products and support services to the building systems, automotive and aerospace industries. Prior to joining UTC, Page had a 20-year career with Black & Decker Corporation, culminating in the position of executive vice president and chief financial officer.

Daniel A. Seigel '68
Daniel A. Seigel is chairman and chief executive officer of Hartleigh Creations, Inc., and formerly president and chief executive officer of Thrifty Corporation, Earl Scheib, Inc., and numerous other companies.

Sheila Prell Sonenshine '70
Retired from the bench, the Honorable Sheila Prell Sonenshine now serves as chief executive officer of RSM EquiCo Capital Markets and executive managing director of RSM EquiCo, a wholly owned subsidiary of H&R Block, with offices in California and England. RSM EquiCo is a leading international investment banking firm specializing in mergers, acquisitions, divestiture and corporate finance for middle-market companies. She began her career as an attorney practicing business law, was named to the Orange County Superior Court in 1981, and was appointed associate justice for the California State Court of Appeal the following year.

IN ADDITION
Notable alumni also pursuing careers in business and corporate law include:

Helene Hahn '75
Principal, DreamWorks SKG

Neil E. Schmale '74
Executive Vice President and Chief Financial Officer, Sempra Energy
Sempra is a Fortune 500 energy services holding company whose subsidiaries provide electricity and natural gas.

Mark S. Strukelj '81
Vice President and General Counsel, Fluor Corporation
With 50,000 employees, Fluor is one of the world's largest publicly owned engineering, procurement, construction, and maintenance services organizations.

Christi R. Sulzbach '79
Executive Vice President, General Counsel and Chief Compliance Officer, Tenet Health Care Corp.
Tenet and its subsidiaries own and operate general hospitals and many related health care services. In communities across the U.S., its 110,000 employees treat millions of patients.

Alan Victor '87
President and Chief Operating Officer, Jack Victor Limited
The North American manufacturer of men's tailored suits and formalwear is based in Montreal, Canada.

Henry C. Yuen '80
Chairman and Chief Executive Officer, Gemstar-TV Guide International, Inc.
A leading global media and technology company, Gemstar focuses on developing, licensing and providing products and services that simplify and enhance consumer entertainment.
# Table of Contents

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
<th>Author(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>A Turning Point</td>
<td>A message from Dean Burcham</td>
</tr>
<tr>
<td>4</td>
<td>The Corporate Law Program</td>
<td>Keeping in Line with Corporate Times By James Keane</td>
</tr>
<tr>
<td>12</td>
<td>Do Lawyers Matter?</td>
<td>By Professor Therese H. Maynard</td>
</tr>
<tr>
<td>18</td>
<td>Remedies for Victims of Terrorism</td>
<td>By Professor Georgene Vairo</td>
</tr>
<tr>
<td>22</td>
<td>Reframing Evil in Evolution and Game Theoretic Terms</td>
<td>By Professor Theodore P. Seto</td>
</tr>
<tr>
<td>46</td>
<td>The Enron Files: New Scandal, Same Law</td>
<td>By Professor William D. Araiza</td>
</tr>
<tr>
<td>54</td>
<td>Bypassing a Collaborative Procedure: Politics and the Reform of Evidence Law</td>
<td>By Professor David P. Leonard</td>
</tr>
<tr>
<td>66</td>
<td>What's Wrong With a National ID Card?</td>
<td>By Professor John T. Nockleby</td>
</tr>
<tr>
<td>76</td>
<td>Detention, Material Witnesses &amp; the War on Terrorism</td>
<td>By Professor Laurie L. Levenson</td>
</tr>
</tbody>
</table>

**Alumni Profiles** 26  **Programs** 58

**Newsworthy & Notable** 34  **Around Campus** 70

**Fundraising** 39  **Faculty Updates** 80

**Student Profiles** 50  **In My Own Words** 96
With the opening of the Albert H. Girardi Advocacy Center in September, the major building projects on our campus will be completed, at least for the foreseeable future. For the past 25 years, we have been acquiring property and building classrooms and other facilities on our campus that now occupies an entire city block. Indeed, many of us remember attending classes in trailers and in classrooms A, B, and C, in what is now the library. Needless to say, this extensive building effort has required extraordinary resources, and would not have been possible without the generous support of our many loyal alumni, friends and supporters. For all of you who have assisted in building the physical assets of the law school, I again extend a sincere “thank you.” And if you haven’t been at the law school recently, please drop by—I think you will feel a profound sense of pride in your alma mater’s campus.

I characterize this point in Loyola Law School’s history as “a turning point” because of the tremendous promise that the next phase in our development presents. The need for capital projects now diminished, our fundraising efforts will be directed almost exclusively at the academic program. Imagine the impact on our school if, over the next 25 years, we are able to invest in the academic program resources equivalent to those that funded our building campaigns! In particular, we will be working hard to increase the law school’s endowment—in the form of endowed faculty chairs and programs and endowed student scholarships. The law school’s endowment provides several essential functions as we move the school to an even higher level of excellence. First, the endowment provides an income stream in perpetuity that enhances the financial security of the law school and helps diminish the ever-present upward pressure on tuition rates. Second, fully endowed faculty chairs are critical in our efforts to attract and retain the best legal academics in the country. A law school generally awards named chairs to those faculty who have distinguished themselves in the academic world and who bring leadership, special skills and prestige to the law school. Finally, endowed scholarships permit us to attract and retain the best students possible. In short, a healthy endowment represents an investment in what pushes a school to excellence—its faculty and its students.

This edition of the Lawyer highlights one of the academic programs that will be receiving increased attention at the law school. The success of our alumni in the corporate and business law area is truly remarkable, as the cover of the magazine and the accompanying articles attest. I also hope you take time to read the articles by several of our professors. I think you will find them interesting, thought-provoking and insightful.

Above all, thanks to each of you for your loyalty to the law school. I look forward to seeing you soon.
LOYOLA LAW SCHOOL DEDICATES THE NEW
Albert H. Girardi Advocacy Center

Featuring a keynote address by
Anthony M. Kennedy
Associate Justice United States Supreme Court

New three-story building dedicated totally to advocacy, skills and home to Loyola's Center for Ethical Advocacy program

The Albert H. Girardi Advocacy Center:

- Total of 15,141 square feet within three stories
- 90-person trial courtroom, and jury deliberation room
- 45-person appellate courtroom
- 36-person ethical advocacy classroom and video training labs
- State-of-the-art presentation technology on all floors

Monday, September 23, 2002  4:00 P.M.
Loyola Law School Campus
Reception and tours to follow the program
Outlets of popular culture have long portrayed the typical lawyer as a courtroom practitioner, the skilled defense attorney or prosecutor with slick arguments and an exhaustive knowledge of the nuances of the trial setting. Whether fictional characters like Perry Mason or larger-than-life advocates like Johnnie Cochran or F. Lee Bailey,

CORPORATE TIMES

By James Keane

lawyers in the popular imagination spend most of their time pacing before a jury box. Yet a large percentage of law school graduates enter the legal profession every year without any intention of ever arguing before a judge, seeking to win over a hostile jury, or even setting foot in a courthouse. Where do they work?

A great many enter corporate practice, a broad and inclusive legal field that can encompass everything from mergers and acquisitions to securities and startup financing to intellectual property. The term is used to describe a dizzying array of legal specialties, including even litigation on behalf of a corporation or serving as legal counsel for a small business. By some estimates, fully 50 percent of current law students will eventually enter the workplace in some area of corporate law. In metropolitan areas such as Los Angeles, the percentage is even higher. As more and more lawyers find themselves employed in fields that reward legal expertise but are oriented away from the courtroom, law schools around the nation are pondering ways to make legal education more relevant to the realities of the marketplace.

BREAKING INTO THE CORPORATE MILIEUX

Thanks in part to its location in a large and economically vibrant metropolitan center, Loyola Law School produces a substantial number of graduates yearly who practice corporate law. Many enter large, well-established firms that operate in diverse areas of transactional law. Others find their calling in small “boutique” firms that cater to select clients or work in a narrowly defined area of business law. Still others branch into “new economy” legal areas that have boomed in popularity over the last decade, as a healthy economic climate opened up new positions for transactional lawyers.

“A phenomenon we saw in the 1990s was an enormous number of lawyers who left law practice to work in the operation of startup businesses,” commented Victor Gold, associate dean for academic affairs at Loyola Law School. “The Internet was a big part of that, but not the only part. With more money available to invest, there were more securities offerings and more business startups, and the more business activity you have, the more lawyers you need.”

When one adds lawyers working within industries such as entertainment, health care, public affairs, real estate, technology, sports, and foundations and not-for-profit operations, among many other legal niches, the wide array of opportunities for the law graduate becomes apparent.
“I have former students at the top of their professions in a lot of different industries,” commented Therese Maynard, Professor of Law and resident securities law guru at Loyola. “Loyola has graduated a lot of successful students over the years. They’re good role models for current students, who can look at them and say ‘I can do that!’” These success stories exist across different decades as well as many diverse areas of law practice, and Loyola graduates are found at every level of experience as well. While a great many are practicing in areas they never studied at Loyola, they still credit the law school for giving them the tools necessary to adapt to new environments.

Carrie E. Fogliani, a class of 2000 graduate of Loyola, is at the more recent end of the spectrum of Loyola graduates working in what might be loosely termed corporate law. Fogliani went on to earn her LL.M. in Health Law from St. Louis University in 2001 before becoming an associate in the Los Angeles office of Foley & Lardner. She assists health care providers in dealing with issues concerning transactional, operational, and regulatory health care law; such as fraud and abuse, physician self-referral issues, and the development and implementation of compliance programs. She also assists managed care plans in complying with state licensing requirements.

At Loyola, Fogliani took a corporations class with Professor Katie Pratt but kept her emphasis on courses in health care law. “I took the health care courses Loyola offered,” Fogliani noted, “including Regulation of Health Care Transactions. I also took Employment Law, which has been a help in corporate health care issues.”

Fogliani was on the job for less than two months at Foley & Lardner when she found herself working on an important hospital revenue bond project that required an understanding of legal, financial, and health care interests all at once. Fogliani was preparing documents for negotiations, studying the hospital’s contractual obligations for possible red flags, and reviewing corporate minutes.

“There’s no doubt that there was a certain trial by fire when I first started,” Fogliani remembered, “but I felt confident, because all the work was building on what I had already learned. Loyola is a good school for ‘background,’ no matter what area you expect to work in. [Loyola] met and exceeded my expectations in terms of giving me a substantive hold on the topics and issues that came up in a bond financing project. The situation is a little different than being in class, because the issues come at you at the speed of light, but thanks to Loyola, I had a strong foundation.”

Roberta A. Conroy, a 1980 graduate of Loyola, has had similar experiences in her work despite a radically different field of expertise. Conroy has worked in investment management since law school. A senior vice president at Capital Guardian Trust Company in Los Angeles, Conroy went into investment management because she wanted to work more on the business side of the law. In her daily work, she deals with the legal issues related to the portfolios of large, institutional clients. Though she doesn’t consider herself a “classic corporate lawyer,” Conroy does find her legal background important.

“The law degree is still necessary for my work,” Conroy commented. “Much of the day-to-day work involves understanding federal and state regulations. There’s always something happening on the legal side of investment management that affects the operation of our business. For example, Depression-era banking rules have been changed so that banks, securities firms and insurance companies no longer have to be separate. That affects the way we work in a lot of ways.”

Another Loyola graduate who faces a constantly changing legal environment is 1989 graduate H. Bruce Carter. In his position as executive counsel for the Walt Disney Company, Carter manages litigation for Disney and its subsidiaries. His position requires a great deal of flexibility and an understanding of different areas of the law. “It depends on what role I’m taking on, the complexity of the case, and the area of the law involved in the litigation,” said Carter. Despite working in litigation, Carter still fits the broad definition of a corporate lawyer. “Although my primary function is one of a litigator, on a daily basis I am involved in helping my business counterparts make decisions that affect their companies, and more often than not, there is a legal impact on the corporation, so I would consider that corporate law.”

Carter came to Loyola with a strong business background as a certified public accountant that has also held him in
good stead in his work at Disney and elsewhere. "I think that all lawyers enhance their skill sets by having a business background," Carter noted. "The courses that I took at Loyola in subjects like tax, securities, and commercial law enhanced my knowledge of different areas and helped me understand business from a legal perspective.

"We do focus on the students' understanding of such things as the public policy implications of legal rules, so they see what the law is about, but we also want to marry up that intellectual framework with something that's a little more hands-on and practical."

Professor Therese Maynard

"I've also taught as an adjunct professor at Loyola in an Accounting for Lawyers class, and I think it's important that all lawyers have a fundamental understanding of basic financial statements," Carter added. "I don't think there's any area of law where a lawyer can't benefit from a financial background. Even when it comes down to issues of understanding how to manage one's own legal practice, that background is important."

Fogliani, Conroy, and Carter work in three diverse fields, at different levels of seniority in their work, and have enhanced their legal knowledge in unique ways to benefit their careers. All three, however, share the same diploma. How does Loyola Law School prepare students for such a wide variety of careers in the corporate sector?

SKILLS PAY THE BILLS

Dean David W. Burcham '84 had long recognized that a substantial number of Loyola graduates were entering corporate law practice, both in large, multipurpose firms or in smaller practices, with a specific transactional specialty. In addition, a greater number every year went from law school directly into business work or into related corporate fields such as entertainment law. Burcham also saw a pattern developing in his visits to area firms and alumni to discuss the law school and its curriculum. Every time he mentioned that Loyola wanted to enhance its educational programs and training for corporate and transactional lawyers, he received an enthusiastic response.

"Our students get a basic grounding in corporate law at Loyola, depending on what courses they take, including securities regulation, or mergers and acquisitions, which are the standard fare," Burcham commented. "Many will also be able to fit in a bankruptcy course or two, but the practical-skills aspect of their education is usually learned on the job, as a summer associate or law clerk. That's an area where we would like to close the gap between school and law practice. "You can never close the gap entirely, and we certainly shouldn't aspire to be a practical-skills school.

On the other hand, we should aspire to make our graduates as employable as possible, and what I've heard over and over again is that firms love applicants who have had some serious skills training in this area."

Therese Maynard agrees with Burcham's assessment. Maynard, who has taught at Loyola since 1983, hears similar suggestions from alumni. "I talk to former students at all different levels in terms of career development, and I think it's important to take into account the situations that lawyers will be exposed to," Maynard commented. "We do focus on the students' understanding of such things as the public policy implications of legal rules, so they see what the law is about, but we also want to marry up that intellectual framework with something that's a little more hands-on and practical."

Horror stories about the first year of corporate practice are legion among law students and lawyers alike; for both the new employer and the new employee, the first few months for a lawyer in a complex, high-paced transactional environment can be a trying experience. A definition of a new associate heard around some of Los Angeles' larger firms frames the situation in blunt terms: "First-year lawyer: someone who does not know anything of any importance to anyone."

The situation is rarely so dire, but every new associate does face what Roxanne E. Christ of Latham & Watkins called "an extremely steep learning curve." Christ, a 1985 graduate of Loyola Law School, noted that law students tend to focus their classroom education on those subjects covered on the California bar exam. "A lot of students take a general course load, and the only business area covered on the bar exam is corporations," Christ said. "The bar exam is really skewed towards testing the skills of a litigator."

Though many firms expect the practical-skills element of a lawyer's training to blossom during work as a summer associate or a law clerk, many young lawyers won't find themselves placed on an important project until after passing the bar exam—and they are integrated into the normal operations of an office. Others may have done internships or externships in non-transactional environments, or only switched to corporate law late in their law school career, making the first year of practice something of a high-intensity seminar on corporate law.
“Compare it to a medical student training to become a doctor,” suggested Victor Gold. “Students learn the basics in medical school, but that’s really only the beginning of their education. After they graduate, they serve as interns, then as residents in a hospital. The first several years of law practice are much like that internship or residency, not just in corporate law but across the board.”

Every lawyer and law professor agrees that a crucial step in preparing students for transactional work is giving them a legal education of great breadth and variety. Possessing a thorough overview of the basics of the law allows a lawyer to work within different legal areas simultaneously. More importantly, it allows one to synthesize knowledge of different fields within a single complicated transaction or negotiation. Loyola Law School has long prided itself on offering such a broad legal education, and students are expected to complement their core curriculum requirements with a broad range of electives for any interest. The school offers its students over 80 electives, including such diverse offerings as Chinese law, aviation law, franchise law, and art and the law, among many others.

A valuable byproduct of a broad legal education is the strong analytical training that comes with working in so many different intellectual areas. Neal E. Schmale, a 1974 graduate of Loyola Law who worked for Unocal Corporation for 29 years and is now chief financial officer at Sempra Energy in San Diego, considered that training to be more valuable in the long run than any applied skill.

“There’s no doubt that in my early days as a lawyer, the specific skills I learned in my classes at Loyola were helpful in my work, particularly in the contracts and securities areas,” Schmale commented. “However, once I got into upper management, I found logical thinking, breadth of experience, and understanding of nuance to be the greatest benefits gained from law school, rather than any technical material I learned.”

Neal Schmale

“For example, I’ve done work in the past in both insurance law and maritime law. In insurance law, you’re dealing with a very specialized form of contract law that you ordinarily will not pick up in a basic law school education. The same is true of maritime law, in which there was a lot of work that involved the chartering and purchasing of ships. There’s no law school that teaches you how to buy a ship.”

Stephen Page, ’68, a director and vice chairman of the board of directors of United Technologies, expressed similar sentiments. Page worked in various corporate environments at McCullogh Oil Corporation and Black & Decker until 1993, when he left to become executive vice president and chief financial officer of United Technologies Corporation. He later served as president and chief executive officer of Otis Elevator Company from April 1997 until earlier this year. In those positions, Page was able to draw again and again on his legal background. “My teachers at Loyola gave me excellent training in the law, but also in how to apply the law to different situations with which I might come into contact,” Page noted. “That mindset makes for a better executive, because it gives you new perspectives on important legal issues.”

Because of the company’s many subsidiaries and products, lawyers at United Technologies Corporation might need to specialize in anything from antitrust legislation to products liability. Page, however, has used his legal training to oversee different fields effectively. “I’ve had to work in all of those areas over the course of my career,” Page continued. “We have experts in each field, but there are always some issues that come up where the legal background is important.”

Large firms, such as Los Angeles-based Paul, Hastings, Janofsky & Walker, also fill in many of the gaps in a new lawyer’s understanding of the law through a comprehensive training program for new hires. Mandatory for first-, second-, and third-year associates (summer associates are also invited to participate), the program is operated by a professional development coordinator and taught by firm partners who possess substantive expertise in each specific area. Topics covered include securities regulation, venture capital, private equity, secured transactions and personal property, licensing and intellectual property, bankruptcy and insolvency, commercial leasing, and mergers and acquisitions, among others.
Robert A. Miller, Jr., chairman of the Los Angeles office and vice chairman of global corporate practice at Paul, Hastings, Janofsky & Walker, noted that his firm doesn’t necessarily expect new hires to come in with a full slate of transactional law courses on their transcript. “We do most of our recruiting from our summer session,” Miller commented. “If summer associates are interested in working for us after graduation, we can offer some suggestions on which classes they should take during the remainder of law school to prepare them for practice.

“When they enter our training program, there are about 18 to 20 areas we try to instruct them in. The program is not the end-all, be-all of the substance of each area, but it’s designed to make them aware of the general issues they’ll encounter.”

Miller, a 1983 graduate of Loyola Law School, noted that while most schools offer training with a litigation orientation, equally important for the transactional lawyer is a problem-solving, future-oriented approach. “What you’re trying to do as a transactional lawyer is be an advocate for your client, while not necessarily serving as an adversary to your counterparts in the transaction,” Miller commented. “Litigation tends to be retrospective in nature, in the sense that a litigator works with events that have already happened and tries to produce the best results for a client. When we train transactional lawyers, on the other hand, we train them to spot problems in advance. Our clients are asking us to help them reach their business objectives. If you’re a transactional lawyer, you’re not out to pursue litigation—and if you do end up in court, something has gone horribly wrong.”

According to Miller, a key element in preparing students for work in transactional law is improving drafting skills. That opinion was shared by many lawyers with whom Burcham has met in the past year to discuss legal training. “I mentioned at various law firms that we planned to offer courses that focused on the deal side,” Burcham noted, “which means teaching how to draft contracts, how to negotiate a deal, and how to draft corporate documents, whether they’re part of an initial public offering or a required SEC disclosure document. Everyone nodded vigorously and gave me a great deal of encouragement, saying that that type of course would be received enthusiastically.”

THE DEAN’S MASTER PLAN
Dean Burcham sees the Loyola corporate law program advancing in three ways. First, the school will add faculty specializing in corporate law to meet the needs of students. Second, Loyola will expand its extracurricular and course offerings related to business practice. Third, Burcham will seek to collaborate with other academic and professional fields to prepare Loyola’s students better for a complex and diverse workplace.

“"The first thing I'd like to see is for [Loyola] to do a more complete job of providing students with the solid foundation they need to have a good running start at being a transactional lawyer."" Professor Therese Maynard

As with any good program, you begin with faculty, and we already have a fine faculty in place,” Burcham noted. “However, we’re understaffed in this area. We’re looking to hire a first-rate scholar in the area of advanced corporate law, corporate securities, mergers and acquisitions, corporate finance, and business planning.” In the long term, Burcham would like to see an endowed chair within Loyola’s corporate law program.

“With the addition of this person, plus our existing faculty members who teach and write in the corporate law area, we’ll be able to enjoy the same success in the corporate and business law specialties as we’ve had in the trial advocacy and litigation-focused areas,” he added.

ANSWERING A CALL FOR CORPORATE CONTENDERS
Maynard, who teaches advanced business courses, said, “The first thing I’d like to see is for [Loyola] to do a more complete job of providing students with the solid foundation
they need to have a good running start at being a transactional lawyer.” Maynard added, “And to do that, you need to add faculty and enrich the curriculum.

“My vision is a corporate law program that combines a practical and a theoretical orientation.”

Dean Gold

“With more faculty, we can offer more courses on issues that are extremely popular right now. For example, we could offer a business planning class that studies certain kinds of transactions, depending on their current popularity in the prevailing economic conditions,” Maynard continued. She envisions seminars where subjects such as corporate governance, a much more prominent subject since the collapse of Enron and the ensuing legal fallout, could be taught on a regular basis, with new topics added according to the economic environment.

Full-time faculty are not the only resource for these advanced courses; Loyola will continue its longtime practice of bringing well-known and skilled law practitioners into the classroom to teach part-time. These adjunct professors bring a practical dimension to the classroom learned through their ongoing experience in the workplace. Loyola can take advantage of two major assets when hiring practitioners: its location in downtown Los Angeles and its vast alumni population.

“Legal education should not lose sight of the effective partnerships that can exist between academics and practicing lawyers,” commented Maynard, who has seen a number of graduates of her classes return as adjuncts at Loyola over the years. “Our alumni are our richest resource, because they have such experience in corporate environments, whether that’s in big, broad firms, small firms, startups, or even from hanging out their own shingle as an independent lawyer.” Loyola’s centrally located campus, adjacent to much of the Los Angeles corporate legal community, also facilitates the relationship between full-time professors and adjunct faculty who reach once or twice a week in their area of expertise.

Loyola’s location in Los Angeles is also a powerful asset in such burgeoning areas as entertainment law. “Not only are we in the world center of the entertainment industry, but the school has always drawn students who come to Los Angeles with an interest in these fields,” commented F. Jay Dougherty, an associate professor who teaches copyright law, entertainment law, a seminar on motion picture production and finance, and the entertainment law practicum. “Because the school has also always been supportive of students with that focus, Loyola has one of the top programs in the nation in entertainment law.”

In addition to new faculty, Loyola will seek to bolster extracurricular and classroom opportunities for students to get hands-on experience in corporate law. For years, Loyola’s trial advocacy program has benefited from the many national and local competitions and clinics which offered students the chance to work in simulated courtroom environments; Loyola has similar plans for students of the corporate persuasion.

“My vision is a corporate law program that combines a practical and a theoretical orientation,” Dean Gold noted. “The practical is something we do very well in our efforts to prepare students to become trial lawyers. We offer many programs aimed at giving students the opportunity to get up in a simulated courtroom environment and do what they’re really going to do when they become trial lawyers. We don’t have those opportunities for our students who will be moving into corporate practice. We would like to give them those opportunities and combine them with a full collection of courses that will expose students to all the substantive aspects of business law.”

Business planning courses are a favored method for training lawyers for corporate practice, because they can turn an academic exercise of rote memorization into a practical challenge for students. Rather than learning the subject matter as a collection of abstract rules, students take what they’ve learned from their corporations and securities classes and use that knowledge in a specific area, such as venture capital financing or selling a small business.

Such offerings might involve what Maynard calls “a problem method approach,” where an entire class would handle a certain transaction of the sort that corporate lawyers witness on a regular basis in their practice. With the professors serving as simulated senior partners and students handling the duties of associates, the class would work together on a complicated deal. Students would be judged on their written memoranda to partners, on their ability to
respond to the various elements of “deal flow,” and on their work drafting legal documents appropriate to the transaction. For example, students might be asked to write up articles of incorporation for a new business, draft employment agreements or buy/sell agreements, and tailor their work to the simulated client’s specific objectives. Such a course would address a problem encountered by every new lawyer: reading about a deal in a classroom is radically different than doing one.

“When lawyers study these pieces in law school, they don’t always get a chance to see how the various pieces fit together, particularly in a transactional context,” Maynard commented. “Working on a single deal together, they synthesize different parts of the curriculum they’ve been exposed to and apply those parts to a transaction.”

An additional element in preparing students for the corporate workplace is collaboration with professional fields that touch upon the legal arena. According to Burcham, Loyola is poised to offer students a host of valuable offerings in advanced business courses through its existing partnership with Loyola Marymount University’s M.B.A. program, as well as through its own LL.M. program in taxation.

“I would like to see course work in the law school curriculum that is similar to M.B.A. course work, but designed for students who want an emphasis in this area but don’t want to pursue the full M.B.A.,” Burcham noted. “This might involve working with the M.B.A. program offered at LMU’s Westchester campus. We’re also looking at the possibility of joint courses for those who want to get a juris doctor without taking a fourth year for an M.B.A., but still want the flavor of an M.B.A. in their legal education.”

Because almost every lawyer works within an advanced business environment on some level, Loyola’s faculty would like to instill in students a better understanding of the dynamics of business transactions, as well as a deeper appreciation for the contributions made by other professionals in the business community in successful business deals. One potential method would be a course that pairs a law student with an M.B.A. student for the purposes of negotiating and structuring a business transaction. The course would include both financial and legal analysis, and could be team-taught by a law professor and business school professor.

Students preparing for a corporate environment can also receive training in another important legal area: taxation. In August 2000, Loyola began offering post-graduate training leading to an LL.M. in taxation. Because the program is already integrated with Loyola’s tax curriculum for lawyers and many of the same teachers work in both programs, Burcham sees further collaboration between the two as a natural progression.

“Tax and advanced corporate planning go together like a hand in a glove, and so this new focus will be a natural complement to our tax program,” Burcham noted. “For example, courses such as advanced corporate planning

Ultimately every effort to enhance Loyola’s offerings in the many disciplines contained within corporate law includes the same goal: to give Loyola graduates the educational training necessary to succeed as a transactional lawyer in a modern legal environment.
Over the last 20 years or so, it has become quite fashionable, particularly among corporate law scholars, to claim that the corporation is nothing more than a nexus of contracts. Under this law and economics view of the corporation, no legal rules are mandatory. Instead, everything is negotiable, including the fiduciary duties of corporate managers. Increasingly, this academic perspective has troubled me, especially as I reflected on the events of our world since the fall of 2001.

Ironically enough, as the events of last fall unfolded—most significantly the bombings of September 11th, then later the financial scandal surrounding the collapse of Enron—I was

A disclaimer is in order before I set forth my analysis of the fiduciary duty issues inherent in the practice of spinning. Nothing in my analysis is particularly novel. In this essay, I am not positing any type of new or radical legal theory. In fact, I would go so far as to say that any damn good business lawyer that I know will readily recognize the fiduciary duty implications presented by the recent Wall Street (IPO allocation) practice known as spinning. Rather, I write this essay to underscore the modern importance of certain enduring principles of law, such as principles of fiduciary duty in the corporate law context. In the context of today’s business environment, it is often easy to lose sight of the importance of the rule of law. But, as I will show, recent events, including the tragedy of September 11th followed closely by the financial scandal that engulfed Enron, further underscore the importance of ethical lawyering, which forms the very foundation of the legal education program we offer at Loyola Law School. So, in tribute to the countless number of damn good business lawyers that we have had the privilege to educate, I dedicate this essay to the alumni of Loyola Law School.

WHAT IS SPINNING?

Spinning refers to the practice that was reportedly used by Wall Street investment banking firms to allocate shares in the hot IPO (initial public offering) market that prevailed in the late 1990s. In reality, though, the story of spinning is essentially another version of what has recently become a now all-too-familiar story of corporate managers exploiting their position, in this case to seize for themselves certain business opportunities that rightfully belong to the corporation.

The story of spinning takes us back to the incredibly hot IPO market that prevailed for a brief period in the late 1990s. It was in this market that we saw the IPO of VA Linux Systems, Inc. go effective at $30 a share and, by the close of its first day of trading, surge a whopping 698%, to close at $239.25, for the then-biggest ever first-day gain. In this market, the competition to get an allocation of shares in a hot IPO was fierce, owing in no small part to the widely held perception that IPOs—especially of Internet-related issuers—would

Do Lawyers Matter?

Yes! ......We Need Damn Good Business Lawyers Now, More Than Ever

By Therese H. Maynard, Professor of Law

busy finishing an article in which I maintained that fiduciary law matters. Moreover, my article claimed that damn good business lawyers have always appreciated the truth of this assertion, notwithstanding considerable academic commentary to the contrary.

