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Court in Session:

1) Moot Court

By Todd Rhoads
Section Editor

Being drunk is not required to decide to join the USD Moot Court team. Just don't tell that to Stefanie Valentini and Brian Fogarty.

The two 2Ls, members of a team that won Jessup regional competition last month, said they were rather wasted this summer when they first decided to do Moot Court; they weren't quite sober again either when they decided to continue on and try out for the National team.

Naturally, students who want to hone their skills writing briefs and delivering oral arguments while at the same time developing their resumes can be perfectly sober when making up their minds to pursue the Moot Court program.

While Mock Trial simulates the trial level of courtroom action, Moot Court gives students an opportunity to gain experience making appellant arguments. For a typical Mock Trial competition, the teams will write a 30 page brief based on a fact pattern, then present 15 minutes arguments for both sides of the case before a panel of judges.

This year, the team of Valentini and Fogarty won the regions of the Phillip C. Jessup International Law Competition and are preparing for the nationwide finals.

2) Mock Trial

By Todd Rhoads
Section Editor

Talk about quick beginnings. It was 14 years ago when USD law professor Richard "Corky" Wharton got a call from a lawyer friend suggesting the school enter a team in an upcoming Mock Trial competition.

"I had three weeks, and so I went out into the hallways and grabbed literally the first two people I found, and they just happened to be great," Wharton recalls. "I found a third person to act as a witness and so we went to the regional and won that in three straight rounds, and went to the nationals and ended up in the finals. Just like that. I figured, this is easy, nothing to it."

Breezing past the competition has gotten a good deal more difficult since then, says Wharton. Not that the team under Wharton's guidance hasn't held its own. Since 1986, USD mock trial teams have won one national championship, finished in the top five in national tournaments nine times, been named best team in the Ninth Federal Circuit seven times, finished first 10 times in the American Trial Lawyer's Association (ATLA) Western Regions and recently was selected as one of the top 16 teams in the country for seven straight years.

This year one of USD's two trial teams finished first in the ATLA Regionals, earning it a spot in the National finals March 23 to 26 in West Palm Beach, Fla., to face the other 15 regional championship teams from around the country.

While success is nothing new to the USD program, Wharton says that during his tenure as coach the bar has been raised for the amount of time.

"Mock Trial" on page 2

Moot Court's David LaSpulito delivers his argument as teammates Trevor Rush, left, and Michael Faircloth, right, look on and Stefanie Valentini and Brian Fogarty, opposite, play judges. 

Todd Rhoads
"Mock Trial" from page 1

schools prepare for the trial competitions. The time USD teams spend practicing has grown from three or four times a week for three weeks during the first year, to now 20 to 30 hours of practice a week for eight weeks before the competitions, says the coach.

"Everybody's so much better, but that's the whole point of this movement, is that everybody's so good now," Wharton said.

Mock trial is, simulated trial court. The trials involve a fictitious fact pattern each team receives a month or two before the competition. From the case's exhibits, complaints, answers to the pleadings, and depositions the sides build their case for the trials, which are from two and a half to four hours long.

On each team there are generally two 3L students who play the attorneys and two 2Ls who play witnesses.

The students prepare by poring over the cases with a fine-toothed comb and by practicing the trial segments again and again, says Lisa Hillan, the team's assistant coach and a former team member herself in 1990-92.

"Then as we head toward the courtroom component we work on everything from substantive presentation, construction of an opening statement argument, which is a presentation of the facts, not supposed to have any argument in it, — in addition to a closing argument, how do you put your factual theory together with an analysis of your law, how do you put together your direct examination which is not leading and tells a good story, your cross examination, which is typically constructed around two or three key points of attack, when and how to make objections, how to move gracefully and efficiently with exhibits, getting them admitted into evidence — it's everything encompassed by a real trial," says Hillan.

Wharton and Hillan say they aim to prepare USD's teams to think on their own and to be prepared for any trial contingency, unlike some other teams which do mainly act.

"One of the problems I have with some of the schools is they will write out a script for the trial for the students," Wharton said. "They will literally have their trial law professors write out a script, so they basically become actors. We don't do it that way. I want our students to have total command of a single fact in the case, every inference from the fact, every deduction from every inference, to anticipate every single evidentiary issue, and to make them like that (snap), until the case becomes second nature to them."

