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advocate

**Kevin Cole**  
Named Dean of  
the University  
of San Diego  
School of Law



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*Thanking those who gave to the School of Law  
in the 2004–2005 fiscal year.*

# message from the dean

## Looking Back, Moving Forward



This message reaches you at about the time that I welcome the fall 2006 incoming class to campus; the first class I welcome as dean of the law school. Times like this both summon memories and inspire plans. Let me share some of each.

When I joined the faculty in the fall 1987 semester, Sheldon Krantz was dean. He was followed by Grant Morris (as interim dean), Kristine Strachan, Grant Morris (as interim dean again) and Daniel Rodriguez. Under the leadership of these deans, USD evolved. Before I arrived on the picturesque mesa on which USD sits, the law school had a solid reputation for providing rigorous, high-quality preparation for new lawyers.

Since my arrival, however, I have had the great pleasure of watching the school grow in national reputation. Faculty members hired during my time here—as well as those who came before—have done much to raise the scholarly profile of the school. Recently in the *Leiter Law School Rankings*, out of the 194 faculties at ABA-accredited law schools, our fac-

ulty was ranked 22nd nationally in overall scholarly quality in a survey of leading law academics and 23rd nationally in a study measuring how often faculty work is cited by others. In the twelve-month period ending in July 2006, the faculty ranked 19th nationally in the number of times their papers have been downloaded from the Social Science Research Network.

The rising recognition of the faculty has occurred in conjunction with the rising credentials of our entering students. When I joined the faculty, we received 2,450 applications for our entering class; in the last few years, the number has consistently exceeded 5,000 and once exceeded 6,000. The increasing popularity of the school has, as one might expect, brought an increase in the statistical profile of the incoming class.

Looking forward, my goal is to continue the upward trends from which I have benefited during my career at USD. We should continue to remain attractive to gifted scholars who enjoy (and excel at) the process of educating new lawyers. And we should make USD even more attractive to prospective students. We have recently augmented the resources available to our Career Services Office to enable our new Assistant Dean of Career Services, Cara Mitnick, to make the changes needed to improve our services to students in this vital area, and we are likewise increasing other student services.

USD's future success will depend on our ability to increase financial support for the school from alumni and other

friends, and making the case for that support will be an important focus during the coming years. I need look no further back than the past year to feel confident about the future in this regard. The report on the capital campaign for the law school, which appears later in this issue, shows the willingness of our alumni and friends to support the school's ambitions. While we currently lag behind our competitors in the size of our endowment, we can confidently look forward to the day when the resources available to the school make our past a mere prologue to the even greater successes ahead.

A handwritten signature in dark ink that reads "Kevin Cole". The signature is written in a cursive, slightly slanted style.

KEVIN COLE  
DEAN AND PROFESSOR OF LAW

## 2006 Paul A. McLennon, Sr. Honors Moot Court Competition

*Wood, Burns and Huffman Serve as Judges for USD's Most Prestigious Intramural Moot Court Competition*

**O**n March 3, Katherine Payerle and Kirsten Widner got the chance to hone their advocacy skills in front of an imposing panel of three judges in the final round of the 2006 Paul A. McLennon, Sr., Honors Moot Court Competition. Held at the Joan B. Kroc Institute for Peace & Justice on the USD campus, this year's competition drew more participants than ever. More than 200 members of the bar were needed to assist with the competition.

The Honorable Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit presided over a panel that included U.S. District Court Judge Larry Alan Burns of the Southern District of California and Justice Richard Huffman of the Fourth

District Court of Appeal for the State of California, who is also an adjunct faculty member of the University of San Diego School of Law.

The case, *Chaker v. Crogan*, addresses whether or not California Penal Code section 148.6 violates the First Amendment. Convicted for filing a knowingly false complaint of peace officer misconduct in violation of section 148.6, Chaker filed a habeas corpus petition in federal court challenging the constitutionality of section 148.6. He argued that section 148.6 violates the First Amendment because it only punishes lies that are critical of the government.

In the final round, Widner represented the state of California and Payerle represented the petitioner.

After deliberation, the panel ruled in favor of the petitioner and went on to praise both finalists. "In the real world this is precisely the experience you will have. The two of you are welcome anytime in our courts," said Judge Wood. "I want to compliment you on how nimble you were. Both of you listened very carefully and worked to answer questions."

Established through the generosity of USD law Professor Michael Devitt and his family in honor of longtime family friend, attorney and naval aviator Paul A. McLennon, Sr., the McLennon Honors Moot Court Competition provides an opportunity for students to develop their brief writing and advocacy skills and to test these skills in an open, rigorous competition.

## U.S. Supreme Court Justice Visits School of Law

**J**ustice Antonin Scalia will be visiting the University of San Diego School of Law as Distinguished Jurist-in-Residence in fall 2006. Be sure to visit [www.law.sandiego.edu](http://www.law.sandiego.edu) for details.



## Anders' Energy Makes Epic Changes

*Scott Anders named Administrative Director of the Energy and Policy Initiatives Center (EPIC)*

**W**ith a history of working on energy policy issues and a belief that energy is a non-partisan issue that can improve financial well-being, Scott Anders quickly settled into the directorship of the Energy and Policy Initiatives Center (EPIC) at the University of San Diego School of Law.

The center, funded through a cy pres settlement, has two sides. One is academic with a program at the law school and the other is research and analysis. "Over time, we'd like to increase offerings at USD in terms of energy and environmental law," Anders explains.

The two sides of EPIC merge when law students perform research at the center for school credit. Among the student projects with expected completion dates in 2006 are a treatment of California solar energy laws and a study of renewable energy credit ownership.

EPIC has also teamed up with the Utility Consumers' Action Network (UCAN) and San Diego Gas & Electric to study the possibility of creating a "smart" energy grid that

would better respond to users' needs, making energy use more efficient.

Anders hopes to host a conference on climate change, regulation and policy in fall 2006. "This is the best time to be studying California climate change policy, particularly with regard to carbon emissions, because there are many proposed works in the state legislature," Anders says.

EPIC was initially funded with a \$2.7 million portion of a settlement against Duke Energy for the San Diego District Attorney. Anders plans to supplement the center's finances by raising an additional \$3 million in the near future. By fall semester 2006, the center's personnel will include a law professor specializing in the area of energy policy.

For more information on EPIC and Scott Anders, visit [www.sandiego.edu/epic](http://www.sandiego.edu/epic).



## See a Movie, Eat Some Pizza, Change the World

*Professor Orly Lobel Hosts the Law and Social Justice Film Series*

**T**he Law and Social Justice Film Series, hosted by Professor Orly Lobel, began screening films at the law school during the fall 2005 semester. Chosen for social and legal issues raised, films are preceded by a short lecture during which viewers eat free pizza and other snacks. Usually there are enough chairs for everyone, but the series has become so popular that some films have drawn standing-room only crowds. Whether sitting, standing or lounging on the floor, faculty, students and community members intermix in this not-for-credit forum.

Professor Lobel fosters the informality; she wanted to create a place where "students and staff get together and

think and laugh and cry and become interested in the world."

Many professors use examples from movies in class. It made sense to create a film series open to everybody, Lobel says. But, she adds, the wealth of good films raising social justice issues makes choosing among them difficult. And she must not only choose a good movie, but one that will mesh with a lecturer's expertise.

USD professors and alumni have both been involved in the film series. Robert Goff, a law graduate and founder of Restore International, spoke before a showing of "Born Into Brothels." Another film, "The Gatekeeper," was written, directed and produced by USD under-

graduate degree recipient John Carlos Frey. USD law professor Jean Ramirez, who teaches criminal law and evidence, spoke before "Capturing the Friedmans."

The entire USD community, including alumni, are invited to attend the series. Once released, dates and times for the winter 2006 semester will be made available in USD's law alumni newsletter "The Docket" online at <http://www.sandiego.edu/usdlaw/about/publications/docket>.

The School of Law has provided generous funding for the program, Lobel says. But the film series is not a big expense, she adds. It is dinner, a movie and maybe at the end of the day a wider worldview.

## School of Law Mourns the Loss of Justice Gerald Brown

**T**he University of San Diego School of Law mourns the loss of one of its greatest friends, The Honorable Gerald Brown, who died at the age of 90 on December 9, 2005.

Known for his enduring passion for life and the law, Justice Brown was a founding member of the law school's Board of Visitors (1974) and a steadfast and vocal champion of the law school's progress and growing national reputation.

Justice Brown was elevated to the Fourth District Court of Appeal of California in 1963 and served as its presiding justice from March 16, 1965, until his retirement in 1985. While serving as presiding justice, he routinely hired new graduates of the School of Law to serve as his research attorney.

At the School of Law's Graduation Awards Ceremony on May 26, 2000, Justice Brown presented his first annual "Progress Award" to the member of the law school's graduating class whose grade point average increased the most from the first to the third year. Justice Brown's award, a reflection of his own character, is unique in that it honors not only academic excellence but also determination and constant self-improvement.

Born on June 4, 1915, in Chamberlain, South Dakota, Justice Brown received his bachelor's degree from the University of Southern California in 1937, Phi Beta Kappa. He received his law degree from Yale Law School in 1941 and was admitted to the California bar in 1942. In 1973, Justice Brown was awarded an honorary Doctor of Laws degree from the

University of San Diego, of which he was very proud.

Following in his father's footsteps, Justice Brown was selected as a Rhodes Scholar and received his M.A. from Oxford University in 1949. The Browns were the first father-son Rhodes Scholars from the United States. At Oxford, Justice Brown met and struck up a long-standing friendship with Professor Ronald H. Maudsley. Years later, that friendship would prove to be of great benefit to the School of Law, when Justice Brown encouraged Professor Maudsley to come to the United States to join its faculty in the 1970s.

As a jurist, Justice Brown was known for his concise and plainly written opinions; as a presiding justice, he was renowned for overseeing an extremely efficient intermediate appellate court. Beyond the law, he was a Renaissance man whose wide range of interests included motorcycling, classical music, lawn bowling, photography and world traveling.

**Justice Brown presenting his Progress Award to Michael Hernandez at the 2003 Graduation Awards Ceremony.**



## School of Law Hosts Armed Forces Court of Appeals

**O**n September 22, 2005, the School of Law hosted the United States Court of Appeals for the Armed Forces as part of the Court's "Project Outreach." Held in the Joan B. Kroc Institute for Peace & Justice, the special session was open to the general public.

After welcoming remarks by Dean Kevin Cole, a panel consisting of Chief Judge H.F. "Sparky" Gierke and Judges Andrew S. Effron, James E. Baker and Charles E. Erdman heard an oral argument in the case of *United States v. Luke*.

Christopher Turtzo, a third-year student at the law school, submitted an *amicus* brief in support of Luke's petition and presented an oral argument during the special session. Before the session began, the Court's judges met with students and faculty of the School of Law to discuss the military justice system and the role of the Court.

The Court exercises worldwide appellate jurisdiction over members of the U.S. armed forces on active duty and other persons subject to the Uniform Code of Military Justice. The Court is comprised of five civilian



judges appointed for 15-year terms by the U.S. president with the advice and consent of the U.S. Senate. Through its decisions, the Court has a significant impact on the state of discipline in the armed forces, military readiness and the rights of service members.

## The Thernstroms Talk about Segregation

*Bowes-Madison Series Brings Noted Authorities on Race and American Society to USD*

**I**n "Let's Talk about Segregation," Abigail and Stephan Thernstrom work to debunk the myth that American society is still segregated by design. The one exception: certain electoral districting practices.

On November 3, Abigail Thernstrom, vice chair of the U.S. Commission on Civil Rights, and her husband Stephan Thernstrom, Winthrop Professor of History at Harvard University, spoke at the second annual presentation of the law school's Joan E. Bowes-James Madison Distinguished Speaker Series to an audience of almost 300 in the Joan B. Kroc Institute for Peace & Justice.

"Do we currently live in an apartheid America?" Stephan Thernstrom asked. Responding in the negative, he explained that America's political and economic government policies do not, in general, create racially concentrated neighborhoods. Many African-Americans live in predominantly black neighborhoods by choice; similarly, "all immigrant groups show some degree of residential concentration," he pointed out.

Abigail Thernstrom then explored the role of the federal government in deliberately separating black and Hispanic voters into their own electoral districts and its consequences. She noted that "black integration into mainstream American politics has been accompanied by a determined

effort by the federal government to separate voters on the basis of race," concluding that America "should not have a system of proportional racial or ethnic representation based on redistricting."

The day after their presentation, the Thernstroms met with and fielded questions from USD law students at Warren Hall.

Joan E. Bowes of La Jolla established the series to inspire law students and other members of the San Diego community and to promote the open exchange of ideas. The series brings distinguished speakers from the fields of law, diplomacy, government and politics.



From left to right: School of Law Dean Kevin Cole, keynote speaker Abigail Thernstrom, Joan Bowes and keynote speaker Stephan Thernstrom.



## International Tax Conference Focuses on Cross-Border Commerce

USD School of Law—Procopio International Tax Institute Draws Top Experts from Mexico and the United States



**T**he second annual University of San Diego School of Law—Procopio International Tax Institute Conference, the only conference dedicated to the latest developments in the dynamic field of U.S. and Mexican international tax law, brought more than 100 tax attorneys and other tax professionals from

both countries to the USD campus on February 23 and 24, 2006.

Held at the Joan B. Kroc Institute for Peace & Justice, the conference featured keynote speakers; Lic. Julio Cesar Aguilar Matías, director of tax policy for the Treasury Department of Mexico, and Rufus von Thülen Rhodes, Esq., author of *Rhodes & Langer, U.S. International Taxation and Tax Treaties*.

In addition, members of the USD law faculty, Professor Herbert I. Lazerow, Adjunct Professor Richard Shaw and Visiting Professor John Forry, spoke at the conference. The tax faculty at the School of Law is currently the highest rated in the western United States among law faculties with graduate tax programs and is ranked 9th overall in the nation.

Other featured speakers included Patrick W. Martin, Esq., tax team

leader at Procopio; Lic. Alfredo Gutierrez Ortiz Mena, chief counsel of the Mexican Tax Administration Service (SAT); and key tax attorneys from the U.S. Internal Revenue Service and Treasury Department.

Topics covered included Mexico's new tax law reform, with an update of reforms affecting cross-border transactions; current developments involving Mexico's maquiladoras; complex issues regarding partnerships with foreign partners; and current developments in reorganizing and liquidating U.S. and Mexican cross-border operations.

Hosted by the School of Law and Procopio, Cory, Hargreaves & Savitch LLP, the conference's presenting sponsor was Bank of America, The Private Bank. The State Bar of California, Taxation Section, International Tax Committee, was also a conference sponsor.

## The Evidence Is In: CSI for Lawyers Was a Big Hit

**F**ocusing on evidentiary issues from real-life cases ranging from battery to mayhem to murder, expert speakers in the School of Law's *Investigate Your Case: CSI for Lawyers* program kept an audience of almost 200 riveted for the greater part of a Saturday on January 28, 2006.

Michael Burt, Esq., a certified criminal specialist in private practice in San Francisco, led off the session with a discussion of the legal issues involved in fingerprinting, concluding that more and more federal appellate judges are saying that fingerprint evidence is unreliable. Burt was followed by Richard Ernest, an award-winning forensic scientist from Fort Worth, Texas, who talked about ballistics evidence. Dr. Harry Bonnell, a forensic pathology consultant based in San Diego, then focused on autopsies, accompanying his discussion with numerous autopsy photos.

The keynote address was given by Professor Edward Imwinkelried, the Edward L. Barrett, Jr. Professor of Law at the University of California, Davis. One of the nation's leading authorities on scientific evidence and a former law professor at USD, Professor Imwinkelried in his talk titled *The Importance of Daubert in Frye Jurisdictions*, discussed the admissibility of handwriting evidence.

Afternoon sessions included a discussion of evidence of child injuries by Janice Jean Ophoven, M.D., a pediatric forensic pathologist from Woodbury, Minnesota, and a talk on DNA evidence by Christopher Plourd, Esq., a San Diego sole practitioner.

The program, moderated by USD law Professor Laura Berend and San Diego-area attorney Alex Landon, Esq., was funded by a grant from Community Defenders, Inc. and co-sponsored by the San Diego Psych-Law Society.

## Remembering USD School of Law Professor Bernard H. Siegan

*An Unflinching Voice for Property Rights and Economic Liberty*

**P**rofessor Bernard H. Siegan, one of the nation's preeminent defenders of strong constitutional protection for property rights and economic liberty, died March 27, 2006, at age 81.

Siegan spent more than 20 years practicing law in Chicago before coming to USD in 1973. While at USD, he worked to convince the nation that the right to private property and economic liberty were basic human rights. Of his many books and articles, his 1980 book, *Economic Liberties and the Constitution*, was his most influential and has been credited with laying the foundation of the modern property rights movement.

Roger Pilon, vice president for Legal Affairs and director of the Center for Constitutional Studies at the Cato Institute, said "Bernie Siegan was a legend. Almost alone, he stood against the forces of the day to retrieve and restore a constitutional vision nearly

lost. In doing so, he inspired a new generation to the defense of economic liberty, property rights, the due process of law and a judiciary dedicated to the rule of law and the dignity of the individual."

Siegan's influence was not limited to the United States; he also counseled government officials and private groups drafting new constitutions or constitutional amendments in Eastern Europe and elsewhere.

In addition to being intellectually revered by his peers, Siegan was loved by students and colleagues alike.

"Bernie Siegan was a sweet, funny, optimistic man," USD law Professors Gail Heriot and Maimon Schwarzschild stated. "We wish we could have kept this gentle Reagan Revolutionary with us a little longer."

"Professor Siegan was a fixture on campus," said USD School of Law Dean Kevin Cole. "No one who had the pleasure to know him will soon



forget his warm and gentle manner or his passion for his work."

Siegan was honored at a memorial mass and Jewish service on April 18, 2006, at USD's Founders Chapel. A memorial fund has been set up in his name. Those interested in making a donation should contact Trevin Hartwell, director of Development and Alumni Relations, at (619) 260-4692.

## Professor Georg Ress Speaks at the 22nd Annual Nathanson Lecture Series

*Property as a Human Right, According to the European Convention of Human Rights*

**G**eorg Ress, a professor of international law at the International University Bremen and a former judge of the European Court of Human Rights, was the speaker for the 22nd annual presentation of the Nathaniel L. Nathanson Memorial Lecture Series on April 6, 2006, in the Joan B. Kroc Institute for Peace & Justice Theatre.

Ress discussed various aspects of human rights including problems of interpretation, guarantees by the European Commission of Human Rights and the idea of property as a human right. To illustrate his message, he used multiple examples of real world issues he has encountered over the years. He also urged for greater cooperation and accountabil-

ity in the area of human rights on the world stage.