To demonstrate the truth of this assertion—that Law Matters—my article focused on a real world problem that has received—and continues to receive—significant attention in the financial press following the recent meltdown of the IPO market: that is, the Wall Street practice known as “spinning.” In this essay, I will draw on my analysis of the practice of spinning to show why fiduciary duty law principles must continue to be mandatory in nature—that is, non-waiveable—notwithstanding the outpouring of academic commentary to the contrary. Once I establish that Law Matters, then I will argue that this conclusion must, in turn, inform us as to the proper role for lawyers in advising their corporate clients. In other words, Lawyers Matter; that is, damn good business lawyers do, in fact, add more to the decision-making process of corporate managers than just their technical knowledge of relevant legal rules. Lest I leave the reader with the misimpression that this conclusion holds true only when dealing with Wall Street selling practices such as spinning, I will conclude this essay by offering some observations, related particularly to the events of last fall, including the Enron debacle, that further underscore the essential truth of my premise: Law Matters... and Lawyers Matter.
yield tremendous profits to any buyer who was lucky enough to get the opportunity to purchase these shares from the underwriters.

In the midst of this frenzied IPO activity, at least one individual investor made a substantial profit flipping shares allocated to him as part of a hot IPO. According to a November 12, 1997 article in the Wall Street Journal, Joseph Cayre, CEO of GT Interactive Software, a privately held computer software firm, was lucky enough to receive a sizeable allocation of shares of Pixar’s hot IPO from the company’s lead underwriter, Robertson Stephens. As was usually the case with these widely oversubscribed hot IPOs of the late 1990s, Pixar’s IPO shares soared by 77% over the fixed offering price by the close of its first day of trading. Mr. Cayre was then heard to brag about the $2 million profit he made when he “flipped” (sold) his Pixar shares in the aftermarket. According to the Wall Street Journal, the allocation of Pixar shares to Mr. Cayre’s personal trading account at Robertson Stephens was apparently made in anticipation that Mr. Cayre would direct his company’s future investment banking business to Robertson Stephens. In fact, when GT Interactive Software went public a month later, Robertson Stephens served as the lead underwriter of the company’s IPO.

**Without the firm foundation of fiduciary duty law, the scope of disclosure obligation on the corporate manager is uncertain at best, and nonexistent at worst.**

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**DOES THE UNDERWRITER’S PRACTICE OF SPINNING VIOLATE THE FEDERAL SECURITIES LAWS?**

As generally described in the numerous (reportedly now over 200) lawsuits pending in federal court, the term “spinning” is used to refer to the decision of a lead underwriter (such as Robertson Stephens) to allocate shares of a hot new issue (such as shares of Pixar’s hot IPO) to the personal brokerage account of certain clients (most often corporate executives, such as Mr. Cayre, or venture capitalists). As generally alleged in these lawsuits, these hot IPO allocations were made in an apparent effort to recruit future investment banking business from the executive’s firm (such as GT Interactive, where Mr. Cayre was CEO). On receiving these hot IPO shares, the executive (such as Mr. Cayre) would immediately “flip”—that is, sell—these shares at a substantial profit and pocket the profit (in Mr. Cayre’s case, reportedly a $2 million profit) in the executive’s own personal trading account.

The litigation now pending centers primarily on alleged violations of the federal securities laws on the part of those managing underwriters who made these hot IPO allocations. These allegations generally charge that the IPO prospectus contained misleading statements about the underwriters’ information practices in violation of the disclosure obligations of the Securities Act of 1933 and the Securities Exchange Act of 1934. In addition, these lawsuits usually include a claim that the underwriters’ hot IPO allocation practices, such as spinning, violate the NASD’s rules prohibiting free-riding and withholding (all of which I have analyzed in detail in my article, “Spinning in a Hot IPO: Breach of Fiduciary Duty or Business As Usual?” 43 William And Mary L. Rev. (forthcoming 2002).


**SPINNING AS A BREACH OF FIDUCIARY DUTY—THE CORPORATE OPPORTUNITY DOCTRINE**

What has not received as much attention in the financial press accounts of spinning activity—and what is most relevant as we watch the Enron debacle continue to unfold—is the culpability of those corporate executives who received allocations of these hot IPO shares. What the financial
press has failed to appreciate is that spinning activity indicts both the investment banker and the corporate CEO. Specifically, the corporate manager’s receipt of an allocation of hot IPO shares from the managing (or lead) underwriter gives rise to potential liability for breach of fiduciary duty on the grounds, among other things, that it involves the manager’s usurpation of a corporate opportunity. The lessons to be learned from the story of spinning, particularly in analyzing the scope of fiduciary duty that corporate executives, such as Mr. Cayre, owe to their corporations, such as GT Interactive, are particularly relevant in light of the events of last fall.

Briefly summarized, the corporate opportunity analysis of spinning activity starts out by focusing on the manner in which allocations of hot IPO shares came to be deposited into the personal trading accounts of company managers. Thus, in the case of Mr. Cayre, the analysis starts out by focusing on the manner in which the allocation of Pixar’s hot IPO shares came to be deposited by Robertson Stephens, Pixar’s lead underwriter, into the personal discretionary trading account of Mr. Cayre. This allocation seemingly was made to Mr. Cayre because he served as the CEO of a company, GT Interactive, that was itself about to launch an IPO of its own shares. Under traditional common law formulation of the corporate opportunity doctrine, since this opportunity to invest in Pixar shares apparently came to Mr. Cayre as the direct result of his position within the company, this is powerful evidence that this investment opportunity constituted a corporate opportunity. Even more compelling evidence of the corporate opportunity taint to this allocation of Pixar shares is the underwriter’s apparent assumption that Mr. Cayre would direct his company’s future underwriting business to Robertson Stephens. If this allocation were made to Mr. Cayre in order to obtain the underwriting business of his company, it would seem that this investment opportunity properly belongs to the company and, hence, should be treated as a corporate opportunity. Since the executive took advantage of this investment opportunity without any disclosure to his company, the executive is liable for usurping a corporate opportunity in breach of his fiduciary duty. As such, the traditional remedy for this type of breach of fiduciary duty is to impose a constructive trust. Under this common law remedy, the approximately $2 million profit that was reportedly made by flipping the Pixar shares properly belongs to the corporation, GT Interactive, and not to the company’s CEO, Mr. Cayre.

On the other hand, the CEO may try to avoid liability by showing that this investment opportunity is not a corporate opportunity. So, if in fact a CEO, such as Mr. Cayre, has an ongoing personal relationship with a particular investment banking firm, such as Robertson Stephens, that includes the specific investment strategy of getting as many hot IPO allocations as he can for his personal account, then the CEO may be able to eliminate the corporate opportunity taint from this hot IPO investment. However, the fiduciary obligations of this CEO may require that he voluntarily disclose of his prior transactions with a prospective underwriter for his company’s IPO. This disclosure should, at a minimum, explain why receiving hot IPO allocations does not involve the usurpation of a corporate opportunity. This disclosure obligation would seem to be all the more compelling if the company is considering using the services of this same underwriter in connection with the company’s proposed IPO.

SPINNING AND THE CORPORATE MANAGER’S FIDUCIARY DUTY OF CANDOR

On another level, the story of spinning offers valuable lessons that further refine our understanding of the scope of the corporate manager’s disclosure obligation. This analysis starts from the premise that the manager’s fiduciary duty to the corporation includes a duty of candor, which
triggers affirmative disclosure obligations at two distinct points in time within the context of the corporate manager's participation in spinning activity.

The first time period to consider is the time at which the manager receives an allocation of hot IPO shares. Looking at this issue in the context of Mr. Cayre's situation as reported in the Wall Street Journal, the question is whether, at the time that Mr. Cayre received the allocation of Pixar shares, he incurred any duty to disclose to the corporation his receipt of these shares. I am of the view that the most obvious source of a disclosure obligation at this time is the manager's fiduciary duties under state law, including the corporate manager's duty of loyalty. Under a duty of loyalty analysis, the scope of the disclosure obligation imposed on the corporate manager at the time the hot IPO allocation is made to his/her personal account will presumably turn, at least in part, on whether the manager's receipt of these hot IPO shares constitutes the usurpation of a business opportunity in potential breach of the CEO's fiduciary duty to his/her corporation.

The second time interval to consider is the time at which the company selects the investment banking firm who will serve as the lead underwriter for the company's IPO. At this later date, there arises the separate issue of whether the CEO (Mr. Cayre) has any fiduciary obligation to come forward and disclose to the company's (GT Interactive's) Board of Directors the nature of his prior involvement with the investment banking firm (Robertson Stephens) now being considered for the position of lead underwriter of the company's (GT Interactive's) IPO. At a minimum, it would seem that the existence of this type of relationship should affect the credibility and weight to be given by the Board to any recommendation made by the company's CEO as to the selection of lead underwriter. It would seem to go without saying that no Board member wants to be embarrassed by this type of disclosure—of the CEO's prior spinning activity with the investment banking firm who is ultimately chosen by the Board to serve as the company's lead underwriter—after the Board has decided to hire this particular investment banking firm to serve as the company's lead underwriter.

So precisely which rule or legal doctrine serves as the source of the corporate manager's duty to disclose this information to the Board—before the Board makes its decision as to the selection of the lead underwriter? My own view is that, at the very minimum, the CEO's fiduciary duty obligates him to disclose his prior spinning activity to the Board before it finalizes its selection of the lead underwriter for the company's IPO. If managers know that the courts will rigorously enforce fiduciary duty standards, then the rule of law creates powerful incentives for managers (such as Mr. Cayre) to come forward and volunteer disclosure of unforeseen contingencies (such as the opportunity to purchase shares in Pixar's hot IPO) and then to bargain for an appropriate allocation of rights and responsibilities (as between Mr. Cayre and his corporation) in light of these unforeseen developments. As we watch the events surrounding the collapse of Enron continue to unfold, we see powerful evidence in support of the law and economics view that suggests we rely on the reputation market and other market forces to promote adequate disclosure and to otherwise curb unethical business practices, such as spinning activity. But the lesson to be learned from spinning—that is further supported by the events that led to the collapse of Enron—is that the reputation market and other market forces are simply not enough in and of themselves. Without the firm foundation of fiduciary duty law, the scope of the disclosure obligation on the corporate manager is uncertain at best, and nonexistent at worst.

**THE REACTION OF THE VENTURE CAPITALIST COMMUNITY TO PUBLICITY SURROUNDING SPINNING**

In further support of the view that spinning implicates the fiduciary obligations of corporate managers such as Mr. Cayre, it is instructive at this point to consider the reaction of the investment community, including the venture capitalist industry, on learning that corporate managers and venture capital investors used their executive positions to influence the underwriters in order obtain shares of a hot IPO for their personal accounts.

According to a November 17, 1997 article published in the Wall Street Journal, the venture capitalist community moved quickly to lobby its members to avoid the practice of “spinning” and the attendant appearance of impropriety that such activity created. On one level, the informal lobbying of its members can be seen as a shrewd move on the part of the venture capital industry who presumably feared that continued publicity of Wall Street's spinning practices—at least insofar as they involved allocations to venture capitalists—might invite more scrutiny, which ultimately might lead to greater regulation of the venture capital industry, either by the NASD or the SEC, or both. Seen in its best light, the swift reaction of the venture capital industry may reflect promisingly on the general proposition that corporate executives
conform their behavior to a particular ethical standard because they have internalized this standard as part of their character. On the other hand, a more dim view is that the industry’s reaction simply reflects that some folks in the business community determined their response to this potentially negative publicity regarding spinning activity by examining the costs and benefits of adhering to a particular standard of behavior, without regard to any ethical or fairness considerations.

However, no matter what reasoning ultimately motivated the venture capital industry to lobby its members to avoid participating in spinning activity, what is important for purposes of this discussion is that the industry’s response reflects on the essential truth of my premise that fiduciary duty law matters. In other words, the concerns that motivated the venture capital industry to respond in the manner it did to reports of spinning activity are clearly grounded in concerns over potential conflict of interest problems that they fear might ultimately result in claims of breach of fiduciary duty. As such, the venture capital industry’s warning to its members reflects how fiduciary duty law continues its traditional role of monitoring standards of ethical conduct that we as a society can legitimately expect of our modern corporate managers.

THE CONTINUING IMPORTANCE OF THE DAMN GOOD BUSINESS LAWYER

Seen from this perspective, the story of spinning provides a compelling reason for the law to continue to enforce a rigorous standard of fiduciary duty. In framing the default rule for corporate opportunity to include the CEO’s receipt of an allocation of shares in a hot IPO, the law continues its traditional role in shaping the standards of what investors and other members of the business community can reasonably expect as “fair commercial practice.” The recent developments surrounding the practice of spinning provide a concrete illustration of the continuing importance of the role of fiduciary law as the default rule. Rigorous judicial enforcement of fiduciary duty standards as the default rule—a rule which cannot be completely waived by the parties—provides the courts with the basis for intervening to protect the legitimate expectations of investors and others as to what constitutes fair and ethical business practices.

The reaction of the venture capital industry further reflects on the continuing importance of ethical lawyering. In formulating its warning to its members, the venture capital industry clearly turned to their lawyers for advice as to the legitimacy of spinning activity. In giving advice to the venture capital industry, the lawyer, at least implicitly, relied on the foundational premise that fiduciary duties are mandatory. Moreover, if the damn good business lawyer is not confident that fiduciary duty law is mandatory, and therefore, confident of vigorous judicial enforcement of fiduciary obligations, then the lawyer is handicapped (substantially, if not completely) in his or her effort to counsel the client as to the timing and scope of disclosure required. Without that guiding principle, the ability of lawyers to give advice to move behavior of corporate managers to conform to standards of fair and ethical business practices is mooted. By emphasizing the mandatory nature of fiduciary duty obligations, the rule of law facilitates the lawyer’s ability to give advice that will move the behavior of modern corporate managers into line with standards of fair and ethical business practices to be expected of such persons.

CONCLUSION:

LAW MATTERS and LAWYERS MATTER

By focusing attention on these fiduciary duty issues, this essay seeks first to clarify the scope of a manager’s fiduciary duty, in order to show that Law Matters. The lessons learned from the story of spinning certainly must resonate strongly in our post-Enron world. The implications seem clear: if the courts fail to reinforce this duty of candor as part of the manager’s fiduciary obligations, then the transparency of managerial conduct is considerably clouded, thereby creating considerable disincentives in the future for managers to be forthcoming with information that bears directly on their trustworthiness and credibility. In the case of spinning activity, this lesson is most clearly reflected in the reaction of the venture capital industry and the resulting warning it issued to its members following widespread publicity in the financial press of Wall Street’s spinning practices. All of which just goes to show you what I think any damn good business lawyer will tell you...Without the support of a mandatory rule of law rigorously enforcing managers’ fiduciary duty obligations, we undermine the ability of lawyers to give advice that will move the behavior of corporate managers into line with standards of fairness and ethical conduct that investors and others in our modern business world are entitled to expect of their corporate managers. So, in the end, the lesson to be learned is a time-honored one: Law Matters...and we need damn good business lawyers now more than ever.

Remedies for Victims of Terrorism

By Georgene Vairo, Professor of Law
William M. Rains Fellow

When two jetliners slammed into the World Trade Center, another dive-bombed into the Pentagon, and the final one ditched into a field in Pennsylvania, our world and our lives changed.

I happened to be in New York City that day, waiting with my mother in my brother's driveway for cabs to take me to the airport for my American Airlines flight back to Los Angeles, and to take my mother to Penn Station. As we stood there, the ground under my feet felt a jolt like that of an earthquake. Based on my LA experience, I figured it was about a 2.2 magnitude tremor. Because I had been standing on the driveway since a little after 8:30 a.m., I had no idea that what I must have felt was the second plane crashing into the South Tower.

When the cars finally arrived, both at about 9:20 a.m., the driver of my mother's car said something about how Manhattan was shut down. I decided nonetheless to try to make a mad dash for Kennedy airport. However, as we headed off we decided to ask the driver's dispatcher about the status of the airports. Of course, we were told that all the airports had been shut down, too. I returned to intercept my mother, and we figured out how to break back into my brother's empty house.

Once we did, we gasped together as we turned on the television only to see the World Trade Towers burning. It was surreal, but we immediately knew that a serious terror attack was the cause. I had taken a bicycle...
my whole world
was
budding
in
the
arm
of
my
own.
I
went
home
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drunk
and
had
a
rodeo
out
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mind.

WALL OF PRAYERS

day,
away
from
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life,
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ride only two days before, across the George Washington Bridge up the New Jersey Palisades, and my biking buddy had taken a picture of me on the bridge with the World Trade Towers in the background. I never could have imagined that in two days they would be gone.

We kept watching in horror, as everyone else in the country probably was, and so many people throughout the world were, hearing the reports that there were other hijacked jets that could be turned into missiles. At the same time, our thoughts turned to my brother, Peter, who left us to take the subway to his office two blocks from the World Trade Center. Where was he? We could not reach him on his cell phone. Essentially, the whole telephone system in New York City had crashed along with the Towers. Luckily, though, Peter never made it past 50th Street. After hours of walking and catching lifts, he walked in the door and we all hugged and cried. We were a lucky family. So many others were not. It appeared that the deaths, the injuries, and the suffering would be on a scale unknown to our country. Peter and I drove off to the hospital to give blood. On the way there, I looked back toward Manhattan. For decades, whenever I drove by that spot, the WTC Towers dominated the view. Only a thick cloud of smoke, and the smell of jet fuel, remained. It reminded me of the funeral pyres of India.

When most of us think about September 11, 2001, we think about the horrible images we saw, and wonder why anyone would want to cause such death, damage and destruction. Few of us at the time thought about the civil lawsuit landscape. Rather, unprecedented private giving to charities providing for the families of the dead and the injured poured out. Additionally, there was considerable restraint on the part of the plaintiffs’ bar. For instance, Leo V. Boyle, president of the Association of Trial Lawyers of America (ATLA), urged his members not to bring any lawsuits. Instead, we saw ATLA and bar associations coming together to provide pro bono services to the families in need. Inevitably, though, everybody knew there would be lawsuits. But, how many of them? Who would the defendants be? How much money would there be to pay? How could the victims get any money out of Osama bin Laden? Would Congress do anything? In my first classes after I returned from New York by train, my students and I discussed these questions.

A complicated array of cases is already occupying the time of the courts, and many others will be filed in the future. To name a few: 1) there is complex litigation involving the insurers of the WTC over whether the plane crashes in Lower Manhattan were part of one occurrence or two, the resolution of which would result in proceeds of $3.5 billion instead of $7 billion; 2) various personal injury suits have been filed against Osama bin Laden and others; 3) businesses who lost money due to the curtailment of flights in the immediate aftermath of 9-11 and the steep drop in tourism have brought numerous suits. Notices of claim have been filed against the City of New York by rescue workers and others who believe that breathing the noxious fumes emanating from the WTC site has caused respiratory problems.

In the pages that follow, I will survey some of the problems raised by these cases, as well as the set of federal statutes that can be invoked to provide federal jurisdiction over cases involving foreign or American victims of terrorism or human rights abuses suffered in foreign countries that might arise in the future. Of course, in the context of the 9-11 attack, Congress has enacted the September 11th Victims Compensation Fund of 2001 (VCF). The special master appointed to administer the fund has encountered stiff resistance to his plan, and at this point it is unknown how successful this Congressional excursion into the tort remedy realm will be. Indeed, the VCF raises all kinds of basic questions of fairness in terms of how to value a life, as well as interesting questions of separation of powers and federalism.

TRADITIONAL TORT AND SPECIALIZED FEDERAL REMEDIES

The terrorist attacks on 9-11 created a vast range of claimants. It was obvious that those suffering personal injuries or the representatives of those killed on 9-11 would seek compensation. This original claimants group includes people killed in the four jet crashes, as well as the people working at or visiting the WTC and the Pentagon. It also includes the police officers, firefighters, and other rescue workers who were injured or died as a result of the attacks.

Other plaintiffs are suing for property damage sustained as a result of the attacks and for loss of business resulting from the shutdown of air traffic in the days following the attacks and the drastic decline in travel in the wake of the attacks. Given the magnitude of damage, it is clear that there will be insurance coverage disputes.

A new set of claimants recently emerged. There is continuing concern that the air quality in the vicinity of the WTC is unhealthy. For three months, fires continued to burn. Many of the workers at the site developed the “WTC cough” and a host of other health problems. Over one
thousand notices of claim have been filed on their behalf against the City of New York. It is quite possible that other workers as well as people who live and work in the area of the WTC will file suits.

Who would the plaintiffs sue? There are several sets of defendants: 1) American Airlines and United Airlines, as well as the companies charged with airline security; 2) owners, operators of the buildings; WTC security personnel; the City and Port Authority; the architects and contractors who designed and built the WTC; and other similar defendants ("WTC defendants"); 3) Osama bin Laden and other individuals, entities, or states responsible for the attacks; and 4) various governmental entities. As a professor who writes and teaches in the area of mass torts, I am certain that claims arising out of the WTC and Pentagon disaster would provide a career's worth of classroom examples, articles, and books. There would be numerous procedural and substantive problems managing and resolving the lawsuits that have already been filed, and that are likely to be filed in the future, notwithstanding the creation of the VCF.

With respect to the first set of defendants, barring bankruptcy, there would be no problems obtaining jurisdiction or enforcing judgments. However, given that those who hijacked the jets brought no illegal objects aboard, determining the liability of the airlines could be somewhat problematic. Of course, various theories of negligence could be advanced, but the case for liability is arguably not as strong as the case in Pan Am Flight 103, the Lockerbie crash case, where terrorists smuggled a bomb aboard the jet. And, despite the sympathy factor, it is arguable that jurors would be less likely to find the airlines culpable.

With respect to the WTC defendants, there are indications that some WTC security personnel told the workers in the second tower that they should go back to their offices. Otherwise, their degree of culpability appears to be somewhat tenuous as well.

The terrorists, of course, are obviously substantively liable, but how will personal jurisdiction be obtained and judgments enforced? With respect to governmental entities such as the City of New York, the state and federal government, and their agencies, to what extent will sovereign immunity preclude recovery by those injured? These questions just scratch the surface.

Additional issues are presented by the use of various specialized statutes that provide an opportunity to sue the terrorists and their sponsors in United States courts. Briefly, there are several avenues available to victims of terrorism, both United States citizens and foreign citizens, for seeking damages for personal injuries suffered either in the United States or in other countries. The Alien Tort Claims Act, enacted in the first Judiciary Act of 1789, provides for federal subject matter jurisdiction over civil actions "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

"A problem with using the International Terrorism Act in connection with the 9-11 events is the limitation of the Act to cases where the acts occurred primarily outside the United States."

This statute was little used until the Second Circuit's landmark case, Filartiga v. Pena-Irala, when that court held the federal courts had jurisdiction over a suit against a former Paraguayan police officer for the alleged torture and murder of the plaintiff's deceased Paraguayan relative. According to the court, customary international law prohibits official torture, and § 1350 of the Alien Tort Claims Act provides subject matter jurisdiction for tort claims based on violations of that law. The import of this statute is that an alien can sue another alien in a United States court for violations of international law. Arguably, this statute would provide federal subject matter jurisdiction over claims by aliens killed or injured in the 9-11 disaster against Osama bin Laden and others responsible for the attack. Without this statute, such plaintiffs could sue in state court, but not federal court, because there would be no alienage jurisdiction and their tort claims do not arise under federal law.

Continued on page 84
Calling a person or act "evil" is an act of moral rejection. We thereby place the person or act beyond the bounds of the even arguably defensible. But what is "evil"?

Is it merely a linguistic placeholder for our subjective moral response? Or can it be given a more concrete meaning? I am in the process of developing a theory of normative obligation based on evolutionary and game theory. This article will preview relevant portions of my new theory. It will then apply that theory to two problems. First, it will attempt to define evil. Second, it will address the problem of original sin—in secular terms, why it is that we sometimes find it hard to be good. "Evil," the article concludes, can be defined both concretely and usefully.

**AN EVOLUTIONARY THEORY OF MOTIVATION AND NORMATIVE OBLIGATION**

The most serious problem with existing moral theory is that it fails adequately to answer the question: Why are we motivated to be good? The moral theorist will argue passionately that goodness is X—adherence to a categorical imperative, for example, or maximization of total utility—but will offer no plausible reason why real human beings might actually care about X. Most simply assume that human beings are inherently motivated to care about goodness, however defined.

This is profoundly unsatisfactory. We know a lot about the origins of motivation, at least in broad outline. Evolutionary theory tells us that motivations, like other attributes, generally evolve because they are adaptive. This means that individuals with adaptive motivations are more likely to survive and reproduce than individuals without such motivations. And this, in turn, means that any definition of goodness not tied in some way to adaptivity is implausible.

A simple thought experiment demonstrates why this is so. Assume a population consisting of two types of individuals, good and bad—that is, people motivated to be "good" (however we define goodness) and people not so motivated. Assume further that good parents are more likely to produce good children and bad parents more likely to produce bad—in other words, that behaviors are to some extent transmissible. (For reasons beyond the scope of this article, the assumption of parent-child transmission is not necessary. It does, however,
simplify my exposition.) Finally and most importantly, assume that being good is, in net effect, not adaptive at the individual level. In other words, assume that being good involves some net sacrifice to long-term individual prospects for survival and reproduction. Over time, what will happen is that good people will survive and reproduce at a lower rate than bad people. They will not necessarily die out altogether, but they will become a smaller and smaller percentage of the population—eventually a percentage small enough that the average person will no longer care what goodness is or why good people are motivated to be good. And this is so simply because of the mathematics of probability. I am not invoking here an area of science that is controversial or uncertain. I am invoking basic math.

But we know that the average person does care about goodness. It follows that being good must be adaptive. Indeed, it follows that goodness should be amenable to definition as a particular kind of adaptive behavior. And this explains why we are motivated to be good: we are so motivated because good people tend, on average, to survive and reproduce more successfully than bad. To ignore this dynamic—to conjure moral theory out of philosophical ether and then simply assert that we should care about the result—is no more likely to produce enduring truth than alchemy.

The next obvious question, of course, is: Why is goodness adaptive? The answer, I suggest, can be found in the theory of repeat games. This branch of mathematics has become quite elaborate in recent years. I will discuss it in only the simplest terms. In particular, I want to focus on a game known as the repeated Prisoner’s Dilemma.

Our game involves two players, A and B. Each can make only one decision: he can cooperate (C) or defect (D). The payoffs to each player depend on the decisions of both. The following is an example:

<table>
<thead>
<tr>
<th>PLAYER B</th>
<th>C</th>
<th>D</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLAYER A</td>
<td>C</td>
<td>3,3</td>
</tr>
<tr>
<td></td>
<td>D</td>
<td>4,1</td>
</tr>
</tbody>
</table>

In the foregoing table, each pair of numbers represents the payoffs to the players, the first to A, the second to B. For example, if both cooperate (Row C and Column C), then each gets a payoff of 3. If A cooperates but B defects (Row C and Column D), then A only gets a payoff of 1, while B is rewarded with a payoff of 4. If they both defect (Row D and Column D), then each gets a payoff of 2.

Note A’s incentives. If she believes that B is going to cooperate, then A should defect, because then she will get a payoff of 4 rather than 3. If she believes that B is going to defect, then A should still defect, because then she will get a payoff of 2 rather than 1. In fact, in a single play of this game, it is always in A’s self-interest to defect. And because the table of payoffs is symmetric, the same is true of B’s incentives as well. Both should defect. But if both defect, each will receive a payoff of 2, whereas if both cooperate, each will receive a payoff of 3. Hence the dilemma.

The dynamics of the game change if the players know that they are going to be playing more than once. Now if A defects, she knows that B may respond by himself defecting in the future, as a result of which each player will earn a progression of 2s rather than 3s.

What strategy for playing the repeated game is most successful? It turns out that the most successful strategies are variations of a strategy known, perhaps unfortunately, as “Tit for Tat.” Tit for Tat can be viewed as consisting of three parts: (1) begin by cooperating (“Do unto others as you would have them do unto you”), (2) if the other player defects, punish immediately (“An eye for an eye, a tooth for a tooth”), and (3) if the other player returns to cooperation, immediately return to cooperation yourself (in moral terms, forgive the other player). In other words, three of the world’s most fundamental moral principles—the Golden Rule, punishment, and forgiveness—appear to be part of the most successful solutions to this purely mathematical game.

My moral theory is based on the assumption that this is not a coincidence. Individuals who appropriately cooperate, punish, and forgive tend to survive and reproduce more successfully than those who do not. As a result, the world has come to be dominated by individuals who, to some degree or another, have internalized these principles. Morality, in short, responds to the mathematics of the universe.

Life, of course, is far more complex than any mathematical game. Even the most sophisticated games under study today are but crude approximations of reality. We are not yet able adequately to specify either the relevant game or its optimal solution. Nevertheless, my theory assumes that such a game exists; I label its optimal solution the “principle of reciprocity”; and I assume that Tit for Tat, the various formulations of the Golden Rule, Kant’s categorical imperative, John Rawls’ choice from behind the veil, and the classic parental question “How would you feel if Mary did that to you?” are all approximations of this principle. Goodness is simply adherence to the principle of reciprocity—no more, no less.
Each culture implements this principle in a set of rules that members are obliged to observe vis-à-vis others of the same culture. I call such rules the culture's "ethos of reciprocity." The set of individuals thus bound and protected constitutes the "We" of that ethos. Those not so bound and protected are "Them" or the "Others." History is in part the story of the expansion of our most general We—from the tribe, to the city-state, to the nation—and to humanity as a whole. This expansion is predicted by game theory; to the extent that moral actors are excluded from our We, our relations with those actors are likely to be non-optimal because they will not be based on the principle of reciprocity. A Hobbesian international order is no more functional than a Hobbesian tribe.

The fact that goodness is adaptive, of course, explains why we might be motivated to be good, but not how. Two common explanations are inadequate. If motivations evolve because they are adaptive, one might be tempted to hypothesize a genetic basis for goodness, what some have called an "altruism gene." Much work remains to be done in this area; preliminarily, however, it seems unlikely that genes can explain all the complexities of moral decision-making. Goodness, we have seen, has at least three parts—being cooperative, punishing, and forgiving. To be fully effective, an altruism gene would have to code for all three. A gene that merely motivated us to be nice would disable, rather than enable, goodness when punishment is the optimal path. A subpopulation unable to fight back when taken advantage of would quickly be washed out of the gene pool. This is not to say that genes are irrelevant. We are genetically motivated to bond with others and to become angry when others treat us poorly; an entire region of our brain appears to be devoted to the specialized task of detecting cheating on the social contract. I merely suggest that genes, by themselves, are not enough.

