

# UCI Law: The First Half Century

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On Monday, August 24, 2009, sixty students took their first class at the University of California, Irvine School of Law (UCI Law). While the gestation of any major academic institution is a long process, those students opening their books to a new subject called Statutory Analysis were realizing the culmination of a process of planning, programming, fighting, politicking, strategizing, and coordinating among almost innumerable people that spanned almost half a century.

In this article I recount the history of UCI Law. I do so on the basis of archival materials that have been collected by the University of California, Irvine (UCI) administration, by the main UCI library, and by me.<sup>1</sup> As a person involved

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1. Archival material comes from UCI Library's Central Records Unit, AS-004, Special

in many of the activities and decisions that resulted in UCI Law I also add some firsthand information. Where I do this I strive to distinguish my personal assessment of what happened from my descriptions of what transpired.

Writing history should have a purpose. Mine is threefold for this undertaking. First, I describe an attempt to create a highly innovative professional school so that in the future observers can assess whether its supporters' goals were met. Second, I aim to describe the challenge of creating new organizations in a highly complex multi-campus, the University of California, which has numerous decision-making points in part because of its system of governance shared between the administration and the faculty, and which has a wide range and large number of constituencies and stakeholders. Third, I hope to provide information about and insights into an undertaking of great interest to many people in and out of the legal community, across the state and the nation, who would not ordinarily follow the academic plan of a single campus; very few of them have had access to the wealth of information about the story of UCI Law that covers almost fifty years.

### I. THE VERY EARLY YEARS

Official descriptions of UCI state: "The contemplation of a law school at Irvine is as old as the campus itself. One of the earliest images we have of our university is a videotape from the mid-1960s of our founding Chancellor, Dan Aldrich, walking around the empty grounds of the campus noting our plans for professional schools, including Law."<sup>2</sup> I have seen the videotape, and it does appear that the chancellor, dressed impeccably in a grey suit, making his way across windblown dirt mounds, with the first of the William Pereira *Planet of the Apes*-style buildings visible in the background, was referring to an area for professional schools, the campus being one zoned by academic discipline and academic function.

At the systemwide level of the University of California (UC), consideration of the need for an additional UC law school in Southern California dates back to decisions made by President Clark Kerr in 1961.<sup>3</sup> Based on a faculty committee

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Collections and Archives (henceforth UCI Archives). The School of Law has collected and preserved materials from the many offices that worked on the law school project (on file with author).

2. Memorandum, History of Law School Proposals at UCI (summarizing UCI's efforts to create a law school between the mid-1960s and 2001) (on file with author).

3. Minutes, meeting of the Comm. on Educ. Policy at UCLA (Apr. 20, 1961) (on file with author). "Systemwide" here refers to the total University of California enterprise, sometimes, as here, to the Office of the President, sometimes to the Academic Senate, sometimes to both. On April 20, 1961, the UC president presented to the Committee on Educational Policy of the Regents a report by "the Committee on Additional Facilities in Legal Education." The report noted that there were 19,381 lawyers in California in 1960 and almost 44,000 lawyers would be required by 1980 to maintain an acceptable ratio of persons to lawyers. In addition to expansion of the Berkeley and UCLA campuses, recommendations included the creation between 1965 and 1970 of a new law school at Davis, and "establishment of new law schools in Northern and Southern California." The report called for

recommendation, he created an Advisory Committee on Law School Planning, charging it with creating a complete study of the needs of the state in legal education. In November 1967, the Office of the Vice President, Business and Finance, presented its report to the Preliminary Planning Committee. The study noted the shortage of lawyers in California and the uncertainty about how many newly educated law students would be necessary to alleviate the shortage. The study also discussed the cost, phasing process, location, technology, and facilities needed to construct a new law school.<sup>4</sup>

One month later the Advisory Committee Report on law school planning was issued.<sup>5</sup> The report highlighted the shortage of lawyers in California, where the ratio between lawyers and “clients in need” was 1:700.<sup>6</sup> A recommendation was made that the UC system open two new law schools. UC Riverside was named as the first location.<sup>7</sup> The second law school should be at either the Irvine or Santa Barbara campus.<sup>8</sup> The Advisory Committee suggested that an administrative committee consisting of law school deans and state bar members should decide where the second campus should open.

As to Irvine:

The Irvine campus is in the highest population density area and will increase its advantage on this score. It will be a large campus and will eventually be an extremely attractive site for a law school. Between Santa Barbara and Irvine, the former seems readier to proceed with a law school. Both campuses have expressed a desire for a law school, and each is in a rapidly developing situation. The committee’s recommendation here is to temporize and to defer decision for several years.<sup>9</sup>

As a result of the study, plans for a law school at UC Santa Barbara began—starting with budgeted funds. One of many cyclical downturns in the economy that would set back numerous attempts to go forward with a new school led to the proposal being removed from further consideration.<sup>10</sup>

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another study of need within four years.

4. [Internal] Report from the Office of the Vice President—Bus. and Fin., New Law Schools for the University of California? Some Economic Considerations (Nov. 28, 1967) (UCI Archives, Box 93, Folder 483).

5. See Murray L. Schwartz et al., Report of the Advisory Committee on Law School Planning (Jan. 1, 1968) (UCI Archives, Box 93, Folder 483). Committee members were Edward L. Barrett, Jr., Edward C. Halbach, Jr., Richard C. Maxwell, Sho Sato, Sharp Whitmore, and Murray L. Schwartz, Chairman.

6. *Id.* at 2.

7. *Id.* at 1.

8. *Id.* at 2.

9. *Id.* at 12.

10. See Memorandum, Previous Reports on the Need for Another University of California Law School (internal document covering reports from 1961 to 1989) (on file with author). The story

At roughly the same time UCI Chancellor Aldrich presented his goals for creating a law school to an ad hoc committee. They were to (1) get a report from Angus Taylor<sup>11</sup> on the development of law schools; (2) request advice from the recently opened UC Davis School of Law; (3) develop a plan so that the law school would reflect the environment of UCI's institution and pioneer legal education; and (4) contact and form partnerships with legal education leaders, the American Bar Association, and local professionals.<sup>12</sup> Soon thereafter Chancellor Aldrich appointed the members of the Preliminary Planning Committee as well as its chair, Professor Abraham Melden, a founding UCI faculty member and the first chair of the department of philosophy.

In 1971 Charles J. Hitch, UC president, sent to the UC Board of Regents another report on the need for additional law schools, this one a reply to Assembly Concurrent Resolution Number 81. It recommended the opening of two new law schools in Southern California, one "a Hastings-type school [practice-oriented and urban] . . . the other . . . a campus school . . . at either Santa Barbara or Riverside."<sup>13</sup>

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involving UC Santa Barbara has several chapters. Reportedly in 1971, "the Regents authorized the establishment of a law school at Santa Barbara and asked for further study of the desirability of a new law school in Southern California. The 1972–73 University budget requested initial funding for a Santa Barbara law school, but this request was denied by the state, as was a similar request in the 1973–74 budget." *Id.* at 2.

11. In 1963–64, Angus Taylor was chair of the statewide Assembly and Academic Council of the Senate. Taylor had several other roles: Professor of Mathematics, Emeritus, at UC Berkeley and UCLA; Vice President of Academic Affairs; University Provost, Emeritus; and Chancellor, Emeritus, at UC Santa Cruz. Special thanks to Jack Peltason for information related to this identification.

12. Memorandum to the Files from Univ. of Cal., Irvine Chancellor Daniel G. Aldrich (July 20, 1967) (UCI Archives, Box 93, Folder 483).

