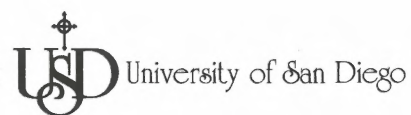




A Family Affair: Annebeth Loher, wife of Tom Loher '00 (LL.M. in Comparative Law), and son Dominic meet the law school community during a Graduate Programs reception in late January.

parting shot



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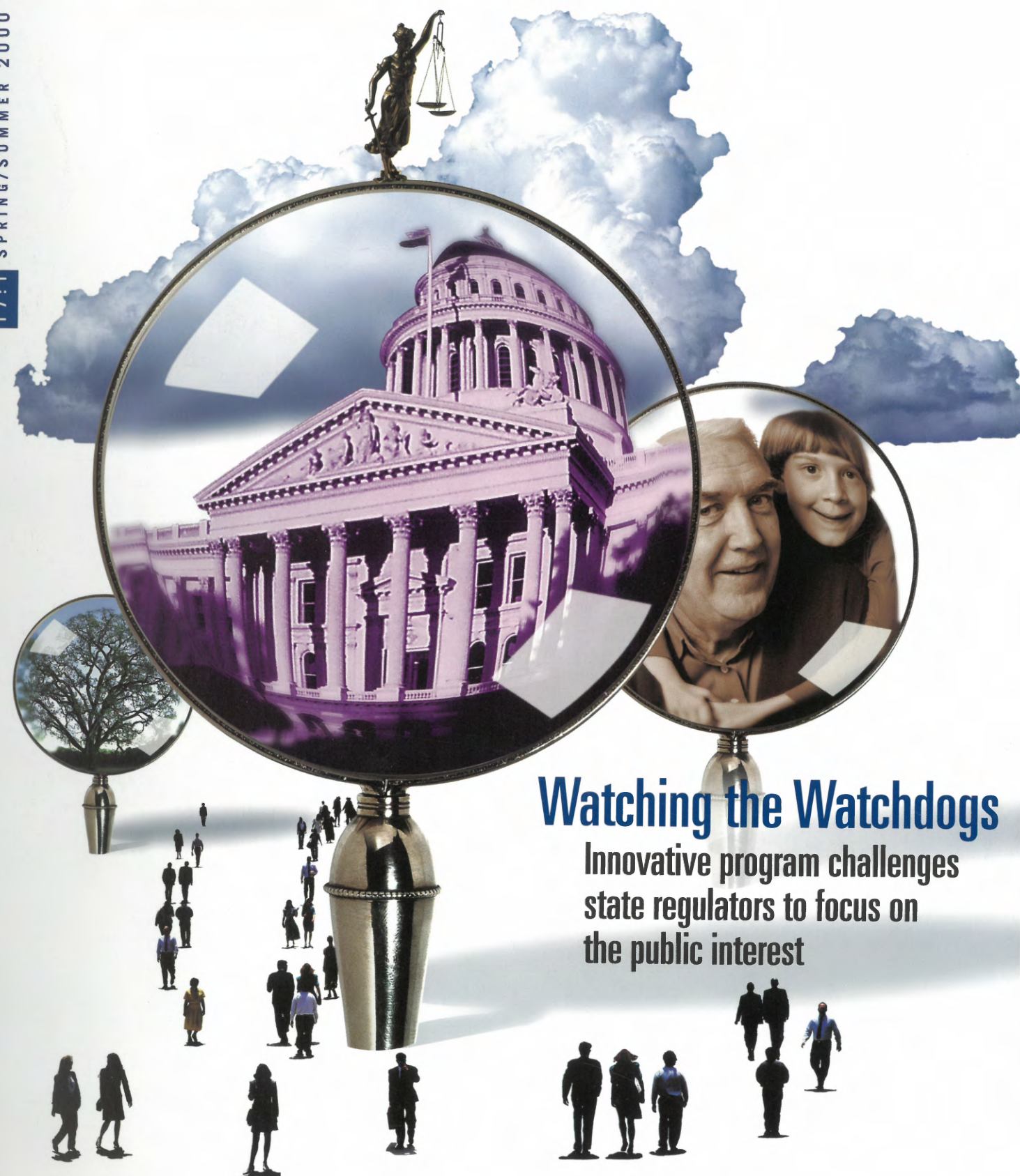
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Watching the Watchdogs

Innovative program challenges state regulators to focus on the public interest

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Features



14 Law Alumni Weekend 1999

In camera: Alumni celebrate ninth annual reunion on campus and at Balboa Park's Aerospace Museum



22 Taking It Personally

Lesley Clement '88 leads the crusade against elder abuse



18 Giving Foster Children a Voice

Ana España '82 speaks up for society's most vulnerable

10 Cover Story

Watching the Watchdogs

Innovative program challenges state regulators to focus on the public interest

Departments

- 2 MESSAGE FROM THE DEAN
Taking maximum advantage of the information economy
- 3 LETTER FROM THE EDITOR
Debunking the "dead lawyer" jokes
- 4 CAMPUS BRIEFS
An update on the law school's achievements and programs
- 8 ALUMNI BRIEFS
An update on special events, and news about your classmates
- 26 CLASS ACTION
Catch up with the personal and professional lives of alumni
- 33 HONOR ROLL
A special thank-you to alumni and friends for their generous gifts
- 49 ON THE DOCKET
A calendar of law school events and activities



PG. 4

message from the dean

"It is the information economy, stupid."

Perhaps this era will be looked upon by future leaders as a very unique time in the history of the American economy. While the economic circumstances of lawyers vis-à-vis the larger economy are always complex, the intriguing opportunities available through the maturation of the so-called information economy have rightly focused our considered attention on the ways the legal profession can contribute effectively to moving society forward.



The University of San Diego School of Law is especially well poised to take maximum advantage of, and contribute to, this expanding information economy. Under the leadership of able full-time and adjunct faculty, we are busily building a top-notch program in law and technology, and intellectual property. Our programs in business and corporate law are first-rate. This year we inaugurated our LL.M. graduate program in business and corporate law, and we continue to expand and refine the curriculum. Our intellectual property curriculum is also developing nicely. During this next academic year, we will offer a large and diverse series of course offerings in IP with the ultimate aim of developing a durable concentration in this fast-moving area of law.