I also reject reason as a sufficient explanation for goodness. The adaptivity of many learned behaviors—sharing, for example—only becomes obvious with extensive experience, sometimes the experience of many generations. Were we motivated solely by reason and self-interest, individuals might never undertake such behaviors or do so only after painfully inventing the wheel again and again. Indeed, if reason were a sufficient explanation, good parenting would be irrelevant, and institutions such as religion, devoted to the transmission of codes of virtue, would be unnecessary. Each child, upon reaching the age of reason, would deduce the same moral code—an explanation wholly inconsistent with our experiences as parents and teachers. We do have a name for individuals motivated solely by reason and self-interest: we call them "sociopaths." But if not by genes or reason, how are we motivated to goodness?

My answer is that goodness should be viewed primarily as a set of internalized learned behaviors, transmitted from generation to generation. Although we do not fully understand the mechanics of such transmission, we do know that each generation comes to feel a compulsion to perform the transmitted behaviors and to feel discomfort—guilt or shame—when it does not. In my theory, learned behaviors evolve. That is to say, over time the population of learned behaviors becomes better adapted to the environmental conditions it faces. For the most part, this means that learned behaviors evolve to make individual humans better adapted to their environment as well. Bronze tools replace stone; steel replaces bronze. Hereditary monarchy replaces a despotic free-for-all; democracy, in turn, replaces monarchy. Most importantly, we learn more each generation about what it means to be good, and we transmit those lessons, new and old, to our children. In the case of moral behavior, internalization is essential to the evolutionary process. Without it, each generation would have to relearn old lessons from scratch.

The moral theory I propose is thus both consequentialist and deontological. It is consequentialist in its ultimate explanation. Behaviors are good because of their consequences—they help us to survive and reproduce. Operationally, however, my theory is almost completely deontological: it requires that we internalize rules and, for the most part, follow them regardless of their consequences.

Continued on page 88
Determination, humility and compassion are all virtues that most of us strive to attain. Alumna Gisselle Acevedo-Franco '86 exemplifies all three, but you'd have a hard time getting her to admit it.

Gisselle is the vice-president of public affairs for the Los Angeles Times, working on philanthropic projects to better this city and allow the Los Angeles Times to lead by example. The path to this "delightful" position was neither simple nor direct, but Gisselle has never backed down from a challenge; she has never quit.

Gisselle was raised blocks from Loyola's current location. The neighborhood was tough and her childhood wrought with tribulation. When she and her mother arrived in Los Angeles from Costa Rica, they did not know where they would spend the night. Rather than allow herself to be defeated, Gisselle learned early to stand tall and make a difference. Gisselle did not want to fall prey to the easy way and let her surroundings pull her down. She wanted the success that those around her were denied.

After college, a few years of teaching, and obtaining her Master's degree, Gisselle enrolled at the law school. Loyola was one of Gisselle's only options, as few schools were admitting Hispanics, and she had to work full-time to make the tuition and pay the rent. Yet the lack of options was not disheartening to Gisselle; she was proud to return to her old neighborhood while attending law school.

It was not long before she discovered law school was not for her, but this didn't stop her from graduating, and it didn't steer her from her intentions to help out the community. Regardless of how Gisselle felt during law school, she now credits Loyola with infusing in her strong practical and analytical tools that allow her to see both sides of an issue, which is critical in public affairs work. Often she will look upon an issue differently than her colleagues, and she jokes, "I even apply IRAC when analyzing a crisis."

After law school Gisselle turned her attention to working with people with disabilities as an advocate for civil rights in the community. Gisselle won't call this work noble or commendable, but simply "necessary." After many years of working for The Regional Center for Protection and Advocacy, Inc., she ended up as executive director of corporate communications for AT&T Broadband. Her jobs in between allowed her to position the company's philanthropic agenda in the community as well as deliver key messages.

"It is important that companies have a philanthropic role in our communities and improve the lives of the people they serve, from whom they make money," reflects Gisselle. Now at the Los Angeles Times, Gisselle is working in a less controversial climate, but she doesn't take it lightly. Among her many areas of responsibility, Gisselle works primarily with two foundations, the Los Angeles Times Fund and the Los Angeles Times Family Fund, which "serve to improve the lives of disadvantaged children and youth." The funds focus on social services and literacy. One of the programs that the Times has been able to help most recently is the Harriet Buhai Center for Family Law, where she did one of her first internships at Loyola. "The Harriet Buhai Center plays an important role in helping women, and children in particular, exercise their rights, and it is gratifying to give them the support these dedicated lawyers need," said Gisselle.

Gisselle and her husband Victor have a nine-year-old daughter named Noelle. "We let her know how privileged she is all the time, and try and show her by example that she can make a difference, and has a responsibility to do so," she says, "but Noelle has to go to law school and preferably Loyola before she can conquer the world. No matter what, a law school education is invaluable, no matter which field you choose!"
Visitors may feel they've stumbled upon tourist nirvana where the law hangs in inebriated suspense, but one step off the bustling main street into a drab government building reveals a calm center of law and order.

From his bench, elevated slightly above the adjacent sea level, Judge Mirich watches the town, closely. He has occupied his legal aerie, a Los Angeles County Superior Court seat, since 1988. Four days a week Judge Mirich presides over a courtroom in San Pedro, but every Friday he rides the boat or helicopter out to Catalina. If need be, the amphibious judge could even paddle his paddleboard across the channel, a feat he has accomplished during Los Angeles to Catalina paddle races.

Judge Mirich's fitness might have played a part in his landslide victory during Catalina's judicial elections 14 years ago. As one longtime resident put it, he had never seen a political candidate go door to door, toiling on the steep hillsides of Avalon; "but Pete did it." Perhaps more swaying in the candidate-choked judicial election was Judge Mirich's refusal to accept campaign donations and his promise to serve more than one term, thus precluding the possible use of the Catalina seat as a steppingstone to more prestigious appointments.

Arguably, the superior court judge influences the lives of Catalina residents more than any other government official; hence, voters are passionate and informed. In 1998, Catalina's public expressed their desire for a judge who wasn't a local; someone who would administer California law, not a relaxed Catalina hybrid. Judge Mirich certainly has obliged. Although he still lives overtown (Los Angeles), the judge's myriad surrogate eyes observe the town's doings. If a student doesn't show up at school, if someone doesn't attend an AA meeting, if a probationee stands with his or her rake too long, Judge Mirich knows someone who noticed.

On a recent, pleasant day in February, Judge Mirich has felt a tingle in his island-wide information web. A local woman charged with breaking probation stands before him. A dozen islanders sit in the audience, the district attorney wears jeans, and a reporter admires the roofing job Judge Mirich did by hand. The judge looks down at the woman's probation papers, examining her P.O.'s signature. Perhaps it's a good forgery, but not good enough to get by the judge. Firmly, fairly, and with a mixture of regret and disappointment, Judge Mirich sentences the woman to three days in county jail.

The day winds on; spectators are comforted by the air conditioning and new chairs Judge Mirich had installed. Eventually, the judge wraps up his docket of lobster pot stealing, garibaldi poaching and the like. On this day, the routine seems just a bit more mundane; in just a few weeks Catalina's first murder trial is opening. Lawyers, clerks, and the small courtroom itself are quiet in expectancy, awaiting the sordid details of a man accused of stabbing his married lover in an Avalon hotel room.

As Judge Mirich hurries for the helipad, lawyers, tourists, and orange-clad convicts ramble onto the five o'clock boat, leaving Avalon serene, in fading light, but well watched by a distant judge.
Jordan Kort ‘87 is the co-founder and CEO of WHAT KIDS WANT! Inc. This up-and-coming children’s toy company was founded in 1999 after Jordan and his younger brother, Steven, left Imperial Toy Company (their father’s business). The new company is young but prosperous, due in large part to Jordan’s expertise and experience in the field and, by his own admission, to the training and education received in Loyola’s evening program.

What Kids Want! is a small toy company with the intent to “create unique toys of high quality and good value.” The company is making great inroads against the giants of the industry. Currently, their greatest success is in their What Girls Want! line of toys marketed directly to young girls—tiaras and dress-up clothes. Yet, the company is not limited to gender-specific toys. For example, “Wubbles” is a new product soon to hit the market which allows the user to make bubbles without soap or solution. Just dip the “wand” in water and you’re ready to go!

Loyola gave Jordan a definitive advantage when he returned to the business world full-time: his problem-solving ability and organizational skills were enhanced by his legal training. As well, due to the incredible intersection of the law and the toy industry, Jordan’s legal education proved even more valuable. Jordan constantly deals with the patent and trademark office, the FDA and the customs office, for example. Also, the toy industry is highly litigious. Suits are common in the piracy “knock-offs” area, with the occasional consumer tort case. Beyond litigation, knowledge of the law is crucial—not just in toy regulation, but in international taxation, international trade, treaties like NAFTA, and so on.

Jordan, proud father of Joel, Lyndsay and Daniel, is looking forward to the further growth of his company, and is very pleased at its initial success. Jordan is another shining example of a successful, yet humble and hard-working alumnus.
How did Tal Finney '91 go from waiting tables in a Westwood grill to widespread acclaim as "The Energizer Bunny of Sacramento"? Perhaps by doing almost every job in town, and doing all of them well.

Tal C. Finney '91

By James Keane

To spend any amount of time with Tal is to find that the San Francisco Chronicle was not too far off the mark when they honored him with his nickname. Like the battery-powered mascot of television fame, this 1991 graduate of Loyola Law School can be found practically anywhere at any time in the halls of Sacramento's legislators.

Currently, Tal holds five titles: he is the senior advisor to Governor Gray Davis, the director of policy for the Governor, the interim director of the Governor's Office of Planning and Research, the Governor's designee to six different financing authorities, and a governing member of the Board of the California Independent System Operator (the public commission that operates California's electrical transmission system and ensures fair and impartial access to the system.)

In the past, Governor Davis has called Tal his "utility infielder," able to move fluidly from position to position and work where he is most needed. "Tal Finney has a thorough understanding of the diverse policy issues facing California," Davis noted when he appointed Finney senior assistant to the Governor and director of policy in 1998. "His knowledge of business, labor and legal issues are valuable assets that will help guide my administration."

For Tal, the broad scope and hectic pace of his work help feed a lifelong passion for politics. A professed "Navy brat" with five siblings, Finney spent parts of his childhood in Pennsylvania, Ohio, North Carolina, Tennessee, and Virginia before his family moved to Long Beach when he was 13. Tal studied political science at UCLA, working nights and weekends at Stratton's Grill in Westwood. He got his first real taste of the political world working on Alan Cranston's 1986 senatorial campaign as a Democratic Party activist. The next year, he moved to Washington, D.C., to help with Congressman Richard Gephardt's presidential bid.

After graduation from Loyola in 1991, Tal worked at Radcliff, Frandsen & Dongell, where he had clerked as a student. "They were a boutique firm with big-time clients," Finney recalled, "and I was able to get a lot of experience there." Russell Frandsen, a partner at Radcliff, Frandsen & Dongell, remembered Tal fondly despite their differing political philosophies. "I always tried to convince Tal to use that political zest he had for the Republican side," Frandsen chuckled. "But, as you can see, I was ultimately unsuccessful. He just radiated enthusiasm for everything he worked on. His zest for life and for lefty politics made him an interesting character."

Tal's political work brought him into contact with Gray Davis, and shortly thereafter, Tal became general counsel for Gray Davis, who was then the Lieutenant Governor. At the time, Davis' gubernatorial campaign was struggling. "I eventually moved over to become deputy campaign director, and we won in a landslide in the primary." In the general election, Davis triumphed again, and Tal's schedule became busier than ever.

Soon to follow were appointments to numerous boards and commissions, as well as the duties of the many official positions he currently holds. His phone is always ringing and his schedule is never less than hectic, but Tal, who has two children and splits his time between homes in Los Angeles and Sacramento, is not so busy that he can't make ambitious plans for the future.

"My first goal, of course, is to get the governor reelected," Tal laughed. "I've always found the world of business an exciting area, and want to help make sure California remains at the cutting edge of the world's emerging economy."
John P. McNicholas, '62, counsel to the Archdiocese of Los Angeles and special trial counsel for the Holy See and Vatican Apostolic Library, has been blessed in his career. And he's equally as blessed in his personal life. Three of his seven children—Patrick, Courtney and Matthew—are attorneys at McNicholas & McNicholas, a firm founded by John and Patrick in 1993.

He married his wife, Diana, while still in law school, and she was pivotal in his career, helping him through law school and raising their children. "I am where I am because of her, and my children are where they are because of her." John fondly recalls the evening dinner table discussions of the law, and states that Diana could indeed be a lawyer, for all her knowledge, wisdom, and input during these discussions.

Aside from his work for the Archdiocese, John McNicholas received the Pontifical Order of St. Gregory the Great in 1997, an award conferred by Pope John Paul II. He is a diplomate and past president of the Los Angeles chapter of the American Board of Trial Advocates, an elected fellow of the prestigious American College of Trial Lawyers, and a fellow of the International Academy of Trial Lawyers and certified Civil Trial Advocate by the National Institute of Trial Advocacy. He has taught trial advocacy at Loyola—and true to many an Angeleno—he has his Screen Actors Guild card, which he earned when he appeared on an episode of "Divorce Court."

His Jesuit education has stayed with McNicholas throughout his career, especially its emphasis on commitment to ethics and excellence. "If you do the right thing," he says, "you'll sleep well at night and you'll always succeed."

His son, Matthew McNicholas '97, is a trial attorney, specializing in catastrophic injury, wrongful death, civil rights, employment, wage and hour, maritime, Jones Act law, premises liability, and governmental entity law. Matthew, too, recalls warmly the family dinner table discussions of the law, which continue to this day, "although my mom has now imposed the rule that we can't talk about the law at the table anymore, and I think I have to agree with her."

Upon graduating Loyola, the younger McNicholas clerked for the Honorable William J. Rea of the U.S. Court of Appeal for the Ninth Circuit. "A fantastic man and a great judge." Then he joined his father and brother at McNicholas and McNicholas, which he considers his workplace home.

From his father, he has learned that one's word is one's bond, and it is never broken. "My father has always taught me to be a gentleman; no matter how low the opposing side stoops. He's right," Matthew said.

Matthew interacts with his father every day. "I look to his years in the trenches for the gut reaction you can't get anywhere else. He has been there so many times; he has tried so many cases that his gut reaction on trial technique and tactic are unsurpassed.

He is one of the last great true trial lawyers whose track record will never be repeated."

While in practice with his father, Matthew has learned things that law books just don't teach. "In trial, it's a whole new ball game. You are in a street fight, far from the ivory towers of law school theory and academia. Once you are before a jury, Palsgraf goes right out the window," he laughs. "In a courtroom, it's about the people; their passions, prejudices, and belief systems. Law school gives you the framework to get into the courtroom, but living life gives you the tools to excel once you are in there."
Melissa Widdifield ’87 spent the summer of 1973 riveted by the Watergate hearings. She was transfixed by the powerful, flawed men at the center of the national drama as well as the homespun homilies on Constitutional law delivered by Sen. Sam J. Ervin, the committee chairman. For a teenager, the televised hearings provided a compelling view of the inner workings of the political and criminal justice systems. “That was about the time I decided I wanted to be a lawyer,” recalls Widdifield. “It was this unformed ambition.”

Widdifield followed through on that ambition. She spent most of her career at Lightfoot, Vandevelde, Sadowsky, Medvene & Levine in Los Angeles, where she was a partner and specialist in white-collar criminal defense. In April, she started a new post as a Los Angeles Superior Court Commissioner. Through it all, she’s never forgotten the enthrallment of watching the legal system at work. That’s why mentoring is one of her top priorities in her new role as president of the Women Lawyers Association of Los Angeles.

Widdifield serves as a mentor to UC Irvine student Mary Kokodian through a partnership between WLALA and the national organization Women and Youths Supporting Each Other (WYSE). “She’s a friend and a sister to me as well as a great mentor,” Kokodian says. “Melissa loves her job. That made law so much more appealing to me.”

Three women have served as role models in Widdifield’s career: former firm partners Hon. Carla M. Woehrle ’77, and Maria Stratton, now magistrate judge and federal public defender for the Central District of California respectively, and Hon. Consuelo B. Marshall, chief judge for the U.S. District Court for the Central District of California. Widdifield served as a clerk to Judge Marshall for one year.

“The most important thing I learned from these women is to be yourself,” Widdifield says. “Never let someone else define you. It may sound simple, but just learning to be yourself is an invaluable lesson.”
Downtown Los Angeles might seem a long way from any horse pasture, because it is. Darrell often had to fly by private plane from the racetrack at Del Mar to make his law school classes. Still, the man who rode bulls for UCLA's collegiate rodeo team and later professionally, found law school to be an inviting intellectual exercise. Darrell didn't plan on practicing law after graduation. At the time he was already a trainer for world-champion thoroughbreds—but the thrill of trial advocacy hooked him. He interned with the District Attorney's Office during law school and later served on the court-appointed juvenile defense panel for the Los Angeles County courts.

Eventually, though, the attraction of combining his horse-training expertise with his new legal training drew Darrell to equine law. He traded juveniles for jockeys, representing the horse racers as well as trainers and owners in administrative hearings before the California Horse Racing Board. Darrell handled inquiries into medical violations, racing infractions, and ownership disputes.

Yet, the whinny of his beloved horses was too loud in Darrell's ears. To focus more on horse training, he scaled his clientele down to one after several years of practice. Today, Darrell operates a major racing stable and you can find him at the track every morning and afternoon that his horses race. He is often at the stables, training, treating, and rehabilitating the racehorses he manages. Still, at moment's notice, Darrell could yank off his dusty boots, slip on a pair of wingtips, and step into a court of law.

Darrell Vienna's business card, which states he is general counsel to a real estate investment company, reveals nothing out of the ordinary. But make no mistake, Darrell is of a different ilk than most Loyola graduates. Darrell is as much at home on the 6,000-acre cattle ranch he manages in Ventura as he is in a courtroom. That's right, Darrell is a cowboy, a bull-riding, and a jean-wearing, horse-whispering lawyer.
Loyola Law School is pleased to announce that it will be hosting

THE FIRST ANNUAL
NATIONAL CIVIL TRIAL ADVOCACY CHAMPIONSHIP
NOVEMBER 14-16, 2002 IN LOS ANGELES.

The National Civil Trial Advocacy Championship is open to all ABA accredited law schools who have demonstrated excellence in mock trial competitions and/or demonstrated excellence in the training of law students in litigation skills. The purpose of the tournament is to provide student litigators an opportunity to develop and display the skills of a successful civil litigator. Students will be required to perform opening statements, direct- and cross-examination of expert and lay witnesses, and closing arguments, as well as argue objections based on the Federal Rules of Evidence.

Fourteen law schools will be invited to compete. Each school may bring one team of four advocates/witnesses, and each team will be guaranteed to participate in at least three full trials.

Trials will be judged by distinguished members of the Southern California Bar, including partners and associates from numerous Los Angeles civil litigation firms.

Schools will be invited based on the applications submitted and the competition problem will be distributed to participating schools by September 1, 2002.

Loyola Law School is excited to sponsor the first West Coast national invitational tournament. We hope you will be able to join us.
More than 400 graduates representing the class years from 1950 to 2001 attended Loyola Law School's Grand Reunion on March 20 at the Beverly Hilton Hotel. An awards presentation was held during the evening to honor (l) Benjamin J. Cayetano '71, governor of Hawaii, as the law school's "Distinguished Alumnus of the Year." Also honored were John T. Gurash '39, and Professor Emeritus Kay Tate. Gurash, a loyal supporter of the law school and former chairman and chief executive officer of INA Corporation (CIGNA), was awarded an honorary degree. Tate was presented with the "Distinguished Career Service" award in recognition of her 16 years on the Loyola Law School faculty, teaching Corporations, Securities Regulation and Ethical Lawyering.

Loyola Law School Entertainment Law Symposium

Loyola Law School's Entertainment Law Symposium, The Media and Social Responsibility, was held on February 22, 2002. (l to r) Entertainment Law Professor F. Jay Dougherty, moderator, with morning panelists Frank J. Jancek (partner, Milberg Weiss Bershad Hynes & Lerach LLP), Zazi Pope (senior vice president and assistant general counsel for Warner Bros.), Rod Smolla (professor of law, University of Richmond School of Law), and Rex S. Heinke (partner, Akin, Gump, Strauss, Hauer & Feld, LLP).

Dean Tom Goldstein of Columbia University's Graduate School of Journalism spoke before the luncheon guests on "Law and Journalism: Where Values Collide in a Warp-Speed World."
The Board of Governors Recognition Awards for 2002 were presented to five persons, including the late William (Bill) Hobbs, professor of law and director of the Center for Conflict Resolution at Loyola Law School, Adrienne M. Byers '89, John P. Miller '70, Hon. Richard Montes '67, and David J. Pasternak '76.

(Below) Law student Megan Tannell '02, president of the St. Thomas More Law Honor Society, presented the Society's medallion for 2002 to Dean David W. Burcham '84, in recognition of his unique and continuous contributions to the fields of law and ethics.

The Loyola Law School's Hon. Stephen O'Neil Trial Advocacy Mentoring Program is a community-directed program which encourages high school students to consider a future in the law by teaching them about the criminal justice system, trials and trial practice. Following months of preparation by the youth, the program culminates in a mock trial—held this year in April. (picturred) Loyola Law School student and mentor Claudia Gutierrez '02 (r) advises prosecutor Jose Aguilar of Belmont High School during the full criminal trial: *People v. Masters.*
Loyola Law School's 2002 Commencement Ceremonies

(Above) Lary Lawrence, professor of law and Harriet L. Bradley, chair of Contract Law (l), welcomed the Honorable D'Army Bailey, Circuit Court Judge in Memphis, Tenn., to Loyola Law School on January 22, 2002, in celebration of Martin Luther King, Jr.'s birthday. Founder of the National Civil Rights Museum (which honors Dr. King and is located at the Lorraine Motel, the site of King's assassination), and a civil rights activist himself, Bailey gave an address before law students on "From Black Nationalist-Militant to Southern Judge: Diverse Perspectives on Race in America."

(Above) The sum of $10,000 was raised through the 2001 Bob Cooney Golf Tournament held a year ago, which benefits the Cancer Legal Resource Center (CLRC), an on-campus program run in cooperation by the Western Law Center for Disability Rights and Loyola Law School. (l to r) Namesake of the tournament, Robert A. Cooney, Barbara Ullman Schwerin '87, director of the CLRC, Ami Silverman '87, and Dean David W. Burcham '84.

(Right) In memory of the late William H. Hannon, a bust of Loyola's benefactor was placed in the atrium of the newly refurbished William M. Rains Library in January. (l to r) Robert J. Nissenbaum, professor of law and director of the William M. Rains Library, Dean David W. Burcham '84 and Kathleen H. Aikenhead. The niece of Hannon, Aikenhead is president of the William H. Hannon Foundation, which donated the bust. The foundation provided support for the law library renovation, creating the second floor Hannon Atrium.

(Left) Serving as Grand Marshal on May 19 was Chairman and CEO of Camacho's, Inc. Andy M. Camacho, who serves on the Board of Overseers.
During the Academic Awards Ceremony for the Graduates of 2001, held in early December, the "Gregory W. Goff Award in Tax Law" was presented for the first time to Class of 2001 alumnus Michael T. Melo, who as a student demonstrated superior achievement in the tax law curriculum. The award has been established in honor of the late Gregory W. Goff '78, a tax partner at O'Melveny & Myers. Pictured are Sandra Goff, Gregory's widow, and Ellen P. Aprill, professor of law, John E. Anderson Chair in Tax Law, and director of the Tax LL.M. Program.

In early April, former U.S. Senator from Colorado Gary Hart taught a session of Loyola Law School's course "Terrorism and the Law." Co-chair of the U.S. Commission on National Security and an international law and business expert, Hart lectured on "Terrorism and National Security in the 21st Century."

"Authority, Extremism and Religious Law" was the cross-cultural dialogue in March between Professor Khaled M. Abou El Fadl, the Omar and Annemel Alfi Distinguished Fellow in Islamic Law at UCLA (r), and Rabbi Yitzchok Adlerstein, the Sydney M. Irmas Chair of Jewish Law and Ethics at Loyola Law School. The two debated over how the law shapes the changing geopolitical realities of the world following 9/11. Serving as moderator was Professor Laurie L. Levenson, William M. Rains Fellow and director of the Center for Ethical Advocacy at the law school.

This year, the 2002 Burns Scholarship Luncheon honored past scholars as well as current. (l to r) Bernhard W. Rohrbacher '01, Alan Heinrich '97, Deborah J. Snyder '85, and Trevor Stockinger '02, with Joseph E. Rawlinson '58 and W.K. Skinner, trustees of the Fritz B. Burns Foundation.

Swearing-in Ceremony 2001 (l to r)
The Honorable Tomson T. Ong '83, Los Angeles Superior Court, gave the judicial address; the Honorable Kathryn Doi Todd '70, California Court of Appeal, administered the State oath; and the Honorable Manuel L. Real '51 administered the Federal oath at the December 4, 2001 Swearing-in Ceremony.

(Left) Loyola de La Raza student organization celebrated the graduation of its members from Loyola Law School at an on-campus celebration, held a day in advance of the official commencement ceremonies in May.
Orange County Alumna of the Year
Irene E. Ziebarth ’84, who works for JAMS (Judicial Arbitration and Mediation Services) in Irvine, was named Loyola Law School’s “Orange County Alumna of the Year,” for 2001-02. Ziebarth works on cases involving construction, real estate, business contracts, class actions, personal injury and homeowner disputes.

2002-2003 Alumni Association Board of Governors
Loyola is pleased to announce the appointment of the Honorable John Meigs ’78 as president of the Alumni Association Board of Governors (BOG). Other members of the executive board include John Guttenberg ’96, who will serve as vice president, Mike Conway ’85, who will serve as secretary, and Jeff Lewis ’96, who will serve as treasurer and chairperson for the 2003 Grand Reunion. Special congratulations are extended to Dan Berman ’92, Greg Koffman ’80, David Maurer ’83, Michelle Popowitz ’94, Kelly Ritter ’94, and Joseph Shahani ’94, who were recently elected to the BOG. Special thanks and recognition are extended to Karen Rinehart ’96 outgoing president of the BOG, for her leadership, outstanding commitment and service to Loyola Law School. Rinehart will continue to serve on the 2002-2003 executive board. Best wishes for a successful 2002-2003 term are extended to all members of the BOG. Have suggestions for the Board? Contact them at Alumni Association Board of Governors at http://alumni.law.loyola.edu/contact/bo.

Alumni Mentoring Program Underway
The law school’s Alumni Office and the Board of Governors are joining forces in reviving an alumni mentor program for second-, third- and fourth-year law students. The program is designed to provide students with a system of support and guidance during their law school years, preparation for the bar exam and ultimately entry into the legal profession. Only you are uniquely qualified to provide such support and guidance. Please join efforts of both the Alumni Office and Board of Governors in developing and maintaining a successful mentor program. What greater gift can you give a future member of Loyola Law School’s alumni community? Learn more about the mentor program and register now at http://alumni.law.loyola.edu/mentors/index.

PASSINGS
The Honorable Thomas W. Le Sage ’37
The Honorable Thomas W. Le Sage, a respected superior court judge and naval officer during World War II, died in Santa Barbara. He was 88. After graduating at the top of his class from Loyola Law School in 1937, Le Sage began his legal career as a deputy city attorney for Pasadena. He interrupted his legal career to serve his country when he enlisted in the Navy during WWII, and following intensive training in naval war tactics was commissioned as ensign and assigned to the USS Coos Bay. After the war, Le Sage returned to private practice of law in Pasadena for 20 years. He served as the city attorney and prosecutor for Lynwood, and as a professor of municipal law at Loyola Law School. Le Sage served as president of the Pasadena Bar Association and president of the Loyola Law School Alumni Association prior to his appointment to the municipal court in 1965 by Governor Pat Brown. He was elected to the Los Angeles Superior Court in 1968 by Governor Ronald Reagan. Among the many high-profile cases he presided over at both criminal and civil trials was the notable murder trial of “The Onion Field” killer Gregory Powell, who murdered an LAPD officer in Bakersfield in March, 1963. The father of nine children, Le Sage was honored with many prestigious awards over the years, including the St. Thomas More Medallion Award from Loyola Law School and “Father of the Year” by the Pasadena Star News.

Charles R. Redmond ’74, Longtime Executive with Times Mirror Co.
Charles R. Redmond, 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 1995, 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 Times Mirror employees, until 1997. Redmond also served as vice chairman of the board of trustees of Loyola Marymount University and chairman of its finance committee, and served on the boards of 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.
Law School Receives Largest Pledge in its History

By Elizabeth Fry

Travelling along the Olympic Boulevard corridor in or out of downtown Los Angeles gives one an opportunity to view the stunning new advocacy structure on the Loyola law school campus. Representing the final color added to the Gehry palette at the law school, the building is boldly positioned in brick-orange and is the final structure in the lineup of buildings that march around the Loyola campus.

To conclude the physical environment of the law school, and to fortify an endowment, the Fritz B. Burns Foundation has pledged $5 million over the next five years to Loyola Law School—the largest, one-time commitment ever received from the Foundation. A portion of the gift will create the Fritz B. Burns Plaza, designed by Frank O. Gehry & Associates to link the new advocacy building to the campus.

"A total of $2 million is designated for the completion of the Fritz B. Burns Plaza, to include construction of a three-story advocacy classroom building and the implementation of state-of-the-art technology features throughout. This state-of-the-art 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," stated Dean David W. Burcham '84. Formal dedication of the Burns Plaza and advocacy center structure is scheduled for Monday, September 23, 2002.