While being a member of the trial team adds 30 hours a week to a student's busy schedule, team members say it is well worth it.

"Resume aside, this is just invaluable."

"Mock Court" from page 1

"Moot Court" from page 1

Since the teams must argue both sides of the issue on the same night, Moot Court members really learn to think on their feet, said LaSpalata. "You feel like you're a lawyer, like you're a real oral advocate and that you could get in front of any court anywhere and make these sort of arguments," he added.

Second-year students compete in the Jessup competitions and 3Ls on the national team, allowing 3Ls to gain experience and to coach the second-year students. This system is different from most schools, which have 3Ls compete in the Jessup tournaments.

The USD teams maintain another unusual practice, says Trevor Rush, who this year is competing on the national team and coaching the Jessup team.

"USD has a little pride thing going where we work to the point where we go with no notes," he said. "We're traditionally the only school that does that, so we make a big deal of it. The guys when they get up at the competition, they close their notes, they get up from their chair, they button their coat, and then they step up to the podium and just talk to the judges."
Miranda: Do you still have the right?

By Christine J. Pangan
Section Editor

You have the right to remain silent. Anything you say can and will be used against you in a court of law. We've all heard the arresting officer read a suspect his or her rights, at least on television, if not in person. The police ask, "Do people have a right to have their rights read to them?" In the controversial *United States v. Dickerson*, the 4th Circuit Court of Appeals last year upheld a 1968 federal statute purported to overrule the Supreme Court's *Miranda*. Next month, the Supreme Court will hear the case.

Paul Cassell, the Utah University law professor appointed by the Supreme Court to argue in favor of the statute, told the *Manchester* executive. "The *Miranda* rule has not been adhered to, and under the statute the police are not required to follow the protective rules formerly applied by the courts. Congress, however, may still make adequate and alternative remedies which are then upheld by the courts."

"In determining the constitutionality of section 3501, the Court left the door open for Congress to do so long as these procedures adequately safeguard a defendant's right to a public counsel."

For Kamisar, section 3501 does not help the suspect and that §3501(b) is not a list of warnings similar to Miranda as Cassell argued. "These don't tell the police to tell a suspect anything. These are instructions to the trial judge, that's it," Kamisar said.

Cassell also questioned the "clearance rates" mentioned by Cassell. Cassell had shown data that depicted a tremendous drop in the rate at which violent crimes were cleared in the U.S. and that many crimes had gone unresolved after *Miranda*.

A clearance rate, according to Kamisar, is the number of crimes the police say have been solved or "cleared"—defined as of whether a suspect was convicted for the crime. One explanation given by Kamisar for Cassell's data is that after *Miranda* there was an enormous increase in the number of crimes being reported. For Kamisar, even if the clearance rates appear to have gone down, it is not indicative of what is happening in the real world.

"The Court left the door open for Congress to do something," Kamisar said. "Unfortunately, Congress never walked through the door."
TOXIC WASTE LANDFILL IN USD's BACKYARD POSES HEALTH THREAT

By Andrew B. Gagen
Editor-in-Chief

Students may want to wait for a USD Environmental Legal Clinic investment before taking a dive into Mission Bay anytime soon.

The Tenth Bay Landfill, located along the southeast shore of Mission Bay, only two miles from the University of San Diego campus, served as San Diego County’s designated waste dump site from 1952 to 1959.

The clinic is investigating numerous monitoring and testing reports to determine at what level the fishers, swimmers, boaters, joggers, and jet-skiers of Mission Bay are being exposed to the industrial wastes that have migrated away from the Landfill.

During its seven-year period of operation in the '50s, the Landfill received domestic and municipal refuse, and more significantly, industrial waste. Available information indicates that anywhere between 15 and 2.2 million gallons of industrial waste was deposited in the Landfill.

This large amount of industrial waste consists of heavy metals, waste acids, alkaline solutions, volatile organic compounds, and paint solvents. The potential health effects caused by any one of these industrial wastes can range from discomfort to potentially lethal harm. For instance, the heavy metals cadmium and chromium can cause kidney or lung cancer. The volatile organic compounds toluene and benzene attack the central nervous system and can cause headaches, sleeplessness, depression, and decreased alertness.

