

Advocate

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW



**Lesley
McAllister
Makes
Environmental
Law Matter**

MINAN & COLE HIT THE FIELD | GRADUATION '09 | USD MOOT COURT TEAMS SHINE

25:2 SPRING 2010

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**ex officio*

message from the dean

Notwithstanding an uncooperative economy, the past year has seen great progress at USD Law School. In contrast to those schools that have been forced to trim back their offerings, we have undertaken new initiatives and expanded skills training and student writing opportunities that focus on practice areas of great interest to our current and prospective students.

In late December 2009, with the help of faculty advisor Professor Lesley McAllister (see feature story on page 24) and a twelve-person advisory board that included Professor of Law Richard J. Lazarus of Georgetown University, Western Director of the National Resources Defense Council Felicia Marcus and San Diego-area attorney Stanley Legro, a group of determined and talented students published the first student law review in the country devoted to climate and energy law.

The *San Diego Journal of Climate & Energy Law* provides a forum for scholarly and practical dialog in this emerging field. Articles explore topics such as the law and economics associated with cap-and-trade greenhouse gas markets, new energy policy in the carbon-constrained world, legal implications of trans-border air and water pollution and the effects of climate change on laws protecting endangered species. The journal has partnered with our Energy Policy Initiatives Center to bring prominent speakers to campus, most recently the Chairman of the California Air Resources Board, Mary D. Nichols, a participant in the United Nations Summit on Climate Change in Copenhagen; and Jody Freeman, a Harvard Law School professor who recently served as a White House advisor on energy and climate change issues.

Our moot court and mock trial teams experienced great success with our expansion of the coaching resources available to them. The trial team advanced to the national championships. The moot court program finished the season ranked 16th in the country and second in the West.

Our newest institute, the Center for Corporate & Securities Law, led by Professor Frank Partnoy, hosted its inaugural event in January of this year in collaboration with the Corporate Director's Forum. Professor Partnoy gathered experts from across the country, including vice chancellor of the Delaware Court of Chancery Leo Stine, to explore the insiders' view of expected corporate regulation and litigation in the coming year.

Professor David McGowan, director of the Center for Intellectual Property Law & Markets, has continued to focus his efforts on assembling a top-notch cadre of IP experts from throughout the region. Student demand for courses in patent, trademark and other aspects of IP law remains exceptionally strong. Our IP center is in good hands: Professor McGowan recently received national recognition for the scholarly impact of his publications in the field of intellectual property.

Tough economic times create challenges on several fronts, but the programs and innovations of the past year are examples of how the School of Law is working to boost the competitiveness of our graduates in the legal marketplace. They will be ready to take their place among USD Law alumni as leaders in the profession.



Kevin Cole
Dean and Professor of Law



Discovery

USD School of Law Students to Argue Ninth Circuit Appeals

For the first time, USD will offer a select few students the opportunity to brief and argue Ninth Circuit appeals. Students admitted to the Appellate Clinic in fall 2009 will represent indigent immigrants in two cases. The year-long clinic immerses students into the appellate litigation process from start to finish—from writing opening briefs to participating in oral arguments. Complementary interactive classroom sessions provide students instruction, simulations and other skill-building activities relevant to the cases. Appeals will be litigated under the supervision of Professors Katherine Mayer Mangan, a former Ninth Circuit clerk and current appellate attorney, and Michael Devitt, who teaches appellate advocacy and oversees the McLennon Honors Moot Court competition.



Legal Clinics Presented Bernard E. Witkin Award

USD's Legal Clinics have been honored with the 2009 Bernard E. Witkin Award for Excellence in Teaching of the Law. Presented annually by the Law Library Justice Foundation, the award honors members of the San Diego legal community for civic leadership and excellence in the teaching, practice, enactment or adjudication of the law. The Witkin Fund is used to purchase books and materials for law practitioners for the San Diego County Public Law Library, in keeping with the life and writings of Bernard E. Witkin, Esq. It is aimed at resources for the practicing bar and the legal community in general, as distinct from the Law Library's other mission, to help *pro per* litigants. The Witkin Award Dinner is, appropriately enough, the primary fund raiser for the fund since the Witkin Award celebrates members of the legal community and their good works.

USD Law Takes the Helm of CrimProf Blog

USD School of Law has assumed leadership of the CrimProf Blog (http://lawprofessors.typepad.com/crimprof_blog/). Joined by USD Law's Dean Kevin Cole, Professors Lawrence Alexander, Donald Dripps, Yale Kamisar, Adam Kolber and Jean Ramirez will contribute to the blog providing a forum for discussion among law professors and students about criminal law. Recent guest bloggers have included New York Law School Professor Michael Perlin on ignoring advice about academic collaborations, Regent Law School Professor James J. Duane on the "Extraordinary Mystery of *Briscoe v. Virginia*," and University of Auckland Professor of Law John Ip on the prevention of terrorism. Launched in November of 2004, the CrimProf Blog covers a wide range of criminal law topics from capital punishment to white collar crime. With annual traffic approaching one million visitors, the blog is frequently cited as one of the top 35 law professor blogs and one of the top 30 "stickiest" or best read law professor blogs.

New Masters of Science in Legal Studies Program Launched at USD

USD School of Law has launched a new Masters of Science (M.S.) in Legal Studies program. The M.S. in Legal Studies is designed for graduate students and professionals who would benefit from further study of the law, but who do not wish to become an attorney. The traditional Juris Doctor (J.D.) program is a comprehensive curriculum that takes approximately three years to complete. The Legal Studies program allows students to enroll in the same courses as traditional law students, while structuring their course-load to suit their individual needs.



Ideal candidates for the M.S. in Legal Studies include graduate students in other disciplines such as business, healthcare, technology, science and journalism. In addition, candidates with undergraduate degrees in other disciplines and significant professional experience will be considered and are invited to apply.

Low Income Taxpayer Clinic Grant Recipients Announced

The Internal Revenue Service (IRS), U.S. Department of the Treasury, has awarded the University of San Diego School of Law Tax Clinic a grant of \$81,643 for the 2009 calendar year. The tax clinic program at USD School of Law was one of the initial LITC (Low Income Taxpayer Clinics) in the country to receive the very first award in 1999. Since that time, the IRS has awarded more than \$800,000 to the USD tax clinic. LITCs are organizations that represent low income taxpayers in federal tax controversies with the IRS for free or for a nominal charge and provide tax education and outreach for taxpayers who speak English as a second language.

New Tax Lecture Series to Bring National Tax Experts to USD




USD School of Law is pleased to announce the creation of the endowed Richard Crawford Pugh Lecture in Tax Law and Policy in honor of USD Law's Distinguished Professor of Law, Richard C. Pugh. The inaugural lecture will be given on April 16, 2010, by Eric Solomon, an outstanding practitioner and public servant who has made lasting contributions to tax policy as treasury assistant secretary for tax policy and IRS assistant chief counsel (corporate). In September 2009, he rejoined the national tax practice of the international accounting firm of Ernst & Young in its Washington, D.C. office.

Professor Partnoy's Work Lands on Book of the Year Award Shortlist

USD School of Law Professor Frank Partnoy's book, *The Match King: The Ivar Kreuger, The Financial Genius Behind a Century of Wall Street Scandals*, was placed on the shortlist for the Financial Times and Goldman Sachs Business Book of the Year Award. *The Match King* is Partnoy's retelling of the almost forgotten story of Ivar Krueger, the businessman who smooth-talked Wall Street and Europe in the 1920s before his empire collapsed amid allegations of fraud. The panel of judges for the annual book award gathered in September 2009 at Goldman's New York headquarters to identify six finalists from a long list of 15. The judges were united in praise for the quality of this year's shortlist. Lionel Barber, editor of the *Financial Times*, called the list "outstanding" and Lloyd Blankfein, Goldman's chief executive—echoing the mission of the award—said all the books were "both compelling and enjoyable."



The Docket Moves to Bimonthly Schedule

The Docket, USD School of Law's alumni e-newsletter, keeps alumni up-to-date on recent and upcoming law school events as well as alumni news. Starting March 2010, the Docket moved to a bimonthly schedule and will be published each January, March, May, July, September and November. The current issue and previous issues of the Docket are available online at law.sandiego.edu/docket. Alumni and friends can submit personal and professional updates for the Alumni Spotlight section in the Docket by e-mailing lawalum@sandiego.edu. Contact the office of development and alumni relations at (619) 260-4692 for more information. 

save the date

MAY 2010

MAY 1

University of San Diego Alumni Honors
5:00 p.m.
Shiley Theatre and Camino/Founders Patio
More information at
<http://www.sandiego.edu/alumnihonors>

MAY 14

2010 Graduation Mass
2:30 p.m.
Founder's Chapel
Contact Jamie Simmons at
simmonsj@sandiego.edu
or (619) 260-4651

MAY 15

2010 Law School Commencement
9:00 a.m.
Jenny Craig Pavilion
Contact Jamie Simmons at
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or (619) 260-4651

JUNE 2010

TUESDAY, JUNE 15

Board Appreciation Dinner
Contact the office of development
and alumni relations at
lawalum@sandiego.edu or
(619) 260-4692

TUESDAY, JUNE 22

New York USD Law Alumni Reception
Register at law.sandiego.edu/alumni/ny or
(619) 260-4692

THURSDAY, JUNE 24

Washington D.C. USD Law Alumni Reception
Register at law.sandiego.edu/alumni/dc or
(619) 260-4692

JULY 2010

JULY 25

USD Wine Classic
2:00 p.m. – 5:00 p.m.
Joan B. Kroc Institute for Peace &
Justice Garden of the Sea
More information at
<http://www.usdwineclassic.com/>

AUGUST 2010

AUGUST 14

Pageant of the Masters and
Pre-Performance Gathering
6:00 p.m.
Contact the office of development
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lawalum@sandiego.edu
or call (619) 260-4692

OCTOBER 2010

OCTOBER 8 – 10

Law Alumni Reunion Weekend
Classes of 1970, 1975, 1980, 1990 & 2000
More information at law.sandiego.edu/aw
or call (619) 260-4692

NOVEMBER 2010

NOVEMBER 12

Distinguished Alumni Awards Luncheon
11:30 a.m.
Westin Gaslamp Quarter
More information at law.sandiego.edu/daa
or call (619) 260-4692

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go to law.sandiego.edu/events.



USD School of Law Welcomes Sempra Chief Counsel to Discuss Navigating Current and Future Greenhouse Gas Regulations



PHOTO CREDIT: SEMPR ENERGY

Sempra Energy Executive Vice President and Chief Counsel Javade Chaudhri leads the fourth EPIC Climate Change Lecture as keynote speaker.

On November 4, 2009, USD School of Law's Energy Policy Initiatives Center (EPIC) held its fourth Climate Change Lecture on campus. Co-sponsored by Environmental Law Society and the new *San Diego Journal of Climate & Energy Law* (JCEL), Sempra Energy Executive Vice President and Chief Counsel Javade Chaudhri spoke as the event's keynote.

Chaudhri joined Sempra Energy in September 2003 and is responsible for all legal affairs and compliance for Sempra Energy. Prior to joining Sempra, he served as senior vice president and general counsel of San Diego-based Gateway Inc. since 2001. Chaudhri also was a senior partner in the Washington, D.C., office of the international law firm of Winston & Strawn, where he co-managed the international and technology practice groups. He has written and lectured widely on international infrastructure projects, technology and commercial law. He has been a visiting faculty member for the International Development

Law Organization in Rome and the International Law Institute in Washington, D.C. Chaudhri has bachelor's and master's degrees from Yale University and a law degree from Georgetown University.

Chaudhri began his address titled, "Navigating Current and Future Greenhouse Gas Regulations (GHG)—the View from the General Counsel's Office," with one simple assumption: global warming is a given. What's uncertain is how and if the world will respond.

Chaudhri explained that transitioning to more efficient renewable sources of energy always pays off in the long run—it's the initial investment that is tough. For this reason, he noted with disappointment, many energy companies are continuing to fight the reality of global warming.

The transition also will be difficult and take hundreds of multi-national, interdisciplinary projects and experiments to accomplish, rather than a single government program. Taking a bit of a bet that the world will take responsibility for



Sempra Energy and other California utilities are at the forefront of the movement toward cleaner energy technologies, joining with the State to reduce greenhouse gas emissions.

climate change and seek to regulate greenhouse gas emissions, Sempra has already begun converting much of its generation-side business into natural gas. This cleaner-burning natural gas is said to be the “bridge fuel” that will aid in the transition from carbon-intensive fuel sources such as coal and petroleum, to renewable and nearly carbon-free sources such as solar energy.

Sempra and other California utilities at the forefront of this movement towards cleaner technologies have been joined by the State of California. In 2006, California was the first state to pass legislation—known as Assembly Bill 32 (AB 32)—to reduce greenhouse gas emissions to 1990 levels by the year 2020. Unfortunately,

Chaudhri explained, leading the way comes with great challenges, especially as increased regulations at the federal level loom on the horizon.

“Any business welcomes certainty—certainty of regulation and knowing what you have to do,” he said. However, the proposed legislation thus far paints with a broad brush and does not take into account efforts by those who have already increased efficiency and decreased their emissions.


Upcoming federal legislation might not provide for steps already taken, in which the case California would receive less credits in the cap and trade program, negating the investments the state has made into solar and wind power. Further, coal

states are reluctant to sign onto any program that punishes carbon-intensive energy creation. Overall, expectations for a federal program are low.

“Greenhouse gas regulation is going to have to go through the industrial states,” said Chaudhri. “And that is not necessarily good for California or the goals of state laws like AB 32.”

Several recent court decisions have contributed to the mounting pressure to create effective GHG emission regulations. In September the Second Circuit Court of Appeals found that Connecticut and several other states could bring public nuisance claims against coal-fired utility companies for global warming effects of their emissions (*Connecticut v. AEP*). Just two months later, the Fifth Circuit also allowed a suit based on contributions to global warming to proceed. Claimants seek damages from Hurricane Katrina in *Comer v. Murphy Oil*.

Chaudhri described the decisions as “a direct challenge from the courts telling the executive branch and the legislature that unless they actually enact regulations or law in this area, they are going to go ahead and make law through this rather antique, common nuisance cause of action.”

For energy companies like Sempra, these types of cases are just one more reason the certainty of regulations are appealing. Chaudhri closed his address with a call for comprehensive legislation and clarity, “We don’t need unnecessary layers of complication—there is enough real work to go around.” 

USD Law Celebrates 25 Years of the Nathaniel L. Nathanson Lecture Series by Welcoming Pulitzer Prize Winning Author Jack Rakove

By Patrick Riedling

In April 2009, the Nathaniel L. Nathanson Memorial Lecture Series passed a significant milestone. The series has brought prominent lecturers from around the country to speak on a variety of legal issues for 25 years.

The most recent lecture featured yet another nationally renowned scholar, Professor Jack Rakove, the

William Robertson Coe Professor of History and American Studies, and professor of Political Science and (by courtesy) of Law at Stanford University, where he has taught since 1980. In 1997, Rakove was awarded the Pulitzer Prize for *History for Original Meanings: Politics and Ideas in the Making of the Constitution* (Alfred Knopf, 1996). The book cast

serious doubt on whether originalism is a viable theory of interpreting the Constitution.

Opening his address at USD, “The Poverty of Public Meaning Originalism,” Professor Rakove defined the originalist theory of constitutional interpretation as one that says the meaning of the constitutional text is locked at the moment of its adoption. The goal of originalist constitutional interpretation is to ascertain and apply that meaning to the case at hand.

“How do we know that this theory of interpretation is really worth all the attention I want to give it to?” queried Rakove. “Well, Justice Scalia says so. Because in the recent decision, *D.C. v. Heller*—the D.C. gun case decided last June—which by the usual 5-4 majority the court struck down the District of Columbia’s ban on handguns and a related provision requiring guns kept at home to be disassembled.” This form of originalism is changing the process of how cases are decided.

According to Rakove, the best way to figure out what a document meant when it was written is to analyze it historically. He pointed out that a document has an author or authors—and the Constitution authors and ratifiers. It was discussed and debated actively. There are volumes and volumes of records that can be used to make sense of what the founding fathers thought





“For Scalia to say that’s about a power and not a right... uhn-uhn... I don’t think so.”

—Rakove

both about the document in general and about many of the particular clauses that went into it.

“It seems to me that to talk intelligently about the original meaning

of the Constitution,” said Rakove, “you would have to engage in some sort of historical inquiries. But what set of historical inquiries would those be? How would you as a working historian, thinking methodologically, set about solving or resolving those kinds of questions?”

To answer those questions, Rakove’s book, *History for Original Meanings: Politics and Ideas in the Making of the Constitution*, set out to figure out a method of being an originalist.

“It doesn’t mean I’m an originalist in principle. It doesn’t mean I’ve overcome my democratic scruples about why originalism might be problematic, but I thought it was a really interesting set of questions and deserved a serious response from historians,” he said.

Rakove thought historians owed the public a better answer, so then offered his own. “Let’s be somewhat scrupulous and rigorous about what

we call meaning, intention and understanding. It was my sense at the time that those three terms—meaning, intention and understanding—were used somewhat promiscuously and somewhat interchangeably and not particularly rigorously.”

To combat the issue, Rakove proposed guides to ascertain the *meaning* of the text. He suggests using the records of the debate in Philadelphia to determine the *intentions* of its authors—the framers of the Constitution—and to show the *understandings* of its ratifiers. Yet, even when these other texts are consulted to gain a better understanding of original meaning, intention and understanding clarity is elusive.

The political language of the late 18th century was exceptionally robust and in a continuous state of flux. The era was marked by revolutionary innovation in political thinking and institutional development. The meanings of key concepts were evolving as Americans broke away from existing political traditions.

“The most fundamental word of all, “constitution,” was itself a subject and object of a great deal of creative, critical and contradictory discourse,” said Rakove. “It had its own history and that history was dynamic. So the idea that some lay



reader is going to come up with an adequate definition is problematic.”

Rakove points out that there’s fuzziness in the phenomena we are studying. As individuals, we have real limitations in terms of our observational capacities. Thus, the meaning of law cannot be ascertained by going back to the original intention, but by reasoning it out on a case-by-case basis.

One of the things that puzzled Rakove about the current originalism debate—the semantic originalism debate—is that it’s all about modern perceptions of language. There’s relatively little discussion of how the 18th century thought about language.

“It’s all about Kripke or Wittenstein and guys I’ve never heard of, said Rakove. “Some of them are still alive. Locke hasn’t been alive for a while, but he was the dominant linguistic theorist of the time and cast a fairly significant shadow over American thinking about this.”

The big payoff with Locke is that he says that words are constantly changing their meaning. Rakove notes the best way to figure out what words mean is to do so by consensual agreement. Insofar as language can acquire its meaning, it does so by convention. It does so

by being used and by people being forced to deliberate about what words mean.

Exemplifying how language, semantics and consistency (or the lack thereof) can cause issues in ruling on a case, Rakove then read a single paragraph from Scalia’s opinion in *Heller*, the D.C. gun control case.

“It comes very early. It’s so slippery, so duplicitous that he wants to slip it past the reader before the reader is really awake. This has to do with the right to bear arms.”

Justice Scalia wrote in *D.C. v. Heller*, “Three provisions of the Constitution refer to the people in a context other than rights—the famous preamble (We the people), section two of Article I (providing that the people will choose members of the House), and the Tenth Amendment (providing that those powers not given the Federal Government remain with the States or the people). Those provisions arguably refer to the people acting collectively—but they deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does a right attributed to the people refer to anything other than an individual right.”

“Scalia is dead wrong,” said Rakove. “What’s being actualized

there is the same statement we find in the Declaration of Independence and

numerous state constitutions that people have the right to alter or abolish governments. That’s a right. That’s what the preamble does. The preamble is the manifestation of the right of the people to alter and abolish governments. The people’s power to do so—if you want to say it requires an act of power to do that—the act of power is made legitimate only because there is a right that precedes it. So for Scalia to say that’s about a power and not a right... uhn-uhn... I don’t think so.”

“Scalia’s very slippery use of the term powers illustrates exactly the problem of language that John Locke was talking about in the 17th century and that Madison was echoing when he was trying to defend the Constitution,” said Rakove. “Until semantic originalism can tell me where Locke and Madison fit into the story in exactly this sense, I remain unpersuaded that it’s the best mode [of interpretation].”

* * *

Professor Jack Rakove is the William Robertson Coe Professor of History and American Studies and professor of Political Science and (by courtesy) of Law at Stanford University, where he has taught since 1980.

California Air Resources Board Chairwoman Ushers in Inaugural Climate & Energy Law Symposium at USD

In February 2009, the Energy Policy Initiatives Center (EPIC) and the *San Diego Journal for Climate & Energy Law* (JCEL) held the inaugural Climate & Energy Law Symposium on the USD campus. Academics, government lawyers and private practitioners from around the country gathered to hear three speaker panels discuss the interplay of state and federal law aimed at mitigating climate change and how to rationalize the resulting (and sometimes differing) regulations.