The remaining $3 million has been pledged for endowment of the Fritz B. Burns Dean and Professor of Law Chair at the law school. This is the second, fully funded endowed faculty chair at Loyola Law School, the first of which was the $1,500,000 Fritz B. Burns Professorial Chair of Real Property, established in 1984. Creation of the Dean and Professor of Law Chair by the Burns Foundation serves to launch Loyola Law School into a new era of endowment development and brings further distinction to the law school and the University. Dean Burcham is the first holder of this new chair. The Dean and Professor Chair will traditionally continue to be filled by a scholar and dean of national reputation and preeminence, and will underscore the commitment of the law school to academic excellence. "We are exceedingly fortunate to have such generous and loyal benefactors over so many years," says Dean Burcham. "The students, faculty, alumni, administration and staff extend their appreciation to each of the trustees 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 in their desire to maintain and enhance the law school's mission toward excellence."

Foundation President Joe Rawlinson adds, "We support Loyola Marymount University and Loyola Law School to continue the lifetime wishes of Fritz B. Burns. Fritz Burns was instrumental in selecting the site for the Law School and was dedicated to its success. The members of our board have great faith in Loyola Law School and its future." During his life, Fritz B. Burns distinguished himself as a real estate developer and was renowned for his philanthropic works, among them Loyola Law School. He served as honorary co-chairman of the Board of Visitors (recently re-named Overseers) and helped plan and design, in 1963, the original building when Loyola relocated to its present site. In 1973, Burns was the recipient of the Law School Distinguished Service Award and an Honorary Doctor of Laws degree.

"The members of our board have great faith in Loyola Law School and its future."  
Foundation President Joe Rawlinson
Loyola Law School has raised more than $6.5 million over the past two years and has received another $8 million in pledges. The completion of the library renovation in 2000 and the completion of the Albert H. Girardi Advocacy Center this fall were the primary priorities for the law school's fundraising efforts. In each of the past two years, more than 2,000 alumni participated in these fundraising efforts.

BUILDING THE ENDOWMENT NOW THE FOCUS
Loyola Law School plans to double its endowment over the next several years. Building an endowment is now the prime development goal of the institution. A healthy endowment will ensure the financial security of Loyola Law School for generations to come. The primary focus of the effort to build the endowment is to increase the number of endowed academic chairs and adjunct or visiting professorships. An endowed chair provides the opportunity for Loyola Law School to recognize a superb teacher and scholar. Distinguished professors who may visit from abroad, other law schools or private practice can enhance the quality of education and curriculum for both students and other faculty. They may also provide expanded curricular offerings for Loyola Law School. “When you build your endowment, you build your future,” states Assistant Dean for Development Kenneth Ott. “Now, with most of the campus complete and the capital projects behind us, our efforts will be to raise endowment funds. We have a clear outline of the law school’s needs and many significant opportunities for donors.”

ALBERT H. GIRARDI ADVOCACY CENTER NEARS COMPLETION
More than 20 years have passed since the William H. Hannon Foundation funded the original Advocacy Center in honor of Mr. Hannon’s mother, Eugenia B. Hannon. The Eugenia B. Hannon Trial Advocacy Center at Loyola Law School was located in the Charles S. Casassa Building and served generations of Loyola students and faculty. Over time, increasing demands for space and advanced technology, and the desire to expand the Ethical Advocacy Program to include an annual series of lectures and symposia, led to the creation of a new, expanded center—the ALBERT H. GIRARDI ADVOCACY CENTER.

The official dedication ceremony of the Albert H. Girardi Advocacy Center is scheduled for Monday, September 23, 2002. The keynote speaker will be Associate Justice Anthony Kennedy, of the United States Supreme Court. The completion of the Girardi Advocacy Center will provide added capabilities in the training of future lawyers. The three-story structure features state-of-the-art technology in two courtrooms/classrooms and labs that will be used to teach a variety of advocacy skills.

MARK P. ROBINSON, JR. ’72 NAMES NEW COURTROOM
Mark P. Robinson, Jr. ’72, of the Newport Beach law firm of Robinson, Calcagnie & Robinson, Inc., has named the courtroom on the first floor of the Girardi Advocacy Center—a 90-person trial moot court classroom and an ancillary jury room comprise the primary portion of the design. The ROBINSON FAMILY COURTROOM, as well as all classroom/courtrooms throughout the Advocacy Center, will be equipped with state-of-the-art audio-visual equipment. This advanced technology will be demonstrated to invited guests during the formal dedication ceremonies of the Albert H. Girardi Advocacy Center on Monday, September 23, 2002. Mark is the son of the late Hon. Mark P. Robinson, Sr. ’50, and the father of Loyola Law School student Daniel S. Robinson ’03.
WEINGART FOUNDATION LABORATORY
FOR ETHICAL LAWYERING

In February of 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 with a most generous gift of $500,000 from the Weingart Foundation. The grant will support the construction and furnishing of the new classroom facility in the Albert H. Girardi Advocacy Center at Loyola Law School.

LITIGATOR-IN-RESIDENCE PROGRAM
SPONSORED BY WALTER J. LACK ’73

In support of the trial advocacy program at Loyola Law School, Walter J. Lack has gifted a most generous four-year pledge to the LACK LITIGATOR-IN-RESIDENCE program. Lack, a partner at Engstrom, Lipscomb & Lack, is a 1970 graduate of Loyola Marymount University and a Loyola Law School member of the class of 1973. To enhance our faculty efforts, Loyola will invite prominent trial lawyers to participate in a Litigator-in-Residence program. The law school will provide an opportunity for an outstanding lawyer or professor who focuses in the field of trial skills to spend a semester at Loyola teaching our students trial advocacy and related skills. Support from Lack will surely help Loyola to reach its goal to establish an endowment to underwrite each resident participant.

THE MINYARD TOWER

Mark E. Minyard ’76, of the Orange County firm of Minyard and Morris, LLP, and his wife Barbara, visited the Loyola campus in May to meet with Dean David W. Burcham ’84, and Loyola Marymount University President Robert B. Lawton. They enjoyed a “hard hat” tour of the new building and a close-up view of the MINYARD TOWER they named at the Albert H. Girardi Advocacy Center. Bradford M. Winkeljohn, associate with Gehry Partners, LLP, described the spectacular Gehry-designed tower as “the result of a collaboration with French architect Jean Nouvel.” The Minyard Tower represents an architectural entry element to the Advocacy Center on the west side of the structure. Standing three stories high, it features unique glass floor plates, and stainless and angel hair steel sheathing that mirrors the blue skies of downtown Los Angeles. Each floor will provide lounge areas and windows with views of the Fritz B. Burns Academic Center, the Rev. Charles S. Casassa Building, the S.J. Building, and other campus structures, as well as the skyscrapers of the city. The Minyard Tower represents an architectural design continuation repeating the vertical elements and free-standing columns that are Gehry signatures on the Loyola campus.

DR. AND MRS. EDISON H. MIYAWAKI
EDISON H. MIYAWAKI, M.D. AND SALLIE Y. MIYAWAKI of Honolulu, Hawaii, have generously pledged $500,000 over five years to support the construction of the new Advocacy Center. Dr. and Mrs. Miyawaki also continue to be loyal supporters of an annual moot court competition held for high school students in Honolulu and have created the Miyawaki Law Journal Center, which serves as the home to three journals: Loyola of Los Angeles’ Law Review, International & Comparative Law Review, and Entertainment Law Review.
LEONARD COHEN ’51 CHAIR
A most generous gift was received from Leonard Cohen, Loyola class of 1951, toward the endowment of his Chair. Professor Daniel E. Lazaroff holds the LEONARD E. COHEN CHAIR IN LAW AND ECONOMICS at Loyola Law School.

FUNDRAISING ESTABLISHES SCHOLARSHIP AND NEW PROGRAMS

GREGORY W. GOFF ’78 AWARD
The GREGORY W. GOFF AWARD was established in February 2001, following the untimely death at the age of 49 of Loyola’s 1978 alum. Gregory W. Goff spent his career as a partner in the Tax Department of the Los Angeles law firm of O’Melveny & Myers LLP. He was a nationally recognized tax lawyer who was highly skilled in many areas of tax law, but with a special expertise in partnership tax matters. He was especially well-known for his creative ability to structure tax-advantaged real estate transactions. This award was established together with his O’Melveny partners and friends, and recognizes the graduating student who has demonstrated superior achievement in the tax law curriculum. It has recently been endowed as an annual award.

WILLIAM C. HOBBS PROFESSORSHIP
An endowment to fund a clinical faculty position in trial advocacy has been established at Loyola Law School in memory of Professor William C. Hobbs. “It is with great pride that I announce the naming of the WILLIAM C. HOBBS CLINICAL PROFESSORSHIP IN TRIAL ADVOCACY in honor of the late William C. Hobbs. During his tenure at Loyola, Professor Hobbs made a significant contribution to the legal education of hundreds of students,” stated Dean David W. Burcham. “The Hobbs Professorship will allow Loyola Law School to continue the tradition of affording law students the practical skills and training necessary to become ethical advocates.” Bill Hobbs served on the Loyola Law School faculty from 1971-2002 as a visiting professor and member of the clinical faculty, and his reputation for producing exceptional trial advocates and mediators was widespread throughout Southern California.

WILLIAM J. LANDERS ’76 MEMORIAL
Loyola Law School is proud to establish the WILLIAM J. LANDERS JOINT MEMORIAL SCHOLARSHIP & LECTURE FUND as a tribute to the late William J. Landers ’76. Landers served as editor-in-chief of the Loyola of Los Angeles Law Review and competed as a member of the Jessup International Moot Court team. After graduating magna cum laude, he joined the Los Angeles firm of Parker, Milliken, Clark, O’Hara and Samuelian as a litigator. In 1978, he left private practice and began his career in public service as a prosecutor for the Los Angeles City Attorney’s office and five years later, moved to Washington, D.C. to work for the Department of Justice as Special Counsel to the Assistant U.S. Attorney General. He later served as deputy associate attorney general, associate White House counsel to President Ronald Reagan, and chief of the Public Corruption Division of the U.S. Attorney’s Office, where he supervised the prosecution of former Mayor Marion S. Barry, Jr. The Landers Scholarship is awarded annually to the editor-in-chief of the Loyola of Los Angeles Law Review. The completion of the Albert H. Girardi Advocacy Center this fall will allow for the expansion of the Ethical Advocacy Program to include an annual series of lectures and symposia. The Law School plans to initiate a special annual lecture on prosecutorial ethics as part of the series to be presented in the new Advocacy Center. This program will be named THE WILLIAM J. LANDERS MEMORIAL LECTURE and will feature a vibrant speaker or panel covering a range of federal and state prosecutorial issues directed to members of the Los Angeles legal community, alumni and law students.

McNICHOLAS & McNICHOLAS TRIAL ADVOCACY SCHOLARSHIP
John P. McNicholas ’62, and his son Matthew McNicholas ’97, of the firm McNicholas & McNicholas, have recently made a generous five-year pledge to establish the MC NICHOLAS & MC NICHOLAS TRIAL ADVOCACY SCHOLARSHIP at Loyola Law School. Loyola is embarking on a new program designed to train the finest trial lawyers in the nation.

Continued on page 90
Create a Scholarship in Your Name.

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: Elizabeth Fry Office of Development 213.736.1096

*A scholarship can be endowed for a gift of $25,000.
M any estate planners say that there are three remaining legal strategies for effective estate planning: The use of life insurance, valuation techniques such as family limited partnerships, and charitable estate planning.

Charitable estate planning generally starts with charitable intent. Your client has the desire to make a positive mark on the community, set an example for his or her children, and ensure that the organizations (such as Loyola Law School) he or she supports today will still be supported tomorrow. In some cases it will be you, the advisor, who will help your client make the connection. In philanthropy, there is an old saying, “Don’t give until it hurts. Give until it feels good.” There is no area of philanthropy where this statement more aptly applies than in charitable estate planning, especially with regard to life income gifts where the donor retains an income interest in the gift.

**TYPES OF GIFTS**

When people think about life income gifts, two strategies usually come to mind.

Charitable gift annuities, part gift and part annuity, are the oldest life income instruments. They are simple contracts between one or two donors and the charitable organization, such as Loyola Law School, that require the organization to pay a predetermined stream of income to the donor for life in exchange for a gift. The income is based on the actuarial age of the donor on the date of the gift. While still very popular, some states, such as California, continue to regulate them, as they resemble an insurance or securities product. In order to safeguard your client’s interest, Loyola Marymount University maintains a special reserve fund specifically for charitable gift annuity contributions. All gift amounts are held in this special fund until the obligation to make income payments has ended.

The annuity payments to the beneficiary(ies) are guaranteed. Should all of the funds held in the special reserve trust be exhausted, the university would continue to make payments to the annuitants from other funds. Thus, these are fully backed by the university.

Charitable remainder annuity trusts and charitable remainder unitrusts are creatures of the Tax Reform Act of 1969. Cash or other assets are donated to the charitable trust with the donor or other beneficiary(ies) receiving an income interest for life or a term of years. The charitable remainder trust is tax-exempt by virtue of the fact that there must be a charitable beneficiary of the remainder interest. Because of its versatility, the charitable remainder trust is one of the most popular life income vehicles.

These types of trusts are used both as a charitable device and as an effective estate planning tool. According to IRS figures in 1997, there were 288,484 charitable trusts in existence—an increase of 47 percent since 1994. The value of those trusts increased 92 percent over the same period, to approximately $73 billion. In the words of the late Senator Everett Dirksen (R-Ill.), “Now we’re talking about real money!”

**CHARITABLE TRUSTS HAVE SOME VERY POSITIVE ASPECTS:**

- Assets are removed from the donor’s estate if the noncharitable beneficiaries are the donor and the donor’s spouse. In other cases, the assets are partially removed from the donor’s estate.
- The donor is entitled to an income tax deduction for the present value of the remainder interest.
- Any capital gain on appreciated assets is bypassed.
- The donor receives an income interest for life or a term of years.
- Most importantly, the donor helps make our communities better places to live by providing resources to charitable organizations such as Loyola Law School, to help ensure excellence in legal education.

Many different kinds of property can be used to fund charitable trusts. In addition, they can be structured so that the donor and/or the donor’s financial advisor retain some control over the trust assets, subject to the prudent investor rules. While charitable remainder trusts themselves are tax-exempt, the income produced by the trust is not necessarily tax-exempt. This depends on the nature of the asset producing the income.
CHARITABLE REMAINDER TRUSTS

There are two basic types of charitable remainder trusts: the Charitable Remainder Unitrust (CRUT), which pays a variable amount annually, and the Charitable Remainder Annuity Trust (CRAT), which pays a fixed amount annually.

Charitable remainder unitrusts are extremely versatile and can be structured in various ways.

- There is the straight percentage CRUT, which pays a fixed percentage of the net fair market value of the trust assets as valued annually.
- There is the net income unitrust (NICRUT), which pays the lesser of net income or the fixed percentage of the net fair market value.
- Finally, there is the net income with makeup trust (NIMCRUT), which pays the lesser of net income or fixed percentage. The added twist is that in the years when the trust's net income is less than the fixed percentage, there is a deficit account established. The deficit is "made up" in years when the net income is greater than the fixed percentage.

IN 1998 THE SERVICE ADDED ANOTHER VARIATION:
The Flip Trust, which allows the trust to "flip" from a NICRUT or NIMCRUT to a straight CRUT (Does this stuff make you seasick?) upon the occurrence of some triggering event, such as a birth, death or the sale of certain trust assets. Flip trusts are often funded with non-income producing, appreciated assets in a net income or net income with makeup unitrust. When the assets are sold, the trust flips to become a straight percentage trust, and the sale proceeds are then typically invested.

Unitrusts have a minimum payout of five percent and a maximum of 50 percent. The present value of the remainder interest must be at least 10 percent of the initial value of the assets contributed or the trust will fail to qualify as charitable. If permitted by the trust instrument, additional deductible contributions can be made to the unitrust at any time.

Charitable remainder trusts are great vehicles for those who expect the market to generally improve and who look forward to a long life. Given the average stock market growth over the last 30 years of 11 percent, lower payouts in the early years will let the trust principal grow, meaning larger payouts in the later years even though the percentage remains the same. And, of course, that growth is all taking place within a nontaxable entity.

Charitable remainder annuity trusts pay a fixed dollar amount, a sum certain, based on the initial fair market value of the property placed in the trust, rather than paying a percentage of the net fair market value of the trust assets as revalued each year.

As in the case of the unitrust, the annuity trust must pay a minimum of five percent and no more than 50 percent annually to the non-charitable beneficiary. Unlike unitrusts, annuity trusts cannot accept additional contributions once the trust is established.

In addition, the annuity amount must not be such that there is greater than a 5 percent chance that the trust corpus will be exhausted before the charitable organization receives its interest.

Charitable annuity trusts are for those who want a fixed sum and who do not want to worry about the vagaries of the market. In the CRAT, no matter how much the corpus grows, the annuity amount will never change, so it may not be appropriate where the funding assets are expected to continue appreciating.

In general, annuity trusts are popular with conservative donors with conservative assets that produce predictable income. They seem to favor the older donor, but not always.

CHARITIES AS TRUSTEES

Some organizations, including Loyola Marymount University/Loyola Law School, act as trustees; others don't. Those that do usually require a minimum present or face value on assets at inception or charge a management fee. We typically suggest a $100,000 minimum. (This is negotiable.) In addition, we require that we be made the irrevocable beneficiary of all or a substantial part of the remainder in return for trust management. Many donors, with the help of professional advisors, establish and fund charitable trusts.

In some cases, donors may choose to act as trustees themselves, or co-trustees with professionals, including the trust department of investment management firms. They rely on the professional community to let them know the options. The same is true for nonprofit organizations, even those who choose to act as trustees. Few nonprofits are in the business of investment and asset management. We rely on professionals like you. We need your expertise so that we can focus on our mission. Usually that is what the donor wants, too.

Donors may know and appreciate the impact a planned gift can have in their community. They may not always be aware of the positive impact that gift can have on their estate plans or of the income they can generate in the process.

If you would like further information on these and other planned giving opportunities, please contact, Joan E. Pohas at 310/338-3068 or by email at jpohas@lmu.edu.

The information in this article is provided for general information purposes only. The application of laws discussed in this publication may vary from state to state.
The Enron files: New Scandal, Same Law

By William D. Araiza, Professor of Law

Enron's bankruptcy and its political fallout have given prominence to what might otherwise have been a relatively obscure dispute between the White House and the General Accounting Office (GAO), Congress' investigative arm. The object of the tug-of-war is the GAO's demand for documents relating to the operation of the working group Vice President Cheney chaired, charged with developing a national energy strategy. Because Enron is suspected to have been a major participant in the formulation of the Administration's energy policy, the issue has had more political staying power than it otherwise might. When lawyers hear of this dispute, they might think of United States v. Nixon, the famous 1974 case in which the Supreme Court required the Nixon Administration to turn over the White House tapes. And that analogy would be a good one.

The dispute started in April, 2001, with a request from Democratic Congressmen Henry Waxman and John Dingell that the GAO obtain certain information regarding the White House energy policy working group. This was the group that was charged with developing a national energy strategy; its most controversial recommendation (so far) was that the Arctic National Wildlife Refuge be opened up for oil drilling. After the GAO made its request, there followed a series of letters, phone calls and meetings, spanning nearly a year, during which the GAO defended the legality of its request and pared down the categories of documents it sought, while the White House questioned its legality and, ultimately, provided a relatively small number of documents responsive to some of the GAO's requests. By early 2002, though, it was clear that the two sides were still far from agreement on the remaining requests, and, on February 22, the GAO filed an unprecedented lawsuit against the vice president, alleging that he had violated a legitimate GAO information request and seeking an injunction compelling his compliance with that request. The case is now pending in federal district court in Washington, D.C.

These bare facts, of course, don't even begin to illustrate the complexity of this issue. On the one hand, the GAO is asserting broad authority under federal statutes to "investigate all matters related to the receipt, disbursement and use of public money," and to "evaluate the results of a program or activity the government carries out under existing law." Broad words, indeed. If read for all they were worth, they might, for example, authorize a GAO investigation of secret cables sent from the White House to a military commander in the field, or White House meetings between the president and his political advisors over the most politically-savvy method of handling legislation the president is considering proposing. After all, sending a cable costs government money, and "under existing law" (i.e., the Constitution), the president has the authority to propose legislation.

What's wrong with such investigations? Assuming the GAO and Congress can be trusted with confidential material, what's the problem with government investigating or auditing itself? A large part of the problem is that the GAO is, by statute, an office independent of
the executive branch, and subordinate to the Comptroller General, who is himself subject to removal by the Congress. Indeed, in the 1986 case of *Bowsher v. Synar*, the Supreme Court forbade the Comptroller General from exercising powers deemed executive in nature (in that case, ordering budget cuts in order to bring the federal budget within a pre-set deficit limit). Can, therefore, the GAO—an office subordinate to an official under Congress’ control—investigate matters that may fall squarely within the authority the Constitution grants to the president?

Investigation, of course, does not equal control. But it surely influences the operation of the executive branch. For example, disclosure to Congress of the substance of conferences between the president and his political advisors might lead those advisors to temper their candor. In fact, one of the main objections raised by the White House to the GAO information requests was that such requests would make it more difficult for the president to be able to deliberate confidentially with his advisors, in the course of his performance of his duties. To the extent that the vice president has constitutionally-mandated executive functions, the argument would apply to him as well.

**THE SCOPE OF EXECUTIVE BRANCH PRIVILEGE**

The existence and scope of the president’s constitutional privilege to shield information cannot be determined on an all-or-nothing basis. In the Nixon tapes case, for example, the Court recognized the president’s need to have advisors who were confident that their advice to the president would remain confidential, but nevertheless held that that interest was outweighed by the court’s interest in obtaining evidence that could bear on a criminal defendant’s guilt or innocence. On the other hand, in an earlier, lesser-known case concerning the Nixon tapes, a federal appeals court refused to enforce a congressional committee’s subpoena of those tapes, on the ground that Congress’ need for them did not outweigh the president’s privilege claim.

Common sense suggests the correctness of such balancing approaches. Different information requests have different impacts on the requesting branch’s ability to perform its constitutionally-assigned functions, and intrude in different ways on the functioning of the executive branch. For example, our intuition suggests that there is more legitimacy in a congressional demand to know how an executive branch agency is administering a regulatory regime enacted by Congress than there is in a congressional demand to know what bills the president is considering proposing, or what the president is talking about with his closest political and policy advisors. Closer examination of this intuition suggests that several factors are relevant to the appropriate scope of any relevant privilege, and thus, the correct resolution of the GAO-Cheney dispute.

**FIRST: TO WHAT CONDUCT DOES THE INFORMATION REQUEST REFER?**

Presidential administrations are hybrids, constitutionally speaking. Part of the president’s job, according to the Constitution, is to “take care that the laws be faithfully executed.” Normally this entails administering—“executing”—regulatory regimes enacted by Congress. While the power to execute the laws is certainly fundamental to the presidency, this power intimately involves Congress, since it is triggered only when Congress enacts a law that it then entrusts the executive branch to administer. Thus, it makes sense that Congress might have a legitimate claim to investigate how laws are being administered, when that administrative action is made possible because Congress has decided to delegate power to an executive branch official.

This insight is, in fact, at the core of one of the arguments made by Vice President Cheney in opposition to the GAO request. Recall that one of the statutory bases for the GAO’s information requests empowers the GAO to “evaluate the results of a program or activity the government carries out under existing law.” One way to read the italicized language—the way the GAO itself has read the language in its dispute with the vice president—is that “existing law” includes the Constitution. Under this reading, when the executive acts “under the Constitution”—as when, for example, the president proposes legislation—the GAO has the statutory authority to evaluate the results of such activity. Another interpretation—a much more limited one, and thus, unsurprisingly, one pressed by the vice president in his correspondence with the GAO—argues that “existing law” means statutes. Whatever else may be its merits, this latter interpretation fits in with the idea that Congress may have more authority to investigate the workings of the executive when the executive is acting as Congress’ agent—for example, administering a statutory scheme enacted by Congress and entrusted to the executive branch.
SECOND: WHAT TYPE OF INFORMATION IS CONGRESS REQUESTING?

In resisting the GAO's information request, the vice president has cited the need to preserve the confidentiality of deliberations done in the executive branch. The rationale is straightforward: If the president's closest advisors cannot be sure that their advice to the president will remain secret, they may be tempted not to be as frank with the president, to the detriment of his ability to make good decisions. In the Nixon tapes case, the Court recognized the validity of this argument, even while ultimately rejecting, on the facts before it, the president's claim of privilege.

For our purposes, the important point about this argument is that it implicates the type of information Congress is seeking. Certain types of information may implicate the concern for deliberative confidentiality more than other types. This type of careful parsing of one branch's demands on another is consistent with the Court's approach in the Nixon case, which distinguished between, on the one hand, diplomatic and military secrets, which it considered always privileged, and, on the other, other types of executive branch information, which were considered presumptively privileged but open for possible disclosure (as, in fact, the information in that case was ultimately held to be).

The nature of the information at issue has in fact played a significant role in the development of the GAO-Cheney dispute. The GAO's original request encompassed a broad variety of information, ranging from the dates of the task force meetings, the costs associated with those meetings, the names of persons present and the offices or clients they represented, the agendas for those meetings, information presented at those meetings and notes and minutes of those meetings, and how the vice president and others determined who would be asked to those meetings. Some of this information—for example, the meeting dates or the costs incurred in hosting them—is clearly irrelevant to any concerns about confidential deliberations. Other information—for example, the meetings' minutes and notes—obviously implicates deliberative confidentiality. Yet, other information rests in a difficult middle ground. For example, the guest lists for these meetings, while seemingly innocuous information, could arguably reflect the vice president's thoughts about who were important players on a particular policy issue, a conclusion that could be seen as the result of deliberations about the underlying issue itself.

During the course of the back-and-forth between the vice president's office and the GAO, both sides compromised in ways that reflected the concern for deliberative confidentiality. The GAO withdrew its requests for the meeting agendas and minutes, while Cheney's office supplied heavily redacted information concerning costs. Of course the compromise was incomplete, since the matter is now in litigation. However, the fact that the parties' attempts at compromise tracked this criterion suggests that it is relevant to the correct answer to this question.

THIRD: FROM WHOM IS THE INFORMATION BEING REQUESTED?

At first blush, this criterion seems obvious. The information is being requested from the vice president. However, the issue is not as straightforward as that. Just as the executive branch in general is a hybrid, in terms of the functions it performs, so too is the Office of the Vice President. It might be surprising to learn that the original Constitution accords only one function to the vice president: presiding over the Senate. (The vice president's role as successor to the president was not formalized until the 25th Amendment, ratified in 1967, although the practice was established in 1841 when John Tyler succeeded William Henry Harrison.) If one stops here, and assumes that its role as presidential successor is only latent, one might conclude that the vice presidency is primarily an office of the legislative branch! On the other hand, the growth of the vice president as a major political and policy advisor to the president in the last half-century suggests that the office belongs squarely in the executive branch.

The GAO-Cheney dispute illustrates the growth of the vice presidency. The energy task force Cheney chaired was charged with developing an important part of President Bush's domestic policy agenda. This sort of role is emblematic of recent vice presidential tasks, from Dan Quayle's chairing of the elder Bush Administration's Council on Competitiveness, to Al Gore's spearheading the Clinton Administration's Reinventing Government Initiative. All told, the growth of the vice presidency as a significant player in the executive branch's policymaking apparatus suggests that congressional intrusions into the work of the vice president may encounter constitutional objections.

Continued on Page 91
Introducing some of Loyola's students

By Andrew Willis '02, Ryan McEachern '02 and Linda Stanley

A TALE OF

Two Olgas

OLGA BERSON & OLGA KAY '03

What are the odds that two intelligent, lively, humorous women named Olga, both from Russia, would wind up at Loyola Law after leaving the USSR? As it turns out, the odds are high that at least they both would be named Olga. Says Olga Kay, "In Russia, there weren't a lot of options: it was either being named Olga—or Natasha."

Although they hail from the same continent, and have found their way to Los Angeles and the law at the very same time, Olga Berson and Olga Kay are very different in many ways. Yet, they do share many of the same things: humor, intelligence, drive, creativity, and of course the proper name of Olga—not Natasha.

Olga Berson, who is warm and demure, first visited the United States while she was in college, as a senior at Moscow Institute of Chemical Technology. Although she claims, "I've been in the U.S. so long now," she's kept herself very busy. After spending a semester as an exchange student at Dartmouth in New Hampshire, she returned to Moscow to graduate with a B.S. in Environmental Engineering. A year later, she applied to a variety of schools across America, and chose the California Institute of Technology. After moving to California, Berson pursued her M.S. and Ph.D. while working on aquatic bioremediation, the process through which bacteria are used to consume toxic chemicals.

After earning her doctorate, she went to work for American Technologies Group as a senior research scientist. While there, she drafted relevant patent specifications and designed tests in support of the patent claims, which led her to the doors of Loeb and Loeb, LLP, and then on to Hogan and Hartson, LLP. She works about 30 hours a week at the firm, and she specializes in patent prosecution, in addition to attending Loyola Law School's day program.

The effervescent Berson is married, with two children. She loves the United States ("especially the French restaurants!") and she feels extremely blessed by people in the United States who were willing to help give her a chance at every turn, in her life here, with matters as commonplace as finding her path around the city, and as complex as helping facilitate her career path.

Olga Kay—whose wry personality couldn't be more different from Olga Berson's than if they had come from opposite ends of the globe—graduated from Moscow University with an undergraduate degree in virology. She came to Los Angeles to earn her Ph.D. in molecular biology, a subject similar to virology, at USC. After earning her Ph.D., Kay did her postdoctoral training at the Department of Microbiology and Immunology at UCLA.
She is currently a research assistant professor at USC, where she works at the School of Dentistry, researching the biology of oral pathogens, "bugs that eat your teeth, especially if you eat too much candy," explains Olga. She performs experiments involving enemies of the teeth, and trains undergraduate and graduate students as well.

She attends Loyola Law in the evening, and plans to become a patent attorney. Her intention is to utilize her science background in the arena of biotechnological patent law. Says Kay, "Biotech is a good area to be in right now.