The Nathaniel L. Nathanson Memorial Lecture Series was established in 1984 to honor the esteemed law professor who devoted his life to the law and legal education. This lecture series brings distinguished speakers to the University of San Diego to discuss issues of national significance.

# Law Alumni Weekend

*We had a great time last year—join us for an even better time this year.*

## Highlighted Events

Friday, October 6, 2006

### Law Alumni Reunion Class Receptions

All alumni from the classes of 1966, 1971, 1976, 1981, 1986, 1991, 1996 and 2001 are invited to celebrate with us in the Gaslamp District—a new area that has grown up around San Diego's Petco Park. Relive memories and catch up with former classmates while enjoying hors d'oeuvres and cocktails.

Saturday, October 7, 2006

### USD Legal Clinics

### Celebrating 35 Years of Service

We will be honoring past directors, highlighting the important work going on at the clinics today and sharing our vision for the future.

### All Law Alumni Jazz Lounge

Saturday night, a live jazz band and comfortable lounge will create the perfect backdrop for mingling with fellow alumni and law school faculty. The evening will also include dancing and a live comedy performance along with heavy hors d'oeuvres, drinks and specialty desserts.

For a complete list of events or for more information, visit [www.law.sandiego.edu/alumni/weekend](http://www.law.sandiego.edu/alumni/weekend) or contact us at (619) 260-4692 or [lawalum@sandiego.edu](mailto:lawalum@sandiego.edu).

Law Alumni Weekend will be combined with the University-wide Homecoming Weekend to provide more activities for you to enjoy. Don't miss this great opportunity to reconnect with friends, classmates and faculty.

*Photos by George Decker and Gates Photography*

## A Look Back at Law Alumni Weekend 2005



1 2  
3

1. Saturday alumni tee off at the Riverwalk for the Alumni Golf Tournament.



2

2. On Friday night, alumni and guests from the classes of 1970, 1975, 1980, 1985, 1990, 1995 and 2000 met at the Hilton Gaslamp in downtown San Diego. Alumni not celebrating a class reunion year met under the stars in the courtyard of the Degheri Alumni Center for the All Alumni Welcome Reception.



4

3. The Class of 1975 had the largest reunion party with 74 alumni and guests who gathered at the Shelter Pointe Hotel on Shelter Island. The dinner celebrated the class of 1975's success in raising over \$275,000 for The Class of 1975 Professorship.



3

4. Saturday evening, law alumni from every class meet at the beautiful Shiley Center for Science and Technology where they were welcomed by a 15-foot clown, a contortionist and other performers.



For more photos, go to [www.law.sandiego.edu/alumni/weekend](http://www.law.sandiego.edu/alumni/weekend) and visit the photo gallery.



**No Stranger to USD**  
**KEVIN COLE**

*Named 11th Dean of the  
University of San Diego School of Law*

Story by Sarah Severson  
Photos by George Decker and Pablo Mason

In his first commencement speech as dean, newly appointed Dean Kevin Cole spoke about skills graduates would need to succeed in the legal profession.

"Remember the case of Napoleon Dynamite," Cole recalls. "When asked whether he had a girlfriend, Napoleon responded, 'Girls only want boyfriends who have great skills. You know, like nunchuck skills, bow-hunting skills, computer-hacking skills.' Napoleon's perception that he was lacking in certain respects motivated him to improve his lot. As lawyers, your ability to critically examine your own positions, arguments and plans will be even more helpful."

Although lacking in bow-hunting skills, Dean Cole brings a rich combination of skills and experience to his new position. Cole, a scholar in criminal law and procedure, was named the new dean of the University of San Diego School of Law in April, after serving as interim dean since July 2005.

*Cole's prior experience in administration gave him insight into what life will now be like in the dean's chair. Cole is the first dean to come from the USD law faculty in many years, and there are definite advantages coming from the inside.*

Cole got a glimpse of a dean's responsibilities even before his year as interim dean by working for four years as the associate dean for former Dean Daniel B. Rodriguez.

"Having worked closely with Professor Cole for the past several years, I have full confidence in his skills, judgment and ideas about making the law school great. With support from the University and law school alumni, he will lead the school toward a higher level of excellence and reputation," says Rodriguez.

Cole's prior experience in administration gave him insight into what life will now be like in the dean's chair. Cole is the first dean to come from the USD law faculty in many years, and there are definite advantages to coming from the inside.

"I think I've come into the job with a better idea of what the faculty's interests and ambitions are," Cole said. "There is less transition time needed to formulate the plan for moving the school forward."

As a dean who has spent a large portion of his career at USD's School of Law, Cole has an even greater motivation to improve and expand the program.

"Not only have I known my colleagues from the beginning, I can also imagine what it will be like to return to the faculty one day when my duties as dean are over," he says. "It gives an incentive to build for the long haul because of my investment in the institution."

Michael Rider, an alumnus on the dean's search committee, says as a tenured faculty member and administrator, Cole knows

the culture of the law school, how things work and how to make good things happen.

"Kevin is affable, outgoing and is very solutions-oriented," Rider says.

Professor Steven Smith, chairman of the dean's search committee, said the committee was looking for a dean who would appreciate the school's academic strides in recent years. "We wanted someone who would understand this and have good academic values. Being here for quite a while, Dean Cole understands the progress we've made."

This also helps when meeting with alumni and community members—they know Cole has been at USD School of Law for a long time and has a sincere interest in seeing the school succeed.

Cole has already helped the law school's progress. He has aided in reforming the grading system, modernizing the curriculum and providing more class choices for students. He has also hired a new assistant dean of career services to assist students in finding employment after graduation.

Cole has three main goals he hopes to accomplish as dean:

First, Cole says USD's law school is a real asset to the city. But he believes the school can do a better job in making the community aware of all the school has to offer. "Our events on campus benefit the community only to the extent that we make the community aware of them," Cole said.

Along the same lines, Cole wants to spotlight the law school's legal clinics, which provide free services to an underserved population in San Diego, a benefit of which many people in the community are not aware.

Second, Cole plans to continue to support the law school's effort to attract a high caliber of students and faculty, and to support them in the ways needed to help them to achieve at a high level. He says the law school is very well regarded as a strong general purpose law school, and overall, a sound place to get a legal education.

"The students are very strong, with credentials as high as they've ever been," Cole says. "This translates into great accomplishments when they graduate and become alumni. More and more alums are making big splashes in the legal world."

The law school's tax program was recently ranked ninth in the nation, and the faculty is ranked twenty-third in how often its work is cited. These are strong indicators of the promise of the faculty, Cole says. "As the school becomes better known, the faculty is a target of opportunity for other law schools, and we need to be in a position where the faculty is willing to resist these offers from



Top Left: Cole accepts a gift from the Court of Appeals for the Armed Forces during their visit in September 2005. Right: Dean Cole addresses the class of 2006 during the law school's commencement exercises. Middle Right: Cole draws raffle prizes at the law school's Student Services Fair. His sense of humor makes him a favorite with students. Bottom: Cole and 2006 School of Law commencement speaker Frances Fragos Townsend, President Bush's homeland security advisor.



other schools, and keep it the great place it's become," Cole says.

Third, Cole hopes to increase the sense of attachment alumni have to the institution.

"I mean this not just in a matter of financial support, but I would like alumni to have a willingness to participate in alumni events, and in helping students to become integrated into the practice of law," he says.

Cole confides that being a law professor is the best job in the world, sometimes it is a mistake to call it a job.

"To work in things you are interested in and to teach classes to students who are for the most part eager to learn what you expose them to... it's a wonderful way to make a living."

As dean, there are some aspects of the job that are administrative and sometimes tedious, but also very rewarding.

"A lot of it is exciting and fun—a dean makes the case to the outside world about why the faculty and students' work is deserving of their support. You can help people do the things you got into teaching to do in the first place," Cole says.

Cole enjoys the chance to represent the school and says it is a privilege to be in that kind of position.

In the almost twenty years that Cole has spent at USD's School of Law, he has developed a solid reputation as a hardworking, intelligent and personable professor. He leads with enthusiasm and has a knack for working well with others.

"I have known [Cole] since he joined the faculty and I was involved in his recruitment," says Larry Alexander, USD professor of law. "He has high academic standards, which he applies both to classroom teaching and to scholarship. He is also good with numbers and statistics, skills that are essential in a modern deanship. He has a quick wit, which I believe will make him successful in dealing

with alumni and students."

Alexander says Cole has been around long enough that he knows the strengths and weaknesses of the school's faculty and staff well, and that Cole will be "difficult to fool."

Trevin Hartwell, director of development and alumni relations, said Cole has been well received by the alumni community.

"He is a very approachable person and is very likeable," Hartwell says. "He has a sense of humor that comes out when he gives a speech or interacts one on one, which makes him an endearing character."

Tom Fetter, chairman of the campaign committee and member of the board of visitors, has interacted with Cole

in the campaign to double the size of the school's endowment.

"Kevin is a very willing campaigner—he is willing to meet with prospects, communicate with them, explain the school's needs and justifications and is a tremendous asset in this capital campaign," Fetter says. "He's well-grounded and is a friendly, witty guy who speaks and relates very well to people. He's energetic, and I'm absolutely delighted with him."

Colleagues agree that Cole's interpersonal skills really set him apart.

"Kevin has a good sense of humor. He communicates well with people and is candid and honest with them," explains Jim Krause, chairman of the board of visitors. "He's the type of guy who is willing to roll up his sleeves and get things done."

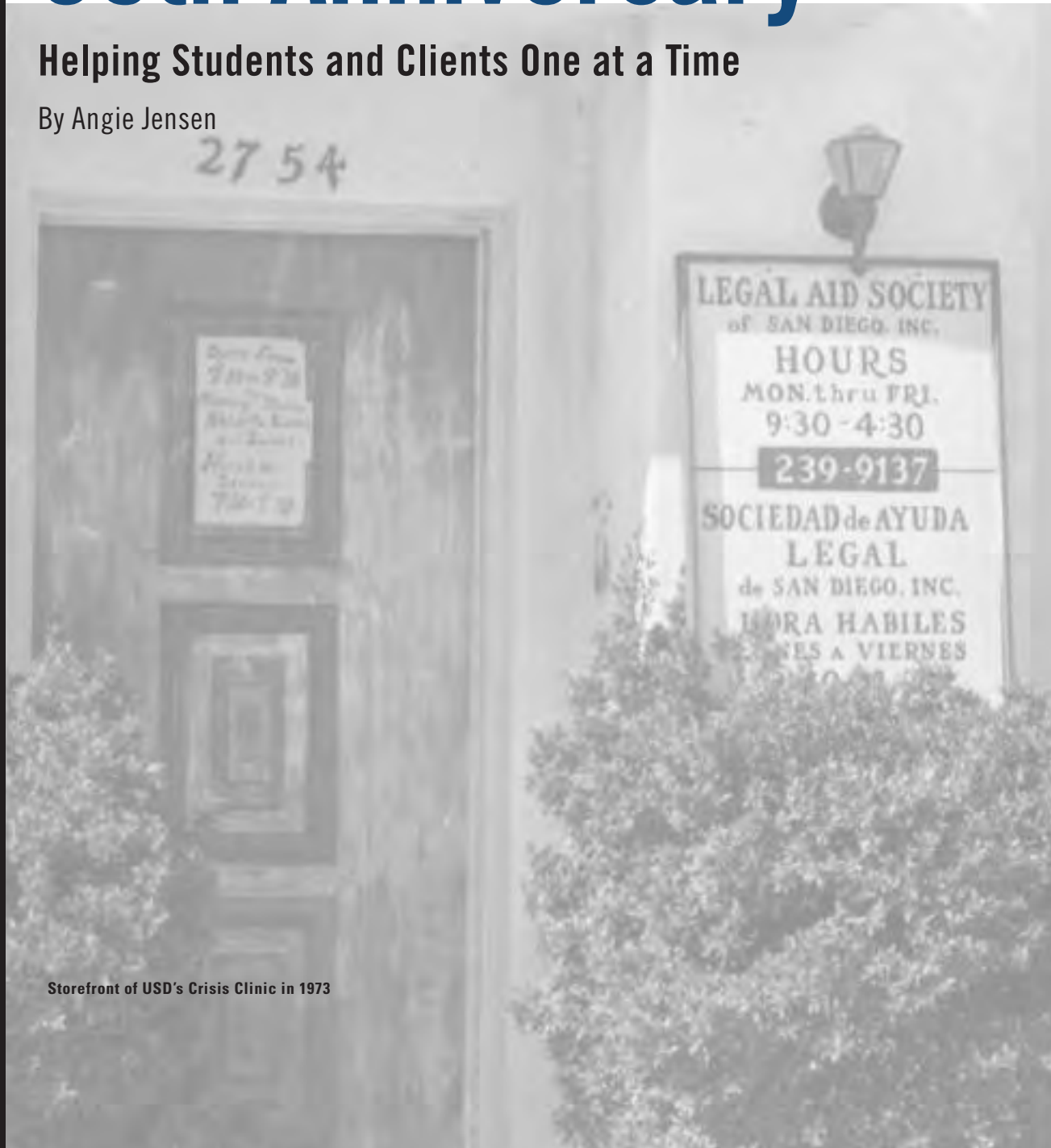
Cole has an excellent relationship with the students as well. "Dean Cole is almost always smiling. When you're already in an environment that is designed to be stressful, seeing the dean with a smile on his face and an open, calm demeanor truly helps," says the University's Student Bar Association President Angie Anastasopoulos. "He has an excellent grasp and understanding of what the students are going through and what the students need to be successful."

# USD Legal Clinics Celebrate Their 35th Anniversary

Thirty-five years later USD law students and the community are still reaping the benefits of the USD Legal Clinics.

Helping Students and Clients One at a Time

By Angie Jensen



Storefront of USD's Crisis Clinic in 1973

At the University of San Diego School of Law, our students have never been the type to sit and wait for the world to come to them. When they believe in something, they are willing to go to astonishing lengths to make it a reality. That's why it is not surprising to find out that in 1971 the USD Legal Clinics were started by a group of law students who passionately believed in helping others and foresaw the benefit of this practical application to their legal education.



Thirty-five years later USD law students and the community are still reaping the benefits of the USD Legal Clinics.

"Student interest has never been stronger," said Margaret Dalton, Esq., director of the University of San Diego School of Law Legal Clinics. "We train close to 200 upper-division law students each year. These students learn the basics of ethical legal practice with the close supervision of an attorney experienced in the area of practice. This type of experience is invaluable when our students compete in the job market."

## In the Beginning

In 1970, the Law Students Civil Rights Research Council (LSCRRRC), a small law student organization at USD, worked with the USD Student Bar Association to develop a plan to bring legal services to the residents of Linda Vista and to integrate clinical work with the school's curriculum.

The Honorable Federico Castro '71, one of the students involved, says looking back at the time, "I thought it was a very good training instrument for people who wanted to be attorneys, and the services were rendered to those who could not afford them. It gave those people the opportunity to become involved with the legal system and gain an understanding of their rights."

The students knew they would have to make a strong case to get faculty approval for the program. At the time, clinical education wasn't the accepted norm it is now. The California Legislature had only recently approved new rules allowing law students in good standing, who had completed 50 percent of their legal education, to become "certified" to practice law under the direct supervision of a member of the California bar.

The Faculty Curriculum Committee met in October 1970 to consider the students' plan. After review, the committee recommended that the faculty approve the proposal. At a faculty meeting, it was agreed to give students one credit for clinical work.

By February 3, 1971, the law school's new clinical education program opened the doors of the Linda Vista

**Above: Professor Charlie Lynch supervises a students during a court appearance.**

**Below: June 1972, students meet together to discuss a case.**





**Left: Jenna Leyton '07 worked with the Special Education Clinic helping students with disabilities receive the school services and accommodations they need.**

**Center and right: Rishi Khullar '07 works with the Small Claims Clinic helping clients prepare for their day in court.**

Neighborhood Legal Service Center. It was temporarily located in the Family Service Center near Kearny High School. Professor John Sherry was appointed as the faculty advisor, and Alex Landon '71 and Napoleon Jones '71 were the student coordinators. Operated by certified law students under the supervision of local volunteer attorneys, the clinic did legal work and community relations projects, like the preparation of a consumer's rights guide and a landlord-tenant pamphlet.

Landon, now a member of the USD School of Law Board of Visitors and an adjunct professor, says that the students involved at the time recognized it was an important part of their education. "[The clinic] introduced me to procedures, the courts and the real world. Medical education gets students involved in an internship in their second year, and they have to complete a residency before they are set loose on the medical community. Theoretically, a law student can graduate, pass the bar and get assigned to a felony case having never stepped into a courtroom."

Before long, La Raza Legal Aid Center (or the Mexican-American Advisory Committee Clinic) in National City and the Crisis Center in Southeast San Diego joined the list of clinics. USD law Professor Richard "Corky" Wharton '71 was made student director of the Mexican-American Advisory Committee Clinic. Wharton laughs about it now. According to him, he was "a Yankee from Philadelphia" who didn't speak a word of Spanish. Nevertheless, he threw himself wholeheartedly into the project.

At this time, USD's Clinical Education Program operated from a \$1,000 grant from the Law Student Division of the American Bar Association and a matching grant from USD Student Bar Association funds. Although supervised by Professor Sherry, the center was largely run by students. With almost 100 students participating in the clinic, the law school realized that a director was needed. Professor Charlie Lynch was hired as the first director,

and the law school agreed to start funding the clinical program.

The program developed through 1972 and 1973 and had expanded to both civil and criminal law when Professor Rod Jones was hired to head up the Criminal Clinic.

By 1977, the Legal Clinics were operating ten clinic field offices: Grossmont College Clinic, Indian Clinic, Women's Legal Center, Southeast Welfare Clinic, the original Linda Vista Clinic, Mexican-American Advisory Committee Clinic, San Diego State Clinic, County Jail Legal Services Program, Art Law Clinic and Southeast Immigration Clinic.

Since then, Professors Walter Heiser, Theresa Player and Susan Quinn have served as directors with Professor Margaret Dalton serving as the current director.

The list of clinics has changed over the years, often adapting to meet the needs of the San Diego community.

For example, the Entrepreneurship Clinic came about when the San Diego economy was changing and more small businesses were starting up. Many of the startups didn't have the corporate expertise or money needed to get some of their basic legal questions answered.

The Tax Clinic was formed with a grant from the Internal Revenue Service, making the clinic one of the first of its kind. In a move to be more customer-friendly, Congress allocated money to help represent low-income individuals against the IRS in controversies. Recently, the clinic's outreach was so effective that the National Taxpayers Advocates Conference has asked the clinic to do a presentation on outreach at the next annual conference.

A couple of years ago the Immigration Clinic, already handling some of the more traditional cases, started seeing more asylum cases. The clinic quickly adapted to meet the needs of refugees from Somalia and other countries who were fleeing from religious persecution.