California Air Resources Board (CARB) Chairman Mary Nichols kicked off the event by with a keynote address, discussing her organization's role in developing the structure to implement California's landmark Global Warming Solutions Act (AB 32) and its supporting measures. AB 32 requires California to adopt regulations to reduce statewide greenhouse gas emissions to 1990 levels by the year 2020 and 80 percent below 1990 greenhouse gas levels by 2050.

She began by pointing out that the name of this conference "Federal Preemption or State Prerogative: California in the Face of National Climate Policy," has been put squarely on the table thanks to the November 2009 election. "However, when presented with a choice between federal preemption or state prerogative," Nichols said, "well actually, it's neither one."


Nichols continued explaining that, "Successfully addressing this global challenge is going to take everybody's best efforts and will require new models of collaborative federalism, unlike anything we've ever seen before."

For example, using a collaborative system, the federal government could set a floor of regulation—marking a baseline level for pollutants that states must meet. If states want harsher regulations, they can pass more stringent laws, but there is no federal ceiling that would prevent them from requiring lower pollutant levels.

States have a unique ability to be agile, innovative and even aggressive in their efforts to deal with pollution and our federal system encourages state innovation. To explain, Nichols quoted former U.S. Supreme Court Justice Louis Brandeis's dissent in the 1932 case *New State Ice Co. v. Liebmann* which stated that, "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel economic experiments without risk to the rest of the country."

California has taken this advice from Brandeis and, combined with its own pioneering spirit, moved forward as a laboratory for innovation and climate change. Chairman Nichols' work leading CARB has given her the chance to closely monitor the state operating as such a laboratory.

"I'm very proud that our state is one of those that has also had to take its ability to lead in these areas to the Supreme Court and has had that right to be an innovator in the area of stricter emissions."



However, Nichols explained, a framework in which the states have the ability to participate both as leaders and as partners with the federal government is going to take the best efforts of leaders from both sides.

“You can’t get to the 80 percent by 2050 without the cooperation of sources that are exclusively under federal jurisdiction.” For example making major changes to the electricity grid that will go across state lines must require federal involvement.


For this reason, according to Nichols, “I don’t think there’s too much debate that we want the federal government to come in and take an active role on the state’s behalf.” She went on to say that while climate change breaks all models, “the Clean Air Act remains the best model and the best tool we have today to take on a problem of this kind. And, perhaps not a complete solution, it offers a good basis so we do not have to reinvent the wheel.”

We do need, Nichols said, to step in and prevent a “race to the bottom,” in which the state with the most lax pollution requirements attracts all the industry, particularly when dealing with climate change because the pollutant is one that operates in a global atmosphere.

The federal government has to establish some sort of “race to the top,” in which states can attract jobs, federal money and the other benefits by leading on climate-change technology.

Nichols stressed that the federal government must set a framework that will require us all to move forward.

“It’s happened before. It’s worked with our vehicle standards. It’s worked with energy efficiency standards. And we see no reason why it won’t continue to be effective in areas of advanced fuels and technology.”

To watch Mary Nichols’ full presentation and the three panel discussions from the inaugural symposium, please go to law.sandiego.edu/watchcelsymposium. 

Second Annual Symposium

The University of San Diego’s Second Annual Climate & Energy Law Symposium, “Next-Generation Regulation: Instrument Choice in Climate Law,” will be held Friday, April 9, 2010 in Warren Auditorium at Mother Rosalie Hill Hall on the USD campus. The symposium will explore various regulatory approaches being proposed and adopted to reduce greenhouse gas emissions. Panels will focus on how innovative regulatory instruments such as carbon taxes and emissions trading complement, displace and otherwise interact with traditional “direct” regulatory approaches such as setting and enforcing emissions standards.

For more information about the upcoming event, please go to law.sandiego.edu/celsymposium.

Political Analyst and FOX News Channel Commentator Michael Barone Keynotes Sixth Annual Bowes-Madison Distinguished Speaker Series

By Patrick Riedling

PHOTO BY ANDREW HARNIK



“I think Republican strategists are looking ahead at the campaigns of 2010 with realistic hopes of significant gains. Democratic strategists are looking ahead with fear and trepidation.”

—Barone

After a long and challenging climb to the pinnacle of American politics in 2008, President Barack Obama and a reenergized Democratic Party, which had won substantial majorities in both chambers of Congress, seemed poised to begin a new era of political discourse and embark upon significant changes in national policy. Political analysts and leaders from both parties were observing in unison that change had most assuredly come to Washington.

But only ten months later, the dream of a new national political paradigm seemed to be waning. Republicans won governorships by significant margins in Virginia and New Jersey, healthcare reform stalled in the Senate, and public opinion soured on massive corporate bailouts.

“I am here to address the question, ‘Are we in a new era?’” stated Michael Barone, senior political analyst for the *Washington Examiner*, contributor on FOX News Channel and resident fellow at the American Enterprise Institute. On November 9, 2009, Barone delivered the keynote address at the sixth installment of the annual Joan E. Bowes-James Madison Distinguished Speaker Series at the Joan B. Kroc Institute of Peace & Justice.

“We were ready last spring,” began Barone, “as Franklin Foer and Noam Scheiber wrote in the *New Republic*, for ‘a form of liberal activism that is eminently saleable in this country—both with the average voter, easily spooked by charges of creeping statism, and the constellation of political interests in Washington,’ and ‘the bold, persistent experimentation that the moment demands.’”

“Well, not so fast,” said Barone.

Citing polling data showing support for the Obama administration’s programs and policies had dropped well below 50 percent, Barone highlighted the administration’s problems. He pointed out that although the Democrats’ healthcare legislation—assumed by insider lobbyists to be a sure thing—did narrowly pass the House, it was in real trouble in the Senate. Passage of legislation to limit carbon emissions was even dimmer. The economic stimulus

package passed last February and the auto company bailouts of General Motors and Chrysler had mixed reviews. And vast budget deficits have proved to be widely unpopular.

The Democratic Party also suffered reverses in the November 2009 elections in states that Barack Obama carried where the issues, although state issues, were roughly congruent with those at a national level.

“I think Republican strategists are looking ahead at the campaigns of 2010 with realistic hopes of significant gains,” said Barone.

“Democratic strategists are looking ahead with fear and trepidation.”

For a decade from 1995 to 2005, the U.S. operated in a period of trench-warfare politics where both parties’ presidential candidates won between 48 and 51 percent of the vote, a narrow range. This occurred at a time when voting for Congress followed the same pattern with more straight-ticket voting than we had seen since the 1940s. The parties, both their politicians and their voters, were like two armies in a culture war of almost exactly the same size, fighting it out over narrow margins that meant the difference between victory and defeat. It was pretty clear what the major issues were, what strategies were necessary to win a party’s nomination and how to maximize your side’s turnout on election day. But times change.

Somewhere between Hurricane Katrina in August 2005 and the bombing of the Samarra mosque in February 2006, Barone believes we entered a period of open-field

politics, in which candidates are more likely to explore options and move around within wider patterns of political discussion. At the same time, voters see the valid points to issues and stances on both sides of the debate.

Barone feels confident that in our current era of open-field politics, many things can change. But despite this era of open-field politics and despite the likelihood that Republicans will make gains in the 2010 off-year elections, he believes there is still good reason to expect President Obama’s re-election in 2012.

“Most Americans want him to succeed,” he said. “They have a certain goodwill toward him as they did toward Bill Clinton in 1996 and George W. Bush in 2004, and I think many Americans will be reluctant to reject our first African-American president.”

Barone suggested that in this period of open-field politics, many electoral results are possible. In his analysis of the majority of voters that elected President Obama, he noted that one of the weaknesses was that the voting coalition—as was revealed in the exit polls—is a top and bottom coalition. Obama carried voters with annual incomes under \$50,000 and carried voters with annual incomes over \$200,000. Voters with annual incomes between \$50,000 and \$200,000 voted for John McCain. That suggests that there is certain instability in such a coalition.

Barone agrees with longtime Washington reporter Tom Edsel, who made the somewhat obvious

point that high-income voters and low-income voters don’t want the same thing. Low-income voters want the healthcare plans, but high-income voters who are going to get hit by taxes on it don’t. Low-income voters don’t want cap-and-trade legislation increasing energy costs whereas high-income voters who are very worried about global warming tend to favor cap-and-trade.

Evidence of that fraying of the top and bottom voting coalition is ripe in the November 2009 election results in Virginia and New Jersey. Barone notes that in the affluent suburban counties, which had been trending Democratic since the beginning of the trench-warfare period of politics in 1995—trending Democratic on largely cultural issues such as abortion—went back to the Republicans in those two state contests. Fairfax County, Va., which voted for Obama by a margin of 60 to 39 percent, voted for Republican Bob McDonald by 51 to 39.

“Fairfax County,” said Barone, “like San Diego County, is a county

with a large number of immigrants and new voters from other countries. Bob McDonald spent a lot of time campaigning with them, talking with them, exchanging ideas with them, and he seems to have carried the Asian vote in Fairfax County, which definitely went against John McCain in 2008. So that indicates that there is some possibility for Republicans in those counties.”

The other asset of the Obama coalition in 2008 was the ability to get the young vote. Voters 18 to 29 years old voted for Barack Obama by a 66 to 32 percent margin, the largest margin for young voters seen since exit polling began in 1972. Voters 30 and over voted for Barack Obama by only a 50 to 49 percent margin. The Obama campaign had a robust turnout for young voters.

In the 2009 Virginia and New Jersey elections, these voters didn't turn out to vote. More than 400,000 18-to-29-year-olds in 2008 voted in each of those two states. Only 120,000 voted in November 2009. The young vote was down two-thirds in New Jersey and three-quarters in Virginia. In Virginia, they voted for Republican Bob McDonald by a 54 to 44 margin.

“I think the allure of Obama-mania has worn off to some extent,” said Barone. “Sales of those T-shirts are down, but the fact is they sure aren't buying Republican T-shirts. While non-voting may be something that Republican strategists would have them do for a while, that condition will not be permanent.”

For the moment, Barone believes those who projected a long-lasting natural Democratic majority from



Michael Barone, Joan E. Bowes, Kevin Cole, Larry Davis.

PHOTO BY ALAN DECKER

the results of the 2008 election don't look much more far-sighted than those who projected a long-lasting natural Republican majority based on 2004.

“In fact, as I go on and co-author more editions of *The Almanac of American Politics*,” said Barone, “I am increasingly inclined to agree with the Yale political scientist David Mayhew that the pursuit of a long-lasting national party majority is kind of a will of the wisps.”

Barone points out that when you look closely at past periods of American history and the electoral facts, no party has had that long-lasting natural majority. There are always exceptions to the rule. But he thinks it is possible to make enduring public policy changes, enduring at least for a generation, and sometimes for longer than that.

According to Barone, the Democratic victory of 2008 has resulted—contrary to the expectations of the winners—in a clear demonstration that current policies of the Democratic Party run against the grain of American public opinion, something that really wasn't entirely clear a year ago.

“Certainly not to the Democrats,” he said, “but not really to any of us because we had not yet been through a period of many years in which voters in general were giving serious thought to what those policies would mean in real life. Now Americans have had that chance.”

Barone closed by saying the 2008 elections and the political events of 2009 have proved once again that in defeat are planted the seeds of victory. “We just don't know yet where precisely they are going to sprout up.”



Longtime La Jolla resident and civic activist Joan E. Bowes continued her family's passion for learning by establishing the Joan E. Bowes-

James Madison Distinguished Speaker Series through the University of San Diego School of Law. Established in 2004, the series is designed to inspire law students and other members of the San Diego community and to promote the open exchange of ideas.

U.S. Supreme Court Justice Antonin Scalia Discusses “Originalist Approaches in Recent Supreme Court Decisions”



On Wednesday, September 2, U.S. Supreme Court Associate Justice Antonin Scalia gave a lecture in Shiley Theater titled, “Originalist Approaches in Recent Supreme Court Decisions.” Often referred to America’s leading originalist, Scalia began his talk with a synopsis of originalist theory of interpretation and then explained how this method influenced three recent Supreme Court opinions.

“The opposition to originalism is not another theory of Constitutional interpretation,” Scalia began. “Rather it is simply ‘non-originalism.’” Originalism is the “only game in town,” because “without a theory of interpretation, what can you rely on? Natural law? Yeah, we all can agree on that . . .”

Originalist interpretation is defined as the view that the

Constitution has a fixed and knowable meaning that was established at the time of its adoption. Originalists construe the Constitution using the context in which it was written. Evolving concepts of justice and interpretation simply warp the founders’ intention.

After the lecture, a panel of four USD law professors from the school’s Center for the Study of Constitutional

Originalism (C-SCO) questioned Justice Scalia on the cases he discussed. Professors Don Dripps, Mike Ramsey, Steve Smith and C-SCO Chairman Mike Rappaport challenged Justice Scalia with detailed questions more befitting a courtroom or constitutional law seminar than a lecture hall. Their questions allowed Justice Scalia to both make the case for originalism and defend its weak points.

The first case was *District of Columbia v. Heller*, a 2nd Amendment challenge to a Washington D.C. law limiting the sale of firearms and imposing requirements on their possession. Six residents challenged the law on the grounds that it violated their 2nd Amendment right to bear arms. Going into the history of the 2nd Amendment, Scalia said that its purpose was to ensure that the stand-

ing militia could keep the rifles and weapons they used in battle at their homes. Historically, the ruling clan or King exercised control by confiscating the weapons of the militia and those who opposed them, a practice the founders intended to prevent.

Defenders of the D.C. law argued that the 2nd Amendment refers only to militia members’ ownership of guns, a concept that became outdated when the United States formed a standing military. Justice Scalia stated that the modifier at the beginning of the 2nd Amendment, “a well regulated militia, being necessary to the security of a free state . . .” does not limit the protections to those in the military, rather it provides clear reasoning that the 2nd Amendment was intended to protect citizens’ right to possess guns. For Scalia, the right the founders intended to protect was the right to own guns, not necessarily a right to belong to any militia.

Professor Smith pointed out that the majority in *Heller* went out of its way to allow for certain exceptions to the right to bear arms, excluding, for example, the mentally ill and felons. He asked Scalia where he drew the line on exceptions and what provided for these limitations as they were not in the text of the Constitution. Scalia pointed out that being an originalist does not confine one solely to the text of the document and that in this case, mentally

ill people and felons would of course be exempted from 2nd Amendment protections, because when the 2nd Amendment was written, the mentally ill and felons would have been institutionalized and executed, respectively.

These exceptions are still valid today, as Scalia pointed out, because we routinely restrict the freedoms of felons and the mentally ill by institutionalizing them or taking away their vote. Scalia said if these more basic freedoms could be limited, then the right to own a gun could most definitely be withheld as well.

The second case was *Boumediene v. Bush*, the only case discussed in which the originalist interpretation was in the dissent. Prisoners kept in the Guantanamo Bay military facility as enemy combatants filed for a writ of *habeas corpus*. The Kennedy majority granted the writ, but Scalia dissented, joined by Justices Roberts, Thomas and Alito. Scalia argued that the act of Congress that suspended *habeas* for prisoners at Guantanamo

was constitutional because it did so in a time of war and against enemy combatants.

This provided a very close case, as Guantanamo's status as an American-leased, but not sovereign territory, complicated the situation and left no applicable precedents. In applying his understanding of *habeas* rights, Justice Scalia found that they did not apply to enemy combatants simply because they were housed at Guantanamo. If simply being on U.S. leased or owned soil entitled enemy combatants the same rights as citizens, it would create a double standard for enemy combatants kept on foreign soil.

Scalia argues that in such a case, where a statute is neither clearly unconstitutional nor constitutional, the court has to give deference to Congress. This was in line with Scalia's understanding of the intent of the founders and with the applicable portions of the Detainee Treatment Act of 2005, which was being challenged.

Professor Ramsey asked Justice Scalia why it was not the other way around—why in close cases, the court would not look for stronger justification from Congress that their action was constitutional. Scalia responded that it just was not done that way and U.S. history had not provided for such a precedent. When challenged further, he commented that in his dissent he “wrote a lot and they (the professors) read it like it's a statute,” nevertheless he stands by his dissent.

The final case discussed was *Crawford v. Washington*, in which Michael Crawford was charged with attempted murder and assault on another man he believed to have raped his wife. Crawford's wife had stated in interrogation that the man her husband attacked did not have a weapon, which was contrary to Mr. Crawford's statement. Washington state law forbade requiring the wife to testify in court against her husband, but the prosecutors were able to play a tape of the statement,



despite hearsay rules, because it was ruled reliable enough under previous precedent. Mr. Crawford claimed this violated his 6th Amendment right to confront witnesses against him.

The court agreed with Mr. Crawford, and Justice Scalia wrote the opinion. He stated that the current indicia of reliability standard was completely inadequate, just as “dispensing with confrontation because testimony is obviously reliable, is akin to dispensing with jury trial because a defendant is obviously guilty.” To Scalia, confrontation means confrontation, and nothing less, even if the statement is reliable.

Through his lecture and spirited answers to the professors’ questions, Justice Scalia outlined what he believes to be the only game in town when it comes to interpreting the law. He made the argument for originalism’s intellectual consistency through the three cases, relying on what he found to be the writer’s intent. Some have made the argument that original intent can be shifted and warped as much as the words themselves. However, to Justice Scalia, there is an original intent that can be divined through research and then used to understand the law’s relation to any modern situation.

In his final words, Scalia noted that originalist interpretation is not taught or well understood at many law schools. The justice was grateful for the chance to spend a few days on the USD campus teaching students, one of only a few law schools lucky enough to house a center devoted to originalist study. 🏠

Supreme Court Justice Antonin Scalia: One Student’s Perspective

By Anna Phillips



On September 1, 2009, a group of second-year students enrolled in the Paul A. McLennon, Sr., Honors Moot Court Competition, gathered to hear Supreme Court Justice Antonin Scalia’s perspective on oral advocacy. Luckily, I was fortunate enough to be a part of this group who asked Justice Scalia questions about the art of oral advocacy, the quality of attorneys before the United States Supreme Court, and proper appellate courtroom etiquette.

But the conversation was not all law and order. Although Justice Scalia has written opinions exhibiting his biting wit, it never crossed my mind that Justice Scalia, in addition to being well-spoken and intellectually discerning, would be funny, charming even to the most ardent of those who oppose his conservative and originalist views. And it dawned on me: although the United States Supreme Court is the most venerated and serious legal forum in the United States, Supreme Court justices also appreciate witty banter in the courtroom. Oral advocacy is not just about the facts and the law; it can also be about conveying your argument in an intelligent, maybe even humorous, way. Everyone appreciates a little levity—even Supreme Court justices.

Scalia’s humorous perspective is not limited to oral argument. Take his view on the “lady-like” lawyer: “Ladies have to be lady-like, but that doesn’t mean they can’t be assertive ... you should see Justice Ginsburg take a lawyer and grrr, shake them around with her teeth!”

Justice Scalia’s talk was not all tongue and cheek, however. Students did receive tips about appellate advocacy that they could apply to their own oral arguments: be careful with language, present briefs that are logical and sequential, choose your best arguments and stick with them, be brief and immediately after realizing you made a mistake, take it back to “repair the damage as soon as you can.”

In retrospect, Justice Scalia did me a favor. After years of being mired down in the weeds of the strict scrutiny test, the Federal Rules of Civil Procedure and the separation of powers, Justice Scalia reminded me that the law does not have to be the cursed drudgery of the daily grind. To love the profession we have dedicated ourselves to, we must always look at the humor of the situation. Humor not only imbues an intelligent argument with charm, but also helps the average attorney stay sane amidst the solemnity of the law. 🏠

2009 Paul A. McLennon, Sr., Honors Moot Court Competition

Outstanding performances for RLUIPA case: pre-textural discrimination or unconstitutional overextension of Congressional power?

On March 4, the University of San Diego hosted the final round of the Eighth Annual Paul A. McLennon, Sr., Moot Court Competition at the Joan B. Kroc Institute for Peace & Justice. At issue was the fictitious Supreme Court case of *Assembly of Light Church v. City of Muir Island, State of Sequoyah*. The case involved the highly controversial Religious Land Use and Institutionalized Persons Act (RLUIPA). This law applies a strict scrutiny standard to local zoning decisions that substantially burden religious exercise. Congress unanimously enacted the statute after the Supreme Court struck down the Religious Freedom Restoration Act, an earlier effort to protect the free exercise of religion from burdensome laws and regulation.

