



Bill Ota '99 asks his daughter, Matty, to share her Pez candies during the law school's commencement exercises.

parting shot



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UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

16:2 FALL/WINTER 1999-2000



Adding Value

Tax program builds national
model for success

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The Advocate is published semi-annually by the University of San Diego School of Law Publications Department.

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Features

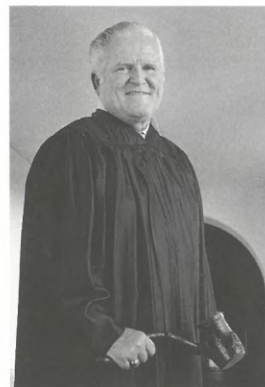
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Adding Value

Tax law program gains national recognition with a first-rate faculty and talented students



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Offer of proof: The class of 1999 celebrates with family and friends during spring commencement festivities



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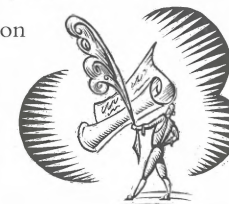
Ambassador Nancy Ely-Raphel '68 seeks peace in the Balkans



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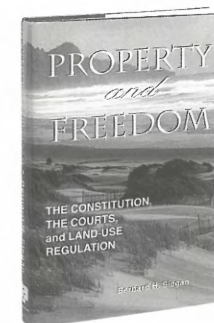
A catalog of recent publications and presentations by distinguished faculty members; profiles of five professors' current work; spotlights on three areas of academic inquiry; and a summary of the past year's events



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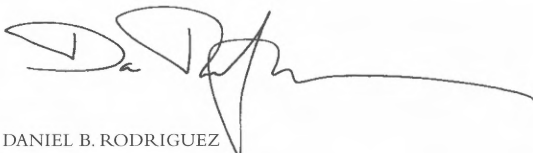
message from the dean

A law school contributes to the development and success of the legal profession in many different ways. First, and most obviously, we teach the next generation of lawyers—or, more accurately, we *begin* the process of legal education as we send students into the profession for the next stage in their lifelong training to be excellent lawyers. Another important way in which we contribute to the legal profession is through the published scholarship of our faculty.

It is fashionable these days to look critically upon the attention lavished by modern law schools on faculty research and writing. Lawyers question the pertinence of this scholarship, which is often theoretical and, on the surface at least, remote from the day-to-day practicalities of lawyering. Upon reflection, however, the apparent disconnect between what we do in the process of training students for law practice and what we do in our scholarly work is not nearly so clear. In fact, our responsibility as faculty members to contribute with our research to the sum of legal knowledge—throughout the range of subject matters, academic and practical debates, and scholarly genres—is a key element in the law school’s dual role as part of the legal profession and the modern university.

We are proud to be a law school affiliated with a university that values the contributions of teaching and scholarly research. Our faculty’s primary work of teaching is completely complementary with their role as scholars. As the discussion of faculty research in this issue of the *Advocate* shows, the USD law faculty is made up of a distinguished, and very busy, group of professors and scholars who are pursuing cutting-edge research in a variety of legal fields. Indeed, it is one of the signal strengths of our law school that we have a national reputation for excellence in legal scholarship and research.

An essential part of a law school’s success is its ability to integrate the teaching of values and skills for practicing law with its commitment to advancing the frontiers of knowledge through published scholarship. The University of San Diego School of Law is squarely in the forefront of law schools that are achieving these overlapping and complementary aims. I hope the readers of this issue will take the time to become acquainted with the fruits of these efforts.


DANIEL B. RODRIGUEZ
DEAN AND PROFESSOR OF LAW



letter from the editor

building a national reputation

Only 45 years ago, the USD School of Law opened its doors in temporary quarters at University High School with a part-time faculty composed of nine volunteers.

Three years later in 1957, the law school moved across the street to its current location. Professor C. Hugh Friedman, one of the law school’s first professors, remembers moving the entire contents of the law library with a few colleagues in one evening. Today, such a move would be nearly impossible. (Read about the library’s latest collection milestone on page 3.)

The law school graduated its founding class of eight men in 1958. The following year, the law school graduated its first woman, Mary E. Harvey. This year, USD graduated a diverse group of more than 370 law graduates, nearly half of them women. (See the 1999 commencement celebration in this issue’s photo essay.)

With vision and hard work, USD’s early pioneers established a strong regional law school. Today, the School of Law is building a national reputation.

The tax law program is gaining attention nationwide for offering an innovative mix of academic and policy study along with practical instruction. The program is attracting top-notch professors and talented students. This year, USD students entered the National Tax Moot Court Competition for the first time and emerged victorious. In addition, the U.S. Treasury Department awarded USD a grant to establish a low-income taxpayer assistance clinic, which opens this fall. Read about the tax law program in our cover story.

The faculty’s achievements also contribute to USD’s growing reputation. For example, a new study on academic distinction ranks USD’s law faculty in the nation’s top 25. (See page 3.) Learn more about the fac-

ulty’s recent accomplishments in our new section, the Academic Year in Review. This section includes interviews with five professors and spotlights three areas of academic inquiry: law and economics, constitutional law and history, and legal theory.