The amount of exposure required to cause these effects in humans will vary widely from person to person depending on their age, weight, sex and even ethnicity. The on-set of these symptoms will also vary widely from a few hours to a few decades.

The 115-acre Landfill is bordered on the north by Mission Bay, on the east by Interstate 5, on the south by the Colorado River and 7 lakes. The Mission Bay and San Diego River are within 100 feet of the Landfill. Seven endangered species inhabit areas within 15 miles of the site. In other words, the Landfill should not have been placed in a more ecologically sensitive area of the Mission Bay watershed.

The site is accessible to the general public as many readers may already know due to their own recreational use of the site via swimming, boating, fishing, jogging, and picnicking.

The potential threat posed by the Landfill to the public health, welfare, and environment prompted the United States Environmental Protection Agency (U.S. EPA) to exercise its authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Specifically, the U.S. EPA ordered a series of preliminary assessments of the site from 1987 to 1991 to determine if further action under CERCLA was warranted. Based on these preliminary assessments, U.S. EPA determined that further investigation of the Mission Bay Landfill was necessary.

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The inspection report cited the following reasons as to why no response action was necessary: 1) the Landfill has been closed since 1959, 2) no residences, schools, or daycare centers are within 200 feet of the site, and 3) there is ongoing semi-annual and annual surface water, sediment, and groundwater monitoring and reporting program for the Mission Bay and San Diego River area conducted by the City of San Diego.

Despite Bechtel's questionable reasoning, the U.S. EPA accepted the conclusions of the site inspection, and the Landfill was classified as a "no further action" site, which meant that the Landfill will not be federally remedied, monitored, or receive any federal funding under CERCLA.

U.S. EPA's decision not to remediate or expedite federal monies on the Landfill, whereby trenches approximately 600 feet long and 15 feet deep were excavated and filled with wastes and refuse, after placement of the waste material into the trenches, a cover of 3 to 4 feet of soil was placed over the disposal area.

Following the closure of the Landfill in 1959, the Landfill was used as a disposal site for hydraulic fill generated from the original dregging of Mission Bay until 1962. The dredging resulted in approximately 5 to 20 feet of hydraulic fill, consisting of saturated fine sandy silt, being placed over the landfill and adjacent areas.

In 1980, an undisclosed amount of imported soil and additional hydraulic fill was placed on the Landfill as cover material. In short, all portions of the Landfill are covered with approximately 8 to 20 feet of dirt.

The integrity of a landfill describes the geophysical condition of the landfill, which shields the contents of the landfill from the human health and environment.

The site is one of the last undeveloped areas in the City of San Diego's Mission Bay. The City of San Diego Parks and Recreation Department initiated a tri-phased project, the Mission Bay South Shores Development Project, in the mid-1980's to develop the site. The Project has at least twice breached the integrity of the Landfill resulting in direct exposure to the public health and welfare of the environment.

For example, although not officially attributed to the Landfill, in 1989 eight construction workers were hospitalized when they were exposed to a pocket of hydrogen sulfide gas that was emitted from the site during an attempt to bail out a boat launching ramp. Construction of the boat launching ramp was part of Phase I of the Mission Bay South Shores Development Project and was later completed as part of Phase II.

Another example of a breach of the Landfill's integrity occurred during the construction of Phase II when pools of yellowish-brown water covered the bottom of an excavated area. Available information indicates that the yellowish-brown water was leachate containing industrial waste that had migrated from the Landfill. Notably, the final proposed phase III will consist of a marina, parking lot, and a park that are all to be built on or adjacent to the Landfill.

The City of San Diego purchased the property from the California State Department of Parks in the mid-1940's and has owned the site ever since. The Landfill has had a history of neglect and political hot potato passing through the hands of California, San Diego County, and the City of San Diego until 1984 when the California health agency relinquished responsibility for public health matters involving the landfill to the City of San Diego.