"Biotech is a good area to be in right now. There is a lot of activity all over the world.

Following in the Path

Daniel Robinson returned a questionnaire for this interview with information about himself in small font and praise for his Loyola Byrne Trial Advocacy teammates in bold-faced type. It's not as if Dan's resume is awkwardly skimpy; to the contrary, his work experience spans the country, including positions in the New York District Attorney's Office and with a United States District Court judge. However, when speaking of his time with the trial advocacy team, a certain amount of excitement enters his voice that perhaps isn't present when pressed to speak of his own achievements.

Dan was a two-sport star (baseball and football) during high school in La Jolla. He went on to earn an English major at Williams College in Williamston, Massachusetts, and worked two years for the Rackets Bureau in lower Manhattan.

Still, it's the achievements of the trial advocacy team that spark enthusiasm in Dan. In April, he capped off a year in which he helped Loyola's trial advocacy team win the William Daniel National Championship in Atlanta and by taking first place with his co-counsel, Kate Gillespie, at Loyola's Annual Byrne Trial Advocacy Competition. Real litigation, not just the mock variety, appears to be in Dan's future. Although his career ambitions remain fluid, Dan would relish an opportunity to engage in challenging courtroom advocacy.
The police officer on the beat passes through a swarm of people; each one could be a perpetrator. Unlike “Where’s Waldo” though, the officer just can’t point and shout, “There’s the criminal!” Every action the officer makes must be in accordance with the Fourth Amendment, and on the beat action must be swift and decisive; there are not three hours of exam time allotted for issue-spotting.

Justice on Patrol

Steve Lurie, recent graduate, has picked faces out of LA’s street collage for seven years patrolling as a member of the Los Angeles Police Department, West LA division, as well as Wilmington and Harbor City. Working any of these LA beats might sound rigorous, yet Steve missed the intense academic exercise of school. Law school appealed to Steve. As an LAPD officer, Steve realized that judges are the final distributors of justice. Thus, Steve relishes the opportunity to sit behind the bench and do right.

Steve has done all right here at Loyola too. He was the president of the evening bar association and, by chance, last summer he and fellow Loyola law student Katherine Lyons arrived early but separately in Bologna, Italy for a Loyola study abroad program. Under the Italian sun romance grows eternally, even for law students. Today the two are engaged.

AS AN LAPD OFFICER, STEVE REALIZED THAT JUDGES ARE THE FINAL DISTRIBUTORS OF JUSTICE.

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Rachel Zellars '03 recently finished her second year of law school. If it weren't for a simple suggestion by a burgeoning hip-hop artist, Loyola would be short one fantastic person. Born and raised in predominately white upstate New York, near Ithaca, Rachel, of mixed race, left to pursue her bachelor's degree from Howard University, a predominantly black college. After college, Rachel moved back up the coast to attend Cornell University's graduate studies program in African Studies.

Media-Minded

Rachel's passion for hip-hop and R&B prompted her to devote her thesis to investigating the genesis of the East Coast hip-hop explosion in the 1980s.

By virtue of attending Cornell, Rachel was near the trenches and the persistent pulse of the hip-hop underground music movement. Her thesis discussed the transition of hip-hop and R&B from native West African rhythms, to blues and jazz, to modern-day R&B and hip-hop. Rachel was not only writing about the movement, she was mixed in with it. Her work allowed her to meet and interview musicians, artists, labels, and so on. Eventually Rachel began working with blues legend Donald Byrd. Rachel and Byrd went so far as to create a magazine devoted to the current world of underground and mainstream hip-hop and R&B. The magazine was called Juba, a type of stew. After two years, Rachel was finished with grad school, so the magazine was left behind.

During this time Rachel was trying to plan her next move. She was set to head back to Howard for a Ph.D. of some sort. Yet one day, while interviewing artists at a local label office, an artist said, "It would be great to have one of us on our side." This off-the-cuff suggestion was enough to influence Rachel to take the LSAT and apply to law school. Having little or no idea about the schools that had granted her admittance, Rachel chose Loyola because of the Los Angeles weather.

At first, Rachel had no concrete idea what she would do afterward, and frankly, why she was even in law school. Her whim had brought her here; the experiences and the opportunities made her stay. Rachel found herself truly challenged, probably for the first time, and had to grapple with being in a new town, on a new coast and in a completely different culture, both in and out of class.

Through hard work and persistence, Rachel adapted to law school and landed a great job in the in-house legal department at Paramount. Working at Paramount, and experiencing the Hollywood vibe, channeled Rachel's talents toward the entertainment industry.

Rachel has caught the bug and plans to write and produce television shows and films. Rachel's bi-racial background and rich academic history lend themselves to thoughtful and passionate media, rather than the socially ignorant and culturally bankrupt drivel that can surface in the mass market.

Rachel does not plan to fully abandon academia—planning to write more about music, media and possibly about her mixed-race experience, or as she refers to it, "thriving in ambiguity." Rachel credits her experience as the main catalyst in her personal formation, and she wouldn't have it any other way. So, thank you, Mr. Anonymous hip-hop artist, for giving Loyola such a charismatic, brilliant and thoughtful individual. ☞
Bypassing a Collaborative Procedure

By David P. Leonard, Professor of Law
William M. Rains Fellow

Usually, when people think about the back-room deals and *quid pro quos* that characterize the legislative process, they aren’t thinking about legislation concerning evidence rules.

The notion that legislators would engage in heated debate about the vagaries of the hearsay rule or ancient rules about the admissibility of character evidence seems rather absurd. Indeed, particularly in the federal system, rules of evidence do not come into being through the familiar, politically-charged legislative process. Instead, federal evidence rules, along with other rules of procedure, traditionally are enacted through the process established in the Rules Enabling Act, which bypasses normal legislative channels, takes place quietly (though with opportunity for public input), and largely occurs without the intrusion of partisan politics. This is how the Federal Rules of Evidence initially came into
being in the mid-1970s (though Congress did make a number of changes before the rules took effect), and until recently, the vast majority of amendments found necessary also were enacted through that process. In many states, including California, procedural reform takes place through similar processes.

But things have changed, at both the federal and state levels. Politicians have come to realize that procedural rules, including rules of evidence, can reflect deep-seated social values, and can support or undermine those values as well. Today, evidence rule-making has entered the political arena, and the result has been sweeping changes in the shape of the rules.

Whether those changes have been for the better is very much in the eye of the beholder. Though I will offer some thoughts on that question, primarily I will discuss the advantages and disadvantages of shifting from the collaborative model of rule-making characterized by the Rules Enabling Act to the politically-charged atmosphere of legislation.

**THE RULES ENABLING ACT**

Though Congress has always had the authority to enact rules of procedure through normal
legislation, the 1934 Rules Enabling Act, 28 U.S.C. §§ 2072-2074, largely removed rule-making from the partisan political process. The Rules Enabling Act places the power to enact rules squarely in the hands of the Supreme Court. The Act requires the Judicial Conference (which is chaired by the chief justice) to authorize the appointment of a standing committee on rules of practice, procedure and evidence. That committee’s task is to review the recommendations of various advisory committees (also appointed by the Judicial Conference) for the enactment and amendment of procedure and evidence rules. Members of both the standing committee and the various advisory committees are to be drawn from bench and bar, and their meetings must take place in open session following notice to the public. Final adoption of the rules involves, but does not require the approval of Congress. The Act provides that no later than May 1 of any year, the Supreme Court shall “transmit” proposed rules to Congress, and that such rules shall take effect no earlier than December 1 of the same year “unless otherwise provided by law.” In other words, the rules take effect unless Congress affirmatively decides otherwise through the normal legislative process. Generally, Congress has simply allowed the rules to become effective.

In practice, the standing committee and the advisory committees include many judges, practitioners, and law professors. The presence of representatives from bench and bar ensures that rule-making will take place in the light of practical reality, and the inclusion of law professors helps to maintain the overall policy and theoretical perspective of the evidence rules. Though the meetings of these groups are hardly without contention, and though political and social perspectives can seep into the discussions, the work of the committees in no way resembles congressional deliberation. The committees act slowly, cautiously, and with truly substantive deliberation. All proposals that reach the Judicial Conference are published widely, opportunity for written public comment is provided, and hearings are held to take the testimony of interested persons. No rule reaches the Supreme Court without having been vetted in this way, and public response to proposed rules does at times affect their final shape.

The Federal Rules of Evidence were initially developed through the Rules Enabling Act process, and the Supreme Court transmitted the rules to Congress in the early 1970s. Though Congress debated some of the rules at length, most rules emerged with little or no change. In the more than 25 years since their adoption, the Judicial Conference has seen fit to amend the rules in only a small number of cases. Most lawyers who practice before the federal courts, and most district court judges, would state that the rules work remarkably well. Despite gaps in their coverage (the most notable of which being the absence of specific privilege rules), the evidence rules have served their purposes reasonably well.

It would be foolish to claim that rule-making under the Rules Enabling Act is apolitical, or that the process created by the Act is entirely devoid of political influence. In addition, as Wright and Graham point out, as far back as the early nineteenth century, rules of evidence were often the subject of partisan debate, and “[t]he average citizen [at that time] was likely to have a better acquaintance with the conduct of trials than the fans of Perry Mason.” [21 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure: Evidence § 5005, at 63 (1977).] Moreover, debates in the various advisory committees and in the standing committee often pit prosecutors against defense counsel and the plaintiff’s bar against the defense bar. But the influence of interest groups on appointed, uncompensated advisory committees pales in comparison with the effect such groups have on members of a legislature who are always looking ahead to the next campaign and the enormous amount of money that will be required to prevail in that contest. Spirited debate among groups involved in the promulgation of rules pursuant to the Rules Enabling Act should not be confused with the kind of debate that characterizes partisan politics. When North Carolina Senator Ernest Hollings, who chairs the Commerce Committee, was railing against the influence of Enron money on certain members of Congress and he was challenged about having himself received $3,500 from the company over a period of years, he was only half-joking when he pointed out that another senator had taken nearly $100,000 from the same source, and added, in reference to the sum he had received, “[h]eck, I’m chairman of the committee. That’s not a contribution, that was an insult.”

**CONGRESS ASSUMES A MORE ACTIVE ROLE**

From the adoption of the Federal Rules of Evidence in 1975 until the present, the Supreme Court has only proposed amendments to the Federal Rules on a few occasions, and most of those amendments have been relatively uncontroversial. The removal of gender-based language from the rules was a laudable development but hardly a controversy-provoking
change, for example. And when it became clear that the rule governing the use of prior convictions to impeach witnesses led to some absurd results, the rule was amended with little controversy. As academics are quick to point out, the rules do not work perfectly, and their doctrinal gaps are particularly troubling, but slow change is a value in a system that depends to such a great degree on certainty and predictability. As long as the advisory committees are in place and vigilant (perhaps even more vigilant than the present chief justice would like), bench and bar can feel assured that change will be incremental and cautious.

There is historical precedent for congressional involvement in evidence rule-making. In the 1850s and 1860s, Congress actively engaged in creation of evidence rules ranging from the establishment of the privilege of witnesses called before Congress to the abolition of any rules of witness competency based on race and interest in the outcome. One would have thought, however, that the adoption of the Federal Rules of Evidence and the existence of a standing committee on rules of practice and procedure would have relieved any significant pressure on Congress to take an active role in evidence rule-making. That has not been the case, however. The political pressures on Congress do not allow that body to be as satisfied with evolutionary rather than revolutionary change. Prompted by highly publicized events and the blowing of political breezes, Congress has on several occasions seen fit to change the course of evidence law on its own. A few examples will illustrate this trend, and the effect congressional action has had on the shape and scope of the rules.

In 1984, following the trial of John Hinkley for the attempted assassination of President Reagan, Congress amended Rule 704 to make inadmissible an expert opinion concerning the state of mind of a person that comprises an element of a claim or defense. Aimed primarily at stemming the "battle of experts" on the question of a criminal defendant's sanity, the amendment sweeps more broadly and draws into question the scope of its exception to the general thrust of Rule 704, which is to allow a court to admit opinion testimony even if it "embraces an ultimate issue to be decided by the trier of fact." Had the amendment been discussed and debated as part of the deliberative process established by the Rules Enabling Act, a clearer, more effective approach might have been defined.

In 1994, by its enactment of Rules 413 to 415, Congress made arguably the most revolutionary change in evidence law in over a century, and thereby cast into question fundamental precepts of evidence law and perhaps even substantive criminal law. A little background: as every law student learns, American trials are not exercises in assessing guilt or responsibility according to character. In a criminal trial, a person is not charged with being a "murdering type," but with having murdered a particular person on a specific occasion. In a negligence case, a defendant is not charged with being an incautious person, but with having failed to act with reasonable caution on a specific occasion. This is a fundamental value of American jurisprudence that can be traced back several hundred years into English history. It is supported by a principle that allows few exceptions: evidence that a person possesses a particular character trait is not admissible to prove that the person acted in conformity with that trait on a particular occasion. Evidence that the murder defendant is known as a violent person, or that she has murdered on other occasions, is not admissible to prove that as a result of the trait of character one may infer from the evidence, she murdered the victim in this case. The same holds true in the hypothetical civil negligence action. And this rule applies across the substantive law; its application is not limited to particular crimes or civil claims.

Rules 413 to 415 change all of that. These rules carve out two basic types of cases—sexual assaults and child molestation—and provide that prior instances of the same kind of conduct "may be considered for [their] bearing on any matter to which [they are] relevant." In a prosecution for rape, evidence that defendant has raped before is admissible to prove that he raped on the occasion in question.

As academics are quick to point out, the rules do not work perfectly, and their doctrinal gaps are particularly troubling, but slow change is a value...

In a prosecution for child molestation, other acts of child molestation may be offered on the same basis. In civil actions resulting from alleged sexual assault or child molestation, the same holds true.

The rules in question had been under consideration for several years during the administration of George Bush (Senior), but had not garnered sufficient support to move them before the Supreme Court for promulgation. The lawyers, judges, and scholars appointed by the Judicial Council believed the rules to be unwise, and refused to propose them.

Continued on page 91
he late Professor Bill Hobbs had two maxims for his students when it came to working in the Los Angeles County District Attorney's Office. The first was to expect the unexpected in the courtroom. The second was that it’s how students handle the unexpected that determines their success.

“When students decide to do trial work, they are choosing a field that is full of challenges,” said Hobbs, who ran Loyola Law School’s D.A. Externship Program from 1971 until recently. “You can never be completely prepared for any case. There are always going to be surprises.”

With the death of Professor Hobbs last March, Professor Susan Poehls now runs the program.

Recent alumna duVergne R. Gaines ’02 got a big surprise in a preliminary hearing for a carjacking case. When she questioned the victim on the stand, the victim identified the defendant as the man who stole her car. But under cross-examination, the victim pointed to someone in the audience.

Gaines had to react quickly. The defendant had been arrested after getting into an accident while driving the victim’s car. Gaines called to the stand the police officer who had accompanied the victim to the accident scene where she initially identified the defendant. The police officer’s testimony helped to bolster the case and the defendant was held to answer.

“That’s a terrifying thing to have happen,” says Gaines, who is assigned to the Inglewood office. “But Professor Hobbs prepared you for the incredibly unexpected moments.”

**CLOSING THE DEAL**
The D.A. Externship Program, a two-semester commitment, entails one semester in the trial advocacy course, and one semester serving as a law clerk in the D.A.’s Office. Eighteen students per semester are accepted into the program, whittling down the finalists from a pool three times that size. To make the cut, students prepare a four-minute closing argument from a fact pattern that they receive with their application materials. They deliver the closing before a professor, who serves as judge and jury. “I look for someone who would have the skills of a trial lawyer,” Hobbs said about the process. “I imagine them in front of a jury.”

In the trial advocacy class, students simulate courtroom situations every week. Because law clerks typically handle preliminary hearings for the D.A.’s Office, Hobbs did numerous mock proceedings in that area.

“I stress being able to pass for a D.A.,” Hobbs said. “I want them to be able to walk out of my class into a courtroom and know where to sit, whose turn it is, and what to say
next. I'd like them to be so good that after they put on their first case, everyone in the court assumes they are district attorneys."

During the externship, students can choose to either work two days a week or three. They are assigned to specific offices and often receive a case on their first day following the orientation. Law clerks are given actual cases and usually handle preliminary hearings. The state bar requires that the District Attorney's Office supervise the law clerk in the courtroom. But the amount of involvement that the D.A. has during the proceedings depends on personal style, Hobbs said. Some whisper constantly in the student's ear. Others observe quietly unless they feel their advice is needed.

It is a trial advocacy professor's duty to keep in touch with the student externs through weekly reports. Supervising attorneys are asked to provide performance evaluations at the end of the semester. The experience can be invaluable. Many Loyola graduates have gone on to work as district attorneys or public defenders at the county, state and federal levels.

"Students love the program," Hobbs said. "Loyola has always done a lot of clinics and placed students in positions where they can get hands-on experience."

Many Loyola graduates have gone on to work as district attorneys or public defenders at the county, state and federal levels.

**LEARNING CASE BY CASE**

Gaines remembers her first case vividly. She was handed a possession case on her second day of the externship. When she walked into the courtroom, her heart pounded. The judge, who knew she was a law clerk trying her first case, gave her a reassuring smile. Unlike the mock trials in the classroom, Gaines knew that every word she spoke would be recorded forever in a transcript. She chose a more formal approach, standing as she delivered her presentation.

"I had my script ready," Gaines recalls. "But I was fluid with my facts, so I was able to go forth without staring at my sheet of paper."

Continued on page 93
When William B. Colitre '00 told people that he wanted to be an entertainment lawyer specializing in Internet and technology issues, he got the same response. They told him he was crazy. Not only was it next to impossible to get into entertainment law right out of law school, but there was no such thing as Internet law.

Two years later, Colitre looks like a sage. At Loeb & Loeb, Colitre is assigned to both the Internet law group and the music group for the firm. When his colleagues need background on legal issues surrounding MP3 or TIVO, he's the one they ask.

"I proved people wrong on both counts," Colitre says. "There's no question, I would never have received this offer without my technology focus."

In a field in which lawyers pay their dues doing general transactions and litigation first, Colitre proved an exception to the rule. He credits Loyola's Entertainment Law Program, which gave him the knowledge and the hands-on experience to pursue his goal.

Technically, entertainment law is a cross-disciplinary study that brings together a wide range of issues, including the First Amendment, copyright, right to privacy, and intellectual property. But the key to the entertainment industry lies in contracts. Most lawyers in the entertainment world deal with contracts—whether it's negotiating, drafting or interpreting them.
"We're in the entertainment capital of the world," says Professor Jay Dougherty, who heads the program. "An entertainment lawyer does the same things as a transactional or litigation lawyer. The difference is that the product is entertainment. Your clients are creating and marketing a new product each time—a show, a movie, a record."

Determined to stay ahead of the curve, Dougherty organizes an annual symposium examining hot issues in entertainment law. This year's event, held February 22, explored media and social responsibility. A panel examined whether the media influences violence, bringing together lawyers who handled cases involving the band Slayer, the book Hitman, and the movie Natural Born Killers. Another session focused on privacy issues raised by unscripted reality shows. Tom Goldstein, dean of Columbia School of Journalism, delivered the keynote address on ethics and the law. "We've dealt with cutting-edge issues over the past four years," Dougherty says.

AN OLD-FASHIONED BUSINESS

Coltrice got the inside track by being on the vanguard of new media technologies. But in many ways, entertainment law is still about old-fashioned business values. Hillary Bibicoff '91, recently named to Los Angeles Business Journal's list of Hollywood's hot young dealmakers, made her reputation by being responsive to her clients, giving sound advice and problem-solving.

"Most of my clients are creative people and they rely on lawyers for business advice."

"Most of my clients are creative people and they rely on lawyers for business advice," says Bibicoff, a partner at Greenberg Glusker Fields Claman Machtinger & Kinsella LLP. "You're a much better lawyer if you think about the business side. How much is this worth to the client? If we want something and the studio wants something, can we find a solution in the middle?"

Bibicoff was hired out of law school to do corporate securities at the now-defunct Cooper Epstein & Hurewitz. With California still in recession in 1991, she found herself taking on more and more work for the firm's entertainment department. She soon transferred into the department, where she represented the production companies in movie deals and handled chain-of-title reviews.

After the firm shut its doors, Bibicoff went to Live Home Video (now known as Artisan Entertainment) and then Rysher Entertainment, a motion picture and television production company. In 1997, she received an offer from Greenberg Glusker. The firm, whose partners include the renowned Bert Fields, does both litigation and transactions. Firm clients for whom she works include such luminaries as director James Cameron and actors Dustin Hoffman and Warren Beatty.

ON THE CUTTING EDGE

Because of the proximity to Hollywood, students participating in the Entertainment Law Practicum can receive course credit for internships in the field. Over the years, students have landed plum internships with industry giants: Warner Bros., Paramount, 20th Century Fox, ABC, NBC, Sony, Universal Music, and more. Dougherty, a former senior vice president of legal affairs at 20th Century Fox, keeps a list of places where students have worked as interns. He posts available positions on his office door.

In the classroom, the program offers three core classes: entertainment law, Internet law and copyright law. Students also can take courses on motion picture production finance, television production, music law, trademark law, the art of negotiating, and the First Amendment.

Besides a source of practical experience, Hollywood also provides access to guest speakers and adjunct professors who are industry veterans. And Loyola runs one of the oldest entertainment law journals in the country. "It's certainly a different experience from taking entertainment law in, say, Lansing, Michigan," Dougherty says.
As a transactional lawyer, Bibicoff represents the talent side of the movie industry. The film projects that her clients work on run the gamut from Sundance material to studio blockbusters. Her personal clients include 24 Hour Fitness, the estates of Harpo and Chico Marx, and a slate of up-and-coming actors, directors, writers and independent producers.

"The major, established celebrity and the up-and-comer each have their challenges," Bibicoff says. "There's a lot of diversity in this line of work."

**PERSISTENCE PAYS**

Colitre decided to attend Loyola after creating the web archive of original programming for KCRW, the public radio station based at Santa Monica City College. Though the project was for non-commercial radio, he recognized that eventually this would be an area in need of legal expertise. At Loyola, Colitre landed an internship at Warner Bros. online division. A connection he made through the internship eventually led to his position at Loeb & Loeb.

“It was all through persistence and meeting people through work experience,” he says. “Nobody's going to hire you because they met you at a party. But when you meet people in a work context, they see what you're like on the job.”

That was also the approach of Erin Einstein '99. She interned at Showtime for the practicum. Rather than take an entry level position in general transactions and litigation, Einstein continued as an intern after passing the bar. The gamble paid off. By the following spring, she was hired as an attorney.

“I'd rather pay my dues in the industry than outside for more money,” Einstein says. “It's a life choice.”

Einstein negotiates and drafts Showtime’s agreements with directors, producers, writers and actors who work on original movies and series. She also analyzes and drafts rights documents to screenplay, book, and life stories. Her work is often done before the script is written. She sees the outcome at Showtime screenings, festive affairs attended by the stars. For most people, attending a screening would be a great perk of the job. For Einstein, the job itself is enough reward.

“At any given time, we'll have two or three hundred projects in development,” she says. “The days are never boring.”

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**HILLARY BIBICOFF '91**

Bibicoff is going to the movies, though she wouldn’t call herself a movie buff. She’s more likely to have seen an obscure film involving one of her clients than a box-office smash in the theaters.

“I go to fewer movies than you’d think,” says Bibicoff, a partner at Greenberg Glusker Fields Claman Machtinger & Kinsella LLP. “Movie times aren’t set up for lawyers. They’re either too early in the evening or too late.”

In the high-powered field of entertainment law, celebrities turn to Bibicoff for her business expertise and legal acumen. The firm’s clients include Oscar-winning director James Cameron and Hollywood icons Dustin Hoffman and Warren Beatty. Bibicoff is developing her own talent roster with a slate of promising actors, writers, directors and producers.

**STUART LINER '87**

Liner and founding partner Steven Yankelevitz built the firm with lightning speed. At first, Liner was the litigator, Yankelevitz the transactional lawyer. With Liner handling the business end of the practice, the firm has grown to more than 60 lawyers. In 2001, the firm opened an office in San Francisco.

“We have constantly strived to add people that will help broaden our practice,” Liner says. “One reason we decided to do this is the firms that are protective of our relationship with our clients. This gives us a competitive edge.”

His philosophy of surrounding himself with the best people extends to family as well. Though he could easily credit entrepreneurial spirit and sharp instincts for his accomplishments, he instead credits his wife, Stephanie: “I couldn’t do it without her.”

**ROGER ARMSTRONG '95**

Armstrong practiced transactional law and represented film and television actors, screenwriters, directors, producers and production companies. With a strong background in film finance, he specializes in finance structures including gap financing, foreign split rights financing and insurance-backed motion picture financing. He also negotiates employment agreements for motion picture and television executives.

While at Loyola, Armstrong served as editor of The Loyola of Los Angeles Law Review. He became a father during his third year of law school and remembers feeding the baby as he read through law review submissions. Though he had originally planned to go into environmental law, he soon found he missed the entertainment industry. At Manatt Phelps, he made partner in 2001 and serves as co-manager of the entertainment practice group. "The firm has given me a lot of responsibility and support," says Armstrong, a member of Loyola’s Board of Governors. “Every day is a different kind of deal. It’s always fresh. I like the challenge that represents.”

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*LOYOLA LAWYER*
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LAW SCHOOL
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began working exclusively in elder abuse law after a man named Jesus Noy came to his office eight years ago. Noy told the story of his aged mother who had fallen in the shower and due to the heat of the water was scalded, receiving burns over 18 percent of her back. Mrs. Noy was prone to fainting and was frail, but was left unattended at her nursing home because they were understaffed and uncompassionate. Stephan took the case and remembers the nursing home’s defense was, “She’s gonna die soon anyway.”

Now, because of government intervention and the tenacity of men like Garcia and his colleagues at Wilkes & McHugh, elders and their relatives can fight the nursing homes and come home with something to show for it, other than large attorney fees. Because of the growing need for law in this area, Wilkes & McHugh, sponsors of the Elder Abuse Symposium last spring, have sponsored an Elder Abuse Professorship at Loyola.

Garcia, the main speaker at the spring symposium, views himself and his fellow advocates as just that, advocates for those who cannot protect themselves from abuse, neglect and the like. It is the goal of Wilkes & McHugh, Garcia and almost any other attorney who braves this field of law, to wipe out elder abuse and neglect in nursing homes.

The law insulated nursing homes—now the mighty for-profit nursing home industry has lost its impervious nature and humanity is slowly returning to the face of the senior community in this nation.

The over-60 crowd is the fastest growing age group in this country. It won’t be long before that age group represents the majority. Yet some nursing homes treat them like cattle, financial institutions treat them like easy prey, and gambling and telemarketing corporations see them as “suckers.” As these societal gaffes are finally reaching the surface, legally related groups and institutions need to address these issues straight on to hasten remedial measures. Thanks to the generosity of Wilkes and McHugh, a leader in elder abuse suits, “Honor thy Mother and Father: Symposium on the Legal Aspects of Elder Abuse” was fea-
The symposium focused on the current changes in the law, local, state, and federal, which are sealing the cracks that have allowed such blatant mistreatment toward a very large group of Americans. Attorney General Lockyer stated that his office is currently working diligently to enforce the current laws and draft new protective statutes in order to prevent and protect. After the attorney general’s introduction, the symposium discussed four broad topics: financial abuse (individual fraud, theft, false pretenses), lending and gambling abuse (coercion, institutional fraud, inducement), physical and mental abuse within medical care facilities, and how the law is changing to reflect these abuses.

The most notorious of the elder abuses is the physical and mental torture that has occurred in a number of for-profit nursing homes. Many nursing homes have been understaffed for years, and as a result, the clients/patients are denied adequate care and comfort. Not only is the staff unable to adequately serve the physical health and maintenance needs of the patients, they are spread so thin that eventually the stress causes the staff to execute their anger in the form of beatings and apathy. Of course, while one can blame the orderlies, or claim that the patients are a burden, the fact of the matter is that the corporations who run the homes are doing so for a profit. In many instances, these business owners often cut back on staff, substitute cheaper and less effective medicine, hire less experienced workers, cut back on janitorial concerns and so on, resulting in the de facto torture of our parents, grandparents and other loved ones. So, rather than enjoying the last few years of one’s life in a comfortable setting, every day is suffering.

Until 1991, victims of abuse or neglect at a nursing home would have three battles to fight. First, victims would have to secure an attorney. This was very difficult, because there was a great financial disincentive for an attorney to even consider taking the case. Litigation, especially against large corporations, is difficult and time consuming, in other words, expensive. Most nursing home residents cannot afford to pay hourly wages of a competent attorney, and contingency arrangements were out of the question since recoveries were typically small and often injunctive in nature. The next two battles were concurrent. The victims had to fight the home and death. The home had the cash, control and a cornucopia of attorneys. The victims were probably already in poor health when they arrived at the facility, and if they were physically injured that was sure to exacerbate their condition, and the stress of a trial is hard on any person, let alone someone more than 70. Yet, the major problem was that if the victims did pass away during the litigation, their cause of action died with them (another reason it was hard to find an attorney to take the case).

Therefore, nursing homes could act any way they wanted, because they knew no one could successfully sue them, even in the face of constant senior complaints and Congressional studies. Yet, when the epidemic hit the proverbial fan in the mid-1990s, Congress stepped forward despite heavy lobbying from the nursing home industry. Now when seniors are victimized in a home, they can sue for serious damages, their claim survives their death, and attorney’s fees are automatically attached. (As well, it doesn’t hurt that these offenses are more and more in the social consciousness). Unfortunately, nursing homes are still winning more than half the cases; maybe in time that trend will reverse.

The preceding is an example of the kind of action that is being taken in elder abuse law. It gets much trickier when it comes to financial and lending issues, because competency of seniors gets called into issue. It would be equally insulting to hold that seniors are unable to handle their fiscal affairs, yet we all know a loved one who was “talked into” buying insurance or making repairs they really didn’t want or need.