The expansion of the new information economy is not merely a matter of the creation and accumulation of wealth, but the opening of access to those who have been left behind by this economy. After all, our profession is not only about facilitating sound public policy and economic advantage; it is critically about the establishment and protection of individual rights and equal opportunity. Fortunately for our students, the USD School of Law continues to hold dearly its role in promoting the public interest. We do this corporeally, that is, as an institution that has the responsibility of promoting public interest lawyering, and individually, through the development of public-spirited students. I am very proud that one of our students, Jessica Neyman '00, currently serves as vice president of the National Association of Public Interest Placement. Other students serve in equally significant roles in USD's public interest programs. We are proud of all the work our students, faculty and alumni do in promoting public interest lawyering throughout the community, nation and world.

DANIEL B. RODRIGUEZ
DEAN AND PROFESSOR OF LAW

letter from the editor

debunking "dead lawyer" jokes

Lawyers are rarely held in high regard these days. Most of us have heard countless lawyer jokes that play upon the theme "the only good lawyer is a dead lawyer." But the reality is, many law students come to USD because they believe a juris doctor degree can help them improve the human condition. One of the *Advocate's* missions is to show how USD academic programs and centers offer students opportunities to learn the law and use that knowledge to implement their ideals. Another goal of the magazine is to highlight how law faculty and alumni work toward improving today's world.

For example, the cover story discusses how Professor Bob Fellmeth—who began as one of the original "Nader's Raiders" in the 1960s—founded the law school's Center for Public Interest Law (CPIL), an academic center dedicated to teaching students as well as serving as a public monitor of California's state agencies. Over the past two decades, Fellmeth and members of CPIL have successfully shut down unnecessary state agencies in California and have influenced public policy-making on the state level. Fellmeth also established the Children's Advocacy Institute (CAI), an organization that represents the interests of children in state government.

This issue also profiles two alumnae who have dedicated themselves to helping underrepresented segments of society. Ana España '82 strives to improve the plight of San Diego County's foster children by running

the San Diego Public Defender's Office Dependency Section, where she represents foster children in juvenile court.

After suing the nursing home where her great-aunt suffered devastating physical abuse, Lesley Clement '88 is fighting for the end of elder abuse. Clement has transformed a painful personal incident into a passionate cause and built a practice on defending elderly victims who have been battered by nursing home caretakers, medical attendants and even family members.

So, while this magazine cannot erase the dubious reputation lawyers may have, these stories demonstrate that many lawyers from USD positively influence our world.

As always, we welcome feedback. Please let us know your thoughts on this issue's stories. Write to the USD School of Law or send e-mail to lawpub@acUSD.edu.



Caroline F. Tobias
CAROLINE F. TOBIAS
DIRECTOR OF PUBLICATIONS

campus briefs

Freeing the "Hurricane"

Visiting Jurist Defends Constitutional Rights of the Wrongly Accused

On June 17, 1966, Rubin "Hurricane" Carter, the top contender for the middleweight boxing world championship, was arrested for killing three white people in a Patterson, N.J., bar. Although Carter was not identified by any of the survivors, and the strongest evidence was the testimony of a criminal standing lookout during a nearby robbery, Carter received three life sentences. For the next 20 years, Carter, his lawyers and his supporters fought to overturn his conviction and gain his release.

The critically acclaimed film *The Hurricane*, which stars Denzel Washington, traces Carter's case, exposes the corrupt system that framed him, and reveals the undying spirit of a man who refused to be beaten.

USD law students, alumni and faculty were treated to a screening of the film on December 5, 1999, at San Diego's Museum of Contemporary Art, before it was released nationwide in January. Judge H. Lee Sarokin, the law school's distinguished jurist in residence, arranged the event and asked Rubin Carter to attend and speak about his experience.

It was Sarokin, then sitting on the U.S. District Court, 3rd Circuit, who freed Carter by signing the rarely used writ of habeas corpus—which allows federal judges to overturn state convictions. Sarokin, who was criticized for his decision and dubbed "Let 'em Free Lee" when he was



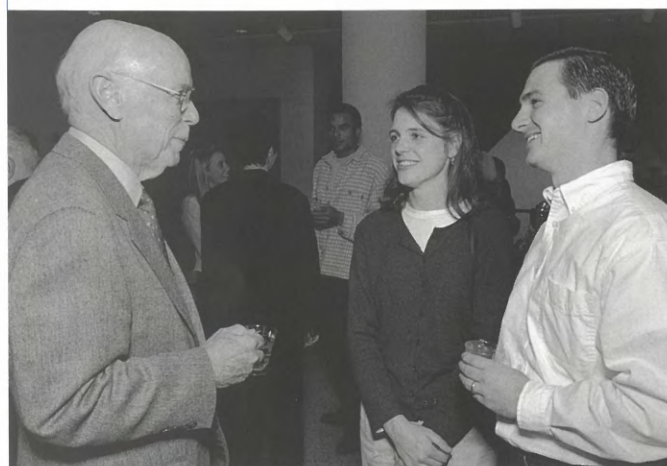
During the December reception, Virna Luque '00 (LL.M. in Comparative Law) gets the opportunity to meet and speak with Rubin Carter, on whom the movie, *The Hurricane*, is based.

nominated to the U.S. Court of Appeals, stated the prosecution committed grave constitutional violations and convicted on the basis of racism rather than reason, and concealment rather than disclosure.

"We must stop equating the protection of the constitutional rights of those accused of crimes with being 'soft on crime,'" said Sarokin after the screening. "There is [currently] no compensation for being wrongfully deprived of one's cherished right of liberty and the resulting loss of opportunity, income and, as in Rubin Carter's case, one's family." He argued for legislation that establishes "some reasonable formula" for compensating the wrongfully accused for losses suffered while in prison.

Sarokin also stated the bar for habeas corpus relief has been raised so high that few applicants can hurdle it, and claimed if Carter's case were appealed today, Carter would still be in jail.

"The man ... who tracks me down and calls me wherever I am, on the anniversary of his release, to thank me, is the living symbol of the vital need for habeas corpus relief," Sarokin said. "He is also the most remarkable testament to the human spirit that I have ever known."



Judge Lee Sarokin (left) talks with Jay Jurata '00 (right) and his wife, Linda (center), following USD's screening of *The Hurricane*.

The Right to Remain Silent

Professors Debate the Vitality of *Miranda*

"You have the right to remain silent..." These famous words, recited in actual arrests and in countless television cop shows, have become a fundamental part of the American criminal process since the U.S. Supreme Court's landmark decision in *Miranda v. Arizona*, 384 U.S. 436 (1966). However, this spring a case before the Supreme Court will determine whether Congress and the states can abolish the requirement that *Miranda* warnings be issued to arrested persons.