In our case, a community church, already unpopular in its wealthy suburban community for its controversial animal sacrifice practices, seeks to tear down its existing structure and build a state-of-the-art center for the homeless. The project requires a zoning permit. Residents attending the zoning board hearing complained that the project would draw the homeless to the community, where it is largely believed that a homeless man recently murdered a wealthy heiress in her home. The zoning board denied the permit application, designating the building a historic landmark. The church



2009-2010 Moot Court Executive Board, from left to right: Judge Janis L. Sammartino, Judge Richard R. Clifton and Judge Bruce S. Jenkins.

filed an RLUIPA lawsuit, arguing that the permit denial was arbitrary and an example of pre-textual discrimination.

For Moot Court purposes, our “Supreme Court” reviewed both the issue of whether RLUIPA is constitutional under Congress’s 14th Amendment remedial power to enact prophylactic legislation to deter constitutional violations, and whether the statute impermissibly advances religion under the Establishment Clause by providing religious groups with a remedy unavailable to their secular counterparts.

Arguments were heard by a three-judge panel, the Honorable Richard R. Clifton, circuit judge for the United States Court of Appeals,

Ninth Circuit, presiding. He was joined by the Honorable Bruce S. Jenkins, United States Senior District Judge, District of Utah, and the Honorable Janis L. Sammartino, United States Senior District Judge, Southern District of California.

Derek Hecht, ’10, argued that RLUIPA was passed for cases just like the one before the mock court—where a local government places a substantial burden on a religious group under a pre-textual land use law application. Past cases show individualized assessments can lead to hidden unconstitutional discrimination, so RLUIPA simply solidifies protections for religious groups by statute.

Lindsay Parker, ’10, responded that because RLUIPA is an over-

exertion of Congressional power and violates the Establishment Clause of the First Amendment. Section 5 of the 14th Amendment gives Congress the ability to enforce the provisions of the Constitution, but Congress can only do so in a remedial fashion—meaning that Congress can enforce by statute only when there is a pattern of discrimination found in the legislative history. Furthermore, because RLUIPA created new rights and protections for religious groups that secular groups did not have, it was an unconstitutional overextension of Congressional power.

“It would be very difficult to judge the substance of this case; it was at least as difficult judging the competition,” remarked Judge Clifton. “I can say without any doubt that the arguments you heard were far superior to a good 90 percent of the arguments that I get in my day job. It was an outstanding performance and both of



you have outstanding futures ahead of you.” With that said, Clifton announced Lindsay Parker as the competition’s winner.

Professor Michael Devitt and his

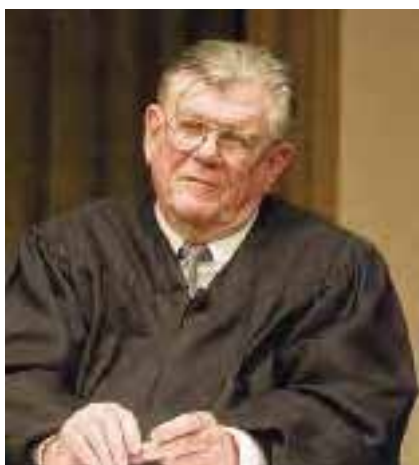
family endowed the moot court competition in 2001 to honor long-time family friend, attorney and naval officer Paul A. McLennon, Sr. The competition provides students an opportunity to develop their brief-writing and advocacy skills by testing them in an open and rigorous competition. After filing a written brief, early round participants are given 15 minutes to argue their position. Those students who move on to the semi-final and final rounds are allotted 20 minutes for arguments. Participants are also required to argue both sides of the issue as they advance in the competition. More than 400 local attorneys took part as judges and were charged with the task of narrowing the field down from 93 participants. 🇺🇸



Left: Lindsay Parker, '10
Right: Derek Hecht, '10

The Honorable Bruce S. Jenkins Visits USD Law

By Andrew Adams



On March 4, 2009, United States District Court Judge Bruce S. Jenkins came to USD to meet with students and to help judge the McLennon Moot Court competition. At a lunchtime event for students, Judge Jenkins discussed *Allen v. United States*, 588 F. Suppl 247 (D. Utah 1984), a case on which he ruled 25 years ago, and one that continues to strongly influence American law.

In *Allen*, 24 plaintiffs brought suit against the federal government for the negative health effects of atomic tests conducted in the 1950s and early '60s. Judge Jenkins ruled that the government was liable for compensatory damages, adding that Utah residents should have been better warned and protected when exposed to nuclear radiation. The case was notable for many reasons, and was one of the first radiation exposure cases in the nation brought against the federal government.

In the discussion, Judge Jenkins stated that he knew *Allen* would be

a landmark case, that it would definitely be appealed. For that reason, he allowed both sides to develop an enormous record. The case took 13 weeks to hear and produced a 500-plus-page decision.

Judge Jenkins had to decide whether the U.S. government had a duty to protect its citizens from any and all radiation or whether a certain limited amount was acceptable. He found that the Atomic Energy Commission, in allowing citizens' exposure to an acceptable amount of radiation, had erred and thus the government was responsible for at least nine of the citizens' injuries.

Because this was the first tort case to deal with atomic fallout, experts had to be called to determine whether atomic bombs could cause this type of damage on the human body and how widely the nuclear fallout could have spread. The general tort questions of duty, breach and causation had to be answered, all complicated by the federal government's presence and the public nature of the case.

Notable in the decision is the discussion of atomic particles and their affect on the human body. Some exhibits included equations explaining how atoms break down, the periodic table of elements, and long asides that explained the intricate science. Judge Jenkins also wrote a well-crafted introduction to the case that tried to break the case down to its essential elements: "This case is concerned with what reasonable

men in positions of decision making in the United States government between 1951 and 1963 knew or should have known about the fundamental nature of matter."

The decision evidences Judge Jenkins' intellectual curiosity in many areas: science, government and the law, as well as his personal history as a politician in the Utah State Senate. He is a man who understood the historical nature of the case, the politics that were shaping the facts themselves, as well as the public's reaction to the decision. This case may have overwhelmed a lesser judge.

The 10th Circuit did overturn the decision three years later ruling that exposing citizens to a limited amount of radiation is acceptable. But Judge Jenkins said that he is somewhat vindicated. Although his decision was overruled, the scientific, risk and governmental community have all been moving toward a zero exposure theory rather than a limited exposure one.

There was a larger message Judge Jenkins found in the case; one that he learned on a trip to speak in West Africa just after rendering his decision. He was hailed as a hero there, not simply because he ruled in favor of the citizens, but because he oversaw a case in which they brought a tort suit against their government—a situation that the Africans found incredible. Judge Jenkins had a unique appreciation for this fact because of his history as a legislator and a judge. He reveled in the

In Memory of USD Law Benefactor Sol Price

American ideal that regular citizens were at liberty to seek legal redress from the most powerful government in the world.

He said that no matter how the case had come out, it was a victory for the United States judicial system that the federal government could potentially be held liable. He enjoyed trying the case very much, and he hoped that it could provide a template for future complex, science-driven cases.

Judge Jenkins is known for his two extensive careers, first within state politics as a Utah State Senator and then within the judiciary as a United States district judge. Appointed a member of the Utah State Senate and twice re-elected by wide margins, he served as minority leader and was elected president of the Utah State Senate at age 37. Jenkins authored and sponsored legislation dealing with the management of public monies, securities regulation, civil rights and public employee retirement and is credited with modernizing the executive branch of the Utah state government. In 1965, he was appointed as a bankruptcy judge for the United States District Court, District of Utah. In 1978, Jenkins was nominated as United States district judge by President Jimmy Carter, confirmed by the United States Senate and served as chief judge of the court from 1984 until 1993. In 1994, he assumed his current status as United States senior district judge. 🇺🇸

University of San Diego School of Law benefactor Sol Price, a business visionary whose Price Club retail stores revolutionized the way millions of Americans shop—in no-frills warehouses that offer bulk items at cheaper prices to consumers willing to pay membership fees—died December 14, 2009,



at his home in La Jolla, Calif. at age 93. His family said he had been in declining health in the last two years and did not cite a specific cause of death.

Sol Price was instrumental in helping start the Center for Public Interest Law at USD School of Law. Price left behind a legacy of education and community improvement.

Sol and Helen Price, with early support from Robert and Allison Price, were initiators of the law school's Center for Public Interest Law (CPIL). The idea to focus on state regulatory agencies originated with Price's 1979 observation that advocates and media largely ignored that essential legal forum.

In 1990, Price funded the law school's first faculty chair, the Price Chair in Public Interest Law. It was one of two major public interest chairs nationally. He directly provided \$1.5 million in funding to endow the chair in perpetuity. Price helped with subsequent fundraising and convinced other foundations to donate, particularly after CPIL created its sister organization, the Children's Advocacy Institute (CAI) in 1989.

"The Price family, and each of them, had their hearts in our work for children," says Robert Fellmeth, the Price Professor of Public Interest Law at USD School of Law. "Sol helped with early funding during its first five years and encouraged us 'to never criticize anyone or anything without offering a constructive alternative' that would meet our critique and stand up to its own.

"Personally, I miss Helen's quiet courage and Sol's entertaining wit and boundless heart. I remember most our weekly walks in La Jolla (early weekend mornings) where we would do what he liked best, walk briskly for 40 minutes with a few good friends such as Paul Peterson or Murray Galinson, arguing loudly, making fun of each other, and getting a free breakfast out of it at that muffin shop."

Professor Fellmeth concludes, "I have always been, and will always be, proud to wear the Price family name next to mine." 🇺🇸



Lesley McAllister Makes
ENVIRONMENT

New book chronicles the unique group of prosecutors helping Brazil emerge as an international leader in climate change law.

By Angie Jensen



ALL LAW Matter

When Brazilian President Luiz Inácio Lula da Silva said the “21st century would belong to Brazil,” many thought the statement a bit of an exaggeration. But with recent improvements in the economy, increasingly reliable political institutions, the discovery of large offshore oil fields, and promises to host the World Cup in 2014 and the Olympics in 2016, the future is definitely looking bright.

The Reviews

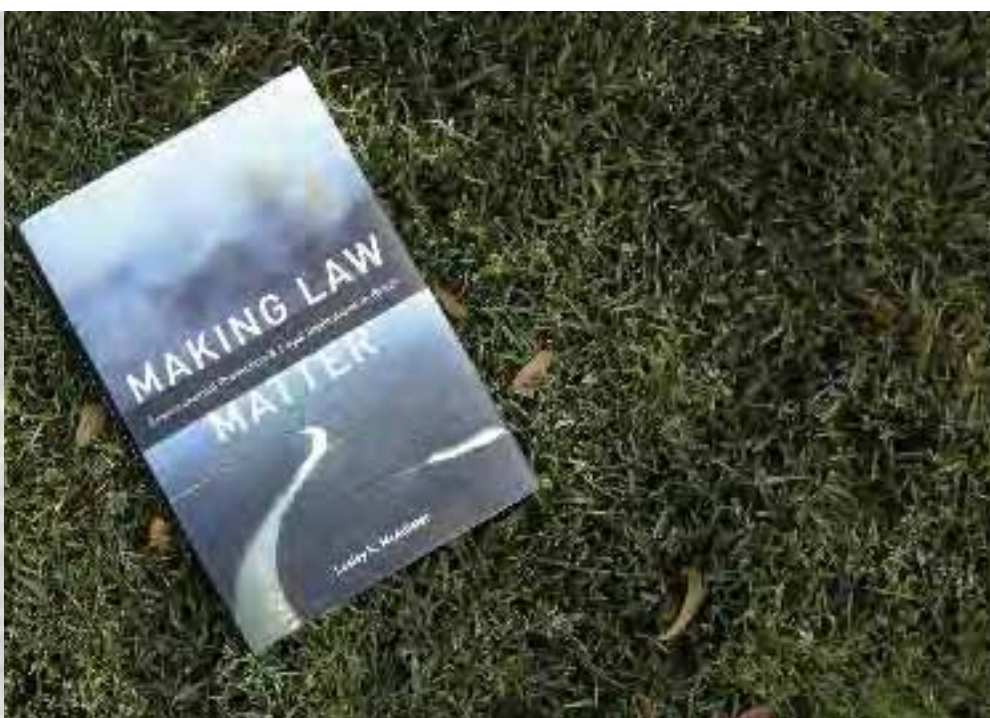
“Making Law Matter is a wonderful addition to the growing literature on global environmental law. Lesley McAllister explores the difficulties of enforcing environmental law in Brazil, a country critical to the future health of the planet. She examines enforcement patterns in different Brazilian states and discusses the influence of the ‘Ministério Público,’ an unusual, independent public interest entity that has launched major environmental initiatives. I highly recommend this book to anyone seeking to broaden their understanding of global environmental law.”
—Robert Percival,
University of Maryland

USD School of Law Professor Lesley McAllister’s recently published book *Making Law Matter: Environmental Protection and Legal Institutions in Brazil* (Stanford University Press, 2008) could not be timelier. While not making any promises for the next century, Professor McAllister does see Brazil emerging as a major international player in environmental law. Over the next decade, this will put Brazil under great scrutiny as to how it will balance its economic development with environmental quality.

“Brazil is a critical country for dealing with climate change,” explains McAllister, who has long been interested in Brazilian environmental law. “It is among the ten largest countries in the world in terms of size and population, and home to the Amazon—the world’s largest tropical rainforest. Most notably, tropical deforestation contributes about 20 percent of the global carbon emissions that cause climate change.”

Given the country’s importance to the planet’s overall health, environmentalists are paying close attention to how Brazil will handle a number of issues related to its recent prosperity: How will Brazil develop tens of billions of barrels of recoverable oil in recently discovered deep-sea oil fields? How will building projects for the World Cup and the Olympics impact Brazil’s environment? And how will Brazil curtail Amazonian deforestation in the face of strong pressure to clear the land for ranching and agriculture?

*“At the outset, it is essential to note what an important service *Making Law Matter* performs, not only for legal writing in English about Brazil, but more generally for legal writing in English about countries in development. Specifically, Professor McAllister’s focus is on the dynamics of legal institutions and the process that leads to their creation. This is terrifically important work for a country like Brazil, with a democracy that, in 2009, is just a quarter-century old.”*
—Colin Crawford,
Georgia State University



Brazil's Ministério Público in São Paulo.

Historically, developing countries have struggled with enforcing environmental laws. Regulatory agencies are frequently underfunded and poorly staffed, and corruption sometimes stymies any real progress. Brazil, however, has been an important exception.

In her new book, McAllister explains how the Brazilian Ministério Público and its unique group of public prosecutors have become central figures in environmental law enforcement, enabling both prosecutors and judges to supplement the environmental enforcement work of regulatory agencies.

The Ministério Público is an independent branch of the government that was granted new responsibilities to represent the environment and other public interests by the 1988 Federal Constitution. Its prosecutors have the authority to file legal actions against private groups, companies, individuals as well as the government and its officials. With this new authority, prosecutors can now conduct investigations and file actions against those who violate environmental laws, leveraging Brazil's relatively strong legal system to enhance the effectiveness of environmental law.

The right to a healthy environment is part of Brazil's constitution, and the country's environmental laws are some of the most comprehensive in the world. Due in part to the actions of the Ministério Público prosecutors, Brazil's environmental laws have become more than just words. Today, most of the country's experts on environmental law are prosecutors. They have learned how to work effectively with the media and local environmental groups to increase awareness and place pressure on those who harm the environment.

"When a prosecutor files a headline environmental case, the public as well as the defendant learn more about what the law requires of them," explains McAllister in her book. "When the judge decides an environmental case, the law is interpreted to clarify its meaning and applicability. Prosecutions and court decisions also compel compliance with the law. The legal system is harnessed to bring force to environmental laws."

McAllister first became interested in Brazil's environmental prosecutors during law school when she spent the summer between her second and third years in the country to study developments in Brazilian environmental law. Before law school, McAllister served as a Peace Corps volunteer in Costa Rica and had already begun to develop expertise in Latin American environmental law and policy.

She returned to Brazil after graduating from law school to conduct doctoral dissertation research on the Ministério Público in two very different Brazilian states: the southern, industrialized state of São Paulo and the northern, Amazonian state of Pará. In each state, McAllister observed the internal workings of Brazilian environmental enforcement by getting "inside" both the Ministério Público and state environmental agencies through a series of "internships."



The right to a healthy environment is part of Brazil's constitution, and the country's environmental laws are some of the most comprehensive in the world. Due in part to the actions of the Ministério Público prosecutors, Brazil's environmental laws have become more than just words.

Second Annual Climate & Energy Law Symposium

On April 9, 2010, USD School of Law's Energy Policy Initiatives Center and San Diego Journal of Climate & Energy Law will host the Climate & Energy Law Symposium. The symposium, "Next-Generation Regulation: Instrument Choice in Climate Law," will explore various regulatory approaches being proposed and adopted to reduce greenhouse gas emissions. The keynote address will be given by White House Counselor for Energy and Climate Change and Harvard Professor of Law Jody Freeman.

Sessions will discuss innovative regulatory instruments such as carbon taxes and emissions trading complement, displace, and otherwise interact with traditional "direct" regulatory approaches such as setting and enforcing emissions standards.

Climate and energy law expert panels will focus on cap-and-trade regulation, carbon taxes and other climate policy instruments. Presenting articles is an impressive group of scholars including: David M. Driesen of Syracuse University College of Law, Michael Wara of Stanford Law School, Reuven Avi-Yonah of University of Michigan Law School, Richard J. Lazarus of Georgetown Law Center and USD School of Law, and Holly Doremus of the University of California, Berkeley School of Law.

In addition, this year's symposium will be preceded by a Pre-Symposium Workshop on Thursday, April 8, titled "Siting Energy Projects in California: Finding the Balance." John Geesman, co-chair of the American Council on Renewable Energy and former California Energy Commissioner, will present the workshop's keynote address.

Professor McAllister is the chair of the annual symposium, which had its inaugural event in February 2009. She is also the faculty advisor for the San Diego Journal of Climate & Energy Law, which publishes symposium articles and other scholarship related to climate and energy law.

McAllister's research and writings have helped shed light on an area that has received little scholarly attention—environmental law in developing countries. The area is an important one. Environmental problems are not confined by national borders and some of our most important environmental resources belong to developing countries. McAllister's research helps us understand how to make environmental law matter in these countries right now.

Building on her work in Brazil, McAllister has written a series of articles on controlling pollution through economic incentives—also known as emissions trading or cap and trade regulation—to address the problem of air pollution. Cap and trade regulation has been used since the early 1990s in the U.S. to reduce traditional air pollutants such as nitrogen oxides and sulfur dioxide, and it is now looked to as the regulatory instrument of choice for reducing the greenhouse gases that cause climate change.

McAllister's scholarship and research is, once again, very timely as the U.S. Congress is currently considering a new federal climate change law that features cap and trade regulation.

As full-time professor of law at USD, McAllister focuses her teaching and research in the areas of environmental law, property law and comparative and international law. Before joining the University of San Diego law faculty, Professor McAllister clerked for the Honorable Fern M. Smith of the Northern District of California and also worked for Earthjustice and the U.S. Environmental Protection Agency Office of Regional Counsel.

Professor McAllister's personal involvement in many high-profile cases that impact environmental law makes classes extremely popular. USD law student Vic Merjanian, '10, says that students love to take McAllister's classes because her real-world experience makes their classroom discussions so much more dimensional and relevant.

"I think it is definitely to a teacher's credit when you have a three-hour climate change class and you are not looking at the clock," says Merjanian.

McAllister has been integral in building the law school's environmental program, which now offers a full set of environmental law course offerings including several clinical courses. The law school's Stanley Legro Professorship in Environmental Law brings some of the

most celebrated environmental law experts in the country to campus. In addition, the law school has the *San Diego Journal of Climate & Energy Law*, an active Environmental Law Society, an environmental film series, and numerous environmentally related guest speakers.

“Professor McAllister has been an invaluable addition to our program,” says USD School of Law Dean Kevin Cole. “Her passion for protecting the environment not only shows in her research and the contributions she has made to her field, but also inspires the students she works with.”

When you talk to McAllister about environmental law she is quick to point out how important it is to protect the environment for future generations. “I have children who are six and two years old,” says McAllister. “I hope my work contributes toward giving them a world in which they can be happy and healthy.”

McAllister has found environmental law to be a very effective way to make the kind of difference she is looking for. “The air in our cities is cleaner today than forty years ago because of the Clean Air Act, even though there are more people and cars,” says McAllister. “We have many protected areas like national and state parks, which we enjoy precisely because the laws were passed to protect them from the development that otherwise, would have occurred.”

As we look for ways to become better environmental stewards, McAllister’s research and work sheds important light on how we can use the law to build countries and institutions that will use the world’s limited resources more wisely. 🇺🇸



Brazil is among the ten largest countries in the world in terms of size and population. Given the country’s importance to the planet’s overall health, environmentalists are paying close attention to how Brazil will handle a number of issues related to its recent prosperity.