Gambling is a very common recreational activity for the elderly, and the casinos know this and target them. Of course, it is not a crime to market to a group, but there is a point were such inundation becomes inducement or coercion. Laws of protection in this area would be more beneficial than laws of persecution. One such law allows seniors addicted to gambling to register with gaming bodies to prevent their entrance.

What is ironic and sad is that old age is inevitable. At some point all of us will be amongst the “target” groups, yet that doesn’t seem to prevent exploitation. Maybe with more public debates on the subject, like the symposium held here at Loyola, we can move back to admiring our elders instead of condemning and exploiting them.
The September 11 tragedy sparked a renewed interest in proposals to create a national identification card. If adopted, such a card would likely operate like a domestic passport, one that would include tamper-proofing features like biometric data and embedded chips.

Imagine arriving at an airport security checkpoint. Your identification card is inserted in a machine that reads your card and compares it to a national database of suspicious persons. You position your face against another part of the machine that scans your retina and matches that image against data contained in the card. If the data matches, you’re permitted to proceed.

Should the United States adopt a centralized national database and identity card? If it did, would domestic security be enhanced?

Technologists argue that a national ID card, would permit instant confirmation of identity. More importantly, they contend that the key feature missing now—authentication of the data on identification cards—could be achieved with current technology.

On the other hand, opponents raise concerns about privacy and civil liberties. To be effective, every citizen or resident of the United States would be required to submit substantial information to an agency like the FBI. Every person would be required to appear at a federal collection office to have a photo taken and to allow biometric data such as a palmprint or retinal image to be taken and recorded. Information such as change of residence would routinely need to be submitted from birth to death to keep the government’s database up-to-date.
Proponents of a national ID card argue that a standardized nationwide card would be less susceptible to forgery and misidentification. For example, the current default ID—state-issued driver’s licenses—are very easy to obtain legitimately. Moreover, driver’s licenses are issued by each state, which maintain their own separate records. Some fear that such decentralized databases would enable a terrorist to forge a Tennessee license (for example) and fly out of Seattle where minor discrepancies wouldn’t be noticed and where it would be difficult to check the forged document against a master database.

A national identification card might also enhance security by allowing for speedier investigations after a terrorist attack. Data collected at various points in the system would allow perpetrators and their potentially dangerous cohorts to be more easily identified and tracked. Of course, since the criminal element does not willingly identify itself, the rest of us would be tracked as well. Are the trade-offs of a comprehensive national database system containing substantial information on every person lawfully present in the territory of the United States worth the loss of privacy and civil liberties?

**IDENTIFICATION, AUTHENTICATION AND TRACKING**

To evaluate this, one must distinguish among three purposes an identification card might serve: identification, authentication, and tracking. Identification refers to the capacity of a card to identify the holder by name, number, or some other unique feature. Usually this is done with a photo of the holder, but not always. The challenge for any system of identification is how to prevent fraud: how does one prevent a person from presenting a document that misidentifies the holder?

A much more reliable identifier is something that cannot be changed or forged. Hence, national ID card proponents urge the use of biometric information—such as a retinal image, palmprint or DNA. Such technologies promise to authenticate the holder of an ID card in two ways. First, a card containing biometric data can be checked against a national database of known characteristics of the cardholder much like credit cards are routinely swiped millions of times every day. In addition, the card itself would likely contain a chip holding encrypted personal data that would match the chip to some biometric feature of the holder. For example, at the same time a card is swiped, the holder would supply a palmprint or a retinal scan, which would be matched against the card. Each of these mechanisms would be designed to prevent fraudulent identification.

As the card is used, the holder’s movements could also be tracked. Every swipe of the identification card would create a new record of a person’s travels. Yesterday, Joe passed through the Holland Tunnel and visited LaGuardia. Today, Joe entered the Sears Tower, the Federal Courthouse in Chicago and cashed a check at the Hilton. Tomorrow, Joe will pass through O'Hare on foot and the Brooklyn Bridge by car. In short, a national ID card would permit the government, as a matter of course, to track the movements of every person in the country.

**WHAT ARE BIOMETRICS?**

A biometric identifier is a unique physical characteristic of a person such as a palmprint or a retinal scan. Recent proposals for a national identification card have included biometric devices. Here’s how it would work: The card issuer would implant a tiny computer chip into the identification card that contains characteristics of a person’s physical features impossible to forge, say a retinal scan. Then, at a checkpoint, a machine scans the holder’s eye. The machine compares the eyescan to the image contained on the chip. If the two match, the holder would be “authenticated.”

**WILLIAM SAFIRE, THE NRA AND THE ACLU IN BED TOGETHER?**

Civil libertarians, privacy watchdogs, and conservatives such as William Safire and the National Rifle Association have vented strong opposition to a National ID card. Their objections have coalesced around three types of arguments: privacy concerns—such as the fear of government control over a substantial amount of personal information contained in centralized databases; pragmatic concerns involving cost, implementation or bureaucracy; and civil liberties concerns—such as the loss of anonymity and the tracking of travel.

Privacy concerns stem from a realization that information is power. Privacy involves the principle that individuals should control access to information about themselves. Law Professor Daniel Solove analogizes the loss of privacy to the fear experienced by Joseph K. in the Kafka novel, *The Trial*. Awakening one morning, Joseph K. finds a group of officials in his apartment telling him he is under arrest. They leave, and Joseph K. spends the rest of his life attempting to find out why he has been arrested, to no avail. He hears about a complex but secret court that has apparently assembled a detailed dossier on him. At the end of the novel, two officials appear in the middle of the night and execute him.

According to Solove, the hallmarks of *The Trial* are powerlessness, vulnerability, and dehumanization created by the collection of reams of personal information where individuals lack any meaningful form of participation in the
collection and use of their information. That image captures many people's nagging sense of loss of privacy accompanying the proliferation of computerized databases. Solove argues that we are heading toward a world resembling Kafka's vision, "a mindless process—of bureaucratic indifference, arbitrary errors, and dehumanization."

Many people—even those who trust their government more than members of the NRA—might be reluctant to grant a national security state the power to require everyone to submit fingerprints or retinal scans. Allowing the state to create centralized databanks, containing billions of personal databits about every person in the country, centralizes enormous power in the hands of the government and creates great risk that that information would be put to nefarious uses.

Our country has a history of mistrusting dissenters. Even without the aid of tracking data that would be permitted by use of a national ID card, throughout the 20th century the FBI spied on civil rights organizers, antiwar protestors and church groups that opposed government aid to military dictatorships. Indeed, on May 30, Attorney General Ashcroft announced that the government would relax rules that prevented domestic spying.

An illustration of unanticipated uses for data collection can be found in Massachusetts where bars collect data contained on their patrons' state driver's licenses. According to the New York Times, to verify the age of their patrons, taverns employ devices that read the magnetic code on the back of the license. This data includes the name, address, birth date and other personal details such as height, eye color and sometimes Social Security numbers. "You swipe the license, and all of a sudden, someone's whole life as we know it, pops up in front of you," says Paul Barclay, one bar owner. "It's almost voyeuristic."

Originally, taverns acquired the scanning machines to identify underage drinkers who use fake IDs. But Barclay soon discovered that the technology allowed him to create a database of personal information, providing an intimate look at his clientele that has proven useful in marketing. "It's not just an ID check," Barclay says. "It's a tool."

Now, for any given night or hour, Barclay can break down his clientele by sex, age, ZIP code or other characteristics. If he wanted to, Barclay could produce a list of blond women named Patricia under 115 pounds who came in over a weekend. More practically, he can build mailing lists based on all that data—and keep track of who comes back.

Continued on page 95

FUNCTION CREEP
Privacy advocates worry that once a system of data collection and control is in place, it would be very easy to expand the system in ways not today imagined. "Function creep" refers to the belief that new uses will readily be found for a system of control that has been installed. Today, for example, the chip on an ID might contain only 10 identifying features or personal info bits; tomorrow 1,000. Today, the ID might be demanded sparingly at courthouses, airports, stadiums, and tall buildings; tomorrow everywhere. Today, citizens' movements might not be tracked, but tomorrow's disaster will create new calls for everyone's movements to be monitored. A corresponding worry is that creating a single nationwide card would allow diffuse and decentralized databases to become linked. Reasons might be found to allow both public and private databases to be interconnected. For example, driver's license information, credit reports, arrest records, purchasing habits, driving records, auto claims experience, employment history, children and marital status, wealth, property ownership, professional licenses, residential history, and educational records could be linked using the common number that would accompany a national ID card. And, how does one restrict or control access to such a system?
LOYOLA ALUMNUS TAKES HELM OF WESTERN LAW CENTER FOR DISABILITY RIGHTS

By Eve Hill

Nicholas DeWitt '79 took over as president of the Western Law Center for Disability Rights in January. DeWitt served as an assistant United States attorney, and then became an associate, and later a partner, at Paul Hastings Janofsky & Walker. In 1999, he started his own firm, DeWitt & Roberts, specializing in corporate litigation.

This year, DeWitt serves as president of the Western Law Center, a clinical disability rights program at the law school. The Western Law Center was founded in 1975 and joined Loyola Law School in 1983. The Center hosts Loyola students throughout the year in its four substantive programs:

The Civil Rights Litigation Project has a team of staff attorneys, pro bono co-counsel, and law students who advocate for the rights of people with disabilities. Our cases improve the lives of the individual parties, and also impact the lives of thousands of individuals with disabilities.

The Cancer Legal Resource Center provides specialized information, education, resources and referrals on cancer-related legal issues, such as discrimination, health care, or employment. This project helps people with cancer focus their energies on fighting the disease, rather than on fighting legal battles.

The Disability Mediation Center (DMC) provides expert mediators and conciliators to help parties in disability-related disputes resolve their conflicts without going to court. The DMC resolves 80 percent of its cases successfully, for a nominal fee to the parties.

The Learning Rights Project provides advocacy, workshops, referrals and outreach to minority and low-income students with learning difficulties. Learning Rights' mission is that all students with learning disabilities receive an appropriate education to achieve their dreams.
The Western Law Center also does extensive education and outreach on disability rights issues, including training businesses and government entities about their responsibilities under the ADA, training individuals with disabilities about their legal rights, bringing disability leaders together through the Disability Rights Leadership Conference and Disability Rights Roundtables, and bringing students with disabilities and potential employers together through attending Disability Mentoring Day.

IN THE PAST YEAR, SOME OF OUR ACHIEVEMENTS INCLUDE:

The Civil Rights Litigation Project challenged the Kodak Theatre’s failure to provide wheelchair accessible seating.

The Learning Rights Project assisted three families in having their children with disabilities educated in their neighborhood school, instead of being bussed to a distant school.

The Civil Rights Litigation Project challenged the Los Angeles Police Department’s policy of not providing sign language interpreters for deaf witnesses, victims, and arrestees.

The Disability Mediation Center resolved over 100 employment, housing, and family disputes involving people with disabilities, allowing the parties to avoid the expense and delay of litigation, to maintain their relationships, and to come up with creative solutions to their problems.

The Cancer Legal Resource Center helped a child with leukemia get the treatment protocol she needed, even though her HMO usually would not cover it.

The Western Law Center is a 501(c)(3) corporation and is supported by Loyola Law School, grants, and individual donations. Without the financial support and volunteer work of Loyola Law School alumni, like Nick DeWitt, the Western Law Center would be unable to continue its essential services. Please consider donating time and/or a gift of money to support the Center.

During the week of April 8, all first-year students participated in oral arguments as part of their final assignment in Legal Research and Writing. Over three nights, Loyola Law School conducted more than 210 arguments, involving 54 lawyers acting as judges. Many of the judges are law school alumni who volunteer every year to help with this effort. Based on the recommendations of the judges, the Legal Research and Writing faculty compiles a list of the best advocates to pass on to the coaches of the law school’s various advocacy competition teams.

This year, students argued a motion for summary judgment on the issue of whether the compensation terms in a contract between a personal manager and a singer were unconscionable. Relying on either California or New York law, the students had written a memorandum of points and authorities on either side of the issue, based on a case file consisting of partial deposition transcripts and the contract. They had exchanged papers with opposing counsel, a student in another section whom they did not know, about one week before the arguments.

Before the arguments, each judge received the papers of the students who argued before them as well as the problem and a bench brief summarizing the facts and the law. Each argument lasted about 30 minutes, and the judges ran their “courtroom” much like a typical law and motion calendar. Judges gave constructive feedback to each student on their oral advocacy skills and received two hours of MCLE credit for their participation.

The oral arguments are not graded, but are a mandatory component of the Legal Research and Writing course. For virtually all first-year students, this is their only opportunity to hone their oral advocacy skills during the first year. They are given instruction in oral advocacy ethics, strategy, and techniques by their Legal Writing professor. For many students this is a highlight of their first-year experience.

The judges enjoy the exercise as much as the students. Jennifer Nassiri ’00, who participated for the first time this year, commented that “it was a fantastic experience. I really enjoyed the process and meeting the students. I hope you will consider me in the future.” If you are interested in volunteering to serve as a judge, please contact Professor Arnold Siegel, director of legal writing, at arnold.siegel@lls.edu.
Following the remarkable Lakers' victory in Game 7 of the NBA Western Conference Finals, various players were interviewed by the media and uttered the expression “Heart of a Champion” over and over. It was their explanation for the tenaciousness and poise with which the Lakers battled through adversity to defend their championship against a relentless opponent.

After my first year or so as assistant dean of career services (overlapping with the first year of Dean David W. Burcham's deanship), I believe I understand what the “Heart of a Champion” means. Not in the athletic sense, of course, but in the sense of a different adversity—that of our one-year dip in the US News & World Report rankings of law schools. For reasons that no longer matter, the employment rate of the Class of 1999 dipped, resulting in US News lowering our ranking in its 2001 report.

This caused consternation among some of our alumni and concern among some of our students. To my own dismay, Dean Burcham, who has brought to his deanship unsurpassed energy and passion for the law school, was taken to task by some alumni concerned about their firms' continued willingness to recruit at Loyola in light of this rankings dip, among other things. Those proverbial “bullets” were meant for Career Services; however, Dean Burcham took them himself and took them in stride. Although another dean might have left the affected department to “swing in the wind,” Dean Burcham pronounced to the deans and department heads that this was a Loyola Law School problem—not just a Career Services problem. It was, of course, the responsibility of Career Services to rectify what we knew to be a one-time anomaly in the employment rate, and we did: the 2002 rankings restored Loyola to the second tier, where the law school had always ranked before. We did so with the support of the dean, who enabled us to devote a career counselor with a job placement background (Marla Najbergier) to helping new graduates find employment. (Marla was just promoted to assistant director in recognition of her success and outstanding service to new alumni.) And, we did so with the help of the larger law school community, especially faculty and alumni. In particular, the Faculty Career Services Committee, led by Professor Katie Pratt and aided by Associate Dean Victor Gold, provided invaluable assistance to us in collecting vital graduate employment data.

The HEART of a CHAMPION

By Graham Sherr, Assistant Dean, Career Services

ALUMNI MADE THE DIFFERENCE

In the last incomparable issue of the Loyola Lawyer, I wrote about “The Power of a Phone Call” to jumpstart a new legal career; how the de minimus effort of phoning Career Services with a job notice can dramatically alter a student's life. So, to every alum who expressed concern about the rankings, I had this reply: no one has more power to affect the employment rate of our graduates than alumni and other employers. I exhorted alumni to aid us in our effort to produce a higher employment rate and they responded.

Alumni played a critical role in restoring Loyola's ranking by apprising us of job opportunities at their respective employers and in continuing their firms' participation in OCI. Alumni “reaching back” to current students and new graduates is the lifeblood of new legal careers. It was a long, tough year. We believed we would succeed in restoring our previous ranking but couldn't be sure until the clock ran out and US News notified us of the new rankings.

Throughout this effort, Dean Burcham provided leadership, encouragement and support. He showed concern about the implications for the law school, its students and alumni, without ever losing perspective about it. Although no dean should ever have to start his deanship with a year like the one in which ours just did, I can think of no better dean to lead the law school through such a year, and any other. With his passion for Loyola, he inspired us as a law school community to dig deep, and we succeeded. Tenaciousness and poise: the “Heart of a Champion.”
A man named Salvador Dolly gives blood for a routine genetic test to determine his fitness to father a child. The testing company, Advanced Genetic Testing Company (AGTC), then sells the remains of the sample to NuGenEra, a biotechnology company. NuGenEra discovers that Dolly's genes make him resistant to HIV.

The company responds to this discovery by taking out a patent on both Dolly's genome and a series of gene sequences that confer resistance. When NuGenEra informs Dolly his genes guard against the deadly virus, he decides to set up a business to market his blood to research institutions. To protect its patent, NuGenEra sues Dolly for patent infringement, saying that it owns his genome.

Does the patent mean that Dolly must forego any rights to his own genome? Does it violate his privacy or property rights? Should these rights be balanced against society's need for the tests and therapies for HIV that might be derived from NuGenEra's research on Dolly's genome? These issues were highlighted last November in a mock trial at the California Institute of Technology, as part of the school's Program for Law and Technology, in collaboration with Loyola Law School.

During arguments made by students from both schools, Judge Marilyn Hall Patel, who presided over the Napster copyright case, had to decide whether to invalidate the NuGenEra patent and throw out the company's suit against Dolly for violating the patent on his own genes. Many of the arguments centered on the usefulness of Dolly's genes—utility being one of the principal criteria for granting a patent. In its patents, NuGenEra claimed that both Dolly's entire genome and 10 genes within it, called the P sequences, could be employed to create diagnostic tests for determining resistance to HIV and to produce therapies to cure the disease.

Dolly's attorneys argued that the genome—and even the P sequences—consisted of DNA for which the specific genes that conferred resistance had not yet been identified; the lack of utility that meant the patents should be declared invalid. They also contended that the patent violated Dolly's rights to privacy, property and personal autonomy. In her decision, Patel allowed the mock case to move forward to a jury trial (see http://techlaw.lls.edu/atic3/ordr.pdf). In doing so, she affirmed that the P sequences had a legitimate use as a diagnostic tool to ascertain HIV resistance. But she validated the part of NuGenEra's patent that covered Dolly's whole genome because of a lack of clear-cut applications.

Acknowledging an aversion to judge-made law, Patel would not embrace privacy or other public policy arguments made by Dolly's attorneys, citing the absence of legislation and case law to guide her. But, she did seem inclined to find some means of suggesting protection for genetic property within the bounds of existing law. The judge noted that genetic material is unique to each individual. Thus, Dolly may have the right to sue in California for misuse of his likeness for commercial purposes.

The case illustrates how the genomics era may affect existing patent law. So if NuGenEra v. Salvador Dolly is any portent, whatever part of one's self that is locked up in the genetic code may be eligible to be owned and bottled by someone else.
Laws of the Holy Book

Universities offer an alternative to the Western perspective by teaching courses in Jewish law.

By Gaby Wenig

Reprinted with Permission from The Jewish Journal

For years, centuries really, Jews who chose careers in law did so in secular law, while Jewish law was kept within the four walls of the yeshivas.

These days, that distinction is fast disappearing. There is an increasing trend among top U.S. law schools—places such as Yale, Harvard and Columbia—to teach Jewish law, and a preponderance of students, both Jewish and non-Jewish, are choosing the subject.

The same goes for students in Los Angeles. Loyola, USC and UCLA offer courses in Jewish law. Rabbi Yitzchok Adlerstein, who holds the Sydney Irma Chair of Jewish Law at Loyola, attributes the popularity of the subject to a student's curiosity. "The students take Jewish law because they are intrigued that Judaism has something to say about the issues facing our society," Adlerstein told The Journal.

Adlerstein structures his course in a way that allows students to see just how Jewish law differs from Western law. "The single most compelling difference between Jewish and secular laws is the inclusion of moral values. In Western law, if you want to know the right thing to do, you have to go outside the law to the vaguer sanctions of conscience, and what resonates most with students is the incorporation within Jewish law of the moral and ethical themes," Adlerstein said.

"For example, there are Good Samaritan laws in the United States in a handful of states, and what they do is hold blameless a person who intervenes on behalf of the distressed person if the intervention proves injurious. There is no state in the union that makes it mandatory to stop and intervene on behalf of that person, but there is a Torah law that says you have to stop and help.

"Not only is there a verse in the Bible, but it has also been expanded into Jewish law, and it tells me how far you have to go and extend yourself," he said. "That is an example of certain concepts of affirmative intervention that can be expected in a religious system of law, which can't be in another."

Adlerstein is also careful to impress upon his students the breadth of Jewish law, and the fact that—as opposed to Western law, which is reserved for lawyers—Jewish law is meant to be studied thoroughly by the layperson. "The law is something that everyone participates in," Adlerstein said.

Laurie Levenson, a law professor at Loyola who was instrumental in setting up the school's Chair of Jewish Law, agrees that it is the ethics (in)herent in Jewish law that makes it imperative for study. "There is an enormous value in teaching the morality of the law," Levenson told The Journal. People are constantly raising questions about lawyer's ethics and having a class in Jewish law can only help students in dealing with those issues. It gives the students a much deeper understanding of justice."

Professor Arthur Rosett, who teaches Jewish law at UCLA, concurs that it is the moral vacuum of Western law that draws students toward Jewish law. "I think that our students are looking for something beyond modern legal positivism as a source of authority. A number of students feel that values are not accurately represented in modern
The study of Jewish law in secular institutions raises some questions about the influence that religious legal teaching might have in a country that prides itself on the separation of church and state, but according to Professor Eugene Volokh, an expert in constitutional law at UCLA, this is a non-issue. "Certainly, a judge can't say, 'The Talmud says X and therefore it should be the law,'" Volokh said. "But lawyers and judges are perfectly entitled to make their decisions influenced by their moral code, whether it is a religious code or a nonreligious code."

But will learning Jewish law make a difference to the way law is practiced in this country? Adlerstein believes that although the study of Jewish law will enrich a student's perception of the law, "the impact on general society is something we still have to wait and see."

"You can't prove your point in Jewish law without going through all the different alternatives," he said. "In Western law you can appear in front of a judge and make an argument that seems intuitive; then you win. Following the Jewish law approach is going to be helpful in terms of being able to master the comprehensiveness of the law—rather than trying to find the first thing that works."

Adriana Cara, who is not Jewish, but was nevertheless the top student in the Jewish law course at Loyola, believes that Jewish law is going to make an enormous difference in how she practices law. "If anything, the course reinforced my own belief that as a lawyer you have to be really ethical. I think that the most valuable thing I carried away from that course is how important it is to be a good person. You can never forget the human side, and you have to be sure that the choices you make are ethical ones so that you can look at yourself in the mirror."

"The single most compelling difference between Jewish and secular laws is the inclusion of moral values."

David Burcham, the dean of Loyola Law School, is unsure whether these courses will have any impact at all. "To be honest I can't see how these courses have affected [the legal world]. I wish we could find a way to measure how our ethics instructions create better lawyers, but there is really no way to quantify that. Anecdotally, I know that they are very well received and respected courses, and I hope we are making a difference, but we have to go on faith."
Detention, Material Witnesses & the War on Terrorism

By Laurie L. Levenson
Professor of Law
William M. Rains Fellow & Director, Loyola Law School Center for Ethical Advocacy

The recent war on terrorism has prompted law enforcement to use material witness laws to detain suspicious individuals who have not yet been charged with a crime.

The use of these laws is troubling because it is contrary to the original purpose of material witness laws. Moreover, this strategy is a disturbing reminder of how easy it is for law enforcement to incarcerate individuals even before they have been convicted of a crime.

The trend toward incarcerating those feared to be threats, but not proven to be so, began years ago. Gradually, preventative detention has become an accepted part of our philosophy that even individuals who are presumed innocent, may be detained when other societal concerns outweigh their liberty interests.

THE ROOTS OF PREVENTATIVE DETENTION

Fifteen years ago, Justice Thurgood Marshall warned in his dissent in United States v. Salerno, that we are quickly moving to a criminal justice system where a person innocent of any crime may be jailed indefinitely. The issue in Salerno was the constitutionality of the Bail Reform Act of 1984 that authorized detention of defendants who pose a pretrial danger to the community. At the time it was adopted, the new law caused quite a stir. Defendants were to be presumed innocent and bail was to be determined based upon flight risk.

When the majority held in Salerno that prospective danger to the community could be used as a criterion for denying bail, we moved into an era in which technically there might be a presumption of innocence, but a host of criminal and civil laws would nonetheless allow society to detain individuals because it suspects they could cause future harm.

When Salerno was first announced, there was strong public reaction. Editorials in three major newspapers condemned the decision. The Los Angeles Times wrote, “The purpose of bail is to make sure that an accused person will appear at trial while not keeping him in jail before he is convicted. It is a perversion of the system to use bail to keep people in jail without trial. If there is a case to be made against someone, let the government make it. If not, ‘preventative detention’ should not be used as a substitute.”

Similarly, Stephen Chapman in the Chicago Tribune wrote, “‘Innocent until proven guilty’ is one of those axioms so basic to the American way that it can be repeated by every school child. So when the Supreme Court does violence to the concept,...the damage ought to evoke alarm.”

Finally, the New York Times editors opined, “Who is hurt by this decision, other than thugs like Anthony (Fat Tony) Salerno...? But [he’s] not the only one. ‘Lock him up,’ today’s prosecutor may urge. ‘There’s danger of violence.’ The sharper danger is that tomorrow’s prosecutor will find it easier to ‘regulate’ other defendants, who
harbor unpopular ideas. In defending the rights of unsavory citizens, we defend our own. In restricting them, the Court demeans liberty.” Attitudes have changed. Following Salerno, the public and courts predictably moved into an era in which we are relatively comfortable with preventative detention. Legally, there might still be a presumption that a defendant was innocent, but we have many more laws today that permit the preventative detention of individuals in the name of guaranteeing society’s security.

DETENTION AND THE WAR ON TERRORISM
The War on Terrorism has capitalized on this new attitude. Following the events of September 11, 2001, the Justice Department and courts had little hesitancy in detaining individuals who have been prejudged as dangerous. In the rush to shore up national security, the government detained thousands of persons. Some were alleged to be in violation of the immigration laws; others were designated as “material witnesses.”

Of the hundreds of aliens rounded up on immigration violations, not one detainee has been directly linked to the terrorist attacks of September 11th. However, the admitted purpose of the roundup was preventative detention. During congressional hearings, Senator Sam Brownback, ranking member of the Senate Judiciary Immigration Subcommittee stated, “Clearly, clearly, our immigration laws and policies are instrumental to the war on terrorism. While a battle may be waged on many fronts, for the man or woman on the streets, immigration is the front line.”

One of the sad consequences of the War on Terrorism is that it set back advances that had been recently made on behalf of detained immigrants. Just four months before the September 11th attacks on the World Trade Center and Pentagon, the United States Supreme Court had held in Zadvydas v. INS that indefinite detention of removable aliens violates due process. By October 26, 2001, Congress had provided a legislative mechanism for lengthy detention of aliens. Under the new USA Patriot Act, if the attorney general designates an alien as a terrorist threat, that individual may be held for repeated six-month periods with no limit on the number of times that such a designation may be made. Thus, we have become so comfortable with the concept of preventative detention that we now allow it based upon the certification of the attorney general, rather than court order.

The War on Terrorism has also made a fundamental change in the use of material witness laws. Under the material witness laws, individuals who have not committed any crime themselves may nonetheless be detained for extended periods of time. They stand in legal limbo. As alleged witnesses to other people’s crimes, they can be detained until after the criminal justice system is done with them. They are subject to deprivations of their liberty, even though they have not committed a crime. They are detained because even though they may not be a risk to society, they know about someone else who may be. They are held because it strategically benefits the government to have them in custody.

THE HISTORY OF MATERIAL WITNESS LAWS
The designation of material witnesses dates back to Common Law. The original concept was, that individuals who have relevant testimony regarding a case have a responsibility to appear as witnesses. As Lord Bacon declared, “All subjects, without distinction of degrees, owe to the King tribute and service, not only of their deed and hand, but of their knowledge and discovery.” The material witness law was never conceived, however, as a means to detain those whom the authorities suspected of being a threat to society but did not have enough evidence to charge.

When America adopted into its laws the power to detain material witnesses, the focus of the law was on having an individual available to testify in a criminal proceeding. Although they were being detained, material witnesses were conceptually different from defendants who were incarcerated. Material witnesses were to be held because they could assist the criminal justice system in convicting those who pose a danger; they themselves were not considered a threat.

With the War on Terrorism, the legal seas have changed. The designation of “material witness” has often become a temporary moniker to identify an individual who soon will bear the status of defendant. Consider, for example, the initial designation of Terry Lynn Nichols as a “material witness” in the bombing of the Murrah Federal Building in Oklahoma City. When Nichols challenged the material witness warrant, the authorities simply substituted it with a criminal complaint charging malicious destruction of government property.
Similarly, it has not been difficult for prosecutors in terrorism cases to convert material witnesses into defendants. One standard technique is to question the witness before the grand jury, knowing that the individual is unlikely to cooperate fully. When the detainee withholds information or lies to the grand jury, charges of perjury or obstruction of justice can be substituted for the material witness warrant.

CHALLENGING THE USE OF MATERIAL WITNESS DETENTION

Although the prosecution’s actions are completely lawful, the tactic is troubling. The goal is to detain these individuals, not because of their witness potential, but because of the unknown risk they pose to society. Material witness laws provide the government the perfect avenue to jail those it considers dangerous. It is preventative detention. The government is using the law to round up people because of what we expect them to do, rather than what they have done.

Recently, United States District Judge Shira A. Scheindlin became the first judge to sustain a challenge to this use of the material witness laws. In United States v. Awadallah, Judge Scheindlin held that the material witness statute should be limited to holding trial witnesses. She wrote that it was contrary to our fundamental notions of freedom that a person “having committed no crime—indeed, without any claim there was probable cause to believe he had violated the law...bore the full weight of a prison system designed to punish convicted criminals.”

BACK TO THE FUTURE

The groundwork for using material witness warrants to effect preventative detention was laid out in the Salerno decision. Chief Justice William Rehnquist wrote: “[T]he Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest. For example, in times of war or insurrection, when society's interest is at its peak, the Government may detain individuals whom the Government believes to be dangerous...Even outside the exigencies of war, we have found that sufficiently compelling governmental interests can justify detention of dangerous persons.” These words have become a justification for the aggressive use of both the immigration laws and material witness detention of individuals suspected of, but not charged with, terrorist acts and sympathies.