This March at USD, Visiting Professor Yale Kamisar and Professor Paul Cassell of the University of Utah College of Law debated the constitutionality of Section 3501 of the Crime Control Act of 1968, 18 U.S.C. § 3501. This obscure and rarely invoked statute allows the admission of a voluntarily given confession as evidence during a criminal trial, even if the arresting officer did not issue *Miranda* warnings to the suspect. The Supreme Court has appointed Cassell to

defend the constitutionality of Section 3501 in *Dickerson v. United States*, 99-5525.

Cassell and Kamisar agree that the U.S. Constitution does not specifically require *Miranda* warnings, and that the warnings may be modified or even trimmed by legislation. Beyond these points, the agreements ended. Cassell argued that Section 3501 is constitutional because it includes the voluntariness test of *Miranda* and instructs judges to consider an additional requirement: whether the suspect was informed of the nature of his offense at the time of arrest.

Kamisar, known as "the father of *Miranda*," responded that Section 3501 "turns back the clock to a pre-*Miranda* state" by merely adopting the voluntariness standard that existed before *Miranda*. Acknowledging that Congress and the states may adopt alternative procedures, Kamisar maintained that such procedures must meet or exceed *Miranda* requirements. Kamisar concluded that Section 3501 fails to meet these standards.

From Chance to Choice

Conference Examines the Moral Dilemmas of Genetic Research

Today, infertile couples can purchase "genetically gifted" eggs to create a child.

Tomorrow, insurance companies may deny coverage for people whose genetic makeups reveal a high risk of cancer. Technological advances in genetic research are raising increasingly complex philosophical—and legal—dilemmas.

During a two-day conference in January hosted by the School of Law, lawyers, scientists and philosophers discussed the ethical consequences of scientific advances in genetic research. The conference focused on issues

raised in the upcoming book *From Chance to Choice: Genes and the Just Society* (Cambridge Press, May 2000).

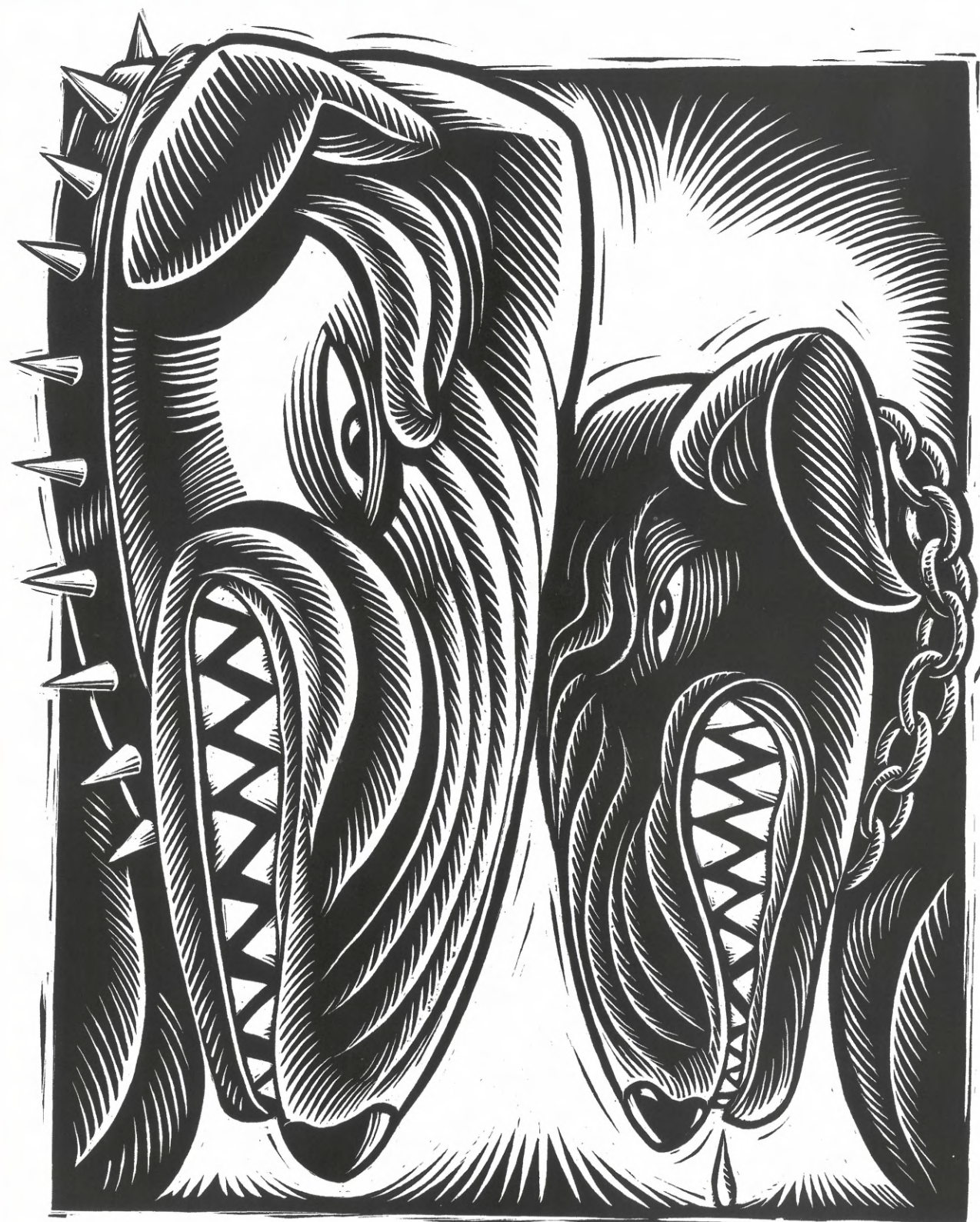
Three of the book's authors, Dan Brock, Allen Buchanan and Norman Daniels, participated, as well as panelists from around the country, including Dr. Francis Collins, director of the Human Genome Project and Dr. Richard Lewontin, professor of biology at Harvard University.

When the authors asked Professor Larry Alexander to write a paper about the book, he decided to organize the January conference with help from Professor Arti Rai. The issues raised in-



From Chance to Choice: Genes and the Just Society authors Norman Daniels, Dan Brock and Allen Buchanan (left to right) participate in USD's January Genetics Conference.

cluded genetic discrimination, genetic pharmacology, the future availability of gene therapy, and the resource allocation for these new treatments.



TWENTY YEARS AGO, a peculiar group of advocates from San Diego started showing up at the Sacramento meetings of California state regulatory agencies.