TECHNOLOGY TAKES THE SPOTLIGHT, INTEGRITY STILL THE STAR

QUALCOMM President Steve Altman, '86,
Delivers the 2009 Commencement Keynote Address

By Ashley Vitale





W“You came to us with talent and impressive backgrounds. And through your hard work and the support of so many of your friends and family with you here today, you have earned a credential that will open many doors,” said University of San Diego School of Law Dean Kevin Cole welcoming the more than 350 graduation candidates who gathered with friends and family for the fifty-second Conferral of Law Degrees on May 16, 2009.

But instead of celebrating the end of final exams, Dean Cole began with a pop quiz.

“When I first started in this profession, a faculty member could hold the attention of a class so long as he or she was more interesting than a game of Hangman. Now, a professor must compete with e-mail, streaming music videos and eBay auctions.”

“Indeed, I suspect that many of you are secretly texting your friends right now,” continued Dean Cole. “I hereby ask that the class of 2009 take their cell phones in hand and prepare to participate in a friendly competition.”

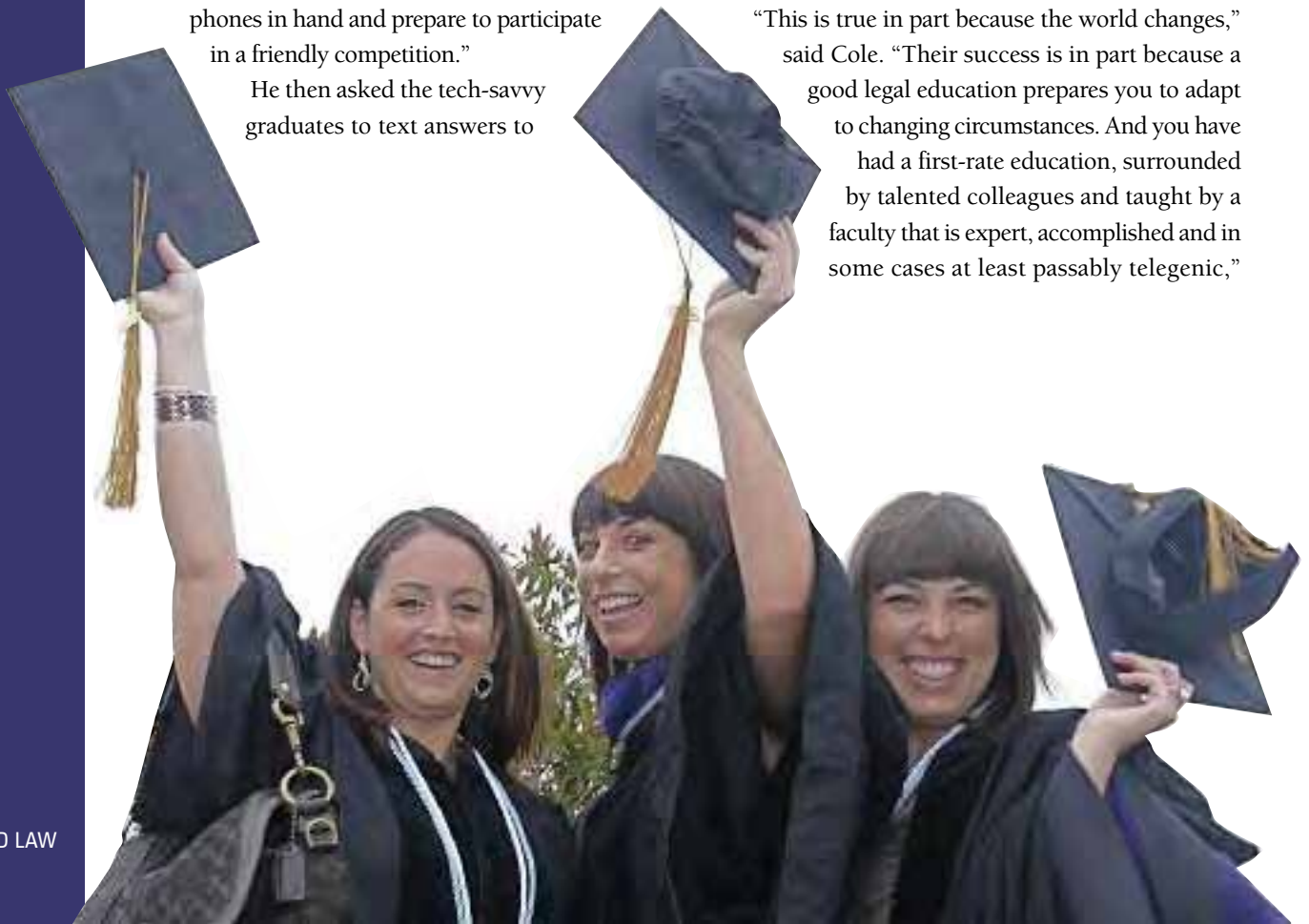
He then asked the tech-savvy graduates to text answers to

three questions, promising the first graduate to respond with the correct answers a \$50 gift card to TGIFridays and a copy of the most recent edition of the *U.S. News & World Report* ranking of U.S. law schools. Could you have taken home the grand prizes in Dean Cole’s text message quiz? See inset on page 34 to test your knowledge.

Weaving the answers to his trivia questions into his commencement address, the dean offered realistic advice to a class that would face the worst legal employment market in decades.

“The fact that the world changes and that the skills demanded of lawyers will also change can cause needless anxiety among graduates,” said Cole. He urged graduates not to be troubled by this, noting that he continues to meet successful alumni who tell him that when they graduated from law school, they had no idea that they would end up doing what it is they do today.

“This is true in part because the world changes,” said Cole. “Their success is in part because a good legal education prepares you to adapt to changing circumstances. And you have had a first-rate education, surrounded by talented colleagues and taught by a faculty that is expert, accomplished and in some cases at least passably telegenic.”



referring to Professor Frank Partnoy's run of national television appearances concerning the economic meltdown on Wall Street.

Dean Cole added, "People will give you advice for many reasons, but a big reason is that they care about your well-being. That is certainly true of your law school. Our future is inextricably intertwined with yours. And your progress reaffirms for all of us that we are engaged in a worthy endeavor."

He closed with a quote from a famous commencement address by Kurt Vonnegut that, oddly enough, never occurred but nonetheless is heralded within many a commencement speech. (Watch Cole's address on YouTube at youtube.com/SanDiegoLaw for the inside story.) "He said, and I quote," read Cole, "Be careful whose advice you buy, but be patient with those who supply it, end quote."

Technology continued to play a pivotal role in the commencement ceremonies when Dean Cole welcomed QUALCOMM, Inc. President Steve Altman, a 1986 graduate of USD School of Law, back to campus to deliver the ceremony's keynote address. Altman leads the only company in San Diego to rank among Fortune magazine's top 250 publicly held companies in 2009.

"Whatever path you travel, I'd like to share with you a few lessons I have learned and have served me well," Altman began. He then laid out the important practices that helped him rise through the ranks at QUALCOMM.

Altman's practical advice was drawn from his own career experiences: speak your mind, don't be



**Top: A group of the 2009 LL.M. graduating class.
Middle: J.D. recipient Devinder Hans with proud family.
Bottom: From left to right, LL.M. in Comparative Law Elena Kazakova, Benjamin Kaiser, Carlos Jáuregui, Saro Grano and Simon Falbe-Hansen.**

Opposite page: From left to right: 2009 J.D. graduates Angela Silvestri, Mary Kate Oehrlein and Jessica Witham.



At the USD School of Law 2009 Commencement celebration, Dean Cole asked students to take a 3-question text message quiz. See if you could have taken home the grand prize:

1. On which of the following television shows has professor Frank Partnoy not appeared?
 - a. 60 Minutes
 - b. Newshour with Jim Lehrer
 - c. Daily Show with John Stewart
 - d. Dancing with the Stars
2. Name the U.S. Politician who, when discussing relations with the Soviet Union, often used the phrase, "Trust, but verify."
3. Name the person who wrote the following: "There are many methods for predicting the future. For example, you can read horoscopes, tea leaves, tarot cards or crystal balls. Collectively, these methods are known as 'nutty methods.' Or, you can put well-researched facts into sophisticated computer models, more commonly referred to as 'a complete waste of time.'"

Hint: the author is also the creator of the comic strip Dilbert.

Answers: 1) d; 2) Former President Ronald Reagan; 3) Scott Adams

afraid to ask questions, embrace your sense of humor and don't shy away from the challenge. However, the most important life lesson he spoke of was about integrity.

"Great leaders are also those who possess great integrity."

Altman explained how early on in his career, he learned an important lesson about integrity from QUALCOMM founder, Dr. Irwin Jacobs. As a young attorney negotiating a venture agreement, the company Altman was negotiating with mistakenly sent an internal memo to his office. The fax discussed details of the negotiation, specifically how much the company was willing to bend on certain issues.


When Altman approached Dr. Jacobs with the information, the QUALCOMM president stopped him in his tracks. With great integrity, he explained that the fax was not intended for their office and Altman should send it back to the other company and let them know they made a mistake.

"I walked out of the office that day with my tail between my legs, but I learned a very valuable lesson," explained Altman. "It is actions like this that define people's character, truly set them apart and make them great leaders."

Altman concluded his list of important life lessons by moving beyond how to get ahead in the working world and focused squarely on creating a perspective that most wouldn't expect from an executive at Altman's level in the high-tech industry:

"There is, and always will be, more to life than work. Invest in and nurture both your career and your personal life. Figure out what makes you happy and spend time doing it. You will accomplish so much more in this world if you can maintain the right balance. When you determine what the most important things are to you and you keep things in perspective, then you find the time."

Altman then concluded his commencement address, sending forth the USD School of Law 2009 graduates filled with a sense of accomplishment, excitement and anticipation.

"Today you have achieved a life milestone and for that you should be very proud," remarked Altman. "You should be excited for the future. Although times may be challenging, new opportunities are never far away." 

Opposite page, Top Left: J.D. recipients Jason Hall and Anand Upadhye.

Top Right: From left to right, J.D. recipients participating in Dean Cole's text message quiz: Jennifer Cormano, Lauren Cooper, Jason Conforti and Cassidy Collins.

Bottom: The plaza at the Jenny Craig Pavilion after commencement ceremonies.





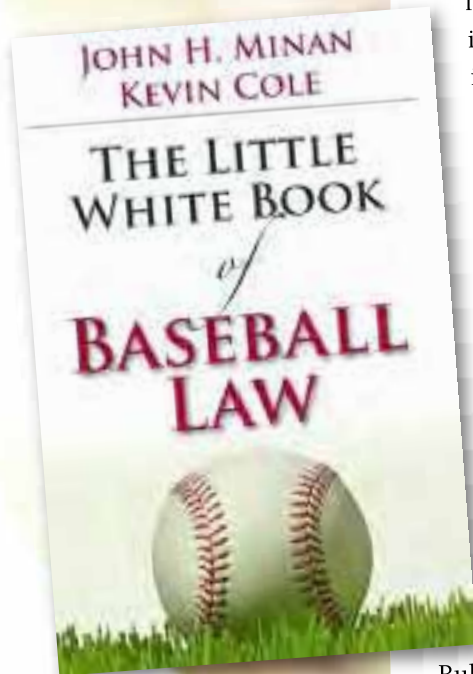
By Andrew Adams

LIFE IS A GAME, BUT

baseball is serious

Who owns the home run ball hit into the bleachers? Whose fault is it when a foul ball hits a spectator? Why did the U.S. Supreme Court exempt Major League Baseball from federal antitrust laws?

To answer these and other questions, USD School of Law Professor John Minan and Dean Kevin Cole offer *The Little White Book of Baseball Law* (ABA Publishing, 2009), an examination of various legal issues baseball has presented in its approximately 150 years of existence.



Minan and Cole cleverly divided the book into a “double-header” of 18 chapters or “innings” that touch on nearly every major area of the law. Each of the selected cases in the book was litigated either in a federal or state court. The actual judicial opinions often are lengthy—some running 30 or more pages—and involve multiple legal issues as well as disputed factual matters. To capture core ideas, the book’s stories simplify matters.

“Virtually every page has a tidbit of information that even the most dedicated fan will appreciate,” says Tacoma, Wash., attorney Howard L. Graham. “Perhaps the most interesting literary device in the book is the “Umpire’s

Ruling” segment that follows each chapter explaining a pertinent legal issue of the game in concise lay person’s terms.”

Exemplary of the Umpire’s Ruling is the fifth inning’s (chapter five) discussion of the baseball “balk,” which covers a host of illegal moves a pitcher might make while on the mound. In another chapter, the authors discuss the regulations governing the size and shape of bats and what happens when spectators involve themselves in the game—such as the Bartman fiasco of 2003 in which a Chicago Cubs fan might have cost his team a trip to the World Series by interfering with a pop fly. These rules and disputes are then analogized to problems attorneys might face in litigation.

But the book’s innings (chapters) are the real meat. The authors wrote

the innings in a short-story format, blending case law, statutory law and baseball rules into the text. In telling these stories, the authors relate how baseball has interacted with different legal fields, including sales, patents, antitrust, medical malpractice, criminal law, contracts, the First Amendment, intellectual property, torts, Title VII discrimination claims, labor law and tax law, and how these legal fields have impacted the game of baseball.

Highlights from the Double-Header: Fantasy Baseball and Real Damages

The book’s second inning (chapter two) explores the legal constraints around one of baseball’s fastest growing attractions: fantasy baseball. The Major League Baseball Players Association (MLBPA) controls Major League Baseball (MLB) players’ images, biographical data and names for all commercial uses. MLBPA contracted with CBC Distribution and Marketing to create online fantasy baseball leagues. From its inception in 1995 to 2004, things went smoothly.

In 2005, the licensing agreement between the two companies expired, so when CBC continued to use the individual players’ information, the MLBPA sued. The 8th Circuit Court of Appeals was asked to balance the CBC’s First Amendment right to use the information against the MLBPA’s right to control the use of player’s likeness and public image.

The court ruled that because the information was publically available, the Web site was selling its processing of the data, not the data

itself. Prior to this decision, only a few major Web sites had paid the licensing fees to use MLB players' statistics and names, so they were the only ones allowed to host on-line fantasy leagues. Today, Web fantasy baseball providers are free to host leagues without paying to use players' information.

MLB's Historic Antitrust Exemption and the Supreme Court Balk

The book's fourth and fifth Innings (chapters four and five) discuss MLB's antitrust exemption and the challenge that created free agency. In the early years of professional baseball, there were multiple professional and semi-professional leagues. At the turn of the century, most reputable professional teams were joining either the National or American League, which never met until the leagues agree to play a "World Series" in 1903. The leagues united under a single commissioner in 1920.

From MLB's inception until the early 1970s, players could only sign a new contract with their current team due to a reserve clause in each player's contract. Under the reserve clause system, players were bound for life to one team and had no opportunity to put their services on the open market. This system allowed owners to exert complete control over the market, and kept player movement to a minimum.

The U.S. Supreme Court validated the reserve system in *Federal Baseball Club v. National League*, 259 U.S. 200 (1922), in which Justice Oliver Wendell Holmes,

Jr., wrote for a unanimous court that federal antitrust law did not apply to professional baseball leagues. The court ruled that the individual baseball "exhibitions" were not subject to federal regulation because they were not covered under the U.S. Constitution's Commerce Clause.

This restrictive understanding of the Commerce Clause was overturned in the years following the Federal Baseball case, stretching federal power to cover activity that is more local in nature than professional baseball games. However, it was not until the late 1960s that a player challenged the antitrust exemption. After he was traded in 1968, former St. Louis Cardinal centerfielder Curt Flood brought suit against the MLB commissioner, *Flood v. Kuhn, et. al.* 407 U.S. 258 (1972). Flood argued that the reserve clause effectively made him property of the Cardinals and unfairly constrained his freedom to sell his services. He claimed that federal antitrust law should apply, which would make the reserve system illegal.

The U.S. Supreme Court noted that Federal Baseball and a similar 1953 case were aberrations in their refusal to apply federal antitrust law due to the antiquated and limited understanding of the Commerce Clause power. However, they ruled that *stare decisis* concerns required upholding the system because the decades of what the authors called "positive inaction" on MLB trust violations showed Congress' tacit approval, one that the court was unwilling to disrupt.

The Flood action started a chain of events that ended the reserve clause system. Players began playing without contracts, which freed them from the reserve clause and allowed them to become free agents. By the end of the 1970s, players were able to move freely and sign with whichever team they chose—creating the free agency system we have today. Congress finally acted in 1998, officially ending the reserve clause system with the Curt Flood Act.

Hey Beerman!

The sixth inning (chapter six) of the book deals with a similar concern, but this time it was "Bob the Beerman" making claim to personal information. Bob was a beer vendor who worked at Coors Field in Denver when the Colorado Rockies played their first season. After a few seasons selling beer, Bob approached Rockies management to pitch them on using his character in advertisements, but he was turned down. In the years following the pitch, Coors made ads about "beermen" and "beerstuds" who sold beer at ballparks.

Bob sued, saying Coors infringed on the character he had created. He claimed that the term beerman was a descriptive trademark that he had developed though his time at Coors Field. Coors argued that the term was a generic mark, and was used to describe any number of vendors at sporting events. The U.S. District Court for the District of Colorado, and then the 10th Circuit Court of Appeals sided with Coors, saying that "Bob the



Beerman” was too broad-based, and not individual enough when compared with beer vendors as a whole. The Coors ads did not infringe upon the “Bob the Beerman” character simply because there were too many “beermen” and “beer-studs” at the ballpark.

Going for Home and the Post Game Review

The remaining innings (chapters) of *The Little White Book of Baseball Law* provide further examples of what happens when baseball comes into contact with various fields of law. While the book touches on the more obvious baseball-legal intersection of player contracts and foul ball liability, the authors also focus on more obscure issues like the multiple challenges the San Diego Padres faced in building Petco Park.

It would seem that America’s favorite pastime and the legal system have a lot in common. “As the authors definitively adumbrate, baseball has managed to permeate virtually every major area of American legal practice, and vice-versa,” says Michael M. Rosen, associate in the Southern California office of Fish & Richardson P.C.

“So intertwined are the two disciplines,” says Rosen, “Minan (who takes the mound for the majority of the book’s legal analysis) points out that Supreme Court Chief Justice John Roberts invoked the national pastime during his confirmation hearings, testifying that ‘Judges are like umpires. Umpires don’t make the rules; they apply them. The role of an umpire


and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ball game to see the umpire.”

“John H. Minan and Kevin Cole have blended 248 pages of fascinating legal disputes from baseball’s history with an examination of some of the more arcane rules in baseball,” says Graham.

“From free agency and scalping tickets, to the infamous Bartman Ball, this book has it all,” says Paul L. Caron, editor of the popular TaxProf Blog. “The game of baseball has often resulted in brawls, both on the field and in the courtroom, and from the 1890s on, much of what baseball is today has been shaped by the law.”

By the time you finish the book says Boston, Mass., attorney Judy Zeprun Kalman, “the reader has not only gained a solid understanding of the law of baseball but also of the law, generally. It is easy to imagine this book being used as the text of a History of American Law course.”

The Little White Book of Baseball Law is the second in a series of books from Professor Minan on different sports and the lawsuits that have shaped them. The first was the top-selling *The Little Green Book of Golf Law*, and the next will be *Sports Law and the Amateur*, which is scheduled for a 2012 publication date.

The Little White Book of Baseball Law is available for purchase from the ABA Press online at ABAbooks.org or from Amazon.com. 

USD Moot Court Teams Shine Nationally

By Laura Vogltanz

Alumni and students are familiar with USD School of Law's moot court program, but most are unaware of its consistent success, the highly skilled advocates it produces, and the people behind the scenes that make the program what it is today.

The 2009-10 school year produced significant changes in moot court intramural tournaments and continues to mark a highly successful year for the numerous moot court national teams. Ranked 14th in the nation, moot court continues to be one of the most prestigious, sought after activities on campus for current law students.

Intramural tournaments have been a hallmark of the moot court program. Its executive and associate boards, particularly the students in charge of each tournament, spend months organizing every aspect of these tournaments, from the 100 or more judges required, to the final night reception. In years past, the intramural tournaments included Torts and Jessup in the fall and the Paul A. McLennon, Sr., Honors Competition in the spring. This year, however, the moot court board along with Professor Kris Panikowski, moot court advisor and full-time faculty member, decided to change some of these competitions to reflect new and different practice areas.

"The goal was ultimately to make a change that would better reflect the capabilities of students as legal practitioners, and that would simultaneously further engage those judging our competitions," said Ian Schuler, USD's moot court board president. "We saw quite quickly that intellectual property and employment-related law draw a lot of attention and had potential to be great moot court subjects."

