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MOTIONS

University of San Diego School of Law

Volume 37, Issue 5

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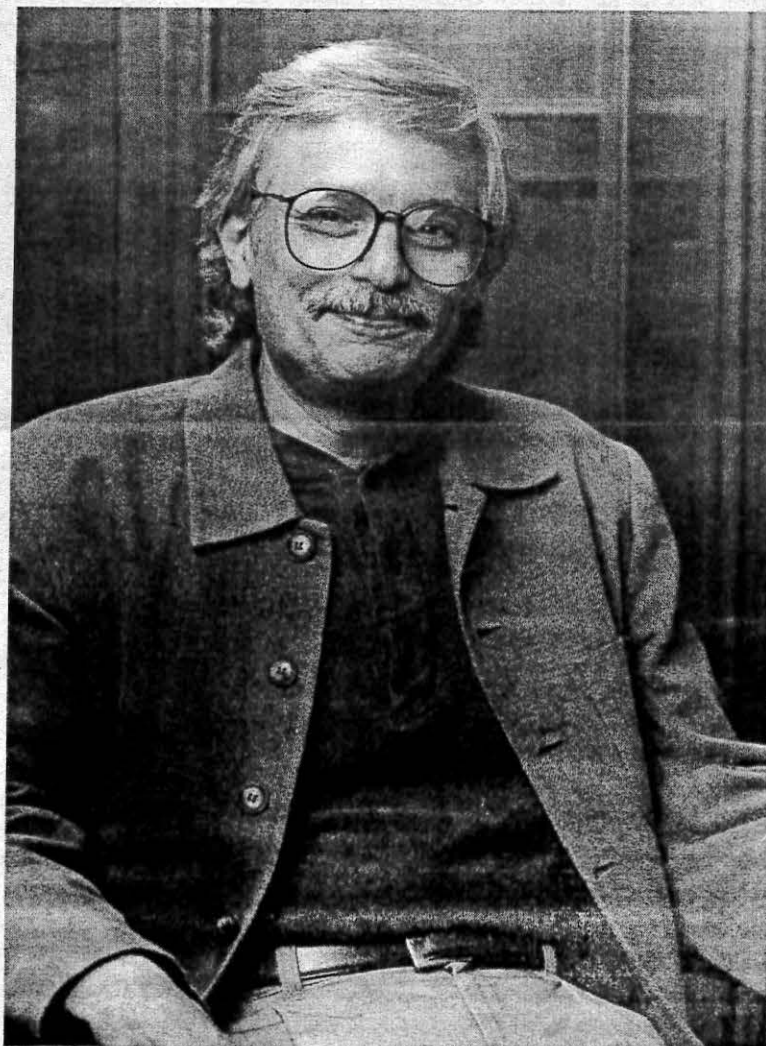
The MOTIONS staff joins with the entire Law School community in expressing our profound sorrow at the deaths of Professor Paul Wohlmuth and 1L student Tom McCauley. Our deepest sympathy goes out to their families and friends.

Tributes appear on the front page and page 3 of this issue.

Death be not proud, though some
have called thee
Mighty and dreadful, for thou art
not so;
For those whom thou think'st thou
dost overthrow
Die not. . . .

- John Donne
"Holy Sonnet X"

Professor Paul Wohlmuth remembered



By Watson Branch

The USD School of Law lost one of its most valued members with the death of Paul Wohlmuth late last year. Dean Daniel Rodriguez described Professor Wohlmuth as "an esteemed colleague, an imaginative scholar, a dedicated teacher, and a devoted university citizen."

His influence was felt well beyond the university's walls because of his efforts with the Institute for Law and Systems Research, of which he was executive director, and through his work with other scholars on the complex structure of regulatory systems, particularly those focusing on highways.

"Paul explored the deep questions of how human beings, through legal rules, structures, and theories, deal with a complex world," said Dean Rodriguez. Drawing on the work of behavioral scientists and cognitive theorists, Professor Wohlmuth examined human lives and interactions with a poet's eye for the metaphorical relationships between disparate things.

"His passion for ideas—indeed, the very big ideas—and his indefatigable commitment to understanding how the world works," Dean Rodriguez said, "are what his colleagues will best remember about him."

A graduate of the University of Pennsylvania and the Yale University Law School, Professor Wohlmuth had been a member of the USD law faculty for more than a quarter of a century, teaching in the areas of contracts, professional responsibility, alternative dispute resolution, and jurisprudence. His students found him to be knowledgeable, demanding, engaged, generous, and sincerely interested in them as individuals. He will be remembered at a "Here and Now Memorial," scheduled for Tuesday, Jan. 29, at 4:45 p.m. in the Warren Hall Second Floor Foyer.

Most of us remember Paul Wohlmuth as the most intellectually gifted and eclectic member of the faculty. He was a deep and creative thinker with life experiences that added to the richness and credibility of his ideas. Paul never flaunted his abilities or accomplishments. He was too serious a thinker to tend to the politics of academic reputation.

Paul was also a person of deep humanity. There was nothing phony about Paul's concern for others, especially those most unlike himself. He was not one to suffer meanness — what he called "small minds" — gladly. There was in him a fire that ignited at the first sign of injustice. This fire burned brightest during the dark days of the 1980s when the law school struggled to become a more racially diverse place of learning. The law school today is a warmer place because of Paul's fire.

- Roy L. Brooks
Warren Distinguished Professor of Law



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

The Dean's Corner

From the Dean's Corner:

Welcome back to a new semester and a new year. Our semester is already well underway and a busy schedule of classes, meetings, programs, and activities has begun. Gearing up for the new semester, the law faculty held its Fourth Annual Research Colloquium on January 11 — an all-day scholarly retreat, presentation of papers, and exchange of ideas. Earlier this month, USD was well represented by our law faculty who participated as speakers, panelists, or discussants at the Annual Meeting of the Association of American Law Schools in New Orleans.