The strangers were young and ill dressed. They sat up front by themselves and asked blunt questions that demonstrated a keen grasp of state law. Unlike others in attendance, the strangers could not be chatted up, bought off or scared away.

They were students from the University of San Diego School of Law's new legal clinic, the Center for Public Interest Law (CPIL). Founded by USD Professor Robert C. Fellmeth, CPIL quickly won national acclaim for representing citizens who lacked the money or the clout to influence decision makers. In the ensuing two decades, CPIL and its 1989 offspring, the Children's Advocacy Institute (CAI), have discomfited four California governors; hundreds of state legislators and regulatory agencies; and legions of lobbyists on the payrolls of myriad industries, including medicine, law, banking, insurance, telecommunications, fuel oil, trucking, car sales, accounting and dry cleaning.

Critiques published in CPIL's high-profile *California Regulatory Law Reporter* have led to reform legislation and, in several cases, the abolition of unnecessary state agencies. CAI's annual *California Children's Budget* has mapped the chasms between politicians' declared fondness for children and their funding of children's services.

In the process, CPIL and CAI have equipped two generations of lawyers with courtroom skills, legal acumen and a passionate commitment to justice and democracy.

"Any lawyer will tell you," says Fellmeth,

"that whenever you have people around a table making decisions, whoever is not at the table will lose out when the decision is made.

"Before CPIL and CAI came along, a lot of Californians weren't 'at the table' in Sacramento because they couldn't afford a seat," Fellmeth continues. "We've changed that on some issues. Frankly, I'm disgusted by the fact that there is a table. In a democracy, public interest law should be the government's purview, not ours. But as

young lawyers, formed the original "Nader's Raiders" in 1968. At his mentor's request, Fellmeth expanded the Raiders by recruiting 110 other legal advocates. The group appeared in a *Life* magazine photo captioned "The Lone Ranger Gets A Posse."

From Nader, Fellmeth learned how to outbox or outfox opponents with greater resources and weaker principles. But the prime mover behind his work at USD was a retail genius with a mulish egalitarian streak.

In 1978, when Fellmeth was an antitrust prosecutor cross-commissioned by the San Diego District Attorney and the U.S. Attorney, he received a call from Sol Price, whose FedMart warehouse chain sold alcoholic beverages at discount prices.

"Sol wanted me to sue members of the liquor industry who were threatening him for undercutting their prices," Fellmeth says. "I told him, 'I'm interested in this issue, but you can afford your own counsel.' And then I refused to let him pay for my lunch."

But the meeting didn't end there. Fellmeth had begun teaching consumer law as an adjunct professor at USD, and he told Price he thought the university needed a public interest law center.

"Sol agreed, and he urged me to focus on state regulatory agencies—the part of government that is most controlled by special interests and gets the least amount of public scrutiny," Fellmeth explains. "Sol also pointed out that agency hearings would be an excellent forum for teaching law students, since they wouldn't have to be members of the bar to present arguments there."

Price persuaded the Weingart Foundation to provide seed money for the new center. Between 1980 and 1990, Price and

Watching THE WATCH DOGS

Innovative program challenges state regulators to focus on the public interest

STORY BY KATE CALLEN

ILLUSTRATION BY JENNIFER HEWITSON

long as there is a table, people without an immediate profit stake need to be at it."

A DEFENDER OF UNDERDOGS Fellmeth's 20-year stint as one of the nation's best-known watchdogs has been the result of temperament and training. As a boy growing up in Hawaii, he recalls, "I always had a tendency to empathize with the underdog—anyone victimized by a bully."

While at Harvard Law School, Fellmeth began working for consumer advocate Ralph Nader and, along with two other

the Weingart Foundation gave CPIL more than \$1 million. In 1990, to celebrate the center's first 10 years, Sol and Helen Price gave \$1.5 million to establish the Price Chair in Public Interest Law, an endowed faculty chair that Fellmeth holds.

REGULATING THE REGULATORS In the early days, CPIL was "one room with a secretary and a whole wall of mailboxes," recalls Julie D'Angelo Fellmeth '83, one of the center's first interns and the current administrative director.

"The first thing we did was get on the mailing lists of all the agencies so we could find out where and when their meetings were," says D'Angelo Fellmeth. "When we showed up at a board meeting, we were the only people in the audience who were not members of the trade or profession regulated by that board."

"We would say things like, 'Excuse me, but you're in violation of the Bagley-Keene Open Meeting Act.' And the regulators would ask, 'What do you want?' Well, we didn't want anything. We were just law students trying to get a good grade."

Gene Erbin '80, whose J.D. was two days old when he opened CPIL's Sacramento office, recalls the center's successful siege against the industry-dominated California Board of Fabric Care.

"We didn't just question the activities of the board; we challenged its very existence," says Erbin, who is now in private practice. "Legislators from across the political spectrum—from Ross Johnson on the far right to Maxine Waters on the far left—agreed with us that this entity actually worked against the interests of consumers."

Another early CPIL intern, Michael Shames '83, suggested an independent

study project: a utility watchdog group that would represent the public interest before the state Public Utilities Commission.

Shames's project turned into the Utility Consumers' Action Network (UCAN), now the nation's third largest ratepayer organization and the David that helped thwart the expansion plans of the Goliath San Diego Gas & Electric Company (SDG&E).

Shames, UCAN's executive director, has vivid memories of learning at Fellmeth's elbow. Before the two of them were to appear at an evidentiary hearing to argue for UCAN's creation, Fellmeth looked over Shames's list of potential witnesses and said calmly, "This won't be satisfactory."

As Shames tells it, "When we walked into the hearing, Bob said to the judge, 'Our witnesses will include residential customers who will tell the court how they have been chronically underserved by

SDG&E.' I was dumbfounded. It hadn't occurred to me to put customers on the stand. After the hearing, Bob said, 'Okay, now go out and find underserved customers.'"

Today, UCAN and its affiliate, the Privacy Rights Clearinghouse, are on the list of CPIL's greatest spin-offs, and Shames is one of Fellmeth's best-known protégés.

PUTTING ACADEMIC FREEDOM TO THE TEST Like CPIL, CAI was established with seed money from the Weingart Foundation, and its aggressive advocacy efforts on a range of children's issues—including child support enforcement, childcare licensing, lead poisoning prevention, and swimming pool and playground safety—landed Fellmeth and USD in a few political crosshairs.

In 1993, then-USD President Author Hughes was visiting the Sacramento offices of Governor Pete Wilson to express thanks

for a newly signed student scholarship bill. The day before, CAI had issued a *Children's Budget* that was highly critical of Wilson's support for children's services. When Hughes arrived in Wilson's offices, the governor's aides were angrily brandishing copies of front-page news coverage of the CAI report.

