

UCLA SCHOOL OF LAW

THINK TANKS

PROVIDING RELEVANT SCHOLARSHIP
AND RELIABLE DATA
FOR REAL ISSUES

by Brad Sears

In the last century, THINK TANKS have become an indispensable part of our political system. At their best, they provide busy legislators and judges with new legal theories, policy proposals, and data relevant to their decision-making; create a more informed populace through publications in the popular press; and serve as a training ground for future academic and policy leaders.

Through on-campus think tanks such as the Empirical Research Group (ERG), the Evan Frankel Environmental Law & Policy Program, and the Charles R. Williams Project on Sexual Orientation Law and Public Policy, UCLA School of Law makes the work of its world-class faculty relevant to current policy and legal debates. In addition, these centers provide unique educational opportunities for law students, the legal community, and the public.

A Short History of Think Tanks

The history of think tanks roughly divides into three eras: the pre-ideological, the ideological, and the sound-bite. Until 1970, the approximately two dozen think tanks in the United States followed the model of the country's first think tank, the Brookings Institution, which was founded in 1916. Their missions were to provide objective, rigorous policy analysis on a wide array of issues.

Beginning in the 1970s, think tanks became increasingly ideological and focused on specific policy goals. For example, since 1970 the Heritage Foundation's mission has been "to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." Many of the legislative initiatives and economic policies of the Reagan Revolution were hatched by conservative think tanks in the 1970s and 1980s.

During the past twenty years, there has been a virtual think tank boom. Today, there are over 3,500 think tanks worldwide, half of which are in the United States. Donors and foundations granted over \$1 billion in the 1990s to support think tanks in their work of "knowledge production."

As the staff at think tanks increasingly serve as talking-heads for news channels and counsel elected leaders without filling formal appointments, many are beginning to dismiss them as a form of "shadowy government" that is primarily partisan and almost entirely unaccountable.

UCLA School of Law Think Tanks

Beginning in the 1990s, UCLA School of Law began to create policy centers that lived up to the original ideal for think tanks—a place where the best minds could gather to focus on policy and legal issues free of partisan influence and ideological biases. Today, UCLA School of Law think tanks such as the ERG, the Environmental Law Center, and the Williams Project meet the highest standards of knowledge production. They provide invaluable information for legislators, the judiciary, and the public; and provide critical training for the legal community, students, and tomorrow's academic and political leaders.

Creating Innovative Policy Solutions

A central function of think tanks is to provide policy-makers with innovative solutions for pressing policy questions. A 1998



*Professor Dan Lowenstein
and Associate Director
Joseph Doherty of the
Empirical Research Group.*



*Sean Hecht, executive direc-
tor of the Environmental Law
Center.*

Survey of Congressional staff found that 90 percent viewed think tanks as “somewhat or very influential.” Think tanks provide the research and creative thinking that legislative bodies don’t have the time or resources to produce.

Think tanks at UCLA School of Law help develop new policy solutions by bringing together the best and the brightest in expert policy roundtables. For example, this year the Evan Frankel Environmental Law and Policy Program, part of the UCLA Environmental Law Center, convened a roundtable focused on the policy implications of importing liquefied natural gas into California. The roundtable, organized in cooperation with the campus-wide Institute of the Environment and business and environmental leaders, brought together more than fifty experts and stakeholders from across the state, including UCLA School of Law faculty, government officials, and business and environmental group leaders. Issues addressed ranged from the need to develop sustainable energy sources to the disproportionate risks low-income communities face from transportation-related fuel consumption.

“The meeting was a resounding success, bringing together a diverse group to exchange ideas on a critical issue facing our region,” says Sean Hecht, executive director of the Environmental Law Center. “The roundtable has started an ongoing dialogue that will result in better policy decisions for California.”

Similarly, a year before the controversy sparked by the San Francisco mayor’s decision to allow same-sex couples to marry, the Williams Project, the only think tank focused on sexual orientation law in the country, convened a roundtable of thirty-five constitutional scholars and lawyers to discuss whether a same-sex marriage case should be brought in California. Although the group unanimously decided a case should not be brought; well... sometimes mayors rush in where experts fear to tread.

Legislating by the Numbers

UCLA School of Law’s think tanks also conduct original empirical research that provide politicians with reliable, objective data upon which to base policy decisions. For example, ERG, a center which has assisted one-half of the faculty with empirical research, has been involved in two studies about the effects of two very different “Living Wage” proposals. The first study was

of the existing Los Angeles ordinance, and the second was an analysis of a proposed ordinance in Santa Monica, which came to a citywide vote in 2002. The group's study of the controversial Santa Monica ordinance, led by Professor Rick Abel, focused on whether the costs of the ordinance on local businesses would be counterbalanced by a decrease in poverty in the city. On this point, the study concluded that, "[t]o the extent the measure aims to alleviate poverty in Santa Monica, it is very poorly targeted."