We are pleased to welcome back Distinguished Visiting Professor Carl Auerbach who begins his 18th spring at USD with a new course on *Law and American Democracy*. Other repeat spring visitors are M. Carr Ferguson (senior partner in the New York City law firm of Davis Polk & Wardwell) teaching *Corporate Reorganizations*, Yale Kamisar (Clarence Darrow Distinguished University Professor of Law at the University of Michigan) teaching *Criminal Procedure I*, The Honorable David Laro (United States Tax Court) teaching *Valuation*, Walter Raushenbush (Emeritus Professor at the University of Wisconsin Law School) teaching *Real Estate Finance*, Richard Speidel (Beatrice Kuhn Professor of Law at Northwestern University School of Law) teaching *UCC: Sales and International Arbitration*, and Frank Kemerer (Visiting Professor at USD School of Education and Regents Professor of Education Law at the University of North Texas) teaching *School Law*. New faculty and new courses on tap for this semester: Alan Wertheimer, John G. McCullough Professor of Political Science at the University of Vermont (*Consent, Coercion, Exploitation and Philosophy of Punishment*); Mike Dessent, Dean Emeritus and Professor of Law at California Western School of Law (*Corporations*); Guy Scoffoni, Professor of Law at the University Aix-Marseilles, France (*Fundamental Rights in Europe*); Dennis Lilly, Professor Emeritus, Santa Clara University School of Law (*Estate Planning*). Gail Evans of Southern Cross University in Australia continues her visit at USD with courses on *Cyberlaw* and *International Intellectual Property*. Mat McCubbins — professor of political science at UCSD (*Political Theories of Law/Law and Theories of Politics*) joins returning Fall visitors Michael Devitt (*Accounting for Securities Lawyers*) and Kevin Greene (*Entertainment Law*). Detailed faculty biographies are posted outside room WH206. Better yet, stop by their offices and chat with these

faculty who bring enormous depth and talent to our already impressive faculty.

The law school will host distinguished speakers this spring at Institute of Law and Philosophy lectures; Law, Economics and Politics Workshops; and the Nathanson Memorial Lecture. Opportunities to attend these and other less-scholarly events (the spring Dean's Kegger) will abound, so watch mailboxes and notice boards for information.

On a final note: As we proceed through the traditional pace of classes and whirlwind of activities, the events of September 11 and its ramifications and repercussions continue to shadow our daily lives. Closer to home, the law school community has had to deal with the sudden and untimely deaths of first-year law student Tom McCauley and long-time professor Paul Wohlmuth. These unforeseen and unexpected tragedies, combined with the anxieties and pressures attendant with daily life, can make for rough going indeed. I want to remind all members of our community to take advantage of the resources at hand. Whatever the need, advice, counsel, or just someone to talk to, my door is always open to faculty, staff, and student alike. Our law school and the rest of the campus is replete with services and sources of support. Beyond this, I urge all of us to be sensitive to the needs and troubles of our friends and colleagues and to be vigilant in safeguarding the health and well-being of our community.

Dean Daniel B. Rodriguez



Boston College Law Dean to Headline as Nathanson Lecturer

John H. Garvey, dean of Boston College Law School, will deliver the 18th Nathaniel L. Nathanson Memorial Lecture on Wednesday, February 20, 2002, at 5:30 p.m. in the University Center Forum A. Garvey, the latest in a long line of distinguished speakers, which include Supreme Court justices, ambassadors, and nobel laureates, will address a topic on law and religion entitled "A Plea for Complexity."

Dean Garvey is a 1970 summa cum laude graduate of the University of Notre Dame, and upon graduation received a fellowship from the Danforth Foundation. He received his J.D. cum laude from Harvard Law School in 1974. While in law school he served as Treasurer of the Harvard Law Review.

Upon graduation he worked as a law clerk for Irving R. Kaufman, Chief Judge of the United States Court of Appeals for the Second Circuit. He then took a job in San Francisco as an associate at the law firm of Morrison & Foerster. From 1981-1984 he served as Assistant to the Solicitor General of the United States.

He has taught law at Notre Dame, Michigan, and Kentucky, where he was the Wendell Cherry Professor of Law, and later the Ashland Professor of Law. Mr. Garvey is the author of *What Are Freedoms For?* (Harvard U. Press 1996), and a co-author of *Religion and the Constitution* (Aspen 2002), *Modern Constitutional Theory* (West Publishing, 4th ed. 1999), and *The First Amendment* (West Publishing, 2d ed. 1995). He was elected to the American Law Institute in 1982. He is the chair-elect of the Deans' Section of the Association of American Law Schools.

The Nathaniel L. Nathanson Memorial Lecture Series was established in 1984 to honor the esteemed law professor who devoted his life to the law and legal education.

The lecture is free of charge, and a reception follows. MCLE credit is also offered. Anyone interested in attending may contact the Dean's Office or the Nathanson Lecture Response Line at 619/260-6848.

Careers in the Law

Don't miss this event! The Alumni Advisor Program "CAREERS IN THE LAW" will be held on Wednesday, February 27, 2002 from 4:30-7:00p.m. at the University Center Forum. Hors d'oeuvres, beer, wine and soda will be provided. Sign up to attend!!!

This is an excellent opportunity to meet USD alumni practicing in San Diego and Orange County. The program begins with an alumni panel presentation, followed by an informal reception with alumni. Discuss litigation and transactional careers, salary profiles, employer expectations, the San Diego and Orange County job market, courtroom experiences, attorney lifestyles and more. We will have tables with alumni representatives from various areas of practice such as: Employment/Discrimination Law, Family Law, Immigration/International Law, Intellectual Property Law, Public Interest/Environmental Law and many more.