The amount and identity of industrial wastes that have been and continue to migrate into the San Diego River and the Mission Bay is the subject of an annual and semi-annual testing program by the California Regional Water Quality Control Board (RWQCB), San Diego Region.

The RWQCB, San Diego Region, issued closure requirements for the Mission Bay Landfill in 1985. The requirements include specifications for an ongoing water quality monitoring and reporting program.

The City of San Diego has complied with these requirements by testing the surface water of Mission Bay and the San Diego River semi-annually, and testing the sediments of Mission Bay and the San Diego River. The future health of the water beneath the site annually.
Absurdity, Exams, and the Importance of Penmanship: The Triumph of Subjectivity in Legal Education

By Harry Kassakhian
Staff Writer

Ancient Romans deciphered omens by carefully examining goat-entrails. Law professors attempt to improve a student's ability to deconstruct "legal analysis" by reading law school exam "answers." Poor test scores can harm a law student's career as much as Ancient Romans could harm a goat's digestive tract. Many professors and law firms believe that grades legitimately describe a student's understanding of the law and a student's ability to "think like a lawyer." Nevertheless, law school grades (like scores in figure-skating competitions or the loose evaluations for college bowl invitations) are rough, highly subjective "evaluations." Unfortunately, these subjective evaluations determine far too much of a law student's future.

Scott Turow wrote in "One L" that the unfairness of law school evaluations is ironic in an educational system that claims to prepare advocates for fairness. Turow gave a plausible explanation for the continuation of draconian law school exams and grades: those who are in a position to improve the system have thwarted it.

Law exams are traditionally only administered at the end of the year. A law school grade is solely based on a singular event, the frenzied four months of reading cases and creating an outline. Empirical research is the basis of all modern, Western methods of gathering objective data. "Empirical" evaluations must rely on multiple observations and repeated evaluations. But law school exams are not empirical evaluations. They would never pass muster under the scrutiny of any behavioral or social science. The students are not subjected to a battery of oral, written or multiple-choice answers. Instead, an anxious neurotic bunch of law students are herded into Classrooms for a single day so they can express the full panoramic understanding of a course in an essay written in under three hours. Obviously, a mere one-hour-long essay cannot comprehensively describe a student's knowledge of any subject, let alone a subject such as law.

Illness, weak nerves, anxiety and insomnia weed out "mediocre" legal minds. Those with carpal tunnel syndrome, weak wrists, ugly curvature, childish lecturing, or an inability to underlie key-words are relegated to the ash-heap of legal academia.

Law students who diligently study and are rewarded, with at best, mediocre grades are often told that certain students have a "knack" for law school tests. This mysterious part of the human genome, the "law school" gene, has so far eluded geneticists.

Interestingly, law professors and attorneys who excelled in law school are strongest adherents to the knack theory of law school grades.

In fact, to test the knack theory, professors can choose to test on any material within the realm of human knowledge. This includes areas of the law they may have only briefly muttered about or dismissed as "irrelevant."

A seasoned law student latches onto the obscure, with the ominous intuition that the tails, sealed contracts, ancient writs of trespass on the case and minority rules from Louisiana will haunt the exam.

In addition, law school exams often include a "fact-pattern" consisting of a dense story rife with vile puns. The following paragraph is typical of the pandemonium of a law exam's fact-pattern.

"Bob, a man that Joe knows has Down's syndrome, tells Joe a CME-made lawn mower. Sue tells Joe that the lawn mower will not work on her house. Joe moves the lawn, but a rabid gopher bites Joe. Joe bleeds profusely and enters shock. Joe hallucinates. Joe, fearing for his life, kills a vicious gopher with his lawn mower. The police discover that Joe killed Dan, who was dressed as a gopher to raise money for children's event. Sue, Dan's wife, is appalled that her husband dresses as a rodent and is hysterical."

A Midwestern airline jet crashes into Sue's house while flying over the airport accident. Bob, and Mike, who are all members of an apocalyptic Japanese religious cult, collectively commit hara-kiri while their act is televised on KTVP, a local TV station. Hundreds of California television viewers mimic their actions and command their idols to the hereafter. A videotape of the mass suicide is smuggled from the local TV station and subsequently appears on a Finnish internet site."