The success of alumni, such as Thomas Whelan ’65 and Nancy Ely-Raphel ’68, is another indicator that USD is gaining recognition. Former presiding superior court Judge Whelan was recently appointed to the U.S. District Court in San Diego, where his decisions will have nationwide influence. Former principal Deputy Assistant Secretary of State Ely-Raphel now works on bringing peace to the Balkans from her post as U.S. ambassador to Slovenia. Read about these two alumni in this issue’s profiles.

As always, we welcome feedback. Write to the USD School of Law Publications Office or send e-mail to lawpub@acusd.edu.



Caroline F. Tobias
CAROLINE F. TOBIAS
DIRECTOR OF PUBLICATIONS

USD Community Welcomes State Supreme Court to Campus

On April 6, the California State Supreme Court visited the School of Law. It had been 22 years since the full court last came to San Diego. On November 7, 1977, the court (then composed of Chief Justice Bird, Justice Clark, Justice Manuel, Justice Mosk, Justice Newman, Justice Richardson and Justice Tobriner) presided over the dedication ceremonies for the law school's Joseph P. Grace Courtroom and held a special session in the newly completed courtroom.

This spring, an intimate gathering of law students and faculty had the opportunity to converse with Chief Justice George, Justice Baxter, Justice Brown, Justice Chin, Justice Kennard, Justice Mosk and Justice Werdegard. This was a return visit for Justice Mosk, who attended the Grace Courtroom dedication, and Justice Chin, who delivered the School of Law's 1998 commencement address. During the reception, Dean Daniel Rodriguez and USD President Alice Hayes presented each justice with a bronze medallion to commemorate the visit. The following day the court held a special session in San Diego to mark the county bar's 100th anniversary.



Justice Kathryn Werdegard (left) converses with Dean Daniel Rodriguez and President Alice Hayes.



Brittany Oates '99, Timothy McGinity '00, Justice Ming Chin and Christian Gray '00 (left to right) pause to smile for the camera.



The California Supreme Court poses for a picture during their visit to USD: (top row, left to right) Associate Justices Ming W. Chin, Janice Rogers Brown, Kathryn M. Werdegard and Marvin R. Baxter; (bottom row, left to right) Associate Justice Joyce L. Kennard, Chief Justice Ronald M. George and Associate Justice Stanley Mosk.



Justice Joyce Kennard (left) emphasizes a point to Marcus Debose '01 (center) and Professor Larry Alexander (right).

Academic Distinction

New Survey Ranks USD in Top 25

The ranking of law schools, such as those compiled by *U.S. News & World Report*, the *National Jurist* and the *Princeton Review*, attract national attention—both positive and negative—and show no sign of losing their influence. Brian Leiter, a former USD law professor, has addressed the dissatisfaction many law school administrators have with existing rankings by devising his own rating system, incorporating what he believes to

be more accurate and objective criteria.

In a forthcoming study for the *Journal of Legal Studies*, Leiter ranks the academic distinction of ABA-approved law schools by measuring faculty scholarly productivity. Leiter, now director of the University of Texas at Austin's Law & Philosophy Program, developed a methodology that integrates various objective criteria as well as reputational surveys. With his ranking system, USD ranks number 23 in overall faculty publi-

cation productivity. The survey includes various rating categories, such as peer review journals (USD ranks 24), law book publications (USD ranks 14) and overall book productivity (USD ranks 27).

Leiter says the proliferation of rankings in the 1990s is the natural result of competition for academic distinction among law schools. According to Leiter, national rankings "evoke thoughts of status, distinction, quality and prestige in the minds of law students and faculty, and to a lesser extent it appears, lawyers." And since rankings are here to stay, Leiter's approach is to create more reliable rating systems.

LRC Reaches Collection Milestone

This spring, the Pardee Legal Research Center added its 450,000th volume, achieving a new collection milestone. Circa 1960, the earliest available law library records show a count of 26,395 volumes, then 20 years later the school's collection topped 100,000. Throughout the 1980s, the collection grew steadily but slowly, and a 1991 American Bar Association report criticized the LRC's limited collection and "meager selection of monographs." The report stirred law school and university officials to offer greater support for collection building.

During the 1997-98 academic year, the LRC reached its goal of joining the top one-third of ABA law schools in library size. When the ABA inspection committee visited USD in 1998, they said the library collection's former problems were "cured." According to LRC Director Nancy Carol Carter, most experts predict at least another 20 years of heavy reliance on traditional library resources. However, she says, it is difficult to know how the growing trend of using electronic resources will impact the LRC's collection growth—and when the 500,000th volume will be added.