Affecting Change in Government

The Williams Project has conducted a series of studies about the fiscal impact of same-sex marriage on state budgets. Brad Sears, executive director of the Williams Project, has testified before a number of state legislative committees about the positive impact of extending marriage to same-sex couples. This summer, the Congressional Budget Office adopted the Williams Project's analysis and issued a report concluding that recognizing same-sex marriages nationally would save the federal government over \$1 billion each year. This positive impact is a result of higher federal income tax revenues through the federal marriage penalty and the reduction of recipients of means-tested public benefits, such as Medicaid and Social Security Disability Income.

Explains Sears, "by seeking marriage, same-sex couples are taking on its obligations as well as its benefits, including the obligation to provide for each other's basic needs."

Providing Judges with Legal Theories and Data

UCLA School of Law's think tanks also help develop new legal theories to assist the law's development. For example, Professor William B. Rubenstein, faculty chair of the Williams Project, with Stanford Law Professor Pamela Karlan, developed a new framework for looking at Equal Protection Clause cases that will have a significant impact on federal courts' consideration of gay rights issues.

In an *amicus* brief submitted in *Lawrence and Garner v. Texas*, the Supreme Court case that struck down all thirteen remaining state sodomy laws, Professors Rubenstein and Karlan developed an argument that discrimination against gay men and lesbians could violate the Equal Protection Clause

even if courts applied the lowest standard of review, rational basis. Leading constitutional scholars from across the country signed on to the brief.

The argument, nick-named "rational basis plus" was closely followed by Justice O'Connor in her concurring opinion in *Lawrence*. According to an article in the *Boston Globe*, the brief has "become a topic of intense conversation in law school circles in the past year and a half...and even Justice Antonin Scalia, no friend of the concept, has signaled that their approach may be the smoothest path to winning gay marriage throughout the country."

UCLA think tanks have not only influenced the law's development but how the legal system works. For example, Professor Gary Blasi and ERG conducted a study of the Van Nuys Self-Help Legal Access Center. The Center, a publicly-funded agency, assists its clientele primarily with family law and housing issues, and its goal is to help litigants navigate successfully the sometimes labyrinthine judicial process. The study, the first of its kind in the country, showed that the Center had a positive impact on family law cases, including higher child support. Its effectiveness in landlord-tenant disputes was limited by the fact that most evictions are not without cause; for those tenants who were being evicted without cause, however, the Center was very effective. ERG's research design on this project was adopted by the California Administrative Office of the Courts as a model for evaluating self-help centers around the state. Joseph Doherty, associate director of the Empirical Research Group, serves on Advisory Board for this project.

Enriching Public Debate through Relevant Scholarship

The school's think tanks not only provide support for scholars and policy-makers, they also make sure their research is put into a form which is accessible to the public. Faculty and staff associated with ERG, the Environmental Law Center, and the Williams Project are frequently interviewed by the press and publish op-ed pieces on their research.

On August 9, 2004, Professor Jody Freeman, an internationally-known scholar of Administrative Law, governance structure, and Environmental Law and one of the faculty advisors of the Frankel Program, published an op-ed in the *Los Angeles*

Times criticizing a proposal that would concentrate power in the California governor's office by removing a number of independent boards. Professor Freeman argues that this change in the balance of power would make environmental decisions currently made by such boards more prone to political influence and less likely to be based on sound policy analysis.

In 2001 and 2002, studies by Professor Lynn LoPucki and Joseph Doherty of ERG sparked a lively public policy debate in the press and on the web. The studies found that most large public firms that filed for reorganization in the early 1990s chose bankruptcy courts in Delaware and New York; and those firms re-filed bankruptcy at rates four to seven times higher than firms emerging from reorganization in other states. After controlling for a number of variables, LoPucki and Doherty concluded that bankruptcy judges in the two states were approving reorganizations that would not have been approved in other states. Their controversial motivation: attracting big companies and lawyers to their states to boost the local economy.

Attracting World-Class Faculty to Provide a World-Class Education

ERG, the Frankel Program, and the Williams Project are not only an important way in which the school contributes to the development of law in Los Angeles, California, and the nation; they also provide unique educational experiences for UCLA School of Law students.

The centers attract and retain world-class scholars to the campus, providing students with opportunities to take classes not offered at other schools and gain experience as research assistants for leaders in the law's development.