The test tersely commands, "discuss." Or the test may require the student to discuss every possible combination of characters mentioned in the faux melodrama of the fact-pattern.

"What are Bob's rights against Joe? What rights does Joe have against Dan? Question 1) Assume you are representing Bob, 2) Assume you are representing Joe, 3) Assume you represent Dan's insurance company. 4) Assume you are Sue's therapist."

Discuss...

It would take a student one or two days to thoroughly answer a law school exam. The idea that traditional law schools should abolish traditional law school exams (the way socially progressive nations have abolished corporal punishment) is not an esoteric idea. Socially advanced Scandinavian nations have abolished the death penalty and corporal punishment. Similarly, some of the finest law schools in America have abolished the traditional law school exam and even law school grades.

Certain renowned law schools have not only abolished grades (these schools have converted to a pass/no pass system), and some law schools only give out "happy face" stickers to students for satisfactory performance) but these law schools have also eliminated in-class examinations. The law students take their exams in the leisure of their home instead of furiously scribbling their answers under the hawk-like scrutiny of proctors.

Until a distant day in the future when this cruel practice is abolished, law students will continue to fill their blue-books with haphazard essays written at lightning pace. At the same time, and professors will spend less time reading each of them than it takes to cook a soft-boiled egg. Yet students who have failed to dazzle their professors may find refuge in the fact that there is little, if any, correlation between academic success in law school and the successful practice of law. From Clarence Darrow to Johnnie Cochran, attorneys who stubbornly ignored the stigma of mediocre grades have demonstrated that their answers require more than neatly writing an answer tailored to the professor's court (a court whose decision can be appealed).

Common sense, language and the ability to understand and empathize with fellow human beings, qualities that are difficult to "quantify" from a notebook written during an ephemeral "test," determine whether one is successful in practicing law.

Movie Reviews

By Phil Paturo
staff writer

Boiler Room
Starring Ben Affleck and Giovanni Ribisi

Fast cars, boasts and tons of cash—the American dream for some. Giovanni Ribisi gets sucked into a dirty stockbrokerage firm and tries to rectify the situation in order to gain his father's respect. Ben Affleck, a serious hunk of man meat, turns in a brilliant performance. As someone who actually worked in one American dream for some . Giovanni Ribisi gets sucked out of him!

The Beach
Starring Bruce Willis, Matthew Perry, Amanda Peet, Natasha Henstridge

As most of teenage America, I'd been going through Leo withdrawal since Titanic and have longed for his return to the big screen. At the start I wasn't disappointed—Leo was tanned, toned, and as sexy as ever. However, the chemistry with his co-star (a French import) was lacking, as was the script. The story was basically about Leo playing an American traveler who discovers a marijuana utopia. At times, the movie moved, but in the end, it just stalled.

Black Letter Law-4. The movie was funny at times, but it really only deserves a 3. However, because of Henstridge and Peet's nudity it was bumped up.

Ratings Scale
5- Must see classic (e.g. Star Wars, Urban Legend)
4- Well-acted hotel movie prices (e.g. Usual Suspects, FaceOff, T-2, Rocky II)
3- Take it or leave it (e.g. Speed, Heat, latest Star Wars)
2- See only to talking to boy/girlfriend (e.g. Mod Squad, Urban Legend, Bad Boys)
1- Pure crap (e.g. Election, any Friday the 13th past the 15th)

Non-movie related tip of the month: If someone lurking in their car asks you if you are leaving while you're walking through the law school parking lot at 9 in the morning, sarcastically respond, "No, I came for the terrible breakfast across the street and checked my mailbox for important info and now I think I'll leave and come back later for class idiot."
Pride Law Hosts Debate

By Kenneth M. White
Section Editor

On February 24, 2000, Professor Barbara Cox and Businessperson Peter Knoblock debated the merits of Proposition 22 in the University of San Diego School of Law's Grace Courtroom. Pride Law hosted the debate. Proposition 22 reads, "Only a marriage between a man and a woman shall be valid or recognized." Professor Cox, the Associate Dean at Cal Western School of Law, argued against the Proposition. Professor Cox is a lesbian who has been living with her partner for nine years. Mr. Knoblock, the President and CEO of Meridian Group International, argued for the Proposition. He is a San Diego native and a graduate of San Diego State University.