The Torts tournament was replaced by the USD Alumni Appellate Moot Court Tournament. This tournament changes subject matter each year based on writer preference, but continually focuses on California litigation. This year, problem-writer and third-year USD Law student Tricia Lee produced a challenging employment discrimination problem.

“The alumni tournament will incorporate more practical, real-world issues that students can expect to see when they start legal careers.”

— Robert Brady, Jr.

“The alumni tournament will incorporate more practical, real-world issues that students can expect to see when they start legal careers,” said Robert Brady, Jr., moot court vice chairman of national teams. The change in topic proved to be a success drawing 31 competitors and a distinguished panel of final round judges.

The Jessup tournament, which focused on international law, was replaced with the Intellectual Property tournament. The problem this year, written by third-year USD Law student Anna Phillips, involved issues surrounding internet technology, fair use and fair trade.

“Incorporating intellectual property for an intramural tournament allows us to bring in a new practice area and expose students to this growing industry in San Diego,” said Brady. “Plus, this tournament allows 2Ls to practice how national teams compete, including working with a partner, writing a brief together, working out issues and learning how to fair as a team.”

The last intramural tournament of the year is the Paul A. McLennon, Sr., Honors Moot Court competition in spring 2010. The problem will be written by third-year USD Law student Joanna Simon. Thus far, this competition has produced record-breaking numbers with 120 second-year and third-year students signed up to participate. The number is due, in part, to the first-ever appellate advocacy seminar offered this fall, taught by United States Supreme Court Associate Justice Antonin Scalia.

“Justice Scalia conveyed valuable insight to the students which, I believe, will result in a higher level of competition among our students,” said Schuler.

The moot court board also produces a national criminal procedure tournament in the fall, where schools from across the nation come to USD to compete. This year, approximately 23 schools and 40 teams competed, including students from Stanford Law School, University of Kansas School of Law and Boston College Law School.

Though this is a national competition, members of the moot court executive board organize and write the problem. This year’s problem, written by third-year USD Law student Christina Salazar, involved issues surrounding the good-faith exception to the exclusionary rule and a third party’s apparent authority to consent to a search. The esteemed panel of final-round judges included retired Third Circuit Judge Lee Sarokin, Fourth District Court of Appeal for California Justice Richard Huffman and DLA Piper partner Stanley Panikowski.

Not only have intramural tournaments been an accomplishment for the moot court program, but national team members on the Moot Court Executive Board continue to achieve great success at the national level. Thanks to the performance of the national team members in 2009, USD is currently ranked number 14 in the nation according to www.lawschooladvocacy.com.

“Our national teams continue on a path of success,” said Schuler. “With fantastic coaches, committed students, Professor Panikowski, and a whole community of supporters, there is no doubt in my mind we can achieve top five status nationally within a year.”

The moot court program sent teams to three national competitions this fall. The first being the Emory University School of Law Civil Rights and Liberties Competition. USD started the year with a huge success, as one USD team was a finalist out of the 24 teams, and third-year USD Law student Randy Freeman received the best oralist award.



“We could not be more pleased with the performance of our students at this prestigious—and challenging—national moot court competition,” said Panikowski. “Brief writing and oral advocacy skills play an equal role in a competitor’s success at this tournament.”

This year’s Emory tournament focused on two distinct issues: 1) freedom of speech, specifically as it is affected by a federal statute prohibiting depictions of animal cruelty; and 2) the use of expert witness testimony regarding the reliability of eyewitnesses and whether that determination is the sole realm of the jury. The first issue relating to animal cruelty was such a hot topic that it was heard by the United States Supreme Court just days before the tournament.

USD also sent two national moot court teams to the 16th Annual Wechsler First Amendment Moot Court Competition, hosted by American University Washington College of Law. The success at this tournament included a finalist position and a top 16 position out of 32 total teams, as well as a second place brief award. Competitors at Wechsler addressed two distinct issues: 1) whether the First Amendment creates a qualified reporter’s privilege against court-compelled discovery of sources; and if so, whether the blogger-defendant qualifies as a reporter and therefore is entitled to shield the identity of his anonymous source from the plaintiff in a defamation suit; and 2) whether the business executive-plaintiff is a limited public purpose figure, which then requires the business-executive plaintiff to establish actual malice in the defamation suit.


The final fall national tournament was the American College of Trial Lawyer’s (ACTL) National Constitutional Law Competition. USD teams placed in the regional final four and in the regional top 10 out of 32 teams at this competition. This year’s ACTL competition focused on two issues: 1) what standard should the court apply when deciding a motion to change venue in which the defendant argues that she cannot receive a fair trial in the current forum; and 2) whether the imposition of a life sentence without the possibility of parole on a juvenile offender convicted of a non-homicide crime violated the Cruel and Unusual Punishment Clause of the Eighth Amendment.

USD’s moot court teams consistently achieve success at national tournaments and expect to do so in the several national competitions in spring 2010.

“Our ranking in the top 14 shows consistently strong advocacy throughout the year and reflects on the entire board doing well,” said Brady. “We have set the bar with the fall and will continue those results in the spring.”

Moot court continues to be a successful program on campus, both in intramural competitions and in students’ performances at the national level. This year alone, the Moot Court Board had 96 first-year students apply for 22 associate board positions. The executive board members are at the top of the class and participate in the *San Diego Law Review*, *San Diego International Law Journal*, *San Diego Journal of Climate & Energy Law*, and National Mock Trial Team.

Moot court consistently develops top advocates as evidenced by the moot court alumni, which include judges, clerks and associates at firms such as Cooley, Godward and Kronish, LLP, Latham & Watkins, LLP, and Gibson, Dunn & Crutcher, LLP.

“We sincerely appreciate the legal community’s enthusiasm in our program,” said Amaris Mao, moot court vice chairman of intramural tournaments. “Without them, these tournaments would not be possible.” 



Emory National Competitors:
3L Laura Vogltanz, 3L Randy Freedman, Adjunct Faculty Student Coach Megan Donahue, 3L Kristy Hewitt, and 3L Arthur Connors at this year’s Emory University School of Law Civil Rights and Liberties Competition.



Wechsler National Competitors:
Adjunct Faculty Student Coach Andrew Haden and 3Ls Derek Hecht, Courtney Randall, Joanna Simon and Seth McCutcheon at this year’s 16th Annual Wechsler First Amendment Moot Court Competition.



ACTL National Competitors:
3L Josh Schloesser, 3L Christin Lawler, Adjunct Faculty Student Coach Carolina Bravo-Karimi, 3L Lindsay Parker and 3L Robert Brady, Jr. at this year’s American College of Trial Lawyers National Constitutional Law Competition.

academic year in review

faculty colloquia

A listing of the faculty colloquia presented in 2008.

Orin Kerr, professor of law, George Washington University Law School, “The Case for the Third-Party Doctrine,” January 16, 2009.

Samuel J. Levine, professor of law, Pepperdine University School of Law, “The Law and ‘Spirit’ of Legal Ethics,” January 19, 2009.

On Amir, Professor Rady School of Management, University of California, San Diego, “The Dishonesty of Honest People: A Theory of Self-Concept Maintenance,” January 30, 2009.

Iddo Porat, visiting professor of law, University of San Diego School of Law, assistant professor of law, Academic Center of Law and Business, Israel, “The Hidden Foreign Law Debate in *Heller*,” February 6, 2009.

Christine Parker, associate professor and reader in the law faculty, Melbourne Law School, “The Challenge of Empirical Research on Business Compliance in Regulatory Capitalism,” February 9, 2009.

Jens Schovsbo, professor of law, University of Copenhagen, “Post Grant Measures to Increase Access to Patented Inventions,” February 16, 2009.

Dennis J. Ventry, Jr., acting professor of law, University of California, Davis School of Law, “An Ownership Theory of Family Taxation,” February 27, 2009.

Michael Ramsey, professor of law, University of San Diego School of Law, “International Law Limits on Investor Liability in Human Rights Litigation,” March 16, 2009.

Philip Hamburger, Maurice and Hilda Friedman Professor of Law, Columbia Law School, “Law and Judicial Duty,” March 27, 2009.

Randall Roth, professor of law, University of Hawaii, “Bishop Estate Controversy,” April 10, 2009.

Lisa Ramsey, professor of law, University of San Diego School of Law, “Free Speech and International Obligations to Protect Trademarks,” April 17, 2009.

Ariel Porat, Alain Póher Professor of Law, Tel Aviv University, “Private Production of Public Goods: Liability for Unrequested Benefits,” May 31, 2009.

Leandra Lederman, William W. Oliver Professor of Tax Law, Maurer School of Law, “W(h)ither Economic Substance?,” September 11, 2009.

Pierre Legrand, professor of law, University of Paris-Sorbonne, “An Invitation to Comparative Legal Studies Other-Wise,” September 24, 2009.

Heidi Hurd, David C. Baum Professor of Law and Professor of Philosophy, and **Ralph Brubaker** Guy Raymond Jones Faculty Scholar, University of Illinois, “The Intrinsic Moral Value of Bankruptcy Discharge,” School of Law, October 1, 2009.

Michael Green, professor of law, William & Mary Law School, “Two Fallacies about Copyrighting Factual Compilations,” October 6, 2009.

Lesley McAllister, associate professor of law, University of San Diego School of Law, “Models of Self-Enforced Self-Monitoring for a Greenhouse Gas Cap-and-Trade Scheme,” October 23, 2009.

Daphne Barak-Erez, Leah Kaplan Visiting Professor of Law, Stanford University, “Secret Evidence and the Due-Process of Terrorist Detentions,” November 6, 2009.

Robert Bartlett, assistant professor of law, University of California, Berkeley-Boalt Hall School of Law, “Financial Crisis and the Perils of ‘Safe’ Credit,” November 13, 2009.

class ACTION

The Class Action section is an update on the personal and professional news of your classmates and other alumni. To submit information either via mail or e-mail and for details on how to submit accompanying photographs, please see the perforated response card located in the back of this *Advocate* magazine.

'68

Hon. Frederic L. Link was named Outstanding Jurist of the Year by the San Diego County Bar Association. Judge Link serves on the San Diego Superior Court.

'69

Steve Cloud says "hello" to the day class of 1969.

C. Edward Miller, Jr., recently sold most of his businesses and is now in partial retirement. He is enjoying spending more time with his wife, three daughters and grandchildren.

'74

John Adler was elected to the San Diego County Bar Foundation Board of Directors. He is a partner at Littler Mendelson, where he focuses on employment litigation.



David Casey, Jr. was selected for inclusion in *San Diego Super Lawyers 2009* as well as *The Best Lawyers in America*. Casey was entrusted by U.S.

Senator Diane Feinstein to oversee the bipartisan committees responsible for the judicial, U.S. Attorney, and marshal nomination processes for President

Obama. The American Bar Association Tort Trial & Insurance Practice section honored him with the Pursuit of Justice Award, and Consumer Watchdog awarded him a Lifetime Legal Achievement Award at the Rage for Justice Awards. A third generation attorney, Casey specializes in serious personal injury and wrongful death cases.

Kathleen Strickland, a partner in the San Francisco office of Ropers Majeski Kohn & Bentley, was selected as a sustaining member of the Product Liability Advisory Council. Strickland is one of only three California female outside counsels inducted as sustaining members.

'76

Kendall C. Jones joined Sutherland Asbill & Brennan LLP as of counsel in the tax practice group. Kendall is based in the firm's Washington, D.C., office, where he will advise clients on tax controversy matters focusing on IRS procedure, controversy and dispute resolution cases as well as tax litigation. Kendall was a partner at KPMG for 18 years and had spent 15 years at the IRS.

'77

Brandon Becker joined TIAA-CREF as executive vice president and chief legal officer. He will lead the company's legal and compliance, government relations and internal audit functions. He joins TIAA-CREF from the law firm of WilmerHale, where he was a partner in the firm's securities department and chairman of the firm's broker-dealer compliance and regulation practice group. Becker joined WilmerHale in 1996 following an 18-year career at the Securities and Exchange Commission, where he held a series of successively senior positions before becoming director of the division of market regulation and then special advisor to the chairman for international derivatives.

Hon. Richard Curtis announced his retirement after 20 years on the Monterey County, Calif. bench. He received his Bachelor of Science from U.S. Naval Academy in 1968 before coming to USD Law.

Joyce Tischler was honored by the American Bar Association Tort Trial & Insurance Practice section Animal Law committee with the Excellence in the Advancement of Animal Law Award. The award recognizes exceptional work by a member or leader of an international, national, regional, state or local bar association's animal law committee, who, through commitment and leadership, has advanced the humane treatment of animals.

'78

Dave Camp, a member of the U.S. House of Representatives, was selected to chair the Select Revenue Measures subcommittee, in addition to continuing to serve as deputy minority whip.

Frederick Schenk has been elected to serve on the Board of Governors of the American Association for Justice. He was also selected for inclusion in *San Diego Super Lawyers 2009* and *The Best Lawyers in America*. He is a past president of the Consumer Attorneys of San Diego and the Lawrence Family Jewish Community Center. Schenk also sits on the board of the Consumer Attorneys of California. He specializes in asbestos litigation, products and premises liability.

'79

Hon. David Arthur Hathaway was elected to the Third Circuit Court of Wayne County, Mich. Judge Hathaway has been a practicing attorney for 29 years, specializing in civil, criminal and probate litigation.

Virginia C. Nelson was named the San Diego Best Lawyers Personal Injury Litigator of the Year for 2010 by *Best Lawyers*.

Hon. Robert J. Trentacosta was elected to serve as assistant presiding judge on the San Diego Superior Court. Judge Trentacosta was appointed to the bench in 2001 and is currently the supervising judge of the Superior Court's criminal division.

'80

Charlie Hogquist retired from the San Diego Police Department after a 28-year career and is now the police chief for the San Diego Community College District.

Monty McIntyre was recently selected to be a lawyer representative for the United States District Court, Southern District of California. His duties will include assisting the district and magistrate judges in presenting programs during annual district conferences, as well as assisting with and participating in pro-

grams for the annual Ninth Circuit Conference each year. McIntyre is a shareholder in the San Diego law firm of Seltzer Caplan McMahon Vitek, where he represents plaintiffs and defendants in business and commercial, insurance bad faith, brain injury and real property litigation.

'81

Hon. Judy A. Hartsfield received the Friend of Children award from Lutheran Child & Family Service of Michigan. In 1997, she became the first African American female in the history of the state Attorney General's office to head a division when she became the division chief of the child abuse and neglect division in Wayne County, Mich. She was later promoted to bureau chief of the Child & Family Service Bureau in the State Attorney General's Office in Lansing. In 2004, Hartsfield was appointed to the bench by Governor Jennifer Granholm.

Scott T. Johnson was re-elected mayor of Sarasota Springs, N.Y.

Mark W. Prothero practices criminal defense in Kent, Wash., where he recently had a murder charge against his 20 year-old client dismissed. He published an article detailing the case in the May 2009 edition of *Washington Criminal Defense* magazine.

Jeffrey E. Thoma was installed on the Board of Directors of the National Association of Criminal Defense Lawyers.

Ellen Whittemore was featured in a *Las Vegas Review Journal* profile. She is a partner at Lionel Sawyer & Collins in Las Vegas, where she specializes in gaming law.

'82

Victor M. Nunez was honored for Service by a Public Attorney by the San Diego County Bar Association.

'83

Robert Francavilla was selected for inclusion in *San Diego Super Lawyers 2009*, an annual publication which provides comprehensive listings for consumers of legal services. Robert was also recognized in *The Best Lawyers in America*. A past president of Consumer Attorneys of San Diego, he has also been honored with its Outstanding Trial Lawyer Award on four occasions.

'84

David Depolo was elected to the American Board of Trial Advocates in 2005 and has been certified by the National Board of Trial Advocacy since 2004. He is a shareholder and founding member of the Walnut Creek, Calif. firm of Donnelly, Nelson, Depolo and Murray, which specializes in medical malpractice defense and employment litigation.

Mary Gillick will become co-practice leader of the family wealth and exempt organizations practice. She is a partner in Luce Forward's San Diego office.

Jeff Green was appointed to the California State University Bakersfield Alumni Hall of Fame. Green has served as general counsel for Grimmway Farms, one of the nation's largest carrot producers, since 1990.



Fran Townsend, who served as the top homeland security adviser to President George W. Bush for nearly four years, joined Baker Botts

L.L.P. as a partner in the firm's Washington, D.C. office. Townsend will lead a global security and corporate risk counseling practice, focusing on homeland and national security issues.

'85

Debra Carrillo was installed as judge of the Superior Court of Orange County, Calif. on January 23, 2009.

Chief Justice Ron Parraguirre announced that he would seek a second six-year term on the Nevada Supreme Court. Parraguirre is a fourth-generation Nevadan who has served at every level in the Nevada judiciary. He was first elected to the judiciary in 1991.

'86

Crystal Crawford is serving as the mayor of Del Mar, Calif., her third time serving in the post. Crawford first moved to Del Mar in 1992, and has since become a leader in the community.

'88

Frank J. Bitzer was named a 2010 Ohio Super Lawyer for his employee benefits/ERISA work. Bitzer is of counsel at Greenebaum Doll & McDonald PLLC in Cincinnati, Ky.



Paul Klockenbrink was again named one of Virginia's top lawyers as chosen by his peers and through the independent research of *Law & Politics* magazine. The

designation is based on the results of a survey of more than 19,000 lawyers across the state. He was recognized for his work in the employment and labor fields.

Jannie Quinn was selected to temporarily take over as Mountain View, Calif. city attorney. She leaves her post as senior assistant city attorney for the city.

'89



Karen P. Hewitt was named Outstanding Attorney of the Year by the San Diego County Bar Association. Karen is the U.S. Attorney for the Southern District

of California.

'91

Walter Baber co-authored *Global Democracy and Sustainable Jurisprudence*, which is being released by MIT Press in August 2009. Dr. Baber is currently director of the Graduate Center for Public Policy and Administration at California State University.

Mark Brnovich was named as the new director of the Arizona Department of Gaming by Arizona Governor Jan Brewer. Prior to his appointment, Brnovich was Assistant U.S. Attorney for the District of Arizona, where he focused on federal offenses occurring in Arizona gaming enterprises and worked closely with tribal gaming investigators, the Arizona Department of Gaming and law enforcement agencies to prosecute crimes and coordinate crime prevention efforts.

'93

Michael Loesch joined Fulbright & Jaworski L.L.P. in the firm's Washington D.C. office. He comes to the firm from the U.S. Commodity Futures Trading Commission, where he served as chief of staff. Loesch is also the former chief operating officer for the acting chairman at the Securities and Exchange Commission.

Matthew H. Printz was named a partner at Murchison & Cumming, LLP, where he focuses his practice on defending clients in construction defect, general liability and commercial litigation.

'95

Neel Grover was named Business Leader of the Year by TiE Southern California, a South Asian business group. Grover is president and CEO of Buy.com.

Joshua Lynn has entered the race for district attorney in Santa Barbara, Calif. He is currently the acting district attorney for Santa Barbara County.

'96

Judge Sean Hoeffgen was reelected to the North Las Vegas Municipal Court after first being elected in 2005. He has brought to the city the Habitual Offender Prevention and Education Program (HOPE), which requires repeat, non-violent offenders to seek jobs, do community service and take drug tests while serving one-year probations. Hoeffgen is also credited with starting night and DUI courts in the city.

Kurt Kicklighter (LL.M.) has officially assumed the role of managing partner and will serve a five-year term at Luce Forward.

Catherine S. Wright was made partner in the Lexington, Ky. office of Dinsmore & Shohl LLP in the labor and employment law department. Wright provides employment advice to human resource managers and in-house counsel to provide labor and employment advice and litigation support as well as training and on-site investigations.

'97

Margaret (Peggy) Carr and her husband, Chris, started a group called Vacations for Veterans, a nonprofit organization that helps send wounded veterans and their families on vacations around the world.

David T. Matsuda was nominated for the post of administrator for the maritime division at the U.S. Department of Transportation. He had been serving as deputy and acting administrator since his appointment by President Obama on July 28, 2009. David served as acting assistant secretary for transportation policy from March 2009 until his appointment.

Karyn K. Reed, managing partner at Reed Law Corporation, based in Fullerton, Calif., has launched the distressed real estate practice group. It will focus on complex workouts and restructuring deals, handling pre-litigation disputes, joint venture disputes, foreclosure avoidance strategies, and landlord-tenant issues.

'98

John Kyle was promoted to partner in the Cooley Godward Kronish San Diego office. He focuses on intellectual property and business litigation with an emphasis on patent litigation in the mechanical arts and wireless telecommunications.

Michelle Stimson (J.D., LL.M. '99) has joined Fox Rothschild's Los Angeles office as special counsel in the tax and estates department.

'99

Gina C. Clark-Bellak was named executive director of the Bleeding Disorder Foundation of Washington, a leading non-profit organization that works to improve the quality of life for people with bleeding disorders. The organization is based in Edmonds, Wash.

