from the GROUND UP

Erwin Chemerinsky launches a new law school.

With the economy as bad as it is right now, this may not be the best time for the University of California to be talking about, let alone launching, a brand new law school. So, when Erwin Chemerinsky talks about the UC Irvine School of Law—the institution he was hired to get off the ground this fall—the word that comes to mind is *chutzpah*.

"I'll tell you what my vision is," the dean says one recent sunny afternoon at the school's headquarters, amid proliferating piles of empty computer boxes and unconnected cubicle parts. "Front and center, we want to be one of the top 20 law schools from the beginning." But there is much more to his vision than simply building a top-tier institution.

"We need to figure out what the ideal law school for the 21st century should be," he says. "If we just replicate other law schools, UCI will fail in its unique opportunity to create an ideal law school. There isn't a need for another law school like Duke or USC—places I've taught in for the past 25 years—or Berkeley or UCLA.

by LEONARD STEIN

photograph by LINDA FORD >
... As I've recruited administration and faculty, my pitch to them is, 'Come, let us create our dream school.'

It's an intriguing proposition, of course. But is his vision of a "dream school" anything more than a pipe dream? To be sure, Chemerinsky does have the prestige of the University of California brand name going for him, and a $20 million grant from Donald Bren, Orange County's leading billionaire, doesn't hurt either. Also, pledges from 15 major law firms—Gibson, Dunn & Crutcher, and Latham & Watkins, among them—will enable the school to offer a full three-year scholarship to each and every student in its inaugural class. (In a recession, that alone should be a powerful incentive for the country's brightest applicants to at least give Irvine a look.) Chemerinsky can boast, too, about the top-notch legal scholars and administrators he's already attracted to the campus—most of whom, incidentally, came from top-20 schools.

And then there's Chemerinsky himself. From his trademark wire-rimmed glasses to his worn brown suits, Chemerinsky still looks more like the renowned constitutional law professor he's been than the salesman he's become. Over the course of his career he has taught at four universities, authored two highly regarded casebooks, and made four oral arguments before the U.S. Supreme Court. He has also provided enough commentary to the general press to rank as one of the better-known legal scholars in the country with a left-of-center perspective. Ironically, though, it was this very perspective that almost prevented Chemerinsky from becoming dean of the new school.

Here's what happened: In September 2007, just a week after he agreed to take the job, UC Irvine Chancellor Michael Drake phoned Chemerinsky to rescind the offer. The reason given? The Los Angeles Times had just published an op-ed in which Chemerinsky argued against a proposal by then-Attorney General Alberto Gonzalez to shorten the window of opportunity for habeas corpus petitions in death penalty cases.

To Chemerinsky, Drake's explanation seemed razor thin. "I've written lots and lots of things far more controversial and inflammatory than, We shouldn't shorten the statute of limitations of people on death row who don't have lawyers," Chemerinsky says. More to the point, perhaps, were the sentiments expressed by Los Angeles County Supervisor Mike Antonovich, who wrote a memo to Orange County Republicans saying that putting Erwin Chemerinsky at the head of the law school at Irvine "would be like appointing al-Qaeda in charge of homeland security."
In any event, when both the New York Times and the Los Angeles Times ran stories about UC Irvine's clumsy about-face, it triggered a storm of protest from liberal and conservative academics alike, which then put the university in the extremely awkward position of having to offer the job to Chemerinsky—again.

"Michael Drake and I have a terrific working relationship," Chemerinsky now says. And even if Chemerinsky found the whole controversy extremely unpleasant, he thinks that some good may actually have come of it. "I'm not yet ready to see silver linings," he says. "But as a result of it, we got the best-publicized new law school in the country."

In a sense, the 21st-century law school that Chemerinsky has in mind is a throwback. Up until the middle of the 19th century, legal education in the United States was almost completely hands-on, with aspiring attorneys serving as apprentices to practicing ones. Law as a higher academic discipline—the so-called casebook method developed at Harvard and Columbia universities—didn't really take off until the early 20th century.