To attend, sign up at the Alumni Relations office (Room 112) or the Career Services office (Room 111) by Wednesday, February 20. If you have any questions about the event, please contact the Alumni Relations Office, WH 112, 260-4692, or lawalum@is.acusd.edu



Law School mourns death of Thomas McCauley, 1L

By Watson Branch

When someone dies in his or her sixtieth year, we usually don't speak in terms of "promise" but instead list the accomplishments of a full and productive life. It is extraordinary, then, when we can talk about both promise and accomplishments, and that is precisely the case with our late friend and colleague Tom McCauley.

Tom died unexpectedly on Thanksgiving Day, just three months into his first year of law school. He had retired after 40 years as a highly successful computer systems technology expert in order to take up a new career in the law, in order, as he once expressed it, "to put the talents I was granted and the skills that I have developed to the service of the innocent and the disadvantaged."

But it is not as if this sense of service to those in need had been lying dormant in Tom for four decades. He had used his talents and skills working in missions as far apart as the slums of Brooklyn and the jungles of Yucatan, helping to run the U.N. World Food Programme in Belgium and Italy, creating and operating a non-profit charitable community advocacy foundation, serving as a lay leader in his parish, and promoting progressive ecological and educational policies in his community.

Through the years he was joined by his wife, Carol, his active partner in all these accomplishments. They also raised a family of seven children—five of them adopted—who now have grown up and, as Tom said, gone on to their own lives and families. Their parents' example provides excellent guidance on how to live those lives and raise those families.

These are significant achievements, yet it was not enough for Tom. He

believed that he had a vocation to fulfill, a "calling" to serve the poor, to redress their plight in more direct ways than simply sending checks to various charities. And so he chose the law. Why? Because he recognized the important role that law plays in the lives of all Americans. Here is what Tom once wrote:

Whatever else is true in our society, it is primarily the lawyers who litigate, legislate, advocate, propagate, judge, penalize, incarcerate, liberate, and reward the advantaged and the disadvantaged. In a pluralistic, democratic society, this ultimately determines even who these groups are and why. If one wants to work to change what is unjust in our world, they need to learn the how and the why, and to wear the words and the cloth, and to wield the influence and the connections of a lawyer.

Tom said that once he had become a lawyer, he wanted to be able to walk out of the courtroom knowing that his indigent client had just received as much good legal help as any rich and powerful client could ever receive. With his untimely death, Tom will not accomplish that particular goal nor fulfill the promise of his newly chosen vocation. We are diminished by his loss, but his life and his vision abide as an example for us all.

Pro Bono Service: Inspiration and Endive Salad

By Tom Ladegaard

Imagine that you are at the hospital. After you have helped a dying woman with her will, she looks up at you and says, "I don't understand. You work at a big law firm and this consultation is free?" This memory was recited on November 27th by Timothy Pestotnik at the Justice for All Awards Dinner, hosted by the San Diego Volunteer Lawyer Program (SDVLP). Such an experience motivates Pestotnik to represent indigent clients for free. He convinced his firm to open a pro bono clinic, which eventually merged with SDVLP. Pestotnik accepted the Humanitarian Award that evening for his service to the community.

SDVLP's mission is to provide pro bono legal services in civil matters to indigent San Diegans. It specifically serves clients with special needs, including the homeless, the elderly, immigrants, victims of domestic abuse, those with HIV/AIDS, and abused children.

Among the many awards that were bestowed that evening, one went to a USD law student. Paula Koellmann accepted the Community Service Award for her work at the Legal Aid Society. Her primary task was helping clients get prior convictions expunged from their records.

The keynote speaker was Paul Glaser, former star of Starsky & Hutch. Glaser has a personal affiliation with those in need: his wife died from AIDS, and their two children were both born with the HIV virus. The Pediatric AIDS Foundation he formed, which has raised \$80 million for research, was a response to the lack of information or resources available when his children were born.

His speech was an existential plea for lawyers to remember to be compassionate: because we are all fallible and mortal, we should extend kindness to everyone, especially those in need.

SPEAK UP FOR A CHILD

Each month 200 abused and neglected children are removed from their homes in San Diego County. Volunteer to serve as a Court Appointed Special Advocate or Monitor. These volunteers research a case, interview parties involved, make recommendations to the court, and lend support to the children. Educational advocates are also needed.

Information sessions are held monthly.

Call Voices for Children at (858) 569-2019 or visit www.voices4children.com for more information.

EDITORIALS

DARKNESS AT GUANTÁNAMO BAY

"O Monstrous Arrogance!"
Taming of the Shrew, IV, iii.

It may well be, as Donald Rumsfeld declared last week, that none of the prisoners being held at Guantánamo Bay "has been mistreated in any way" and that their treatment "is fully consistent with international conventions." And he may be justified in taking great umbrage at the widespread and growing criticism, including what he called "breathless reports on television," authored "by people who are either uninformed, misinformed, or poorly informed."

(Secretary Rumsfeld gets satirical support from one of our waggish fellow law students who, tongue in cheek, complains, "No cable TV?! No conjugal visits?! No workout equipment to get toned for the next terrorist mission?! This is an outrage!")

But Mr. Rumsfeld's position is undermined in the eyes of the world by the widely published U.S. Navy photograph showing Taliban and Al Qaeda prisoners in a holding area shortly after their arrival in Cuba. They are on their knees, shackled and handcuffed, surgical masks over the mouths, wearing earmuffs and goggles, the lenses of which have been covered with black tape. Mr. Rumsfeld and his crew have come up with all sorts of ingenious (and perhaps disingenuous)

rationales to explain away the particulars of this damning evidence of mistreatment, but the world remains unconvinced.