UCSD's U.S.-Mexican Studies Center Welcomes Professor Vargas

Professor Jorge Vargas has been invited to be a guest scholar at the University of California, San Diego's Center for U.S.-Mexican Studies for part of the 1999-2000 academic year. The center offers its international group of 15 visiting scholars university affiliation, access to academic resources and participation in the center's events. Vargas says the center's director, Kevin J. Middlebrook, became interested in Vargas' research on the incorporation of Mexican ethnic law into Mexico's legal system following a recent amendment to the country's federal constitution. In his letter to Vargas, Middlebrook stated, "We are confident that this vibrant intellectual community will provide a stimulating environment for your work. Your project and your presence will contribute greatly to our research community."



GRADUATE TAX PROGRAM EARNING NATIONAL RECOGNITION
WITH FIRST-RATE PROFESSORS AND TALENTED STUDENTS

ADDING **value**

It was the night before the final round of the National Tax Moot Court Competition, and third-year student Joanna Owen was a little edgy. She had just learned her team's argument would be presented before U.S. Tax Court judges, flown into St. Petersburg, Florida, from Washington, D.C. Owen and two classmates, John DerOhanesian and James Gergurich, had sailed through two days of difficult arguments and were ready for the finals.

In January 1999, the Tax Section of the Florida Bar Association hosted this prestigious competition, which pit the USD team against students from the top law schools in the country. Owen says the pressure made her nervous, but she was not really worried.

"The subject we were arguing wasn't anything we were familiar with. It was a very narrow issue, but we were prepared for it. I had a creative argument our team didn't think anyone else would come up with," she says.

The team's strategy worked. It was the first time USD students had entered this competition, and they won first place. In addition, Owen received the prestigious title of Overall Best Oralist, and one of the judges called her argument ingenious. "I was thrilled," she says. "It was probably the highlight of my entire law school experience."

And a defining moment too. Owen decided then and there that tax litigation was her calling, this from a woman who was not even interested in tax law when she first came to USD. "I didn't think I would like tax at all, but I took some courses early on and the professors here made it much more enjoyable than I thought possible. The LL.M. program recruits professors who are wonderful, probably some of the best in the law school," she says.

A Win-Win Situation Students like Owen are able to take these advanced courses because of USD's stellar graduate tax program. "Without our strong master of laws program in taxation, these additional opportunities for J.D. students wouldn't exist. It's a win-win situation—for both the LL.M. and J.D. students," says Judy Bruner '94, the law school's assistant dean for graduate programs and academic planning.

Daniel Rodriguez, dean of the law school, believes USD has one of the largest and most prestigious graduate tax programs in the West. The reputation of the program, and of the school's tax offerings for J.D. students, has been growing in stature due to a first-class faculty.

Story by Eilene Zimmerman

Illustration by Rafael López

Value

"We have a number of full-time tax scholars and teachers with great reputations in their fields and subfields, and we also hire adjunct faculty to teach highly specialized courses," says Dean Rodriguez.

The USD faculty roster reads like a *Who's Who* of great minds in tax law, and includes people like Distinguished Professor Richard Crawford Pugh, a Rhodes Scholar, former partner with the New York firm of Cleary, Gottlieb, Steen & Hamilton and former law professor at Columbia University; Professor Lester Snyder, author of numerous articles on tax policy and reform, and a former member of the State Bar of California's Taxation Section Executive Committee; Adjunct Professor M. Carr Ferguson, senior tax partner with the New York firm of Davis Polk & Wardwell, former law professor at New York University and chair of the ABA Tax Section; and the Honorable David Laro of the U.S. Tax Court.

Visiting Professor Michael Devitt was impressed when Laro introduced him to USD. "People like Judge Laro—an esteemed judge and a truly impressive person—to have him here, and to have a school that is committed to attracting teachers of his caliber, is really something," he says. Devitt handles complex civil litigation cases nationwide and was managing partner of the firm Beus, Gilbert & Devitt.

USD recruits visiting and adjunct professors with diverse perspectives and ideas, which supplement the scholarly contributions of the full-time faculty. "We're moving toward widening the tax program so that it confronts not only issues of tax law, but of tax and financial administration as well," says Dean Rodriguez.

That broadened focus is right on track. Comparing USD's graduate tax program to New York University's—historically the nation's model in graduate tax education—USD offers more of a mix of policy study and academic inquiry, observes Professor Ferguson. "I think that was missing for a while at NYU, although it is catching up now. But the San Diego program has very nicely enriched a traditional academic focus without losing its core mission of preparing young lawyers to practice tax law," he adds.

"The tax clinic adds a substantial practical dimension to our excellent academic program."

Inspiring Students According to Scott Smerud '99, former president of the USD Tax Law Society, professors like Laro and Ferguson rank as some of the best he's ever had. "More than just teaching the rules, they helped me conceptualize what they were teaching," he says.

Laro often teaches by way of example, referring in class to actual court or practice experience. "I think that makes the knowledge vivid to the student," he says. "And I like to create an atmosphere where there is a community of ideas and shared experiences."

Another reason for the program's success is the personal attention students receive from the faculty. For example, Laro encourages students to apply for clerkships on the U.S. Tax Court. Currently, LL.M. graduates James A. Orefice '88 is an attorney advisor and Bahar Schippel '98 is a full-time clerk. In addition, second-year J.D. student Wendy Woolstenhulme secured a summer clerkship. "That is an unusually high number to represent any one school," says Laro.