Mr. Knoblock argued first. He stated that Proposition 22 "touched all families" and that the authors of the initiative only wanted to "realize California law." He went on to note that "Californians should get to decide" the issue of marriage for themselves. Knoblock stated, "As Californians you should be able to choose what a marriage should be and not leave it up to another State."

Professor Cox argued next. She stated that Proposition 22 "stands in limiting marriage." She believes the initiative is "unfair, divisive, and intrusive." Professor Cox went on to say that Proposition 22 is "bad law." In essence, Cox argued that a marriage entered into by a man and a woman shall be valid or recognized. In his second rebuttal, Mr. Knoblock said that he opposed "discrimination in any form." He said, "The definition of marriage...in many ways is up for grabs." He believes Proposition 22 simply "allows Californians to decide the definition of marriage." He denied that the initiative was "intrusive."

In her second rebuttal, Professor Cox stated, "the same argument of preserving the traditional definition of marriage was used before to protect inter racial marriage." She took umbrage with Mr. Knoblock's comment that opponents of Proposition 22 seek a "legal loophole" to have same-sex marriages recognized in California. Professor Cox stated that the initiative does not reframe California law, because "since 1872 all marriages have been recognized into in another State!" She said, "It is not Mardi Gras to decide the definition of marriage." She denied that the initiative was "intrusive."

In his second rebuttal, Professor Cox argued that the author's argument of preserving the traditional definition of marriage was used before to protect interracial marriage. She took umbrage with Mr. Knoblock's comment that opponents of Proposition 22 seek a "legal loophole" to have same-sex marriages recognized in California. Professor Cox stated that the initiative does not reframe California law, because "since 1872 all marriages have been recognized into in another State!" She said, "It is not Mardi Gras to decide the definition of marriage." She denied that the initiative was "intrusive."

In her final rebuttal, Professor Cox stated, "the same argument of preserving the traditional definition of marriage was used before to protect interracial marriage. She took umbrage with Mr. Knoblock's comment that opponents of Proposition 22 seek a "legal loophole" to have same-sex marriages recognized in California. Professor Cox stated that the initiative does not reframe California law, because "since 1872 all marriages have been recognized into in another State!" She said, "It is not Mardi Gras to decide the definition of marriage." She denied that the initiative was "intrusive."

In his final rebuttal, Mr. Knoblock restated that Proposition 22 is "simply a chance for Californians to decide what the definition of marriage will be." He stated that the pro-Proposition 22 campaign has been very "peaceful." He charged that the opposition to Proposition 22 uses "victim language." He said, "There is [sic] no victims here. "This is simple," he concluded, "our State, our choice, do we want to give up that choice?"

In her final rebuttal, Professor Cox urged Californians to "look at what's at stake." She said the initiative is an attack on achievement in their personal career, and also their advocacy of important issues in the legal field.

He said, "The initiative is about public policy" and will enable "change [in] public policy" and will enable them to "make a difference in society." He said, "The initiative is about public policy" and will enable "change [in] public policy" and will enable them to "make a difference in society." He said, "The initiative is about public policy" and will enable "change [in] public policy" and will enable them to "make a difference in society." He said, "The initiative is about public policy" and will enable "change [in] public policy" and will enable them to "make a difference in society."
Marihuana and Kids

By Kenneth M. White
Staff Writer

I wonder whether most Americans would support the end of marihuana prohibition. I think most would tolerate the responsible adult use of marihuana, however I think many Americans would be worried about the consequences such a drastic policy change would have on our nation's children.

I am also concerned for our nation's youth. I do believe children should use marihuana. Children should enjoy their childhood—we only get one after all. I believe intoxicating substances, including but not limited to marihuana, harm children by negatively affecting their childhood experiences and possibly hurting their behavior. Millions of Americans have used marihuana, and surely they are affected by that disadvantage. Why I believe only the responsible adult use of marihuana should not include supporting the use of marihuana by minors.