The problem is not so much the treatment of the prisoners per se. As we have said, they may be being dealt with humanely for all we know. The real problem is that we *don't* know. A shroud of secrecy engulfs the fatuously (and ironically) named "Camp X-ray," made more impervious by the obfuscations of governmental half-truths and double-talk, including ubiquitous references to "detainees" and "unlawful combatants." The refusal by the Administration to let the American people and the rest of the world know the whole truth about the prisoners (including John Walker Lindh) or about the conduct of the war in Afghanistan manifests an appalling arrogance and what Kenneth Rose of Human Rights Watch characterized as a "highly cynical Hobbesian view of the world." Because America is the most powerful nation on earth, its government believes it can do whatever it wants. Who will stop it? Certainly no other country. And neither will the American people themselves, who *do* have the power to control their government but cannot make rational judgments about its policies unless they are well informed. For now there is overwhelming support for those Administration policies.

In the meantime we have to rely on Mr. Rumsfeld to give us the facts: one detainee in Cuba has threatened to kill Americans; another has bitten a U.S. military guard. With such monstrous threats to American security, the guards had better replace those surgical masks with muzzles like the one Hannibal Lecter wore. We can worry about the prisoners' fundamental rights later.

- Watson Branch

Got an opinion?

Agree/disagree with one of the Opinion writers?

Let us know!

Write us at MOTIONS by dropping off a letter or article in the MOTIONS box next to student mailboxes or email us at motions@sandiego.edu.

You can also reach us through the editor at cpangan@sandiego.edu

Shooting at a Virginia law school: choose your side

By Tom Ladegaard

Unless you have been living in a cave this month, you have heard about the Virginia law student who went on a shooting rampage upon being academically disqualified for the second time. According to the Associated Press, when Peter Odighizuma, 43, was told that he was going to be suspended again, he threw a table across the registrar's office and stormed out. When he returned he "executed" the dean, a professor, a student, and injured three others before being tackled by four students.

The purpose of this piece is not to comment on Odighizuma's action — there could not be too much divergence of thought here. This is a discussion about the lawyer's perspective. Let's assume that we have chosen criminal law as our calling. Which side would you choose? Would you prefer to defend or prosecute this guy?

I remember the rage I felt toward the Columbine shooters and their many copycats and the relief I felt for having graduated high school before killing your classmates became trendy. Until this incident, I could not recall hearing about any such incident occurring at the college level, much less at a law school. This should particularly affect us law students, as well as lawyers. It is natural to have a gut reaction of rage here, for Odighizuma does not have the excuse of being a confused teenager, and every semester intelligent, hard working students become casualties of the mandatory curve. It is one of the harsh realities of the profession we have chosen.

What makes this incident especially troublesome is that the dean had "bent over backwards" to get Odighizuma readmitted for a second try at law school. It is obvious that this is a very disturbed man, and that makes me want to step back for a moment before siding with the prosecution, which is reflexive.

One student recalled his first encounter with Odighizuma, who came up to him and introduced himself. He seemed normal enough, until he returned five minutes later. In what must have been an attempt to clear up any confusion he found it necessary to say, "Look, I'm not crazy, people just tick me off sometimes." I wouldn't be inviting this guy to join my study group either. Because there were so many

witnesses, it appears that the only issue at trial would be whether Odighizuma knew the difference between right and wrong; whether he was insane. For this issue the burden will fall squarely on the defense, and the prosecutor's main job will be to rebut by proving that these were calculated actions, prepared by a rational mind. I have enjoyed all of my criminal law courses, but that is only the academic level. I can foresee a harsh distinction between criminal law in the classroom and the courtroom.

In the casebooks we deal only with faceless "defendants," and we can sit back with detached amusement like we are watching a legal drama on TV. What we seldom consider in class is that the "defendant" or "appellant" is a real person who is probably scared to death. People commit crimes like this out of weakness. Did any of you get a chance to watch the "Hockey Dad" trial? Seeing Junta in court only reminded me of his humanity — he got caught up in a mindless altercation with someone half his size and in a moment of weakness he went too far. You are not human if you are infallible. Although Junta made a good witness, he appeared terrified and remorseful. This compassion I feel for others could make it difficult for me to prosecute. Perhaps that compassion is better directed at the victims. On the other hand, I also have a saying that I am too intolerant to be a defense attorney. I could see myself resenting my client for putting me in a situation of having to explain his or her actions. Unlike the civil litigator, the defense attorney does not have the luxury of picking and choosing clients. We all want to defend the innocent person, but what about when your client is charged with child molestation or rape? Would you want to cross-examine the victim?

In conclusion, I don't know which side I would choose in the present case. If I were to defend Odighizuma, my own opinions might cloud my judgment, and if I were to prosecute him, I might see him as a weak, scared, and sick person. I'm sure that most criminal lawyers do not have the luxury of entertaining these thoughts because their caseloads are too demanding — they have a job to do. What I do know is that I would not encounter these conflicts when arguing whether a grant is a fee simple determinable or subject to a condition subsequent...

OPINION

The Existence of Racial Profiling: Byproduct of Public Safety Measures or Prejudice?

By Rhonda Moore

The worst thing that can happen to non-white citizens is for the white majority to notice any problem plaguing them. Once that happens, experts scramble frantically to disprove, qualify, distinguish and protect by any means their beloved prejudice. As a "minority" in America, expecting (and unfortunately accepting) this behavior is essential to living and functioning in this society without an ever-present and ill-suppressed anger (if not hatred) hovering to cloud your judgment.

When the racial profiling controversy gained nationwide attention, the only surprise for many was how long it took detractors to find a way to deflate the seriousness and importance surrounding the subject. Into the arena of discussion comes "soft" and "hard" profiling. Now the issue is resolved. There is no truth in rumors that police target minorities! "Driving while black" is nothing more than a new complaint in the never-ending list of excuses criminals use to deflect attention from the real reasons the police stop and often arrest them. Race alone does not motivate police actions; it is a factor in estimating "criminal suspiciousness."