Hughes stood firm. "When professors challenge entrenched interests," says Fellmeth, "universities take a lot of heat, and the whole concept of academic freedom is tested. I'm proud to say that USD and the School of Law keep passing that test."

Today, Wilson can comfort himself that Fellmeth has been just as harsh on his Democratic successor. In the *Sacramento Bee* editorial, "Children and the Road Not Taken," Fellmeth blasted Governor Gray Davis for what Fellmeth called a "just say no to children' mentality."

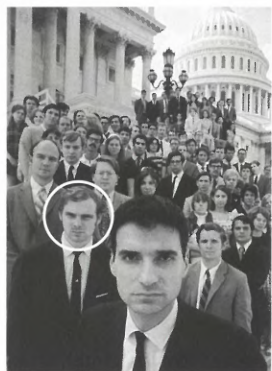
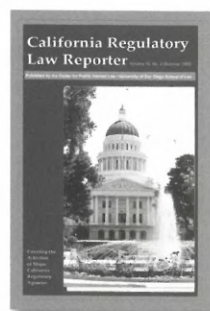
Such fiery eloquence has made Fellmeth a

media favorite. Quoted and profiled in hundreds of newspaper stories, he has appeared twice on TV's *60 Minutes* and once on *The Oprah Winfrey Show*, and has persuaded the producers of hit series like *L.A. Law* and *ER* to weave public interest themes into their scripts.

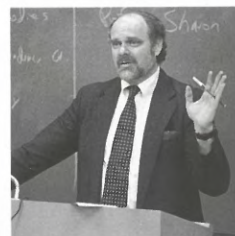
Does he feel a sense of satisfaction in any of this? Not a chance. Rather, Fellmeth is disappointed with the failure of his own generation to provide for its children.

"We are much more prosperous than our parents were, and yet they spent 20 percent more on us than we're spending on our kids," he says. "We've turned out to be selfish and pathetic."

On the other hand, Fellmeth says with an ironic smile, "We're seeing a growth in the percentage of students who want to pursue public interest law. The next wave of lawyers seem to feel it is appropriate to reject their parents' values."



"Nader's Raiders"



Center for Public Interest Law:

A Historical View

1980: Law faculty approves Center for Public Interest Law (CPIL). Students begin attending agency meetings. CPIL opens Sacramento office. *California Regulatory Law Reporter* begins publication.

1983: Utility Consumers' Action Network (UCAN) is created through CPIL advocacy.

1985: CPIL successfully sponsors bill abolishing California's Board of Fabric Care as an unnecessary regulatory agency.

1986: CPIL drafts and sponsors bills creating civil remedy for state and local agencies' violation of the open meetings acts.

1987: Bob Fellmeth is appointed California State Bar discipline monitor by Attorney General John Van de Kamp, setting the stage for 1988 legislation overhauling the state bar's attorney discipline system.

1988: CPIL sues Medical Board of California over refusal to license 32 Vietnamese physicians. All 32 are licensed, and court awards CPIL attorneys' fees and costs.

1989: With a \$500,000 Weingart Foundation grant, CPIL creates the Children's Advocacy Institute (CAI). *Physician Discipline in California: A Code Blue Emergency*, a critique of the medical board published by CPIL, spawns 1990 and 1993 reform legislation.

1990: Sol and Helen Price contribute \$1.5 million to create USD's Price Chair in Public Interest Law. California Attorney General awards CAI a three-year grant to evaluate pilot project aimed at reforming child sexual abuse investigations.

1991: CAI launches Price Child Health and Welfare Scholarship and Journalism Awards.

1992: CPIL creates Privacy Rights Clearinghouse with a grant from the Public Utilities Commission. CAI wins enactment of AB 3087 (Speier), authorizing "Kids' Plates" personalized license plates program; and AB 3589 (Speier), characterizing child support orders as tax liens and authorizing the Franchise Tax Board to collect on them.

1993: CPIL persuades medical board to overhaul its public disclosure policy regarding physician misconduct. CAI secures \$500,000 grant from U.S. Department of Education and opens Child Advocacy Clinic. CAI wins passage of AB 2268 (Caldera), requiring children under age 18 to wear helmets when riding bicycles.

1994: CAI publishes first annual *California Children's Budget*, critiquing Governor Wilson's proposed spending on children's programs in eight substantive areas. CAI wins

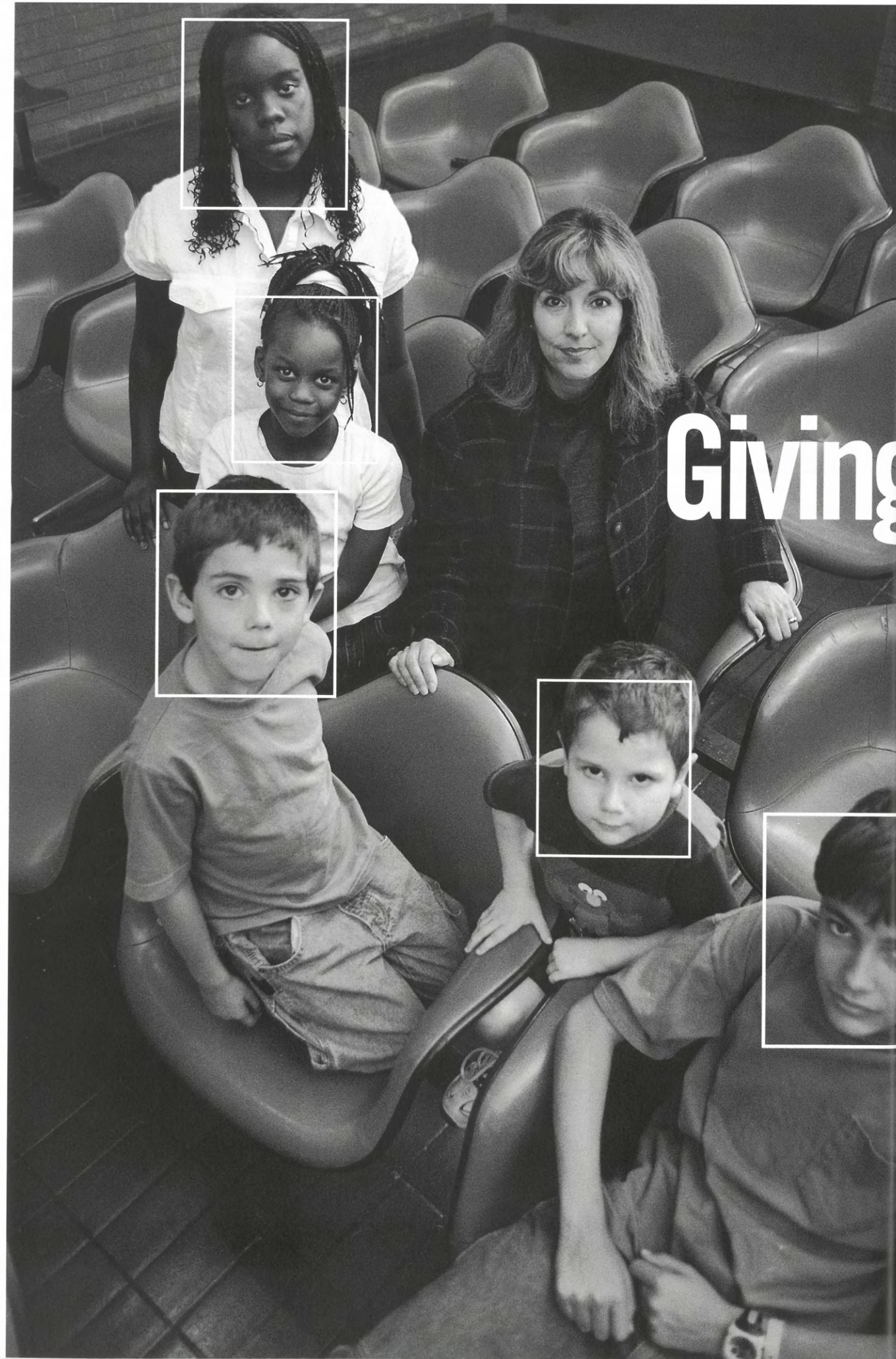
passage of SB 783 (Lockyer), imposing minimum standards for attorneys in juvenile court and establishing children as full-fledged parties in dependency proceedings.