"The environmental program at UCLA School of Law, including the Frank G. Wells Environmental Law Clinic and the Frankel Program, is designed to give students a broad and deep understanding of environmental issues, from an interdisciplinary perspective," says Professor Jody Freeman. "The Environmental Law Center teaches students to think creatively and inventively about how to solve environmental problems."

ERG also works with law students, either as research assistants for faculty or with their own independent study projects. ERG trains students in empirical methods such as research design, sampling, data collection, and statistics. For example, a

recent student's independent study project examined the structural differences between federal and state courts in how they award attorney fees, and how these differences affect the actual fees awarded.

According to Professor Rubenstein, "As more legal scholarship trends towards empirical studies, it is imperative that UCLA School of Law trains its students to stay ahead of the curve."

Training Tomorrow's Leaders

Think tanks increasingly serve as incubators for national policy leaders. The current administration proves the point: Vice President Dick Cheney is a former senior scholar of AEI, Donald Rumsfeld and Condoleezza Rice are both Hoover Institute Veterans, and Labor Secretary Elaine Chao is a Heritage Foundation alumna.

Through several new post-graduate fellowships, UCLA School of Law's think tanks are also helping to create tomorrow's academic and political leaders. For example, the Frankel Program provides funding and other support for Frankel Fellows in Environmental Law and Policy to teach and conduct research at the School of Law for a one- or two-year term, helping post-graduates to pursue careers in Environmental Law and Policy while adding to the body of research conducted by the Frankel Program.

The Williams Project currently has two post-graduate fellows. The Williams Law Teaching Fellow provides a two-year stipend for a recent law school graduate to come to UCLA for two years to gain experience in research, writing, and teaching before going on the law teaching market. The Project's Public Policy Fellow provides a similar post-graduate opportunity for students interested in sexual orientation public policy issues.

A Class Apart

UCLA School of Law's think tanks are helping the school meet its core missions: producing outstanding research and scholarship, being of service to local and national communities; and providing the highest level of education for its students. Think tanks such as ERG, the Environmental Law Center, and The Williams Project are rapidly making UCLA School of Law a school with a difference—that makes a difference; a school in a class of its own.

UCLA SCHOOL OF LAW'S THINK TANKS

THE EMPIRICAL RESEARCH GROUP

The Empirical Research Group (ERG) is a methodology-oriented research center that specializes in the design and execution of quantitative research in law and public policy. It was established in 1998 with the goal of helping the faculty to fund and carry-out large scale research projects, in recognition of the fact that legal scholarship in general has shifted towards greater use of empirical research and social science methods. As a research center, ERG is unique among American law schools, in that it serves the entire law school and covers a diverse range of subjects. ERG has contributed to the scholarship of over thirty-four full-time professors in fields including bankruptcy law, tax law, environmental law, employment law, election law, and the legal profession. In its short lifetime, ERG has received or facilitated more than \$2 million in foundation support for specific projects.

For more information about ERG, visit the website at www.law.ucla.edu/erg, or contact Joseph Doherty, associate director, at 310-206-2675.

THE EVAN FRANKEL ENVIRONMENTAL LAW AND POLICY PROGRAM

The UCLA School of Law is home to the UCLA Environmental Law Center, the nation's most dynamic center of education and research on Environmental Law and Policy. The Evan Frankel Environmental Law and Policy Program, a component of the Environmental Law Center funded by a generous gift from the Evan Frankel Foundation, fosters top-quality critical analysis of environmental laws, governance institutions, and regulatory tools. By focusing on how governments, businesses, and individuals make and implement decisions that affect the environment, the Frankel Program generates ideas for improving environmental policy at all levels of government.

For more information about the Frankel Program, visit the UCLA Environmental Law Center website at www1.law.ucla.edu/~environment or contact Sean Hecht, executive director, at (310) 794-5272 or envirolaw@law.ucla.edu.

THE WILLIAMS PROJECT

The Charles R. Williams Project on Sexual Orientation Law and Public Policy is a national think tank dedicated to the field of sexual orientation law and public policy. UCLA School of Law is the only law school in the country to have a special project focused on sexual orientation law issues. Founded in 2001 through a generous grant from Charles R. Williams, the Project supports legal scholarship, legal research, policy analysis, and education regarding sexual orientation discrimination and other legal issues that affect lesbian and gay people. According to a recent LA Weekly article, "The Williams Project is at the center of sexual orientation law...it is something of a thoughtful David among a world of reactionary Goliaths."

For more information about the Williams Project, visit the Project's website at www.law.ucla.edu/williamsproject or contact Brad Sears, executive director at (310) 267-4382 or WilliamsProject@law.ucla.edu.