Of course no one really suffers the indignity of being stopped simply for being in the wrong kind of car or being in the wrong "kind" of neighborhood. Widespread racial profiling is a myth. There are always valid reasons for the traffic stops that lead to arrests; just look at the data and facts available. Certain racial groups drive vehicles with illegal defects, or when engaged in illegal activity, they drive more than other racial groups; they speed and drive impaired to an astonishing degree. Just look at the data; it will tell you. No police officer would ever dare to arrest someone without a valid reason. No officer would ever fabricate a reason for the stop just to write a report. Never. The very idea is alien to the honor and integrity of our nation's police forces. That would imply corruption, and everyone knows the police are above reproach. Just look at the data: these officers are making reasoned deductions based on years of experience and their working surroundings, not prejudice.

A non-white individual is just as likely, if not more so, to be stopped outside these "high crime" neighborhoods. Police believe any non-white in a nice neighborhood occupied by more than five white families is out of place. They believe "checking on" this suspicious person is their job. Admittedly, knowing the police notice people loitering is usually a good thing. The problem is, having skin "darker than a paper bag" is enough to qualify for their undivided attention. It does not matter if you live in the neighborhood or have a reason for being there, nor it does it matter if you are simply lost. Frankly, having a car is not a prerequisite for detainment. Non-white teenagers and young adults know that, at the very least, the police are watching, and given half a chance they will "question" them. Not having two forms of identification is enough to buy you a seat in the back of a police car and a full body search.

Everyone wants to turn to the "data and facts" because they show that ethnic or racial groups disproportionately commit crimes, but no one is willing to acknowledge that the facts appear that way because ethnic and racial minorities are arrested and convicted for crimes more than any other portion of society. Nor is the white majority willing to accept its portion of the blame for the widespread nature of these activities. Show me one minority that has lobbyist in Washington shaping policy on sentencing and on which drugs carry

mandatory incarceration. Why is crack in the pocket of a fifteen-year-old black child met with the full weight of the judicial system while crack in the white child's pocket is met with compassion and understanding? What are the numbers on how many underage Caucasian youths are given probation for the same offenses and violations for which non-white youths spend time in jail? How often are nonwhite men pulled over at random, because they do not fit the "make-up" of the neighborhood they're driving through? How many non-whites are "accidentally" shot by the police in a year? The truth is not that felons exist in non-white communities any more than anywhere else. The fact is that cases featuring non-white defendants are so commonplace (almost expected) that the circumstances surrounding their arrests are rarely questioned without some outside force bringing pressure to bear on the already overflowing courts full of overworked people or dispassionate staff members just putting in their time.

No one believes there is never valid cause to stop a car driven and/or occupied by minorities. The problem is, the police rarely make the distinction between a reasoned judgment call and simply seeing a non-white person in a car which they do not think they should own or a place in which they do not think they belong. Now the detractors want to make the fact that the distinction is supposed to exist the only relevant fact. The same indicators used to "identify" drug couriers (nervousness; refusal to make eye contact; profuse sweating; types of cars; turning to watch a police car pass; the ethnic makeup of drug-trafficking organizations...the list is endless) may be signs of something other than drug activity. People who live in areas where hostile police officers are prevalent are wary of any officer. Nervousness is a natural reaction to being in a situation where you are uncomfortable and afraid and you know their reasons for detaining you. The more unsettled you are, the more signs will be present. Just because drug couriers favor particular travel routes does not mean it is permissible to treat anyone in the determined ethnic group like criminals.

Yes, the police face the uphill battle of attempting to control the streets of neighborhoods in chaos. Of course traffic violations in high police areas are going to draw more attention. No one wants to see an end to public safety. Where is it written that the police have probable cause to search (and often dismantle) your car searching for drugs because you are speeding in a Lexus rather than a Honda? Why should a thing like the color of a driver, the kind of car, and how many people are occupying the car be enough for the police to leap to the conclusion that they must be engaged in illegal activity? Shouldn't a car occupied by a Caucasian in a predominately black neighborhood driving slowly at night raise the same flags?

These same naysayers are swift to point out how the safety of people living in these "violent and drug-infested" neighborhoods will suffer if the desire to control racial profiling becomes paramount. If that is really the concern, try cutting down police response time to crimes in these neighborhoods. Make medical response teams respond with the same sense of urgency exhibited in suburban neighborhoods. Stop sapping the resources sorely needed by the people for whom you purport to be concerned. Make them feel as safe in their homes as the people in gated communities. Then talk to me about the myth of racial profiling.

The truth is, racial profiling is a real problem, and it is hardly limited to the high crime neighborhoods or only connected to techniques for "urban" policing. It

is not permanently intertwined with the crime fighting efforts of policemen, as some journalists would have you believe. They use the demand for increased police presence in neighborhoods being overrun by drug dealers as the starting point for discussion of the validity of profiling claims. Suddenly a demand for protection under the law means you must also be willing to accept the reduction in your civil rights in pursuit of that goal. The outcry for an ending to racial profiling should not be perceived as a crusade to undermine crime fighting "success" but a reminder that the methods used to combat criminal behavior do not empower the police or anyone else to criminalize entire groups of people while they search through their ranks for those truly in the wrong.

A new apprehension arises in light of the terrorist attacks in New York and Washington D.C.: targeting of citizens because they share ethnicity or a religion with the parties perceived to be responsible for the attack. Fear can and will turn into acts of aggression. The impulse to detain every person who may have some connection to the horrible events might prompt some to disregard the law in their zeal to produce results. Is it any different for a person who physically resembles someone determined to be "the enemy" to be stopped and subjected to unwarranted inquiries into their actions than for a black person to be held because they were in an SUV on a road known to be used by drug couriers? Is the law suspended because we have a war to fight? Is shredding the Constitution really the only way that criminals can be caught and public safety maintained? Detractors would say such correlations are nothing more than an inflammatory way to blur the truth in an attempt to make the presumption of racial profiling irrefutable.