1995: CPIL participates in California's first-ever legislative "sunset review" hearings, evaluating performance and necessity of existing regulatory agencies. A year later, Wilson administration adopts CPIL's "sunset" criteria and calls for abolition of five agencies.

1996: With \$300,000 California Wellness Foundation grant, CAI creates Information Clearinghouse on Children. CAI launches "Lawyers for Kids," offering attorneys the opportunity to serve as child advocates. CAI wins enactment of AB 3305 (Setencich), requiring that residential swimming pools constructed after 1997 have safeguards to protect children from drowning.

1998: CAI's Information Clearinghouse on Children begins publishing *Children's Regulatory Law Reporter* and *Children's Legislative Report Card*.

1999: CAI's five-year campaign against California's Department of Health Services results in nation's first mandatory statewide safety standards for public playgrounds. CAI awards inaugural James A. D'Angelo Outstanding Child Advocate Awards to three graduates of Child Advocacy Clinic.



Ana España speaks up for society's most vulnerable

Giving Foster Children a Voice

STORY BY EILENE ZIMMERMAN

PHOTO BY PABLO MASON

Ana España '82 has been up since 4:00 this morning.

First, she took her 14-year-old daughter to skating practice, something she does three—sometimes five—times a week. Then she raced over to the Public Defender's Office to arrive well before 9:00 a.m.

"My daughter is a member of a nationally ranked synchronized skating team," España explains. "[The team] practices on the weekends, and she works on her own skating during the week. I'll be in Portland with her next week and Detroit the week after."

Today, however, España can be found in San Diego at the Public Defender's Office running the dependency section. Although she's not a tough person, she's got a tough job—managing the attorneys who represent San Diego County's foster children.

"Ana is a dynamo," says Deborah Fanning, supervisor of the North County Dependency Office, "but a nice dynamo. She is a very human person, as both an attorney and an administrator."

Susan Huguenor, supervising dependency judge of San Diego Juvenile Court, says España

"has a really good way of advocating that is assertive but doesn't cause others to be put off. She's caring, and has a great ability to develop a rapport with children."

Jeff Riley, a public defender and España's husband, agrees. "When Ana and I were first married we tried a couple of homicides together. My style was very confrontational; I was always in trouble with the judges. Ana taught me there was more than one punch."

"Before dependency work, I did some criminal defense work and found that aggressive, in-your-face advocacy doesn't get you anywhere," says España. "People shut doors and don't want to listen." Instead, she tries to understand the other side's position, express hers, and work from there. "In the end, we all just want what is best for the kids," she says.

España has always been interested in representing vulnerable populations. As a law student, she focused on the elderly, the mentally ill and the disenfranchised. She participated as an intern in USD's Center for Public Interest Law (CPIL) and the law school's mental health clinic. España says her clinic experiences had an enormous influence on her.

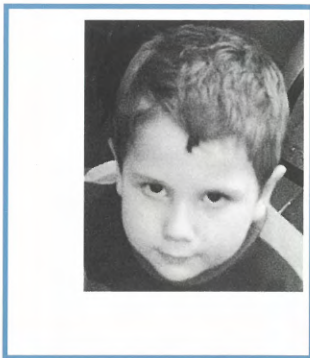
"I knew that public interest law was my path," she says. And she has never deviated.

Bob Fellmeth, USD's Price Professor of Public Interest Law and founder of CPIL, says his former student España is an example of why he started the Children's Advocacy Institute (CAI) in 1989. "I knew there were students like Ana who were interested in children but needed some direction. Between six and eight CAI interns now work in Ana's office each semester," he says.

It was España's desire to represent children in dependency court that motivated the Public Defender's Office to establish a dependency section 10 years ago. She has been the supervising attorney ever since. ➤

Foster Children

"Every time I would see an infant or a toddler who had broken bones or had been molested, I would think, 'How can people do this to children?'"



THE BEGINNING

España's first job after graduation was with Defenders Incorporated, a nonprofit group that represents indigent defendants in criminal and juvenile court. For three years, she handled juvenile delinquency and dependency cases.

"It was really my first experience with juvenile law," she says. And it suited her.

España met her husband, Riley, in juvenile court. He was—and still is—a public defender who represents children who have committed crimes ranging from petty theft to murder.

After they married, España and Riley started their own practice, focusing on juvenile cases. "We contracted with the county and were always busy," España says.

But representing children can be a sad business. "You see a lot of bad things happen to kids. You read the reports and talk to the kids, and they tell you about their lives," says España, "and it is very, very sad."

After becoming a mother, España had to take a break from dependency work for about six months. "Every time I would see an infant or a toddler who had broken bones or had been molested, I would think, 'How can people do this to children?'"

