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# MOTIONS

University of San Diego School of Law

Volume 39, Issue 1

September 2003

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## CALIFORNIA SPECIAL ELECTION 2003

### *Professor Shaun Martin "Recalls the Recall"*

By Jonathan Meislin  
Staff Writer

One of the University of San Diego's own professors has taken part in the California recall. No, not to run against Arnold, but to prove that part of the recall statute is unconstitutional.

Professor Shaun Martin successfully brought suit on July 23, and obtained summary judgment declaring that California Elections Code section 11382 is unconstitutional, as well as a permanent injunction enjoining the state from enforcing the statute.

The court ruled on the case in only six days, and produced a decision on July 29, after an expedited briefing schedule. Though this decision has touched both the infamous

California recall and the United States' Constitution, many voters will only take what Professor Martin has accomplished for granted.

The California recall statute provides that to recall a state officer, there must be a simultaneous two part vote in a recall election.

First, there must be a yes/no vote on whether to recall the state officer, in this case Gray Davis. The second part of the ballot happens in the case that there is a recall. This is the part where voters get to choose which candidate shall succeed the state official until the expiration of his term. Section 11382 of the California Election code puts forth the condition precedent that if a voter fails to either vote yes or no on the first part, his or her vote on the state official's successor will not be counted.

This may not sound insubstantial at first glance, but by striking the section as unconstitutional, the decision protects those who do not wish to vote and those who are morally and politically opposed to the recall, but wish to have a say in Gray's successor if he is defeated. According to Martin, those who are not strong either way on the vote are the most susceptible to not having their votes counted.

Martin discovered the flawed statute after hearing a false statement on the radio that if a voter voted no on the recall, that voter could not be able to vote in the second part. Martin knew that the proposition had to be false, but while researching the proposition he came across section 11382. The statute had been in effect since 1911, and no one had yet challenged the statute. Although the statute had played a roll in previous recalls, none were of the size

Please see **RECALL**, at 3

## RED MASS, APRIL 29, 1963



In the foreground is the U.S. Naval Color Guard. In the background beneath the baldachino is Charles Buddy, proto-bishop of San Diego. For information on this year's Red Mass, to be held on campus, please see *infra* page 2.





University of San Diego  
SCHOOL OF LAW

Published Since 1971  
Formerly *The Woolsack*

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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

Greetings from the Dean:

For all you first year students, I am very happy to welcome you to USD Law School. And for the rest of you, welcome back. We begin a very special celebration period this semester at the Law School. For the next 18 months (3 semesters) we will be marking the 50th anniversary of the University of San Diego School of Law. This milestone will be acknowledged with special events and programs, including a Gala Celebration in April, 2004. Our usual busy and exciting school year will be very much enhanced with these anniversary activities. Students are encouraged to complement their academic endeavors and coursework with our numerous programs, speakers, and events, academic and social, and to learn something about the history, growth, and direction of our outstanding law school. These extracurricular opportunities not only add to your academic pursuits, but they provide significant and meaningful exposure to life outside the classroom.

New faculty and a new administrator join us as we move toward our next fifty years. We welcome new faculty Laura Adams and Larry Solum. Professor Laura S. Adams joins the USD School of Law faculty from Thomas Jefferson School of Law where she taught courses on Family Law, Contracts, International Organizations, Refugee and Asylum Law for the past two years. She served as an Attorney-Adviser with the U.S. Department of State from 1993 to 1997. She graduated from Harvard Law School in 1992 and clerked for the Honorable Michael B. Mukasey, U.S. District Judge for the Southern District of New York. Professor Larry Solum becomes a permanent member of our faculty after serving as a visiting professor last year. His distinguished career includes 18 years of service at Loyola Law School where he was a Professor of Law and Associate Dean for Academic Affairs from 1993 to 1996. Like his new colleague, Laura Adams, Larry Solum is a Harvard Law graduate and also served as editor of the Harvard Law Review. He has practiced law at Cravath, Swaine, and Moore in New York and was law clerk to the Honorable William Norris of the United States Court of Appeals for the Ninth Circuit. Professor Solum researches and writes in the areas of civil procedure, law and technology, and virtue jurisprudence, and he will teach civil procedure in both fall and spring semesters.

Yvonne Dutton joins the Lawyering Skills I program as a new Instructor. Ms. Dutton, senior counsel in the San Diego office of Allen Matkins, practices in the litigation department. She is a graduate of Columbia University School of Law where she was a member of the law review. Joining the Professor Dutton and the rest of the faculty are visiting professors Don Dripps, the James A. Levee Professor of Criminal Procedure at the University of Minnesota Law School, teaching Criminal Law and Criminal Procedure; Clark Gibson, Associate Professor of Political Science at the University of California, San



Diego, teaching Environmental Policy; Paul Horwitz, previously a visiting professor at the University of Iowa College of Law, teaching Federal Courts; and Graham Strong, former visiting professor at Santa Clara University School of Law, teaching Evidence. Returning visitors include: Michael Devitt teaching Evidence, Jane Henning teaching Copyrights and Introduction to Intellectual Property, Kevin Greene teaching Entertainment Law, and Mat McCubbins co-teaching Statutory Interpretation. The Honorable H. Lee Sarokin also returns as Distinguished Jurist-in-Residence.

On the administrative side, we welcome Trevin Hartwell to the Law School as the new Director of Development and Alumni Relations. Trevin was previously the associate director of west coast development for Harvard University. Before that, he was a development officer at the National Academy of Sciences in Washington, DC. He holds a master's degree in political science from American University in Washington and a BA from Pepperdine.

While we welcome new faculty our outstanding faculty continue to distinguish themselves. Professor Shaun Martin and his spouse, Sandra Rierson (attorney and former Lawyering Skills I Instructor), made the news with their litigation challenging certain aspects of the upcoming California gubernatorial recall election. Professor Lester B. Snyder, marking his 20th year as a USD law professor, has been recognized by the Law Library Justice Foundation and will receive the 2003 Bernard E. Witkin, Esq. Award at an Honorary Dinner on September 17th. The award honors members of the San Diego legal community for civic leadership and excellence in the teaching, practice, enactment or adjudication of the law. Co-recipients are Justice Judith Haller and attorney Janice Brown, and past recipients include Professor Hugh Friedman and former USD Dean and Professor Don Weckstein.

As the school year begins, and most especially, as our anniversary period begins, I look forward to meeting incoming students and welcoming back old friends. And whether I see you in the classroom, or in the hallways, parking lots, and coffee carts which make up our fabulous USD environments, I look forward to hearing from you about our law school and its challenges, and celebrating our accomplishments and strengths. As we reflect on our past, together we will define our future and strengthen the reputation of our school and its programs in the community, in the law school world, and in the profession.

Have a great year!

## THE RED MASS 2003

The Law School, in conjunction with the Saint Thomas More Society of San Diego, invite all to the annual celebration of the Red Mass on Monday, October 6, 2003 at 5:30 p.m. in Founders Chapel on the USD campus. A reception will follow the Mass in Founders Hall Foyer and the French Parlor. The Mass will be celebrated by the Most Reverend Salvatore J. Cordileone, Auxiliary Bishop of San Diego. A native San Diegan, Bishop Cordileone went to Crawford High School, San Diego State University, the University of San Diego and St. Francis Seminary. He also attended the North American Pontifical College in Vatican City, considered the church's most prestigious school for selected seminarians. An expert in canon law, Cordileone served at the Vatican as a member of the Apostolic Signatura, the highest judicial court of the Catholic Church.

The Solemn Votive Mass of the Holy Spirit, traditionally known as the Red Mass, is a religious ceremony for all members of the legislative, judicial, and executive branches of the government and of the bar, as well as members of the legal academic community, Catholic and non-Catholic alike. It is a special occasion when all may reflect on the God-given power and responsibility that are part of their offices. Together Red Mass participants ask God to grant all the members of

the legal community the virtues and gifts necessary for the proper and just administration of their duties.

The custom of a special Mass for Bench and Bar originated in England, France and Italy in the early thirteenth century. The first recorded Red Mass, celebrated in 1245, was held in the chapel of the Order of Advocates, La Sainte Chapelle. Elsewhere in France, the Red Mass was celebrated in honor of St. Ives, the patron saint of lawyers. Almost 100 years later, during the reign of Edward I, English judges and lawyers assembled for a Red Mass before the opening of each term of court. The priest wore red robes to represent the wisdom of the Holy Spirit. The judges of the High Court, all of whom were doctors of law, conformed to this ecclesiastical symbolism by also wearing red robes. As a consequence, the term "Red Mass" emerged.

The Red Mass is often celebrated in the United States on the first Monday in October where it coincides with the opening of a new session of the U.S. Supreme Court.

If you would like to attend, please RSVP to the Dean's Office by September 30 at 260-4527 or to [lawdean@sandiego.edu](mailto:lawdean@sandiego.edu) so that we may order catering accordingly.

The University of San Diego School of Law is gearing up for an 18-month long celebration marking the 50th Anniversary of the Law School. Marking the occasion is a new School of Law anniversary logo which will appear on banners, flyers, invitations, and other anniversary-related materials. Celebrations begin with an Anniversary Inaugural program on September 30, 2003 at the Kroc Institute for Peace and Justice. Thomas J. Fanning, first dean of the Law School, will be on hand to receive a special gift. The program will also feature remarks from distinguished voices from the Law School's history: Sister Sally Furay, class of 1972 and former USD Vice-

President and Provost; Professor C. Hugh Friedman, who began teaching at the law school in 1959; and Professors Larry Alexander and Bert Lazerow, who have logged more than 30 years apiece at the law school. Current dean and professor of law, Daniel B. Rodriguez, will address the future of our law school as we reflect upon our past successes and accomplishments, and look forward to meeting new challenges and opportunities in the evolving world of law and legal education. Limited seating is available for students. If you are interested in attending, please leave your name and contact number and/or e-mail in the Dean's Office, room WH 200.