In our world of ultra-political-correctness, no one wants to admit one very simple but very important fact. We have not dealt with the race problems in this country. I do not mean agreeing that certain events from the past were wrong and should never happen again or some political proclamation that we as a people need to accept each other for who and what we are. I mean the day-to-day prejudices shrugged off or ignored or how swift people in authority are to find ways to blame these problems and many more on rap artists (of any color), the "hip-hop" lifestyle and the glorification of vulgar behavior by television. The fact is, when someone points out a glaring injustice, people rush to downplay its existence or seriousness in "modern society." Just because we are in a new millennium does not mean old problems cease to exist.

People who complain are told (politely) to "get over it" or they are presumed to be making excuses for their failure to be flush with American success (even if they are celebrities in their chosen field). It worries me that an article based on an assumption that only inner-city blacks are subjected to police harassment and declaring racial profiling a myth can not only remain unchallenged but be quoted by others. Most often, the public at large indulges an astonishing degree of naïveté about how often racially motivated acts occur in this country. Racism isn't over, equality hasn't been achieved, the Dream has not been fulfilled, and as long as no one is willing to face the "awkward fact" that non-whites in general are subject to a different standard of living with its own accompanying rules, nothing will ever change.

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- ☒ Learn Effective **Exam Problem-Solving Techniques**
- ☒ Learn the **Difference Between Essay and Multistate Strategy**
- ☒ Learn the **Difference Between the A, B and C Essay**
- ☒ **Student Will Write Two Exams for Critique**
- ☒ Learn In-Depth **Issue Spotting Methods**
- ☒ Learn the **Difference Between Major and Minor Issues**
- ☒ Learn Comprehensive **Outlining/Organizational Strategies**
- ☒ Learn How to Properly **Interpret Calls of Questions**
- ☒ Learn How to **Develop Successful Legal Arguments** (Fact to Element Analysis)
- ☒ Learn How to Use **Public Policy Analysis**
- ☒ Learn the **Relationship Between the Casebook and Legal Exams**
- ☒ Learn How to **Get the Most Out of Class and Study Time**
- ☒ Learn How to **Write the Superior Answer**

Schedule of Seminars:

LAS VEGAS

- Saturday, February 9, 2002: Noon-6 pm
- Sunday, February 10, 2002: Noon-6 pm
- All Sessions will be given at UNLV Sam Boyd School of Law, 851 E. Tropicana Blvd., Las Vegas, NV. **VIDEO PRESENTATION**

ATLANTA

- Saturday, February 16, 2002: Noon-6 pm
- Sunday, February 17, 2002: Noon-6 pm
- All Sessions will be given at Promenade Park, 3915 Cascade Rd. SW, Suite 250, Atlanta, GA. **VIDEO PRESENTATION**

SAN MATEO

- Saturday, February 16, 2002: 9 am-4 pm
- Sunday, February 17, 2002: 9 am-4 pm
- All sessions will be given **LIVE** at the Villa Hotel, 4000 S. El Camino Real, San Mateo.

SAN DIEGO

- Saturday, February 23, 2002: Noon-6 pm
- Sunday, February 24, 2002: Noon-6 pm
- All Sessions will be given **LIVE**. Saturday's Session in Moot Courtroom, Sunday's Session in the Auditorium, at California Western School of Law, 350 Cedar St., San Diego.

ORANGE COUNTY

- Saturday, March 2, 2002: 9 am-4 pm
- Sunday, March 3, 2002: 9 am-4 pm
- All sessions will be given **LIVE** at Hope International University, 2500 E. Nutwood at Commonwealth, Fullerton (across from Cal. State Univ., Fullerton), Second Floor, Room 205.

LOS ANGELES

- Saturday, March 9, 2002: 9 am-4 pm
- Sunday, March 10, 2002: 9 am-4 pm
- All sessions will be given **LIVE** at the Ramada Hotel, 6333 Bristol Parkway, Culver City, in the Projection Room.

ORANGE COUNTY

- Saturday, March 16, 2002: Noon-6 pm
- Sunday, March 17, 2002: Noon-6 pm
- All sessions will be given **LIVE** (Lecturer: Attorney John Couch) at Hope International University, 2500 E. Nutwood at Titan, Fullerton (across from Cal. State Univ., Fullerton), Room 215A.

VENTURA

- Saturday, March 16, 2002: 10 am-4 pm
- Sunday, March 17, 2002: 10 am-4 pm
- All sessions will be given at the Ventura College of Law, 4475 Market St., Ventura, Room 9. **VIDEO PRESENTATION**



SACRAMENTO

- Saturday, March 16, 2002: 10 am-5 pm
- Sunday, March 17, 2002: 10 am-5 pm
- All sessions will be given at America's Books, 725 J Street, Sacramento. **VIDEO PRESENTATION**

RIVERSIDE

- Saturday, March 16, 2002: Noon-6 pm
- Sunday, March 17, 2002: Noon-6 pm
- All sessions will be held at California Southern School of Law, 3775 Elizabeth St., Riverside, Room 2. **VIDEO PRESENTATION**

\$160 per person

Pre-registration Guarantees Space & Workbook

Students who pre-register for the Writing Course and June 2002 Baby Bar Review (\$150 Deposit Required) will be given a \$50 Discount off the Regular Writing Course Price

\$135 Group Rate (available to groups of 5 who register together at least one week before the desired seminar)

\$170 Registration at Door (if space available)

\$170 Audio Course (plus shipping & handling)

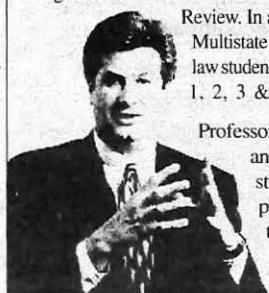
No Tape Recording Permitted • No Exceptions

Course
Lecturer:

PROFESSOR JEFF A. FLEMING
Attorney at Law • Legal Education Consultant

For the past nineteen years Professor Fleming has devoted his legal career to the development of legal preparatory seminars designed solely to aid Law Students and Bar Candidates in exam writing techniques and substantive law.

