

Advocate

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW



24:1 SUMMER 2007

MESSAGE from the dean

Two Kinds of Beauty

When casual observers remark on what makes USD special, they often include on the list the beauty of our campus.

I have always been struck by how one aspect of that beauty contrasts with another particularly attractive quality of the law school—its intellectual activity. The serene beauty of the Pacific Ocean serves as the backdrop to a frenzy of events on campus. This activity is supported by and attracts the stellar faculty we have assembled at the law school, and enriches our students' educations as they prepare to take on the challenges of law practice in the 21st century.

The spring 2007 semester was noteworthy for featuring a debate between USD School of Law Professor Mike Ramsey and University of California, Berkeley, Boalt Hall Professor John Yoo, architect of the Patriot Act and the controversial "torture memos," on the timely topic of presidential war powers. We were also visited by Dr. Meizhen Liao, a Chinese linguist who discussed the differences in legal cultures between the U.S. and China, with a focus on different styles in judicial opinions. Dr. Liao's visit fit nicely with the law school's increasing efforts to prepare students to face the challenges of a global legal practice.

Noted consumer activist and former presidential candidate Ralph Nader spoke to a large group in April 2007 on "Challenging Corporate Power and Building Democracy." And the academic year came to an emphatic conclusion with the 2007 commencement address by Associate Justice Alan Page of the Minnesota Supreme Court—covered in the next issue of the *Advocate*. Justice Page is known to football fans as a member of the National Football League Hall of Fame for his exceptional play as a defensive lineman for the Minnesota Vikings—as a member of the Purple People Eaters. His post-football career has been equally impressive, including substantial work to enhance the opportunities for minority youth to pursue college educations.



These events were supplemented by several roundtable discussions by our Institute on Law and Philosophy and by an active faculty colloquium series that brought noted academics to campus.

The schedule for the coming academic year is not yet complete, but it will include a return visit by U.S. Supreme Court Justice Antonin Scalia as well as visits by retired U.S. Supreme Court Justice Sandra Day O'Connor and former U.S. Attorney General Edwin Meese, who was also a member of the Iraq Study Group, a bi-partisan panel that assessed the situation in Iraq and made policy recommendations impacting the Iraq War.

In addition to what all this activity means for students and faculty, we have increased our efforts to make campus events available to the local community. Great law schools are assets to their communities. By serving in this role, they become important not just to their alumni, but to all in the region who appreciate the opportunity to come face-to-face with important figures in the law. These activities can generate additional support for the law school, and this support can generate additional opportunities to enhance our intellectual environment.

Technological advances permit us to serve this community-building role even with far-flung communities. Many of our alumni and friends are outside the San Diego area; others are in town but have scheduling conflicts that prevent their attendance at certain events. They can increasingly partake of USD's intellectual life via streaming video on the Internet. Take a look at www.law.sandiego.edu/webcast.

I hope you will be able to join us, either in person or by the Internet, for some of the exciting events we have on the agenda for this coming year. You can find updated listings of these events at www.law.sandiego.edu. If you do join us, you will come away with a much clearer view of what truly makes USD special.

Kevin Cole
Dean and Professor of Law

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Challenging Corporate Power and Building Democracy

Ralph Nader visits USD to discuss growing "imperialism" of multinational corporations and the corresponding decline of personal liberties in America.



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save the DATE

Correction

Visit www.law.sandiego.edu/about/news/calendars/event/ for more information and updates.

August

AUGUST 24-26, 2007

The Southwest Regional Conference for the National Association of Women Judges: A Focus on Judicial Independence and Judicial Diversity
Keynote Speaker: Retired U.S. Supreme Court Justice Sandra Day O'Connor
Joan B. Kroc Institute for Peace & Justice
Invitation-only event
Contact Jeff Groton
jgroton@navj.org

September

SEPTEMBER 27, 2007

Alumni Reception in Anaheim
State Bar of California Annual Meeting
California Bench Bar Biannual Conference
Anaheim, CA
Contact the Office of Alumni Relations & Development
(619) 260-4692

SEPTEMBER 27-30, 2007

State Bar of California Annual Meeting
California Bench Bar Biannual Conference
Anaheim, CA
www.calbar.org

SEPTEMBER 28-29, 2007

Institute for Law and Philosophy
"Just War Theory" Conference
Warren Hall
Invitation-only event
Contact event coordinator Leilani Sharrett
(619) 260-4208

October

OCTOBER 1, 2007

Red Mass
Founder's Chapel
5:30 p.m.