In recent years, however, a growing number of legal educators have expressed dissatisfaction with this model. In fact, just last year the Carnegie Commission on Higher Education released a report entitled "Educating Lawyers: Preparation for the Profession of Law," which found that though graduates from top law schools acquire a wealth of intellectual grounding and substantive knowledge, they are conspicuously ill-prepared when it comes to representing clients. "What we saw in legal education," says Anne Colby, a Carnegie fellow and coauthor of the report, "is that legal education is very much dominated by an academic orientation, rather than an orientation for preparation of a practice."

"Relatively early in the 20th century," Chemerinsky observes, "preparing lawyers for the practice of law was relegated to the bottom rung of law schools, and the top law schools didn't see it as their primary mission. Could you imagine if a school graduated medical students or dental students who never treated a patient? Yet most law students have never had a client."

The new school aims to change all that, starting with its first year, when law students will be introduced to the practical tools of their profession through a lawyering-skills class that integrates clinical experience. Then, in their second year, students will work through simulated fact situations, honing their skills in a particular field of civil or criminal law, so that when they are ready to register for a third-year, semester-long clinical course, they will already have a working knowledge of how to represent clients. "My central vision for the school," says Chemerinsky, "is that we will do the best job of any school in the country in preparing students for the [actual] practice of law. A top-quality clinical program is key to achieving this."

Along with the emphasis on practical education, Chemerinsky wants to push the envelope on interdisciplinary study. "If you're going to do business or tax law," he argues, "you're going to need to know some economics. If you're going to do criminal law, you need to know some psychology. If you're going to do patent law, you need to know some engineering. And if you're going to do environmental law, you need some environmental science." Hence, four members of UC Irvine's general faculty have joint appointments with the law school, while two of Irvine Law's founding faculty members have joint appointments with other departments at the university. In addition, law students at Irvine can pursue joint-degree programs in business, public policy, medicine, public health, economics, history, political science, and psychology.

Chemerinsky also would like to see Irvine Law graduates outdo top-20 schools when it comes to taking public-sector jobs. But this means replicating, if not exceeding, the generous assistance programs now
A study found that graduates from top law schools acquire a wealth of intellectual grounding but are conspicuously ill-prepared when it comes to representing clients.

Offered to students at leading law schools who are willing to forgo corporate-size salaries, "We will have a loan-forgiveness program that matches Boalt's—which is the best in the country," he declares. He also promises to create a scholarship program for public-interest-minded law students, much like NYU's famed Root Tilden Program.

When Chemerinsky accepted and then finally landed the UC Irvine job last fall, he knew at least one leading academic would be willing to join him. Catherine Fisk, until recently the Douglas B. Maggs Professor of Law at Duke University, is an expert in labor law and civil procedure, as well as a respected legal historian. She also happens to be Chemerinsky's wife. As cochair of Irvine's faculty hiring committee, she's been working with Chemerinsky to entice other leading scholars to join the fledgling law school. With nine months to go, they'd managed to recruit ten. "Everyone who is here is here because they're intrigued with the idea of starting a law school and doing it a little differently," says Fisk.

The committed include Dan Burk, a leading authority on how both information technology and biotechnology have affected intellectual property law. Burk had been teaching at the University of Minnesota Law School for seven years and had no intention of leaving. But one day in December 2007 he received an email with Chemerinsky's name on it.

"Of course, we'd all heard a bit about Erwin from the little pickup that happened with his hiring," says Burk. "So I showed the email to my spouse, and I said to her, 'I should blow him off, right?' But, to Burk's surprise, his wife, Laurie, wasn't quite so dismissive. "Why don't you talk to him at least?" she said.

Four days later Burk flew out to California to meet with Chemerinsky and got so caught up in the dean's enthusiasm that at one point he said to himself, "This is really a once-in-a-lifetime thing."

Then, when he returned, Laurie Burk asked her husband a telling question: "Five years from now," she said, "would you rather say that you spent those years at the University of Minnesota, or that you helped Erwin Chemerinsky launch a new, top-tier law school?" That very night he called and accepted Chemerinsky's offer.

To build the clinical program, Chemerinsky brought onboard Carrie Hempel, the former director of USC's Post-Conviction Justice Project. Also on the faculty are Irina Jones, a discrimination law specialist from Duke; Carrie
Menkel-Meadow, an ethics professor from Georgetown; and Rachel Moran, a civil rights and education law expert from UC Berkeley School of Law.