It is time to pause again to consider the dangers in this approach. Certainly, national security is a legitimate goal. The events of September 11th must never be repeated. But, as the road from Salerno has demonstrated, it is hard to regain support for freedoms once they are compromised. Thirty-five years before Salerno, Chief Justice Robert Jackson reviewed the pleas for bail on appeal by members of the American Communist Party. He wrote: “Grave public danger is said to result from what [the defendants] may be expected to do, in addition to what they have done. If I assume that defendants are disposed to commit every opportune disloyal act helpful to Communist countries, it is still difficult to reconcile with traditional American law, the jailing of persons by the courts because of anticipated, but as yet, uncommitted crimes. Imprisonment to protect society from predicted but unconsummated offenses is...unprecedented in this country and...fraught with danger of excesses and injustice.”

Imprisonment to protect society is not unprecedented. In fact, quite the contrary is true. As history demonstrates, there certainly is a domino effect. Laws supporting preventative detention pending appeal ultimately lead to laws supporting preventative detention pending trial. Those laws then lead to the increased use of laws for civil commitment, additional use of laws to detain aliens, and the aggressive use of the laws to detain material witnesses. As this trend demonstrates, we are well on our way to making preventative detention the norm, rather than the exception.

It is understandable that during a time of crisis, society wants to take all possible steps to protect itself. However, we would be wise to heed Justice Marshall’s warning: “The coercive power of authority to imprison upon prediction...[poses a danger] to the cherished liberties of a free society.” If the government fears that illegal aliens are terrorists, it should hold deportation hearings and deport them. If it feels that individuals designated as material witnesses are disguised terrorists, then it should charge them and try them as terrorists. It is unwise, however, simply to expand the use of preventative detention to accomplish the same goals. The dangerous trend set today is likely to continue for years to come.

My thanks to my terrific research assistant, Dennis Hyun, for his help in preparing this essay.—L.L.
Beyond campus lecture halls,

the Loyola Law School faculty share their expertise

with the world—through

their published works

PROFESSOR WILLIAM D. ARAIZA, in November, spoke at the Administrative Law Roundtable at the University of Louisville, on "White House Influence on the Administrative Rulemaking Process." Recently, Araiza published the article, "ENDA Before It Starts: Section 5 of the Fourteenth Amendment and the Availability of Damage Awards to Gay State Employees Under the Proposed Employment Non-Discrimination Act," 22 B.C Third World L.J. 1 (2002). This spring, he presented a paper at the Socio-Legal Spring, he presented a paper at the Socio-Legal Studies Association Conference at the University of Wales, Aberystwyth; and published, with several other authors, "The First Amendment: Cases, History and Dialogues," (Anderson Publishing Co.) In July, Araiza spoke at the Southeastern Conference of the American Association of Law Schools on "United States v. Mead Corporation," and the Availability of Chevron Deference to Non-Legislative Rules.

ASSOCIATE CLINICAL PROFESSOR SUSAN SMITH BAKHSHIAN '91 spoke on bias at the Redondo Beach Bar Association meeting (Probate & Estate Planning Division) in early January. In March, Bakhshian presented "Teaching Techniques for Integrated Legal Research and Writing Projects" at the Rocky Mountain Regional Legal Writing Conference in Phoenix, Arizona. In May, Professor Jean Boylan '86 and she co-presented at the National Legal Writing Conference in Knoxville, Tennessee on the topic of incorporating professionalism in all types of legal writing and lawyering skills courses.

ASSOCIATE CLINICAL PROFESSOR MICHAEL R. BEEMAN joins the Loyola Law School faculty with the onset of the 2002-03 academic year. He will be teaching Ethical Lawyering and Legal Research & Writing. During the past year, Beeman was an instructor at the University of San Diego School of Law, teaching a first-year course in legal analysis, writing and research. He served on the student admissions committee there, as well. A graduate of Columbia University School of Law, Beeman served as editor-in-chief of the Columbia Law Review. Beeman clerked for the Honorable Alvin B. Rubin of the U.S. Court of Appeals for the Fifth Circuit upon completing his law studies, and then became an associate with the law firm, Irell & Manella. He has also practiced law with Dewey Ballantine LLP, Troop Steuber Pashich, Reddick & Tobey LLP, Classified Records, Inc., and most recently, Kaye Scholer LLP.

PROFESSOR LINDA S. BERES and co-author Thomas Griffith published the article, "Habitual Offender Statutes and Criminal Deterrence" in 34 Con. L. Rev 35 (2001).

CLINICAL PROFESSOR BARBARA A. BLANCO, who also serves as the faculty externship director, along with Professor Sande Buhai '82, prepared written materials and conducted a two-hour Continuing Education of the Bar (CEB) course in January on professional responsibility for legal services housing advocates. The two did so in response to an invitation by the Western Center on Law and Poverty. Their materials were also used as a basis for a parallel presentation in the Bay area.

ASSOCIATE CLINICAL PROFESSOR JEAN BOYLAN '86 published an article in the Los Angeles Lawyer, January 2002 edition (with B. Gadbois), entitled "The Abandonment of Contract Doctrine in Construction Disputes," p. 21. Boylan also organized a planning session for HeArt, a non-profit organization assisting lower income students. The event was held at Loyola Law School for artists and architects assisting the students. In May, Boylan and Professor Susan Smith Bakhshian '91 co-presented at the National Legal Writing Conference in Knoxville, TN on the topic of incorporating professionalism in all types of legal writing and lawyering skills courses. In addition, Boylan (with Professor Jennifer S. Kamita '88) presented "Designing Successful Bar Preparation Programs" at the National Academic Support Conference in Seattle, Washington in June.

CLINICAL PROFESSOR SANDE BUHAI '82, who also serves as the faculty public interest law director, presented three panel presentations this year. Buhai participated in a Legal Services Ethics Training in January 2002, a two-hour lecture and discussion session for legal services lawyers with Professor Barbara A. Blanco. Buhai also sponsored and participated in a panel discussion at Loyola Law School about Public Interest by the Private Bar, in April 2002. In addition, she was a panelist at the Equal Justice Conference, sponsored by the American Bar Association on Law School Pro Bono Programs in April 2002. During the recent academic year, Buhai published "One Hundred Years of Equality: Saving California's Statutory Ban on Arbitrary Discrimination by Business," 36 U.S.F. L. Rev 109 (Fall 2001). She also coordinated the Legal Aspects of Elder Abuse Symposium at Loyola Law School on April 26, 2002.

PROFESSOR ROGER W. FINDLEY (Fritz B. Burns Chair of Real Property) was a visiting professor at Brooklyn Law School during the fall semester of 2001. A new edition of his Property casebook, Cases and Materials on Property (8th ed., 2002), was published by Foundation Press in March. It is co-authored with professors John Cribbet of the University of Illinois and Corwin Johnson and Ernest Smith of the University of Texas. In June, Findley was the keynote speaker at the Sixth Annual International Congress on Environmental Law, in Sao Paulo, Brazil. This year, the Congress is being held in Findley's honor because of his work on environmental protection in Latin America and the United States.

The Daily Journal quotes Loyola Law School dean, David Burcham. "He has become a nationally known expert on election law in addition to being a prolific scholar and gifted teacher." Hasen states, "I love to teach and being in the classroom is the best part of my job!" Hasen is working on a new book that will examine 40 years of U.S. Supreme Court cases involving election law and political equality.

PROFESSOR PAUL T. HAYDEN (Jacob Becker Fellow), after teaching Comparative Tort Law in the Loyola-Brooklyn program at the University of Bologna, Italy, during the summer of 2001, took sabbatical during the fall semester to work on a legal ethics casebook, which will be published by West Group. Hayden's article, "Butterfield Rides Again: Plaintiff's Negligence as Superseding or Sole Proximate Cause in Systems of Pure Comparative Responsibility," [originally published in Loy. L.A. L. Rev.] was reprinted in 39 Defense L.J. 645 (2001). Hayden continues his work as a member of the American Law Institute's Members Consultative Group for the Restatement (Third) of Torts.


PROFESSOR LISA CHIYEMI IKEMOTO recently published the article, "Doctrine at the Gate: Religious Restrictions in Health Care," in the J. Gender-Specific Medicine. In March, Ikemoto spoke on the panel, "Gender, Race, and Other Invidious Stereotypes and Their Effect on Legal Performance" at the Midyear Meeting of the State Bar. She recently has become a member of the Test Development and Research Committee of the Law School Admissions Council, as well as a member of the Joint Bioethics Committee of the Los Angeles County Medical Association and the Los Angeles County Bar Association. Ikemoto has begun serving as an advisory board member for the newly formed Latina Rights Project of the ACLU of Southern California, and she continues to serve on the boards of Asians and Pacific Islanders for Reproductive Health and the Breast Cancer Legal Project of the California Women's Law Center.

PROFESSOR DANIEL E. LAZAROFF (Leonard E. Cohen Chair in Law and Economics) published "The Influence of Sports Law on American Jurisprudence," in the Va. Sports & Ent. L.J.; it was the lead article; and he attended the 2002 E. Hodge O'Neal Corporate and Securities Law Symposium at Washington University School of Law, St. Louis.


PROFESSOR RICHARD HASEN SELECTED AS ONE OF "20 UNDER 40" BY LOS ANGELES DAILY JOURNAL

Professor Richard Hasen was recently selected by the Los Angeles Daily Journal as one of the twenty top legal professionals under forty years of age. Professor Hasen, 37, went from consulting for the Gore campaign during the 2000 Florida recount scandal to consulting on the disputed city of Compton mayoral election in early 2002.

BARBARA A. BLANCO SANDEE BUHAI ROGER W. FINDLEY CHARLOTTE GOLDBERG RICHARD L. HASEN


PROFESSOR THERESE H. MAYNARD’S article, “Spinning in a Hot IPO: Breach of Fiduciary Duty or Business as Usual?” was accepted for publication in the Wm & Mary L. Rev. Spring 2002) and for presentation at the May 2002 Annual Meeting of Law and Society in Vancouver, British Columbia. In April 2002, she presented her paper, “Law Matters. Lawyers Matter,” as part of the Corporate Social Responsibility Symposium in New Orleans, hosted by Tulane Law School. Currently, she is at work on a casebook project, Mergers & Acquisitions Law. This summer, she will continue as a National Lecturer for BarBri Bar Review.


PROFESSOR MARCY STRAUSS published the article “Silence” in 35 Loy. L.A. Rev. 101 (2001). The article analyzes whether the government should be able to use defendants’ pre-trial silence against them. Also, an article entitled, “Reconstructing Consent” will be published later this year in Northwestern University’s Journal of Criminal Law and Criminology. This article criticizes the current law on voluntary consent under the Fourth Amendment. In March, Strauss spoke at the American Law Institute - American Bar Association’s 30th Annual Conference on Legal Problems of Museum Administration, on the “First Amendment and Art,” and also participated in a panel discussion on freedom of speech, obscenity, and children.

PROFESSOR PETER M. TIERSMA (Joseph Scott Fellow) spoke at a conference on the jury at Brooklyn Law School in 2001. He also made presentations before the Jury Summit (co-sponsored by the National Center for State
Courts and the New York Unified Court System, the Law and Society Association's annual meeting, the linguistics departments of the University of California in Santa Barbara and Cal State Northridge, an undergraduate seminar on language and law at Stanford University, and a conference at the University of Texas Law School. In July 2001, he was the keynote speaker at the meeting of the International Association of Forensic Linguists on Malta. During the past year, Tierasma published articles in Clarity, the Brooklyn L. Rev., and The Journal Of Forensic Linguistics. Currently, he is writing a book on language and the criminal law (with Lawrence Solan of Brooklyn Law School), and continues to participate as a member on the California Judicial Council's taskforce on criminal jury instructions.

PROFESSOR GEORGENE M. VAIRO (William M. Rains Fellow) is a regular columnist on forum selection for the Natl. L.J. This year's columns covered areas such as removal, the meaning of a federal question, and forum non conveniens. Vairo continues to serve on the Board of Editors of Moore's Federal Practice, and updates the Treatise's chapters on removal, venue, and multi-district transfers. She also regularly writes lead articles for Moore's Federal Practice Update. Vairo completed the manuscript for the third edition of her book on Rule 11 sanctions, and prepared articles on Rule 11, summary judgment, and forum selection in connection with her lecturing at American Law Institute - American Bar Association's Advanced Federal Civil Practice programs in Chicago, Illinois, and Orlando, Florida. Professor Vairo also has produced casebook materials for her Mass Tort Litigation Seminar. Her article on remedying the victims of the September 11 attacks will be published in Loy. L.A. L. Rev. During the course of the year, Vairo served as a commentator or source of information for the national press including the New York Times, Wall Street Journal, and Los Angeles Times—as well as for local legal press, and local and national radio—on mass tort issues, Rule 11 sanctions, and federal jurisdiction. She also continues to train riders participating in the various charity bicycle rides. ☑

SAVE THE DATE!

The Public Interest Law Foundation presents the TENTH ANNUAL PILF Auction and Casino Night

Saturday, October 19, 2002
6 to 11 p.m.
Loyola Law School Campus

Tickets $20 at the door; $15 in advance; $15 for Loyola students

Feast on a sumptuous dinner
with drink while listening to lively music

Get Lucky and Win!
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Auctions of:
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Enjoy outings with professors and more!

Alumnus Thomas V. Girardi '64 will be honored as "PILF Supporter of the Decade"

All proceeds benefit PILF scholarships, which enable Loyola Law School students to work in public interest law organizations.
Remedies FOR VICTIMS OF TERRORISM

VICTIMS OF TERRORISM
By Georgette Valiro, Professor of Law

Continued from page 21

Not all courts were as receptive as the Filartiga court to the use of United States courts in cases where the claims arise in a foreign country. In another important case, Tel-Oren v. Libyan Arab Republic, the Court of Appeals for the District of Columbia held that the Alien Tort Claims Act did not provide federal subject matter jurisdiction over a case brought by citizens of Israel, the United States and the Netherlands against the Palestine Liberation Army (PLO) and Libya for allegedly murdering a number of civilians during a terrorist attack in Israel. Although the three-member panel so held on different grounds, they were unanimous that the Alien Tort Claims Act could not reach such claims.

Partially in response, Congress enacted the Torture Victim Protection Act (TVPA). TVPA provides a federal cause of action in favor of persons tortured or extrajudicially killed, and therefore jurisdiction under § 1350, against any individuals acting under the actual or apparent authority or color of law of any foreign state.

Directly combating the growing problem of terrorism, Congress enacted the Antiterrorism Act of 1990. Primarily a criminal statute, the Antiterrorism Act also provides a potent civil remedy tool. Section 2333 of the Antiterrorism Act allows plaintiffs injured or killed as a result of an international terrorist act, to sue for treble damages and attorney's fees. Unlike the case of the Alien Tort Claims Act and the TVPA, where federal and state court jurisdiction are concurrent, the private remedy available under the Antiterrorism Act is exclusively federal.

International terrorism was defined as acts that occur primarily outside of the United States. Therefore, the Act should be a powerful tool in cases where terrorists act outside of the United States and kill or injure United States citizens in foreign countries.

A problem with using the Antiterrorism Act in connection with the 9-11 events is the limitation of the Act to cases where the acts occurred primarily outside the United States. A case can be made that although the injuries were suffered in the United States, the planning that took place outside of the United States satisfies the "primarily" requirement. But Congress rectified the problem when it enacted the USA Patriot Act of 2001. The Patriot Act expands the definition of the types of terrorism that would give rise to a claim under § 2333 of the Antiterrorism Act. Section 802 of the Patriot Act defines domestic terrorism as acts that take place primarily within the United States.

To the extent that victims of terrorism seek a remedy from sovereign nations listed as a sponsor of terrorism (neither the Taliban, because the United States never recognized the Taliban government, nor Al Qaeda, a non-governmental entity, could seek such protection), the Foreign Sovereign Immunities Act generally provides an exception to the assertion of sovereign immunity in cases against a foreign sovereign for personal injuries caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act. When the § 1605 exception is satisfied, the federal courts will have jurisdiction over the foreign sovereign pursuant to 28 U.S.C. § 1330.

Although enforcement of judgments rendered under any of these provisions will be difficult to obtain, the various acts of Congress freezing the assets of the terrorists and their cohorts provide some solace. The Year 2000 Terrorism Asset Report to Congress by the Office of Asset Control, for example, indicated that $3.7 billion in assets of six of seven Department of State designated sponsors of terrorism were blocked by the United States. An additional $254 million of Taliban assets were blocked. By Executive Order on September 22, 2001, President Bush froze the assets of 27 entities believed to be supporting the Al Qaeda network. This resulted in the blocking of additional millions of dollars more, including at least $5 million in the United States. One further problem, however, is that often the Executive Branch, in order to preserve its prerogatives in the conduct of foreign affairs, is reluctant to allow private citizens to satisfy judgments with the blocked assets.

SEPTEMBER 11TH VICTIM COMPENSATION FUND

Congress' decision to establish the VCF to provide a quick and reasonable remedy to those who suffered personal injuries as a result of the events of 9-11, held the promise that many of the problems discussed in the preceding section could be avoided. Nobody thinks that the VCF provides a perfect solution. Then again, as the preceding discussion shows, many claimants will have a problem collecting substantial damages through the judicial system.

Shortly after the terrorist attacks of 9-11, Congress took action to offer an alternative to court litigation for victims of the attacks. On September 22, 2001, Congress provided for the creation of the 9-11 Victim Compensation Fund of 2001 as part of the Air Transportation Safety and System Stabilization Act.

The Act requires that the Special Master place geographic and temporal limitations on who may apply for compensation from the VCF. Those eligible to apply for compensation are individuals or their legal representatives "present at the site" of the World Trade Center, Pentagon, or the Pennsylvania crash site who suffered physical injury as a "direct result" or in the "immediate aftermath" of the crashes, and personal representatives of those who died on American Airlines Flights 11 and 77 or United Airlines Flights 93 and 175.

Although the definitions of "present at the site," "immediate aftermath," and types of "physical harm" have been liberalized a bit, in reality, these limitations may undermine the

On September 22, 2001, Congress provided for the creation of the 9-11 Victim Compensation Fund of 2001 as part of the Air Transportation Safety and System Stabilization Act.
success of the VCF. For instance, although directly related to the WTC attack, many who will claim personal injury due to their inhalation of the polluted, smoky air in the months after 9-11 are probably precluded from seeking compensation. Similarly, the shop owners in the vicinity who suffered property damages and loss of business opportunity in the aftermath of the attack will also be ineligible. Arguably, the VCF should provide a vehicle for the resolution of all claims related to the attacks. Although there will always be a point at which a line must be drawn, it may have been drawn too soon.

Of all the determinations and rules promulgated under the Act, calculation of the final award is the most difficult for the Special Master because it involves an assessment of the value of a life. As lawyers, we may be used to applying economic concepts when determining the appropriate amount of damages for death or injuries. For the victims and their families, however, such calculations appear callous, unfair, and inhumane. The Special Master tried to overcome these concerns by articulating that his system would be based upon two primary objectives: 1) to make the process efficient, straightforward, and understandable to claimants; and 2) to treat each claimant fairly, based on individual circumstances, and relative to other claimants.

Calculation of noneconomic losses and the offset of collateral source compensation also are extremely controversial. The Special Master initially capped noneconomic loss at $250,000 per decedent, plus $50,000 for the victim’s spouse and each dependent. This is equivalent to capping “pain and suffering” in the tort context. In addition to this, the Act requires that any VCF award be offset by recovery from “collateral sources.” Thus, monies received from insurance policies, pensions, death benefit programs, and the like may be deducted depending on the Special Master’s final definition of “collateral compensation.” It should be noted that the Interim Rule did not include contributions from charities as collateral source compensation. However, the Special Master may later determine that such benefits actually are a collateral source.

Public controversy ensued after the issuance of the Interim Rules on December 21, 2001. In addition to the criticisms outlined above, others questioned the fiscal wisdom of the VCF and the precedent it sets. While U.S. Senator Hillary Rodham Clinton, New York, queried, “[H]ow do you put a price tag on a life?” Others asked why such a scheme was not created after the bombings in Oklahoma City, Nairobi, or even the bombing of Pan Am Flight 103. The quick creation of the VCF was seen as a betrayal for many of the victims’ relatives in these other tragedies who have unsuccessfully sought compensation from the government. Subsequently, Congress amended the VCF to include victims of the 1993 World Trade Center bombing and the Oklahoma disaster.

Given the number of claimants, it is unlikely that the Special Master’s Final Rule will please all parties. Pressure from claimants and attorneys is likely to continue throughout the process of resolving claims. In addition, Congress and taxpayers will be keeping an eye on the payments. Although most Americans probably would like to see the victims and their families made “whole,” most also, probably, do not want to see them overcompensated to the point where the VCF becomes a budgetary black hole. There are some who are outraged that the victims’ families could become millionaires. There are others who understandably complain that the stringency of state law will result in no recovery for members of alternative families, such as gay and lesbian partners or straight domestic partners, including those with children. Others complained that the original rules did not incorporate a measure of economic damages for the value of household work.

On March 7, 2002, the Special Master issued the Final Rule that incorporated several significant changes. The simplest change was increasing the presumed noneconomic loss for spouses and dependents from $50,000 each to $100,000. Also, regarding eligibility, the temporal limitation for “physical harm” was expanded to “within 72 hours of injury or rescue for those victims who were unable to realize immediately the extent of their injuries or for whom treatment by a medical professional was not available,” from the initial 24-hour restriction. Additionally, the Special Master is given great discretion in extending the time period for rescue personnel on a case-by-case basis. This may or may not allow rescue workers to recover for injuries such as “WTC cough,” depending on how much discretion is exercised.

The rules for collateral source offsets also were modified to address some of the concerns raised by comments to the original rules. The Final Rules allow the Special Master to exclude insurance premiums and other forms of self-contribution, made during the decedent’s lifetime, from the offset calculus. The Special Master’s statement, preceding the Final Rules, explains that certain government benefits should not be included in determining the offset amount. These include: victim tax relief, contingent Social Security benefits, contingent workers’ compensation benefits, 401(k) accounts, savings accounts, or other investments. Most importantly, the Special Master stresses the fact that presumed awards are not binding, that all claimants may present additional evidence of “individualized circumstances” at hearings.

The Final Rules also contain a significant change designed to address the problem of whether a particular claimant ought to pursue a remedy in the VCF or in court. Claimants may meet with VCF administrators to receive advice about whether certain forms of extra-VCF compensation qualify as collateral sources and possibly receive a non-binding “ballpark” award figure. This provision is very important because it goes to the goal of providing claimants enough information to make an intelligent decision about whether to waive their right to judicial resolution of their claims.

Whether these changes are enough is a question easily debated, but not easily answered in any definitive way. Surely the Special Master is aware of the old saying that “you can’t please everybody.” The idea, however, is to please as many people as possible and encourage widespread use of the VCF. Mary Schiavo, a plaintiffs’ attorney from Los Angeles, stated that she believed that the VCF was geared toward low- and medium-income claimants with many dependents. Assuming this is true, there is a likelihood that high-income claimants may feel that they would not receive their fair share from the VCF and pursue litigation.

More extremely, Donald Nolan, who represents plaintiffs and is based in Chicago, suggested that some parties are so disenchanted with the VCF that they may challenge the entire system. Potential claims in this vein could be that the Special Master exceeded his authority under the statute or that the statute itself is unconstitutional. However, ATLA president Leo Boyle has identified a more pressing concern for those who chance litigation. Because property damage is not covered by the VCF, and because Congress capped airline liability at insurance policy limits, are tort litigants likely to recover anything any time soon, or at all? Boyle points out that with $40.50 billion in property damage, many with equally viable claims against airlines, and only $3.2 billion of available airline insurance, even assuming attorneys can get past difficult issues such as causation, actual recovery is highly debatable. In the end, despite collateral offsets and other controversial VCF provisions, the VCF may be a claimant’s best chance of seeing any recovery.
Nonetheless, the success or failure of the VCF will be closely watched, not necessarily because it is under-inclusive in the sense that it compensates only those who suffered personal injuries at a particular place at a particular point in time, but because of the precedent it has established in terms of Congressional intervention into the tort process. Let us now turn to the question of whether the VCF is, in a sense, the camel’s nose under the tent.

THE CAMEL’S NOSE UNDER THE TENT?

Until the recent amendment to the VCF, Congress did not provide a compensation fund for the victims of the Oklahoma City bombing, another unspeakable disaster. Nor did it provide compensation to the victims of the 1993 bombing of the WTC. Indeed, the cases arising out of that disaster, which luckilly resulted in death or injury to relatively few people, are still pending in courts in New York. Moving to another sort of disaster, despite invitations and pleas from the United States Supreme Court, Congress to date, has failed to do anything, except introduce a few bills, to resolve the asbestos litigation. In the past, for good reasons having to do with federalism and separation of powers concerns, Congress has, with very few exceptions where the government itself was arguably the most culpable party, left it to our tort system to provide remedies for those who suffer personal injuries.

Now, however, it increasingly appears that Congress may want to play an important role in the resolution of mass torts and other complex cases. While Congress likely has the power to enact legislation that governs how complex cases should be resolved, such legislation presents complex separation of powers and federalism problems. Whether Congress acts in a way that governs the procedures to be used in various types of cases or whether Congress enacts substantive rules, these problems are raised to a greater or lesser degree.

Given the exigencies of the 9-11 disaster, I think congressional action was appropriate. Further, it seems appropriate for Congress to set up similar funds for compensating the victims of future terrorist attacks. We must consider, additionally, whether there are other complex civil litigations that raise similar problems for judicial resolution that ought to be addressed by Congress. Is the current phase of the booming asbestos litigation an exam-
BOB COONEY GOLF TOURNAMENT

Loyola Law School has hosted an annual golf tournament for the past fifteen years. The law school re-named the tournament the Bob Cooney Golf Tournament in 1998 in recognition of Robert Cooney's (former Associate Dean of Business) continued support and contributions to Loyola. Proceeds from the Bob Cooney Tournament benefit the Cancer Legal Resource Center (CLRC), a joint program of Loyola Law School and the Western Law Center for Disability Rights. The CLRC provides information and education on cancer-related legal issues to cancer survivors, their families and others impacted by the disease. In 2001, the Bob Cooney Golf Tournament raised more than $10,000 for the CLRC. These funds helped provide services to the more than 6,300 people assisted by the CLRC in 2001.

10:30 a.m. - Registration and Tee Packages

12:00 Noon - Shotgun Start Scramble format. Team prizes in various categories, including gross and net for men's, women's and mixed teams. Also individual prizes, including closest to the pins and longest drives for both men and women golfers. Special prizes for holes-in-one.

5:00 p.m. - Cocktails

6:00 p.m. - Dinner and Awards

Tournament Chair: Ami Silverman '87

FEES:
Individual Player: $195
(Includes tee package, 18-hole tournament, cart and greens fees, box lunch, on-course refreshments and dinner.)

Foursome: $780
(Includes all individual player benefits for four players.)

Tee Sponsor: $1,000
(Includes on-course recognition with a sign at the tee. Program acknowledgment and all individual player benefits for four players.)

Register now!
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Refocusing Evil

By Theodore P. Seto, Professor of Law

Continued from page 25

DEFINING "EVIL"

With this introduction, I turn to the definition of "evil." If goodness is adherence to the principle of reciprocity, one might be tempted to define evil simply as a failure to adhere to that principle. Without further elaboration, however, such a definition would gloss over at least two important problems.

First, the principle of reciprocity is not just the Golden Rule. It also requires punishment and forgiveness. Most of us find it intuitively easy to classify violations of the Golden Rule as "evil." Perhaps less obviously, my theory suggests that a failure to forgive when another has returned to cooperation may be equally evil. Forgiveness of others, not merely personal adherence to the principle of righteousness, appears to be a necessary part of the most successful solutions to the repeated Prisoner's Dilemma.

More difficult is the issue of punishment. Some have characterized punishment as itself an evil, albeit necessary. My theory suggests, to the contrary, that failure to punish may be just as evil as failure to be good oneself. Is this so?

Unfortunately, punishment is poorly modeled in current repeat game simulations. Real human beings do not merely cooperate or defect; we engage in an almost infinite range of social behaviors. Punishment may range from a mere withholding of approval to the most extreme fantasies of the vengeful. As a matter of game theory, all that is needed is an environment that decreases the likelihood that "bad" learned behaviors will survive and reproduce and increases the likelihood that "good" learned behaviors will do so.

Articulating this goal is easy. Achieving it in the real world is not.

The problem is further complicated by the fact that modern society, for the most part, transfers the punitive role to the state. This transfer solves a problem inherent in repeat games—that cooperative solutions are not the only evolutionarily stable ones. When an individual player assumes the punitive role, it may be ambiguous whether his nastiness is punishment (and therefore good) or mere defection (and therefore bad). This ambiguity may lead the other player to punish in turn. If so, the result may not be long-term cooperation; it may instead be a stable cycle of mutual defection—in other words, a blood feud.

Laws solve this problem by removing the punitive role to a neutral third party. Punishment by a third party pursuant to neutral rules is much less likely to be misconstrued. Obviously, to the extent that law is perceived as biased, it will be less effective at solving this problem. The most effective legal order, therefore, is one that treats all players as equal under neutral rules. The rule of law and equality under law are thus both solutions to a game theoretic problem.

Individually administered punishment—vigilante justice—may actually undermine these solutions, at least with respect to infractions subject to legal correction. It may be helpful, perhaps even necessary, for individuals to disapprove of the defections of others. To permit such individuals to retaliate further, however, risks the development of a state of blood feud. In a society of laws, it may be more adaptive for individuals to turn the other cheek. This, not because punishment is itself morally wrong, is, indeed, for the state to turn the other cheek to fail to perform its punitive role would be maladaptive and therefore wrong. It is rather because individual performance of a major punitive role often creates more problems than it solves. Failure to adhere to the Golden Rule and failure to forgive are both individual evils; in a society of laws, failure to punish (beyond the expression of disapproval) may not be.