November

NOVEMBER 2, 2007

Distinguished Alumni Award Luncheon
San Diego, CA
Contact the Office of Alumni Relations & Development
(619) 260-4692

NOVEMBER 2-4, 2007

Law Alumni Weekend
San Diego, CA
Contact the Office of Alumni Relations & Development
(619) 260-4692

NOVEMBER 16-17, 2007

Center for the Study of Constitutional Originalism hosts the Bernard Siegan Memorial Conference
"Economic Liberties, Property Rights, and the Original Meaning of the Constitution"
Warren Hall
Invitation-only event
Contact event coordinator Leilani Sharrett
(619) 260-4208

NOVEMBER 27, 2007

Bowes-Madison Distinguished Speaker Series
Guest Speaker: Edwin Meese, former U.S. Attorney General
Joan B. Kroc Institute for Peace & Justice Theatre
Contact director of special projects Theresa Hrenchir
(619) 260-7438

December

DECEMBER 2007

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

JANUARY 2-6, 2008

Association of American Law Schools
Annual Meeting
New York, NY
www.aals.org/am2008

January

JANUARY 2008

Alumni Reception in New York, NY
Alumni Reception in Washington, D.C.
Contact the Office of Alumni Relations & Development
(619) 260-4692

In the 2006 graduation awards ceremony story, which ran in the winter 2006/2007 issue of the *Advocate*, we neglected to include recipients of the following very important leadership and service awards:

Law Alumni Association Service Award

for outstanding service to the law school: Timothy R. Cross and Daniel P. Rawlins

Dean's Distinguished Service Award

for contributions to the life of the law school: Timothy R. Cross, Aaron M. Dumas and Daniel P. Rawlins

ALI-ABA Scholarship & Leadership Award

for the graduate who best represents a combination of scholarship and leadership, the qualities embodied by the American Law Institute and American Bar Association: Timothy R. Cross

Owen Stark Heriot Award

for the outstanding students who are either veterans or current members of the Armed Forces: Charles M. Billy and Elizabeth M. McElwee

Alec C. Cory Pro Bono Award

for contributions to pro bono causes during law school: Rebecca L. O'Toole

To all those who were inadvertently omitted from this feature, please accept our sincere apologies.

campus BRIEFS

2007 Paul A. McLennon, Sr. Honors Moot Court Competition

McKeown, Barkett and Ramsey Serve as Judges for USD's Most Prestigious Intramural Moot Court Competition



From left to right: the Honorable Rosemary Barkett, United States Circuit Judge, Eleventh Circuit Court of Appeals; Presiding Judge M. Margaret McKeown, United States Circuit Judge, Ninth Circuit Court of Appeals; and USD School of Law Professor Michael D. Ramsey.

On Friday, March 9, 2007, judges for the University of San Diego School of Law's Paul A. McLennon, Sr., Honors Moot Court Competition had a difficult decision to make. The law handed James De Silva, '07, victory in the case, but after careful consideration, Andrew Haden, '07, was named winner of the competition.

Presiding Judge M. Margaret McKeown, United States Circuit Judge, Ninth Circuit Court of Appeals, praised both competitors for outstanding arguments and courtroom performance. "What you've

seen tonight," Judge McKeown remarked addressing the audience, "is no different than what I see in the Ninth Circuit courtroom every day. You have all been treated to the highest level of law skills."

Judge McKeown also commended the USD Appellate Moot Court Board for organizing a first-class competition and researching and choosing a difficult and complex case: *United States v. Afshari*, 426 F.3d 1150 (9th Cir. 2005), rehearing denied, 446 F.3d 915 (9th Cir. 2006).