13. Memorandum from Charles J. Hitch to the Regents of the Univ. of Cal. (Sept. 27, 1971) (on file with author). The committee members were Professor Emeritus J.A.C. Grant, Political Science, UCLA; Dean Edward L. Barrett, Jr., UC Davis; Dean Marvin J. Anderson, Hastings College of the Law; and Paul A. Peterson of White, Price, Froehlich & Peterson, Inc. The report, "Report of the Advisory Committee on Need for a New Law School in Southern California," referenced the April 17, 1961 report of a predecessor committee, a 1968 report of a new committee, and the Resolution introduced by the San Diego delegation in the Legislature. Report of the Advisory Committee on Need for a New Law School in Southern California (Aug. 5, 1971) (on file with author). Among the points made by the committee were the following: (1) "For white male applicants the pinch is even more severe," referring to the supply constrictions in ABA approved law schools. *Id.* at 4. The report also addressed the type of faculty that a new school would recruit: "the faculty for a new school may have to be gathered by enticing seasoned men in the upper brackets away from the established schools." *Id.* at 10. Hastings apparently at the time hired only men. (2) The report also noted the increasing interest in "internship programs, counseling projects, and even actual court appearances by advanced students under supervision," referring to the interest in the Hastings, practice-oriented, urban model—presumably to counter a phenomenon cryptically referred to in the short report: "It has been truly said that no student in a Willistonian contracts class got within a light year of a negotiated business deal." *Id.* at 12.

The report did mention Irvine, saying, "By the time the second school was to be authorized, [President Kerr's new] committee assumed that the Irvine and San Diego campuses might also be in the picture as possible sites." *Id.* at 1. But for the new report, Irvine was not a priority because the

In Orange County, the chairman of the Law School Advisory Committee, Deane E. Neubauer, wrote to Chancellor Aldrich about the law school recommendations.<sup>14</sup> UCI should (1) establish a relationship with the surrounding Orange County community; (2) integrate plans for the law school in UCI's five- and ten-year campus plans; (3) engage in preliminary recruitment efforts for a law school dean and law school librarian; and (4) determine the best space on campus for the law school's location.

Soon thereafter appointments were made to the Friends of UCI School of Law Committee.<sup>15</sup> In August 1968, Chancellor Aldrich accepted the Preliminary Planning Committee's recommendations for the planning of the law school and made a commitment to move forward with the committee's recommendations while requesting the continued support of the committee members.<sup>16</sup>

Activity then turned to the organized bar. Mr. Newell, an attorney-at-law with his own firm in Costa Mesa, California, wrote to the president of the Orange County Bar Association (OCBA), commenting on ways to bring a law school to Orange County. Newell recommended that OCBA (1) demonstrate a need for an accredited law school in the county based on an increase in the population and a dearth of superior academic training locally; (2) communicate need for a law school to the Board of Governors of the California State Bar and urge them to send a recommendation to the California Higher Education Council; and (3) build an organized bar constituency to make appearances before the California Higher Education Commission and the Board of Regents, urging them to adopt academic approval and financial priority for the law school.<sup>17</sup>

For the next few years there was little progress on a new University of California School of Law.<sup>18</sup>

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"Irvine campus is less fully developed, and Pepperdine College operates an accredited law school in nearby Santa Ana." *Id.* at 11.

14. Memorandum from Deane Neubauer to Univ. of Cal., Irvine Chancellor Daniel G. Aldrich (July 9, 1968) (UCI Archives, Box 93, Folder 483).

15. Memorandum on membership from Sch. of Law Comm. (Sept. 1967) (UCI Archives, Box 93, Folder 483). Appointed were Judge Frederick Hauser as the chairman of the committee, Eugene Barnes, Dennis Carpenter, Walter Chaffee, Baird Coffin, Mervin Glow, Donald Harwood, Louis Knobbe, John Kaer, Garvin Shallenberger, Warren Sikora, Walter Smith, and Stephen Tamura. H.B. Sterat, Assistant Chancellor, expressed regret that Judge Frederick Hauser resigned as chairman because of conflicts arising from a "misunderstanding." Letter from James M. Day, president of The Friends, to Judge Frederick Hauser (Mar. 7, 1968) (UCI Archives, Box 93, Folder 483).

16. Memorandum to members of the Law Sch. Advisory Comm. from Univ. of Cal., Irvine Chancellor Daniel G. Aldrich (Aug. 21, 1968) (UCI Archives, Box 93, Folder 483).

17. Letter to Robert S. Barnes, President, Orange County Bar Ass'n, from Richard A. Newell, Attorney (Feb. 20, 1970) (UCI Archives, Box 93, Folder 483).

18. This said, there was activity regarding a law school in Irvine, one located cheek to jowl with UCI. Those actions gave some the impression that UCI had begun its own law school. In July 1973, UC Assistant General Counsel John Lundberg wrote to Chancellor Aldrich about an unfolding controversy. Evidently a private law school had been established by an attorney, one Mr. Egon Mittelmann, Esq., directly across the street from UCI at the Town Center building. It was named Irvine University School of Law (IU). Mr. Lundberg addressed the potential confusion between IU

Prompted in part by a proposal to the Regents in 1983 by the Trustees of California Western School of Law to merge their institution with UC San Diego, UC's President Gardner asked the Law School Review Committee, which "had recently completed a system-wide program review of the University's three law schools, to undertake a general study of the potential need for a fourth law school."<sup>19</sup> In general, when requests were made for establishing new law schools the systemwide response was to undertake or commission a report. There have

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and UCI. Letter from John Lundberg, Univ. of Cal., Irvine Assistant Counsel, to Daniel G. Aldrich, Chancellor of Univ. of Cal., Irvine (July 19, 1973) (UCI Archives, Box 93, Folder 483). A letter from Chancellor Aldrich to Dean Mittelmann followed, requesting that all advertisements by IU disclose that IU was in no way affiliated with UCI. Lundberg requested notification of any further actions by IU that would indicate a false affiliation. At about the same time H. Bradford Artwood (who served in 1967 as the public affairs officer and later as the assistant chancellor of university relations) wrote to John Garfinkel of the California State Bar discussing the potential for legal action against IU. Letter from H. Bradford Artwood, Univ. of Cal., Irvine Assistant Chancellor, to John Garfinkel (misspelled as Garfenkel), Cal. State Bar (July 25, 1973) (UCI Archives, Box 93, Folder 483). Simultaneously Dean Mittelmann requested that Chancellor Aldrich allow IU students to take courses at UCI. Letter to Univ. of Cal., Irvine Chancellor Daniel G. Aldrich from Egon Mittelmann, Dean of Irvine Univ. Sch. of Law (July 30, 1973) (UCI Archives, Box 93, Folder 483).

In October of 1973, students at UCI through ASUCI, the student government, passed a "Resolution Refuting any Association with IU" and mandating that the IU bookstore post a disclaimer indicating no association between IU and UCI. Ass'd Students of Univ. of Cal., Irvine, Council Resolution (Oct. 9, 1973) (UCI Archives, Box 93, Folder 483). In the following year the University General Counsel concluded that there was no similarity between UCI's letterhead and that of IU. *See* Letter from Eloise Kloke, Assistant Chancellor for Administration, Univ. of Cal., Irvine, to John Lundberg, Univ. of Cal., Irvine Assistant Counsel (May 8, 1974) (UCI Archives, Box 93, Folder 483). The Kloke letter wondered whether legal action should ensue; but UCI also received a complaint by an anonymous student who had applied to IU believing that it was affiliated with UCI. *See* Letter from Eloise Kloke, Assistant Chancellor for Administration, to Vice Chancellor Cox, Univ. of Cal., Irvine (Apr. 17, 1974) (UCI Archives, Box 93, Folder 483).

Rather than fight, Dean Mittelmann evidently decided to try to join. Letter to Univ. of Cal. Regent from Egon Mittelmann, Dean, Irvine Univ. Sch. of Law (Dec. 20, 1974) (UCI Archives, Box 93, Folder 483). Early in 1975 he wrote to the UC Regents requesting a merger between UCI and IU. He suggested that UCI would achieve a law school more quickly this way and he highlighted the benefits to UCI in light of IU's growing student body of 100 students and its positive earnings. Almost immediately Angus Taylor replied to Dean Mittelmann, informing the dean about UCI's rejection of the offer for merger and indicating that UCI's intent for a law school would not include IU's "type of program." Letter to Egon Mittelmann from Angus Taylor (Jan. 8, 1975) (UCI Archives, Box 93, Folder 483).

A few more incidents occurred involving UCI and IU related to the confusion over the status of the latter, but in February IU had moved to a new location in Newport.