Professor Fleming's experience includes the Lecturing of Pre-Law School Prep Seminars and First, Second and Third Year Law School Exam Solutions®. He is the Organizer and Lecturer of the Baby Bar Review Seminar and the Founder and Lecturer of the Legal Examination Writing Workshop. Both are seminars involving intensive exam writing techniques designed to train the law student to write the superior answer. He is the Founder and Lecturer of Long/Short Term Bar Review. In addition, Professor Fleming is the Publisher of the Performance Exam Solution™ and Multistate Examination Workbooks, the creator of The Exam Solution Tape Series®, which aids law students in exam preparation, the Author of the Essay Examination Writing Workbook Volumes 1, 2, 3 & 4. These are available in legal bookstores throughout the United States.



Professor Fleming has determined that the major problem for most law students is weak analytical skills. Most students can learn the law, but application of the law is a stumbling block under exam conditions. Professor Fleming has structured his programs to include both substantive law and legal analysis training. This provides the combination necessary for the development of a better-prepared and skillful law student and Bar candidate. These courses have made it possible for thousands of law students to improve their grades and ultimately pass the Bar exam.

REGISTRATION FORM

Name _____
Address _____
City _____ State _____ Zip _____
Telephone (_____) _____
Law School _____
Current Year/Semester _____ / _____ Graduation Date _____
Workshop Location/Date to be Attended _____
Form of Payment: ☐ Check ☐ Money Order (Make Payable to Fleming's Fundamentals of Law)
☐ MasterCard ☐ Visa ☐ Discover ☐ American Express
Credit Card # _____ Credit Card Expiration Date _____
Driver's License # _____ Signature _____ Date _____



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News from the LRC

"I Thought I Made a Better Grade in Torts"

by Brainerd Currie, Professor of Law,
Duke University [1912-1965]

I thought I made a better grade in torts.

I tried to read so many law reports,

I learned a lot from reading Mr. Leon Green

How judges try to be sly

Behind the law's protective screen.

I learned to psycho-analyze a court!

Gee! I thought I made a better grade in tort.

Examination day I felt real fine.

I picked three issues out in every line.

To dialectic arguments I tried to call a halt

And wrote a lot about the thought

Of "negligence without fault."

I said commissions should replace the courts!

Wow! I thought I made a better grade in torts.

Because a lawyer never should give in

I tried to show how either side could win.

I praised in glowing phrase the Torts
Restatement's golden rules.

The courts, today, do what they say

Or else they're thought a pack of fools.

You never need to cite the old reports!

Gosh! I thought I made a better grade in torts.

Insurance rates I viewed with grave alarm.

We can't afford to pay so much for harm.

The "adequate award" is an emotional device.

For broken necks, and other wrecks

The law should set a ceiling price.

The dead and injured ought to be good sports!

My! I thought I made a better grade in torts.

Do you remember Mrs. Palsgraf's case?

Those fireworks that damn near wrecked the
place.

The reas'ning of Cardozo made my head go
round and round,

But after all I can't recall.

Does Prosser say the case is sound?

Or, if not, what's the rule that he supports?

Shucks! I thought I made a better grade in torts.

My teacher was a fellow called Malone,

Perhaps I might have learned more on my own.

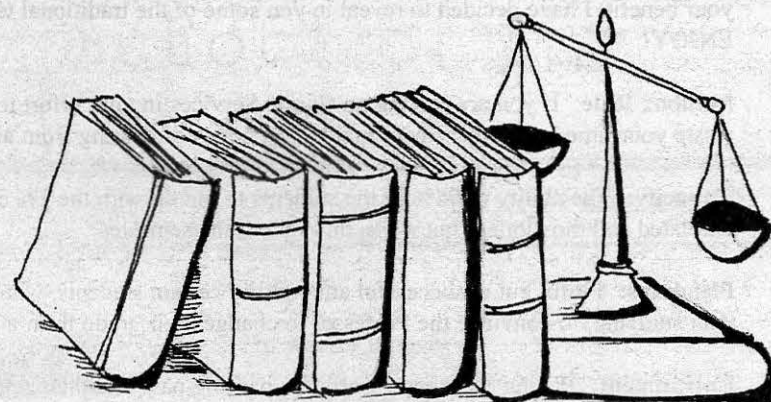
I thought we went to school to learn the meaning
of the laws

But in the fall his talk was all

About the "meaning of a cause."

I bought Malone Martini's by the quart.

Damn! I should have made a better grade in tort.



This rhyme is from the book *Quidsome Balm: The Collected Nonsense of Brainerd Currie*, edited by Ross E. Davies & Montgomery N. Kosma with James C. Ho, Washington, D.C.: Green Bag Press, 2000. You can find it in the LRC Reading Room at K184 .C85 2000. It is reprinted with the generous permission of the Green Bag Press.

Professor Currie was something of a rarity: a scholar, poet, pundit, and driving force behind an entire movement of legal scholars about "the lost meanings of lovely words." *Quidsome Balm* at 8. Currie was a giant in the field of conflict of laws, but he had a genius for wordplay. One evening after several drinks, a colleague insisted to Currie that the proper pronunciation of the word "clothes," at least in Virginia, depended on whether one was wearing them or washing them! Currie, a model of modern intellectualism, proudly rose to that challenge — and many more — in his writings for various law school student newspapers. They are amusing and quixotic, like this rhyme (he never called them "poems") and others that include one about a circumcision that went sorely askew! He also wrote interesting murder mysteries that helped the students spot legal issues and learn the law. All of these are included in *Quidsome Balm*.

Professor Currie is to be saluted and his works cherished. Although we cannot go back and re-take our own torts exams, we can always think how we could have done better and chuckle at Professor Currie's poetic lament.