The American Civil Liberties Union (ACLU) believes an important factor to consider regarding the issue of children and prohibition is "the lure of the forbidden fruit." The ACLU writes, "For young people, who are often attracted to taboos, legal drugs might be less tempting than they are now (as illegal drugs)." The ACLU cites the experience of the Dutch for support of its position. The ACLU notes that after the Dutch decriminalized marihuana in 1976, "allowing it to be sold and consumed openly in small amounts, usage of marihuana steadily declined—particularly among teenagers and young adults."

Children are impressionable. They watch, develop, and learn according to the standards adults set through their behavior. Millions of Americans have used marihuana with little or no detrimental effect—at least no detrimental effect that warrants the government expenditure of 150 billion tax dollars since 1981 to fight prohibition (source: ACLU). Yet despite the fact that a large number of Americans use marihuana responsibly, marihuana prohibition exists, and is sometimes vigorously enforced. Surely children are aware of the discrepancy between this country's message and its behavior regarding marihuana, and surely they are affected by that discrepancy.

The conflict between our behavior and policy regarding marihuana negatively affects our nation's children. I believe marihuana prohibition creates confusion. In our nation's youth a sense of distrust for society and government. This distrust can only lead us farther from a peaceful, stable, and safe society— the very things marihuana prohibition is supposed to accomplish.

Generally speaking, when children are given a rule they follow it, or at least are aware when they are breaking it. When children learn that only some people have to follow the rule, but others do not, they become suspicious. When children learn that the punishment for breaking the rule is prison, they become apathetic.

The rule in America is that marihuana use is not tolerated. The fact is that some marihuana use, for a variety of reasons, is not always punished. Here in California, with the passage of Proposition 215 (medical marihuana) in 1996, the only thing that is not criminal use of marihuana has blurred. How can we explain to the individual in prison, whose only crime was to violate a marihuana law, that he or she belongs in prison, but someone else does not—even though both performed the same act? The answer to that question would be difficult to elucidate to an adult audience. Think of how difficult it would be with an audience of children.

Marihuana prohibition directly, and I think negatively, affects our nation's children. According to a New York Times report from June 14, 1999, some private schools are experimenting with hair testing "to keep adolescents from experimenting with drugs." Currently, there are kits parents can order to test their children for drug use. I can only imagine the harmful effect such practices must have on children. Maturing in today's society is very difficult. Prohibition makes it more difficult.

I think a perceptive child would wonder why marihuana prohibition exists. The perceptive child might ask why marihuana is illegal when, unlike alcohol, "no lethal dose for marijuana has been established." People v. Sinclair, 194 N.W.2d 878 (Mich. 1972). Dr. Lester Grinspoon stated in his book Marihuana Reconsidered, "There has never in marihuana's long history been an adequately documented case of lethal overdose. Nor is there any evidence of cellular damage to any organ." The perceptive child, I think, would understandably be confused as to why consumption of alcohol is legal, but marihuana use is illegal, even though both appear to be used in a similar fashion with a similar effect.

Dr. Drew Pinsky, the popular physician from MTV's Loveline, recently visited with USD students in Shirley Theater. Dr. Pinsky is an expert in substance abuse. He noted that any detrimental effects attributable to the recreational use of marihuana are very similar to the negative effects of occasional alcohol use. The reaction of the crowd suggested that many USD students already know this. I suspect that many high school students, and even younger students, know this as well. How can we, as a society, explain that the responsible adult use of alcohol is okay, but the responsible adult use of marihuana is criminal, even though both substances are relatively innocuous when used responsibly by adults? Furthermore, how can we explain our criminal treatment of marihuana, as compared to the regulated treatment of alcohol, when alcohol consumption can result in an overdose death, but no marihuana overdose death has ever been documented?

The Supreme Court of Alaska analyzed marihuana prohibition in the case of Ravin v. State of Alaska, 537 P.2d 494 (Alaska 1975). The court in Ravin, 537 P.2d at 506, wrote, "it appears that the use of marihuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco." With such information available, how can we justify the harmful policy of marihuana prohibition to our children?