## Today: A first-class clinical program

"USD has developed an excellent model that clearly demonstrates how law school clinical programs can meet both the educational and service goals for students and their community," said Lorna Choy, senior grants administrator of the California State Bar Legal Services Trust Fund Program, during a recent site visit. "The enthusiasm of students and faculty is infectious, and the program's sophistication is evident in its approach to both supervision and evaluation."

USD's Legal Clinics are recognized as one of the most extensive and successful in the nation. Today the list of clinics includes Civil, Criminal, Entrepreneurship, Environmental, Immigration, Land Use, Mental Health, Perspectives in Criminal Justice, Small Claims, Special Education and Tax.

The Criminal, Land Use and Mental Health clinics are placement clinics, which means that students are placed with other agencies or entities for the practical portion of the clinical experience. However, they also attend a regular class making it different from a typical internship. The other clinics are client-based, meaning they work like any other law firm.

Dalton often calls the clinics "our small to midsize law firm." They cover 11 areas of law and staff 12 adjunct and full-time professors who act as supervising attorneys. On average, the Legal

Clinics supervise about 90 students every semester and about 45 over the summer. Over the course of a year, the Legal Clinics close more than 500 cases.

Although the list of clinics has changed over the years, the Legal Clinic's goals have remained the same: 1) Provide high-quality practical training to law students, 2) Enable law students to develop expertise in specific practice areas, 3) Emphasize professional responsibility and ethical practice, and 4) Serve lower income clients.

### Preparing Students

Preparing students to practice law has always been one of the central focuses of the Legal Clinics. "Students are at the center of all activities in the legal clinics," says Dalton. "The professor/attorneys supervise, but the law students do the vast majority of the client representation, from initial intake to arguing in court or the appropriate forum. Students make a large commitment of time when they are accepted into the Legal Clinics."

One of the biggest advantages for the students is the one-on-one time they get with the professors or paralegals. Once the students graduate and start to practice law, they are unlikely to ever get that kind of input and guidance again.

Rishi Khullar '07 joined the Small Claims Clinic at the recommendation of two of his friends who told him that it was a great



The clinic today: Margaret Dalton, Esq., meets with students to discuss current cases.

way to get experience and that there was a lot of client interaction.

"The biggest way the clinic has prepared me to practice is by teaching me how to correspond with clients and better represent them," says Kullar. "With internships you don't get a lot of the exposure or hands-on experience you get here."

To get involved with the clinics, students apply and are interviewed like any other job. The competition is tough—there are two to five applicants for each job opening. Once accepted, law students have to work four hours per week per academic unit. However, they often put in more when the case requires it.

The class component takes an additional two to three hours a week. Class often involves case rounds. Much like a firm, the students meet around a conference table and go from person to person talking about current cases. The professor is always there to provide professional expertise, but is careful not to dominate the conversation, giving students a chance to give each other advice and feedback.

### **Serving Low-Income Clients**

By serving the legal needs of low-income clients in San Diego County, the Legal Clinics support the university's mission to provide community outreach and service in a very direct way. Just like in 1971, the law school is full of students who want to make a difference, and the clinics are an excellent chance for them to do so. For many law students, working with other people in the clinics is the first time they really capture the vision of what law can do.

Jenna Leyton '07, who worked with the Special Education Clinic last spring semester, says the experience taught her that "the need for affordable legal representation in low-income communities is great, and without such representation, many individuals would forego receiving services to which they are legally entitled and that vastly improve their lives."

During the semester, Leyton represented students and parents at Individualized Education Program meetings, conducted intake interviews with potential clients, met with clients on a regular basis, communicated via phone and letters with school district representatives and created informational fliers for students and parents.

Leyton recalls helping one student who was frequently absent from school due to a medical condition. This made it especially difficult for the student to make up her work. Leyton was able to help her gain admission to an alternative high school that could give her more individualized attention and was better suited to her needs.

Leyton found that helping students with disabilities receive the school services and accommodations necessary for them to suc-

One of the biggest advantages for the students is the one-on-one time they get with the professors or paralegals. Once the students graduate and start to practice law, they are unlikely to ever get that kind of input and guidance again.

ceed was very rewarding. It also helped cement her desire to pursue a career in education and special education law.

Beyond legal work, the clinics also organize a number of outreach programs in an effort to better connect with underserved populations like low-income individuals and English language learners. Last year, they hired an outreach coordinator whose job is to be out in the community to get the Legal Clinics' message out. Students frequently participate in these outreach activities, giving them a chance to learn more about the needs of the community and allowing them to apply what they learn in their classes.

### **Looking Forward**

Even with the 500 cases they close each year, the Legal Clinics haven't been able to help everyone who needs it. Dalton has found that if you can't pay for legal services there aren't a lot of places to go for help. Although the clinics do very little advertising, they get a large number of calls. Unfortunately, after a couple of months into each semester they are often forced to turn away new cases.

Dalton carries the philosophy that "our accomplishments are huge, but they are one client and one student at a time."

Looking ahead, Dalton's goals center around securing the resources they need to help more individuals. Her number one priority is to find adequate office space for existing programs—ideally with a bit of room to add additional clinics. She would also like to employ some first-year attorney associates to assist the supervising attorneys and students. Because of their small attorney-student ratio, they have had to turn away many students and clients.

In the spirit of those students who started the program in the 1970s, there is a sign up in the Legal Clinics office that reads "never reject the cause of the oppressed."

Talking to the students and staff, you find that this is a very important motto. For them, it is all about helping one more person.

# faculty essays



BY MIKE RAPPAPORT

*Professor of Law*

## Justice Breyer's *Active Liberty*

In his book *Active Liberty*, Justice Stephen Breyer attempts to develop an alternative to the originalist theory of interpretation that has received so much attention in recent years. Rather than interpret the Constitution based on its original meaning, as originalists like Justice Scalia might, Breyer argues that the Constitution should be interpreted to further political participation—the active liberty of the ancients as opposed to the modern liberty to do as one pleases.

Breyer also maintains that the Constitution (and statutes) should be interpreted

using a “purposivist” approach—i.e., that judges should read constitutional provisions based on their general purposes and should determine whether a law promotes these purposes based on their real world consequences. Breyer claims that such an approach demonstrates judicial humility.

Unfortunately, given Breyer's previous works, one would have expected a more thoughtful book that honestly came to grips with both the benefits *and* costs of non-originalist interpretation. Instead, *Active Liberty* comes across as an assertion without support, and as a work of rhetori-

cal indirection that portrays Breyer's own judicial activism as one of judicial restraint.

At first, Breyer's jurisprudential approach seems plausible. But as one examines it more closely, serious problems emerge. First, what justifies privileging political participation over other values? Breyer shows that the Framers valued political participation when writing the Constitution, but the Framers also prized other values. They therefore chose to limit popular participation in the election of Senators and the President and to prevent the legislature from abridging individual rights.



Because the Framers embraced multiple values, Breyer needs to explain what justifies the preeminence of political participation, other than the fact that he deems it more important. But Breyer provides no explanation.

Similar problems arise when Breyer moves to interpreting particular constitutional clauses. Breyer believes that judges should focus on the general purposes of provisions. But the general purposes of a clause are often highly disputed matters, as there is no clear way of determining what these purposes were. For example, when discussing the constitutionality of affirmative action, Breyer claims that the purpose of the Equal Protection Clause (and the Civil War Amendments generally) was to allow blacks to “participate fully with equal rights in the democratic political community.”

But the Equal Protection Clause is at least as plausibly viewed as having a different purpose—either establishing color-blind laws or guaranteeing to minorities full civil rights (but not special political rights)—neither of which would support his justification for affirmative action. Again, Breyer does not explain why *his* chosen purpose is the correct one. (And neither would his opponents using the very same rationale.)

Breyer also argues that one should determine whether a law promotes or retards these general purposes based on its modern real world consequences, not on what the Framers believed would have furthered their purposes. But the consequences of laws are hotly contested. While Breyer assumes that affirmative action will allow blacks to more fully participate in political life, opponents of affirmative action credibly maintain that it renders blacks less influential by diminishing their accomplishments and creating greater racial animosity. Once again, Breyer gives no reason why his view should prevail, except that he, naturally, thinks it is the correct view.

Breyer’s focus on general purposes allows judges to select the values that the Constitution furthers and his focus on modern real world consequences allows them to assert how laws will in fact operate. With control over the facts *and* values, Breyer’s “active” judge has virtually boundless authority over the Constitution’s content. Thus, it is no surprise that Breyer’s tour through the Constitution—from affirmative action, to campaign finance, to federalism, to separation of church and state—only reaches destinations that Breyer appears to endorse politically.

Interestingly, Breyer’s tour fails to make one important stop—his majority opinion for the Court in *Stenberg v. Carhart*, which struck down a ban on partial birth abortions. One might argue that *Stenberg* is inconsistent with Breyer’s active liberty purposivist approach, because the opinion protects what seems to be a personal decision unrelated to political participation. But perhaps Breyer can avoid this inconsistency. Breyer might argue that terminating pregnancies is necessary for women to work and thereby to participate fully in politics. Alternatively, Breyer never says that active liberty is the only important value. So he might argue that another purpose of the Fourteenth Amendment is to protect individual rights, which in the modern world requires giving those rights a modern interpretation. In other words, Breyer’s approach might be so flexible that there is no decision, including *Stenberg*, that it can’t be made consistent with.

Having articulated this extremely flexible interpretive approach, one would expect that Breyer would defend it against objections. It is here where Breyer’s book is particularly unsuccessful. One major problem with the vast discretion that Breyer confers on judges is that it is inconsistent with the active liberty that is the primary concern of his book. Judicial activism is generally thought to undermine democracy, because it deprives the people of their ability to set policy through their

representatives—either through statutes or through constitutional amendments. Even if a statute or constitutional provision is currently unpopular and needs revision, the Court’s decision to update it will deprive the people of the opportunity to do the updating and they are likely to update it in a different way than the Court does.

Far from defending the broad discretion he would give to judges, Breyer seems to be in denial about it. Breyer actually claims that, as compared to originalism (which tellingly he mistakenly refers to as “literalism”), his approach does not significantly increase the subjectivity of judicial decisions. Given the enormous power that Breyer confers on judges, this is astounding. Moving almost into the realm of self-parody, Breyer illustrates the alleged restraints on judges with his opinions from recent Establishment Clause cases. In two opinions that were so subjective that no other justice agreed with both of them, Breyer concluded that the Ten Commandments could be placed on the grounds of the Texas State Capital, but not inside a Kentucky state courthouse.

It is one thing to argue that judicial discretion is necessary, because the political process suffers from maladies and therefore more powerful judges are needed. That position, although mistaken, at least confronts the issues forthrightly. It is another thing for Breyer to deny that his activist approach empowers courts and to make that approach part of his argument for furthering political participation. Breyer’s arguments here suggest that he either is oblivious to the fact that he is imposing his will on the nation or does not believe that he seriously needs to justify his actions. In neither case are his actions worthy of a Supreme Court Justice.

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BY DAVID MCGOWAN

*Professor of Law*

## The Continuing Convergence of Patent Misuse and Antitrust Doctrine

The patent misuse doctrine provides an equitable defense to claims of patent infringement. Under the doctrine, if a defendant shows that a patentee has effectively expanded the scope or term of a patent, courts refuse to enforce the patent (at all—against *any* defendant), until the patentee stops the misuse and remedies its effects.

The misuse doctrine combines elements of patent and antitrust law, so it provides a window on current thinking about innovation and competition policy. The doctrine has changed significantly over time, and a recent Federal Circuit misuse case, *Philips v. International Trade Commission*, provides a good example of the direction of these changes. If the trend continues, antitrust principles will largely swallow the misuse doctrine.

### **PHILIPS V. ITC AND MISUSE BY TYING**

Philips holds patents for making recordable and re-writable compact discs. It licenses those patents to disc manufacturers, but will only license the patents as a package. It will not license only those patents a particular manufacturer wants, nor will it offer a lower rate to licensees who claim to need fewer patents than are in the package. Certain disc manufacturers signed package licenses in the late 1990s, but soon stopped paying license fees to Philips. Philips filed a claim before the ITC to stop importation of CDs made by these firms.

The licensees argued that Philips misused its patents by tying them together in the package license. Their theory was that some of the patents in the package were not necessary for making discs, so that the package tied a license for unnecessary patents to a license for the necessary one. The ITC agreed that Philips had misused the patents, and Philips appealed to the Federal Circuit.

The Federal Circuit reversed. It accepted the characterization of the

package license as a tie, and it upheld the ITC's finding that Philips has market power. That finding meant 35 U.S.C. § 271(d)(5), which says tying is not misuse unless the patentee has market power in the patented (tying) product, did not exempt Philips from the misuse defense.

This finding put Philips at risk, because Supreme Court precedent in both misuse and antitrust cases refers to tying as unlawful per se. One might think the purpose of

a per se doctrine is to condemn certain practices as soon as they are spotted, without investigating their economic effects. The phrase does not really mean that anymore in antitrust cases, however, and *Philips* shows that the same is true for misuse.

Philips pointed out that the cases condemning tying as per se misuse involved ties between products. The classic cases involved mimeograph machines and ink, or salt deposition machines and salt, or movies a theater wanted to show and movies it did not. In contrast, Philips only required that licensees take a nonexclusive license to all patents in the package. Such a license is just a promise by a patentee not to sue for infringement; it is not a use requirement.

Ergo what? Old-style antitrust and misuse cases reasoned that the evil of such arrangements was that a buyer was forced to take a something the buyer did not want. Forcing was the relevant wrong. On this theory, Philips' point was pointless, because the licensees were forced to take licenses they did not want. Modern cases, however, worry less about forcing than that a tie might foreclose competition in the market for the tied product. Economically, the worry is that a tie might raise the costs of rivals, who might have to pay more for distribution outlets, or might not have enough demand left in the market to achieve economies of scale in production.



The point of this argument was that package licenses do not present the same foreclosure risk as ties between products. Philips was right about that, but the argument needs another step. If the package forced licensees to spend more than they would if they had to license only the necessary patent, then some competitors might be foreclosed from licensing their own technologies because licensees might be reluctant to license an alternative technology in addition to one they had already paid for. There was no con-

licensee would not face infringement suits from Philips.

For these reasons, the Federal Circuit declined to treat the package license under a rule of per se illegality. That left the rule of reason, under which courts ask whether a restriction restrains trade unreasonably, all things considered. The ITC had found, as an alternative to its per se analysis, that the package license was unlawful under this standard as well. Citing the legal objections mentioned above and its reversal of some factual findings that supported the

distrust of patent “monopolies,” a formalist construction of the Patent Act and, on the antitrust side, an emphasis on rivalry among firms rather than efficiency as the relevant goal of the law.

Formalist misuse analysis, and rivalry-based antitrust analysis, was relatively indifferent to economic effects. It did not really matter whether a patentee actually had market power in a tying product, for example, and certainly not whether it had any realistic hope of monopolizing the tied product market. The point was that

## ANTITRUST SHIFTED GEARS IN THE 1970S. THE STORY IS COMPLEX, BUT IN A NUTSHELL THE SUPREME COURT’S JURISPRUDENCE CREATED SUCH ECONOMIC LOSSES (IN TERMS OF GAINS THAT COULD NOT BE REALIZED) THAT FIRMS KEPT TESTING THE PRECEDENTS.

crete evidence of such foreclosure, but the licensees did seem to think they could get better prices if they could license individual patents than if they had to license the package.

The Federal Circuit rejected this lower-price argument. It reasoned that so long as any of the patents were truly necessary to manufacture discs, Philips could extract from licensees the full amount they would be willing to pay for the ability to make CDs. Whatever that amount was, it would not go up just because manufacturing read on four or five patents, and it would not go down so long as any one patent had to be licensed. Combined with the first point, this argument implied that the package license neither raised the licensees’ prices, nor foreclosed competitors.

Having rebutted the supposed harms of the licenses, Philips also pointed out that the package produced competitive benefits in the form of lower transaction costs. The package eliminated the need to argue about whether a licensee’s manufacturing method read on one patent but not others. The package thus created the efficiency of one-stop shopping and the certainty that a

ITC’s rule of reason analysis, the Federal Circuit reversed this finding as well.

### THE EVOLUTION OF THE MISUSE DOCTRINE

*Philips* reflects a trend in the Federal Circuit’s misuse jurisprudence. That trend is likely to continue, and in a moment I’ll offer some conjectures about where the law is headed. To put that subject in perspective, however, I’ll first say a word about where it has been.

*Philips* focuses on the probable economic effects of the package license rather than on the fact that it was a package. The focus on substance over form is the most significant change in both antitrust and misuse law over the past 30 years.

During the period following adoption of the Clayton Act in 1914, and running through roughly 1974, both misuse and antitrust decisions commonly declared that certain transaction structures were simply illegal-unlawful per se. These included ties, restrictions on resale prices, and, in the misuse context, royalties extending beyond the patent term. Such decisions were consistent with a general

independent rivals should not be forced to do things they did not want to do.

During this period, courts either did not understand or were actually hostile to the economic benefits of the condemned practices. Ties might meter uses and facilitate price discrimination; resale price maintenance might ensure a minimum level of service and prevent free-riding by retailers; a long royalty stream might be just a method of financing. All of these practices are at least potentially efficient, and probably produce net benefits in many if not most cases. That was not relevant during this period, unless a court considered that efficiency gains made conduct worse (because it was more threatening to small firms).

Antitrust shifted gears in the 1970s. The story is complex, but in a nutshell the Supreme Court’s jurisprudence created such economic losses (in terms of gains that could not be realized) that firms kept testing the precedents. This process kept judges focused on the costs of the doctrines. Practical people like judges do not like to create costs, so the Court’s doctrines were unstable. The key cases in

this shift were the 1974 *General Dynamics* decision regarding mergers, and the 1977 *GTE Sylvania* decision regarding vertical nonprice restraints.

*GTE Sylvania* said explicitly that the Court would not be guided by the form of a restriction but would look instead to its economic effects, analyzed under the rule of reason. This general trend continues to this day in antitrust. It was in evidence most recently in the Supreme Court's *Illinois Toolworks* decision, which did away with the presumption that an intellectual property right confers market power.

The change in misuse came somewhat later and, more significantly, has occurred at the Federal Circuit rather than the Supreme Court. The key case was the 1986 *Windsurfing* opinion, where the court

is no doubt that the Federal Circuit is correctly reading the current trends in competition policy.

#### A POSSIBLE FUTURE FOR ANTITRUST AND MISUSE

Against this background, it is easy to see that *Philips* is part of a trend that probably will continue. Here are a few specific examples of how *Philips* exemplifies the trend, and some recommendations for future cases.

First, *Philips* shows that per se illegality is not what it used to be. The point of the per se rule in antitrust was to identify a set of practices that are so obviously anticompetitive that courts do not need to waste their time on full-blown rule of reason analysis in order to condemn the practice. In a per se world, a tie is illegal, no matter how small.

restriction as pertaining to one product rather than two, a further encroachment on the per se concept.