Another merger request came two years later, this one from Northrop University to UCI. Letter to Univ. of Cal., Irvine Chancellor Jack Peltason from Howard Gensler, Dean, Sch. of Law, Northrop Univ. (Feb. 5, 1985) (UCI Archives, Box 412, Folder 141). Chancellor Peltason declined the offer, which involved establishing a concurrent five-year BA and JD program between the two schools.

Other activities related to a law school in Orange County included the initiative in the 1990s to have Whittier Law School merge with a UCI law school, sited on the Irvine campus, *see* text accompanying note 35; a fairly active exploration by Loyola Law School to expand into Orange County, *see* G.M. Bush, *A Law School of its Very Own?*, L.A. DAILY J., Mar. 14, 1991, at B1; and the creation of a law school at Chapman University in the mid 1990s.

19. Previous Reports, *supra* note 10, at 2.

been several.<sup>20</sup> The 1983 report concluded that creation of a new law school was not warranted.

## II. THE MIDDLE YEARS: ALMOST ACCOMPLISHED

The first comprehensive and formal actions for a School of Law at UCI came in 1989. The UCI Academic Senate created a Task Force to consider whether it would be appropriate to establish a School of Law at UCI. The 1989 Long Range Development Plan (LRDP), the master plan for each UC campus, also referenced a law school.

The Task Force had members from several disciplines and from the bar and bench.<sup>21</sup> It considered questions of general need for a law school at UCI, intra-campus relations that might be fostered by a school of law, and ways of distinguishing the school by emphasizing specific legal foci. The points of reference were already “other first line schools of law at institutions such as Harvard, Northwestern, University of Chicago, Stanford, and the University of California.”<sup>22</sup>

The Task Force was instructed by the administration “not to dwell on external constraints; the charge is to determine if a law school makes sense for UCI and Orange County.”<sup>23</sup> It was told that the UCI Senate Committee on Planning and Budget “had reviewed many professional schools before making recommendations as to which one should be considered for development on the UCI campus. The law school emerges as a strong favorite.”<sup>24</sup> Although the UC Office of the President (UCOP) was not supportive of establishing another law school (UCOP had stated that UCI should not even raise the issue), the

20. See text accompanying notes 33–41.

21. Memorandum from Howard Lenhoff, Chair, Academic Senate, Irvine Div., to Vincent P. Guinn, Prof. of Chemistry, Univ. of Cal., Irvine, regarding the charge to the UCI Law Task Force (June 29, 1989) (on file with author). The chair was Joseph McGuire, Professor of Management. Members were Joseph DiMento, Professor, Program in Social Ecology; A.I. Melden, Professor Emeritus, Department of Philosophy; Margaret Murata, Professor, Music; Edward Quilligan, Professor, Obstetrics and Gynecology; John Arguelles, California Supreme Court Justice (retired); Stephen Sugarman, Professor, UC Berkeley School of Law; Mr. Peter Zeughauser, attorney-at-law, the Irvine Company.

22. *Id.* at 2. The Task Force also collected data on supply and demand for lawyers. At the time there were

sixteen ABA approved law schools. Approximately 70%, or 14,000+ students are enrolled in the ABA schools. Approximately 4,000, or roughly 24% are in the 18 California accredited non-ABA law schools. . . . In addition, there are 17 unaccredited law schools with a total enrollment of approximately 1,000 or approximately 5% of the student population. There are approximately 500 students who study through correspondence law schools, and they account for roughly 2% of the students. In addition, there are a small number of students who study through law office study or study in a judge’s chamber.

Letter from Allan B. O’Connor, Consultant, Comm. of Bar Exam’rs of the State Bar of Cal., to Patricia A. Adams, Office of Academic Affairs, Univ. of Cal., Irvine (Aug. 17, 1989) (on file with author).

23. Minutes of the UC Irvine Law School Task Force (Sept. 6, 1989) (on file with author).

24. Minutes of the UC Irvine Law School Task Force (Nov. 8, 1989) (on file with author).

administration indicated to the Task Force that there could well be “a change of heart next year or the following year.”<sup>25</sup> UCI wanted to be prepared. Discussions among the Task Force members anticipated issues that would be pursued by supporters of UCI Law for years to come: “A Task Force member stated that a faculty of 23 to 25 would be needed. This would allow for an enrollment of approximately 450 students . . . [whereas] 40 or more FTE [Full-Time Equivalents] . . . would be a tremendous drain on campus resources.”<sup>26</sup>

The Task Force unanimously recommended that a school of law be established at UCI. UCI Senate committees reviewed the report and it was endorsed by the Executive Committee of the UCI Academic Senate. On June 7, 1990, the UCI Representative Assembly endorsed the motion to establish a law school at UCI. There were only two dissents and no abstentions.<sup>27</sup> Chancellor Peltason pointed out that UC President Gardner’s Advisory Committee on Professional Education, chaired by UC Vice President William Frazier, was studying the question of what professional programs should be offered in the UC system and which ones should be offered on one or more campuses. The next step would be to transmit the report and wait until the Frazier committee made a decision.

Chancellor Peltason discussed the proposal with UC President David Gardner. “According to Peltason, President Gardner asked him not to forward the proposal at that time because of budgetary constraints facing the whole UC system. President Peltason agreed, with the understanding that UCI would take up the issue again when the outlook for the budget improved.”<sup>28</sup>

In anticipation of a formal submission in the future, in 1991 the UCI Law School Founders’ Committee was formed, composed of judges, lawyers, some faculty members, and others interested in the UCI initiative.<sup>29</sup> During their deliberations a one million dollar gift from the Irvines was acknowledged, with Joan Irvine Smith stating: “They could be the Harvard of the West.”<sup>30</sup>

In this period another systemwide effort to study need for additional legal

25. *Id.*

26. *Id.* at 2.

27. Minutes of the Univ. of Cal. Academic Senate, Irvine Div., Representative Assembly (June 7, 1990) (on file with author). The minutes include a report from the Law School Task Force, which stated:

Professor Joseph DiMento presented the report on behalf of Chair Joseph McGuire, noting the presence of one of the Task Force’s members, Justice John Arguelles. Professor Dougherty noted with approval the interdisciplinary emphasis in the report and stated that it was in keeping with the campus mission, although he took exception to to [sic] the tone of the report.

*Id.* at 3.

28. History of Law School Proposals at UCI, *supra* note 2.

29. A private practitioner who took an early leading role in the committee was Charlotte Sumrow-Pirch. As he would do throughout the long history of the law school as attorney and later as judge, Andrew J. Guilford took on another leadership position.

30. G.M. Bush, *UC Irvine Gains \$1 Million Pledge for Law School*, L.A. DAILY J., Apr. 25, 1991.

education in the UC system was chaired by UC Davis Law Professor Edward Imwinkelried for the Office of the President. In January 1991 the committee concluded, in a mixed analysis (7–2), that

there is a need to expand enrollment of the U.C. law schools. In the opinion of a majority of the committee members, an increase in U.C. enrollment would help meet the other legal needs . . . such as the need to enhance the diversity of the California legal profession. Moreover, as both law school applications and private law school tuition increase, a U.C. legal education is becoming more and more inaccessible to qualified graduates of California universities and colleges. A minority of the committee concludes that the available data do not warrant a general expansion of U.C. law enrollment. In the opinion of these committee members, California is likely to have a substantial surplus of attorneys for the foreseeable future; and an expansion of U.C. enrollment would not be a cost-effective method of meeting the other legal needs identified in this report.<sup>31</sup>

The report made some unanimous recommendations consistent with these overall conclusions including to “[r]equire all U.C. law students to perform a certain number of hours of *pro bono* service each year.”<sup>32</sup>

There was little formal movement on the UCI School of Law in the next few years, although law-related programs continued to grow and initiatives focused on the legal community were undertaken.<sup>33</sup> During the administration of UCI’s third chancellor, Laurel L. Wilkening, 1993–1998, UCI was approached by Whittier Law School with a proposal for a merger.<sup>34</sup> Several discussions and meetings took place and Whittier College itself as well as the Law School Dean and faculty were solidly in favor of joining with UCI. The Whittier offer was not accepted, but informal

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31. Report from Edward Imwinkelried, Chair, Ad Hoc Planning Study Comm. for Prof'l Educ. in Law, Analysis of Graduate Legal Education at the University of California, 5 (Jan. 1991) (on file with author). Committee members in addition to the Chair were Joseph DiMento, UCI; Laura Kalman, History, UCSB; Loy Lytle, Psychology, UCSB; Miguel Mendez, Law, Stanford; Henry Ramsey, Jr., Dean, Law School, Howard University; Emma Lewis Thomas, Dance, UCLA; William Warren, Law, UCLA; Diane Yu, General Counsel, State Bar of California.