The best argument supporting the theory that marihuana prohibition hurts children comes from children. As a counselor for sixth graders near my home town of Redding, California—farmland for much of our nation's cannabis—I was told by some of my students that they had never heard about drugs until the D.A.R.E. officer came to their school's classroom. One child actually told the officer's visit prompted him to experiment with the drugs the D.A.R.E. officer had identified and discussed. Sadly, another child said he wished his alcoholic father would use marihuana more, because his father was less violent towards him when using marihuana than when drinking beer.

Obviously, the ideal situation for America is a drug free society. However, as the history of the human race has taught us, the idea of a drug free society is a "pipe dream." From the "lotus-eaters" of Homer's time to the "hippies" of our time, humans have always searched for an alternative state of mind. I sincerely suggest this search for an alternative state of mind could be genetic. Regardless, the fact is Americans use marihuana. According to a 1973 study by the National Commission on Marihuana and Drug Abuse, the number of Americans who have used marihuana is an "estimated 26 million." According to the court in Ravin, 537 P.2d at 507, "In 1973, over 400,000 marihuana arrests occurred...81% of persons arrested for marijuana related crimes have never been convicted of any crime in the past, and 91% have never been convicted of a drug-related crime."

The above statistics suggest that society is criminalizing individuals who are not criminals. They also suggest that the responsible adult use of marihuana does not lead to criminal behavior. I can only imagine the harm that it would do to many of the adults who suffer the criminal justice system for the responsible use of marihuana are parents and/or contributing members of society. Are this nation's youth better off with their parents in prison for something that the Supreme Court of Alaska identified as innocuous? Is society better off?

Simply put, marihuana prohibition does not work. According to the ACLU, prohibition in general, "a culture of drive-by shootings and other gun-related crimes. When one gathers information about marihuana prohibition, the argument that it protects our children loses force. One can easily offer rhetoric such as "Just Say No" to support marihuana prohibition. Such rhetoric should lose its appeal, however, when a substantial amount of legitimate information suggests that marihuana prohibition does not create a better society, but instead creates a more dangerous society.

As the ACLU points out, the end of marihuana prohibition would not result in pushers flocking to the streets in the hopes of recruiting business from minors. The only scenario where a child would encounter such a situation is under prohibition. Prohibition hurts our children by subjecting them to the evils of the unregulated, uncontrolled, and unsupervised black market. The end of marihuana prohibition means we, as a society, can regulate, control, and supervise the dissemination of information and rules regarding the responsible adult use of marihuana.

Supporting the end of marihuana prohibition means supporting the truth. It means supporting the idea that our children deserve better than rhetoric. Please contact your elected representatives and ask them what they are doing about marihuana prohibition, and what they are doing to protect our children.
The SBA Prepares For This Spring’s Community Service Day

By Kenneth M. White
Section Editor

This semester the Student Bar Association of the University of San Diego School of Law will hold its Community Service Day at a children’s center in downtown San Diego. The children’s center is run by the Young Women’s Christian Association of San Diego. The YWCA center serves as a safe-house for children. Parents utilize the center as a place for their children to play before and after school. Latch-key children from area schools use the center to work on homework or to simply relax and have fun with friends before their parents come home from school.

The Student Bar Association of the University of San Diego School of Law hosts a Community Service Day each semester. The goal of the event is to serve the community of San Diego, and to gain recognition for the University of San Diego School of Law.

As the number of jokes attest, many people view lawyers and law students as less than kind individuals. The Student Bar Association’s Community Service Day proves that lawyers and law students do have hearts and do care about their community—and that they are willing to prove it in a very hands on way.

Last semester the Student Bar Association’s Community Service Day was held at Bayside Settlement House, which is located in Linda Vista, the home of the University of San Diego School of Law. Students from USD Law gave a Saturday to help paint parking lot lines and curbs, as well as to raise two new basketball rims and backboards. Last semester's Community Service Day was a success, and the Student Bar Association is hoping this semester’s event will be even more successful. Interested students should watch for details, which will be posted soon. Those who wish to help plan the event should attend an SBA meeting for more information.

Summer 1999 Bar Exam Pass Rate (First-Time Takers)

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<th>University of San Diego</th>
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<th>University of San Diego Students Supplemented With PMBR: 89%</th>
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<th>University of San Diego Students NOT Taking PMBR: 13%</th>
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