Second, the trend toward paring back rules adopted in the heyday of rivalry-based antitrust analysis and formalist misuse analysis is desirable and should continue. *Philips* exemplifies the trend by distinguishing ties between patents from ties between products. The Federal Circuit can continue drawing such economically sensible distinctions. The Supreme Court should overrule the cases that created the remaining categories of per se misuse. Tying, resale price maintenance and extended royalty periods all have legitimate, pro-competitive explanations. They should not be subject to a per se rule. Cases in which such explanations do not hold up

THE REAL QUESTION IS WHETHER COMPETITION IN THE TIED PRODUCT MARKET IS THREATENED, SO AN ANTITRUST PLAINTIFF OR INFRINGEMENT DEFENDANT ALLEGING MISUSE SHOULD BE REQUIRED TO SHOW A DANGEROUS PROBABILITY OF MONOPOLIZING THE TIED PRODUCT MARKET.

defined misuse as conduct extending the scope or term of a patent *with anticompetitive effect*. The italicized language was new and was not found in the Supreme Court opinion the Federal Circuit cited for that proposition.

Nevertheless, since the 1992 *Mallinckrodt* decision, which cites *GTE Sylvania* and follows that case's analytical approach, the Federal Circuit has interpreted misuse doctrine to bring it into line with modern antitrust cases. The result is that other than three restrictions that remain misuse per se by reason of Supreme Court precedent (and one of those, tying, is qualified by Section 271(d)(5)), and a few examples of conduct that fall within a safe harbor, patent misuse analysis is now antitrust rule of reason analysis. There is some risk to this strategy, because the Supreme Court has not overruled the misuse opinions the Federal Circuit is whittling away, but there

Outside the paradigm case of price-fixing among competitors, however, courts and Congress are loading up "per se" cases with elements that begin to blur into rule of reason analysis. Both Section 271(d), in the misuse context, and the Supreme Court's *Jefferson Parish* opinion, in the antitrust context, require some showing that the party implementing the tie has market power in the tying product market. That requirement undercuts the notion that certain restrictions are always illegal.

In addition, one cannot have a tie unless there are two products. Analysis of this question provides further opportunity for efficiency-based reasoning. The key here, as the D.C. Circuit pointed out in its *Microsoft* merits opinion, is that the two-product analysis embeds some degree of analysis of the efficiency of the alleged tie. Where efficiency gains are very high, the law recognizes that fact by treating the

can be dealt with under the rule of reason.

Third, in both antitrust cases and misuse cases based on tying, the Court (and the Federal Circuit, to the extent it can) should provide more explicit guidance regarding what effect a restriction must have on a tied product market in order for the restriction to be unlawful. In particular, the Court should harmonize tying and attempted monopolization law by applying the attempted monopolization standard to tying claims.

Currently, a plaintiff alleging a tying claim must only show that the tie affects some significant amount of commerce in the tied product market, which is not a particularly meaningful standard. In contrast, to state a claim for attempted monopolization a plaintiff must show that there is a dangerous probability that the defendant will monopolize the market for the relevant product.



This difference in standards makes no sense because the economic risk in each case is essentially the same—competition is threatened in the market for the tied product, which may well be the market in which monopolization is attempted—and the same course of conduct may support both claims. In the *Microsoft* litigation, for example, the government alleged that Microsoft attacked the browser market by adopting certain technological measures that made it hard to separate Internet Explorer (IE) from Windows, as well as by employing license restrictions that prevented OEMs from removing IE. The former conduct was charged under Section 2 of the Sherman Act because it was “unilateral,” while the latter was charged as a tie because it involved a license.

To treat a tie as a Section One contract

is to place form over substance, in contradiction of the approach set out in *GTE Sylvania*. If there is any merit to a tying claim, then the “contract” will be forced on buyers or licensees. In substance the conduct is the unilateral act of forcing not, as in price-fixing, a truly bilateral act. The real question is whether competition in the tied product market is threatened, so an antitrust plaintiff or infringement defendant alleging misuse should be required to show a dangerous probability of monopolizing the tied product market.

Fourth, misuse remedies should be tailored and standing requirements should be introduced. A finding of misuse should suspend enforcement of a patent only against the party that has demonstrated misuse, and no party who is not subject to a restriction allegedly constituting misuse

should be allowed to defend against their own alleged infringement by claiming that the patentee is harming someone else. These procedural reforms would be consistent with the notion of tying misuse to economic effects (and with the antitrust injury doctrine). If that is what we care about, the law should focus on whether an act causes harm, not whether a patentee is a bad actor.

I would like to think these recommendations are reliable predictions as well. As either or both Neils Bohr and Yogi Berra said, however, predictions are hard, especially about the future. So I'll let my recommendations stand at that, and hope they are right. They are at least a logical extension of the functionalist trend in antitrust and misuse, and the ever-greater convergence between the two.



# faculty footnotes



**LAURA M. S. BEREND** completed her two-year term as president of the San Diego Psych-Law Society in December 2005. She coordinated and co-moderated "Investigate Your Case: CSI for Lawyers" presented on January 28, 2006, to approximately 200 attendees at the Joan B. Kroc Institute for Peace & Justice. This was one of a series of annual or semi-annual seminars funded since 1991 by a grant from Community Defenders, Inc. The San Diego Psych-Law Society co-sponsored this year's event.



LAURA M. S. BEREND



**ROY L. BROOKS** completed the third edition of his casebook, *Civil Rights Litigation: Cases and Perspectives* (Carolina Academic Press). The paperback edition of his monograph, *Atonement and Forgiveness* (University of California Press), was released last winter. His book, *Structures of Judicial Decision Making from Legal Formalism to Critical Theory* (Carolina Academic Press, 2002), gained attention during last fall's Supreme Court confirmation hearings of John Roberts. Brooks presented an academic paper at Yale Law School in the Levinson Auditorium and gave a campus-wide speech at Brown University. He has appeared in debates at the University of Kentucky and the University of Houston, as well as on a panel discussing the issue of reparations sponsored by the New York Historical Society. Brooks has also given interviews on radio, appeared at book signings in San Francisco and New York City and was seen on C-SPAN. Locally, Brooks gave a speech at the Martin Luther King Library and participated in a panel discussion at Thomas Jefferson Law School.



**STEVEN HARTWELL** presented "Humor, Anger, Rules & Ritual," in November at the Sixth International Clinical Conference held in Lake Arrowhead, Calif. and sponsored jointly by UCLA and the University of London. It will appear in 13



**YALE KAMISAR** and his co-authors published in summer 2005 the 11th edition of *Modern Criminal Procedure* (and its spin-offs) (West, 2005), the most widely used casebook in its field. This marks the most editions of a casebook ever pub-

*Criminal Procedure Stories* (Carol Steiker, ed. 2006). His contribution was "Mapp v. Ohio: The First Shot Fired in the Warren Court's Criminal Procedure Revolution."

Kamisar participated in a criminal procedure conference at Harvard Law School on April 21-22, 2006. He also was the keynote speaker at the annual Los



ROY L. BROOKS



STEVEN HARTWELL



YALE KAMISAR



ADAM J. KOLBER

*Clinical Law Review* (2007). The article explores the role of humor and anger as social cues in regulating values informally, the role of anger in moving values to formal status when such values are incorporated into formal rules and then the role of ritual as a vehicle for conveying formal rules with affective power.



**WALTER HEISER** published the second edition of his casebook titled *California Civil Procedure* (LexisNexis, 2005). It examines the important doctrines, rules and policies that define civil litigation in the California courts. He also published an article titled "Relation Back of Amended Complaints: The California Courts Should Adopt a More Pragmatic Approach," 44 *Santa Clara Law Review* 643 (2005) and completed another article titled "Forum Non Conveniens and Choice of Law: The Impact of Applying Foreign Law in Transnational Tort Actions," 51 *Wayne Law Review* (forthcoming April, 2006). He also received the Professor of the Year (Thorsnes Award) for 2005.

lished by a founding author or co-author in the history of West Publishing Co. This May, Kamisar and another set of co-authors published the 10th edition of *Constitutional Law* (West). This will make him the founding author or co-author of the second most published editions of a casebook ever published in West Publishing history.

In the fall of 2005, Kamisar published "How Earl Warren's Twenty-Two Years in Law Enforcement Affected His Work as Chief Justice," 3 *Ohio State Journal of Criminal Law* 11 (2005), an article which discusses how the seeds of Miranda and other famous cases may have been from Warren's own experiences as a crime-busting district attorney for Alameda County. In 2006, Kamisar published "Dickerson v. United States: The Case that Disappointed Miranda's Critics—and Then Its Supporters." It appeared in a collection of essays on the work of the late chief justice, *The Rehnquist Legacy* (Craig Bradley, ed. 2006). He also contributed a chapter to a new book about famous criminal procedure cases called

Angeles Criminal Law Section dinner on May 4, 2006.



**ADAM J. KOLBER** was invited to present a paper in February 2006, at an international conference on "Law, Mind and the Brain" at University College London. His research concerns the legal and ethical implications of emerging technologies to dampen traumatic memories. In September 2005, he spoke on a related topic at Hofstra Law School and at St. Louis University School of Law. In addition, in December 2005, he was interviewed by the *Maryland Daily Record* for the article "Brave Neuro World" on how advances in the neurosciences may affect our understanding of criminal law.



**DAVID S. LAW** presented papers at Boalt Hall, NYU, the University of Southern California, the University of Texas at Austin and Stanford. Together with Professor Larry Solum of the University of Illinois, he also presented a paper on

FACULTY FOOTNOTES

the subject of judicial appointment gridlock and the nuclear option at the 2005 annual meeting of the American Political Science Association in Washington, D.C. He recently published an article in *Judicature* titled "Judicial Ideology and the Decision to Publish: Voting and Publication Patterns in Ninth Circuit Asylum Cases." His forthcoming article in the *Georgia Law Review*, titled "The Paradox of Omnipotence: Courts, Constitutions, and Commitments," takes an interdisciplinary look at the problem of sovereign commitment-making, which lies at the intersection of political science, economics and constitutional theory. Law also continues to write on the subjects of federal judicial



**BERT LAZEROW** was elected chair of the University Senate for 2005-06. He also directed the USD programs in Florence and Paris this summer.



**ORLY LOBEL'S** article on occupational safety and reform policies at OSHA, "Interlocking Regulatory and Industrial Relations: The Governance of Workplace Safety," was published in the *Administrative Law Review* and is the recipient of the 2005 HLS Irving Oberman Memorial Award for best paper on a current legal issue in law and governance. Lobel's



DAVID S. LAW



BERT LAZEROW



ORLY LOBEL

appointment and behavior, and he was interviewed by the *National Law Journal* on the failed nomination of Harriet Miers to the Supreme Court and by the *ABA Journal* on recent popular and political challenges to judicial independence.

Law will act as editor of the *Journal of Contemporary Legal Issues* in 2006. The forthcoming volume collects a series of papers organized around the theme of positive political theory and the law. He also continues to review manuscripts for the *Law & Society Review*. Most recently, he was selected to present a paper on the subject of globalization and constitutional law at the Hawaii International Conference on the Social Sciences this summer.

review essay, "The Four Pillars of Work Law," is forthcoming in the *Michigan Law Review*. An earlier *Michigan Law Review* essay, "Orchestrated Experimentalism in the Regulation of Work" was reprinted in a new casebook *Employment Discrimination Law: Cases, Problems and Critical Perspectives* (Prentice Hall, 2005). Other recent publications include: "Sustainable Capitalism or Ethical Transnationalism: Off-Shore Production and Economic Development," forthcoming, *Journal of Asian Economics* (2006); "Beyond Experimentation: The Case of Occupational Health and Safety Administrative Governance in the United States," forthcoming in *New Governance and Constitutionalism in Europe and the United States* (Hart Publishing: Oxford, UK,

2006); "Making Consumption Decisions By Following Personal Rules," in *Inside Consumption: Frontiers of Research on Consumer Motives, Goals and Desires* (Routledge Press, 2005) (co-authored with On Amir & Dan Ariely).

In October 2005, Lobel gave talks at Georgetown Law Center and at Thomas Jefferson School of Law. The presentations were titled "Sleeping with the Enemy or Effective Public Management?: Government/Industry Cooperation for Promoting Workers' Rights." Other presentations included the California Higher Education Consortium at USD in February 2006, and the Conference on Entrepreneurship and Human Rights



LESLEY MCALLISTER

at Fordham University in August 2005. She also participated at a workshop on the International Criminal Court at the Institute for Peace & Justice at USD in December 2005.



**LESLEY MCALLISTER** contributed a chapter to *Environmental Issues in Latin America and the Caribbean* (Springer, 2005), an interdisciplinary treatment of the most salient environmental problems in the region. Her chapter details the work of Brazilian prosecutors in enforcing environmental laws and analyzes the effectiveness of having prosecutors rather than regulatory agencies take primary responsibility for environ-

mental enforcement. McAllister also presented her research on environmental enforcement in Brazil to the University of California at San Diego's Environment Resource Group. McAllister is currently working on an article about compliance and enforcement in emissions trading programs in the United States, and she was invited to present on this topic at the 2006 International Colloquium of the IUCN Academy of Environmental Law.



**JOHN (JACK) H. MINAN** received the San Diego Citizen Watershed Monitoring Consortium Award in October 2005,



JOHN H. MINAN

for his "outstanding and continuous support educating the public on the importance of clean water." In December, 2005, he was selected for a 2006-07 University Professor award that recognizes "out-

standing, balanced, cumulative contributions supporting the mission and goals of USD." Minan is active in the area of community service. He was recently re-elected vice chair of the San Diego River Conservancy, a state agency created by the California legislature for the purpose of acquiring and managing lands in the San Diego River area. In February 2006, he was re-elected to a sixth consecutive one-year term as the chairman of the California Water Board, San Diego Region. The Water Board administers and enforces the Federal Clean Water Act as well as the California Porter-Cologne Water Quality Act. It was recently identified in a news article on water boards "as a model enforcer within California's network of nine

water-quality agencies" (San Diego Union-Tribune, February 17, 2006).

In January 2006, Minan delivered a paper titled "General Industrial Storm Water Permitting and the Construction Industry: What Does the Clean Water Act Require" at a national storm water symposium held at Chapman University. He will be contributing a law review article on the same subject later this year. In March, Minan presented a paper titled "Storm Water Permitting and Enforcement: Alice Visits Wonderland?" to the ABA Section of State and Local Government. In May, he delivered a paper titled "Federal Clean Water Act Considerations and the Problem of Once Upon a Farm" to the ABA Section of Real Property, Probate and Trust Law.

He recently published two law review articles. "Municipal Separate Storm Sewer System (MS4) Regulation Under the Federal Clean Water Act: The Role of Water Quality Standards" was published by our law review in 42 *San Diego Law Review* 1215 (2005). His article, "The Clash Between Farmers and the Endangered Species Act: Whose Water Is It?" was published this past fall by the University of Missouri-Kansas City in 37 *Urban Lawyer* 371 (2005). His opinion piece on "Congress' Power Over the Environment," which previewed two Clean Water Act cases heard by the Supreme Court of the United States in February, recently appeared in the *San Diego Union-Tribune* (January 18, 2006).



**GRANT H. MORRIS** co-authored a book chapter titled "Informed Consent and Competency: Legal and Ethical Issues" (with David Naimark, M.D., Ansar M. Haroun, M.D., & Laura Dunn, M.D.), which was published in *Current Clinical Neurology: Psychiatry for Neurologists* (Dilip Jeste, M.D. & Joseph Friedman, M.D. eds, Humana Press, 2005). Morris's contribution to the chapter traces the

common law development of the doctrine of informed consent from its origins in the tort of battery to its transformation into the tort of negligence. He then discusses competency as a requirement for giving or withholding informed consent, focusing primarily on the competency issue as it relates to individuals with mental disorders who have been civilly committed and who wish to assert a right to refuse treatment with psychotropic medication.

Morris also co-authored an article titled "Informed Consent in Psychopharmacology" (with Ansar M. Haroun, M.D. & David Naimark, M.D.), which was published in 25 *Journal of Clinical Psychopharmacology* 403 (2005). In the article, Professor Morris discusses the development of the law's recognition of the patient's right to medical self-determination and exceptions to patient autonomous judgment.

Morris also authored a book chapter titled "Civil Law: Structures and Procedures," which will be published this year in *International Handbook on Psychopathic Disorders and the Law* (Alan Felthous, M.D. & Henning Sass, M.D., eds., John Wiley & Sons, forthcoming, 2006). In this chapter, Morris introduces psychiatrists and other non law-trained readers to law and law-making in the United States using examples that demonstrate how various legal principles are applied to issues involving persons with psychopathic disorders.

On November 10, 2005, Morris presented the Mark A. Nordenberg Lecture in Law and Psychiatry at the University of Pittsburgh. The program was presented by the School of Law and the Center for Bioethics and Health Law at the University of Pittsburgh. His speech was titled "Is Competency to Stand Trial Assessed Competently?" Based on a study Morris conducted of 273 forensic psychi-

atrists and psychologists, he found that in cases in which the defendant thinks rationally but acts irrationally or thinks irrationally but acts rationally, forensic evaluators do not assess competency competently. He concluded by offering three recommendations to assure that the issue of competency to stand trial is properly assessed.

On January 10, 2006, Morris spoke at a program on forensic psychiatry issues presented by the San Diego County Continuing Medical Education Committee to San Diego County mental health professionals. His speech was titled "The Right to Refuse Treatment: A Legal Perspective."



GRANT MORRIS



MICHAEL RAMSEY



**MICHAEL RAMSEY** was named Herzog Endowed Scholar for 2005-06. He published "Torturing Executive Power," 93 *Georgetown Law Journal* 1213 (2005), critiquing the constitutional analysis of the Bush administration's so-called "torture memos," and reviewed Robert Badinter and Stephen Breyer's book *Judges in Contemporary Democracy* for the *Journal of Legal Education* (55 *Journal of Legal Education* 305 (2005)). He gave scholarly presentations at a number of leading law schools including Harvard, Georgetown and Columbia, and spoke at the workshop on teaching constitutional law at the American Association of Law Schools Annual Meeting in Washington, D.C. He

is currently working on a book on the constitutional law of foreign affairs with publication expected in 2007.



**MICHAEL RAPPAPORT** published two articles in law reviews: "The Original Meaning of the Recess Appointments Clause," 52 *UCLA Law Review* 1487 (2005) and "The Judicial Filibuster, the Median Senator and the Countermajoritarian Difficulty," *The Supreme Court Review* (forthcoming, 2006, with John McGinnis). He also published a book review of *Justice Breyer's Active Liberty* in the web magazine TCS Daily (12/19/2005). In addition,



MICHAEL RAPPAPORT

Rappaport presented a paper at the Federalist Society Faculty Colloquium in Washington, D.C., January 2006, titled "The Case for the Judicial Filibuster, Debate on the Judicial Filibuster," and spoke to USD alumni as part of a CLE Program on Judicial Appointments (October 2005).