John Cu was named partner at Hanson Bridgett, where he focuses on commercial litigation, insurance coverage disputes on behalf of policyholders, product liability, intellectual property, public agency litigation and securities litigation.

Kelly (Chang) Rickert and her husband Scott welcomed a daughter, Adia Jolie on September of 2008. In addition to the new baby, Kelly continues to be a certified family law specialist at her firm, the Law Offices of Kelly Chang in Los Angeles and was named a Super Lawyer in 2007 and 2008.

'00

Michael Moss has joined Lewis Brisbois Bisgaard & Smith as a partner in the Los Angeles office. He is a member of the general liability practice group and comes to the firm from Lynberg & Watkins.

'01

David Carroll was named a stockholder at Jones Vargas, where he works in the Las Vegas office as a member of the litigation practice group. He joined the firm in 2002 and concentrates his practice on civil rights litigation, criminal law as well as commercial and real estate litigation.



Brian Fogarty was made partner at DLA Piper, where he works in the patent litigation practice out of the San Diego office. He concentrates in civil trial

practice in federal courts with an emphasis on patent litigation, International Trade Commission (ITC) proceedings, trademark litigation (including counterfeit litigation) and class action litigation.

'02

Louis Blum was promoted to partner at Marks, Golia & Finch. Louis joined the San Diego firm as a summer associate in 2001, and he focuses on construction law, civil litigation, business litigation and intellectual property law.

Scott E. Brown (LL.M. in Taxation) has been recognized by Cambridge Who's Who for demonstrating dedication, leadership and excellence in consulting. He started Scott Brown Consulting in 2004 to work on taxation, accounting and business management issues.

Barbara Denny (LL.M.) was recently elected a Coronado City, Calif., councilwoman in June 2009 after running a grassroots campaign to defeat an incumbent.

Noel C. Gillespie has joined the law firm of Procopio, Cory, Hargreaves & Savitch LLP in San Diego as a partner on the firm's intellectual property team. Gillespie assists clients with strategic patent portfolios that protect their technology and help them achieve their business objectives.

Scott E. Rahn joined Jeffer Mangels Butler & Marmaro LLP as a trust litigator in the Los Angeles office. He has experience in business and estate litigation, as well as trust and estates administration and planning.

Sarah T. Schaffer has been selected for a promotion to lieutenant colonel in the U.S. Marine Corps Reserves. Schaffer was on active duty for six years and served as a logistics officer at Okinawa, Japan, and Marine Corps Air Station Miramar in the Joint Legal Center, assisting service members with family law, estate planning and tax issues. She is now an attorney at Higgs, Fletcher & Mack in San Diego and serves as a reservist with the Western Area Counsel Office at Camp Pendleton.



Robert Wernli, Jr., was appointed vice president and senior corporate attorney for Bridgepoint Education Inc., a provider of post-secondary education services. Wernli will provide legal support for Securities Exchange Commission and New York Stock Exchange compliance matters, corporate governance issues and other transactional projects.

'03

Brett Coffee (LL.M. in Business and Corporate Law) was named General Counsel Winner by *Washington Business Journal*. He is general counsel for Computer Systems Center Inc., and works in their office in greater Washington D.C.

Frederick Gaston entered into a partnership with BFC Ventures, LLC. Frederick is a shareholder and business attorney at the law firm of Gaston & Gaston APLC. Prior to joining forces with BFC Ventures, LLC, Frederick served in the U.S. Navy where he spent several years working in the intelligence community.

'04

Tonya Cross took a new position as corporate counsel for Life Technologies (formerly Invitrogen) after nearly 15 years at DLA Piper in San Diego. Her new job will allow her to focus on providing day-to-day employment law advice and to manage outside counsel on litigation matters.

Juliana (Lee) Sherman married William Sherman, a pilot in the U.S. Army, on February 8, 2009. Juliana is a captain in the U.S. Army Judge Advocate General Corps.

Claire C. Weglarz joined Hawkins & Parnell LLP's Los Angeles office. Weglarz handles complex civil litigation, concentrating on product liability, toxic tort litigation, and general civil litigation. Her recent trial experience includes serving as co-chairman in a three-month products liability jury trial to verdict in summer 2008, and serving as co-chairman in a month-long products liability jury trial to verdict in January 2008. Weglarz has also served as lead counsel in binding commercial arbitrations.

Kate Williams joined Birch, Horton, Bittner & Cherot in Anchorage, Alaska as an associate attorney. Previously, Kate was legislative director and chief counsel for U.S. Senator Ted Stevens.

'05

Hilary Stauffer just returned from a three-month posting to Liberia, West Africa, on a fellowship through Washington & Lee University's Transnational Law Institute. While in Africa, Stauffer collaborated with the American Bar Association's Rule of Law Initiative, helped draft reform proposals for Liberia's judiciary, worked on projects to relieve prison overcrowding and prolonged pre-trial detention in Monrovia, co-taught a class on analytical thinking skills to Liberian law students, and facilitated a rule of law training in rural Liberia for paralegals. Stauffer currently resides in London, where she works as a consultant on human rights issues.

'06

Alan F. Doud was named an associate at Young Wooldridge, LLP, where he will specialize in water, environmental, business, franchise, municipal and public agency law.

'07

Vincent LaPietra accepted a job with the California Attorney General's office in San Diego.

Dr. Mary McKenzie was appointed to the City of San Diego International Affairs Board. Dr. McKenzie also runs the model United Nations program, which brings a group of high school students to USD School of Law each year for training and mock diplomacy.



Jessica Klarer Pride was elected to the board of directors of the Consumer Attorneys of San Diego. She will serve a one-year term, working on various

projects and activities related to the organization. She is an associate attorney with San Diego-based Casey Gerry Schenk Francavilla Blatt & Penfield, LLP.

Thomas Rausch joined Marks, Golia & Finch, LLP in San Diego as an associate. Thomas was previously with Alverson, Taylor, Mortensen & Sanders in Las Vegas, Nev. and will now focus on business litigation and construction law.

Christine H. Yung and Greg Yusi were married on August 8, 2009, in a beautiful outdoor ceremony in San Diego. Many alumni from the class of 2007 were in attendance at their wedding celebration.

'08

Marissa L. Lyftogt joined Fisher & Phillips as an associate in the Irvine, Calif. office. Her practice includes labor and employment law with a focus on claims of discrimination and harassment, and wage and hour lawsuits. Prior to joining the firm, she worked on employment discrimination and harassment investigations as well as wage and hour audits and related class actions.



Andrea Myers joined Seltzer Caplan McMahon Vitek in San Diego, where she focuses her practice in the areas of general civil litigation, complex

business disputes and real property litigation.



James Thompson joined Seltzer Caplan McMahon Vitek in San Diego, where he will focus on complex business litigation, including real property disputes and employment matters.



Amanda Villalobos joined Tucker Ellis & West LLP as an associate in the firm's Los Angeles office, where she is a member of the trial department, focusing on intellectual property as well as medical and pharmaceutical liability.

'09



Stephanie Baril has joined Casey Gerry Schenk Francavilla Blatt & Penfield, LLP in San Diego as a first-year associate. She will focus on plaintiffs' injuries, products and premises liability, and other serious personal injury cases.

Rebecca Barker married Jason Abdullah on April 4, 2009, at the North Chapel in San Diego. The couple honeymooned in London, Paris and Venice.

Robert Fitzpatrick joined Marks, Golia & Finch as an associate in the San Diego office. Robert will practice in the areas of business/commercial litigation and construction law.

Andrew James joined Leavitt Insurance Agency of San Diego. Prior to that, James served as a producer for Hilb Rogal & Hobbs, a national insurance brokerage firm. His areas of specialization include real estate, property management, life science, technology and professional liability exposures.

Hwa Lee has joined Fish & Richardson as a first-year associate in the San Diego office. Hwa, who previously worked as a technical specialist at the firm, focuses on patent prosecution in the areas of electrical engineering, medical devices and life sciences.

Elizabeth A. Malcom has joined Luce Forward as an associate in its class of 2009. Malcom will practice in the firm's San Diego office.

Leah Romond joined the litigation practice in the Los Angeles office of McKenna Long & Aldridge LLP. She received her Bachelor of Arts in philosophy and anthropology from Wake Forest University in 2003 and her M.B.A. from the University of Wisconsin in 2005.

Daniel Scholz joined Marks, Golia & Finch, LLP as an associate in the San Diego office. Daniel will focus on business litigation, construction law and real estate.

In Memoriam

'58

Thomas P. Dougherty died in San Diego on November 2, 2009, at his home after a lengthy illness. Dougherty was born on January 23, 1928, in Cumberland, Md., as the oldest of eight children. After graduating from American University in Washington D.C., he took a job with the FBI and was transferred to San Diego, where he earned his law degree from USD. He later worked for General Dynamics in the government contracts division. Tom was ordained a deacon in 1977 and served Holy Family Church for 30 years. He was preceded in death by his wife, Marge; sisters, Rosemary and Dorothy; and brother-in-law, John "Jack" Kelly. He is survived by his son Thomas M. Dougherty, daughter Brenda Sandavol, and grandson James Sandavol, all of San Diego; two brothers, John E. and Joseph F.; three sisters, Catherine Rutledge, Sister Mary Ellen, SSND and Sister Rose Mary, SSND.

'68

William Calhoun was born in Illinois in 1933. He served as a sonarman on the USS Bausell during the Korean War and later graduated from San Diego State College in 1960 with a Bachelor of Science in business management. At school, he met his future wife Jean, whom he was married to for 45 years. While working full time, Bill attended USD School of Law in the evenings. He graduated in 1968 and was admitted to the California Bar in 1969. He opened a law office with F. James Bear on H Street in Chula Vista, Calif., and later started his own practice, which he operated until 1993 when he semi-retired into selling real estate. Bill had a love of basketball that started in his

youth. In high school, his team, the Quincy Blue Devils, made it all the way to the finals of the state championships and he was inducted into the Blue Devils Hall of Fame in 1990. As an adult, he enjoyed playing lunchtime basketball with the "Lawyers League" of the downtown YMCA. Calhoun died as a result of a heart attack on January 30, 2009. His is survived by his son, Bill Calhoun and daughter Jill Calhoun.

'71

District Court Judge Napoleon A. Jones Jr. passed away at his North County home after a long illness. He was 69. Jones was appointed to the U.S. District Court in 1994 by President Bill Clinton, where he served as the second African-American on the federal bench in San Diego. The first was Jones' mentor, Hon. Earl B. Gilliam. Judge Jones was born in Hodge, La., and raised in San Diego. He attended Logan Elementary, Memorial Junior High, San Diego High and San Diego State University, where he joined Kappa Alpha Psi Fraternity, which Judge Gilliam helped establish on campus. After law school, he worked in private practice and with Defenders Inc., which represents poor criminal defendants in court. Judge Jones was appointed as a Municipal Court judge in 1977, and to the Superior Court in 1982. He was known for serving many years as a Juvenile Court judge and for his extensive knowledge of issues involving young offenders. He received the National Bar Association's Lifetime Achievement Award, at the 2009 convention. He also received USD School of Law's Distinguished Alumni Award in 1981 and USD's Author E. Hughes Career Achievement Award in 2005. He is survived by his wife of 19 years, Rosalyn Jones, who said her husband had prostate cancer but continued to work up until

around September of 2009, when he took a medical leave. In addition to his wife, Jones is survived by a daughter Lena Laini Jones of San Diego and two grandsons, Glenn, 15, and Torey, 12.

'77

Allen James Fabbi passed away on January 11, 2009, at his residence in Elk Bend, Idaho at the age of 56. Born in Las Vegas, Nev., on October 4, 1952, to Baptiste and Frances Fabbi, Al graduated from Bishop Gorman High School, the University of Nevada at Las Vegas and the University of San Diego School of Law. In 1980, he married Teresa Hess of San Diego. In 2002, after both retired, they moved to Elk Bend, Idaho. Al is survived by his loving wife and best friend of 28 years, Teresa; his brothers, Bruce (Angie), Donald (Barbara), and Brent; his sister Joan (William Keating), numerous cousins, nieces and nephews, many loving friends and two loyal dogs, Mac and Shiloh.

'88

Robert William O'Shea passed away on March 2, 2009, at the age of 57. After graduating from Petaluma High in 1969, he then attended the University of California, Santa Barbara, and served in the Peace Corps in Morocco after graduation. He obtained a master's in French and taught English as a foreign language in Vermont, North Africa and the Middle East. He graduated from USD Law in 1988 and began practice as an attorney and real estate broker. He is survived by his mother, brothers and a niece and nephew. Contributions may be made in his memory to the Petaluma Educational Foundation, 200 Douglas St., Petaluma CA 94952.

'92

Charlie Sabatier passed away June 11, 2009 at the age of 63. After being shot in the spine while rescuing another soldier in Vietnam, Charlie was unable to use his legs. He devoted the rest of his life to getting equitable treatment for disabled people, primarily in the form of curb cuts and access to public buildings. He counted getting an elevator installed in Faneuil Hall and forcing Delta Airlines to be more accommodating towards handicapped people among his accomplishments. He is survived by his wife Peg, children Charles, Caroline, and Danielle, stepmother, Edith, three sisters and two brothers.

'93

Michael J. Brady (LL.M. in Comparative Law), an avid diver and parachutist, passed away while scuba diving. Michael taught history, law, political science and public health courses at Tohono O'odham and Pima Community Colleges. Brady was popular with his students, as he used his world travels and real-life experiences to assist in teaching. Born in New York and raised in England and Tucson, his family moved often as his father was in the Air Force. After graduating from Salpointe Catholic High School, Brady joined the Marine Corps and served two tours in Vietnam, where he received two Purple Hearts. Upon discharge, he went to college, earning degrees from the University of Arizona, Oklahoma City University School of Law and the University of San Diego School of Law.

'94

James M. Luckey (L.L.M.) passed away on June 16, 2009 at the age of 61. Luckey was born in Mattoon, Ill., the son of Tracy and Ruth Luckey. He served as a CPA, attorney and managing director with Thomson Reuters in the Carlsbad, Calif. office. He was preceded in death by son, Jay Douglas Luckey, on March 31, 2001. He is survived by wife, Jeanie M. Luckey, San Marcos, Calif., and son, Craig Robert Luckey, Pinehurst, N.C.

Bruce S. Rosen passed away on January 1, 2009. He is survived by his three brothers and sisters and niece and nephew.

'09

Heidi Lundblad passed away on April 14, 2007, during the spring semester of her first year of law school at the University of San Diego. Heidi was passionate about public interest law and protecting traditionally under-served interests and individuals. During her time at USD she was involved with the Public Interest Law Society and the Women's Law Caucus. To perpetuate the memory of their friend and classmate, the graduating class of 2009 has raised funds to support the Loan Repayment Assistance Program (LRAP). Primary goals of LRAP include making careers in public interest law financially feasible for USD law graduates and enhancing the provision of legal services to low-income individuals and underrepresented causes. Contact the office of development and alumni relations at (619) 260-4692 to make a gift.

faculty FOOTNOTES

A catalog of the faculty's significant publications and presentations in 2008.

LARRY ALEXANDER
LAURA BEREND
ROY BROOKS
KAREN BURKE
NANCY CAROL CARTER
LYNNE DALLAS
ROBERT (BOB) FELLMETH
RALPH FOLSOM
JOHN I. FORRY
C. HUGH PRIEDMAN
WALTER HEISER
GAIL HERIOT
FRANK KEMERER
WILLIAM LAWRENCE
BERT LAZEROW
ORLY LOBEL
LESLEY K. MCALLISTER
GRAYSON M. P. MCCOUCH
JOHN H. "JACK" MINAN
GRANT H. MORRIS
FRANK PARTNOY
MICHAEL J. PERRY
JEAN RAMIREZ
LISA P. RAMSEY
MAIMON SCHWARZSCHILD
TED SICHELMAN
STEVEN D. SMITH
ALLEN SNYDER
LESTER B. SNYDER
MARY JO WIGGINS
CHRIS WONNELL

LOUIS A. MEZZULO
THOMAS PENFIELD
WALTER SCHWIDETZKY
JUNICHI SEMITSU



Larry Alexander contributed "Freedom of Expression" to the *Encyclopedia of Applied Ethics* (Academic Press, forthcoming 2010) and *Encyclopedia of Modern Political Thought* (CQ Press, forthcoming 2010); "Law and Philosophy at Odds" to *On Philosophy in American Law* (with Sherwin) (Cambridge University Press, 2009); "Rules of Recognition, Constitutional Controversies, and the Dizzying Dependence of Law on Acceptance" to *The Rule of Recognition and the U.S. Constitution*, (with Schauer) (Oxford University Press, 2009); "Constitutionalism," in *Contemporary Debates in Political Philosophy* (Wiley-Blackwell, 2009); "Legal Objectivity and the Illusion of Legal Principles" to *Rights, Law, and Morality: Themes from the Legal Philosophy of Robert Alexy*, (Oxford University Press, forthcoming 2010); "Against Negligence Liability" in *Criminal Law Conversations* (with Ferzan) (Oxford University Press, 2009); "Results Don't Matter" in *Criminal Law Conversations* (with Ferzan) (Oxford University Press, 2009); and "Constitutionalism and Democracy: Understanding the Relation" to *The Supreme Court and the Idea of Constitutionalism* (University of Pennsylvania Press, 2009).

He also published the following articles: "Of Living Trees and Dead Hands: The Interpretation of Constitutions and Constitutional Rights," 22 *Canadian Journal of Law & Jurisprudence* 227 (2009); "Constitutions, International Law, and the Settlement Function of Law: A Schema for Further Reflection," 11 *San Diego International Law Journal* 1 (2009); "Facts, Law, Exculpation, and Inculpation: Comments on Simons," 3 *Criminal Law and Philosophy* 241 (2009); "Kent Greenawalt and the Difficulty (Impossibility?) of Religion Clause Theory," 25 *Constitutional Commentary* 243 (2009); and "Waluchow's Living Tree Constitutionalism," 29 *Law & Philosophy* 93 (forthcoming 2010).

Alexander participated in the Roundtable on Ignorance of the Law, Rutgers School of Law, Camden, N.J., November 13-14, 2009; the Roundtable on Robert Nozick and Lockean Libertarianism, San Diego, April 24-25, 2009; and the Constitutional Theory Conference, University of Southern California Law Center, Los Angeles, April 3-4, 2009. He presented at the Conference on the Place of Precedent in Objective Law, Austin, Texas, October 16-17, 2009; the Conference on Philosophical Foundations of Criminal Law, Rutgers Center for Law & Justice, Newark, N.J., September 25-26, 2009; the Columbia Legal Theory Workshop, New

York, September 21, 2009; and the Constitutional Theory Colloquium, Georgetown University, Washington D.C., March 27, 2009.

He organized and presented at the Roundtable on the Philosophy of Tort Law, San Diego, October 2-3, 2009, and the Conference on Isaiah Berlin, Value Pluralism, and the Law, San Diego, February 20-21, 2009. He also served as a panelist at the Conference on Unchallengeable Orthodoxy in Academia and Science, Tempe, Ariz., March 19-20, 2009, and Panel on Academic Freedom and the Treatment of Dissenting Ideas in the Modern University, Tempe Ariz., March 19, 2009.



Laura Berend spoke at an Appellate Defenders, Inc. seminar on January 24, 2009, at USD School of Law. Titled “The Sixth

Amendment: We Shall, We Shall Not Be Moved,” the seminar celebrated the Sixth Amendment and forty years of contributions of the Defenders’ spirit to the San Diego criminal defense community.



Roy Brooks published his latest book, *Racial Justice in the Age of Obama* (Princeton University Press, 2009), which offers a new and

nonpartisan way of thinking about the problem of race in contemporary American society. One reviewer, Charles J. Ogletree, Jr., the Jesse Climenko Professor of Law at Harvard Law School, writes, “This book is powerful, thorough, and compelling. In Brooks’s critique of liberals and conservatives, there are no sacred cows. It is a must-read.” Joe R. Feagin, past President of the American Sociological Association, writes that Professor Brooks, “Offers the best evaluative summary yet of contemporary civil rights

thinking.” Similarly, Alex Johnson, the Perre Bowen Professor of Law at the University of Virginia School of Law and former dean and William S. Pattee Professor of Law and former Dean at Minnesota Law School, writes, “This excellent book will command the attention of a significant legal audience as well as other intellectuals interested in the race question. Well-researched and well-written, it will revise how the debate on race is addressed.” On November 10, 2009, Professor Brooks gave a campus-wide talk on his book at the Joan B. Kroc School of Peace Studies.