## DeSIGN of the Times





# Curriculum Changes For 1Ls

By Jonathan Meislin  
Staff Writer

The old adage goes, "the first year they'll scare you." As most second and third years remember, first years were subjected to six classes their first semester, massing up sixteen credits, and five classes during their second semester.

Civil procedure, contracts, torts and property took a year to complete, and two thirds of a first year's grade depended on how well he or she did remembering all of the information accumulated over the year and being able to apply that information onto one test. This grueling tradition has been handed down for ages, as though a fraternal hazing ritual, but the University of San Diego will adhere to the tradition no longer.

First years will now take four classes their first semester and five their second. Though only finishing with one less credit than students from the previous system, only civil procedure will be a year long course, and constitutional law will now be a first year course. On top of that, students will get another credit for lawyering skills. Hey, maybe first year won't be so scary after all.

First year students will now be assigned a first

semester schedule including three credits of civil procedure, two credits of lawyering skills and two four credit semester classes out of the four core first year classes, contracts, torts, property and criminal Law. Yes, criminal law will be beefed up to a four credit course. Second semester of the first year will consist of a second semester of civil procedure, the two remaining core first year classes not taken the first semester, one credit of lawyering skills, and four credits of Constitutional Law.

The advantages of the new system are numerous. As Assistant Dean and Professor Kevin Cole elaborated, "There are many perceived benefits. This [new system] allows students to enter law school with more manageable schedules." Rather than getting into the nooks and crannies most first years have struggled with, core classes will only cover the general topics involved in each area.

Dean Cole explained that many of the more prestigious law schools have moved to this new system, as students are to be expected to dig into the core first year areas on their own. Students will have the ability to specialize and tailor their education to their individualized future. "Students can begin to specialize earlier, because many required classes will be completed during the first year," says Cole, "now, only Tax and Professional

responsibility are required for upper division students."

Under the new system, evidence and criminal procedure are no longer required upper division courses, though both classes will still be on the bar. Students are still encouraged to take the previously required courses, though there is no pressure if students cannot fit them in before graduation.

Beyond the advantages to the students, the school can have more leverage in scheduling classes. Because the four classes, criminal law, torts, property and contracts will be interchangeable, first year professors can take a semester leave and the school can allocate classes with the available professors. The system meets the need for flexibility for students and teachers. "When you make a change, you usually make a change to a better system," said Cole. Hey, maybe we can get rid of that ridiculous registration process.

Second and third years can only look back to their glory days of their first years. The days of the multiple year long classes are gone. For those who wish they could have partaken in the new system, too bad, as Dean Cole said, "You should have been born earlier."

**RECRUITING WRITERS, ILLUSTRATORS AND LEGAL PONTIFICATORS!**  
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## RECALL, from 1

and importance of the up coming Davis recall. Martin swiftly began the case with his wife, also an attorney, and reached the favorable decision by the end of the month.

Martin's claim was that by requiring a voter to vote on the first question, in order to have their vote on the second question count, a voter's First, Fourth, Ninth, Fifteenth, Nineteenth and Twenty Sixth Amendments are violated. The court agreed, and held that because the statute forces a voter to take a position on the recall, and the failure to conform thereto results in a cancellation of his or her vote, the section is unconstitutional. The section both strips a voter of his right to vote, and also forces a voter to vote, in violation of the equal protection and due process clauses. No legitimate state purpose was fulfilled by requiring voters to vote on the first part of the recall. All of this was decided in an expedited briefing schedule to ensure that there was a ruling before the ballots for the recall were printed.

## ASK MADAM GRAMMAR

Dear Madam Grammar,

I often read in judicial opinions the word "timely" used as an adverb, not as an adjective, as in "plaintiff failed to timely appeal." Is this correct?---*Adverbally Confused*

Dear *Adverbally Confused*,

You are quite right to question the use of timely as an adverb. It is in fact an adjective, not an adverb. In the example you gave, the proper use of "timely" would be "plaintiff failed to file a timely appeal," or "plaintiff failed to appeal in a timely manner." Madam Grammar believes that this common error (of using timely as an adverb) stems from the word's spelling. Timely ends in -ly, which suffix in English generally signals an adverb. But such an assumption is unfounded, and can be proved as such with little effort. For exam-

ple, the word "smelly" ends in -ly. But would one write "plaintiff smelly filed"? Of course not; rather "plaintiff filed a smelly appeal." By parity of reasoning the same result for "belly." In short, never assume a word's type merely by its spelling.

Dear Madam Grammar,

Could you please review the rule regarding split infinitives?---*Name withheld*

Dear Anonymous,

Much debate rages over whether proper English still requires that one not split the infinitive. Generally, the grammar mavens have instructed us that "to quickly eat" is incorrect but "to eat quickly" is proper (notwithstanding the remonstrance of Miss Manners). Those who split defend

their actions by citing Chaucer. Madam Grammar cannot understand the value of such a precedent: anyone who has read Chaucer knows that he does not write anything that we would recognize as modern English. For example, "Lordinges," quod he, "I warne yow, al this route, /The fourthe party of this day is goon; /Now, for the love of God and seint John, /Leseth no tyme, as ferforth as ye may." On balance the best rule is to avoid splitting infinitives unless one wishes especially to emphasize the adverb.

Dear Madam Grammar,

Would you explain the difference between "that" and "which"?---*Pronounced Interest in Pronouns*

Dear *Pronounced Interest in Pronouns*,

You highlight the difference

between the nonrestrictive and restrictive relative pronoun. Alas! Many good writers frequently confuse the two, perhaps purposefully; but a rule governing their use does exist. If the object of the relative pronoun is identifiable without recourse to the clause following the pronoun, then the nonrestrictive pronoun — "which" — should be used. Conversely, if the object is identifiable only by the following clause, then the restrictive pronoun — "that" — should be used. For example, use "There is the book that I gave you" when the person has many books but not all of them given by you; use "There is the book which I gave you" when the person's only books are those given by you. Avoid at all costs the continual use of "which" in derogation of the abovesaid rule; it smacks of pedantry.



# THE LEGAL RESEARCH CENTER INFORMATIONAL EXTRAVAGANZA

## FROM THE EDITOR.

Dear Lector:

The first year of law school can be harrowing (so too can every successive year, especially if the lessons from the first remain unlearned). No lawyer worth his salt can succeed without efficient research skills. The same applies, *a fortiori*, to law students. To the end of educating all students on the ins and outs of legal research, the librarians and staff members of the LRC have contributed a cornucopia of didactic assistance for the edification of us law students.

## THE LRC COMPUTER INSTRUCTIONAL LAB

By Owen Smith

Head of Electronic Services, LRC

The LRC Computer Instructional Lab provides enhanced educational opportunities for the USD law student through legal research databases, Computer-Assisted Legal Instruction (CALI), LegalTrac, CD-Rom databases, SALLY (USD's library catalog), the Internet, and spreadsheet / word processing software.

The LRC lab offers 28 PIII computers running Windows XP; a scanner with character recognition software to transfer paper documents into Word or WordPerfect files; and a data projector which can be used as a teaching station for classes offered in the lab.

Any USD community member may use the lab, but law students have priority. Law students should post their student ID cards on the computer monitors so the lab staff will be able to easily identify them and give them priority if others are waiting to use a computer in the lab. There is no fee to use the computers or the Lexis and Westlaw printers; however printing from the Internet or from a software application costs 10 cents per page. There is also a laptop printing station in the lab. To order a print job, insert your student ID card or LRC copy card in the card reader next to the computer that you are using. Student ID cards may need to be activated at the USD Print Shop before use. You can purchase a copy card or add money to your student ID card at the LRC in the first floor copy room next to the Reserve Room in the LRC.

A lab assistant is stationed in the lab to assist patrons, but feel free to contact Owen Smith or Robert Lee in the LRC's Electronic Services office (Room 121) or by phone at (619) 260-4759 if you have questions.

## WHAT'S IN THE RESERVE ROOM, ANYWAY?

By Ruth Hastings

Head of Circulation, LRC

To the right as you enter the LRC, you will see the Circulation Desk. Down the corridor from the Circulation Desk is the Reserve Room, with open reserve stacks and study carrels, and a Copy Room, which houses one of the six photocopy machines in the LRC, as well as a change machine and a copy card vending machine.

Students find plenty of law school help in the Reserve Room. Hornbooks and nutshells are popular because of their overviews of legal subjects. They give a context for the study of the individual cases assigned in classes. Also look for special readings assigned by professors, the latest law reviews and periodicals, court rules, and Bluebooks. Patrons may use the materials at study carrels in the room or check out materials for use outside the Reserve Room for three hours. Items are renewable if a hold has not been placed. Reserve items cannot be renewed by telephone. Selected reserve materials are available for overnight check-out to currently enrolled USD law students only, starting three hours before closing. Overnight items are due by 9:00 A.M. the following day. Patrons who keep reserve items beyond these time limits will be charged \$5.00 per item per hour, beginning when the items are due.

The Reserve Room has books on legal research and writing and on how to take a law school exam. Examples of past law school exams, some with sample answers, are available at the Circulation Desk and circulate for three hours. Exams are renewable if a hold has not been placed. The fine for exceeding the time due is the same as for other reserve items. Past exams are also available from the LRC web page at <http://www.SanDiego.edu/lrc> under the Previous Exams link. You will need a student password to access the online exams. If you don't already have a password, go to Serra Hall to obtain one. To assist students in preparation for exams the LRC also has flashcards on many subjects at the Circ Desk.