**STEVEN SMITH'S** recent book, *Law's Quandary* (Harvard University Press, 2004), was the subject of a one-day conference in October at Catholic University. After an opening lecture by Smith, comments on the book were given by Professor Joseph Vining (Michigan), Professor Patrick Brennan (Villanova), Professor Lloyd Weinreb (Harvard) and Justice Antonin Scalia. Smith then re-

sponded to these comments. Scalia also published a review of *Law's Quandary* in the journal, *First Things*.

Also in October, Smith commented on a paper by Oxford University Professor Timothy Endicott at a conference at Princeton University honoring the work of Oxford natural law philosopher John Finnis. The paper and comment will be published in the *American Journal of Jurisprudence*.

In November, Smith presented a paper discussing Thomas More's views on conscience before the first annual conference of the Thomas More Historical Society at the University of Dallas.



STEVEN SMITH

As chair of the AALS's Jurisprudence section, Smith organized and moderated the jurisprudence panel at the national conference in Washington, D.C. He also presented a paper, titled "The Jurisdictional Establishment Clause: A Reappraisal," on the panel of the Law and Religion section.



**JORGE VARGAS** recently published the following articles and book: "The Federal Civil Code of Mexico," 26 *Inter-American Law Review* 229 (Winter/Spring 2005); "Concubines under Mexican Law: A Comparative Overview with Canada, France, Germany, England and Spain," *The Southwestern Journal of Law and Trade in the Americas* (Winter 2005, forthcoming); and

*The Commercial Code of Mexico* (Thompson-West, Toronto, Canada, Winter 2006).

In addition, Vargas presented "Assessing the Mexican Vote Abroad" at the Transborder Institute at USD in the Joan B. Kroc Institute for Peace & Justice Auditorium on February 2, 2006. He also gave a lecture titled "A Wall Across the Border? A Mexican Perspective," for the 2006 Culture Clash Lecture Series at USD on February 21, 2006. The next day he gave a power point presentation at the School of Law on "The California Gray Whale: Legal and Environmental Aspects," and saw publication in the *San Diego Union-Tribune* of his opinion editorial, "Americans,

Mexico and Real Estate." He was one of only five honored at The Presence of Ciudad Juarez in International Law, a special event organized by the Department of Legal Sciences at the Autonomous University of Cuiduad Juarez to recognize leading Chihuahua natives in Mexico. That event took place on March 10, 2006, at the university's School of Law auditorium in Mexico.

Vargas also took part in the USD School of Law Film Series Festival by making comments on immigration law problems between the United States and Mexico as an introduction to the film, "The Gatekeeper."

# class action

**Class Action is an update on the personal and professional news of your classmates and other alumni.**

**Please submit information and photographs to the *Advocate*, USD School of Law, Communications Department,**

**5998 Alcalá Park, San Diego, CA 92110-2492. You may also e-mail your news to [lawalum@sandiego.edu](mailto:lawalum@sandiego.edu).**

## '59

**THOMAS SHARKEY** is a member of the USD School of Law Board of Visitors. During his career, he was named a fellow in the American College of Trial Lawyers and an advocate in the American Board of Trial Attorneys. He was a partner and trial lawyer at McInnis, Fitzgerald, Rees & Sharkey before the firm's 1999 merger with Higgins Fletcher & Mack LLP. After the merger, he remained of counsel to the firm until he left to pursue a solo practice specializing in mediations and arbitrations in 2001.

## '64

**BETTY BOONE** recently shared with the Lawyers Club of San Diego stories of being one of the first practicing female attorneys in the San Diego community. Her stories are in the association's March 2006 newsletter.

## '68

**WILLIAM D. PALMER** was recently appointed to the Kern County Superior Court bench by Governor Schwarzenegger. He has been a commissioner with the court since July 2005, and was previously a partner at various Bakersfield, Calif., law firms.

## '69

**STEVE R. CLOUD** is CEO of Fresno Distributing in Fresno, Calif., and R.V. Cloud Co. in Campbell, Calif. Both companies are involved in the wholesale plumbing business. Cloud wishes his fellow Day Class of '69 friends the very best.

**GARY LANE** lives and works in Irvine, Calif., serving as general counsel to ASR Properties and its affiliated companies, including The Khoshbin Company, Khoshbin Properties and a Ferrari-Maserati dealership called Exotic Motorsports Unlimited. He enjoys playing video games, basketball and riding an electric scooter with his 12-year-old son. He spent much of his career representing hospitals and teaching contract law in

addition to serving as dean of two law schools. Lane invites all classmates to contact him at (949) 863-9390 or [garylane@cox.net](mailto:garylane@cox.net).

**T. WORTHINGTON VOGEL** retired recently after spending 31 years as an assistant district attorney. He now works part-time instructing students on criminology.

## '70

**WILLIAM H. HITT** graduated in 2003 from the Claremont School of Theology with a master of divinity. He is currently the senior pastor at the United Methodist Church in Rancho Cucamonga, Calif.

**MICHAEL R. LENNIE** has a practice devoted exclusively to the representation of authors, negotiating author/publisher contracts and litigating disputes with publishers. He is also the primary literary agent in the Lennie Literary Agency.

**GEORGE STANDEFER** is no longer practicing law. He has taught English as a second language overseas and would love to hear from classmates.

**DONALD WORLEY** retired from law practice in November 2004. He now devotes his time to acting in film and television. One of his recent roles was General Patton for the History Channel's epic "The Battle of the Bulge."

## '71

**WILLIAM PATE**, a retired Superior Court judge, won the San Diego County Bar Association's 2006 Service Award for Outstanding Jurist.

## '72

**ROBERT LEAMAN** tries complex criminal cases as chief trial counsel for the New Jersey Division of Criminal Justice. He was promoted to that position in July 2002. He also manages the division's north regional office in Whippany, N.J.

**JOSEPH O. LITTLEJOHN** retired from the bench in April 2006 after 25 years of service as a Municipal Court and then Superior Court judge in the San Diego area. He plans to continue working on legal issues, particularly in the area of juvenile law reform.



**IGNAZIO J. RUVOLO** was appointed in December and confirmed in January 2006 as the presiding justice of the First District Court of Appeals, Division Four.

**THOMAS J. WARWICK JR.** practices criminal law in San Diego where he works with law partner **BOB GRIMES** at Grimes & Warwick.

'73

**WILLIAM F. HERTZ** has served as an advisor for professional athletes like Steve Garvey, Barry Zito, Trevor Bell, and Jason and Matt Hirsh. He lives in Glendale, Calif.

**JEROME SCHIEFELBIEN** has practiced bad-faith insurance law and plaintiff legal malpractice and ethics in Austin, Texas, since 1991. He litigates in Texas state courts as well as in the Federal, 5th, 9th and

10th circuits of the U.S. Court of Appeals.

**JAMES T. WARING** currently serves as San Diego's director of land use and economic development.

'74

**RICHARD GARIEPY** practices law in Sun Valley, Idaho. He welcomes contact with alumni.

**J. RICHARD HADEN** handled many types of cases before retiring from the San Diego Superior Court bench after 21 years of service. He coordinated statewide natural gas antitrust cases and regularly managed an inventory of 500 to 600 civil cases. He resolved between 10,000 and 12,000 civil cases from the time that he was designated a civil independent calendar judge in 1992 until he retired.

**KATHLEEN D. WELLMAN** founded Caring Residents of Carlsbad Inc., a nonprofit fundraising group for charitable causes, in 1990. San Diego-based 10News.com recently honored her efforts with a leadership award.

'75

**C. DAN CONAWAY** retired after 30 years of practicing law. He will continue his nonprofit affiliations and look for other, nontaxing, things to do. He says, "I intend to stay busy and enthused about a number of things that interest me."

**PATRICK R. DIXON** was one of the government attorneys working on Stanley Tookie Williams' capital appeal. Dixon has been in charge of the major crimes division for the district attorney's office in Los Angeles County since April 2003.

**MICHAEL D. PADILLA** practices personal injury, construction and product defect and medical malpractice at his firm, O'Mara & Padilla. He lives in Rancho Santa Fe, Calif.

'76

**BENTON BECKLEY** sells Boss Hoss motorcycles and enjoys time spent at his Lake Arrowhead, Calif., house.

**JOHN BURNS** has been an investor and board member with San Diego companies SYS Technologies, Inc., Alturdyne, Inc. and Airsis, Inc.

**MAX HANSEN** serves as the ABA representative to the House of Delegates, is a member of that body's nominating committee and participates in the ABA Tax section. He also lectures throughout the country on Internal Revenue Code § 1031 deferred-tax property exchanges.

## Susanne Stanford '75 Receives Author E. Hughes Career Achievement Award



**M**ay 6, 2006, Susanne Stanford '75 received the Author E. Hughes Career Achievement Award. The award is part of the University of San Diego Alumni Honors—a tribute to outstanding graduates in the areas of career achievement, contributions to humanitarian causes and volunteer service to USD.

Long considered a trailblazer in the San Diego community, Susanne Stanford has been a mentor and advocate for women in the legal field for decades. In 1980, she became the first female partner at Luce, Forward, Hamilton & Scripps LLP and soon thereafter was named to head the firm's family law department.

An active member of the community, Stanford has volunteered time with the American Inns of Court, the Museum of Photographic Arts, the San Diego Bar Association and California Women Lawyers. She is a past president of the Lawyers Club of San Diego and served on the USD School of Law Board of Directors. Stanford is now a retired partner and of counsel at the firm Luce, Forward, Hamilton & Scripps LLP.

For more information about USD Alumni Honors, visit [www.sandiego.edu/alumni/honors](http://www.sandiego.edu/alumni/honors).

## class action

**HARRI KETO** lives in Tustin, Calif. He has four children, of whom two have graduated from college. He is general counsel and chief operating officer for Centerstone Communities.

**DENISE MCGUIRE** recently retired from her position as chief deputy of the San Diego District Attorney's Office.

**GARY L. PADEN** was appointed by the governor in July 2005 and sworn into service in August 2005 to the bench of the Tulare County Superior Court. His current assignment is Drug Court and felony trials.

## '77

**RONALD FRANT** has been married to wife Bobbie for 21 years. They enjoy their Maltese dog as well as traveling and helping others without having to worry about the work grind.

**THOMAS LOCHTEFELD** opened Wave House, a \$7 million, water-themed entertainment center, in Mission Beach, Calif., in June 2005. His other company, WaveLoch, sells souped-up wave machines. He was recently featured in *Forbes* for his inventions and entrepreneurial efforts concerning surfing and other water sports.

**VICTOR SALERNO** and wife Laurie celebrate their 31st anniversary in July 2006. They were married in the Immaculata while in law school.

**JIM STROFFE** continues to be a shareholder of Friedman, Stroffe & Gerard, P.C., where he chairs the Real Property and Construction Practice Group. His daughters Jennifer and Sheri recently formed Stroffe Properties, a full-service real estate agency.

## '78

**LEONARD ARMATO** is commissioner and president of the Association of Volleyball Professionals. He and his company, Management Plus, purchased the league in May 2001.

**ANDREW HOLCOMBE** was elected to a four-year term on the Chico, Calif., city council. He was a legal services attorney and has been running an eviction defense practice in Chico.

**FREDERICK SCHENCK** became president of the Washington, D.C., nonprofit Civil Justice Foundation, which funds grants to consumer grassroots organizations. He also anticipates publication of the sixth edition of a book he co-authored, *California Automobile Collision Handbook*, and continues as consulting editor for *Matthew Bender's Pleading and Practice*.

## '79

**LARRY ALAN BURNS**, a federal judge for the District of Southern California, was the sentencing judge for former congressman Randy Cunningham.

**EUGENE KUSION** has been in private practice for the past 20 years. Before that, he spent six years working for the U.S. government. He still surfs around the world and parasails and dives when he can. His youngest child is 15, and the oldest entered college last fall.

**ALICE YARDUM-HUNTER** was honored for the second time in the "Super Lawyer 2005" issue of *Los Angeles Magazine* in its immigration law category. She represents foreign citizens, their American employers and their close relatives, and is an expert witness in cases where immigration law issues impact litigation.

## '80

**GEORGE DEANE III** practiced law for 18 years in California before deciding to live on his boat and sail in Mexico for a year. He then went to Kauai, Hawaii, where he spent two years scuba diving and perfecting his golf game. Upon returning to California, Deane became a yacht broker for a year and a half. He finally returned to his litigation



Leonard Armato '78

career, this time in the role of senior counsel at Boornazian, Jensen & Garthe in Oakland, Calif. He still finds time to sail and ski.

**JOSEPH GHOUGASSIAN**, an advisor to the Coalition Provisional Authority, was in Iraq to reconstruct their educational system. Formerly, he was ambassador to Qatar, director of Peace Corps operations in Yemen and a senior advisor in President Reagan's Department of Domestic Policy.

**DAN GROSZKRUGER** accepted the position of first director of legal services for Tri-City Medical Center, a 400-bed acute care hospital in Oceanside, Calif., on September 1, 2004. He functions as in-house counsel, director of risk management and director of patient safety.

**PAUL JACOBS** and wife **DEBRA DODDS '82** share a law practice in Newport Beach, Calif. They have five children.

**BARRY NUSSBAUM** recently joined the board of directors at Surge Global Energy, Inc. He is president and founder of BNC Real Estate, which owns properties in Texas. In addition, he co-founded the wireless technology company Digital Orchid, raising more than \$10 million for the venture.

**VENUS SOLTAN** is a complex business litigation attorney in Orange, Calif. Both the *Los Angeles* and *San Francisco Daily Journal* listed her in the top 75 women trial attorneys in California in both 2004 and 2005.

'81

**LILIA GARCIA** was chosen to receive the San Diego County Bar Association's 2006 Service Award for Diversity.

**ROBERT HARRISON**, past president of the Association of Southern California Defense Counsel, was honored by the San Diego Defense Lawyers as the 2004 Defense Lawyer of the Year.

**JANICE F. MULLIGAN** received the San Diego County Bar

Association's 2006 Service Award for Service to the Legal Profession.

**ALEXANDER SCHACK (LL.M. 1986)** continues to specialize in anti-trust and consumer class actions. His wife Kathy is part-owner of Savoir Faire Stables in San Marcos, Calif. They have two children, John and Amanda, along with three dogs, two cats, two tortoises and an iguana.

**JEFFREY E. THOMA** and wife Kim celebrated the birth of their first baby, Charles Ryan, on December 5, 2004.

'82

**H. MARK DAVIS** is married and has one daughter (6). An FBI agent since 1986, he conducts overseas operations for terrorism investigations from a base in San Diego.

**DEBRA DODDS** and husband **PAUL JACOBS '80** share a law practice in Newport Beach, Calif. They have five children.

**MARK UHLFELDER (LL.M. 1984)** is a partner at Ski.com, the largest independent ski travel company in the nation. He worked in Washington, D.C., as a tax lawyer for 10 years before joining Ski.com.

**ELOY VILLA** has been executive director of the Office of Internal Affairs for San Diego County since 1998. In addition, he is the county ethics officer, a position which carries the responsibility of training county employees on ethical and legal standards. Villa has also served on the boards of several charitable organizations.

'83

**DARITY WESLEY** is the new editor in chief of Principal Broker Online, an online magazine for real estate professionals in North America.

## Deborah A. Wolfe '80 Elected CASD Trial Lawyer of the Year



**E**arlier this year, Deborah A. Wolfe '80 received the Trial Lawyer of the Year award from the Consumer Attorneys of San Diego for her "unselfish efforts ... to compensate past victims and prevent future injuries," as described on the award plaque.

Throughout 2005, Wolfe tried a series of dental malpractice cases. Although the verdicts were not astronomical, she won damages and negotiated settlements for plaintiffs who might otherwise not have had legal representation. She also brought the dentist's actions to the attention of the California Dental Board. The board ultimately revoked his license, ensuring that the community is protected from his negligent work.

Wolfe is one of only two CASD members to receive this award twice; she previously accepted it in 1996 and has received other honors from the group, and also from San Diego Trial Lawyers and Who's Who.

Formerly a partner at Nugent, Weinman, Abbene, & Alcock, APC, Wolfe recently opened her own office, The Wolfe Legal Group. She will continue litigating and consulting, and will teach in addition to pro tem work on the municipal court bench. She is married to Lester McDonald and has two children.

## class action

### '84

**ROBERT GAGLIONE** is the president of the Todd American Inn of Court in San Diego. In January, he was the chair of the annual dinner of the San Diego chapters of the American Inns of Court. The guest speaker this year was Ken Feinberg, special master of the September 11th Victim Compensation Fund.

**DAVIDE GOLIA** established the construction law firm Marks, Golia & Finch, LLP in April 1987. Davide and Tess have three boys and recently celebrated 24 years of marriage. Travis (15) and Taylor (13) are students at La Jolla County Day School. Tommas (18) played guard for the Williams College basketball team during his first year there.

**JERRY GONICK (LL.M.)** and wife **SUSAN GONICK '86** pledged \$1.75 million to the School of Law in order to endow a chair in elder law. He retired from law practice but continues to consult on securities matters.

**DONALD JONES** joined Qualcomm in 2002 and is vice president of business development, overseeing research and development around the convergence of cell phone technologies and medical devices, bio sensors and healthcare applications.

**ELIZABETH WALKER** is a partner at the Los Angeles office of Sidley Austin LLP. She continues to work in the area of civil litigation.

**SUSAN YECK** opened a law clinic in March 2004 and still maintains the Law Offices of Susan A. Yeck, a firm specializing in business litigation and

personal injury. She lives in San Diego and has a daughter, Olivia (4).

### '85

**JAMES BELLINSON** lives in Birmingham, Michigan, with his wife of nine years and their three children: Cooper (7) and twins Nick and Dara (5). He owns and operates 32 RV resorts and manufactured home communities in Florida.

**LESA CHRISTENSON** says that in April her law firm, Ashworth, Blanchet, Christenson, & Kalemkarian, moved into a building it purchased at Third Avenue and Juniper Street in the Banker's Hill neighborhood of San Diego. The firm specializes in family law matters.

**EARL M. FORTE III** currently represents USGen New England, Inc., a deregulated PG&E Corp. subsidiary, in its bankruptcy. His wife Deborah is a family physician and marathon runner who ran in her third consecutive Boston Marathon last year. They have two sons: Thomas (7) and Jonathon (4).

**ROBERT K. GOFF** is a founding partner of Goff & DeWalt, LLP in Seattle, where he lives with his family. He also established and serves as CEO of Restore International, an organization which investigates and rescues children from sexual slavery in India.

**DAVID MORWAY** continues to be senior vice president of basketball administration for the Indiana Pacers, an NBA franchise.