Petitioners, Hossein Afshari et al., were indicted for knowingly and willfully providing material support to a foreign terrorist organization, designated pursuant to 8 U.S.C. § 1189. Petitioners allege that the statute violates the First Amendment because it prohibits them from challenging the foreign terrorist designation and does not provide adequate procedural safeguards to allow the prosecution of protected speech. Respondent, United States of America, argues that 8 U.S.C. § 1189 is constitutional because it adequately protects any alleged free speech rights.



Andrew Haden, '07, (left) represented the petitioners, and James De Silva, '07, (right) represented the respondent.

The United States Court of Appeals for the Ninth Circuit held that the statute did not violate the First Amendment and reinstated the petitioners' indictments. Although the United States Supreme Court denied certiorari, for the purposes of the competition it was granted on whether there is a First Amendment right to challenge the designation and if 8 U.S.C. § 1189 impermissibly restricts speech.

Haden, representing the petitioners, and De Silva, representing the respondent, argued two issues. The first issue was whether 8 U.S.C. § 1189 violated the First Amendment because it prohibits defendants who are prosecuted for providing financial support to a designated "foreign terrorist organization" from arguing the validity of this designation. The second issue was whether the statute contains sufficient First Amendment procedural safeguards to allow the government to prosecute for providing financial support to a designated "foreign terrorist organization."



Commenting favorably on the quality of the competition was the Honorable Rosemary Barkett, United States Circuit Judge, Eleventh Circuit Court of Appeals. "Either of these two gentlemen would be welcome to argue—after they pass the bar, that is—in the Eleventh Circuit Court of Appeals."

Commendations were also given by both Judge McKeown and Judge Barkett to USD School of Law Pro-

fessor Michael D. Ramsey for stepping in as a replacement for the Honorable Thomas J. Whelan, U.S. District Judge for the Southern District of California. Since he is a longtime friend of one of the competitor's family, Judge Whelan recused himself from the competition. Judge McKeown noted, "You may all refer to Professor Ramsey as Justice Ramsey from this point forward."

The Paul A. McLennon, Sr., Honors Moot Court Competition was created to provide students with an opportunity to develop their legal brief writing and oral advocacy skills and to test these skills in competition. The competition is a course that begins with four mandatory classes, several preliminary rounds and culminates in a final round before a distinguished panel of judges.

The competition is supported with a generous donation by USD School of Law Professor Michael Devitt and his family in honor of longtime friend, attorney and naval aviator Paul A. McLennon, Sr.



According to Judge McKeown, the audience was "treated to the highest level of law skills."

Chinese Scholar Presents Comparative Analysis of the American and Chinese Judicial Systems

By Sherlin Tung, '07

On March 13, one of China's most respected comparative law scholars, Dr. Meizhen Liao, presented a detailed comparison between Chinese and American criminal court judgments, highlighting the differences between the legal systems and cultures of the two countries. A professor of linguistics and director of the institute of lin-

American judges tend to speak to defendants in a more formal tone, addressing them as "mister" or "misses" and using last names. Americans hand down sentencing to the defendant without making any personal comments in the written portion of the court opinion. The trial process is guided by regulation and not personal opinion.

once he had completed his sentence.

Dr. Liao contends the American judicial system is more professional and impersonal. In contrast, the Chinese Judicial System ties in family values and tradition along with law. Rather than detached authoritarian figures, the judges are more like patriarchs of the family, working to keep youngsters in line.



Dr. Liao contends the American judicial system is more professional and impersonal. In contrast, the Chinese Judicial System ties in family values and tradition along with law.

guistics at Central China Normal University in Wuhan, China, Dr. Liao also heads a doctorate program in language and law at China University of Political Sciences and Law in Beijing.

Co-sponsored by the USD School of Law and Copley Library, the hour-long presentation detailed two similar theft cases, one in China and one in the United States. In both cases the defendants were young, male and first-time offenders. Expanding upon cultural differences within the two respective courts of law, Liao made special note of the way defendants are addressed and sentenced.