Please stop by the Circulation Desk when you have questions, or call us at (619) 260-4542. The entire staff is happy to assist you.

## WHO MAKES THE LIBRARY WORK FOR YOU?

By Ruth Levor

Associate Director, LRC

An outstanding cast of service-minded individuals is responsible for the many services available at the LRC, as well as for the growth, orderliness, accessibility, and fine appearance of the collection. First to greet you when you enter the library are the Circulation staff. They are happy to answer your "directional" questions (Where are the telephones, copiers, change machine, bathrooms ... ?) and to explain library policies about checking out books, due dates, overdue fines, etc. The 3-member full-time staff, along with their crew of hardworking work study assistants, cover among them the 108 hours that the library is open. In addition to their smiling faces and eagerness to help patrons, they bring to the desk backgrounds that include work as a crew leader of enumerators for the 2000 U.S. Census (Leanne Phan), bilingual proficiency in Spanish and English (Daniel Gonzalez), and management of a wind chime business (Ruth Hastings, Department Head!).

When you need help with legal research, the Circulation staff will direct you to one of their colleagues in the Reference Department (see the article "You Can't Run Away..."). When it's computer help that you need, they'll help you track down Electronic Services librarian Owen Smith or Electronic Services Assistant Robert Lee, our resident technology wizards. After having worked for a 120-member law firm and for the Sixth Circuit Court of Appeals in Louisville, Kentucky, Owen is not phased by anything that we throw at him. Likewise, Robert has kept the systems going for the accounting firm of Deloitte & Touche and has taught Computer Science courses on the community college and graduate levels.

Also close to the "front lines" of library service are Collection Services librarian Sushila Selness and her staff, Pat Bermel, Niran Shenoda, and Ruth Walker (as you can see, the name "Ruth" is popular around here!). Sushila, a veteran of many years of librarianship at both SDSU and USD, oversees the selection and ordering of materials for the collection, and she and her staff are responsible for the entire maintenance of the stacks and microforms holdings as well as for the processing of interlibrary loan requests. Pat is also familiar to evening students in her role as Evening and Weekend Reference librarian. Niran balances her very busy job at the library with caring for her new baby son and his 7-year-old big sister, and Ruth takes the prize among our staff for the most grandchildren!

As with any organization, "front lines" are only part of the story of an efficient operation. Without the people who acquire and process the materials, service to our patrons would come to a grinding halt. Five librarians and five staff members are dedicated to making sure that the materials you need are received, paid for, checked in, cataloged, labeled, and shelved as efficiently as possible. Under the direction of Loren Stamper, who is an accomplished linguist and a collector of Franklin Mint model cars, the Technical Services division attends to these functions. Loren has assembled a talented team to keep the collection organized and growing: Technical Services Librarian and skilled craftswoman Margaret McDonald, who travels the country and abroad finding ideas and materials for her fabulous beadwork, and Catalog librarians Jane Bentley music lover and traveler extraordinaire, Peggy Trader, who literally runs all over the world(!), and Kathy Whistler, whose expertise extends well beyond the cataloging of legal materials and includes a graduate degree in American literature.

Lois Scheer, mother of a USD law grad and author of children's literature, takes care of ordering and payment; Luda Berengolts, Russia's best export to San Diego, catalogs profusely and proficiently; Sue Fisher, our resident animal care expert, processes serials; Carrie Dussia (pronounced Doo-SHAY), comes out of the water and doffs her scuba gear to supervise the processing of new materials; and Sarh Winston takes a break from creating magnificent works of art to care for the preservation of materials in our collection.

At the hub of all this productivity is Office Manager Jean Miles. Many work study assistants know Jean as the person who got them started on their library jobs and who makes sure that they get paid on time, but she does even more, providing administrative support to every department of the library and especially to the Library Director, Professor Nancy Carol Carter, an esteemed Native American law scholar, and to Associate Director Ruth Levor, who teaches Advanced Legal Research to upper class law students in the Spring semester. Jean also has an exciting background as a search and rescue expert!

We are all committed to providing our patrons with the best collection and service possible. We looking forward to meeting as many of you as possible as the new school year begins. Please drop by to introduce yourself when you're in the library, and don't hesitate to share with us any ideas that you might have for even better service in the LRC.



## YOUR TAX DOLLARS AT WORK

By Sushila Selness  
Head of Collection Services, LRC

Do you need to find the full text of the USA Patriot Act? Do you wish to look at a senate bill that never became public law? Perhaps you need statistics from government agencies or the arguments for and against a state proposition. Do you want to find out what portion of the state lottery funds went to public schools in California in 2002?

You can find all of the above in government documents. The LRC has been a partial depository of federal and state documents since 1967. Libraries designated as depositories of federal documents must agree to maintain materials and make them freely available to the public. The LRC selects and houses government publications relevant to legal research. Some of these are available in hard copy, others on microform.

### FEDERAL DOCUMENTS:

The LRC acquires core titles from the legislative, executive, and judicial branches of government. Some of these are the U.S. Code, Statutes at Large, the Congressional Record, legislative bills, and slip laws as they are signed. The core executive and agency publications include the Public Papers of the President, the Federal Register, the Code of Federal Regulations, and agency decisions such as those of the Federal Trade Commission and the Interstate Commerce Commission. In addition, the LRC receives bound volumes of the United States Reports as they are published.

The LRC also subscribes to commercially reprinted government documents in order to provide access to older publications. For example, our holdings for the Code of Federal Regulations and the Federal Register on microform go back to 1938 and 1936, the beginning of their respective publication. Similarly, all published congressional bills, hearings, committee reports, and senate and house documents are available on microform at the LRC. These commercially reproduced documents come with detailed indexing. For legislative research you may consult these indexes that lead to the full text on microform.

### STATE DOCUMENTS:

As a depository of California documents, the LRC receives copies of bills currently before the State Senate and Assembly, and other related documents, as well as state executive branch documents. The LRC has also purchased a complete microform set of California legislative bills from 1963 on. It includes bills, constitutional amendments, concurrent resolutions, and joint resolutions of the California legislature for all regular and extraordinary sessions. Every printed version of each bill, including all amendments and changes, and the final approved "chaptered" print following passage of a bill are also reproduced. Also included are analyses of Assembly and Senate bills (Assembly File Analysis) by the Assembly Office of Research.

The LRC also has the California Voters Pamphlets dating from 1910. The pamphlets supply voters with arguments for and against proposed constitutional amendments, propositions, initiatives and referenda, and reproduce the texts of the proposed laws.

## FILM TREASURES

By Sushila Selness  
Head of Collection Services

Electronic services indexes can help update you on the most current information, but a huge collection of filmed LRC sources will provide you with detailed research materials unavailable elsewhere and reaching far back into the past.

One of the lesser known LRC treasures of information, the Microform Collection, containing materials on microfilm, either in the form of fiche cards or film reels, offers a wealth of information spanning several centuries and a variety of disciplines. In addition to government documents and legal periodicals on microform, several specialized collections can meet your research needs.

If your research calls for older, archival material, it is quite likely that the LRC has it on microform. Most microform titles are cataloged on SALLY and easily found when doing research. With modern reader-printers and scanners it is possible to read microform without eyestrain and to carry away a laser printed copy of your research results.

Listed below are a few of the specialized research collections on microform at the LRC.

**U.N. Law Library Collection:** This set contains United Nations documents from the founding of the U.N. in 1945 to the present day. These include printed documents and Official Records of the principal organs: the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council, and a special series of U.N. documents in the areas of human rights, trade and development, and disarmament.

**Native American Legal Materials:** Supplemented with a set of tribal constitutions and law codes of approximately 56 tribes, this valuable collection of research materials includes the fields of Native American law, history, and policy.

**Human Rights Documents:** Material represented in this collection covers a broad range of human rights issues such as rights of indigenous peoples, refugees, women, labor, children, freedom of expression, freedom of assembly, freedom of conscience, abolition of torture, political killings, disappearances, slavery, and genocide; fate of political prisoners, and the rule of law and due process.

**Amnesty International Publications:** Material from the Research Archives of Amnesty International is reproduced in this collection. Included are Country Dossiers, transcriptions of radio broadcasts, press reports, and exhaustive interviews with former prisoners, as well as on-site investigations of abuses. All collected information is cross-checked by Amnesty International's Research Department and Legal Office to corroborate individual testimony and to ensure the integrity of the final published reports. The collection represents the concerns of all groups in all regions of the world.

**Canon Law Collection:** If you want to study what part canon law played in the development of civil law, the legal system of continental Europe, Latin America, and parts of Africa, Middle East and Asia, this collection provides access to the basic historical sources of canon law.

**Nineteenth Century Legal Treatises:** This comprehensive collection of more than 10,000 works enables a researcher to trace the evolution of modern law in England and the United States. Roots of many modern legal doctrines were planted during this period as governments and private institutions struggled to come to terms with the impact of the Industrial Revolution. New fields of law such as railroads, business corporations, and labor law came into being. Many legal monographs were published during this period, covering every aspect of law. No longer available in print, these have been reproduced on microform in this collection.

**Tax Foundation Archives:** Long out-of-print and difficult to acquire research resources in taxation, fiscal policy, and finance are available in this archival collection. Over 50 years, the Tax Foundation has earned a reputation for its objectivity in sponsoring research programs and compiling statistics on federal, state and local government fiscal matters.