The School of Law's presence on the court is a true coup. Obtaining a much-coveted U.S. Tax Court clerkship is no easy feat, and a clerk's knowledge of the court's inner workings is invaluable to future practitioners. USD students compete against the brightest from the best law schools nationwide, including Ivy League institutions like Harvard, Yale and Columbia.

Schippel is one of those graduates, and she chose USD for both its reputation and location. "I particularly liked the caliber of the professors and visiting faculty," she says.

Fulbright Scholar Gerhard Rettenbacher '99 (LL.M.) found the specialized courses particularly useful. As a tax lawyer in his native Vienna, Rettenbacher advises American and European clients about the tax implications of their stateside businesses. "Corporate Reorganizations was my favorite course," he says. "Professor Ferguson is absolutely brilliant, one of the very best professors I've had in my career."

Rettenbacher is part of a strong international student presence in USD's graduate programs. "We have a lot of comparative law students in the program and many take international tax courses. It's help-

ful to have foreign students bring their perspectives into the class," says Distinguished Professor Pugh. "They comment on the different approaches their systems take to the tax problems we discuss."

The law school also recently established the student-run *San Diego International Law Journal*. Dean Rodriguez says this academic publication provides a forum for both scholars and practitioners interested in international tax issues and global finance.

Reforming the IRS Exploring domestic tax issues is equally important. To that end, Professor Snyder organized USD's first tax conference in March. For the conference panelists, Snyder says he gathered "14 of the best tax minds I could find: academics, economists and representatives from the International Monetary Fund."

The goal was to gain new insights into the tax system and pursue the national debate on reform. The two major tax reform proposals discussed were presented by Professor Daniel Halperin of Harvard Law School, who proposed saving the current tax system, and Professor Michael Graetz of Yale Law School, who proposed replacing the present system with a combination value-added tax and income tax.

The symposium was particularly timely since both proposals may come before Congress in the near future. The resulting discussions inspired Snyder to produce several publications. "I am doing a short article for *Tax Notes*. And with the help of Halperin, Graetz and other panelists, I am writing a longer synopsis of the issues raised at the conference," he says.

Assistant Dean Bruner plans to make the tax symposium an annual event. She also hopes that in the near future the law school, with the help of the USD community, will establish a faculty chair in taxation and an endowed lecture series.

In addition, the School of Law recently applied for a grant from the U.S. Treasury Department to

"USD is in a unique position, with a top-notch faculty, motivated students and a dean with a vision."

begin a low-income taxpayer assistance clinic. Amid heavy competition, USD was awarded the grant and the clinic opens this fall.

"The tax clinic adds a substantial practical dimension to our excellent academic program," says Dean Rodriguez. "Also, the opportunity provided by the IRS enables our students, under the supervision of experienced lawyers, to serve the public interest by performing legal and advisory work for low-income taxpayers. In this spirit, this clinic reaffirms our school's commitment to pro bono legal services. The faith the federal government has shown in us confirms USD's growing reputation as one of the nation's premier tax programs."

A Winning Formula The faculty, the courses and the conference all contribute to making USD's tax program the best in the western United States. "Because of the LL.M. program we're now attracting J.D. students who come in with some interest in tax," says Bruner. "Look at the Tax Law Society; it started two years ago to meet the needs of a few students and now has over 70 members. It's a stunning success."

This past year the Tax Law Society hosted 10 speakers, among them Don Blackwell, director of partner taxation with Ernst & Young; Timothy Hansford, tax counsel to the House Ways and Means Committee; and Judge Laro and Bahar Schippel from the U.S. Tax Court.

A final, vital component of the program is its dedicated and diverse student body. Devitt, who helped coach USD's moot court team, observes, "The students here are extremely intelligent. I was most impressed with their desire to be the best they could be—something that was especially refreshing to see in the tax moot court competition." He adds, "It was truly amazing, particularly because these students took the competition so seriously and sought help from people like me and their other professors."

Devitt concludes, "USD is in a unique position, with a top-notch faculty, motivated students and a dean with a vision. I truly believe that's a winning formula."



Thomas Whelan
Administers Justice with an Unassuming Style

the quiet man

STORY BY KATE CALLEN
PHOTOS BY PABLO MASON

Try as he might to downplay it, Thomas J. Whelan '65 is ending this millennium with a big year.

Judge Whelan began 1999 unpacking from his November move from San Diego Superior Court, where he was presiding judge, to U.S. District Court, where he is the newest of seven judges.

In March, armed with a black-thorn shillelagh bought on one of his annual trips to Ireland, Whelan presided as Grand Marshal over San Diego's St. Patrick's Day parade, riding in a 1957 Corvette convertible.

In June, Whelan made a sentimental journey to his high school, St. Augustine's in San Diego, to deliver the 1999 commencement address.