Chinese judges, on the other hand, rarely address defendants with courtesy titles, often using first names only. When handing down sentences, the Chinese make personal comments in the official court "opinion" and reserve a separate written statement expressing a personal opinion of the defendant and the case.

The judge in the Chinese case Liao used as an example informed the defendant that he was "a disgrace to his parents who had given up so much to raise him." However, because of his young age, the judge told the defendant that he would have another chance to redeem himself

Dr. Liao suggested that the disconnect between American and Chinese judicial systems may stem from the historical aspects of the Chinese words for "law" and "justice," and the various connotations attached to them. Although the cultural understandings of these two concepts are similar, Liao stated that the Chinese expressions are more intricate than their straight-forward English counterparts. At the end of the day, the difference between the judicial systems of the two cultures can best be understood by exploring the language used to convey the abstract ideas of "law" and "justice."

International Tax Conference Focuses on Specialized Cross-Border Issues

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

By Meredith D'Angelo

At the third annual University of San Diego School of Law-Procopio International Tax Institute, prominent tax experts from the United States, Mexico and Canada joined together to educate fellow professionals about current developments in international tax law. Held on February 15 and 16, 2007 at the Joan B. Kroc Institute for Peace & Justice, the conference introduced a newly expanded cross-border perspective with the addition of several presentations geared toward complex Canadian international taxation issues.

More than 100 tax attorneys and accountants attended the International Tax Institute to learn from top tax professionals, government officials and legal scholars from the three nations. The 2007 conference featured keynote speakers Lic. Jorge Antonio Libreros Calderón, the Central Administrator of International Tax Audits with Mexico's General Administration of Large Taxpayers, and Robert E. Herzstein of Miller and Chevalier Chartered, who served as lead counsel to Mexico during the NAFTA negotiations.

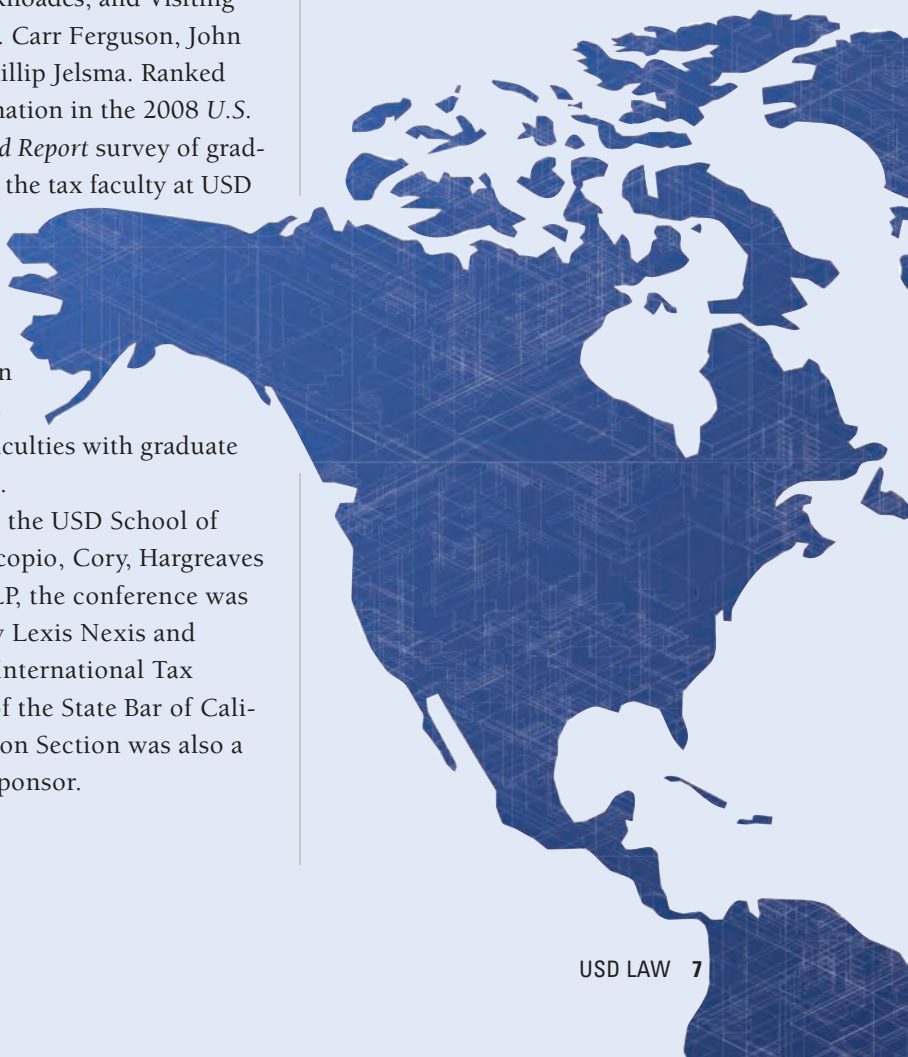
Additional speakers included Patrick W. Martin, Esq., Procopio's tax team leader and vice-chair of the California State Bar's Taxation Section Executive Committee, and Lic. Julio Cesar Aguilar Matias, director of tax policy for the treasury depart-