**Uniform State Laws:** This archival collection includes transcripts of the proceedings of the National Conference of Commissioners on Uniform State Laws and transcripts of the discussions in Committee of the Whole of each Uniform and Model Act. The National Conference of Commissioners on Uniform State Laws has worked on legislative reform since its founding in 1892. It publishes uniform acts, codes, and court rules, as well as model acts. All acts produced by the Commissioners undergo a minimum two-year drafting process. Several drafts are formulated, with each successive draft incorporating new policies, alternative language, etc. These successive drafts provide a "legislative history" of sorts, showing development of each act. When finally approved, they are recommended for general adoption throughout the jurisdiction of the United States and reported to the American Bar Association.

**OTHER MATERIALS.** Of significance in the LRC Microform Collection are the Session Laws for all fifty states, the State Reports, ranging from the first published volume to where the LRC hard copy holdings begin, and the Reports and Opinions of the State Attorney General for each state. These advisory statements of the Attorney General carry considerable weight and exercise significant influence on the courts in their deliberations.

Other non-governmental sets in the Microforms area are the U. S. Supreme Court Records and Briefs, the Oral Arguments of the U.S. Supreme Court, and the California Supreme Court Briefs.

## MEET SALLY

By Kathy Whistler  
Catalog Librarian, LRC

SALLY is your key to library use at USD. The combined holdings of the campus libraries -- Copley Library at the west end of campus and the Legal Research Center -- can be searched on computer terminals at each location.

The online catalog, known as SALLY, offers a

number of search indexes: author, title, subject, genre, and several classification number systems. Generally, if you do not know the exact author or title of a work, a keyword search can be an effective approach. Before you enter the stacks, equip yourself with the "address" (call number) and location from a SALLY search for the item you want to find.

The Legal Research Center collection is organized by the Library of Congress (LC) classification sys-

tem. Call numbers begin with an alphabetic designation, A to Z, followed by numerals. Browse the stacks to familiarize yourself with the system.

Each SALLY record contains a wealth of information. Besides a physical and informational description of an item, the record also reveals its current status: it may have a special location outside of the regular stacks (e.g., reference collection, reserve room, popular law shelves, California law collection, tax collection), it may be

Please see *Sally*, at 7



# WHAT IS THE MORTALITY RATE IN THE UNITED STATES? AND OTHER FASCINATING FACTS

Revised by John Adkins  
Head of Public Services, LRC

Want to attend summer school programs abroad? Ever wonder about the requirements of bar exams in all states and the pass rates? Have no idea where to begin researching foreign law? Well, come to the Reference Collection shelves and you will find the answers to these questions and many more.

What is the Reference Collection? Located on the first floor of LRC between the Computer Lab and the Reference Desk, it is a small but heavily used collection functioning as the center of reference activities. Like the rest of the library collection, most of the reference materials are law-related, and include such resources as legal almanacs, fact books, dictionaries, encyclopedias, court and attorney directories, quotation guides, periodical indexes, and subject bibliographies. Although a few of the books are not strictly legal in nature, they provide important information you may need to know about government agencies, congressional officials, international organizations, and all sorts of statistics.

What can the Reference Collection do for you? Carefully selected by LRC librarians, it is aimed to help you with many questions you may encounter during your law school years and professional career. While it is difficult to count all the ways you can use these reference materials, some highlights in the collection may prove particularly interesting and useful to all of you.

1. Career Information. For law school students who start job hunting during the first year, the career section of the Reference Collection is a good place to begin. Several ABA booklets present excellent overviews on legal careers and specify opportunities in different areas of law, such as international law, entertainment law, environmental law, labor law, and sports law. For clerkships or summer jobs in law firms and courts, browsing the attorney and court directories can retrieve far more information than merely names and phone numbers. The Martindale-Hubbell Law Directory includes profiles of practically all the active law firms and attorneys in the United States while the Almanac of the Federal Judiciary and Judicial Profiles provide biographical narratives and comments on federal, state, and local judges. If you are particularly interested in government law-related occupations, you may find books on federal law-related careers very informative. And for those contemplating alternative careers, several books in this section list a great variety of possi-

bilities of what you can do with a law degree.

2. Research Aids. First-year students are very likely to be puzzled by legalese. To find your way around in this new land of law, you may find the following reference books indispensable. The law dictionaries, such as the Black's Law Dictionary and the Ballentine's Law Dictionary, are essential sources for legal definitions. Foreign students may use multilingual law dictionaries for legal expressions in languages other than English. Legal thesauri provide synonyms for legal concepts and can aid you in selecting more appropriate terms to look up. A dictionary of legal abbreviations, such as Bieber's Dictionary of Legal Abbreviations and Bieber's Dictionary of Legal Citations, offers useful clues to decipher the secret coding of legal shorthand. If you don't know how to cite statutes, cases or law reviews, the Bluebook--A Uniform System of Citation is the most accepted guide to legal citation form. By the way, it is good to know that many California courts prefer the California Style Manual in citing legal materials.

3. Short cuts in legal research. For unseasoned researchers, legal research can be a nightmare. Long hours spent in searching and digging may not yield desired results. The Reference Collection offers shortcuts in research. The rule of thumb is to find the research already done by others and update it yourself. For instance, the printed (Current Law Index or Current Index to Legal Periodicals) or computerized (LegalTrac) indexes of legal periodicals, though considered secondary sources, often lead to finding articles with analysis and citation to primary sources that are often difficult to find by the more conventional methods of using a statute index or case digest. You may use the articles as a reference source to begin your research, but always watch out for possible biases of the authors. For students researching laws in each state, the Martindale-Hubbell Law Digest may be the single most useful compendium summarizing statutory law in each of the 50 states plus DC, Puerto Rico, and the Virgin Islands. The Subject Compilations of State Laws and the National Survey of State Laws are also good sources for state-by-state statutory comparisons while Johnson's Sources of Compiled Legislative Histories and Union List of Legislative Histories provide available legislative histories for major public laws. Together, these tools can save you from countless hours of searching and make your research more efficient.

Though the scope of information embraced by the Reference Collection seems intimidating, the collection itself is very small. So please come and browse our Reference Collection and talk to our reference librarians. They are there to make your law school days a little easier.

## Top Five Things to do with a Law Review

By Margaret McDonald  
Serials Librarian, LRC

5. Use as chocks for airplane wheels
4. Use as a child's booster seat
3. Use as a bug swatter
2. Use as a stand for your computer monitor
1. Use as a starting place for legal research

Seriously, folks, law review articles are an excellent place to start your legal research. Well-written articles provide citations to statutes, cases, administrative regulations and other resources, in addition to in-depth analysis of legal issues. If you find a good law review article on a topic you are researching, heave a sigh of relief, because a lot of work has been done for you.

Legal periodicals come in various forms, from scholarly law reviews to newsy bar journals to daily or weekly newspapers. Legal newspapers keep you informed of local events and cases, and may have job advertisements. Bar journals provide news of legal developments for the practitioner. Law reviews are usually scholarly products of law schools, though commercial publishers also produce scholarly journals. Law reviews may be general in nature, or may specialize in a particular topic. For example, USD's San Diego Law Review is a general law review, while the San Diego International Law Journal is a specialized law review dealing with international law.

The Legal Research Center subscribes to numerous legal periodicals. We subscribe to most academic law reviews in the United States, as

well as many produced by commercial publishers. We also subscribe to a number of foreign journals. We receive some bar journals and legal newspapers. Finding references to appropriate periodical articles, though not especially difficult, does take several steps.

Periodical indexes and the library's catalog

First you must choose a periodical index. A periodical index arranges references to various parts of the article citation (author, title of article, subject matter) in an alphabetical list. The LRC has a number of periodical indexes in the Reference area; the most heavily used are the Index to Legal Periodicals, the Current Law Index, and LegalTrac. The first two indexes are in paper volumes, while the latter can be found on computer workstations next to the Reference Desk and throughout the library.

After you have obtained references from an index to some periodical articles, your next step is to make sure the LRC subscribes to the periodicals you need. To find this out, you need to perform a title search in SALLY, the library catalog. Once you find the title you want displayed on the SALLY screen, be sure to read all the information in the status box in the middle of the screen. In the status box you will find such information as: location in the library; Library of Congress classification number (if any); and what volumes we have, including the latest issue received. If you click on the link for "latest received," you can see what issues we've received and when we received them. If you scroll down, you will see a list of bound volumes and whether or not they are available on the shelf.

The final step is finding the journal in the LRC. Most bound law review volumes are in the Periodicals collection on the First Mezzanine and the Second Floor. The bound periodicals are shelved in alphabetical order by title. Current, unbound issues of law reviews are in the Reserve Room, shelved in alphabetical order by title. Some specialized journals and newsletters have Library of Congress classification numbers, and can be found in the Reading Room or the California and Tax Room. These classified journals are a small part of our collection; most of the journals are in alphabetical order in the Periodicals collection. The LRC also has legal periodicals in the Microforms collection on the First Floor near the Circulation Desk. Items in the Microforms collection include back issues of legal newspapers, bar journals and duplicate copies of some law reviews. Current issues of legal newspapers can be found on the shelves of the alcove near the microform cabinets.