Riley remembers his wife's return to work. "She would come home and cry," he says. He understood, because he had done dependency work himself, and found, "it was very tough. In fact,

Ana took my last [dependency] case away from me. I had just finished successfully representing a father and gotten his daughter back home. Then he murdered her. He was never [even] prosecuted for it," recalls Riley. "When I began working on a similar case, I kept second-guessing myself. I collapsed in the courtroom—I thought I was having a heart attack. And Ana said, 'That's it. No more.'"

A PROGRAM OF ONE'S OWN

After two years, España and Riley decided to close up shop and join the Public Defender's Office, since the office was beginning to handle more juvenile cases. But the staff dedicated to juveniles was small and picked up cases sporadically. España wanted to focus exclusively on representing children, and believed the only way was to begin her own program.

"That kind of opportunity didn't exist at the Public Defender's Office back then. I did some travelling throughout the state looking for model programs," she says. But the situation was bleak. She found there was little money earmarked for advocacy programs, and those that existed suffered from low salaries and high staff turnover. Undaunted, España decided to leave the Public Defender's Office. She tendered her resignation letter, but wrote that if the office decided to represent children in dependency court, she would be interested. Former Public Defender Frank Bardsley called her in to talk. España recalls, "He said, 'What if I gave you a few lawyers, a couple of secretaries and some office space?' I was thrilled."

With input from her husband, España drafted a proposal. "We argued about it a lot," says Riley. He thought the attorneys should represent both parents and children, to keep them balanced. But España insisted the attorneys represent children exclusively.

She discussed her plan with juvenile court's Former Presiding Judge Sheridan Reed, and together they created a pilot dependency project.

"It was for one year, with four lawyers, two investigators and support staff," España says. At the year's end, the judges were pleased with the outcome, and España received increased funding.

Her section began representing all the children in the county's foster care system, handling the

legal interests of children who had been removed from their parents' homes because of abuse or neglect. "We focus on issues from [the children's] perspective—if they should go home, whom they should visit, what kinds of services they need, what kind of schooling is appropriate," España explains.

What keeps España's perspective fresh—and what keeps her going—are the moments when she makes a difference in a child's life. "I think that's true for everyone in this office," she says. "The turnover here is low and if you look at any of the lawyers you'll see some very hardworking, tired, frustrated attorneys. But I think what keeps us all going is that every once in a while we can have a very positive impact on a life."

Her dedication seems boundless. According to colleague Fanning, España has "more energy than six of us. I have a picture of her in my mind, when she was about seven or eight months pregnant with her second child: tiny Ana, very pregnant, and running around the office like crazy. She has put in untold hours keeping the office together."

WORKING TO CHANGE THE SYSTEM

Currently, España's caseload is lighter because of her increased supervisory duties, although when a really difficult case comes along, she often takes it on. Riley says, "I think she's crazy, but she takes them."

Due to a 1999 court decision, not every foster child in San Diego receives legal representation. Only in the most serious situations is a foster child given an attorney; the rest have social workers and court-appointed special advocates who are volunteers. The dependency section—which includes 15 lawyers and 15 investigators—represents about 6,000 children, although the number is slowly dropping because of this recent policy change.

España is determined to initiate projects that will benefit foster children and have an impact on the system as a whole. To that end, she spends much of her time meeting with county bureaucrats, social workers, educators and foster children to develop new programs and improve existing ones.

"I work very closely with the various agencies that service children, the biggest being Health and Human Services," says España. "A large part



"How do we serve kids who are aging out of the system? How do we teach them to be successful, functioning adults when they leave?"

of my time right now is spent trying to redevelop the independent living skills program with HHS. We are addressing issues like: How do we serve kids who are aging out of the system? How do we teach them to be successful, functioning adults when they leave?"

In the past, 18-year-olds were cut loose from the foster care system with nowhere to go, unprepared for living on their own. España is involved in developing the San Pasqual Academy, a boarding school slated to open in 2001, that will help ease these youths' transition to independent living.

España's other current focus is to ensure foster children receive a solid education. Since many have special needs, España works with special education teachers throughout the county's school districts, as well as with education programs in group homes.

"I'm trying to increase the quality of education for foster kids, and assert their right to special education services," she says.

España's work has not gone unnoticed. In 1995, the National Bar Association awarded her the Child Advocacy Award, and in 1999, the San Diego County Bar Association named her Public Attorney of the Year for her service to children.

"Ana is a good example of why I love teaching," Professor Fellmeth says. "Here is someone I can take credit for, for the rest of her life. And," he laughs, "I intend to continue to do so!"



taking it personally

LESLEY CLEMENT LEADS THE CRUSADE AGAINST ELDER ABUSE

In 1994, Lesley Clement '88 received a late-night phone call that changed her life.

Her great aunt, Dorothy Palmer, had wandered from the nursing home where she lived into a nearby resident's garage—bleeding and badly beaten. The 83-year-old, 98-pound woman had large, bloody bruises up and down her limbs, fractured ribs and a ruptured abdominal wall. Emergency room doctors who treated her recognized the symptoms—Palmer's caretakers had become her abusers.

Clement says she was filled with shock and anger when her Aunt Pam, Palmer's daughter, called her with the news. Clement immediately left for Mill Valley, California, to visit Palmer, and wept at the sight of her battered great-aunt. The family wanted

"I had never done personal injury or looked at a medical record in my life, but I said, 'Sue them.' ... I discovered Dorothy had been put outside to make it look as if she had been mugged. The owner and administrator of the nursing home had changed the records to make it appear that Dorothy was a combative, aggressive patient."

Clement to take action, but she was a business litigation attorney who knew nothing about elder abuse.

STORY BY
EILENE ZIMMERMAN

PHOTOS BY
GERRY MCINTYRE

"I had never done personal injury or looked at a medical record in my life, but I said, 'Sue them,'" says Clement. "At first, I just wanted to find out what had happened. I discovered Dorothy had been put outside to make it look as if she had been mugged. The owner and administrator of the nursing home had changed the records to make it appear that Dorothy was a combative, aggressive patient."

In reality, at 4 feet, 11 inches, Palmer was a tiny woman with a severe case of Alzheimer's disease. Her family had agonized over the decision to transfer her to an Alzheimer's specialty facility.

"It was a heart-wrenching process for [the family] from the start, and then after this, you can imagine the guilt. They were just devastated. I was too, but it also turned my life around," says Clement.