And in April, the 58-year-old jurist returned to another of his alma maters, the USD School of Law, where he was the guest of honor at a reception celebrating his appointment to the federal bench.

The accolades pile up; the recipient smiles broadly and shrugs them off. Whelan's physical resemblance to actor Spencer Tracy is often remarked upon. But the character who captures him best is John Wayne's "The Quiet Man": a smart, stoic workhorse with a big heart who keeps his authority holstered.

Ask Whelan about any of the high-profile cases he has handled as prosecutor or judge, and he likely will reply, "It was fairly routine, no real surprises."

"Tom is a kind man," says Cathy Whelan '64 (B.A.), his wife of 36 years. "He has seen the 101 ways people can hurt and destroy one another. He feels deeply for everyone touched by tragedy. But, in the end, he sticks to the facts. It is his gift to look for the truth."

"Judge Whelan never lets on how much he knows," observes

Rosie Cerda, the judicial assistant who came across the street with him from superior to federal court. "But if you think you're going to pull a fast one on him, forget it. He already sees where you're going, and he has the answer for you when you get there."

GROWING UP ON THE MESA

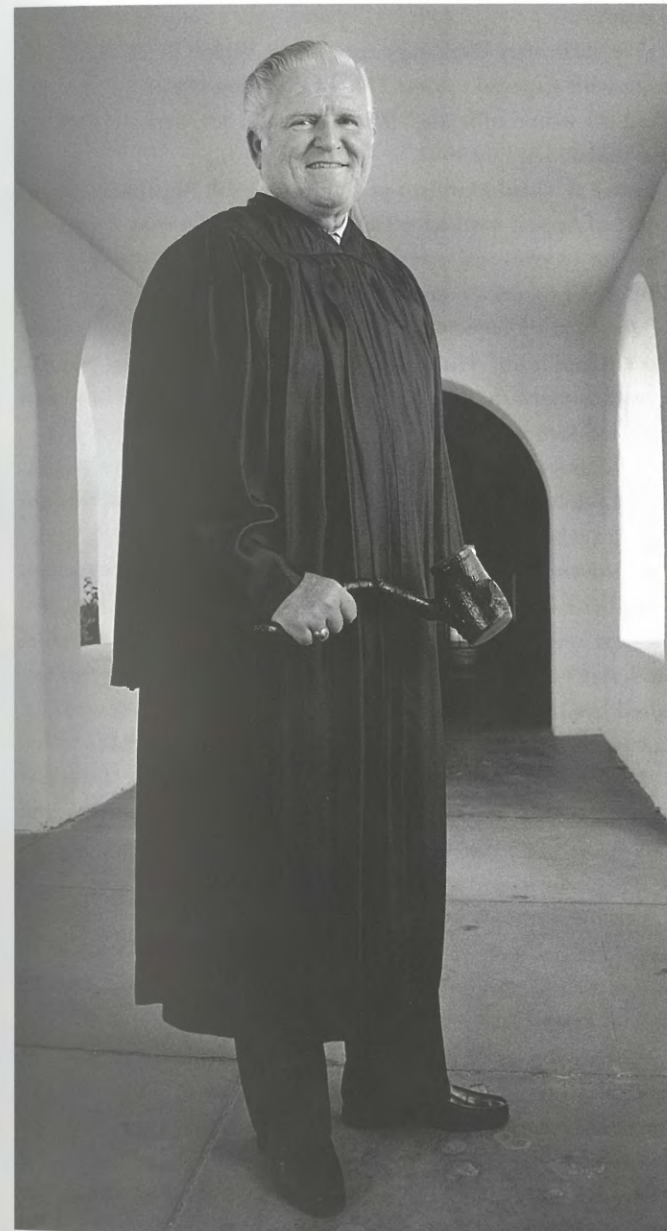
Thomas Whelan was born in St. Paul, Minnesota, but his hometown is San Diego, where his family moved when he was four. He grew up around the Linda Vista mesa that now contains the university's campus. In fact, Tom was an altar boy who served Mass in USD founder Bishop Charles Francis Buddy's private chapel.

Today, the judge can still recite the altar boy's responses in the Latin Mass. And he clearly remembers the day when the cross was placed on the belltower of The Immaculata. "There were a few anxious moments when a sudden gust of wind rolled the helicopter [carrying the cross]. The helicopter had to regain altitude and return on another pass to safely complete the installation," Whelan recalls.

Another young protégée of Bishop Buddy was Cathy Lindseth, an artist in The Immaculata's mosaic shop. Whelan attended the College for Men, and Lindseth was in the College for Women. They began dating when he was in law school, and in 1963, they were married by Bishop Buddy.

Asked what first attracted her to Tom, Cathy, now the director of religious instruction with San Diego's Our Mother of Confidence Parish, replies, "He was a very interesting young man. He worked his way all through school, and I thought that was neat."

"Judge Whelan never lets on how much he knows. But if you think you're going to pull a fast one on him, forget it. He already sees where you're going, and he has the answer for you when you get there."