### Online versions

In addition to the printed volumes in the LRC's collection, an increasing amount of periodical information is available online. Lexis and Westlaw provide the capability to search not only periodical indexes but also selected law reviews and newspapers. However, be aware that coverage on Lexis and Westlaw may not be complete or extend back in time as far as you need. Some law review boards, besides publishing paper versions, make their journals available on their law school's web site. Coverage is often limited, may not include the most recent issue, be years out of date, or only include article abstracts and

tables of contents. A few new law reviews are only issued in electronic form. A new service called Hein Online is attempting to provide online archival coverage of many law reviews. The journals in the Hein Online database are scanned in full-text and available in PDF or plain text versions. Law reviews are continuously being added to the Hein Online database. Commercial publishers are also putting their journals online, either through direct secure subscriptions or via database vendors like Hein Online. The LRC is making an effort to add hyperlinks to electronic versions of law journals in SALLY. If there is a hyperlink in SALLY for a journal, you will see a message after the journal title: "click on the following to", with a clickable link below. When a password is necessary, there will be a link to a web page containing the password information. You can also access Hein Online by going to the Electronic Databases page on the LRC's web page.

Be sure to draw on the expertise of the LRC's excellent reference librarians if you need assistance. They can help you search SALLY for journals in the LRC and use any hyperlinks set up there, direct you to journals in the Periodicals collection, Microforms collection or Reserve Room, assist you in formulating a Lexis or Westlaw search, or show you how to use the periodical indexes.

Remember, legal periodicals are great places to start your research, and are a very important means of keeping up to date on current developments in your chosen field. Or you can always use them as door-stops.



## YOU CAN'T RUN AWAY!

But you can find some places to hide: a guide to your friendly neighborhood reference staff

By John Adkins

Head of Public Services, LRC

You know the feeling -- in your dream you are trapped in a place that has no exit! You search and search for a way out, but without luck. And then you wake up, uneasy in the knowledge that the nightmare might not be so far from the truth.

You might think the first year of law school is a lot like this at times. But there are ways out of the panic and fear that sometimes strike when you are faced with an assignment or new research issue. One way is to take full advantage of the people sitting in the center of the first floor of the LRC. In that central workstation are some of the most knowledgeable legal researchers on campus -- they are law librarians, a special breed of librarian that has focused training in law. Many of them have degrees in addition to their Masters in Library Science -- Juris Doctorates from Boalt, Wayne State University, University of San Diego, University of Cincinnati, and University of Kentucky come to mind. Collectively, this group has decades of experience in helping students and other researchers how to find legal materials. Here is a snapshot of who we are:

**John Adkins** -- As Head of Public Services, I also help at the Reference Desk. I did my graduate work at UC Berkeley, where I received both my JD and MLIS. I practiced antitrust law for five years in San Francisco, and then joined the ranks of academic law librarians. I have been a reference librarian for over a decade and love it. Each day brings a new question and a new puzzle. It is like detective work to figure out the answer from all the clues. And of course, the big payoff is when the person who needs the information gets the information. That is job #1 for me -- to save you time.

**Pat Bermel** -- Our evening and Sunday afternoon reference librarian, Pat has worked at the LRC for over 20 years! She has worked in a variety of positions over the years before settling into a unique half-time reference librarian, half-time collection services assistant hybrid. Since she works most nights from 5 to 9 p.m., night students get to know her well. A graduate of the University of Dayton, Pat is a native New Yorker and a "Survivor" fan, and loves murder mysteries. No matter what your issue or question, Pat is always happy to help you.

**Priscilla Day** -- Our newest reference librarian, Priscilla is a San Diego native who received her JD right here at USD and went on to practice family law here in town. She is now finishing up her masters in librarianship at San Jose State. She is a diligent researcher, which makes her a good person to find for those proverbial needles in the haystack.

**Tracie Krumbine** -- Comes to us from the University of Maryland, where she graduated from Library School with her Masters degree with an emphasis in law. Tracie has many years of law firm experience as well as a Bachelor's degree in Paralegal Studies. She has a real enthusiasm for legal research. New to California, Tracie is spending her free time learning the ins and outs of the local terrain.

**Brian Williams** -- Brian is the Foreign & International Law specialist and received his JD from Wayne State University in Michigan. In addition, Brian works on web design and creation for research lectures, guides, and bibliographies. His varied background and abilities blend well in his role as our international expert. He takes a great interest in Native American law, and was law librarian for the DNA Legal Services on the Navajo Nation.

Other librarians also help us at the reference desk: Associate Director Ruth Levor, Electronic Services Librarian Owen Smith, and Collection Services Librarian Sushila Selness. They all have such a wealth of knowledge and expertise, it would be a shame to miss out on the opportunity to meet them and pick their brains.

So there you go -- you should have no more nightmares about being trapped in the maze of legal materials! Reference librarians are your keys to unlocking the doors to legal research. Stop by and say hello, you will be glad you did.

### SALLY, FROM 5

checked out, or it may be undergoing processes such as binding or repair. Remember to take note of these possibilities.

Before you begin your academic year of research and writing, spend a few minutes learning the SALLY system. Try entering a title you know well and study the display for all the points of access in the record. Experiment with the highlighted links; go back to the main screen and search it again from a different approach, such as call number. Browse the call number "neighborhood" which duplicates book order on the shelf.

Finally, click on "Repeat search in SDCircuit." If you ever find you have a research need that exceeds the resources of the USD libraries, SALLY links you directly to the San Diego Library Circuit Consortium which includes the combined holdings of USD, UCSD, SDSU, and CSU-San Marcos. Among the Information Series guides near the LRC Reference desk, you will find a guide about how to use this extended service.

If ever SALLY tries your patience, turn to a Reference Librarian and ask for assistance. Even if the system is not new to you, upgrades and enhancements may have changed the way it looks and handles.

By the way, SALLY was named many years ago in honor of the forward-thinking Provost and Vice President for Academic Affairs, Sr. Sally Furay, who provided the leadership and support to initiate library automation. Enjoy the legacy of her ambitious project as you work your way through the 2003-2004 law school year.

## THE "BACK ROOM" MYSTERY: THE LRC'S TECHNICAL SERVICES

By Harry Lören Stamper, Head of Technical Services, LRC and Margaret McDonald, Technical Services Librarian, LRC

Every library has a seemingly mysterious back room where arcane rituals occur out of sight of library users. Our back room offers a number of work-study jobs for students and handles operations vital to the functioning of a modern law library.

Despite rumors, there has never been a human sacrifice or a black candle burned behind the doors of the Technical Services Division, located in room 114, near the Circulation Department. Rather, the Technical Services Division knows all about the importance of currency in legal research and is working to provide you with the most up-to-date access to the LRC collection and to ensure that the latest materials are available for your use.

Technical Services is responsible for ordering, receiving, cataloging, and processing all library materials, whether books, microforms, videos, CD-ROMs, or Websites. All these activities are geared toward keeping the library's online catalog, SALLY, up to date, so that students and faculty have access to the most current information about our collection.

By using SALLY, you can find out if a new book is on order, if we have received the latest issue of your favorite legal newspaper or journal, or if a particular government document is available on microform.

Technical Services is made up of four units: the acquisitions, cataloging, serials, and processing units. The acquisitions unit is responsible for placing orders for all new library materials, receiving the materials, and paying the invoices for them. Items that have been ordered appear in SALLY; the status box on the screen for the item will show the date the item was ordered. Once the item has been received, the status box will state that the item is being processed. If you need an item that SALLY says is "in process," please contact a reference librarian.

After the item is cataloged and made available, the status box will give the location, call number, and availability of the item. Student suggestions for new acquisitions are welcomed. Just click on "Books the Library Should Acquire" link on the lower right of the main screen on SALLY, fill out the form, and click on "Submit This Suggestion." (To leave suggestions other than suggestions for book purchases for the LRC, click on the "Suggestions for the Library" link on the lower left of SALLY's main screen, type your suggestion in the box, and click on the "Submit This Suggestion" link.)

The cataloging unit is responsible for describing and analyzing all new works, and providing a bibliographic record in SALLY. The description includes the author, title, publisher, and other relevant information. Subject analysis involves assigning appropriate subject headings and giving the work a Library of Congress classification number.

The serials unit is responsible for receiving all the materials that come on subscription or standing order. These serials include newspapers, law reviews and journals, looseleaf services, supplements and pocket part updates, case reporters, and codes. Each serial issue is recorded as received in SALLY. This detail-oriented and labor-intensive job provides a wealth of information to users of SALLY. When looking at the record for a current serial publication in SALLY, you will usually see a line in the status box that tells you the latest issue received. Click on the "Latest Received" link to find out when we received an item.

Updating schemes for legal materials are as varied as the materials themselves. Some items are available in looseleaf format, with loose pages that are interfiled in a binder (for example, United States Law Week). Some items receive individual supplements, often paperbound, that update a hardbound volume. For example, many California Continuing Education of the Bar materials are updated this way. Other bound materials receive pocket parts, which are stapled pamphlets that are inserted into the back cover of the book. An example of this is Deering's California Codes. Serial publications are intended to be published for an indefinite period of time. These items are published in a chronological format. Some examples include the law reviews (e.g., San Diego Law Review), newspapers (e.g., Los Angeles Daily Journal), and case reporters (e.g., United States Reports).

The processing unit is responsible for preparing the physical volumes of library materials for use. This includes stamping the LRC's name on the volumes, labeling them, and creating an individual link (via a barcode) for each piece to the SALLY record. This link makes possible the quick check-out of books by wandering in the barcodes, along with the barcode on your student ID card.

The LRC's reference librarians are your resource for help with legal research and use of the LRC collection. However, you are welcome to "come on back" to Technical Services whenever you have a question about matters related to the acquisition and processing of library materials, such as the LRC's cataloging practices, the receipt of a book or periodical, or other technical services matters.

Please note that Technical Services does not handle student access to Westlaw or Lexis. For questions relating to those databases or other Computer Lab matters, please contact Owen Smith or Robert Lee of the LRC's Electronic Services Division at 260-4759. The telephone number of the LRC's Technical Services Division is 260-4543.