32. *Id.*

33. As in many major research universities, the study of law has been a part of UCI’s various curricula since the very beginning. Substantive law courses in many fields have been offered to undergraduate and graduate students through the Schools of Social Ecology and Social Sciences. There are minors in law and other fields, for example the Humanities and Law Minor. *See* Univ. of Cal., Irvine, Sch. of Humanities, *Humanities and Law*, <http://www.humanities.uci.edu/humlaw/> (last visited Oct. 29, 2010). UCI offers a Mock Trial experience. *See Mock Trial*, <http://www.irvinemocktrial.com/> (last visited Oct. 29, 2010). A Ph.D. program, as well as M.A. offerings, exist in Criminology, Law and Society. *See* Univ. of Cal., Irvine, Sch. of Social Ecology, *Department of Criminology, Law and Society*, <http://cls.soceco.uci.edu/> (last visited Oct. 29, 2010).

34. I was involved in discussions of this merger.

exchanges between UCI and Whittier continued.

In 1999, the UC Office of the President added to the list of commissioned studies on the need for additional law education in the system.<sup>35</sup> The office commissioned the RAND Corporation to undertake a study of the need for additional lawyers in California. The RAND Report, completed in 2000, concluded that supply met demand then and would meet or exceed expected growth in demand to 2015. However, “if the economy undergoes dramatic upward or downward shifts, major shortages or surpluses could result.”<sup>36</sup> The report did note that “several expert interviewees underscored the importance of looking beyond supply and demand projections when considering the future of the profession and how it might best be served by the legal education system.”<sup>37</sup> The report noted that the Inland Empire and the San Joaquin Valley have the smallest number of lawyers per person in the state;<sup>38</sup> that there are disparities in ethnic representation in the California bar;<sup>39</sup> and that there might be a coming shortage of public sector lawyers.<sup>40</sup>

### III. THE UNSTOPPABLE ATTEMPT (1999–2007)

#### *A. Academic Planning Council Call for New Initiatives: The Law School Proposal*

The next serious effort to create the UCI law school began in October 1999 when Executive Vice Chancellor (EVC) William Lillyman called for proposals for new academic initiatives for the growing and then financially very strong campus.<sup>41</sup> Several proposals were offered to the campus Academic Planning Council, and the law school presentation moved to the front of the campus priorities—first among the four areas selected for further development.<sup>42</sup> The concept was reviewed by UCI Senate committees including the Graduate Council, Planning and Budget, and various school deans. Analysis was generally positive—if not enthusiastic—but there were some concerns about the effect of a new school on availability of resources for existing programs. During the discussions of the proposal the question often arose: are law students to be counted as

35. TORA BIKSON ET AL., THE LABOR MARKET FOR ATTORNEYS IN THE STATE OF CALIFORNIA: PAST, PRESENT AND FUTURE (RAND 2003) (prepared for the University of California Office of the President).

36. *Id.* at vii.

37. *Id.* at ix.

38. *Id.* at vii.

39. *Id.* at viii.

40. *Id.*

41. Letter from William J. Lillyman, EVC, Univ. of Cal., Irvine, to the faculty (Oct. 11, 1999) (on file with author) (“UCI has entered a period of unprecedented growth. . . . This academic year the Academic Planning Group will work in concert with academic deans and the Senate Council on Planning and Budget to review the establishment of potential new academic programs”).

42. I made the presentation with the strong support of William Parker, UCI’s associate executive vice chancellor at the time.

graduate students in the campus' ongoing efforts to increase the percentage of graduates in the student body? There had been differing views of whether professional school students should be considered in attempts to make for a more balanced ratio for a major research university. If counted, there would be an additional rationale to proceed with the professional schools.

EVC Lillyman then appointed the Law School Work Group.<sup>43</sup> He charged it with producing a proposal "for the establishment of a School of Law at UCI that will quickly achieve national eminence."<sup>44</sup> The Work Group met on dozens of occasions and presented the Proposal for a School of Law at the University of California (Proposal), which, as summarized below, addressed in a comprehensive manner the Law School of the future.<sup>45</sup> The Group's chair, Professor William Sirignano, stated early in the process that he would be part of the effort only if the goal was to create a superior proposal and a law school of very high national stature.<sup>46</sup> All the Group members were in complete concurrence.

Part of the task of the Work Group was to solicit advice from leading members of the bar and the academic law community. Deans, other law school administrators, district court judges, firm partners, and others were asked questions relating to the need for UC-trained lawyers; the advantages, if any, of having the next UC School of Law placed at Irvine; the balance of basic coverage of law and specializations; recommendations about joint programs; faculty size; and space and resource needs.<sup>47</sup>

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43. The Work Group was chaired by William Sirignano, Professor of Mechanical and Aerospace Engineering and former Dean of the Engineering School; members were Michael P. Clark, Professor of English and Comparative Literature and Associate Executive Vice Chancellor for Academic Planning; Linda R. Cohen, Professor and Chair of Economics; Russell J. Dalton, Professor of Political Science; Joseph F. DiMento, Professor of Criminology, Law and Society and of Urban and Regional Planning; Mary C. Gilly, Professor of Management; and William H. Parker, Professor of Physics and Vice Chancellor for Research and Dean of Graduate Studies. Melissa Barrett, Tiffany Jue, and Michael Poston were staff to the Work Group. *See* Proposal by Univ. of Cal., Irvine, Proposal for a School of Law at the University of California, Irvine, 51 (Jan. 4, 2001).

44. Memorandum from William Lillyman to Law Sch. Work Group, Charge and Process for the Ex. Sum. (Dec. 19, 2000) (on file with author).

45. Proposal for a School of Law at the University of California, Irvine (Jan. 4, 2001).

46. Personal communication to author.

47. *See* Proposal, *supra* note 45, at 54–55. Consulted were, David Baskin, Assistant Dean, UC Berkeley School of Law; David Carter, Judge, U.S. District Court, Central District of California; Barry Currier, Deputy Consultant, Office of the Consultant on Legal Education, American Bar Association; John Dwyer, Dean, UC Berkeley School of Law; John FitzRandolph, Dean, Whittier Law School; Mary Grivna, Assistant Dean, UC Davis School of Law; Andrew Guilford, Partner, Sheppard, Mullin, Richter & Hampton, and President, State Bar of California; Bruce Hallett, Managing Partner, Brobeck, Phleger & Harrison; Mary Kay Kane, Dean, UC Hastings College of the Law; Louis Knobbe, Senior Partner, Knobbe Martens Olson & Bear; Richard Morgan, Dean, University of Nevada-Las Vegas; Nho Trong Nguyen, Judge, Orange County Superior Court, West Justice Center; Rex Perschbacher, Dean, UC Davis School of Law; John Power, Chief Financial and Academic Officer, UCLA School of Law; Martin Runkle, Director of the Library, University of Chicago; Myra Saunders, Associate Dean and Law Librarian, UCLA School of Law; Gary Singer, Managing Partner, O'Melveny & Myers; Matthew Spitzer, Dean, University of Southern California School of Law;

The Proposal presented an ambitious vision of a new School of Law. The School must “equip its students to address the broad philosophical and social functions of the law as well [as] the more technical and juridical aspects of their profession. It must prepare the students not only for leadership in the practice of law but also in business, politics and the social arena.”<sup>48</sup> The Proposal asserted that as “the complexity and diversity of our world increase rapidly, law will become an even more central and fundamental force for order and justice throughout society, and the demand for lawyers with sophisticated academic training will increase at a greater rate than the population at large.”<sup>49</sup> Law will become “the principal source of justice and social mobility which holds that complex world together.”<sup>50</sup> Lawyers will need “an education that combines mastery of the content of the law with a broad academic foundation in the philosophical, social and theoretical principles that connect that practice to the more general functions of law in contemporary society.”<sup>51</sup>