Clement took on Palmer's case—determined to find out who was guilty and make sure justice prevailed. She had no history in litigating personal injury cases, and she came on very strong. "It

Lesley Clement '88 (right) visits with one of her former clients, Irene Mather.

taking it personally

was a huge learning experience for me. I was very aggressive because I was so upset," she recalls.

Although the nursing home settled the case three weeks into trial, Clement says money was not the issue—she did not even know how to value the case. "Dorothy didn't need the money or the aggravation but we wanted to send a message that this type of thing should not go on," she says.

Clement's ultimate goal was to get the nursing home owner's operating license pulled. "It took me a year and a half after we settled to get it, but I did," she says. "I told my family I would not be happy until I did that."

CLEMENT'S CALLING

Six months into Palmer's trial, Clement opened her own practice, one devoted to defending the elderly. She began meeting with grassroots advocates and working on state and national levels to publicize the problem of elder abuse.

"People were thrilled to find a lawyer who would even take one of these cases. Back in 1994, you didn't hear much about elder abuse. But Dorothy's situation was not an isolated case," Clement says. "This happens all over the country."

Clement's style—to jump right in and take nursing facilities to task—has served her well. Attorney Russell Balisok, a friend and colleague, has worked with Clement on several cases and he admires her style.

"One day I watched her meet an opposing counsel for the first time, in the hallway of a courthouse right before a hearing. Lesley was ladylike, demure, even deferential. Then we went into the courtroom and the case was called. When it was Lesley's turn to speak, she leveled the opposition succinctly and efficiently. She explained why opposing counsel's conduct was sanctionable and unprofessional. And afterward, in the hallway, she was demure and deferential again," Balisok says.

Clement often enrages opposing counsels with her conduct,

mostly because she "gives no quarter and takes no quarter," Balisok says. "She simply whips them with good lawyering. She's better than they are at their own game."

According to others and Clement herself, she is also extremely organized. "She is always prepared and puts her entire self into a task to get things done. You ask her to help with something and you know that whatever she has volunteered to do, it will be done," says Steve Levin, a senior partner at Levin & Perconti and co-chair of the nursing home litigation group of the Association of Trial Lawyers of America.

"I have worked with her on various projects and when she has sensed my disorganization or inability to get something done because of other tasks, she has bailed me out," Levin says. And then he adds, "more than once."

DEVOTION TO HER CLIENTS

Clement has been handling elder abuse cases exclusively for six years now, hearing horror story after horror story. "The majority of abuse that is discovered now is neglect, but I'm sure there is much more physical abuse than is being reported, probably 50 times more," she says. "Remember, a large proportion of this population suffers from dementia and simply cannot tell you what happened."

"You could interview a thousand family members of those in



nursing homes and I bet 95 percent would tell you they have seen unexplained bruises on their parents and grandparents."

In July 1998, Clement assisted the U.S. Senate Special Committee on Aging in finding witnesses to testify about abuse in California nursing homes. She called on clients of hers whose family members were abused and neglected.

"We had family members, former nursing home employees, current employees and even someone from the California Department of Health Services. This woman came out to testify with a hood on her head, and sat behind a screen with her voice distorted," recalls Clement.

The hearings were the beginning of the California General Accounting Office's six-month investigation into the conditions of

the state's nursing homes. "Only 2 percent of the state's 14,000 facilities had minimal or no deficiencies," says Clement. "Thirty percent were found to have caused death or serious harm to residents."

Despite the intensely emotional nature of her work, Clement's energy and compassion seem boundless. "Lesley is one of those lawyers who not only represent their clients in court but give a lot of their time to advocating for the rights of these clients outside the litigation process," says Levin.

Grassroots advocacy? Battling it out with nursing homes? Testifying before the U.S. Congress? This is not where Clement thought she would wind up after graduating from USD in 1988.

FROM LOBBYIST TO SOLE PRACTITIONER

As a student, Clement was drawn to international law and lobbying. Her senior year in college, she was an exchange student in Yorkshire, England. During law school, she went to Oxford University through USD's summer law program and she was elected president of the Student Bar Association. "It all made me

You could interview a thousand family members of those in nursing homes and I bet 95 percent would tell you they have seen unexplained bruises on their parents and grandparents."

think: lobbying," she says.

Clement accepted a job with Clifford Diepenbrock & Paras in Sacramento. "A lot of my classmates teased me for taking a job in Sacramento, when all the big money offers were coming from Los Angeles and Texas," Clement recalls. "But I had this idea that lobbying would be really glamorous."

Far from it. Clement traveled to Hawaii for several months to lobby for seven bills involved with joint economic ventures. She was the first woman lobbyist ever to walk the halls of the state legislature in Honolulu.

"The thing about lobbying is, there are no rules. I did not get much direction from the firm because you really can't give much [direction] in this area," she explains. "People say things to you all

the time that are not true. It's terrible. They make promises and don't stick to them. I was going through the Maalox pretty heavily."

Clement returned to Sacramento and switched to litigation for the next three years, then made two lateral moves before striking out on her own. At the time, hardly any attorneys specialized in elder abuse cases.

"Personal injury lawyers did not see much value in an action brought by an elderly person because all the things you look for when evaluating a personal injury case—loss of income, special damages like medical bills—just do not exist." She adds, "And the clients don't have a long life expectancy. Often the abuse kills them or they die before a verdict is rendered."

In fact, Clement was a pioneer in elder abuse advocacy. In December 1998, she drafted the briefs for a California Supreme Court case that examined whether the Elder Abuse and Dependent Adult Civil Protection Act applied to healthcare providers, such as nursing homes. The act establishes that the pain and suffering of elderly victims are actionable beyond these vic-

tims' deaths, as are attorney fees and costs. Clement's briefs argued that the act applied to healthcare providers, and she won.

"I was nervous, but we knew we were on the right side of the issue," she says. "I couldn't argue [in person] because my whole practice hinged on it. After the decision came out, I walked in the office and said, 'Good news! We can all keep our jobs!'"

Clement's practice, which opened with her and one employee, has grown to include three attorneys, support staff and medical students who review files and point out issues of concern. "Hiring the students is great for us, and I think when they get out of medical school they'll be some pretty compassionate doctors," she says.

Clement is busier than ever—she turns away more cases than she takes. "I have days when I am completely exhausted. It's very emotional work. I do a lot of hand-holding," she says. Among her 50 active files are cases of rape, strangulation and homicide.

Clement devotes much of her limited free time to speaking throughout the country about elder abuse issues. "I'm doing this so I can effect change. My goal is to stop the abuse and neglect," she says, "and I've never worked so hard in my life."