Chemerinsky has drawn several seasoned administrators as well. Victoria Ortiz, formerly dean of students at Berkeley’s law school, is now Irvine Law’s dean of student services and admissions. Charles Cannon left his post as director of development at UCLA’s law school to serve as the assistant dean for development and external affairs at the new school. And Rex Bossert, formerly the National Law Journal’s editor in chief, is director of communications and public affairs.

“Given what Chemerinsky has managed to achieve so far,” says Brian Leiter, a law professor at the University of Chicago who maintains a blog called Brian Leiter’s Law School Reports, “Irvine is clearly on track to have a top-20 faculty by any relevant academic measure.”

Still, for all of the schools’ promise, Irvine Law is starting out with no well-heeled alumni network, no name recognition to speak of, and no track record of any kind. Moreover, the sooner the school can hope to win provisional accreditation from the American Bar Association is the end of its second year.

By contrast, the vast majority of the nation’s current top-20 law schools were established more than a century ago. UCLA, the baby of the bunch, was launched in 1949 during the golden age of the UC system, when money for public education was a lot easier to come by.

For the short term, at least, neither UCLA nor Berkeley is likely to view Irvine as much of a threat, despite the quality of its faculty, suggests Leiter. “The schools, I assume, that are really sweating this,” he says, “are Loyola Los Angeles and the University of San Diego law schools, because Irvine stands a good chance of cutting into their student bodies, and perhaps even USC’s.” Irvine’s cheaper—or free—tuition and its UC brand could give the new school an edge against these institutions.

Meanwhile, at U.S. News & World Report, which publishes a closely watched annual ranking of law schools, Director of Data Research Robert Morse thinks it’s “mega unlikely” that UC Irvine’s start-up will get a top-20 ranking from the magazine within five years. “I’m treating it as an aspirational goal that they’re using to create an atmosphere to become an excellent school,” he says. “There’s a big difference between having a stated goal of excellence, and creating a critical mass of students and faculty, and building an alumni network to rise to that lofty level in our ranking.”

Of course, Chemerinsky isn’t seeking to build a traditional law school. But in some ways that could make his job even more difficult. After all, a distinguished professor can teach 150 students in a lecture hall more cost-effectively than he can work with them in groups of 8 at a clinic.

Clinics are expensive, affirms Lawrence Marshall, the director of Stanford Law School’s clinical program, which itself has grown three- to fourfold over the past four years. “Medical schools and hospitals charge money for patients,” he notes. “Our [clinics] operate exclusively in a pro bono setting.”

So, will Chemerinsky be able to pull this thing off? Loyola Law School’s oft-quoted Professor Laurie Levenson offers a relatively upbeat assessment: “I would say, for mere mortals— not possible. For Erwin? Always a possibility.” Still, with the economy in shambles, Levenson suspects that selling top-tier students on an untested school will be very, very difficult.

Chemerinsky, however, refuses to back away from his pledge. “Yes, our goal is to be a top-20 law school from the moment we are ranked,” he declares. “And, yes, I believe that is realistic.”

Leonard Stein is a freelance writer based in Southern California.

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How California’s Top-Ranked Law Schools Measure Up

<table>
<thead>
<tr>
<th>Law school</th>
<th>U.S. News &amp; World Report rank</th>
<th>Average LSAT score of entering students</th>
<th>Size of entering class</th>
<th>Number of faculty</th>
<th>Number of endowed faculty positions</th>
<th>Number of alumni association members</th>
<th>Tuition*</th>
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<tr>
<td>STANFORD LAW SCHOOL</td>
<td>2</td>
<td>170</td>
<td>170</td>
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<td>USC GOULD SCHOOL OF LAW</td>
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<td>UC IRVINE SCHOOL OF LAW**</td>
<td>–</td>
<td>–</td>
<td>60</td>
<td>20 by August 2009</td>
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<td>–</td>
<td>To be determined; likely in range with other UC law schools. Full 3-year scholarships to class entering fall 2009.</td>
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*2008-09 academic year **Opens September 2009