The Group proposed to develop a law school that would combine “broad and comprehensive training in the fundamental principles of the law with emphases on legal issues related to emerging technology and the globalization of the economy and culture.”<sup>52</sup> The considerable expertise in law that already existed at UCI would be called upon allowing the exploration of intellectual property, patents, and broader ethical and political issues, as well as linking to the “extraordinary initiatives in telecommunications and biomedical technology” at UCI.<sup>53</sup> The new law school would be built with senior faculty with significant national and international scholarly reputations and with junior faculty “recruited from the top of the graduating classes of the best schools of law” and with “special promise as scholars and teachers.”<sup>54</sup>

The Proposal’s vision was to encourage the new configurations of disciplinary and interdisciplinary work of the kind seen at the great universities: law and philosophy at the University of Michigan; law and economics at Chicago and Yale; and law and jurisprudence at Berkeley. Faculty would work with colleagues across the campus and, unlike some other institutions, “participation of law faculty in activities of the Academic Senate” would be encouraged.<sup>55</sup> Clinical education would be central, so as to encourage students “to explore the social,

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Kathleen Sullivan, Dean, Stanford Law School; Kathleen Vanden Heuvel, Deputy Director, Law Library, UC Berkeley School of Law; Barbara Varat, Associate Dean, UCLA School of Law; Jonathan Varat, Dean, UCLA School of Law; Judith Wright, Law Librarian, University of Chicago School of Law.

48. *Id.* at i.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 2.

54. *Id.*

55. *Id.* at 3.

intellectual, and professional benefits of a career in poverty-law, civil rights, and public-interest law.”<sup>56</sup>

Reflecting the interest of the Work Group but also its familiarity with the numerous reports questioning the need for more lawyers in absolute numbers, as opposed to the need for certain kind of lawyers, the Proposal asserted that

the School of Law at UCI will facilitate access to the legal profession for groups that are underrepresented at this time. By its mere presence in our community, it will encourage the educational aspirations and increase the upward mobility of a wide range of people who have little or no contact with the university now.<sup>57</sup>

The Proposal made the point, repeated often in the decades of attempts to bring a public law school to Orange County, that “there is no public school of law south of Los Angeles, and the best private schools in the state are too small and expensive to be adequate substitutes for a high-quality public school of law.”<sup>58</sup> Public access and public education were emphasized: “It has been over thirty years since a new public law school was formed in California. Consequently, of the total number of law degrees awarded in California from ABA-approved schools, the percentage awarded by public schools declined precipitously from 58% in 1966 to 26% in 1996.”<sup>59</sup>

The law school was to “contribute significantly to the academic strength” of the campus.<sup>60</sup> The Proposal emphasized the consistency with the earliest plans for the campus but also noted some more recent events. UC President Atkinson wrote in September 2000: “California’s burgeoning population and healthy economy will require great numbers of well-trained professionals.”<sup>61</sup> He had urged the University to “intensify and accelerate” the effort to form more professional schools, particularly noting the possibility of a new school of law in Southern California.<sup>62</sup>

The Proposal was highly detailed. It contained spreadsheets of various budget options including the FTE (full-time equivalent, i.e., funded permanent positions) associated with each of the functional areas of the School at opening, which was then scheduled for fiscal year (FY) 2004–2005, and “at maturity,” which was envisioned as FY 2011–2012.<sup>63</sup> It addressed the recruitment of the first

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56. *Id.* at ii.

57. *Id.* at iii.

58. *Id.*

59. *Id.*

60. *Id.* at ii.

61. *Id.* at 2.

62. *Id.*

63. *Id.* at 40.

students: “admission must be restricted to highly qualified applicants with a strong probability of excellent performance.”<sup>64</sup> It described critical outreach activities, shrewdly building on conclusions of reports that were not universally favorable to a new law school, remarking that “the Imwinkelried and RAND reports both noted the failure of the legal profession to represent the ethnic and cultural composition” of California.<sup>65</sup>

In July 2000, Michael R. Gottfredson became the executive vice chancellor at UCI. Gottfredson, an experienced university administrator, was a quick study in decision-making in the UC system and had as a major priority the establishment of a law school at UCI. He had been a professor of law at his prior academic home, the University of Arizona. Gottfredson would assume leadership positions in the systemwide executive administration and in the process would become familiar with ways that academic programs advanced or were stalled. He would lead the academic development of UCI at a time of considerable resource expansion and dedication to a strategic plan for the overall development of the university. The plan resulted from the in-depth work of a number of subcommittees meeting over several months. The campus was looking to move UCI forward in a decade when growth was significant and many in the UCI community saw opportunities for increased national excellence in many fields. Within that strategic plan, professional schools would have a central focus. The law school thus was addressed, again, as a central part of UCI planning to continuously evolve as a comprehensive research university. This perspective, widespread across UCI, explains in part the considerable irritation with actions elsewhere in the system and the state to stymie what were appreciated as long-standing and well-developed plans.

#### *B. Approval, Momentum, Resistance*

On January 25, 2001, the Divisional Assembly of the UCI Academic Senate unanimously approved the proposal for a school of law at UCI.<sup>66</sup> The executive vice chancellor and the chancellor endorsed the proposal and it was submitted to UC Provost and Senior Vice President C. Judson King for review at the UC systemwide level. The proposal then underwent review by a number of systemwide committees with acronyms of CCGA, UCORP, UCEP, UCPB (pertaining, respectively, to graduate affairs, research, educational policy, and planning and budget). Review was extensive, sometimes critical and sometimes comparative with a UC Riverside law school proposal.<sup>67</sup> Committees called for

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64. *Id.* at 42–43.

65. *Id.* at 44.

66. Letter from David A. Brant, Academic Senate, Irvine Div., to Michael R. Gottfredson, Exec. Vice Chancellor, Univ. of Cal., Irvine (Jan. 29, 2001) (on file with author).

67. UC Riverside Proposal for a School of Law (Nov. 10, 1999, resubmitted Dec. 20, 2000). UC Riverside had submitted a law school proposal to the UC Academic Council in 1999. The Council

ever more detail on budget, relationship to graduate education, and need for UC-educated lawyers.

Meanwhile UCI had solicited expressions of support for an Orange County public law school from numerous entities within the county; endorsements came in a flurry. These included major business associations, local government, the bar and its subgroups (Celtic Bar Association, Lex Romana, the Asian American Bar Association, etc.), virtually every large firm in the region, many small firms, and a few highly involved solo practitioners. Along with verbal support, many of the large firms sent statements of intent to assist the law school financially. In August 2001, the Joan Irvine Smith & Athalie R. Clark Foundation pledged one million dollars “to be used, in connection with other University-secured funding, for the establishment of a core collection for the library.”<sup>68</sup>

UCI then revised the proposal, dated March 2001. The Academic Council of the UC system endorsed the proposal in May 2001 and it was forwarded for review by the California Postsecondary Education Commission, or CPEC. CPEC is an agency which provides analysis and offers advice on education beyond high school.<sup>69</sup>

A long—and for UCI, immensely frustrating—set of interactions followed wherein the campus tried to respond to CPEC’s concerns.<sup>70</sup> Meanwhile, the chair of the UC Academic Council, Michael Cowan, wrote to UC Provost King that “a comparative University review of the proposals from UCI and UCR is desirable”<sup>71</sup> and offered Senate participation in the review. Thereupon Provost King asked the

approved the proposal in concept and UC Riverside then responded to the concerns the Council identified. The Council approved the UC Riverside proposal and sent it to the California Postsecondary Education Commission.

68. “(We understand that the collection likely will have a special emphasis on materials relating to environmental law.)” Letter from Russell G. Allen, Joan Irvine Smith & Athalie R. Clarke Foundation, to Dr. Ralph J. Cicerone, Chancellor, UCI (Aug. 7, 2001) (on file with author).