Karen Burke’s recently published articles include: *Partnership Taxation* (with Yin) (Aspen Law & Business, 2009) and “The

Sound and Fury of Carried Interest Reform,” in 1 *Columbia Journal of Tax Law* (forthcoming 2010); “Back to the Future: Revisiting the ALI’s Carried Interest Proposals,” in 125 *Tax Notes* 242 (2009); and “Carlisle: A ‘Hollow Victory?’” in 124 *Tax Notes* 169 (with McCouch) (2009). Also, in October 2009, Professor Burke spoke on pending carried interest legislation at the Southern Methodist University Dedman School of Law.



Nancy Carol Carter published an invited contribution in a special issue on Indian law and tribal courts, “American

Indian Law: Research for State Courts,” in 45 *Court Review, The Journal of the American Judges Association* (forthcoming 2010). Her article, “The Brandegees in San Diego,” has been accepted for publication in the *Journal of San Diego History* (forthcoming 2010). Carter’s volunteer work includes advocacy for public library services and presentations on behalf of the San Diego Historical Society Speakers’ Bureau.



Lynne Dallas presented “Caring Too Much About Stock Prices: Managerial Myopia and the Long-Term Shareholder” at the In Berle’s

Footsteps Symposium put on by the Center on Corporations, Law and Society, Seattle University School of Law, November 8, 2009. An article of the same title will be published by the school in a symposium edition journal. Dallas also served as a moderator on the panel on federal financial regulatory reform at the 80th Anniversary of the Great Crash of 1929: Law, Markets and the Role of the State Symposium, held by Chapman University School of Law, October 30, 2009.



Bob Fellmeth continued work on the third edition of *Child Rights and Remedies* (Clarity, forthcoming 2010). The revised and expanded

text includes coverage of international child rights, mirroring a change in Professor Fellmeth’s child law course, which is now taught in conjunction with USD’s Joan B. Kroc Center on Peace Studies and available to Kroc students. He also completed the third edition of the 800-page treatise, *California White Collar Crime* (with Papageorge) (Tower Publishing, forthcoming 2010). Professor Fellmeth wrote the foreword to the new book: *Childhood Denied: Ending the Nightmare of Child Abuse and Neglect* (Sage Publications, 2009). He also wrote the foreword to *A Child’s Right to Counsel, A National Report Card on Legal Representation for Abused and Neglected Children* (2009).

Professor Fellmeth is counsel of record for the Children’s Advocacy Institute (CAI) or the Center for Public Interest Law (CPIL) in three federal cases filed or heard during 2009. The first, *California State Foster Parent Association et al. v. John A. Wagner*, was heard in United States

District Court for the Northern District of California. CAI represents the state's three associations representing family foster care providers, contending that state compensation rates violate federal law, are set below the actual cost of care and have impeded the supply of family foster care placements, limiting adoption opportunity, separating siblings and allocating substantial numbers of abused children into group home placements at eight times the sums paid to families for their care. The district court granted summary judgment for the plaintiffs, declaring the state to be in violation of federal law in failing to consider actual costs, or in meeting them. Attorney fees have been awarded to plaintiff counsel. The state has appealed to the Ninth Circuit and remains pending as of the end of 2009.

The second, *E.T. v. Ronald George*, was filed in 2009. This class action was brought by four Sacramento County foster children on behalf of the 4,200 foster children in the county and against the Chief Justice of the State Supreme Court, the administrative office of the courts, and the presiding judge of Sacramento County. The complaint contends that children subject to juvenile dependency court jurisdiction have a constitutional right to counsel, and that the caseloads existing in the county for judges (at 1,000) and for counsel (at above 350 for many) violate the constitutional rights of the child class, as well as federal and state statutes assuring due process and an effective "guardian ad litem" for these children. The case is pending.

In *Shames v. Hertz*, in United States District Court for the Southern District of California, Fellmeth serves as plaintiffs' counsel for the class alleging antitrust price fixing offenses by the seven rental car corporations operating out of California airports, and Bagley-Keene Open Meeting Act violations by the co-conspirator California Travel and Tourism Com-

mission (CTTC). The federal district court denied the defendant rental car firms' motion to dismiss under Rule 12(b)6, but granted dismissal as to the CTTC. The plaintiff class has appealed that dismissal to the Ninth Circuit, where the case is pending at the end of 2009.

Professor Fellmeth presented at the National Association of Counsel for Children Conference in Brooklyn, N.Y. during August of 2009 on current impact litigation for child rights, the presentation was included in the conference publication, "Partnering with Pro-Bono Counsel on Impact Litigation: Three Examples," in *Standing at the Forefront: Effective Advocacy in Today's World* (with Delgado and Riehl) (National Association of Counsel for Children, 2009). He delivered the annual John Fitzrandolph Memorial Lecture, at Whittier Law School Center for Children's Rights, March 26, 2009. His speech was rewritten as "America's Child Welfare System: The Four Missing Priorities," 9 *Whittier Journal of Child and Family Advocacy* 1 (2010).

Professor Fellmeth also commented on the "Proposed American Bar Association Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings," (February 27, 2009). He also delivered the opening plenary lecture, "The Politics and Prospects of Public School Investment," to the 11th Annual Forum of the Center for Student Support Systems, San Diego, December 11, 2009.

In 2009, Professor Fellmeth was named "Remarkable Leader in Education" by the School of Leadership and Education Sciences, University of San Diego. He was also elected chairman of the board of the National Association of Counsel for Children. He remains chairman of the board of the Public Citizen Foundation, serves on the board of First Star Foundation and serves as counsel to the board of Voices for America's Children.



Ralph Folsom authored or co-authored *Principles of European Union Law* (West, 2009), and four international business transactions course books (West, 2009) covering contracting across borders, trade and economic relations, as well as foreign investment. Professor Folsom also contributed, "International Antitrust Discovery," a chapter in *Antitrust Counseling and Litigation Techniques* (LexisNexis, 2009). During 2009, he presented "Bilateral Free Trade Agreements" at the John Marshall Eighth Annual Folsom Lecture, and made various international law lectures at the Universities of Montpellier, Aix-en-Provence, and Toulouse in France, as well as Tech de Monterrey in Mexico.

John I. Forry published *International Finance Techniques: Key Elements, Challenges and Opportunities*, 2nd ed. (Long Dash Publishing, 2009) a graduate business and law schools teaching text. He wrote "Structuring International Private Equity Investments in the People's Republic of China," published in the March 2009 edition of *The Banking Law Journal*. He was also a speaker on "U.S. Tax Aspects of Cross Border Distressed Investments," USD/Procopio International Tax Institute (October 2009).



Hugh Friedman completed and published the 24th edition of his *California Practice Guide - Corporations* (Thomson/West, 2009).

The two-volume work is widely used by business lawyers and often cited by the California courts. Professor Friedman also presented to the San Diego County Bar Association Business Law and Corporate Counsel section his annual "update" on developments in business law during the prior year. He also was recognized at

a reception by the law student Business Law Society and Tax Society for his contributions over the years to these disciplines. Professor Friedman was a speaker at the retirement event for Professor (and thrice acting dean) Grant Morris. He continues to serve as a director of the San Diego County Bar Foundation and to chair its Distinguished Lawyer Memorial Committee and as a director of the San Diego Corporate Director's Forum.



Walter Heiser presented a paper titled, "The Hague Convention on Choice of Court Agreements: The Impact on Forum Non Conveniens, Transfer of Venue, and Removal in the United States Courts" at the annual meeting of the Mexican Academy of Private International Law and Comparative Law on November 14, 2009. The paper will be published in English and in Spanish. The 2009-2010 edition of Heiser's *California Civil Procedure Handbook: Rules, Selected Statutes and Cases, and Comparative Analyses* was published by LexisNexis in 2009. Heiser's article titled, "Due Process Limitations on Pre-Answer Security Requirements for Nonresident Unlicensed Insurers" was accepted for publication in 88 *Nebraska Law Review* (forthcoming 2010).



Gail Heriot testified as a member of the United States Commission on Civil Rights at a hearing on the proposed Native Hawaiian Government Reorganization Act of 2009 (H.R. 2314) before the House Committee on Natural Resources on June 11, 2009 and at a hearing on the proposed Matthew Shepard Hate Crimes Prevention Act of 2009 (S. 909) before the Senate Committee on the Judiciary on June 25, 2009. Professor Heriot published, "Lights! Camera! Leg-

islation!: Congress Set to Adopt Hate Crimes Bill that May Put Double Jeopardy Protections in Jeopardy," in 10 *Engage 4* (2009); "Hate Bill Threatens Innocent: Federalizing Crimes Strips Protection By Adding Another Layer of Prosecution," in *The Philadelphia Inquirer* (July 22, 2009); and "You Know What I'm Thinking, Right?: A Plea for More Viewpoint Diversity," in the *Journal of Legal Education* (forthcoming 2010).

Professor Heriot organized "Colloquium: Liberty, Responsibility & the Legal Profession," in La Jolla, Calif., March 26-28, 2009, where she also led the discussion. She also organized "Federal Sovereignty, State Sovereignty, and The Sovereignty of 562 Native American Tribes: A Match Made In Heaven, Or Somewhere Less Pleasant?" at the third annual Federalist Society Western Conference, held at the Reagan Library in Simi Valley, Calif., on January 24, 2009. Heriot debated the proposed Native Hawaiian Government Reorganization Act at this conference.

She spoke at the presidential panel on Associational Diversity at the Annual Meeting of the Association of American Law Schools, in San Diego on January 8, 2009, presented "Are Law Schools Legal?" at the 62nd annual meeting of the Southeast Association of Law Schools in West Palm Beach, Fla., on August 3, 2009, and "Civil Rights in the Age of Obama," at the Heritage Foundation in Washington, D.C., on May 13, 2009.

Heriot participated in the Fred Friendly Seminar, "Race in America," at the annual Kaiser Permanente Diversity Conference, held in San Francisco, on November 5, 2009 and assisted in the moot court for the counsel for the petitioners in the case of *Ricci v. DeStefano* 07-1428 on April 16, 2009. The case was then argued before the Supreme Court on April 22, 2009.



Frank Kemerer published the second edition of *California School Law* (Stanford Law Books, 2009), which he co-authored with Peter

Sansom, a 2001 graduate of the law school. He contributed a chapter, "A Legal Perspective on School Choice," to *The Handbook of Research on School Choice* (Routledge, 2009). Professor Kemerer also published *William Wayne Justice: A Judicial Biography* (University of Texas Press, 2009), an updated biography of U.S. District Court Judge William Wayne Justice. The original book was published by the University of Texas Press in 1991 and in 1992, was designated a Scribes Book Award Finalist by the American Society of Legal Writers, and received the T. R. Fehrenbach Award from the Texas Historical Commission. The new paperback edition has an extended epilogue that brings the original book up to date, most notably that Judge Justice passed away last month.

Professor Kemerer was selected as an associate with the newly constituted American Center for School Choice. He served on the panel addressing "School Choice and the Law: Precedents and Prospect," with Jesse Choper, the Earl Warren Professor of Public Law at the University of California, Berkeley School of Law, and Patrick Brennan, the John F. Scarpa Chair in Catholic Legal Studies at Villanova University School of Law, at the organization's inaugural conference at the National Press Club in Washington, D.C. He served as principal investigator of several research studies completed in 2009 by USD's Center for Education Policy and Law (CEPAL), where he serves as the associate director for research and academics. Two such research studies were: "Maintenance of Standards in Collective Bargaining Agreements" (October 22, 2009), and "School Governance

Study,” (September 11, 2009). Both were completed with the assistance of Kimberly Gee, a recent USD Law graduate who is serving as a legal research assistant to the center.



William Lawrence published *Understanding Sales and Leases of Goods*, 2nd ed. (Lexis-Nexis, 2009) and “A Unified Rationale for Section 2-607(3)(a) Notification,” 46 *San Diego Law Review* 573 (2009) (both with William Henning). He was appointed University Professor for 2009-2010.



Bert Lazerow presented “The History and Future of Summer Law Study Programs Abroad” at the 2009 South Eastern Association of Law Schools meeting in Palm Beach, Fla. He pointed out that when USD established the first U.S. law school program on the European continent, there were only four American law school programs outside the U.S. with an average enrollment of 75 students each. That constituted less than one percent of the entering class at U.S. law schools at that time. By 1995, there were more than 100 programs, with an average enrollment of 30 students each, constituting around 10 percent of the entering class. Although the number of law programs abroad has doubled since then and are present on six continents, the percentage of U.S. law students attending those programs has remained around 10 percent. More and more, students are attending programs sponsored by their own schools, which provides a less diverse student base than in the 1980s, and a narrower base of contacts, so a less rich environment in which students can develop their thinking. USD also continues to hire faculty from throughout the globe, and to welcome a

rich variety of students, to its summer programs abroad.



Orly Lobel was part of a collaborative project that released a new authoritative encyclopedia of labor and employment law and economics in 2009. Lobel compiled and edited, along with Kenneth G. Dau-Schmidt of Indiana University’s Bloomington’s Maurer School of Law, and Seth D. Harris of New York Law School, *Labor and Employment Law and Economics* (Encyclopedia of Law and Economics, 2nd ed.). The 600-page volume is one of the first in a series on specific topics within law and economics that builds upon, updates and replaces Elgar’s very popular *Encyclopedia of Law and Economics* (November 2000). The book is designed as an essential starting point for academics and policy-makers who are interested in these topics.

Professor Lobel received several grants for her empirical work, including grants from the Robert Wood Johnson Foundation, the ABA Litigation Fund and the Southern California Innovation Project. She is the 2009-10 Searle-Kauffman Fellow on Law, Innovation, and Growth. In 2009, Lobel served as a Jurist for the Foundation for the Science and Technology of Portugal. In spring of 2010, Lobel will be a visiting professor at the University of California, San Diego, Rady School of Management and will teach a joint MBA/JD class on corporate innovation and legal policy.

Lobel’s experimental study, “The Incentives Matrix: A Study of the Comparative Effectiveness of Monetary Rewards as Compliance Systems,” will be published in the *Texas Law Review* (with Yuval Feldman) (forthcoming 2010). Her article “Citizenship, Organizational Citizenship, and the Laws of Overlapping Obligations,” was recently published in the 97

California Law Review 433; and her book chapter, “The Overlaying of Fair Trade Systems on Other Regulatory Approaches,” was published in *Fair Trade, Corporate Accountability and Beyond* (Ashgate, 2009). Lobel’s book review of *How the Other Half Works: Immigration and the Social Organization of Labor* was published in the *Review of Political Economy* (2009).

Professor Lobel spoke on plenary panels at the Law and Society annual meeting in Denver in May 2009 and at the Aspiring Law Professor Conference, Arizona State University in Tempe, Ariz. in October 2009; participated at the Searle-Kauffman meeting held at Northwestern University School of Law, Chicago in October 2009; and presented her research at workshops at Vanderbilt University, University of Haifa, Tel-Aviv University, University of California, Berkeley and USD School of Law. In 2010, Lobel will present her research at workshops at Cornell Law School, Georgetown Law Center, University of Florida Law School, University of Southern California School of Law, University of Chicago School of Law, and at the American Bar Association Administrative Law Section Annual Meeting, in San Francisco.

Lobel is currently writing a book on innovation, intellectual property and employment titled, *Innovation’s Edge: Talent, Secrets and Sparking Genius* (under contract with Yale University Press, forthcoming 2011).



Lesley K. McAllister published “Regional Climate Regulation: From State Competition to State Collaboration” in the inaugural issue of the 1 *San Diego Journal of Climate and Energy Law* 81 (2009). Other recent publications include “The Overallocation Problem in Cap-and-Trade: Moving Toward Stringency,” in 34 *Columbia*

Journal of Environmental Law 396 (2009); “On Environmental Enforcement and Compliance: A Reply to Professor Crawford’s Review of Making Law Matter: Environmental Protection and Legal Institutions in Brazil,” in 40 *George Washington International Law Review* 649 (2009); “Reorienting Regulation: Pollution Enforcement in Industrializing Countries,” 32 *Law & Policy* 1 (2009); and “Dimensions of Enforcement Style: Factoring in Regulatory Capacity and Autonomy,” 32 *Law & Policy* 61 (2009). Volume 32 is a symposium issue of *Law & Policy* guest co-edited by McAllister, et. al.

Professor McAllister organized and presented at the first annual Climate & Energy Law Symposium at the University of San Diego in February, 2009. She also gave talks at Georgetown University, the Law & Society Association’s annual meeting and West Coast Scholars Retreat, the Rocky Mountain Mineral Law Foundation Law Teachers Institute, the California State Bar annual meeting, and the fall meeting of the American Bar Association section of State and Local Government Law. She serves as a liaison to the ABA Standing Committee of Environmental Law and as a member scholar of the Center for Progressive Reform. In December 2009, she taught comparative environmental law as a visiting professor at the Sorbonne in Paris.



Grayson M. P. McCouch’s article, “Carlisle: A Hollow Victory?,” co-authored with Karen C. Burke, was published in 124

Tax Notes 169 (2009).



John (Jack) Minan coauthored with USD School of Law Dean Kevin Cole *The Little White Book of Baseball Law*, (American Bar

Association, 2009). The game of baseball has often resulted in brawls, both on the field and in the courtroom. From the 1890s on, much of what baseball is today has been shaped by the law. The book explores the legal aspects of America’s favorite pastime. Professor Minan also published two articles, “The Clean Water Act and Power Plant Cooling Water Intake Structures,” in 1 *San Diego Journal of Climate and Energy Law* 163 (2009) and “Pesticides as ‘Pollutants’ Under the Clean Water Act,” in 47 *San Diego Law Review* (2010).

Minan is active with issues affecting the legal profession. He serves on the governing council of the American Bar Association’s section of state and local government, and is on the section’s publications oversight board. He appeared before the State Lands Commission and California Coastal Commission speaking on behalf of the use of desalination. In February 2009, Minan presented “The Clean Water Act and Power Plant Cooling Water Intake Structures,” at the inaugural Climate & Energy Law Symposium at USD. He is currently working on a book titled *Sports Law and the Amateur*, which looks at the legal issues involving players, coaches and governing organizations, such as the NCAA.

Minan spoke to several local organizations about “golf law,” and has started collecting new cases for the second edition of his popular book *The Little Green Book of Golf Law*. In January 2010, he added a hole-in-one to his golf resume. Providence smiled on him at the fifth hole of the Coronado Municipal Golf Course. It was his third hole-in-one.



Grant Morris will publish two articles in 47 *San Diego Law Review* 2 (forthcoming 2010): “Teaching with Emotion: Enriching

the Educational Experience of First-Year Law Students” and “The Greatest Legal Movie of All Time: Proclaiming the Real Winner.”



Frank Partnoy was named the George E. Barrett Professor of Law and Finance at USD Law and won the Thorsnes Prize for

excellence in teaching and the Thorsnes Prize for outstanding legal scholarship for the 2008-09 school year. He published *The Match King: Ivar Kreuger, The Financial Genius Behind a Century of Wall Street Scandals* (PublicAffairs, 2009). *The Match King* was named a finalist for the Financial Times/Goldman Sachs Business Book of the Year, 2009, *Financial Times* Best Books of the Year, 2009, and Inc. Magazine Best Books for Business Owners of 2009. Professor Partnoy also has two forthcoming textbooks: *Corporations: A Contemporary Approach* (with Palmiter) (Thomson, forthcoming 2010) and *Business Organization and Finance, Legal and Economic Principles* (with Coffee and Klein) (Thomson, forthcoming 2010). He contributed a chapter, “Overdependence on Credit Ratings Was a Primary Cause of the Crisis,” to *The Panic of 2008: Causes, Consequences, and Implications for Reform* (Edward Elgar Press, forthcoming 2010).

Professor Partnoy published, “Historical Perspectives on the Financial Crisis: Ivar Kreuger, the Credit Rating Agencies, and Two Theories about the Function, and Dysfunction, of Markets,” 26 *Yale Journal on Regulation* 431 (2009); “Shapeshifting Corporations,” 76 *University of Chicago Law Review* 261 (2009); and “Rethinking Regulation of Credit Rating

Agencies: An Institutional Investor Perspective,” a white paper written for the Council of Institutional Investors in April 2009. He also published six essays and commentary pieces: “Top 5 Books on Financial Schemes,” *The Wall Street Journal*, May 23, 2009; “Danger in Wall Street’s Shadows,” *New York Times*, May 15, 2009; “Geithner’s Stress Test Sham,” *The Daily Beast*, May 7, 2009; “Hedge Fund Managers Are the Heroes of this Crisis,” *The Daily Beast*, March 25, 2009; “Rated F for Failure,” *New York Times*, March 16, 2009; and “Prepare to Bury the Fatally Wounded Big Banks,” *Financial Times*, January 19, 2009.