As former California Supreme Court Chief Justice Roger Traynor wrote of Currie in a Mercer Law Review tribute:

"One was reassured by his company. There was hope for the sad world if only once in a while, if only here and there, a man like Brainerd Currie appeared and worked to make it better." 28 Mercer Law Review 441, 445 (1977)

* Submitted by John Adkins, Head of Public Services

Joke Corner

The Big Shot

The following is taken from an e-mail forward sent to a recent law school graduate...

The Big Shot

Joe grew up in a small town, then moved away to attend college and law school. He decided to come back to the small town because he could be a big man in this small town. He really wanted to impress everyone. So he returned and opened his new law office.

The first day, he saw a man coming up the sidewalk. He decided to make a big impression on this new client when he arrived. As the man came to the door, Joe picked up the phone. He motioned the man in, all the while talking.

"No. Absolutely not. You tell those clowns in New York that I won't settle this case for less than one million. Yes. The Appeals Court has agreed to hear that case next week. I'll be handling the primary argument and the other members of my team will provide support. Okay. Tell the DA that I'll meet with him next week to discuss the details."

This sort of thing went on for almost five minutes. All the while the man sat patiently as Joe rattled instructions. Finally, Joe put down the phone and turned to the man. "I'm sorry for the delay, but as you can see, I'm very busy. What can I do for you?"

The man replied, "I'm from the phone company. I came to hook up your phone."

TWIST ON TERMS BY TIM

Can we be serious for a minute? All through law school, I have been wondering to myself, where did all these legal terms come from? Well, I finally found out. I did a little research and came up with some amazing data. What professors have purported to be "legal terms" are, in fact, just traditional words hidden behind a façade legalese. So, for your benefit, I have decided to reveal to you some of the traditional terms accompanied by their literal definitions. ENJOY!

Mailbox Rule: If you are relying on Career Services in your effort to obtain post-law school employment, do not waste your time standing by your mailbox in hopes of hearing from an employer.

Capacity: The ability of 98% of the students to put up with the 2% of the students who continuously ask stupid, unrelated and thoughtless questions throughout the semester.

Pleadings: Pitiful but unsuccessful attempts by certain students, who spent more hours drinking during the semester than studying, to convince the Professor to change their grade from a 68 to an 86.

Entrapment: Paying \$130 for a worthless parking pass and then getting ticketed for parking in the campus garage.

Duty of Loyalty: Duty that requires students to sit by idly and not protest as the University continues to spend 100K's on keeping the grass mowed and flowers blooming, and yet, cannot find the cash to supply us with a sufficient number of computer terminals. GO FIGURE?

Long-arm statute: Applies to person who consistently, for no apparent reason, feels need to raise hand and ask question 15 seconds before end of class. Penalty for this...probably three push points if you're in a certain Professor's class.

Intentional Infliction of Emotional Distress: Having to wait 5 weeks to get grades, even though you know you blew it in the first place.

False Imprisonment: Having to attend those worthless Lexis and Westlaw seminars.

Trespass: Undergrads using our parking lot and our library!

Future Interests: Non-existing Employment options pledged to USD law students prior to entering law school.

Rule Against Perpetuities: Term used by Professors, while meaningless in legal field, provides hours of laughter and shenanigans for faculty in teachers lounge as they re-enact actual student attempts at deciphering the rule in class.

Disclaimer: These are not meant to offend anyone. If you have any questions or comments, please e-mail me at tstuart@acusd.edu.

THANKS,

TIMOTHY M. STUART, *Contributing Editor*

Room available - Mission Hills

Large bedroom available with adjoining bathroom in grand tudor home with extensive gardens.

Full access to kitchen and laundry facilities as well as living/dining and outdoor gardens. Beautiful views of San Diego Bay and a large verandah to enjoy them.

Perfect tranquil environment for studying.

Call 619 291 4915. Available immediately. \$550

Stay tuned for more

Twists on Terms by Tim in the next issue of MOTIONS

FINANCIAL AID UPDATE

Current Year Financial Aid (Fall 2001 and Spring 2002)

March 1, 2002, is the Loan Certification Deadline to apply for loans for the current academic year.

Financial Aid for Next Year (Summer 2002, Fall 2002, and Spring 2003)

Don't forget that March 1, 2002 is the priority filing date for next year's financial aid. You must file both the FAFSA and the USD Law School Institutional Financial Aid Application. If you plan to attend summer school, your financial aid file for next year must be complete by April 2, 2002 to avoid late charges and to ensure that funds are available when classes begin.

The USD Institutional Financial Aid Application can be picked up in the Financial Aid Office. You should have received a FAFSA "PIN" number. This PIN will allow you to file a renewal FAFSA online. If you don't receive a PIN, you can still file a regular FAFSA online at www.fafsa.ed.gov. Remember to save your PIN number because it will allow you to track your federal loans on the NSLDS web site at www.nsls.ed.gov.

Summer Off-Campus Federal Workstudy and Summer Community Service Grants

Summer Off-Campus Federal Workstudy and Summer Community Service Grant applications were put in your student mailbox. The applications must be submitted by April 5, 2002. For additional applications or information, contact the Financial Aid Office.

Admissions

Campus Visit Days 2002

Help the Admissions Office bring in the Class of 2002 by being available for admitted students during the 2002 Campus Visit Days. Various areas to volunteer include: Continental Breakfast Mingling (8:30a.m. – 9:00a.m.), Campus Tour Guide (Sometime between 9:00a.m. and 11:30a.m.), and Room Escort/Lunch Mingling (11:50a.m. – 1:00p.m.). Volunteers are needed for the following Campus Visit Days:

Monday, March 18

Monday, April 8

Monday, April 22

Volunteer Sign-up forms are available in the Admissions Office or contact Trish Hodny at hodny@sandiego.edu or 619-260-6891.