# EDITORIALS

## Limit police secrecy

by Yale Kamisar  
Professor of Law

Five years before *Miranda* was decided, American Civil Liberties Union lawyer Bernard Weissberg attacked the secrecy surrounding police interrogation, observing that the police are unique as administrative officials in the power given to them to prevent the objective recording of the facts. Weissberg saw this as a desire not for privacy, but secrecy.

Indeed, the U.S. Supreme Court in *Miranda* noted that the secrecy surrounding police interrogation "results in a gap in our knowledge as to what in fact goes on in the interrogation rooms." Yet 37 years later, we know little more about actual police interrogation practices than we did at the time of *Miranda*. The "swearing contest" between police and suspect as to what was said (a contest usually won by the police) has not let up. Two recent high-profile murder cases are quite instructive on this issue.

One involves Lemrick Nelson Jr. Acquitted in a state court a decade ago of murdering Yankel Rosenbaum during a period of racial unrest in Brooklyn, N.Y., Nelson was recently prosecuted in federal court for violating Rosenbaum's civil rights. According to Nelson, he had not attacked Rosenbaum because of his religion, and therefore did not violate the latter's civil rights.

To support his argument, Nelson maintained that when a detective pressed him about whether he had stabbed Rosenbaum "because he was a Jew," he replied that that fact was irrelevant; he did what he did because he was "high" and "got caught up in the excitement." But there was no transcript or electronic recording of the exchange between the detective and Nelson. The government told a different story, and the jury convicted Nelson of violating his stabbing victim's civil rights.

The other case is the Washington-area sniper case, involving Lee Boyd Malvo. According to Malvo, his statements at the outset of his interrogation by Detective June Boyle amounted to a request for a lawyer. If so, the police questioning should have come to an abrupt halt. Once again, however, there was no recording. Boyle took notes and repeatedly referred to them during the arguments about the admissibility of Malvo's statements. But how many of us would accept an advocate's version of what was said and when it was said during, for example, a business meeting?

According to Boyle's own notes, Malvo came fairly close to asserting either his right to counsel or his right to remain silent. As she reconstructed events in her notes, Malvo announced: "My attorneys

told me not say anything to the cops until they get here."

As it turned out, Boyle's follow-up questions were not challenged by defense attorneys and, according to the detective's account, the police reportedly asked Malvo whether he was willing to talk to them without a lawyer. (Malvo said that he would.) In many other cases, however, the precise wording of a suspect's reference to a lawyer could be crucial.

### RECORD MORE THAN CONFESSIONS

Not infrequently, the police tape the confession itself (thereby demonstrating that such recordings can be made easily), but they are much more reluctant to record the events preceding the confession—how the police delivered the *Miranda* warnings and how the suspect initially responded. However, most disputes arise over precisely what happened during the initial interrogation-suspect exchanges.

*Miranda* fell short of imposing a tape-recording requirement on police interrogators—probably because such a requirement would have added fuel to the charge that the court was exercising excessive control over police practices—that it was "legislating." But the Warren court invited state legislatures to impose such a requirement; they have thus far (with a single exception) declined.

It is not hard to see why. A few years ago, when it was disclosed that some Chicago police officers had been torturing suspects into confessing, the Illinois Legislature seemed prepared to enact a law requiring video or audiotaping of police interrogations, but that bill died under opposition from the law enforcement community, which claimed the law would expand the rights of the accused at the expense of public safety. Why making a complete record of what happened during interrogations would expand the rights of the accused was not made clear. Illinois has, however, post-Ryan commission, passed a new bill to take effect in two years that will require videotaping of interrogations in murder cases.

It is not because a peace officer is more dishonest than the rest of us that we should demand an objective recording of the critical custodial events. Rather, it is because we are entitled to assume that the police are no less human—and equally inclined to reconstruct and interpret past events in a favorable light—that we should not permit them to be the judges of their own cause.

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## CASES AND CONTROVERSIES

By the Editor

If one were to associate a particular game with that group of professional persons called "lawyers," it would be golf. The relationship between the practice of law and the playing of golf is a close one: especially between golf and the common law attorney. Perhaps more lawyers watch football or baseball than play golf; but no doubt more play golf than any other sport. This affinity is in some sense peculiar. The way golf is regulated runs counter to the intellectual dispositions of the American attorney by and large,

Take, for example, the Rules of Golf. The game is conducted in America according to provisions promulgated by the United States Golf Association. These rules represent golf's code; that is to say, the game is not a common law sport. No judge applies the studied decisions of his predecessors to determine whether the player is in a lateral hazard, or must rehit from the tee, or has too many clubs in his bag. No—these matters are decided by golf's legislative authority, by rules that are to be applied, not expanded, contracted or judicially glossed.

Moreover, golf asks the player to be his own referee. Unlike most other sports, which have provision for a non-playing umpire, golf expects the player judiciously to apply the rules to his own case. Of course such conduct violates one of the bedrock principles of the common law, espoused and lauded for hundreds of years: that no man shall be a judge in his own cause. What the maxim prohibits is exactly what a golfer must do; it falls to him to call a penalty on himself if he moves his ball, grounds his club in a hazard, asks advice of another player or commits any other infraction. Such practice may well be a sign of golfers' integrity. But it makes for very poor administration of justice.

Although some aspects of golf may not sit well with the American lawyer, the game's many enchantments more than make up for any constitutional dyspepsia. For one, golf is humbling. No devotee would contest this: for what golfer has not struck a magnificent drive, only to follow it up with an ignominious flub? Or what golfer has not played a hole so poorly as to reach the green in seven shots, but then redeem himself with a forty-foot sidehill-downhill masterpiece of a putt? Fortune smiles and frowns frequently on the golfer; its wheel never stops turning. But this very uncertainty is useful to the lawyer-golfer. A golfer would never submit a brief without having proofread it twelve times. A golfer would never fail to shepardize a cited case. A golfer would always double-check the statute of limitations and the deadlines for filings. For disappointment runs in his blood; he is familiar with it; it greets him every Saturday morning when he is with his regular foursome. And so the golfer-lawyer takes precautions. He knows that just as his client's case will be ruined by a careless error, just as surely will his fine round be spoiled by a moment of inattentiveness.

The game is humbling; its rules are edifying. Two will prove the point. Rule 1-3 states that players may not "agree to exclude the operation of any Rule or to waive any penalty incurred." What is this rule but a guarantee against arbitrary government, against a legislature acting by fiat? The rule contains nothing less than the kernel of Due Process. Chief Justice Marshall told us that we are a nation of laws not of men. He could have said the same about golf.

Rule 1-4 even more strongly speaks to the lawyer's mind. "If any point in dispute is not covered by the Rules, the decision shall be made in accordance with equity." Now, surely the Rule cannot mean that a player, under certain circumstances, is entitled to an injunction barring any shot from landing in a bunker, or specific performance of his putt, or estopping his opponent from finishing out. But the rule does assure all who play that no special favor shall be given, no connivance shall be tolerated, no collusion countenanced. It is, if I may say so, the natural law provision of golf—how the game would have been played before the Fall.

Not all lawyers are golfers; indeed, at least two current Supreme Court justices (Rehnquist and Scalia) are avid tennis players. But unanimity among lawyers is always a practical impossibility; and even those who do not play may still have the golfer's disposition.

Golf is most popular with lawyers, however, because it provides a bucolic setting in which attorney may know his client, wherein deals can be made, settlements decided, caseloads decreased. One wonders whether the law professors and judicial councils and Congressmen who are so worried about our over-taxed judicial system ever thought about the role golf could play in furthering judicial efficiency. Why not require disputing parties, instead of attending a mandatory settlement conference, to attend a mandatory tee time? By the turn the parties will have worked out their differences, justice will have been done, and perhaps a few birdies made.

Mark Twain once said that "golf is a good walk spoiled." Twain was no lawyer.



## Thou Shalt Not Have a Ten Commandments Display?

By Juliana Lee  
Staff Writer

In the rotunda of Alabama's state courthouse once stood a 2.5-ton block of granite engraved with the Ten Commandments. Chief Justice Roy S. Moore had the monument moved into the courthouse in the middle of the night two summers ago. He recently lost his case on appeal to keep the monument on display. Rather than obey the federal court order requiring removal by August 20th, Moore openly defied eight of his colleagues and led a spirited defense against removal of the monument, stating that the commandments represented the moral foundation of the American law.

The steps of the Alabama state courthouse then became host to a myriad of protesters, those in support of Moore and those favoring removal, until August 27, when the monument was moved to a private storage area in the state Supreme Court building.

Moore's position was initially supported by both religious and political conservatives, including Alabama's own Attorney General Bill Pryor. Moore lost most of his backing and support when he defied the higher courts, an act impermissible to a judge. Attorney General Pryor ultimately told Moore to comply with the federal order. One legal expert stated that Moore might have lost his case because he emphasized religion and his personal religious views in his public remarks rather than playing up the historical aspect of commandments.

Moore was eventually suspended from the bench for his refusal to obey a federal court order and remove the monument. However, this has not stopped Moore. He remains defiant as ever as he continues his fight by way of an appeal to the United States Supreme Court. "It is a sad day in our country when the moral foundation of our laws and the acknowledgment of God has to be hidden from public view to appease a federal judge," he observed in a statement released to the press.

And while this monument is out of sight it will hardly be out of mind. Candidates for governor in Mississippi have issued statements that they would like to display Moore's Ten Commandments in Mississippi. On September 4, a federal judge dismissed a lawsuit by three residents seeking to return the monument to the judicial building. Challenges to Ten Commandments displays are occurring nationwide. Twenty or so other cases making their way through the courts may eventually become more important, legal experts say.