A second problem with defining evil simply as a failure to adhere to the principle of reciprocity is that in my theory, goodness is a subset of the principle of reciprocity. If, in such situations, violation of the principle should not be condemned, and therefore should not be labeled "evil." For example, although killing another is generally a violation of the principle of reciprocity, allowing oneself to be killed is not adaptive. Therefore, in both morality and law, we recognize self-defense as an exception to the wrong of killing another.

Perhaps an even more important example is the right to free expression of ideas. We might try to frame that right in terms of the principle of reciprocity. I allow you to say what you want because I want the right to say what I want. The problem is that the principle of reciprocity can also be used to justify censorship. I should not say things that will make you uncomfortable because I do not want you to say things that will make me uncomfortable. The right to free expression is more persuasively justified as necessary to facilitate the rapid evolution of learned behaviors. If we can criticize, propose, and debate, our learned behaviors will likely evolve more rapidly. The ability to adapt rapidly is itself extremely adaptive. Where free expression conflicts with the principle of reciprocity, it is often adaptive—and therefore right—to resolve that conflict in favor of free expression.

I do not mean to suggest that we are free to disregard received moral codes whenever it may appear adaptive to do so. To the contrary, those codes themselves represent society's accumulated wisdom about adaptivity; it is therefore essential that most actors behave as if bound most of the time. My position rather, is that the codes themselves sometimes include deviations from an unalloyed application of the principle of reciprocity in situations where breach is more adaptive than adherence. This is particularly likely to be true when survival and reproduction are directly at issue. Hence, perhaps, the saying: "All's fair in love and war." A man who falls in love with and marries his best friend's wife may violate the principle of reciprocity, but we do not necessarily label his actions "evil."

The right to free expression is more persuasively justified as necessary to facilitate the rapid evolution of learned behaviors.

It follows that the concept of evil must be limited to breaches of the principle of reciprocity that are themselves maladaptive. Unfortunately, adaptivity is extremely difficult to ascertain. If a society's moral codes represent its accumulated wisdom about adaptivity, this limitation might even be read to suggest that moral codes cannot themselves be evil. Consider, for example, the moral codes of the 19th century American South, which treated people of African ancestry as subhuman. One might argue that such codes were adaptive to white Americans and therefore, under my definition, not evil.

To this line of reasoning I offer two responses. First, I view all existing learned behaviors, as in the midst of evolution, not as evolution's final product. Just as we have not yet invented the perfect mousetrap, so we have not yet achieved the perfect moral code. Moral codes can embody and reflect states of stable defection; they do not automatically result in cooperation. More simply, the fact that a moral code exists does not necessarily make it right. Second,
We are motivated to evil because our motivational structures respond to more than just the principle of reciprocity.
among the mandates. I have told the story of original sin in mating. Similar stories can be told in other contexts. We are motivated to evil because our motivational structures respond to more than just the principle of reciprocity. The very act of labeling something as “evil” is an attempt to reinforce our internalized learned behaviors—responsive to the mandate of reciprocity—against conflicting motivations responsive to other mandates.

**Conclusion**

My theory of normative obligation is still under development. It is not my purpose here to justify or defend that theory in detail. Rather, my purpose is to suggest that the theory may be able to do useful work—that it sheds light on some of the most important characteristics of evil. Evil can be defined. And it can be defined in a way that is both rigorous and consistent with common usage.

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**JENNIFER ROBERT VAUGHAN MEMORIAL SCHOLARSHIP**

The JENNIFER ROBERT VAUGHAN MEMORIAL SCHOLARSHIP was initiated in December 2001 as a fitting tribute to Jennifer B. Vaughan, in recognition of her untiring efforts as an active member of Loyola Law School for more than 50 years. Jennifer B. Vaughan was the first woman to serve on the Board of Visitors of the Loyola Law School, and, as such, she was instrumental in the development of the law school.

Jennifer B. Vaughan's legacy continues to be celebrated through the JENNIFER ROBERT VAUGHAN MEMORIAL SCHOLARSHIP. The scholarship is awarded to incoming students who exhibit exceptional academic achievement and a commitment to public service.

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**GREENE, BROILLET, PANISH & WHEELER, LLP NATIONAL CIVIL TRIAL COMPETITION**

Timothy J. Wheeler ’78, of the Santa Monica firm of Greene, Broillet, Panish & Wheeler, LLP, has announced the firm’s five-year pledge to endow the GREENE, BROILLET, PANISH & WHEELER, LLP NATIONAL CIVIL TRIAL COMPETITION at Loyola Law School. For the first time ever, Loyola will host an annual national trial competition that will feature the top law school trial teams in the nation. Loyola Law School Professor and Coordinator for the Competition, Susan Poehls, stated, “We are delighted by the generous gift presented by Greene, Broillet, Panish & Wheeler. This competition will allow Loyola to take the next step in developing our role as a national leader in trial advocacy training by sponsoring a mock trial tournament, in which the best student advocates from across the country will come here to compete for honors and hone their advocacy skills.”

David W. Burcham said, “I am exceedingly grateful to you, Tim, and the Firm, for helping Loyola to have the resources to establish a nationally recognized competition program.”

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**FUNDRAISING TOPS $6.5 MILLION**

Continued from page 42

Inspired by the achievements of many of its pre-eminent alumni, the law school will advance programming in the teaching of ethics and trial advocacy under the leadership of Professor Laurie Levenson, named by Dean David W. Burcham '84 as the director for the newly created Center for Ethical Advocacy at Loyola.

**Building the endowment is now our priority.**

Resources provided by John and Matt McNicholas will provide scholarship support to students enrolled in the Ethical Advocacy program and will help Loyola to establish a nationally recognized program.

**JENNIFER ROBERT VAUGHAN MEMORIAL SCHOLARSHIP**

In December of 2002, Jennifer Meltzer of the Loyola Law School Class of 1982 passed away. All who knew her would agree that Jennifer was an extraordinary human being. In honor of the memory of our dear friend and alumna, the Jennifer Meltzer Memorial Scholarship Committee, comprised of Michael J. Lightfoot, of Lightfoot, Van de Velde, Sadowsky, Medvrene & Levine; Robert A. Rees '80, of Kintala, Smoot, Jaenicke & Rees, LLP; and Loyola Law School Professors William G. Coskran '59, Quentin (Bud) Ogren '50, Dean David Burcham '84, Christopher N. May and Harry N. Zavos '71, have initiated the establishment of the JENNIFER MELTZER MEMORIAL SCHOLARSHIP. The memorial fund will be established at Loyola to provide support to students with disabilities. By helping to provide critical scholarship resources, we can help encourage students with disabilities to attend Loyola Law School. A plaque listing all contributing alumni and friends will be prominently displayed on the Loyola Law School campus to recognize the generosity and sincere commitment of those who wish to support students with disabilities.

**GEORGE E. MOORE ‘64 LECTURE SERIES**

The GEORGE E. MOORE LECTURE SERIES IN ETHICAL ADVOCACY at Loyola Law School has been generously endowed by Mr. Moore's widow, Mrs. Eileen Moore, and family members Jonathan C. and Lisa R. Curtis and Harry R. Rothschild. The family's decision to endow the fund established by the many donations received at Loyola Law School from friends, will serve as a tribute to George E. Moore, Loyola Law School class of 1964. Moore is remembered as a highly regarded plaintiffs' attorney, known for his strong sense of ethics and civility. Loyola's planned series of annual symposia, addressing issues facing trial lawyers, will be of great interest to Loyola and the greater Los Angeles communities. The symposia presenters will include the nation's best plaintiffs' lawyers, criminal defense lawyers, prosecutors, trial judges, and technical advisors.

**HONORABLE STEPHEN E. O'NEIL LECTURE**

The HONORABLE STEPHEN E. O'NEIL TEACHER & FRIEND LECTURE was created in July 2001, in memory of Judge Stephen E. O'Neill. O'Neill served as a distinguished member of the Loyola Law School adjunct faculty for more than 15 years and was one of the most respected judges in the Los Angeles Superior Court criminal courts system. He was supervising judge for the Los Angeles Superior Court criminal courts system and was responsible for overseeing the operation of all criminal courts in Los Angeles. District Attorney Steve Cooley said, "Judge O'Neill made his mark in the short time he served as (supervising) judge of the criminal courts. Affable and even-handed, he was an effective manager for the criminal justice system." His memory will surely continue to be an inspiration to the students of Loyola for years to come.

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**JOSEPH ROBERT VAUGHAN MEMORIAL SCHOLARSHIP**

The JOSEPH ROBERT VAUGHAN '39 MEMORIAL SCHOLARSHIP was initiated in December 2001 as a fitting tribute to J. Robert Vaughan '39, who is remembered as an active member in Loyola Law School affairs for more than 50 years. Son of Professor Vincent B. Vaughan, one of the first members of Loyola Law School's faculty, Robert Vaughan was the originator of the Board of Visitors (now Overseers) and a long-time distinguished member of the Fritz B. Burns Foundation Board of Trustees. The Fritz B. Burns Foundation has provided Loyola with the Burns Building, Founders Hall, the Fritz B. Burns Chair in Real Property, the Day and Evening Burns Scholarship programs, and the soon-to-be dedicated Burns Plaza—all tributes to the generosity of the members of the Foundation. His widow, Margaret M. Vaughan and family friend, Lissa M. Schwartz initiated the memorial tribute. The scholarship will be awarded to day or evening students on the basis of scholastic ability and achievement in the areas of business and commercial law, whose extracurricular or professional interests are particularly strong in those areas of practice.
THE ENRON FILES: New Scandal, Same Law

THE ENRON FILES
By William D. Araiza, Professor of Law
Continued from page 49

This facet of the issue is also reflected in the GAO-Cheney dispute. The vice president objected to the GAO's request for information, in part on the grounds that the requests would infringe on the vice president's ability to help devise presidential recommendations for legislative action—a task described by the vice president as "a core constitutional function of the executive branch." In response, the GAO drew an interesting distinction. It insisted that it was not requesting communications involving the vice president, but rather, simply asking for "facts" (note the disavowal of any requests for deliberations) "that the vice president, as chair of the task force, would be in a position to provide the GAO." In essence, then, the GAO is arguing that it is seeking information from the vice president, not in his capacity as vice president, but in his capacity as chair of a government task force, just like any other.

HOW FAR CAN THE GAO GO? AND IS IT UP TO THE COURTS TO SAY?

What does this analysis suggest about the appropriate resolution to this dispute? To summarize the situation based on the three factors noted above, the GAO is requesting (1) factual information that is (2) partially related to the administration of existing statutes and partially related to the executive's legislative proposals and (3) generated by the vice president in his capacity as chair of the energy policy task group. Remember multi-factored balancing tests from law school? This is a classic case where the factors cut in different directions. On balance, though, it wouldn't be surprising if the court hearing this case requires that the information be turned over. Government secrecy has had a bad name at least since Watergate, and the fact that the information requested is factual and at least partially related to the administration of currently-existing regulatory regimes suggests that a court would most likely rule in favor of the GAO request, especially given the extraordinarily broad sweep of the GAO's investigatory authority. This result suggests that, ultimately, the branches are not absolutely co-equal, but rather that Congress holds a slight but perceptible edge in the balance of power. To the extent that evaluation is accurate, it flows not just from formal constitutional law, but from the informal gloss on the constitutional structure, in this case, the anti-secrecy ethic that has been politically dominant for the last 30 years.

In fact, however, that informal gloss implies one more salient point about the GAO-Cheney dispute. If the history of the past 30 years is any guide, this case will never be decided by a court. Instead, over the past three decades such disputes have nearly always been decided by compromises between Congress and the president. Indeed, in one case from 1976, a federal court suggested that as a matter of constitutional law, the political branches had a legal duty to attempt to resolve such disputes through negotiation. It may be that, ultimately, as generations of law students have learned, separation of powers law is made mainly at the negotiating table, and not at the advocate's podium. Don't be surprised if that lesson gets reaffirmed in this most current version of that age-old power struggle.

Bypassing a Collaborative Procedure:

POLITICS AND THE REFORM OF EVIDENCE LAW

REFORM OF EVIDENCE LAW
By David P. Leonard, Professor of Law
Continued from page 57

But in 1994, President Clinton was fighting for the last few votes needed to pass an omnibus crime control act, the centerpiece of which would place 100,000 new police officers on the streets of American cities. The last few crucial votes were supplied by two or three Republican lawmakers, who agreed to support the bill if the President included these proposed evidence rules (along with a few other provisions). President Clinton agreed to this political trade-off, and the crime bill passed. Though Rules 413 to 415 were not to take effect for a specified period of time, during which Congress could disavow them, the election of 1994, which swept in Republican majorities in both House and Senate, ensured that reconsideration would not take place. The rules took effect despite the Judicial Council's strong opposition and organized efforts by other groups to prevent their effectuation.

Rules 413 to 415 were enacted as part of the Violence Against Women Act, which was folded into the omnibus crime bill. Among the Act's purposes was to ease the burden faced by the prosecution in sexual assault and child molestation cases, where independent evidence is so difficult to muster and the context often devolves into a credibility battle between the defendant and the alleged victim. Aiding successful prosecution of guilty parties in any type of case is a laudable goal, but whether it supports singling out these particular kinds of cases, and no others, is hardly self-evident. In addition, the rules were thought to be supported by higher recidivism rates among sexual offenders and child molesters, thus purportedly justifying the use of prior acts evidence in those situations as opposed to others. Yet the empirical support for the assumption about recidivism is at best ambiguous, and some authorities have interpreted the data quite plausibly to show exactly the opposite: that persons who have committed other types of crimes are far more likely to repeat their offenses than are rapists and child molesters. No doubt this was part of the reason why the Judicial Conference had not previously
supported enactment of Rules 413 to 415. Bypassing the Rules Enabling Act process avoided the need to subject the rules to such searching scrutiny. There is nothing inherently wrong with the policies Congress was seeking to serve by the enactment of these rules, but the political currency the new rules bought for some politicians arguably does not justify the enactment of rules that cut so fundamentally against long-standing evidentiary policy.

**THE CALIFORNIA LEGISLATURE FOLLOWS SUIT (AND DOES MORE OF THE SAME)**

Rules 413 to 415 might have little practical effect in federal courts, which try only a small number of rape and child molestation cases (most of them on Indian reservations and military bases), but their effect on the states is likely to be enormous. The California legislature has now enacted Evidence Code § 1108, which admits evidence of other sexual offenses in prosecutions for sexual crimes, and § 1109, which does the same thing for domestic violence prosecutions.

In California, the legislature has moved in other areas of evidence law as well, bypassing the slow, deliberative process of the Law Revision Commission, which operates much like the Rules Enabling Act process. Following the criminal trial of O.J. Simpson for the murder of his ex-wife and an acquaintance, the California legislature enacted Evidence Code § 1370, which has become known as the “Simpson exception” to the hearsay rule. That exception provides for admission of certain statements of an unavailable declarant purporting to “narrate, describe, or explain the infliction or threat of physical injury upon the declarant.” Adoption of this rule did not result from systemic concerns and the slow accretion of authority. The rule was designed to fit the fact pattern of the Simpson case, in which Simpson’s murdered ex-wife had reported his threats of harm. Prospective rules enacted to remedy a specific problem caused by a particular case are seldom effective when applied to different fact patterns. Yet, this is precisely what will happen after the enactment of Evidence Code § 1370, and although the appellate cases have yet to reveal interpretive problems with the rule, whether its general policy accords with the rationales for the hearsay rule no doubt received little consideration in the enactment process. Had a rule allowing into evidence certain victims’ statements been enacted following the kind of deliberation required under the Rules Enabling Act, or pursuant to normal procedures of the California Law Revision Commission, a different rule might well have emerged.

**WHY SHOULDN’T EVIDENTIARY RULES BE SUBJECT TO THE POLITICAL PROCESS?**

In a perfect world, and aside from constitutionally mandated discrimination such as the “presumption of innocence” applied to criminal defendants, procedural rules would be outcome-neutral, discriminating neither in favor of nor against any classes of litigants. The world is not perfect, but fundamental fairness and considerations of due process demand that we strive for neutrality in the rules that govern the litigation process, including evidence rules. That rules of evidence are governed by the same principles as other procedural rules is made clear by Federal Rule of Evidence 102, which requires the courts to construe the body of evidence rules to “secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.”

But evidence rules do not establish substantive policy. Indeed, the Rules Enabling Act explicitly forbids the enactment of rules that “abridge, enlarge or modify any substantive right.”

In addition, legislatures are far better at establishing substantive policy than they are at developing neutral rules for the resolution of controversies implicating those policies. The adversary nature of legislative debate does not tend to allow for the kind of broad perspective that would have revealed the fundamental ways in which Rules 413 to 415 affected the shape and policy of evidence law, or the difficulty of maintaining any kind of theoretical consistency in the body of evidence rules. Moreover, particularly in the states, most legislators are not lawyers, and have little familiarity with the litigation process. They cannot be expected to understand the place of the character evidence rules in the body of evidence law any more than lay jurors can be expected to understand the rationales behind the hearsay rule and its exceptions.

To be effective in both the short term and the long run, procedural rules should be derived through a process in which the primary actors are people whose interests are less substantive than those of legislators and whose expertise in procedure is established. Rules 413 to 415 do not represent the kind of reform that such a process would produce because they undermine the important values of uniformity, coherence, and predictability that are so vital to procedural rules. Now, rather than maintaining a set of rules that apply to all types of cases, we have new rules that treat the same class of evidence (other similar wrongdoing) differently in some types of cases than in others. As already discussed, this change in treatment of only certain types of cases was not well supported empirically, and the absence of such evidence undermines both uniformity and coherence. In addition, frequent change in the rules affects their predictability. Frequent change inevitably increases complexity,
resulting in an increase in the probability of error in the rules' application. Legislatures are not well suited to consider these effects.

AN ASIDE: THE SUPREME COURT AND RULE-MAKING
Some of the criticisms I have leveled against legislative incursion into evidence rule-making can also be applied to the Supreme Court. Though most of the Court's decisions interpreting the Federal Rules of Evidence have narrowly construed particular provisions of the Rules, on a few occasions the Court has gone beyond its narrow focus on the case before it, and engaged in more detailed rule-making. The best example is in the Court's decisions in Daubert v. Merrell-Dow Pharmaceuticals, Inc., and Kumho Tire Co., Ltd. v. Carmichael. In the former case, the Court not only held that the Frye rule concerning novel scientific evidence did not survive the adoption of the Federal Rules of Evidence, but also set forth specific standards for the admission of such evidence and instructed the trial courts to serve as “gate-keepers” to prevent the jury from being exposed to unreliable scientific evidence. In the latter case, the Court held that the basic principles of Daubert applied to all expert testimony, not just scientific testimony. These cases created a tremendous stir in bench, bar, and the academic community because they essentially re-wrote the rules for admission of scientific evidence and placed far greater responsibility on trial judges to determine the reliability and relevance of expert testimony rather than leaving evidence of uncertain validity to the jury.

Before Daubert, it was clear that the Federal Rules needed clarification in these areas. Some believed Rule 702 displaced the Frye "generally accepted" standard, and others thought it adopted Frye. The Court was correct to determine the direction the drafters of the Federal Rules meant to take. It was not necessary, however, for the Court to go beyond this measure and instruct the bench and bar so much more specifically, nor did the Court need to tip the scales so heavily in favor of the trial judge's power to exclude "unreliable" expert testimony.

The Court's decisions in Daubert and Kumho Tire led to the adoption of a conforming amendment to Rule 702. Had the Court not acted in such detail, it is likely that the rule would have been amended eventually, and through a process that allowed the wisdom of residing so much power in trial courts to be evaluated. The drafters of the amendments were not legally bound by the Court's interpretation of existing law, but they surely felt constrained by the Court's decisions, despite their misgivings and the considerable criticism leveled at the decisions themselves. Like Congress, the Court arguably should have exercised more deference to the rule-making process.

CONCLUSION
All lawyers are familiar with the old saying that “hard cases make bad law.” Usually, we understand that phrase to mean that cases presenting a disconnect between justice and established law too often lead courts to carve out exceptions and caveats inconsistent with the course and shape of the substantive law. But the phrase can just as well be applied to rules of evidence.

To take one example, it is understandable that California legislators would be outraged that the prosecution of O.J. Simpson was made more difficult by a hearsay rule that excluded his murdered ex-wife's statements reporting his threats of violence against her. That outrage, stoked by the completely justified anger of the victims' families, led to the creation of a rule of evidence that, upon greater reflection, is difficult to square with the policy behind the hearsay rule.

The urge to "do something about that problem" is one we have all felt, but legislators have a higher duty than to respond to individual events, outrageous though they might be. The recent history of legislative encroachment on the evidence rule-making process demonstrates the wisdom of earlier legislative bodies when they created non-partisan procedures for the consideration and adoption of procedural rules. Congress, the state legislatures, and the Supreme Court should reaffirm their support for the processes their forebears established.

Klaus, who has handled a variety of cases, including a bank robbery, assault with a deadly weapon, prostitution and narcotics.

Both Gaines and Klaus have learned on the job. Gaines has learned how important it is to put civilian witnesses at ease about testifying. In her bank robbery case and her assault with a deadly weapon case, she had witnesses who were nervous about appearing in court. Klaus took care to explain step-by-step what would happen once they took the stand.

"Police officers testify all the time, but with a civilian witness it's more challenging," Klaus says. "You have to be prepared to go through a line of questioning. I try to reassure them about the process."

Gaines has focused on how to recreate events in a compelling way. It's not enough to lay out the facts of a case. She seeks to convey the context.

"You want to create a narrative nest," Gaines says. "Vivid images that tie the facts together. That's the best way to set forth the truth, with the simplicity and beauty of story."

Gaines went into the program convinced she wanted to do civil rights litigation. But the exposure to the criminal justice system has made her reconsider her career track. "I'm astounded by the passion and care with which prosecutors and public defenders handle cases," Gaines says. "The system has so much more integrity than I ever imagined. I think I would love to work in this world. You're seeing how laws impact individuals every single day."

Gloria B. Allred '74, a trailblazer in women's rights and civil rights work, made her courtroom debut through the program. After passing the bar, Allred went on to found her firm, Allred, Maroko & Goldberg, with two other 1974 Loyola alumni.

"The program was a wonderful experience in that I was able to get some clinical experience in the courtroom," Allred says. "I found the criminal justice issues to be very interesting. I felt that I gained important practical experience."
Greetings from your alumni office!

Lately, we have witnessed firsthand the strength and accomplishments of Loyola alumni in the legal profession and in other areas of employment. It is no wonder that Loyola alumni are constantly featured in the newspaper and on television. You are an impressive group and we are extremely proud to be part of your alumni community.

Our primary responsibility is serving you. To that end, the alumni office has launched an interactive web page, email forwarding service, and a monthly electronic newsletter. These services have been designed to provide you with a convenient tool for communicating with other alumni and the law school. You may submit address changes, inform us about personal or professional news, request transcripts, register for upcoming events and contact other alumni who have activated their alumni forwarding email service. In the near future, we hope to provide you with an on-line directory, and a secured site for financial transactions allowing you to register on-line with just a “click” for upcoming events, CLE credits and more!

Loyola and other law schools must report the number of alumni who provide financial support to their school. Currently, Loyola has a 20 percent support rate from its more than 10,000 alumni. Our goal is to increase this percentage rate annually.

To those who have made a financial contribution in the past, thank you and we hope we can count on your support again. If you have not made a financial contribution in the past, please consider doing so this year. Remember, a gift in any amount is appreciated, but your participation brings the greatest value!

Meanwhile, the alumni office is busy planning presentations, receptions, mixers, BBQs, class reunions, regional gatherings and the Grand Reunion. Please visit the alumni web page at http://alumni.lls.edu regularly for more details. We encourage you to contact us to tell us hear how we can better serve you. We look forward to seeing and meeting many of you at upcoming alumni events.

 Regards,

Carmen Ramirez
Director of Alumni Relations and Support
Moreover, bureaucrats could also be bribed or coerced into divulging information or producing fake ID cards. More realistically, hackers could invade centralized databases and distort or steal personal information. In any event, human error is a real possibility. As Jonathan S. Shapiro, professor of Computer Science at Johns Hopkins University, has pointed out, airport security guards and other officials "think they are relying on the cards when in fact they are relying on the integrity of the human process by which the cards are issued." In other words, an over-reliance on technology might end up giving us a false sense of security.

**CHECKPOINT CHARLEY: THE DEMISE OF ANONYMITY?**

"You ought to have some papers to show who you are." The police officer advised me.

"I do not need any paper. I know who I am," I said.

"Maybe so. Other people are also interested in knowing who you are." - B. Traven, The Death Ship

A related fear of a National ID card system is that the United States will become a turnstile society in which it will be difficult to travel without producing the card. As Stanford Law Professor Tom Campbell argues, "If you have an ID card, it is solely for the purpose of allowing the government to compel you to produce it. This would essentially give the government the power to demand that we show our papers. It is a very dangerous thing." Along with the power to compel production comes the risk of discrimination against the poor, racial minorities, undocumented aliens, and other disenfranchised groups.

**PROPOSALS FOR NATIONAL ID CARDS NOT NEW**

National ID card proposals were most recently considered as a possible solution to illegal immigration. Similar national identifier proposals have arisen in debates over gun control, national health care, and Social Security reform. Frequently, the debate over national identification has taken place over the increased use of Social Security numbers. Created in 1935, workers were given a Social Security number so that their contributions to the Social Security fund could easily be credited. Nonetheless, the use of the number for other purposes grew over the years. In 1961, the Civil Service Commission began using Social Security numbers to identify federal employees. In 1962, the Internal Revenue Service began requiring taxpayers to put Social Security numbers on tax returns.

By default, Social Security numbers have become national identifiers, but efforts to convert the number into a national identity card have consistently been rejected. In 1971, a Social Security Administration task force rejected proposals expanding the Social Security number to the status of an ID card. In 1973, a Health, Education and Welfare (HEW) Advisory Committee on Automated Personal Data Systems concluded that a national identifier was not desirable. In 1976, the Federal Advisory Committee on False Identification rejected the idea of an identifier. In 1981, the Reagan Administration stated that it was "explicitly opposed" to the creation of a National ID card. In 1999, Congress repealed a controversial provision in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which had authorized states to include Social Security numbers on driver's licenses.
IN MY OWN WORDS

Thomas Johnston finished at Loyola Law School in May 2000 and hit the ground running as an Associate at Girardi & Keese in Los Angeles. Since then he has been running and running...

Loyola Lawyer: You finished law school two years ago. Was it all worth it?

Tom Johnston: I may have the best law job in Los Angeles. I work directly under Tom Girardi and he seems to value enthusiasm as much as experience. Because of this I have been able to do some wonderful things in the last two years. The highlights have been trying two jury trials to verdict, attending meetings with Senators John Edwards, Joseph Biden, and Tom Harkin, demanding and rejecting millions of dollars in settlement conferences, and traveling to Europe to take depositions.

LL: Why did you wind up at Loyola?

TJ: I was almost born into it. Fr. Richard Vachon, S.J. was dean of the law school when he baptized me. When I was a little older, my grandfather (William G. Tucker, Class of 1956) taught an aviation law class at the law school and I remember sitting in on his lectures when my mom got off work. I also graduated from Loyola High and Loyola University and I'm sure the Jesuits had to make a few phone calls to get me in.

LL: When did you make your court premiere?

TJ: That's a great story. I passed the bar on a Friday. At that time, we were in the middle of a heated litigation where a famous boxer was suing his terrific promoter. We represented the promoter. The summary judgment hearing was in front of Judge Matthew Byrne in the United States District Court the following Thursday, and I was second chair to Mr. Girardi. After the hearing, Mr. Girardi sponsored my admission to the bar and the opposing counsel Bertram Fields came around and stood next to me to second my nomination. That taught me a lot about civility among the great lawyers in the business. I've been in court a couple times a week ever since.

The best part of the story is that my grandmother flew in from Monterey to see me sworn-in but the plane had to land in Santa Barbara because of fog at LAX. My grandmother then took a cab to Sprang Street in Los Angeles, from Main Street in Santa Barbara, to be there on time and made it with about five minutes to spare.

LL: But tell us, what did you learn after law school?

TJ: Practicing law is a very serious business and the margin between winning and losing a case at trial is incredibly small. Your clients and their families are betting their hopes, dreams and needs for justice on your skill and judgment. The pressure and responsibility is enormous and is much greater than I imagined when I was in law school.

LL: What part of law school prepared you for reality?

TJ: The law school's focus on ethical lawyering prepared a clear map for me to call upon whenever I have needed to figure out what's right and wrong. I appreciate that the most, I think.

LL: Who were those that most influenced you at Loyola while studying the law?

TJ: Five people stand out: Fr. Jim Erps, S.J. was the chaplain of Loyola Law when I was there. He taught me a lot about personal sacrifice for one's profession.

Professor Bill Hobbs trained me in courtroom evidence and allowed me to try 12 felony cases to verdict before I graduated. Professor Chris May is the finest teacher I have ever had. Professor Georgene Vairo and Dean David Burcham are two of the best lawyers I have ever seen.

LL: Of all the lawyers you know (and love)—who's the one you most admire?

TJ: Mr. Girardi is my role model. The traits I admire most in him are his dedication to his clients and his civility to the Court and other lawyers.

LL: Where do you see yourself, say, 10 years hence?

TJ: They say it takes a trial lawyer 20 years to become outstanding. It is my goal to cut that in half. And with the help and experience of others I think I can do it.

LL: What do you consider most shocking about being in court?

Frivolous defenses and lack of civility among lawyers.

LL: Any last words of sage advice to future alumni?

TJ: Fr. Erps, quoting St. Ignatius, told me after I graduated to "Light a fire in my life and in my work." That was good advice.
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Loyola now offers rigorous post-graduate training leading to the degree of Master of Laws in Taxation. Our goal is to offer the kind of advanced tax education that students, in the past, have traveled to New York, Washington, or Florida to obtain. Admission is competitive.

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For further information regarding Loyola's Tax LL.M. Program, call the Admissions Office at 213-736-1024 or visit our web site at www.LLS.edu

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