The oldest of seven children, Whelan paid his college tuition working as a grocery store checker at Food Basket. After earning a bachelor's degree in 1961 at USD in business administration, he entered the School of Law.

Whelan worked days in the Convair division of General Dynamics Corporation and took evening classes. "In night law school, many of the instructors had solid practical experience," he says. "I learned constitutional law from General George Hickman, the judge adjudicate general during the civil rights troubles in Alabama. And many other instructors had a private law practice by day and taught law school at night."

Upon graduating from the University of San Diego School of Law in 1965, Whelan remained with Convair as a contracts attorney. A typical day had him riding along on a commercial aircraft test flight with a stopover in Las Vegas. But his heart was elsewhere.

"I really wanted to try cases," he explains. "In my mind, real lawyers are trial lawyers."

Even with two children and house payments, the Whelans decided Tom should go for it. He took a pay cut to work in the San Diego District Attorney's office. His first high-profile case involved Danny Alstat, an Eagle Scout accused of murdering his parents and sister and attacking his brother with a hatchet.

"Nobody wanted to believe this kid could do such a thing, but we showed the thought processes behind his crime," says Whelan. "He had gone to the trouble of printing an invitation to a nonexistent party, and he had also ransacked the house to make it look like a burglary. This was not a spur-of-the-moment thing; it was well planned."

Throughout his 21 years as a deputy district attorney, Whelan was never hell-bent on winning. "The prosecutor's duty is to see that justice is done," he says, "and sometimes that means you wind up dismissing the case."

Mementos from Whelan's career as a prosecutor include chalk drawings from the Alstat trial and a photograph from his last case, the murder trial of David Weeding. In the picture, Whelan stands

Thomas Whelan

Judge Irma Gonzalez, Rev. Msgr. Donal Sheahan and Judge Whelan's son, Jim, converse during the April event.

Colleagues on the bench show their support of Judge Whelan's appointment, including Chief Judge Marilyn Huff and U.S. Magistrate Judge Leo Papas.

Judge Whelan chats with Marlene Turrentine and Senior Judge Howard Turrentine.

by the witness, Vickie Petix, who is staring at the sweater Weeding tore while trying to rape her. Petix's husband, Steve, interrupted the assault and grappled with Weeding, and Weeding stabbed him to death.

Five years after Weeding's conviction, Vickie Petix called the judge with a special request. "She was getting remarried, and she asked if I would officiate," Whelan says. "I married her and her new husband in July 1995."

Justice Richard Huffman of California's 4th Appellate District Court of Appeal worked with Whelan in the District Attorney's office for 14 years and served on the committee that helped recruit Whelan for superior court.

"Tom was a Democrat, and the governor, George Deukmejian, was a Republican," Huffman recalls. "And the governor was delighted to make the appointment. That shows you just how well respected Tom is."

Only five months after he joined the bench, Whelan was assigned a double-murder case that, as he said at the time, "was not exactly a whodunit."

In November 1989, La Jolla socialite Betty Broderick gunned down her ex-husband, prominent attorney Daniel Broderick, and his new wife and former office assistant, Linda. The first of Broderick's two trials made San Diego history as the first trial televised live on a daily basis. The case spawned two made-for-TV movies, several books and intense media coverage that still persists.

Whelan is philosophical about the Broderick saga. "It was just one case. I understand the public's interest in Betty Broderick, and I accept it, but I don't do anything to enhance her notoriety," he says.

Throughout both trials, Whelan won praise for his courtroom skills. "He has such an easy style of doing things that he puts all parties at ease," points out Huffman. "As a consequence, he maintains control of the courtroom without using a heavy hand."

Whelan was also one of two superior court judges assigned to handle the first cases under the "three strikes" law. "There were no precedents," he says, "and we didn't want numerous opinions on how to interpret the new law."

The experience left Whelan with an encyclopedic knowledge of three strikes (he led seminars for retired judges coming back on

the bench to try three strikes cases), and with a profound belief that judges should maintain sentencing discretion.

"In one case, the third strike was stealing a bottle of Mogen David wine," Whelan explains. "The liquor store owner said, 'If I had known this guy was facing a life sentence, I wouldn't have even called the police.' How can you send a guy to prison for life when the victim feels that way?"

THE CONSUMMATE JUDGE

Last year, after other nominees dropped out of the running, Whelan survived the marathon vetting of a Senate confirmation. "The investigators even tracked down a man who had been a box boy with me at Food Basket in the '50s," he recalls.

"Tom sailed through the confirmation process, largely because he doesn't carry a bag on behalf of any point of view," says Justice Huffman. "He's a consummate judge and a real treasure."

Whelan's new chambers on the south side of Broadway are much larger than his old space on the north side. But the office décor has not changed much. As before, the shelves are crowded with photos of him and Cathy enjoying sea cruises; of their four children, Mary, Jim, Shelly and Chrissy; and of Whelan with his mother, Margaret, who attended the USD reception held in his honor.