Some displays, such as the Ten Commandments monument that stood on the grounds of the capitol in Austin, were allowed to stay after a judge ruled that its location did not indicate religious endorse-

ment by the state. Both a bronze Ten Commandments plaque from the 1920s in a Pennsylvania courthouse and a 43-year-old plaque in front of the police station were allowed to remain after rulings that such displays had historical significance.

Other displays have been ruled unconstitutional. Despite vigorous demonstrations, four 800-pound monuments in front of four public high schools were removed from display. Likewise, a six-foot tall granite monument to the Ten Commandments placed on the state capitol in Frankfort, Kentucky was ordered removed.

Some rulings have said that displays grouping the Ten Commandments with other historical documents, such as the Declaration of Independence and the Magna Carta, are constitutional. Others have said the opposite.

Judges at all levels seem deeply divided over the Ten Commandment displays. Their contradictory rulings demonstrate a need for the U.S. Supreme Court to make some sort of definitive statement about where and how the tablets can be displayed. However, the U.S. Supreme Court has not heard a case about Ten Commandments displays in public buildings since a 1980 decision overturning a Kentucky law that required public schools to display the tablets in every classroom. See *Stone v. Graham*, 449 U.S. 39 (1980).

In 2001, the Supreme Court dismissed the closest thing to a Ten Commandments display case since the Kentucky schools case. City officials in the Elkhart, Indiana case, had petitioned a court decision ordering removal of a Ten Commandments monument in front of a municipal building. Chief Justice Rehnquist, along with Justices Scalia and Thomas, took the rare step of dissenting on a decision not to hear the case. Rehnquist wrote that Elkhart's Ten Commandments monument was a "celebration of its cultural and historical roots, not a promotion of religious faith." He also pointed out that the U.S. Supreme Court has a carving of Moses with a pair of tablets on a frieze inside its courtroom. See *City of Elkhart v. Books*, 532 U.S. 1058 (2001).

Attorneys for Moore and other Ten Commandments advocates often use the U.S. Supreme Court frieze as evidence to support their arguments. They state that it is evidence of fundamental unfairness in the application of the First Amendment to religious displays. However, opponents to the displays use the Supreme Court example as well, stating that it is an appropriate display because Moses stands alongside other lawgivers such as Justinian and Hammurabi.

The possible ambiguity and lack of Supreme Court decision on the issue have led to increased efforts on both sides of the issue to prevail.

During the last few years, the American Civil Liberties Union and other civil liberties groups have increased efforts to eliminate the display of the Ten Commandments on public property ("thou shalt not display the commandments on public property.") They stress that the First Amendment prohibits the government from establishing a religion under the establishment clause. The public display of the Ten Commandments violates church-state separation and indicates government endorsement of religion. The proponents of removal further stress that it is the way the Ten Commandments are displayed that is violative of the freedom of religion.

According to the ACLU, in Moore's case, the display of the Ten Commandments was unconstitutional because of the message he conveyed: acknowledgment of Judeo-Christian ideology and God. This is wrong because it interferes with the freedom of every person in this country to have their own religious beliefs and not have the government either tell them what to believe or have it look like the government is telling them what to believe.

Dr. Paul Finkelman, professor at the University of Tulsa College of Law and expert witness in the Alabama case for Americans United for Separation of Church and State, argues that the Ten Commandments also violate the First Amendment on free-speech grounds in its commandment that forbids taking the Lord's name in vain. "Under the First Amendment, we can blaspheme as much as we like. One person's blasphemy is another person's deeply held religious belief."

Opponents to the removal believe the Alabama court ruling was incorrect. In addition to the Ten Commandments display in the U.S. Supreme Court, they point to evidence such as the invocation of God during the Supreme Court's opening sessions, chaplains in Congress, and "In God We Trust" on U.S. coins. Others argue that the Ten Commandments have an independent, secular meaning in our society as a functional legal document and as a significant basis of American law and view the Ten Commandments as an integral part of history.

The number of Ten Commandments displays in public buildings in the United States may figure in the hundreds and even the thousands. A decision is long overdue.

## EXPECTATIONS MET

By Robert Bitonte, M.D., J.D., LL.M.  
Special to *Motions*

No, this is not a commentary on a new dating service at USD or in the community of San Diego. It is a comment on a job well done.

It is easy for the passion to rise when we as consumers, or law students, feel we have not gotten our nickels' worth. Or, that the price we paid did not fetch the value that we thought it would. On the other hand, when we do get full value, or the experience is rewarding, we should say so, but we don't. This encourages those providing the service or product with the feedback to persist, and it also gives the consumer more confidence to step forward.

In my previous educational years, it would never have occurred to me, or most of my colleagues, that post-doctoral work was optional. In fact, most of us would have thought of it as mandatory.

With the profession's body of knowledge expanding so large, and so fast, it only made sense to pick what you like best, and really try to get a grasp of it. As I finished my law school training, I felt the same way about the legal profession. I wanted specialty training. After a rather prolonged and complete search of educational opportunities, I found that the University of San Diego School of Law graduate programs offered me the opportunity to study my area of interest: health law. Although I consider this an exciting area of law, post-doctoral opportunities in this field were limited, especially in California.

My application process proceeded smoothly, and I was delighted when I was given the opportunity to attend the school.

My first inkling that the program was well run and responsive to students was at my pre-enrollment interview with then Dean Bruner and Lee Russel, graduate programs director. At that meeting,

they asked me of my interests and pointed me towards classes and professors that they thought might fulfill those interests. They were right in their recommendations. In all my years of post-graduate training, that was the only pre-enrollment interview I have ever had.

While a student in the law schools' graduate program, it was a uniformly great experience. Course choices, including clinics, were more than adequate. The professors to a person—Knobbe, Reisman, Ursin, Wolds, Kraus, S. Hartwell, Lynch, Shore, and C. Wiggins—gave an exemplary effort. I could feel it, and appreciated it.

Support departments also were always up to the task. The Records and Registrar's Office was always available and responsive. In short, my expectations and hopes for a fulfilling graduate program in law were met, with no compromise.

As a most pleasant bonus, I met

many fine students who have become friends, and I am sure will remain lifetime acquaintances.

I hope the School of Law continues to show the interest and energy it invests in the graduate program.

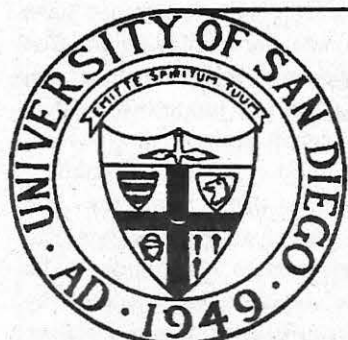
Despite the graduate program's good effort, and good product, I often wondered why there wasn't much talk about it from the undergraduate law student body. I know there is great anticipation in "getting out," getting started, and paying down those student loans. But after seeing people come from around the world to attend the graduate programs, one would have to get the feeling that there is something to it. I would highly recommend a good look at the graduate program to anyone who asked, but especially to those who are walking the halls right now.

USD Law School, good job, and thanks.



FROM THE EDITOR--Our law school completes this school year its golden anniversary. To commemorate this momentous time, MOTIONS will present each issue excerpts from past editions, highlighting stories of interest in these *recherches du temp perdu*. The series begins with the cover page of the very first edition of THE WOOLSACK, the predecessor of MOTIONS.

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW



The

# WOOLSACK

VOLUME 1, NUMBER 1

10 SEPTEMBER, 1963

## ★★★★★ INAUGURAL ISSUE ★★★★★

### Excessive Juvenile Detention

By RICHARD L. VAUGHN  
Judge of the Juvenile Court  
of San Diego County

Since I do not consider myself an expert on the problems of the juvenile, I have elected to write about one small phase of the entire subject, excessive detention. It is, however, a most vital facet of which many people are totally unaware.

For the purpose of this article "Detention" is defined as the

'temporary care of children who require secure custody in a physically restricted facility pending investigation and disposition.'

This is a period of time that a minor is held in a juvenile hall by a probation department officer, who has received him from a police officer, parents, a private citizen or the juvenile, himself.

In most instances, a detention hearing is held before a judge or referee within three days of the time of the minor's arrival in juvenile hall. The hearing is to determine whether or not the juvenile should be detained, or released to the custody of his parents, relatives, or otherwise placed, pending his regular hearing.

A juvenile cannot post bail in juvenile court. Therefore, if he is not released by the investigating probation officer, he must appear for the determination of his placement, pending the regular hearing. In such case he may appear either with or without legal counsel or his parents. The time elapsing between the detention and regular hearing is about three weeks, and therefore it is important to a juvenile whether he is detained or not, because if detained, he is removed from his home, school, and friends.

The detention hearing should be of great significance and lasting impression to the minor, since usually it is his first appearance in a court of law.

In past years I have detained juveniles who should not have been detained. Perhaps in the future I will do the same in my court. My hope is that I will not.

The tendency of courts throughout the land is to OVER-DETAIN; the State of California is one of the worst offenders. This problem was first brought to my attention when Judge James Carter told me, he knew of a juvenile judge in another state who had

### BAMBIC ALSA PRESIDENT

Gene Bambic, 4th year night student, was elected--on August 15th-- National President of the American Law Student Association at its 15th Annual Conference in Chicago. A.L.S.A.'s 40,000 members are students from the 134 Law Schools which are accredited by the American Association of Law Schools, a branch of the American Bar Association.