Professor Partnoy gave many speeches and appeared at many conferences. He presented “Some Historical Perspectives on The Match King,” at the CalCPA San Diego Tax and Accounting Institute, San Diego, on November 18, 2009; the Sempra Lecture Series, San Diego, November 6, 2009; at Club Altura in La Jolla, Calif., on September 3, 2009; the CFA Society of San Diego, on August 26, 2009; New York University, on May 6, 2009; and the University of California, San Diego, on May 1, 2009. He presented “*The Match King, Chapter 9: The Author’s Cut*,” at the American Society for Legal History Annual Conference, in Dallas, Texas, on November 13, 2009; Developments in Corporate Law Symposium at Indiana University Maurer School of Law, Bloomington, Ind., in November 9, 2009; and at the Business Law and Narrative Conference, Michigan State University, East Lansing, Mich., on September 11, 2009.

He presented “Legal Implications of the Financial Meltdown” at the Appellate Judicial Attorneys Institute, in Long Beach, Calif., on November 2, 2009. He presented “What Can We Learn from ‘The Match King?’” at the Public Investors Arbitration Bar Association annual meeting in Carlsbad, Calif., October 31, 2009; at the Council of Institutional Investors Annual Meeting, Los

Angeles, October 2, 2009; and the Institute for Private Investors Fall Forum, San Francisco, September 16, 2009.

Professor Partnoy presented, “At the Center of the Financial Crisis: Derivatives and Rating Agencies, and From Ivar Kreuger to Bernie Madoff: What do Mega-Frauds Tell Us About Our Financial System” to the Labaton Sucharow Conference on Corporate Governance and Securities Regulation: One Year After the Lehman Brothers Collapse and AIG Bailout, in New York, on September 25, 2009. He also presented “Lessons Learned: Looking to History and Looking to the Future,” at the Information Management Network’s 3rd Annual Hedge Fund Activism and Shareholder Value Summit, in Carlsbad, Calif., on September 23, 2009 and “Challenges Facing Public Funds Today, The Corporate Library Conference on the Future of Corporate Reform,” San Diego, September 9, 2009.

Partnoy gave a talk titled, “Financial Innovation and Corporate Governance,” at the Rady School of Management, University of California, San Diego, July 25, 2009, and “Finance in Corporate Law,” at the American Association of Law Schools Conference on Business Associations, Long Beach, Calif., June 8, 2009. He presented “Modeling Prediction,” at the American Law and Economics Association, University of San Diego, May 15, 2009; “Dura Fraud,” at the Institute for Law and Economic Policy, Scottsdale, Ariz., on April 24, 2009; and “Rethinking Regulation of Credit Rating Agencies” to the Credit Rating Agency Roundtable, Securities and Exchange Commission, Washington, D.C., on April 15, 2009. He also presented “Blame the Match King” at Grant’s Interest Rate Observer Spring Investment Conference, New York, on April 7, 2009 and “Overdependence on Credit Ratings Was a Primary Cause of the Crisis” at George Washington University in Washington, D.C., on April 3, 2009.

Partnoy’s international presentations include: “Fixing the Global Financial System” at the FEEM-Bocconi Financial Regulation Workshop in Milan, Italy, on March 27, 2009; “The Role of the Credit Rating Agencies in the Financial Crisis” at the London Business School and “Some Historical Perspectives on The Match King” at Oxford University in England on February 24, 2009; and “Some Historical Perspectives on The Match King,” at Cambridge University, Cambridge, England, February 25, 2009.

Throughout 2009, Professor Partnoy appeared on many media outlets, including *60 Minutes*, *The Daily Show with Jon Stewart*, *The NewsHour with Jim Lehrer*, *Fresh Air with Terry Gross*, and *The Diane Rehm Show*.



Michael J. Perry published *The Political Morality of Liberal Democracy* (Cambridge University Press, 2010).

In the book, he elaborates and defends the moral convictions and commitments that in a liberal democracy should govern decisions about what laws to enact and what policies to pursue. Fundamental questions addressed in his book concern the grounding, the content, the implications for one or another moral controversy, and the judicial enforcement of the political morality of liberal democracy. Particular issues discussed include whether government may ban pre-viability abortion, whether government may refuse to extend the benefit of law to same-sex couples, and what role religion should play in the politics and law of liberal democracy.



Professor Jean Ramirez continues to serve on the board of directors of Appellate Defenders and Federal Defenders (the Defender Board)

and completed a three-year term as the board president in April. During the past year she has produced two instructional videos with the help of Scott Lundergan in Instructional Tech Services: one created for use in evidence classes, illustrating the relationship between motions in limine and trial advocacy. The other video introduces students to the trial process, including trial advocacy, jury instructions and jury nullification. She and Professor Laura Berend are currently updating and otherwise revising their book, *Criminal Litigation in Action* (National Institute for Trial Advocacy, 2002).



Lisa Ramsey was promoted to professor of law in July 2009. She will have her article, “Free Speech and International Obligations to Protect Trademarks,” published in *The Yale Journal of International Law* in 2010. In fall of 2009, Professor Ramsey presented her article, “Brandjacking on Social Networks: Confusion About the Source of Information or Advertising,” at the University of Washington School of Law, the University of Buffalo Law School, the Intellectual Property Scholars Conference at Cardozo Law School, the 2009 International Workshop on Copyright Industries and Intellectual Property at South China University of Technology School of Law in Guangzhou, China, and at the Age of Digital Convergence: An East-West Dialogue on Law, Media and Technology at the University of Hong Kong. The article will be published by the *Buffalo Law Review* in a symposium issue on the topic of advertising and the law in 2010.



Maimon Schwarzschild will publish “Equality and the Constitution” in a forthcoming second edition of *Blackwell’s Companion to Philosophy of Law and Legal Theory* (Wiley-Blackwell, forthcoming 2010). He is also publishing a symposium article titled “On This Side of the Law, On That Side of the Law,” on value pluralism, the philosophy of Isaiah Berlin, and the law in the *San Diego Law Review* (forthcoming 2010.) He also served as a guest lecturer on the American Constitutional System at the Sorbonne in Paris in November, 2009 and on the same topic at the Hebrew University in Jerusalem in December, 2009.



Ted Sichelman’s upcoming publications include: “Commercializing Patents,” 62 *Stanford Law Review* (forthcoming 2010); “Myths of (Un)Certainty at the Federal Circuit,” 43 *Loyola of Los Angeles Law Review* (forthcoming 2010); and “Patenting by Entrepreneurs: An Empirical Study,” in 16 *Michigan Telecommunications & Technology Law Review* (with Graham), which will also appear in *Handbook of Law, Innovation, and Growth* (forthcoming 2010). Professor Sichelman’s recently published articles include: “High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey,” 25 *Berkeley Technology Law Journal* (with Graham, Merges, and Samuelson) (forthcoming 2010) and “Why Barring Settlement Bars Legitimate Suits: A Reply to Rosenberg and Shavell,” 18 *Cornell Journal of Law & Public Policy* 57 (2009).

Also published in 2009 were Sichelman’s “Top 10 Patent Strategies,” in *The San Diego Daily Transcript*, September 30, 2009, a book review in *California Lawyer* (May, 2009), and “Factors Used to Deter-

mine Whether an ERISA Fiduciary or Administrator Has Wrongfully Denied Benefits,” in *Employee Benefits Law*, 3d ed. (with Matthew Jedreski) (Steven J. Sacher *et al.*, eds., 2009).

Recent and upcoming lectures and presentations for Professor Sichelman include: “High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey” at the Colorado Bar Association, Intellectual Property Section meeting, Denver (forthcoming 2010); at the Conference on Empirical Legal Studies, University of Southern California Law School, November, 2009; West Coast Research Symposium, University of Washington School of Law, September, 2009; Hosier Scholars Series, DePaul Law School, September, 2009; National Bureau of Economic Research, Intellectual Property Summer Session, Boston, July, 2009; Kauffman Foundation Summer Legal Institute, Dana Point, Calif., July, 2009; San Diego Intellectual Property Law Association, May, 2009; Graduate Education in Technology Commercialization Workshop, Georgia Tech School of Management, April 2009; Creativity, Law and Entrepreneurship Workshop, Institute for Legal Studies, University of Wisconsin Law School (with Graham), April, 2009; and Innovation Seminar, Haas School of Business, University of California Berkeley (with Graham), February, 2009. He will present “Commercializing Patentable Subject Matter, The Future of Subject Matter Eligibility After *In re Bilski*,” at Bar-Ilan Law School, Tel-Aviv, Israel (forthcoming 2010).

Professor Sichelman participated in a discussion board at “Empirical Studies of Patent Litigation,” at Northwestern Law School, Chicago, in November, 2009; presented “Myths of (Un)Certainty at the Federal Circuit, The Federal Circuit as an Institution,” at Loyola Law School, Los Angeles, November, 2009 and moderated “The Legality of ‘Rogue’ Bots: *MDY Indus-*

tries v. Blizzard Entertainment,” an American Bar Association Webinar, October, 2009. He also participated in panel discussions of “The ‘Entrant’s Dilemma,’ Patent Cross Licensing & Startup Innovation,” at Patent Cross Licensing: Academic and Practical Perspectives, University of California Berkeley School of Law, October, 2009; “Quantum Game Theory and Cooperation in Intellectual Property,” at the annual Meeting of the Midwestern Law & Economics Association, Notre Dame Law School, October, 2009; and “High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey,” Works in Progress in Intellectual Property, Seton Hall Law School, October, 2009.

He participated in the Patent Law Colloquium, at Santa Clara Law School in September, 2009, and Royalty Stacking Roundtable, USD School of Law, March, 2009, as a discussant. He presented “Patent Bullies: How Industry Incumbents Abuse the Patent System” at the Conference on Innovation and Communication Law, University of Louisville Louis D. Brandeis School of Law, Louisville, Ky., August, 2009; Law & Society Association Annual Meeting, Denver, May, 2009; and the Intellectual Property Scholars Conference, Cardozo Law School, N.Y., August, 2009. He presented “Commercializing Patents” at the Annual Conference of the International Society for New Institutional Economics, University of California, Berkeley, Berkeley, Calif. (June 2009) and at Junior Scholars in Intellectual Property, Michigan State University School of Law (March 2009). He also presented “The Vonage Trilogy: A Case Study in ‘Patent Bullying,’” at Patents and Entrepreneurship in Business and Information Technologies, George Washington University, Washington, D.C., June, 2009 and “Patenting by Entrepreneurs: An Empirical Study,” at the Economics and Law of

the Entrepreneur, Searle Center, Northwestern University School of Law, Chicago (with Stuart Graham), June, 2009.

Professor Sichelman presented “Quantum Game Theory and Cooperation in Intellectual Property,” at the annual meeting of the American Law & Economics Association, USD School of Law, May 2009, organized the Bay Area IP & Privacy Law Research Fellows & LLMS Workshop, University of California, Berkeley, School of Law, Berkeley, Calif. (May 2009).

He also assisted in drafting an *amicus* brief in, *Bilski v. Kappos*, No. 08-964, (argued November 20, 2009), a significant Supreme Court case addressing the boundaries of patentable subject matter, including the patentability of business methods and software.



Steve Smith’s essay, “Discourse in the Dusk: The Twilight of Religious Freedom?” was published in 122 *Harvard Law Review* 1869 (2009). His essay, “Kent Greenawalt’s Elusive Constitution,” was published in 25 *Constitutional Commentary* 301 (2009). In May, he presented a paper titled, “The Establishment Clause and the Problem of the Church” in a conference on religious freedom at Princeton University. He also participated in the Constitutional Theory Colloquium, Georgetown University, March 27, 2009. In June, Professor Smith presented several chapters of his forthcoming book, *The Disenchantment of Secular Discourse*, (Harvard University Press, 2010) in a workshop and classes at the Universidad Torcuato di Tella in Buenos Aires, Argentina. In October, he presented a paper, “Persons All the Way Up,” at a conference at Villanova honoring the work of Michigan Professor of Law Joseph Vining.



Allen Snyder taught and directed USD Institute for International Studies’ Florence program in June of 2009. He also collaborated with the Trans-Border Institute and Universidad Autónoma de Baja California (Mexicali) to obtain a grant from USAID-HED for training Mexican judges and lawyers in the oral advocacy skills that recent legislative changes have brought to the Mexican criminal trial system. As part of that program, he attended the USAID-HED annual conference in Veracruz, Mexico, to meet with others involved in USAID’s rule of law programs in Mexico. There he sat on a panel on viable binational commercial dispute resolution in northern Baja and California and presented on his own recommendations based on his experience helping establish commercial and community mediation centers in eastern Europe after the fall of the Berlin Wall.



Lester B. Snyder is completing a study titled, “Eyes Wide Shut: Beyond the Present ‘Tax Gap’ Analyses.” The resulting article explores some major deficiencies in the academic literature of the so-called federal “tax gap,” which posits that between \$300 and \$400 billion of tax revenue is currently not paid or underreported by errant taxpayers, mainly in the small business sector. The article recommends some principal causes of the “real” tax gap (perhaps twice the assumed gap) beginning with the illusory differences between the way we tax corporate and non-corporate businesses. Snyder was also reappointed to the national Academic Advisory Board of the Tannenwald Foundation for Academic Excellence in Tax Law and Policy.



Mary Jo Wiggins was named a Class of 1975 Endowed Professor for the 2009-2010 academic year. This award recognizes meritorious

teaching, leadership, and academic accomplishments of a professor in the School of Law. Dean Wiggins wrote six chapters for *Collier on Bankruptcy*. She is also writing a bankruptcy manuscript for Lexis-Nexis with publication expected in fall 2010. She was interviewed by national media outlets seeking her opinion on the implications of the Chrysler and GM bankruptcy filings. She was invited to comment to the Federal Advisory Committee on Bankruptcy Rules on a series of proposed changes to the Federal Rules of Bankruptcy Procedure. Dean Wiggins was invited by the USD Women's Law Caucus to speak on the topic of gender and the legal profession at the 2009-10 kick-off event. She gave a presentation on legal ethics and professionalism to incoming first-year students and she was the featured speaker at the Francis W. Parker Cum Laude Society's Annual Awards Dinner. Dean Wiggins continued her service to the Law School as Associate Dean for Academic Affairs, a position she has held since 2006. She also served as coach and advisor to USD's Conrad Duberstein Bankruptcy Moot Court team for the fifth consecutive year.



Chris Wonnell was awarded a Master of Arts in Economics from the University of California, at San Diego.

Adjunct Faculty Footnotes, Lawyering Skills Instructors, Adjunct and Visiting Faculty Footnotes



Louis A. Mezzullo started the Business Succession Planning Team at Luce Forward Hamilton & Scripps LLP to help family-

owned and closely held business owners transfer their businesses to the next generation or profitably dispose of them. Louis was named one of the top 50 lawyers in the *San Diego Super Lawyers* in 2009.



Thomas Penfield was selected for inclusion in *San Diego Super Lawyers 2009*, and is the current president of the Bar Association

of North San Diego County.



Walter Schwidetzky, visiting professor from University of Baltimore School of Law, published "Integrating Sub-

chapters K and S, Just Do It," in 62 *Tax Lawyer* 749 (2009) and spoke on behalf of the tax policy committee of the American Bar Association's tax section at its January 2010, meeting in San Antonio on the topic of international approaches for supporting family businesses. He will be a visiting professor at California Western School of Law in the fall of 2010.



Junichi Semitsu presented "The Race to Erase: Reflections on a 'Post-Racial' Society," College of Fine Arts & Communication,

University of Wisconsin-Stevens Point and at the Korean American Bar Association of San Diego. He presented a lecture at the Lawyers Club of San Diego and served as the faculty commencement speaker for Master of Science in Global Leadership major at the University of San Diego School of Business.



In Memory of Professor Fred C. Zacharias

Fred C. Zacharias, USD School of Law Herzog Research Professor of Law and nationally recognized figure in the field of professional responsibility, passed away on Sunday, November 8, 2009. He was 56.

Professor Zacharias joined the USD law faculty in 1990, teaching courses in constitutional law, criminal procedure and professional responsibility. During his tenure, he was named Herzog Scholar (1995-96), received the Thorsnes Prize for Outstanding Legal Scholarship (2003-04), was named the Class of 1975 Professor (2005-06) and in 2009, became the inaugural Donald Weckstein Summer Research Professor.

“Fred Zacharias was one of the finest legal ethics scholars in the United States, a genuine leader in the field. He was also a wise and generous colleague,” said Georgetown University Professor of Law and Philosophy David Luban. “This is a great loss not only to his family and friends, but to the profession as well.”

“At the start of his career,” Luban continued, “Fred did a pioneering empirical study of how much lawyer-client confidentiality matters to what lawyers tell their clients and what clients are willing to tell their lawyers. He was the nation’s leading expert on the responsibilities of prosecutors, about which he wrote both solo and in a number of excellent articles he co-authored with Bruce Green. Fred wrote thoughtfully about the relationship between concepts of professionalism and regulatory strategies for lawyers. He was surely among the most prolific scholars in legal ethics, and among the most thoughtful.”

A prolific author, Professor Zacharias’ many articles included: “The Uniqueness of Federal Prosecutors,” *Georgetown Law Journal*; “Waiving Conflicts of Interest,” *Yale Law Journal*; “Structuring the Ethics of Prosecutorial Trial Practice,” *Vanderbilt Law Review*; “Flowcharting the First Amendment,” *Cornell Law Review*; “Federalizing Legal Ethics,”

Texas Law Review; and “The Politics of Torts,” *Yale Law Journal*. He was a leading proponent of the proposition that lawyers have ethical roles beyond their duty to advance the interests of individual clients. Both as a teacher and scholar, he observed that lawyers have countervailing obligations—to the court, the legal system, third parties, society as a whole and to general morality.

Before joining the USD law faculty, Professor Zacharias taught at Cornell University Law School and George Washington University. He clerked for the U.S. District Court in Philadelphia and practiced public interest law in Washington, D.C., first as an E. Barrett Prettyman Fellow at Georgetown University Law School and then for the firm Dobrivir, Oakes & Gebhardt. He was also a member of the American Law Institute, the leading organization of scholarly work to clarify, modernize, and otherwise improve the law. His philanthropic work included support for the San Diego Shelter for Homeless Teenagers (SDYCA) and as a long-term advisor to the Legal Ethics Committee of the San Diego County Bar.

Professor Zacharias graduated first in his class from Johns Hopkins University in just two and one-half years in 1974, earned his Juris Doctor from Yale University in 1977 and a Master’s in Law from Georgetown University in 1981.

Professor Zacharias will be greatly missed. He is survived by his loving wife, Sharon Soroko Zacharias, his two sons, Eric and Blake, his mother, Laure Zacharias, and his brother, Larry, and family.

The University of San Diego School of Law has established the Fred Zacharias Memorial Fund to honor the longstanding contributions Professor Zacharias made to the law school and its students. To contribute online, please call the USD School of Law Development Office at (619) 260-4692 or go to law.sandiego.edu/zacharias.

SCENE of the Crime

Distinguished Alumni Awards



Distinguished Alumni Award recipients in attendance at the 2009 awards luncheon.



2009 Distinguished Alumni Award honorees, Hon. Michael D. Wellington '71 and Vickie E. Turner '82.



Board of Visitors members Virginia C. Nelson '79, and Abby B. Silverman Weiss '79.

Alumni Receptions



Samin Adib '09, and Shanalee Joyner at USD's 60th anniversary Phoenix alumni reception at Fennemore Craig, P.C., hosted by law alumni association board member A. Joseph Chandler '99.



Maudsley Fellows Society Appreciation Champagne and Dinner Cruise aboard the Hornblower's High Spirits on Sunday, June 14, 2009.

Law Alumni Reunion Weekend

The classes of 1964, 1969, 1974, 1979, 1984, 1989, 1994, 1999 and 2004 celebrated reunions at Hotel Solamar's rooftop deck, overlooking the San Diego skyline. At right, from top to bottom: Class of 1974; Class of 1989; Class of 2004



Bar Swearing-In Ceremony



Angela N. Silvestri '09, Sean V. Miller '09, Jason T. Conforti '09, Ashley T. Hirano '09, Hieu T. Pham '09 and Joe J. Villenor '09.



Michael A. Licari '09, Brad G. Grumbley '09, Jeffrey J. Stein '09 and Thomas R. DeMonte '09.



Law alumni at the State of California Bar Swearing-In Breakfast and Ceremony at the Sheraton San Diego Hotel and Marina on Tuesday, December 1, 2009.



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Complete your class reunion survey at: <http://www.surveymonkey.com/s/usdweekend>
To participate on your reunion committee, or for more information, call (619) 260-4692 or e-mail lawalum@sandiego.edu

Visit law.sandiego.edu/aw for updated information.



Distinguished Alumni Awards

Save the Date!

Friday, November 12, 2010
11:30 a.m. – 1:30 p.m.
Westin Gaslamp Quarter

For more information and for sponsorship opportunities, call (619) 260-4692 or email lawalum@sandiego.edu.

Visit the Distinguished Alumni Awards event Web site at law.sandiego.edu/daa.

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