## George Chanos '84 Named Nevada Attorney General



**N**evada Attorney General George Chanos '84 has been busy since taking the oath of office in November last year. He obtained taxpayer relief through settlements with major corporations, responded to proposed federal legislation to create a nuclear waste site at Yucca Mountain in Nevada and participated in a multi-state resolution asking Congress for help in fighting methamphetamine crimes. He will also argue retroactive application of a hearsay decision before the Supreme Court.

No stranger to politics, Chanos interned at a federal senator's office before going to law school. After graduating from USD, he litigated in San Diego and then Nevada. Chanos decided to rejoin the public sector when a friend and Republican National Committeeman who was looking for a new attorney general asked him to quit making money and start helping Nevada. He assumed the attorney general post when the previous attorney general resigned to become a member of the federal bench. Chanos plans to run for re-election in November.

Aside from his legal career, he is known as the inventor of the board game Notable Quotables and the artist behind the paintings at [www.chanosgalleries.com](http://www.chanosgalleries.com). He and wife Adriana Escobar have one daughter, Alexandra.

**CAROLYN L. REILLY** has been the director of Elder Law & Advocacy, a California non-profit providing free legal services to those aged 60 and older in San Diego and San Bernardino counties, for the past five years. She oversees a total staff of 23, including eight attorneys, and manages a \$1 million budget.

**NICHOLAS J. YOCCA** was appointed to the board of directors of Oxford Media, Inc. He is a partner in The Yocca Law Firm, LLP, where he practices business and securities law.

## '86

**MEREDITH G. ALCOCK** was named a top attorney in the 2006 edition of *The Best Lawyers in America*. She practices estate planning and settlement, and litigates probate and trust matters as a partner at Nugent Weinman Abbene & Alcock APC.

**STEVEN ALTMAN** was elected to the Amylin Pharmaceuticals, Inc. board of directors in March 2006, where he serves on the Compensation and Human Resources Committee. He will donate compensation received for those services to diabetes charities. Altman remains president of QUALCOMM.

**STEPHEN BRIGANDI** was named chairman of the National Council of Chain Restaurants. He has been a member of the council for more than four years and will remain chairman through October 2006.

He is currently corporate counsel and director of government relations for Jack in the Box Inc.

**CRAIG FRIEDBERG** founded the Law Office of Craig B. Friedberg, Esq., in 1999. The firm emphasizes consumer protection and intellectual property law. In 1992, he married Lauriann Bradford. He has two stepchildren, Joshua (23) and Nicole (18), and a son, Ian (13).

**SUSAN GONICK** and husband **JERRY GONICK (LL.M. 1984)** pledged \$1.75 million to the School of Law in order to endow a chair in elder law. She has retired from her securities litigation practice.

**R. CLAYTON WELCH** continues to handle subrogation claims as in-house counsel for State Farm Insurance. He enjoys surfing and visiting his children and grandchildren in California and Hawaii.

## '87

**ALAN R. ALVORD** accepted appointment to the position of Administrative Law Judge for California's Office of Administrative Hearings.

**DAVID L. BOURGOIN** traveled to Antarctica to make a multimedia presentation for TCR Productions. He is also a regional coordinator in Hawaii for the Export Legal Assistance Network, a cooperative effort between the Federal Bar Association, the Department of Commerce and the U.S.

Small Business Administration to advise small businesses entering the export field.

**THEODORE BOUTROUS** currently represents Wal-Mart in an equal-pay discrimination class-action lawsuit.

**WILLIAM LAVELLE** and Beth have been married 16 years. LaVelle spends his time coaching track teams for their daughters, Chloe (10) and Shelby (7), and running a three-attorney firm in Patchogue, New York. Beth has been teaching elementary school for the past 12 years. She plans to open an art studio to showcase her work this summer.

**KATHERINE NAKAMURA** is running again for office on the San Diego Board of Education. Nakamura has been a member of the school board since 2002.

**MIGUEL SMITH** completed a two-year term as managing partner of Solomon Ward Seidenwurm & Smith, LLP. He practices real property and transactional law. He is married with a stepdaughter (15) and daughter (3).

## '88

**MARK PACHOWICZ** reports that after years as a deputy district attorney, child support attorney and executive director of a union, he is pleased to announce the opening of his own law firm in Camarillo, Calif.

**DAVID L. RICE (LL.M.)**, a California Certified Specialist in Taxation Law and principal at Rice & Renshaw, APLC, chairs the California State Bar Association's Income Tax Committee as well as the Los Angeles County Bar Association's Tax Committee on Procedure and Litigation.

**AMY ROMAHER (LL.M.)** joined Sheppard, Mullin, Richter & Hampton LLP as the director of client service teams. She will be based in Del Mar Heights, Calif.

**LAURI STOCK** and law partner M.E. Stephens expanded and relocated their firm to the San Diego Chamber Building in November 2005. Stock Stephens, LLP is in its seventh year of practice and focuses on family law and criminal defense. Stock serves as a settlement judge in family court, on the court appointed minor's counsel panel and is a charter member of San Diego Uptown Sunrise Rotary Club.

**JAMES VALLIENT** authored *The Passion of Ayn Rand's Critics* (May 2005). His political and legal views are regularly heard as he commentates for Fox 6 and KUSI, among other San Diego area local news programs.

## '89

**PETER V. ALLEN** is an administrative law judge at the California Public Utilities Commission in San Francisco. He and his wife, Lynne-Rachel Altman, have two daughters (7 and 2).

## class action



Patricia Garcia '89

**PATRICIA GARCIA**, a San Diego Superior Court Judge, is now at the El Cajon Courthouse presiding over a family law department. She also serves as vice-president of the San Diego County Judges Association.

**SANGEETA JAIN (LL.M.)** was honored with the Indus Women Leaders annual award for her public service and commitment to improving the lives of South Asian-American women. Jain is a member of several women, children and family-oriented organizations. She is currently a magistrate for the Fourth Judicial District in Minnesota and adjunct law professor at Hamline University.

**JOE MARSHALL** is a shareholder practicing in the reorganization/corporate finance group of the Texas firm Munsch Hardt Kopf & Harr, P.C. He and wife Julie live in Coppel, a Dallas suburb, along with their three children: Hutton (14), Kelly (13) and Ben (10).

**WILLIAM H. ROBINSON** was recently appointed chief operat-

ing officer of the Nevada operations of MTR Gaming Group, Inc. Previously, he has held similar roles including vice president of Casino Operations for Tropicana Hotel and Resort, senior vice president at Sands Hotel and Casino and president of the land-based gaming board in Louisiana.

**JANNIKE SYSE (LL.M.)** was recently accepted at NORDEM, the Norwegian resource bank for democracy and human rights administered by the Norwegian Centre for Human Rights and run in cooperation with the Norwegian Refugee Council. Syse will be given international assignments promoting democratization and respect for human rights after completing an introductory course in human rights field work.

**DAVID H. WISE** opened a new law firm, Waters & Wise, PLLC. The firm has offices in Virginia, Maryland and Washington, D.C., and will provide expertise in construction defect and toxic tort law.

## '90

**JOSEPH FLETCHER III** was made a partner at Holland & Knight. He works in the business section of the firm's San Francisco office.

**DOREEN HOGLE** was elected president of the Boston Patent Law Association. A past issue of *Boston Magazine* named her one of Massachusetts' "super lawyers." She is a partner at Hamilton, Brook, Smith &

Reynolds, P.C., where she practices intellectual property law in Concord, Mass.

**MICHAEL SLATER** and Laurel celebrated 16 years of marriage in December 2005. They have three daughters: Sarah (11), Mollie (9) and Katie (6). Slater was appointed assistant city attorney in Fresno, Calif., in November 2003.

**MICHAEL SPATA (LL.M.)** is now the city attorney of Lathrop, Calif. He previously worked for Tulare County, Calif.

**GINA M. WEIHERT** has spent the past 10 of her 15 years of insurance defense litigation experience with Barry Bartholomew & Associates. She was awarded the title "Trial Attorney of the Year" last year, in part because of her four defense wins in five trials.

## '91

**STEPHEN D. HOFFMAN** was promoted to partner at Lewis Brisbois Bisgaard & Smith LLP. He litigates primarily in the areas of insurance defense, construction defect, commercial products liability, personal injury and wrongful death.

**MICHAEL KIM** is a partner at Peters & Freedman, L.L.P., where he represents homeowner associations as general counsel and specializes in litigation.

**RON NORTHUP** was appointed to the San Joaquin County Superior Court bench in March 2006 by Governor Schwarzenegger.

**CHARLOTTE J. ORCUTT** was appointed to the San Joaquin County Superior Court judiciary. Before the appointment she was a commissioner with the county.

## '92

**MICHAEL CORDIER** has been a shareholder in the Phoenix Office at DeConcini McDonald Yetwin & Lacy, P.C., for the past year. He practices intellectual property, employment defense and construction law.

**SIMON SILVA** works for the city attorney in San Diego where he gives legal advice to the police department. He and his wife **CLAUDIA SILVA '93** have two daughters: Gabrielle and Isabelle.

## '93

**RICHARD BRITSCHGI** was made partner at Kutak Rock LLP. He continues to specialize in public finance, financial guaranty insurance and interest rate swaps and derivatives at the firm's Irvine, Calif., office.

**MARY B. GALARDI** is honored to be listed in the "Super Lawyer 2006" issue of *Atlanta Magazine* in its Estate Planning/Trusts category. Galardi represents clients in the areas of estate planning and business law.

She is beginning the eighth year of her law firm, Mary B. Galardi, P.C.

**RICHARD HEALY (LL.M.)** is a staff attorney at the McGeorge School of Law's Institute for Administrative Justice. In that capacity, he manages contract attorneys for the California Parole Advocacy Program.

**JOHN IANNARELLI** recently was promoted from a position in FBI headquarters in Washington, D.C., to the position of supervisory special agent in the FBI's Phoenix division.

**SHEILA R. MOHAN** worked in the administration of former California Governor Davis for five years before returning to the state Office of Legislative Counsel in late 2003. In 2004, she and husband Jay opened an "original concept pizzeria." The family has two additional members: daughter Mira (5) and son Kieran (2).

**RICHARD OSTROW** is now a senior litigator in the business and real estate group of the law firm Kimball, Tiry & St. John. He practices in the firm's San Diego office. Ostrow formerly served as a deputy city attorney for San Diego.

**JOEL SELIK (LL.M.)** received the President's Star Award from the Consumer Attorneys of San Diego.

**CLAUDIA GACITUA SILVA** litigates land use cases for San Diego as a deputy city attorney.

ney. She and husband **SIMON SILVA '92** have two daughters: Gabrielle and Isabelle.

## '94

**JOHN ALESSIO** started a law firm, Thompson & Alessio, LLP, approximately four years ago. The firm concentrates on litigation and transactional aspects of business, employment and real estate law.

**FRANK BOTTINI** is a partner at Wolf Haldenstein Adler Freeman & Herz LLP and practices in the firm's San Diego office. In April 2005, he traveled to Seoul, South Korea, where he gave a keynote speech on class action securities litigation at the second annual CFO Forum.

**JOHN CALLAHAN** recently was promoted to full equity partner at the law firm McDermott Will & Emery LLP. Callahan continues to focus his practice on health sector mergers and acquisitions and life sciences transactions. He lives in Chicago with wife Christine and daughters Claire (5) and Charlotte (3).

**NAOMI COHEN** had a baby girl named Shoshana and is now back at work at the Children's Court in Los Angeles.

**KRISTEN J. FOSSLER** works as a deputy city attorney at the San Diego Office of the City Attorney. She is married and has two children: Jared (6) and Madeleine (4).

**BRYAN J. HOLLAND** was recently hired as the chief financial officer of Electric Aquagenics Unlimited, Inc. The business develops and produces new cleaning processes and machines.

**ROBERT LITTLE** is admitted to the practice of law in six states, is certified as a criminal trial attorney in Manhattan and New Jersey, and has argued before an en banc U.S. Court of Appeals. He also provides some legal commentary for Court TV.

**JONATHAN MONTAG** practices immigration law at Montag & Nadalin LLP in San Diego. He is a member of the National Benefit Center Liaison Committee, the AILA Annual Conference Planning Committee, the AILA National Membership Committee and the Immigration Today Editorial Advisory Board.

**SCOTT S. OLIVER** joined the Palo Alto, Calif., office of Morrison & Foerster LLP as a partner in February 2006. He practices in the Intellectual Property Group.

**MARY PARNOW** lives in Oakland, Calif., with her husband, baby son and two Belgian shepherds. She is senior assistant regional counsel for the Social Security Administration and frequently argues in front of the 9th Circuit Court of Appeals.

## '95

**REBECCA CADY** advanced to partner at Grace Hollis Lowe Hanson & Schaeffer LLP. She manages the firm's regional office in Visalia, Calif. In addition, she is the editor of the *Journal of Nursing Administration's Healthcare Law, Ethics, and Regulation* and is the author of two books.

## '96

**CLAUDINE SHERMAN ABRAHAM** and husband Bryan celebrated the birth of daughter Claire Louise on November 17, 2005. Abraham practices employment law at Friedman Stroffe & Gerard, P.C., in Irvine, Calif.

**LISA KENNY CAREY** is a sole practitioner specializing in family law from her office in downtown San Diego. Her husband practices construction defense law. They have been married for five years and have a son (2).

**CRAIG CHERNEY** is manager of land Acquisitions for Pulte Homes in Las Vegas. He previously served as corporate counsel for Rhodes Homes and staff attorney and law clerk for U.S. District Court Judge Thomas J. Whelan. Cherney is married to **AUBREE CHERNEY '05**. The couple is extensively remodeling their historic Vegas home. They maintain a summer residence in the San Diego Gaslamp District, which they frequent during Nevada's hot summers.

## class action



Sophia Ray '96



Naoki Kawada '97



Jack Balderson Jr. '99

**STACEY E. JAMES** was named partner at Sheppard, Mullin, Richter & Hampton LLP earlier this year. She practices in the Labor and Employment Practice Group in the firm's San Diego office.

**RICHARD MACDONOUGH JR. (LL.M.)** no longer practices law. He is now director of the District of Columbia Operations for the Fraser Forbes Company, LLC, where he works as a land sales specialist. He and wife Julia, son Joseph (3) and daughter Catherine (1) live in Rockville, Md.

**DARREN MCELFRISH** had his second child, Kian McElfresh, on July 17, 2004.

**SOPHIA RAY** and husband Henri had their first child, Tigo, on December 4, 2005. The delivery was difficult, but both mom and baby are healthy. The family lives in Europe.

**TIZA SERRANO THOMPSON** was promoted to partner in December 2004 at Matheny Sears Linkert & Long LLP in Sacramento. She primarily practices personal injury defense, insurance coverage and business counseling. She and Tom have been married for seven years.

**STEVEN ZADRAVECZ** was recently promoted to partner at Morrison & Foerster LLP. He works in the firm's Orange County, Calif., office.

## '97

**ANNIKA GREEN FROSTICK** works for the Vermont Attorney General as an assistant prosecutor. In that capacity, she also serves as a special assistant U.S. attorney. Her son, Colby Thomas, was born October 6, 2004.

**ALEXANDRA GASS** and husband Sean had their first child, Tucker, on February 3, 2005.

**SEAN P. HEALY** was named partner at the Phoenix office of Lewis Brisbois Bisgaard & Smith LLP.

**JOHN NICHOLSON** has been a partner at Adamski Moroski Madden & Green LLP since early 2005. He focuses on general business litigation. He lives in San Luis Obispo, Calif., with his family.

**MATTHEW ORZECH** moved back to Southern California, where he is vice president of the real estate division of City National Bank in La Jolla. He and his wife Jayme have three children: Matthew (9), Mikessa (6) and Michael (4).

**LISA W. ROSAYA** gave birth to a boy, Jackson Pierre, on February 9, 2005. She also has a daughter named Sabine (4).

**DENA ROUDYBUSH** and husband Rich welcomed baby Dylan Mark on May 27, 2005. He weighed 9 lbs. 1 oz. Brothers Mitchell (6) and Ian (4) are also pleased with the arrival. The family lives in Virginia.

**JONATHAN B.** and wife **CHRISTA A. TALLMAN** welcomed daughter Catherine on January 5, 2005. She joined big sister Megan (5) and brother Ryan (3). The family lives in San Jose, Calif.

**DEREK VOSSKUHLE**r passed the California State Bar family law specialization exam.

**THOMAS D. WAYLETT** is now a partner at Adamski Moroski Madden & Green LLP. He specializes in real property, regulatory and business disputes and transactions. He lives in Paso Robles, Calif., with his family.

**KRISTIN JOHNSON ZLOTNIK** married **ANDREW ZLOTNIK '02** in September 2005.

## '98

**ROBERT GLEASON** and his partner, Marc Matys, are proud to announce the birth of their son, Maxwell Adam Matys-Gleason, on September 23, 2005.

**VICTOR HANNA**, formerly managing director of Comdisco Ventures, is now a partner at Hybrid Capital, where he manages the company's investment portfolio and acquires new investments. He is also a new member of iseemedia Inc.'s advisory board. He will help with that company's business development.

**NAOKI KAWADA** was recently promoted to shareholder at Greenberg Traurig LLP where he heads the Japanese



Practice Group of the firm's Los Angeles office. He lives in Bel Air, Calif., with wife Pamela.

**JUDITH LITZENBERGER** chairs the Military Law Committee of the San Diego County Bar Association. She also serves on the board of directors for Walden Family Services, is a member of the Enright Inn of Court and has been a trainer for some National Institute for Trial Advocacy courses.

**KATHLEEN TUTHILL MARINO** and husband of six years, Jeff, had their first child, Vincent, on August 27, 2004.

**BRIAN PECK** recently joined the international trade group at Crowell & Moring LLP. He will work in the firm's Irvine, Calif., office. Peck was previously senior director for Intellectual Property at the Office of the U.S. Trade Representative, Executive Office of the President, where, among other accomplishments, he negotiated the intellectual property sections of the U.S.-Andean and U.S.-Panama Free Trade Agreements.

**BAHAR SCHIPPEL (LL.M.)** was appointed co-chairwoman on membership and vice-chairwoman of the LLC and LLP subcommittees of the American Bar Association's tax section committee on partnerships and LLCs. The ABA also recently selected her to be one of six John S. Nolan Fellows. The Arizona Board of Legal Specialization previously certified her to be

a tax specialist. She practices tax law as a partner at the Phoenix office of Snell & Wilmer, L.L.P.

**CHRISTIAN S. SCOTT** joined the products liability group of Wilson Petty Kosmo & Turner LLP, where he practices theme park liability defense, commercial negligence, product liability and personal injury.

**JACOB M. SLANIA** joined the San Diego firm of Kirby Noonan Lance & Hoge LLP as a partner in January 2006. His practice includes general civil litigation, corporate dissolutions and legal malpractice defense, among other specialties.