69. California Postsecondary Education Commission, *About Us*, <http://www.cpec.ca.gov/SecondPages/CommissionHistory.asp> (last visited Oct. 29, 2010). The CPEC webpage describes CPEC as follows:

The California Postsecondary Education Commission was established in 1974 as the State planning and coordinating body for higher education by Assembly Bill 770 (Chapter 1187 of the Statutes of 1973), Education Code Section Education Code 66900–66906. . . . The Commission provides the legislative and the executive branches of government with advice and information. . . . The Commission consists of 16 members, nine of whom represent the general public, five who represent the major systems of California education: the California Community Colleges, the California State University, the University of California, the independent colleges and universities, and the California State Board of Education, and two student representatives.

70. These concerns were expressed by CPEC Executive Director Warren Fox: “There is no compelling reason to establish either School of Law within the University of California at this time.” CPEC did find that UCI met its criteria based on academic content and quality. Letter from Warren H. Fox, Exec. Director, Cal. Postsecondary Educ. Commission, to C. Judson King, Provost and Senior Vice President, Academic Affairs, UC (June 20, 2001).

71. Letter from Michael Cowan to C. Judson King, Provost and Senior Vice President, Academic Affairs, UC (July 5, 2001) (on file with author).

Executive Director of CPEC to temporarily suspend review of the two proposals, saying, "It is prudent to wait for an improvement in California's economic outlook before requesting that the Commission continue its review."<sup>72</sup>

Then, Chancellor Ralph Cicerone wrote UC President Robert C. Dynes requesting to meet to discuss a law school at UCI. I was in attendance at one of these meetings. The president seemed taken aback by the directness of our request for action on the proposal.

In December 2004, UCOP announced that it intended to convene a study group to consider the process of systemwide planning of professional schools. The frustration level in the administration and Senate at UCI increased even further. As one UCI Work Group member noted in briefing the Administration, "it seems UCOP will keep conducting studies until it gets the answer it wants at any particular time."<sup>73</sup>

Efforts to move the proposal forward took various forms. One unfortunate episode involved the impending move of the California Court of Appeal (Fourth District) Courthouse in Santa Ana. In 2003, UCI was approached by some members of the bench and supportive California politicians about its interest in hosting the new court building. Campus leaders thought that the cooperative effort would be good for overall relations with the bench and might also restart activity for the UCI law school. If the campus was home to the court with its extensive library and other facilities, momentum for more legal initiatives might develop. What campus leaders did not know was that Santa Ana's attempts to keep the court in the newly redeveloping city were energetic. After hearings in which UCI was portrayed in some testimony as an elitist institution trying to divert the development plans of a struggling, poor city, the Santa Ana site was selected.<sup>74</sup>

Meanwhile, in attempts to associate UCI with legal scholarship the UCI Law Forum was established and a number of academics and practitioners were invited to give formal lectures. Among those who presented were then University of Chicago Professor Cass Sunstein and UC Berkeley Professor John Yoo.

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72. Letter from C. Judson King, Provost and Senior Vice President, Academic Affairs, UC, to Warren H. Fox, Exec. Director, Cal. Postsecondary Educ. Commission (Oct. 25, 2001) (on file with author). *See also* Memorandum from Ralph J. Cicerone, Chancellor, UCI, Statement in Response to the CPEC Review of UC Irvine's Proposed School of Law (Sept. 20, 2001) (on file with author). After a considerable period of having the CPEC review on hold, when the UCI proposal was allowed to go forward, the Commission took an antagonistic view of it. (It had unfavorably compared the UC Irvine proposal to UC Riverside's. Marla Jo Fisher, *UCI Law School Plans Undercut*, O.C. REGISTER, Sept. 19, 2001, (Local), at 1.)

73. Memorandum (names removed) (Dec. 17, 2004) (on file with author).

74. *See* Memorandum from Planning & Budget, Possible Land Sale to Court of Appeal (Feb. 10, 2005) (on file with author). On January 29, 2004, UCI submitted a response to the "Request for Information" issued by the Administrative Office of the Court. On January 31, 2005, after the review process had narrowed the choice to a small number of possible sites, UCI submitted a review proposal which would effect a land sale of approximately 2.5 acres of land across from the UCI Research Park. Drawings of a specific site were created.

Invitations were also extended to high-level officials in the US Department of Justice and others, including Chief Justice William Rehnquist who politely declined the invitation in winter 2002. Foreshadowing future decisions, one of the experts suggested a leading presenter for the Forum: “a good person all around, who knows something about all these issues [i.e., the Constitution and surveillance] is Erwin Chemerinsky at USC.”<sup>75</sup>

### *C. Academic Council and UC Regents*

Despite the strong inertia in the UC system to maintain the status quo by studying need, nonetheless the UCI proposal went forward. Michael V. Drake, MD, was appointed chancellor of UCI in July 2005. Drake too had as a major priority moving the UCI Law proposal through systemwide review. In his first month as chancellor, his office wrote: “Chancellor Drake is very interested in reigniting the law school pursuit, and wants to begin talking about it with a small group.”<sup>76</sup> Not only was Drake personally committed to the new school, but he also had knowledge of the UC system bureaucracy and experience within it, having served for five years as vice president for health affairs at the University of California’s Office of the President. Over the next two years, he utilized his personal knowledge and experience to successfully move the proposal through systemwide. Drake also had deep and close contacts with the Office of the President and the Regents, relationships which would prove critical in the ultimate systemwide approval. The chancellor also was aware of and became increasingly familiar with opposition to a new law school in several arenas in the state of California.<sup>77</sup>

On January 3, 2006, Chancellor Drake forwarded to UC President Dynes “a new overview of our proposal for establishing a School of Law” at UCI pointing out that the proposal was originally submitted in February 2001 and revised in March 2001.<sup>78</sup> On July 6, 2006, the Report of the Ad Hoc Committee to Evaluate UC Law School Proposals was issued. Two months earlier UC Provost Hume had appointed the committee to address the strengths and weaknesses of revised proposals for law schools at UC Irvine and UC Riverside.<sup>79</sup> The committee

75. Email from Robert Post to author (Oct. 25, 2001) (on file with author).

76. Email from Carolyn Hunt to Michael Poston (July 19, 2005) (on file with author).

77. I too followed these positions within segments of UC, in some private universities, among some faculty, and at times in stages of review and comment. The UCI archives contains some of these perspectives. *See supra* note 1.

78. Letter from Chancellor Michael Drake to Robert C. Dynes (Jan. 3, 2006) (on file with author).

79. *See* Task Force on Planning for Doctoral and Professional Educ./Legal Educ. Advisory Subcomm., Report of the Ad Hoc Committee to Evaluate UC Law School Proposals: Report on UC Irvine Law School Proposal (July 6, 2006) (on file with author). Committee members were Christopher Edley, Dean and Professor of Law, UC Berkeley; The Honorable David B. Flinn, Judge of the Superior Court, County of Contra Costa; Pamela J. Jester, Director, Continuing Education of the Bar (CEB), State Bar of California; Duncan Lindsey, Professor, School of Public Affairs, UCLA;

unanimously and enthusiastically recommended approval of the UCI proposal. It addressed several criteria that had been established for evaluation of both the UC Irvine and the UC Riverside proposals. It found that a law school at UCI would address the inequity in access to public law schools that currently favors Northern California; it would produce a high caliber of lawyer; it would be positioned to prepare students to help underserved communities; and it would help meet one of UC's fundamental responsibilities as a public research university: to provide legal education.<sup>80</sup>

Furthermore, UCI's proposal met the committee's criteria related to access, adequate planning, and creation of an exciting campus intellectual life. The UCI plan had strong community support (another criterion)<sup>81</sup> and had no significant opportunity costs, since, as the committee noted, the original academic plan for UCI included a law school, and the school would be developed out of projected enrollment growth.<sup>82</sup> Uncharacteristically for a UC report, the committee ended by saying: "we can only urge that once The Regents have acted, the completion of this decades-long gestation warrants a memorable celebration."<sup>83</sup> The Committee reported it was "[s]till reviewing the UC Riverside Proposal."<sup>84</sup>

The systemwide Academic Council endorsed the proposed law schools at both Irvine and Riverside in August 2006. The endorsement was "based on the recommendation of the Coordinating Committee on Graduate Affairs (CCGA)" which according to UC procedures needed to review the proposals.<sup>85</sup> In November of that year, the UC Office of the President recommended to the Regents the establishment of a law school at UCI, and at their meeting that month the Regents approved the UCI proposal.