His new closet houses the kelly green robe he wears every year on St. Patrick's Day. "He makes sure to clear it with both counsel before he comes into court," says Craig Cherney '96, one of Whelan's two research attorneys. "The judge likes to have fun, but he plays by the rules."

Cherney mentions that he and Whelan's other research attorney, Mark Weinstein '97, "had our eye on him before he took the federal bench because we had heard about the kind of person he was and we really wanted to work for him."

"The judge only has to hear something once, and he retains that knowledge forever," adds Cherney. "You can have a detailed conversation with him about a case, and 30 days later, he'll know the names, the facts and the issues of law you discussed."

To his subordinates, Judge Whelan is the boss from heaven. "He treats us as equals," says Cherney.

"I love working for Judge Whelan," states Rosie Cerda. "I never have a bad day because he never has a bad day."

"In one case, the third strike was stealing a bottle of Mogen David wine. The liquor store owner said, 'If I had known this guy was facing a life sentence, I wouldn't have even called the police.' How can you send a guy to prison for life when the victim feels that way?"

Dean Daniel Rodriguez congratulates Judge Whelan during the USD reception held in Whelan's honor.

Judge Whelan's family joins the festivities, including (left to right) daughter Shelly Patriquin, daughter Chrissy Whelan, nephew Ben Wood '99 (B.A.) and nephew Bryan Wood.

HUMAN RIGHTS AND WRONGS

Ambassador Nancy Ely-Raphel

Seeks Peace in the Balkans

Story by Kate Callen



THE KEY TO LASTING PEACE IN THE BALKANS may lie in the baroque setting of the Republic of Slovenia. The diplomat who may help shepherd that peace first studied international law in the renaissance setting of Alcalá Park.

Nancy Ely-Raphel '68, U.S. Ambassador to Slovenia, is part of a cadre of delegates working to iron out the future of Southeastern Europe.

Being near ground zero in a global conflict is nothing new for the veteran negotiator. During her remarkable 30-year career, Ely-Raphel has been a human rights emissary in South Africa, Somalia, Angola, Namibia, Vietnam, Eastern Europe and the former Soviet Union. She was a principal member of the team led by then U.S. Assistant Secretary of State Richard Holbrooke that drafted and implemented the 1995 Dayton Peace Accord.

As only the third American ambassador to Slovenia, Ely-Raphel is navigating foreign relations in a vortex. Following NATO's crackdown on dictator Slobodan Milosevic in nearby Serbia, she has played an indispensable role in Western attempts to bring democracy to the former Yugoslavia.

"Slovenia is the role model for the states of Southeastern Europe," Ely-Raphel explains during a telephone interview from Slovenia's capital city of Ljubljana. "It is the only successful democratic state in the region. It has a thriving economy and an impeccable human rights record. Slovenia is poised to be the bridge between the Balkans and the rest of Europe."

In June, Ely-Raphel played host to President and Mrs. Clinton on their first-ever visit to Slovenia, which declared its independence the year before then Governor Clinton was elected to the White House. "The President's visit really is a recognition of the role Slovenia can play in stabilizing Southeastern Europe," she says.

Ely-Raphel admires the Clintons' commitment to human rights—in particular, their determination to end the abominations in Kosovo. In a February speech to the law faculty at the University of Ljubljana, she borrowed ideas from Hillary Rodham Clinton. "Human rights transcend individual regimes and customs," the ambassador said, quoting the First Lady. "They are not the work of a single culture or country. They have been with us forever, from civilization's first light."



Ely-Raphel is on equally good terms with Republican leaders. In 1988, while serving in the State Department during the Bush administration, she received her first of two Presidential Distinguished Rank Awards for outstanding service to the nation.

"My mom is sophisticated and highly intelligent, but she's also a warm, caring person who speaks from the heart," says Robert Duff Ely, who followed his mother to the USD School of Law, graduating in 1987.

"Nancy has poise and self-confidence; she never loses her cool," observes her for-

Ely - Raphael

mer husband John Hart Ely, currently the Richard A. Hausler Professor of Law at the University of Miami. "She's very resourceful, but she has never been ambitious," he adds. "She just does every job she's given exceptionally well."

Notwithstanding the tumult of her diplomatic assignment, preparing for state visits and traveling in a bulletproof car, Ely-Raphael speaks glowingly of her life abroad. "Slovenia borders on Austria and Italy," she says. "It has the Alps close by and a coast that reminds you of La Jolla. There's skiing, trout fishing, whitewater rafting. On the cultural side, there are two symphony orchestras, opera and ballet, and a jazz festival every summer."

"This place really is a gem. The University of Ljubljana is magnificent, with baroque architecture dating from the Austro-Hungarian Empire. It is such a beautiful setting, it reminds me a lot of USD."

LEARNING TO THINK ON HER FEET

Born Nancy Halliday in the Bronx, Ely-Raphael was a Syracuse University graduate

and a young mother when she decided to become a lawyer. Suzanne Duvall '68, a classmate and close friend, remembers meeting Nancy the first week of law school at USD.