**LAURI S. THOMPSON-BRACKEN** was a partner at the Las Vegas firm Quirk & Tratos before it merged with Greenberg Traurig, LLP in May last year. As a shareholder in Greenberg Traurig, LLP, she continues to specialize in intellectual property, entertainment law and Internet law. She also devotes time to community issues and non-profit charities. She has two children: Nikolas (6) and Alexander (3).

**DAVID WOLFE** is a raw food expert living in Southern California, Manhattan and Toronto. He recently published a book, *Naked Chocolate*, and runs [www.rawfood.com](http://www.rawfood.com).

## '99

**JACK BALDERSON JR.**, a member of Thompson & Knight LLP's Litigation and Dispute Resolution Practice Group in Dallas, focuses his practice on litigation and antitrust matters. He was recently made partner.

**A. JOSEPH CHANDLER** practices real estate and mining law at the Phoenix firm Ryley Carlock & Applegate.

**DINA DAVALLE** recently accepted a position as assistant general counsel for Capital One Finance in McLean, Va.

**SCOTT A. HARSHMAN (LL.M.)** moved to the Orange County office of Greenberg Traurig, LLP where he is of counsel in the trusts and estates practice group. He was previously a partner at The Busch Firm.

**CYNTHIA HARF KAIDEN (LL.M.)** and her husband, David Kaiden, welcomed Tanner's little brother, Cooper Dane, on December 6, 2005. They moved to Carlsbad, Calif., last May. She will continue to work on court-appointed minors' counsel cases.

**PHILIP S. PESIN** was recently named chairman of Auriga Laboratories' board of directors.

**DENISE TESSIER-GLUZERMAN (LL.M.)** practices real estate and niche family law, such as palimony, domestic partner-

ship and Russian bride issues, from her law offices in San Juan Capistrano and Rancho Mirage, Calif.

## '00

**KELLY CHANG** participated in "The Law Firm," a television reality show. She recently moved from a law firm to her own real estate brokerage company, Kelly Chang & Co.

**HARRY W. HARRISON**, formerly of Gordon & Rees LLP, and **JAMES R. PATTERSON**, formerly of Cooley Godward LLP, recently formed Harrison, Patterson & O'Connor LLP with Matthew J. O'Connor. The firm maintains a civil litigation and criminal defense practice servicing San Diego, Orange, Los Angeles and Riverside counties.

**DAVID LASPALUTO** now practices commercial and intellectual property litigation in Phoenix at Perkins Coie LLP. He previously worked for DLA Piper Rudnick Gray Cary LLP. On December 28, 2004, he married Nicole Wilkerson.

**THOMAS LOHER (LL.M.)** became a partner at the Zurich-based law firm Thouvenin Rechtsanwalte, a leader in commercial law. The firm's clientele consists of national and multinational companies, small and medium-sized enterprises and private individuals.

## class action



Soo Lin '02



Sean Burdick '03



Nathan Hicks '04

**DARRELL MOORE (LL.M.)** has worked with Inland Counties Legal Services, a legal aid firm serving Riverside and San Bernardino counties, since 2003. He loves his job, which consists mainly of helping clients with housing problems such as evictions and foreclosures. Moore, his wife Barbara and their five children enjoy baseball, soccer games and swim meets.

**D. TODD PHILIPS** and his wife moved to Houston, Texas, in 2000, where she received an MBA and he earned an MPA from the University of Houston. In June 2004, Philips became chief of Policy and Governmental Affairs at the San Diego Housing Commission. The couple's first child, Greyson H. Philips, was born on September 23, 2005, in San Diego.

**HERBERT STROH (LL.M.)** specializes in estate planning, trust, and probate law at the San Luis Obispo, Calif., law firm of Sinsheimer, Schiebelhut & Baggett. He was formerly a partner at the Glendale, Calif., firm of Whitesell & Stroh.

## '01

**LISA BRIDGMAN** and husband Dan proudly announce the birth of their son, Dylan Ryder, on February 11, 2005.

**STEVEN K. BRUMER (LL.M.)** serves as chief financial officer and general counsel to Real Estate Consulting Group Inc., a San Diego real estate transaction management firm that he co-founded.

**ROGER F. LIU** and his wife announce the birth of their first child, daughter Aliana, on February 13, 2006.

**JAMES NGUYEN** privately practices personal injury, toxic mold and real estate law.

**ROBERT SCOFIELD (LL.M.)** was hired by a CPA firm in New York.

## '02

**KEITH BRUNO** was a contestant on the reality television show "The Law Firm." He married in August 2005.

**LISA A.** and **NOEL JAMES DORAN** were married in Founders Chapel on June 5, 2005.

**DANIELA REALI FERRARI** began working as a deputy public defender in San Diego in July 2005.

**DAVID HUCH** formed a law firm in the La Jolla area of San Diego called Hawkes & Huch. He specializes in employment and consumer class-action cases.

**SOO Y. LIN** joined the Los Angeles office of Tucker Ellis & West LLP as an associate. She practices products

liability litigation involving pharmaceuticals and medical devices as well as general litigation.

**YUNLI XU (LL.M.)** works with her husband at his immigration law firm.

**ROHANE ZAPANTA** serves low-income clients through her law practice in Chula Vista, Calif. Her fiancé, Bernard Cassillan, makes house calls as a physician's assistant to terminally ill and housebound patients.

**ANDREW ZLOTNIK** married **KRISTIN JOHNSON ZLOTNIK '97** in September 2005.

## '03

**KELLEY BOLAND** is doing compliance work in-house for a Denver, investment banking firm, Keating Investments, LLC.

**SEAN BURDICK** joined the Orange County office of Snell & Wilmer L.L.P. where he will focus on intellectual property and technology with an emphasis on patent litigation. He is a licensed Professional Engineer in California and lives in Lake Forest, Calif.

**ANGELA PIERCE GEISLER** and **RICH GEISLER** were married on February 5, 2005.

**MICHAEL R. KIESLING** clerks for the litigation department of Sempra Energy's San Diego office.

**MICHAEL B. LEES** joined the law firm Seltzer Caplan McMahon Vitek as an associate. His practice emphasizes general business and corporate transactions, taxation and real estate law. He was formerly an associate at Blanchard Krasner & French.

**WILLIAM REISING JR.** and **ALISA L. LEDBETTER** were married on July 30, 2005, in Dana Point, Calif. They returned to their respective practices in Orange County, Calif., after honeymooning in Hawaii.

**ZANE TOMINNA (LL.M.)** took part in ABA talks with the IRS and Congress about tax reform for the second year in a row.

## '04

**JACK DAILEY** operates the Disabled Homeless Outreach Project, which he started with the help of an Equal Justice Works Fellowship and the San Diego Legal Aid Society.

**KRISTIN DENNIS (M.B.A. '01)** lives in Washington, D.C., and works for the Secretary of Defense, Under Secretary of Defense for Intelligence.

**NATHAN HICKS** now practices in the labor and employment group at the Orange County, Calif., office of Snell & Wilmer, L.L.P.

**JIM SIDORICK** is a project manager in planning and land acquisitions at McMillin Land Development.

## In Memoriam

The University of San Diego School of Law community would like to extend its deepest sympathy to family and friends.

**JAMES T. CARROLL JR. '77** died at home February 13, 2006. He was a major in the Marine Corps and served with the military for 20 years, including in Vietnam where he was decorated many times, before retiring and earning a law degree. He tried cases for more than 13 years as an assistant district attorney in Pennsylvania. He then taught humanities and law at several colleges.

**WILLIAM FLETCHER '75** passed away on March 10, 2006, in La Jolla, Calif., from complications after undergoing a bone-marrow transplant operation to treat leukemia. He had a full career defending high-profile criminal cases. He also participated in professional organizations as president of the Criminal Defense Lawyers Club in San Diego and chairman of the Private Conflicts Counsel Program of the San Diego County Bar Association, among other assignments.

**CHRISTOPHER MCCALLISTER '07** died June 25, 2006, in San Diego after being struck by a car. A native of Albuquerque, New Mexico, McCallister was a respected and well-loved student at the School of Law.

Contributions to the Christopher McCallister Memorial Scholarship Fund can be made by mailing donations to:

University of San Diego School of Law  
Office of Development and  
Alumni Relations  
5998 Alcalá Park  
San Diego, CA 92110

Make checks payable to: "USD School of Law" and note on the check that the funds should be directed to the Christopher McCallister Memorial Scholarship Fund.

**ANTHONY PASCALE '82** passed away November 4, 2005, in Rahway, N.J. In 1982, he graduated from the School of Law *summa cum laude* and was class valedictorian. After graduation, he moved to Rahway and opened a law office. He also worked for almost 20 years as attorney to the city's Planning Board. He served as a trustee at the local First Presbyterian Church.

**BARBARA L. SOREM '76**, a former senior research attorney for the Court of Appeals in both San Diego and Los Angeles, passed away on December 22, 2004, in San Diego.

**DAVID E. SPANDLE '83** died December 13, 2005. He is survived by his wife Ida and son Jason.

**MARGUERITE STEIN '66** passed away on August 24, 2005, due to complications from heart surgery. She consistently sought opportunities to give service, whether legally or socially. Some of her achievements include court-reporting for the Nuremberg war crimes tribunal, prosecuting for the Oceanside, Calif., District Attorney's Office, working as counsel for Napa County, Calif., and participating in community theatre along the way. She earned two masters degrees, one in theology and the other in canon law, and applied them, along with prior experience, while she sat as a judge for the Roman Catholic Diocese in San Diego.

**DAVID M. WILSON '91** died March 1, 2006, in San Diego. He was a member of the First Baptist Church in Danville, served in the Navy, and worked at General Dynamics. He is survived by wife Teresa Bersch Wilson and two sons.

**CHERYL YARBROUGH '99** died March 2004 from a blood clot. She was very well-known for playing the harp.



**Mathieu Blackston '05**



**Benson Barrera '05**

**JEFF SPENCER** and wife Autumn had a baby girl, Patience Rebecca, on October 6, 2005. The family resides in Reno, Nev., where Spencer practices insurance defense and general litigation.

**JASON WALLER** accepted an associate position at the Orange County, Calif., office of Trovillion Inveiss Ponticello & Demakis.

**MICHAEL ZECH** became an associate attorney at the San Diego office of Trovillion Inveiss Ponticello & Demakis in 2004.

## '05

**BENSON BARRERA** joined the litigation department of Holland & Hart, LLP. He works in the firm's Boise, Idaho, office.

**MATHIEU BLACKSTON** will focus on commercial litigation as a new associate in the Orange County, Calif., office of Snell and Wilmer L.L.P.

**JAMES BOND** passed the Arizona bar exam and was hired by the Phoenix office of Fennemore Craig.

**DANIEL CHASE** married Jessica Cluphf in La Jolla, Calif., on June 10, 2005.

**AUBREE CHERNEY** is an associate at the Las Vegas firm Schreck Brignone, concentrating on litigation and real estate matters. She is married to **CRAIG CHERNEY '96**. The couple is extensively remodeling their historic Vegas home. They maintain a summer residence in the San Diego Gaslamp District, which they frequent during Nevada's hot summers.

**SAMANTHA LEBEDA** is in Portland, Ore., working as an associate for Schwabe, Williamson & Wyatt.

**KEVIN HUGH LOGAN** married **MAURA MCCORMICK HARTMERE** in Bronxville, N.Y., on October 22, 2005. He clerks for The Honorable Alan H. Nevas of the Federal District Court in Bridgeport, Conn. She clerks for Judge Thomas

J. Meskill of the 2nd Circuit United States Court of Appeals. They live in Connecticut.

**CASEY LUSKIN** authored amicus briefs in the Dover, Pa., intelligent design case. He currently works for Discovery Institute, an organization that researches and promotes intelligent design theory.

**KIMBERLY J. MILLER** is an associate at Knobbe Martens Olson & Bear LLP in San Diego.

**JUSTINE PHILLIPS** practices general civil litigation at Seltzer Caplan McMahon Vitek in San Diego.

**SCOTT S. POELMAN (LL.M.)** works as a tax attorney at Procopio, Cory, Hargreaves & Savitch LLP in San Diego. His first child, Zachary Stoddard Poelman, was born on September 15, 2005.

**HILLERY M. STONES** joined the San Diego office of Luce, Forward, Hamilton & Scripps, LLP.

# academic year in review

school events

*USD faculty and student groups host a variety of extracurricular events which enrich the intellectual life of the School of Law community. The following list includes many of the highlights of the 2004-2005 academic year.*

**"Music and the Law,"** a program featuring Justice Sandra Day O'Connor, former associate justice of the U.S. Supreme Court, presented by the La Jolla Music Society in association with the University of San Diego School of Law, August 2004.

**Guest Speaker Ray Krone, exonerated death row inmate,** speaking on the inequities of the death penalty, life in prison and the important role volunteer attorneys played in securing his release, presented by Pro Bono Legal Advocates, September 2004.

**Alumni Torts Appellate Moot Court Competition,** sponsored by the Appellate Moot Court Board, September 2004.

**Law Firm Challenge Kickoff,** alumni from various law firms in San Diego compete for the highest giving participation rate and most dollars raised, this year the event was kicked off at the OMNI Hotel Terrace followed by a Padres/Dodgers baseball game, sponsored by the Office of Development and Alumni Relations, August 2004.

**The Red Mass,** a mass traditionally celebrated on the first Monday in October where it coincides with the opening of a new session of the United States Supreme Court, celebrated by the Most Reverend Robert H. Broom, bishop of San Diego, co-sponsored by the USD School of Law and St. Thomas More Society of San Diego, October 2004.

**The National Conference on Homeless Courts, "Taking the Court to the Streets,"** a conference in which participants learned about the history of the homeless court, their potential roles in operating a program, the process of creating a homeless court and the benefits of the program for communities as well as their homeless residents, sponsored by the National

American Bar Association Commission on Homelessness and Poverty and Pro Bono Legal Advocates, October 2004.

**Minority Perspectives in the Law,** with guest speakers Judge Dana Sabraw, United States District Court judge for the Southern District of California; Jon S. Tangonan, Horton & Ryan; and Nancy Kawano, DLA Piper Rudnick Gray Cary, sponsored by the Asian American Law Students Association, October 2004.

**Careers in Environmental Law,** with guest speaker Marco Gonzalez, Coast Law Group, LLP, sponsored by the USD Environmental Law Society, October 2004.

**Fundraiser for Doctors Without Borders in Darfur, Sudan,** which raised over \$1,700 through the auctioning of various prizes including mini-vacations and gift certificates, sponsored by the Law and Diplomacy Club, November 2004.

**Bowes-Madison Distinguished Speaker Series: "Media vs. Civilization: How the Messages of the Entertainment Industry Undermine the Foundations of a Free and Ordered Society,"** with guest speaker Michael Medved, author, film critic and nationally syndicated radio talk show host, sponsored by the USD School of Law, November 2004.

**2004 Wohlmuth Highway Opening Colloquium,** presented by Charles Goodwin, professor of applied linguistics, University of California, Los Angeles, discussing "Professional Vision," November 2004.

**Cutting Edge Intellectual Property Public Lecture: "File Swapping and File Sharing: Why Congress Can't Fix Hollywood's Problem,"** with guest speaker Pamela Samuelson, Chancellor's Professor of Information and of Law, UC Berkeley and director, Berkeley Center for Law and Technology, with introduction by Judge M. Margaret

McKeown, U.S. Court of Appeals, November 2004.

**Guest speaker Dennis Doucette, partner at Luce, Forward, Hamilton & Scripps LLP,** discussing opportunities in business law and recommended preparation for entering that field, sponsored by the Business Law Society, November 2004.

**The 2004 USD School of Law Distinguished Alumni Award,** presented by the Law Alumni Association Board of Directors to Alan K. Brubaker '76, sponsored by the Office of Development and Alumni Relations, November 2004.

**Jessup International Law Moot Court Competition: Final Round,** sponsored by the Appellate Moot Court Board, November 2004.

**California State Supreme Court Special Session,** held in the Kroc Institute for Peace & Justice in conjunction with School of Law's 50th Anniversary celebration. The justices, over two days, heard cases ranging from criminal cases involving the death penalty to civil cases involving anti-SLAPP statutes and administrative remedies involving "whistle-blower" claims. The event, which turned out to be one the largest collaborative public education events in the state court's history, was sponsored by the USD School of Law, December 2004.

**5th Annual Maudsley Fellows Appreciation Dinner,** an annual event honoring special friends and supporters of the law school, sponsored by the Office of Development and Alumni Relations, January 2005.

**The USD School of Law—Procopio International Tax Institute's U.S.-Mexico International Tax Update,** featuring preeminent tax advisors discussing the newly-enacted American Jobs Creation Act of 2004 as well as the latest Mexican inter-

national tax reforms, sponsored by the USD School of Law and Procopio, Cory, Hargreaves & Savitch LLP, January 2005.

**Nation on Edge: "Disaster Declaration, Relief, and Mitigation—The Changing Role of the Federal Government 1950-2000,"** featuring Rutherford H. Platt, professor of geography and planning law at the University of Massachusetts, Amherst and James L. Huffman, dean and professor of law at Lewis & Clark Law School, sponsored by the USD School of Law, February 2005.

**Nathaniel L. Nathanson Memorial Lecture Series, 21st Lecture: "The Origins of American Constitutionalism,"** with guest speaker Gordon S. Wood, Alva O. Way University Professor and professor of history, Brown University, sponsored by the USD School of Law, February 2005.

**23rd Annual Careers in the Law,** a brief panel presentation followed by a reception with alumni, sponsored by the USD School of Law, the Law Alumni Board of Directors, the Office of Development and Alumni Relations and the Career Services Office, February 2005.

**Paul A. McLennon, Sr. Honors Moot Court Competition,** with guest presiding judge The Honorable Alex Kozinski, United States Court of Appeals for the Ninth Circuit, sponsored by Professor Michael R. Devitt and his family as well as the Appellate Moot Court Board, March 2005.

**2005 Law School Visit Day,** for accepted applicants, including a tour, financial aid and career services overviews, a class presentation and lunch with members of the campus community, sponsored by the USD School of Law, March 2005.

**Guest Speaker Jeff Carrol, general counsel for Santarus, Inc.,** discussing career opportunities in business law and recommended preparation for entering the field, sponsored by the Business Law Society, March 2005.

**Q&A Session with Guest Speaker Taha Hassane, the Imam of the Islamic Center of San Diego,** who spoke on topics ranging from a brief introduction to Islam to the role of women in Islam, the ongoing conflicts in Iraq and Afghanistan, sources of Islamic law, the conditions in which jihad is legitimate, who has binding legal authority in Islam and the compatibility between Islam and democracy, sponsored by the Islamic Legal Society, April 2005.