Once again, CPEC did not concur with the UCI proposal. In September 2006, following its staff recommendation, CPEC voted 8–3, finding that the state had enough law schools to meet demand for lawyers: UCI had failed to satisfy criteria for a new school in the areas of societal need, program duplication, and total cost.<sup>86</sup> Two months later the Regents approved the position and salary for

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Karl S. Pister, Chancellor Emeritus, UC Santa Cruz.

80. *Id.* at 4–5.

81. *Id.* at 6.

82. *Id.* at 8.

83. *Id.*

84. *Id.* at 1.

85. Letter from John Oakley, Chair, Univ. of Cal. Academic Council, to Wyatt R. Hume, Provost and Exec. VP, Univ. of Cal. Academic Affairs (Aug. 8, 2006) (on file with author).

86. See UCI, Academic Planning, Additional Information Submitted in Support of the Proposal to Establish a School of Law at the University of California, Irvine: Response to the CPEC Draft Report of September 2006 (submitted with an operational budget) (Oct. 23, 2006) (on file with author). The UCI responses to the CPEC Review were comprehensive. They addressed the distinctive programmatic features of UCI Law ("opportunity to pursue a first-rate legal education on the campus of a major public research university . . . distinguished by its emphases on the themes of emerging technologies and globalization of the economy"); joint degrees and inter-professional education; service to underserved communities and population; distinctive features of the campus and the region. The responses included

the dean of the School of Law at UCI, and in July 2007 the Regents formally voted to recognize CPEC's objections but nonetheless proceed with the law school.

In parallel with faculty actions, other units within UCI were preparing for a major announcement and promotion of the new law school. An internal memo, "Launch of School of Law at University of California, Irvine" addressed the "Business Objectives," "Marketing Objectives," and "Message Platform" of the UCI School of Law.<sup>87</sup>

In August 2007, Donald Bren, the chairman of the Irvine Company, donated twenty million dollars to the law school, which for a short time was named "Donald Bren School of Law." But the School, in line with others in the UC System, would ultimately be called the University of California, Irvine School of Law. The others are UC Berkeley School of Law, UC Davis School of Law, UCLA School of Law, and the affiliated UC Hastings College of the Law.<sup>88</sup>

#### IV. THE FIRST DECISIONS

##### *A. The Founding Dean*

Some members of the now-defunct Work Group and others then turned UCI's attention to the search for a first dean. Merage Business School Dean Andrew Policano chaired the search group. The Search Committee first decided against using a "headhunter" after reviewing several proposals from consulting firms, most of which had no experience with law searches. For advice on selection of a law school dean the Committee called in for further consultations several highly respected law school deans and high level university administrators.

A short list of dean candidates was compiled; each was interviewed either in person or via teleconference for several hours, each dean Search Committee member having been assigned the same scripted questions to ensure that all areas of expertise were addressed.

A very short list of candidates that the Search Committee considered superior was forwarded to the provost. Soon thereafter, on August 16, 2007, an offer was made, subject to regental approval, to Erwin Chemerinsky, then at Duke and for many years at the University of Southern California. Professor Chemerinsky accepted the offer on September 4, 2007.

How will objective historical accounts, if any could be written, analyze the

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current statistics, addressing the CPEC criticism on absolute need. UCI updated information presented in the RAND Report, and addressed the number of existing and proposed programs in the field and the total cost of the UCI program.

87. Memorandum from Linda Martin et al., Porter Novelli, Launch of School of Law at University of California, Irvine (June 1, 2006) (on file with author).

88. UNIV. OF CAL., *Academics: Law Schools*, <http://www.universityofcalifornia.edu/academics/law.html> (last updated Mar. 4, 2006).

decisions regarding the offer and rescission (September 11, 2007) and the subsequent renewed offer and final hiring (September 17, 2007) of the first dean? This is not the place to do that analysis.<sup>89</sup> However, about the decisions the following might be considered factual.

On August 16, 2007, Professor Chemerinsky published an editorial in the *Los Angeles Times* in which he advocated California's rejection of the U.S. Attorney General's proposed regulation regarding the statute of limitations in habeas corpus cases.<sup>90</sup> Chancellor Drake reportedly considered this a factor in his decision to withdraw his offer.<sup>91</sup> "[W]e had talked to him in June about writing op-ed pieces and that he would have to focus on things like legal education in this new role. . . . It wasn't the subject, it was its existence. What he said doesn't matter."<sup>92</sup>

The interest in UCI Law, combined with what became a strong connection between the chancellor's decisions and what many observers considered issues of academic freedom, resulted in major media attention.<sup>93</sup> On September 13, 2007, Chancellor Drake appeared before hundreds of faculty members at a hastily called special meeting and stated, "My decision not to hire [P]rofessor Chemerinsky had nothing to do with academic freedom or the infringement of academic freedom in any way."<sup>94</sup> In an interview Chancellor Drake said: "It was the most difficult decision of my career."<sup>95</sup>

On September 14, 2007, Chancellor Drake wrote: "I made a management decision—not an ideological or political one—to rescind the offer to Professor Chemerinsky. The decision was mine and mine alone."<sup>96</sup> At the same time Professor Chemerinsky stated that the chancellor had told him that significant opposition to his hiring had developed: "We just agreed that in the public statement, we'd say that I had proved too politically controversial."<sup>97</sup>

On the weekend of September 15, 2007, Chancellor Drake traveled again to

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89. As an active player during this period in the Academic Senate (and earlier the administration), I am not the person to attempt it.

90. Erwin Chemerinsky, Op-Ed., *Don't Rush to Execution*, L.A. TIMES, Aug. 16, 2007, at A17.

91. Mike Anton, *Chancellor's Admirers Baffled by his Decision on Dean*, L.A. TIMES, Sept. 14, 2007, at A19.

92. Garrett Therolf & Henry Weinstein, *UC Irvine Post is Taken from Liberal Legal Scholar*, L.A. TIMES, Sept. 13, 2007, at B1.

93. The *New York Times* ran an editorial on September 14, 2007. See Editorial, *A Bad Beginning in Irvine*, N.Y. TIMES, Sept. 14, 2007, at A20.

94. Garrett Therolf, Rebecca Trounson & Richard C. Paddock, *Furor Disrupts Plans for UCI School of Law*, L.A. TIMES, Sept. 14, 2007, at A1.

95. Therolf & Weinstein, *supra* note 92.

96. Michael V. Drake, Op-Ed., *Chemerinskygate: I Made a Management Decision—Not an Ideological or Political One—to Rescind the Job Offer*, L.A. TIMES, Sept. 14, 2007, at A23.

97. Therolf, Trounson, & Paddock, *supra* note 94, at A1. The *Los Angeles Times* reported on November 9, 2007, that a number of email messages to Chancellor Drake's office were received in the aftermath of the rescission. These ranged from support for the chancellor's judgment to a decision to end financial contributions to UCI. Garrett Therolf, Tony Barboza & Henry Weinstein, *UCI Gave Bren a Say in Dean Selection*, L.A. TIMES, Nov. 9, 2007, at B1.

North Carolina. Chemerinsky wrote an email on the following Monday: “After meeting with Chancellor Michael Drake at length this weekend, I accepted his renewed offer. He provided me the greatest possible assurance of academic freedom for the dean and all faculty.”<sup>98</sup> Soon thereafter, Drake and Professor (and now Dean-designate) Chemerinsky issued a joint statement: the two pledged their commitment to academic freedom and said, “Many issues were addressed in depth, including several areas of miscommunication and misunderstanding.”<sup>99</sup>

To me, the event is like a Rorschach test. People see in the chancellor’s and dean’s actions very much what they bring to them. In any event the decision is truly history in the colloquial sense of that term. The dean and the chancellor became somewhat of a mutual admiration society, teaching a course together and speaking of one another’s accomplishments in the most positive terms.