Gene was chosen as the first A.L.S.A. Representative from the University of San Diego in the May, 1962 elections for Student Bar Association officers. One of his initial official acts was to attend the 14th Annual Conference in San Francisco. Gene was extremely impressed by the organization and the friendly atmosphere of the conference and volunteered for one of the committees that formed the nucleus of the conference. He also gave the nominating speech for Dick Block of U.S.C., who subsequently won the office of A.L.S.A. National Executive Vice-President. Block subsequently placed Bambic's name among the nominations for chairman of one of the eighteen National Committees. Bambic presented himself before the Executive Council for an interview and was appointed Chairman of the Committee on Student Bar Administration.

On March 5th, 1963, Gene presented a two-hour program on Student Bar Administration at the 9th Circuit Conference (there are twelve circuits in the A.L.S.A.). The program con-

sisted of information on publishing a newspaper, on Student Bar financing, on orientation of new students.

At this conference, Gene also nominated Fred Tschoff--another 4th year night student--for the office of Circuit President, which he won by a substantial vote.

Gene next attended the Annual Conference in Chicago, which was to be held from August 11th through August 16th. He had no serious thought of running for National President until 1:30 A.M., Monday, August 13th, when the Executive Council invited him in for a "closed door" session and requested him to run.

Gene was nominated by the 8th Circuit President, Tom Heitz; and by the 10th Circuit President, Ned Oldham. The vote by the representatives was 68-34 in favor of Bambic over Chris Ditz of Rutgers. In his acceptance speech, Gene outlined a program of stronger unification, of more debate and discussion in the House of Delegates on matters of national prominence, and of a loan fund for individual members.

Gene's duties include addressing the American Student Medical Association, the A.L.S.A. at their annual meeting in Los Angeles, the American Bar Association in New York, the Canadian Student Bar Association and various State Bar Associations. Also, Gene writes the editorial for each issue of the Student Lawyer, official A.L.S.A. magazine.

### GENERAL

#### Some Points About Studying Law

The profession of law has been labelled (perhaps even libelled) a jealous mistress. But back of this flippancy, but serious figure of speech, lurk some cogent and fundamental truths. The profession of law requires undeviating fidelity to its pursuit; the lawyer must devote his full time and attention and loyalty to his clients and to an unremitting search for the answer to his clients' needs. The profession of law demands of a lawyer both competence and skill, born of a desire to take all legal knowledge as the lawyer's province and developed with the utilitarian objective of finding all

### HICKMAN

It follows, then, that the thoughtful law student must fashion his habits and orient his thought processes so as to produce in himself the characteristics of the able lawyer. What are a few of these factors that are essential to both the law student and the attorney?

A primary ingredient, vital from the beginning of legal studies and a prerequisite throughout the lawyer's active career, is motivation. With it, even some major educational shortcomings may be overcome; without it, the Phi Beta Kappa or the top-scorer in the Law School Admission Test may flounder. Motivation in the law, though it includes the strong desire to become legally learned, encompasses much more than wishful thinking and hopeful ambition; it embodies the willingness,

### COMMON LAW RAMBLE Brigadier W. J. MILLER

"The Woolsack" conjures up the very spirit of legal history. True, a sack of English wool was not provided for the Lord Chancellor's posterior comfort until as recently as 1535, a gift from the merchants to remind him to be prudent when wool, then the country's greatest source of wealth, was up for debate. Despite this comparative modernity it reminds lawyers of the long line of men who played the role of Chancellor, always the star performer on the legal stage, right back to, and ante-dating 1215, the year of Magna Carta. Until the rise of Parliament in the 15th century every Chancellor was Earl Warren, Bob Kennedy, plus all cabinet ministers rolled into one mighty personage. Nothing great or small affecting the government could be done without his seal. Literally, he was "the keys of the kingdom."

This early period witnessed the transition from local barbarisms to the common law. It saw Judges administering the dictates of conscience, the natural law, as readily as they enforced their own brand new system. But no plaintiff could be heard unless armed with a writ from the King commanding the appropriate court to do justice, or else! These early writs embraced every known cause of action; yet it was never the King's intention to set up courts of elastic jurisdiction rivalling his own. So his writs very soon excluded disputes of conscience, thus compelling the Judges to quit the field of equity. The result was that the Chancellor, the "keeper of the King's conscience," was besieged by oppressed persons appealing "for the love of God and by way of charity" to the King, the fountain of justice, to redress their unconscionable wrongs no longer recognized in the courts. These cases in equity were heard by the Chancellor and his senior officials (members of the Curia Regis) long before the Court of Chancery came into existence around the year 1400.

From a very humble origin, at a period when even the word "law" was unknown in the English tongue, the common law grew and prospered. Like a river with many sources and tributaries it overflowed its banks from time to time and journeyed into far places. Today, much of the Free World drinks of its waters. Without it our American laws and customs would have developed along very different



# FROM THE PRESIDENT

Dear Campus Community:

It is a pleasure to announce that USD is one of a select group of schools to be featured in the just-published 2004 edition of The Princeton Review annual college guide, "The Best 351 Colleges."

Only about 10% of the colleges in America, and two in Canada, have been selected. According to The Princeton Review, they consider the schools in this book to be "the creme of the crop" institutions in the nation for undergraduate education. Schools are chosen based on outstanding academic programs, data review, site visits and surveys of independent college counselors, students and parents.

With our recent approval for a chapter of Phi Beta Kappa, and being ranked last week as one of the top 100 doctoral universities in the nation by U.S. News and World Report, this is yet another indication that USD is recognized as one of the finest institutions of higher learning in the country. Again, this is a great way to start the new school year.

Sincerely,

Mary E. Lyons, Ph.D.  
President  
University of San Diego

## USD BLOOD DRIVE A SUCCESS

*University of San Diego Receives Honor from the San Diego Bloodbank*

The University of San Diego was honored by the San Diego Blood Bank at a ceremony on Wednesday, August 20, outside the NBC 7/39 studios downtown. The school was presented the Outstanding University Award for hosting regular blood drives.

"U.S.D. hosts two drives per year and does a great job recruiting students and faculty," said Jennifer Bradford, donor recruitment consultant at the San Diego Blood Bank. "We hope students will learn that giving blood is a great way to give back to their community."

Blood drive chairperson Tonis Manriquez (pictured on right) accepted the award from NBC 7/39 reporter and mistress of ceremonies, Margaret Radford (pictured on left).

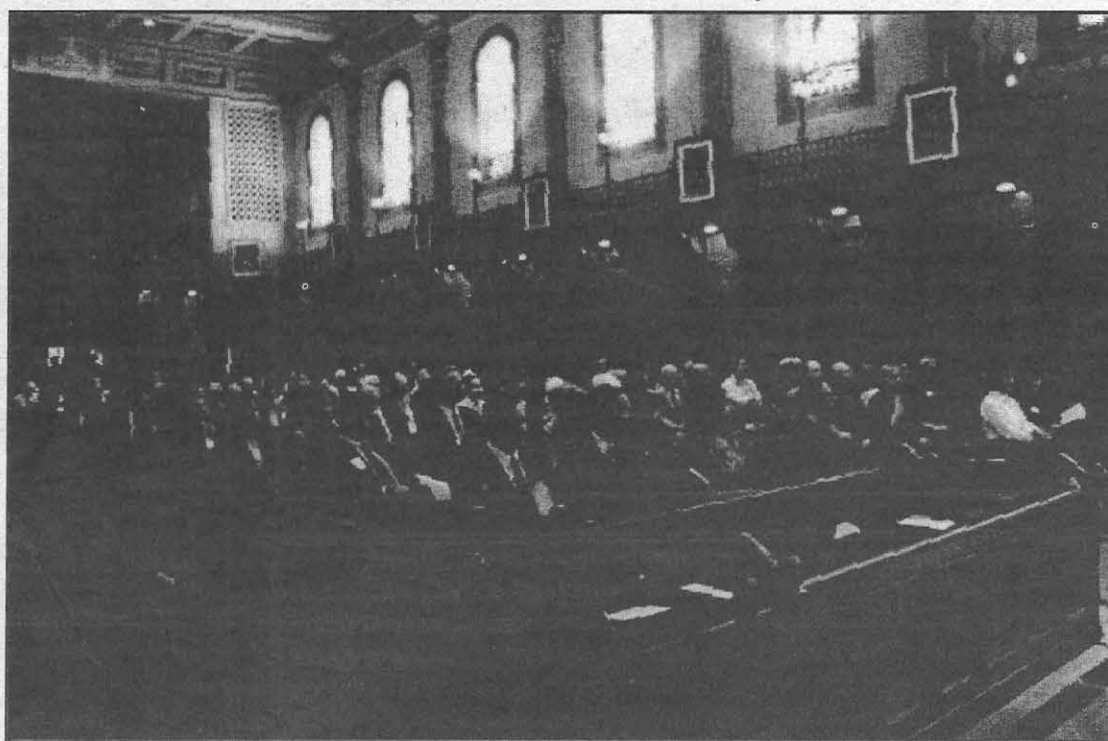
Anyone who is at least 17 years old, weighs at least 110 pounds and is in good health may be eligible to give blood. For more information or to schedule an appointment, please call 1-800-4MY-SDBB or visit [www.sandiegobloodbank.org](http://www.sandiegobloodbank.org).



## RED MASS 2002



Dean Rodriguez speaks from the lectern in Founders Chapel  
*Photograph by George Decker, USD Law Publications*



The congregation at Founders Chapel listens attentively  
*Photograph by George Decker, USD Law Publications*





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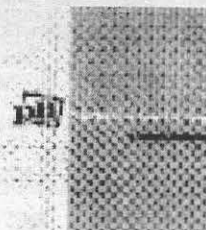
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