**Nation on Edge: "Manifest Destiny and the Natural Order: Markets, Property Rights, and Ecological Planning,"** featuring Arthur F. McEvoy, professor of law, history and environmental studies at the University of Wisconsin; and John H. Minan, professor of law, USD School of Law, sponsored by the USD School of Law and Pace University, April 2005.

**Ninth Circuit Court of Appeals Special Sitting at the University of San Diego,** hearing petitions from the Federal Energy Regulatory Commission stemming from the California energy crisis in 2000 to 2001. The appellate panel consisted of Circuit Judges Sidney R. Thomas of Billings, Montana; M. Margaret McKeown of San Diego, California; and Richard Clifton of Honolulu, Hawaii, April 2005.

**2005 Law School Visit Day,** for accepted applicants, including a tour, financial aid and career services overviews, a class presentation and lunch with members of the campus community, sponsored by the USD School of Law, April 2005.

**Careers in International Law,** with guest speaker David Brennan, one of the founding members of the International Association of Court Administrators (IACA) and graduate of USD's International LL.M. program, sponsored by the Law & Diplomacy Club, April 2005.

**Author E. Hughes Career Achievement Award,** awarded to The Honorable Napoleon Jones Jr. '71, sponsored by the Office of Development and Alumni Relations, April 2005.

# academic year in review faculty colloquia

*A listing of the faculty colloquia presented during the 2004-2005 academic year.*

**David McGowan**, associate professor of law, University of Minnesota Law School: "The Trespass Trouble and the Metaphor Muddle" (additional context is provided by an earlier paper, "Website Access: The Case for Consent"), September 17, 2004.

**Heidi Kitrosser**, assistant professor of law, Brooklyn Law School: "Introduction" and "Containing Unprotected Speech," October 1, 2004.

**Edward J. Larson**, Herman E. Talmadge Chair of Law, Richard B. Russell Professor of American History, University of Georgia School of Law: "Excerpts from *Narrative History of the Constitutional Convention*," October 7, 2004.

**Shaun P. Martin**, professor of law, University of San Diego School of Law;  
**Frank Partnoy**, professor of law, University of San Diego School of Law: "Encumbered Shares," October 13, 2004.

**Brett H. McDonnell**, associate professor of law, University of Minnesota Law School: "Shareholder Bylaws, Shareholder Nominations and Poison Pills," October 15, 2004.

**Miranda O. McGowan**, associate professor of law, University of Minnesota Law School: "In or Out? Groups and the 14th Amendment after *Lawrence v. Texas*," October 20, 2004.

**Viva R. Moffat**, assistant professor of law, University of Denver Sturm College of Law: "Mutant Copyrights and Backdoor Patents: The Problem of Overlapping Intellectual Property Protection," October 25, 2004.

**Sam Kamin**, associate professor of law, University of Denver Sturm College of Law: "Bifurcation and Death-Qualification of the Capital Jury: The Lessons of the Massachusetts Commission on Capital Punishment," November 1, 2004.

**Kathryn R. Abrams**, Herma Hill Kay Distinguished Professor of Law, University of California, Berkeley, School of Law (Boalt Hall): "Legal Feminism and the Emotions: Three Moments in an Evolving Relation," February 18, 2005.

**Orin S. Kerr**, associate professor of law, George Washington University Law School: "Rethinking Searches and Seizures in a Digital World," February 25, 2005.

**Horacio Spector**, dean and vice chancellor of the Universidad Torcuato Di Tella—School of Law: "Philosophical Foundations of Labor Law," March 1, 2005.

**Lynn A. Stout**, professor of law, UCLA School of Law: sample chapter, "Cultivating Conscience: Law and the Science of Morality," March 4, 2005.

**G. Marcus Cole**, professor of law, Helen L. Crocker Faculty Scholar, and associate dean for Curriculum, Stanford Law School: "The Preference for Preferences: Liquidation and Dividend Preferences in Venture Capital Structure," March 17, 2005.

**Manuel A. Utset**, professor of law, University of Utah S.J. Quinney College of Law: "Self-Control Problems & Contract Law," April 1, 2005."

**Eric J. Mitnick**, associate professor of law, Thomas Jefferson School of Law: "Rights, Groups, and Self-Invention," April 8, 2005.

**Gabriel J. (Jack) Chin**, Chester H. Smith Professor of Law, professor of Public Administration and Policy, and co-director of the Law, Criminal Justice and Security Program, University of Arizona James E. Rogers College of Law: "Reconstruction, Felon Disenfranchisement and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment?" April 15, 2005.

**Saikrishna B. Prakash**, Herzog Research Professor of Law, University of San Diego School of Law: "Removal and Tenure in Office," April 22, 2005.

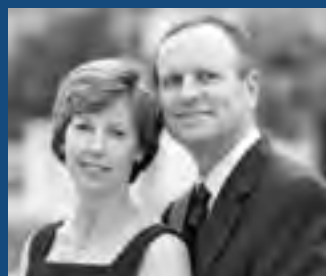
**Richard E. Levy**, professor of law, University of Kansas School of Law: "Necessary and Proper Legislation," April 29, 2005.

# endowment campaign report

## A Few Ways Campaign Contributors are Helping the Law School



The School of Law received \$2.7 million from the San Diego County District Attorney to create the Energy Policy initiative Center (EPIC). Out of the total award, \$1.5 million will be used to establish a permanent endowment for EPIC.



Gale and Jim Krause '75 will provide funds for the Class of 1975 Professorship and for the general use of the law school.



Susan '86 and Jerry Gonick LL.M.T. '84 will establish the Susan S. and Jerry G. Gonick Chair in Elder Law.

## Dear Alumni and Friends,

In a relatively short period of time, the University of San Diego School of Law has undergone a dramatic transformation from its humble beginnings as a small law school with only a part-time, evening program. Today, it is a nationally ranked center of legal education with a faculty rated 22nd in the country in overall quality, an outstanding student body and highly accomplished alumni. The School of Law is now aiming for even greater prominence. To assist the law school in this endeavor, the Campaign for the University of San Diego School of Law was launched with the goal of doubling the size of the law school's endowment.

The law school needs a stronger endowment to build for the future. Over the years, endowments grow in value through sound investment and provide a major source of supplemental income. Instead of depending almost entirely upon revenues from tuition to fund its annual budget, as it now does, the law school could count on endowment income to make significant, long-term investments in its faculty, students and academic programs. A substantial increase in funding will greatly bolster the core missions of the law school—education and research—while also providing funds for student aid, such as scholarships and loan repayment assistance, along with additional resources to expand and improve the school's career and academic counseling services.

We gratefully acknowledge the following gifts and pledge commitments received for our endowment campaign thus far:

### Cash Gifts

San Diego County District Attorney	\$1.5 million
Anonymous	\$500,000
Anonymous	\$250,000
Estate of Herbert Peterfreund	\$156,855
Virginia C. Nelson '79	\$104,000
Jane Trevor Fetter and Thompson Fetter '67	\$100,000
Mary J. and Clayton M. Anderson '76	\$50,000
Liz and Richard M. Bartell '75	\$50,000
Dennis J. Doucette '86	\$50,000
Linden Root Dickinson Foundation/John R. Henkel '77	\$50,000
Terri and Michael B. Kaplan '72	\$50,000
Donna M. and Gerald L. McMahon '64	\$50,000
Trish M. and Vern D. Schooley '66	\$50,000

### Planned Gifts and Bequests

Susan S. '86 and Jerry G. Gonick LL.M.T. '84	\$1.75 million
Gale M. and James C. Krause '75	\$1 million
Susanne Stanford '75	\$150,000
Leah S. Nathanson	\$50,000
Judy and Gary W. Schons '76	\$50,000

We are thankful for the leadership of these individuals and organizations who, with their gifts, are among the first to make major financial commitments to our campaign. Their generosity has provided momentum to our effort and is inspiring others to give.

Sincerely,

Kevin Cole, Dean and Professor of Law



# honor roll



## School of Law Annual Giving

**A**s the 2004–2005 USD School of Law Annual Fund chair, I am pleased to present the University of San Diego School of Law's Annual Report on Giving for fiscal year 2004–2005 (July 1, 2004–June 30, 2005). We greatly appreciate the generous support and dedication of our alumni, students and friends. Your support is critical to the success of the school—it helps the School of Law remain healthy and allows us to meet the challenges of the future.

The USD School of Law received more than \$3,885,000 in cash contributions and grants during the 2004–2005 fiscal year. Contributions were used to help fund a variety of areas, including financial aid, the legal clinics, the Pardee Legal Research Center, the Center for Public Interest Law and the Children's Advocacy Institute, the new Energy Policy Initiatives Center (EPIC), and various academic programs and support services. The generosity of our donors and how their contributions are being put to use are illustrated in the following chart.

To everyone listed in these pages, thank you for your support. If you were unable to contribute in 2004–2005, I invite you to join the thousands of alumni and friends whose donations have helped USD become one of the most prominent law schools in the country.

Your generous contributions are essential to the future of our school and our students.

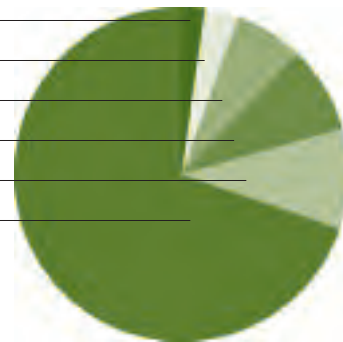
Todd F. Stevens '88, Annual Fund Chair 2004–2005

USD School of Law Alumni Association Board of Directors

### Allocation of Gift Revenue Fiscal Year 2004–2005:

\$96,665	Academic Programs and Services
\$121,868	Financial Aid/Loan Repayment Assistance Program (LRAP)
\$266,860	Center for Public Interest Law/Children's Advocacy Institute (CPIL/CAI)
\$324,342	Law Annual Fund
\$375,931	Legal Clinics
\$2,700,000	Energy Policy Initiatives Center (EPIC)

**\$3,885,666** | Grand Total



*\*The School of Law received more than \$2.7 million from the San Diego County District Attorney to establish the Energy Policy Initiatives Center (EPIC). The funds came from a settlement in a law suit against Duke Energy. A little more than half of the funds, \$1.5 million, will be used to establish a permanent endowment to support the operating needs of EPIC into the future while the balance of the funds will be used as start-up capital to help initiate and develop EPIC's research and programmatic activities.*

# honor roll

## Dean's Circle

Founded in November 1995, the Dean's Circle recognizes those individuals and organizations whose cumulative philanthropy, including gifts and pledges through June 30, 2005, to the USD School of Law total or exceed \$100,000. USD is most grateful to these members of the Dean's Circle.

Anonymous  
 Anonymous  
 Anonymous  
 Arthur A. Herzog Family Trust  
 Joan E. Bowes  
 The California Wellness Foundation  
 Carthage Foundation  
 Community Defenders, Inc.  
 The ConAgra Foundation, Inc.  
 Fiorenza Courtright Lucas  
 Inger and Professor Kenneth Davis  
 Professor Michael R. Devitt  
 Susan S. '86 and Jerry G. Gonick LL.M.T '84  
 Peggy and Charles M. Grace  
 The Maximilian E. & Marion O. Hoffman Foundation  
 The James Irvine Foundation  
 Rose M. and Arthur H. Kaplan  
 Gale M. and James C. Krause '75  
 Kresge Foundation  
 La Jolla Bank  
 Leonore Magee  
 Leah S. Nathanson  
 Office of the District Attorney  
 Katherine H. and George M. Pardee, Jr.  
 Pacific Mutual Foundation  
 Parker Foundation  
 Helen and Sol Price  
 Roman Catholic Diocese of San Diego  
 San Diego County Bar Association  
 SD County District Attorney  
 Scaife Family Charitable Trust  
 The Honorable Lynn Schenk JD '70 and Professor C. Hugh Friedman  
 Marilyn and James E. Spain Jr.  
 Carol Thorsnes  
 Michael T. Thorsnes '68  
 Joanne and Frank R. Warren  
 Weingart Foundation

The following giving levels recognize alumni, faculty, students and friends who contributed \$100 or more to the USD School of Law during the 2004–2005 fiscal year (July 1, 2004–June 30, 2005).

<b>Maudsley Fellows</b>	<i>Gift Level</i>
Dean's Senior Counsel	\$50,000+
Dean's Counsel	\$20,000–\$49,999
Senior Partners	\$10,000–\$19,999
Partners	\$5,000–\$9,999
Senior Associates	\$2,500–\$4,999
Associates	\$1,000–\$2,499
Affiliates*	\$500–\$999
<b>Counselors</b>	\$500–\$999
<b>Barristers</b>	\$250–\$499
<b>Advocates</b>	\$100–\$249

\*Alumni who graduated within the past seven years

## Maudsley Fellows

### DEAN'S SENIOR COUNSEL

Anonymous  
 ConAgra Foods Foundation, Inc.  
 Linden Root Dickinson  
 Foundation/John R. Henkel '77  
 Leah S. Nathanson  
 San Diego County  
 District Attorney

### DEAN'S COUNSEL

Anonymous  
 Anonymous  
 Anonymous  
 Professor Michael R. Devitt  
 Barbara J. and Paul A. Peterson

### SENIOR PARTNERS

Anonymous  
 Anonymous  
 Louise Horvitz  
 Anne and Steven R.  
 Hunsicker '75  
 Mary M. '74 and Arthur R.  
 Knowlson Jr. '74  
 Richard Maudsley

Victor & Ethel McQuiston  
 Scholarship Trust  
 Gwen T. and Robert Y.  
 Nagata '70  
 The Honorable Lynn Schenk '70  
 and Professor C.  
 Hugh Friedman  
 Betty and The Honorable  
 Ross Tharp

### PARTNERS

Anonymous  
 Elaine Alexander and Professor  
 Lawrence Alexander  
 Joyce S. and Paul J. Dostart  
 Jodi Leazott Doucette '87 and  
 Dennis J. Doucette '86  
 Pamela K. and Kenneth D.  
 Heller '94  
 Jack Wm. Hodges '75  
 Gale M. and James C. Krause '75  
 Sunita and Patrick W. Martin '92  
 Mary E. Mix '77 and  
 Dennis L. Livingston '77  
 Deborah J. '84 and  
 Michael J. Rider '83  
 Karen and Brian T. Seltzer '77  
 Darlene and Donald Shiley

Sony Electronics Inc.  
Lysa M. and Jeffrey T.  
Thomas '82

#### SENIOR ASSOCIATES

Sophie Minc and William G.  
Baumgaertner '75  
Susan and Alan K. Brubaker '76  
James S. Copley Foundation  
Cynthia Chihak and The  
Honorable Steven R.  
Denton '75  
Jane Trevor Fetter and  
Thompson Fetter '67  
Ann Miller and Benjamin A.  
Haddad '80  
Denise M. Hickey '94 and  
Christopher J. Soares  
Alice and Harri J. Keto '76  
The Kroha Family  
Kathryn Maas Hattox '74  
Professor Janet and Jim Madden  
Procopio, Cory, Hargreaves &  
Savitch LLP  
Renae Fish and  
Gary Redenbacher  
Judy and Gary W. Schons '76  
Silldorf, Shinnick & Ryan LLP  
Jonathan Steer '01

#### ASSOCIATES

Anonymous  
Anonymous  
Anonymous  
Anonymous  
Vickie Lynn Bibro '90 and  
John H. Abbott '90  
Anzalone & Associates, Inc.  
Donna Lee and G.  
Edward Arledge '73  
Lynn D. and Geoffrey H.  
Ashworth '76  
Lenore Lang and Professor  
Carl A. Auerbach  
R. Kent Bailey '01  
William Curtis Barnes Jr. '89  
Deborah W. and Robert S.  
Barry Jr. '75  
Liz and Richard M. Bartell '75  
Joan E. Bowes  
The Honorable Louisa S. Porter  
'77 and David W. Brennan  
LL.M. '03

Olive M. and The Honorable  
Gerald Brown  
Beryl J. and Norbert R. Bunt '68  
Barbara and Philip Burkhardt '75  
Heather L. Callahan '02  
Lynne M. '88 and  
Glenn R. Carlson  
Professor Nancy Carol Carter  
Sandra Ciallella '87 and  
Kenneth Shurko  
Professor Laurence Claus  
Eve M. Coddon '86  
Alec L. Cory  
Julianne D'Angelo Fellmeth '83  
and Professor Robert Fellmeth  
Beth and Thomas M.  
Diachenko '89  
Christina and Richard J.  
Doren '86  
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## **AUGUST 28-31, 2006**

U.S. Justice Antonin Scalia Visits as Distinguished Jurist-in-Residence  
Contact the Dean's Office  
(619) 260-4527

## **AUGUST 30, 2006**

Lecture on Originalism and Constitutional Interpretation by U.S. Supreme Court Justice Antonin Scalia  
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## **SEPTEMBER AND OCTOBER 2006**

Fall Recruiting  
Contact School of Law Career Services to participate  
(619) 260-4529

## **SEPTEMBER 7, 2006**

Nobel Laureate Shirin Ebadi  
Joan B. Kroc Distinguished Lecture Series and USD School of Law Jane Ellen Bergman Memorial Lecture Series  
Contact the Dean's Office  
(619) 260-4527

## **SEPTEMBER 12, 2006**

Law Alumni Board Meeting  
Contact the Office of Development and Alumni Relations  
(619) 260-4692

## **SEPTEMBER 20, 2006**

Board of Visitors Fall Meeting  
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(619) 260-4692

## **OCTOBER 3, 2006**

Red Mass  
Contact the Dean's Office  
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## **OCTOBER 6-8, 2006**

Law Alumni Weekend  
Contact the Office of Development and Alumni Relations  
(619) 260-4692

## **NOVEMBER 16, 2006**

Distinguished Alumni Award Luncheon  
Contact the Office of Development and Alumni Relations  
(619) 260-4692

## **DECEMBER 2006**

Bar Swearing-In Ceremony and Breakfast  
Contact the Office of Development and Alumni Relations  
(619) 260-4692

## **DECEMBER 5, 2006**

Law Alumni Board Meeting  
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## **LATE 2006 / EARLY 2007**

Linda Chavez, Chairman of the Center for Equal Opportunity  
Joan E. Bowes-James Madison Distinguished Speaker Series  
Contact the Dean's Office  
(619) 260-4527

## **JANUARY 4, 2007**

Washington, D.C., Alumni Reception  
Contact the Office of Development and Alumni Relations  
(619) 260-4692

## **FEBRUARY 2007**

Careers in the Law: Student/Alumni Networking Fair  
Contact the Office of Development and Alumni Relations  
(619) 260-4692 or the School of Law Career Services Office  
(619) 260-4529

## **FEBRUARY 2007**

Mock Interview Program  
Contact the School of Law Career Services Office to participate  
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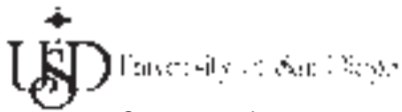
## **FEBRUARY AND MARCH 2007**

Spring Recruiting  
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