### *B. Funding*

Funding for the law school came in part from private gifts to support faculty chairs and tuition for the first class for three years and the second class at fifty percent for three years. However, Provost Gottfredson had for several years set aside or banked FTE in anticipation of the needs of the School, and considerable contributions of staff time and UCI resources were essential for creating the new professional school. Overall funding was to come from state enrollment growth funding and private contributions and eventually from student fee revenues. The California Legislature “did not appropriate any state funds specifically for the planning and startup costs of the School.”<sup>100</sup>

### *C. Facilities*

Over the years the University had discussed the siting of a new law school and various places were considered, ranging from the grassy knoll near the Business School and the School of Social Ecology to the north campus. As it was becoming clear that the School would be approved, the UCI administration changed its orientation and the decision was made to remodel existing space on campus—the idea being that fundraising for the law school would be better done for scholarships, chairs, and other non-brick-and-mortar uses. A two-wing building, Berkeley Place, on the campus’ east side, once the home of entities as diverse as Family Fitness and the Academic Senate, was chosen as the site. The dean’s suite, several faculty offices, the library, and some classrooms were ready at

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98. Email from Erwin Chemerinsky to Duke Law School Faculty (Sept. 17, 2007, 13:07:53) (on file with author).

99. Michael Drake, Chancellor, & Erwin Chemerinsky, *Joint Statement re: Donald Bren School of Law* (Sept. 17, 2007), [http://www.chancellor.uci.edu/lawupdate\\_070917.shtml](http://www.chancellor.uci.edu/lawupdate_070917.shtml).

100. Mac Taylor, *The Master Plan at 50: Improving State Oversight of Academic Expansions*, LEGISLATIVE ANALYST’S OFFICE, 13 (Dec. 1, 2009), [http://www.lao.ca.gov/2009/edu/academic\\_expansions/academic\\_expansions\\_120209.pdf](http://www.lao.ca.gov/2009/edu/academic_expansions/academic_expansions_120209.pdf).

the time of the arrival of the first class, and additional offices, student spaces, and classrooms were completed by the time of arrival of the second class.

#### *D. Early Actions*

The first year of the operation of the School of Law saw the hiring of the founding faculty, the expansion of the original faculty core, the creation of a first-year curriculum, the admission of a first-year class, and almost countless other tasks that are necessary to bring about a new school.<sup>101</sup> Those will be chronicled in a second segment of UCI history where some words will also be given to evaluation of the extent to which “the law school of the twenty-first century” is meeting its goals. Visions of modern legal education such as those expressed in the Carnegie Report<sup>102</sup> (emphasizing skills, ethics and public service) can be translated into proposals and innovative curricula. An internal research project is monitoring and studying the extent to which they are being realized in practice at UCI.<sup>103</sup> It is far too early to conclude very much. What is clear is that the first two admitted classes have been nationally competitive and on indicators of excellence would be admitted to first-tier law schools. Also clear is that the first faculty hires are diverse and have national reputations as scholars and teachers, and that early efforts to implement the vision of the proposal have begun: the funding of clinics, the creation of externships and internships, and the development of an innovative curriculum focusing on skills, public service, writing, and legal reasoning.

Dean Chemerinsky’s vision for the law school was ambitious. Among his goals: “We want to be a top twenty law school as soon as we can. . . . We have this wonderful opportunity to create the dream law school. . . . I don’t think law schools spend time preparing students for the practice of law. We can do a better job. I want every law student to have some clinical experience with at least one client before they graduate. . . . I want to teach fact investigation. . . . I would like to have smaller classes and multiple examinations.”<sup>104</sup>

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101. Founding faculty, with their previous institutions indicated in parentheses, are: Dan L. Burk (Minnesota), Linda Cohen (UCI), Joseph DiMento (UCI), Catherine Fisk (Duke), Carrie Hempel (USC), Trina Jones (Duke), Elizabeth Loftus (UCI), Carrie Menkel-Meadow (Georgetown), Rachel Moran (Berkeley), Ann Southworth (Case Western), Beatrice Tice (Toronto), Grace Tonner (Michigan), Kerry Vandell (UCI), and Henry Weinstein (*Los Angeles Times*). At the same time senior executives were brought on: Rebecca Ávila (USC), Rex Bossert (*National Law Journal*), Charles Cannon (UCLA), and Victoria Ortiz (Berkeley). See Press Release, *UC Irvine Law School ‘Dream Team’ Named*, UC IRVINE TODAY (July 10, 2008), [http://www.today.uci.edu/iframe.php?p=/news/release\\_detail\\_iframe.asp?key=1780](http://www.today.uci.edu/iframe.php?p=/news/release_detail_iframe.asp?key=1780).

102. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARING FOR THE PROFESSION OF LAW (2007).

103. See Carroll Seron, *A Law School for the 21st Century: A Portrait of the Inaugural Class at the University of California, Irvine School of Law*, 1 U.C. IRVINE L. REV. 49 (2011).

104. Marla Jo Fisher, *Irvine’s New Law School Dean Shares His Plans*, O.C. REGISTER, (June 27, 2008) <http://www.ocregister.com/articles/law-school-one-2079257-student-people> (last visited Oct. 22, 2010).

## V. CONCLUSION

The story of the creation of UCI Law is one of the development of a new academic unit in a multi-campus, highly bureaucratized institution. Without the focused efforts of certain “champions” UCI Law may well have been lost within the inertia of a system that did not need to take risks and within a political, academic, and fiscal environment which made the “no action” alternative safe and highly probable.

The first period of UCI Law history teaches some lessons about creating new organizations in an institution of great complexity. First, although there are natural constituencies for initiatives like a law school these do not always translate into dependable ongoing activity to bring about change. Most of the people in those constituencies (in our case the local bar and businesses, law firms both small and large, future law students and faculty, university planning personnel, etc.) do not have the motivation, time, or resources to focus on something as idiosyncratic as one academic entity. It is not in the job description or area of responsibility of many, and for those for whom academic planning is a profession, many competing ideas are constantly in play.

Creation of new entities must come within an environment of satisfaction with existing provision of services, immense competition for resources needed to create new places, and changes in leadership and administration at all levels. Opposition, indifference, and hostility faced the people who promoted UCI Law over the decades of UCI’s history. Champions included those with strong interests in this academic initiative and, in some cases, with the opportunity to pursue those initiatives while remaining engaged in other careers.<sup>105</sup>

Independent of the above, the “constants” of actual resource constraints are at times at work. The macro cycles that seem to define economic health also influence strongly the responses to efforts perceived as distributing or reallocating resources. The University of California saw these cycles in the 1970s and at the beginning of the 1990s and the new century. It may also be the case that resource constraints became a rationale for postponing a contested decision. With direct competition between sister campuses, with negative analyses from a meta-level analytical agency (CPEC) that had only advisory authority but some historical significance, the systemwide choice not to take action on a new law school may have been a strategy appreciated as generating less controversy than going forward with a selection.

But just as opposition at times coalesced throughout the long history of

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105. Champions at UCI over the decades included William Parker and, in more recent years, the “Five Michaels”: Chancellor Drake, Provost Gottfredson, Vice Provost Clark, Associate Executive Vice Chancellor Arias, and Director Poston. Outside of the University, continuing exceptional support was provided by Senator Joe Dunn, the Honorable Andrew Guilford as both attorney and judge, Gary Singer, Tom Malcolm, Senator Dick Ackerman, and Mark Robinson, and a handful of other loyal friends of UCI in the bar.

consideration of a new law school in the UC system it was also often inchoate. This made possible an effective set of initiatives among a determined, small group of supporters for whom a law school at UCI was a major, if not the major, academic or political goal. Senator Joe Dunn, a leading proponent in California government, listed getting a law school at UCI as one of his two public service goals.<sup>106</sup> This suggests some of the considerable support, often pent up, for UCI Law.

Finally proponents of new initiatives are aided by in-depth knowledge of the environments in which they are working. UCI is a very complex, highly bureaucratized major research university which gets important input on academic planning from both faculty and administration. The fact that UCI Law supporters knew where and when to act and when to wait, even if impatiently, made it possible to achieve the outcome that now seems inevitable but that for decades seemed to many to be unrealizable.

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106. Personal communication from Sen. Joe Dunn to author and colleagues (2003–2005).