"We were both in the dean's office," Duvall recalls. "Nancy had towheaded boys ages 3 and 5, and I had a little boy age 4. We called them our stair-step kids."

As two of only three women in their first-year class, they teamed up to survive. "We took tax law with Bert Lazerow, who was very proud of being a Harvard law alum," says Duvall. "Nancy and I weren't exactly whiz kids at tax law, so at exam time, we came up with an idea. Instead of studying old USD tax exams, we studied old Harvard tax exams."

When the grades were posted, the two friends had the highest scores. "Obviously," says USD Professor Bert Lazerow, "these were two very smart women. Nancy was a good student, always well prepared. It's not at all surprising she's had such a stellar career."

With her J.D. in hand, Ely-Raphael began a life of public service as a deputy

city attorney in San Diego. Her prosecutorial ability came to the attention of the U.S. Attorney's office, and she was soon hired as an assistant U.S. attorney. Working as a trial lawyer "taught me how to think on my feet," observes Ely-Raphael. "I had to develop intellectual skills and negotiating tactics that have stood me in good stead."

From San Diego, she moved to Boston, where she served as associate dean at the Boston University School of Law and then joined the Justice Department as a senior trial attorney with the Organized Crime Strike Force. "I loved working on the strike force, and it turned out to be great training for working in the area of human rights, because I learned how to pull a criminal case together," Ely-Raphael says.

"Years later, when I had to give a speech before a police academy in Ankara, Turkey, I drew on my strike force experience," she recalls. "It helped put me on a par with the audience, and I wound up having a wonderful discussion with these cadets, who were very sensitive to the human rights concerns I was raising."

THE AMBASSADOR'S WIFE

Ely-Raphael left the courtroom for good when she joined the State Department in 1978. In her first assignment, as assistant legal advisor for African Affairs, she worked on a legal aid program for political prisoners in South Africa, and she helped draft the constitution for the new democratic government of Namibia. Today, she looks back on both endeavors with special pride.

"I was very lucky to have had those opportunities," she says. "When I look at all that has happened in Southern Africa since I was there, it's just unbelievable."

She next went to Pakistan, but it was

not a professional move. She had been dating career diplomat Arnold Raphael and, after he was named the U.S. ambassador to Pakistan in January 1987, they married, and Nancy found herself immersed in the operations of an overseas embassy.

"Those were the happiest days of my mother's life," Robert recalls. "She worked hard to champion women's rights when she was in Pakistan. And she learned a lot watching Arnie, who was a true diplomat in every way."

Those happy days only numbered in the hundreds. On August 17, 1988, a year and a half after he and Nancy moved to Pakistan, Arnold Raphael was killed when the plane carrying him, the Pakistani president and several officials exploded and crashed. The case has never been solved.

"That was the toughest thing she's ever gone through," says Robert. "But she made herself rebound. And she went back to work."

Last August, after Under Secretary of State for Political Affairs Thomas Pickering swore her in as ambassador to Slovenia, Ely-Raphael faced an audience that included Arnie's daughter, Stephanie, and many of his relatives, and she spoke lovingly of him.

"She talked about how proud she was to be following in Arnie's footsteps," says Robert. "A lot of the people there had known Arnie, and it was a very emotional moment."

NEXT USD SUMMER LAW PROGRAM: SLOVENIA?

When the University of San Diego School of Law held its 1993 Law Alumni Weekend, the keynote speech was titled "Recent Developments in Human Rights and International Law: A Personal Perspective." The speaker was Nancy Ely-



Ambassador Nancy Ely-Raphael greets President Bill Clinton when he arrives for his first visit to Ljubljana, Slovenia this June.

Raphael, who had just been named the State Department's Principal Deputy Assistant Secretary for Democracy, Human Rights and Labor.

Six years later, her words now seem prophetic: "The resurgence of ethnic, racial and religious tension within and among states is threatening the political cohesion of emerging democracies and even of some Western democracies struggling to deal with immigrant populations."

Ely-Raphael also used the occasion to address the next generation of lawyers. "I would encourage law students to consider international law," she said. "It is a wide-open field. We're living in a whole new world, and we need to rethink our geo-strategic interest."

Ely-Raphael's own sons have taken up that challenge. John has worked in Bosnia-Herzegovina as a peacekeeper assigned to monitor the recent elections. Robert (who was the very first second-generation USD law graduate) has visited his mother in Slovenia, and he keeps close track of the Kosovo crisis.

"How many men do you know who only dream of following in their mothers' footsteps?" Robert asks.

Ely-Raphael continues to have a keen interest in expanding the global outlook of students at the University of San Diego School of Law, a place she says "is very dear to my heart."

"Slovenia would be a great place for the law school to have a summer program," she suggests. "Most Slovenians speak English—students start learning English in the third grade—and the people here really love America and Americans."

"In my first week here, I opened an exhibition of photographs by Annie Leibowitz at the Museum of Modern Art. As I was pulling up, I noticed a huge crowd and a lot of TV cameras. It turned out they were there to greet me. It was so unexpected and so wonderful."