ment of Mexico. A review of the latest developments in American, Canadian and Mexican transfer pricing, a comparative analysis of cross-border real estate holding regulations, and a discussion of the tax implications of recent international mergers and reorganizations were among the many topics addressed by the conference curriculum.

Several USD School of Law faculty members also spoke at the conference, including Professor Herbert I. Lazerow, Adjunct Professor Rufus von Thülen Rhoades, and Visiting Professors M. Carr Ferguson, John Forry and Phillip Jelsma. Ranked tenth in the nation in the 2008 *U.S. News & World Report* survey of graduate schools, the tax faculty at USD School of Law is currently the highest rated in the western United States among law faculties with graduate tax programs.

Hosted by the USD School of Law and Procopio, Cory, Hargreaves & Savitch LLP, the conference was sponsored by Lexis Nexis and Vivant. The International Tax Committee of the State Bar of California Taxation Section was also a supporting sponsor.

Prominent tax experts from the United States, Mexico and Canada joined together to educate fellow professionals about current developments in international tax law.



Securities Expert Reveals “What’s Next for U.S. Markets”

By David Kaiser



Lerach described a number of occasions in recent history when government deregulation of the financial markets has led to growth, and then to financial catastrophe.

Did fraudulent conduct by corporate executives cause the value of your 401k investments to drop overnight? Do you know why? William Lerach intends to find out despite his belief that it's increasingly difficult to uncover the answers.

One of the leading securities lawyers in the United States and chairman of the law firm of Lerach Coughlin, William Lerach spoke in January 2007 before an audience of students, faculty and guests at the USD School of Law's Grace Courtroom. The lecture titled “The History of American Securities Laws and the Future of Our Securities Markets,” focused on valuable lessons that can be learned from the past regarding protection of investors under the laws regulating our financial markets.

As chief counsel in many of the largest and most notable securities and corporate derivative suits, Lerach prosecuted hundreds of securities class actions and recovered billions of dollars for defrauded shareholders. His work has pitted him against such corporate monoliths as Enron, Dynegy, Qwest, WorldCom and AOL/Time Warner.

“Enron and WorldCom became the poster children of corporate excess in the current era because of billions of dollars in bogus profits and illegal insider trading,” Lerach stated. “Where was the corporate governance?”

Critics claim that Lerach has filed frivolous lawsuits resulting in

blackmail settlements that injured public companies and undermined economic growth. Lerach responded to these assertions by explaining that Congress has explicitly authorized securities class action lawsuits as part of a comprehensive regulatory scheme to oversee our financial markets and protect the interests of average Americans, the majority of whom now invest in the stock market.

Lerach explained America's current system of regulation, oversight and control of the financial markets as a four-legged stool. The first line of defense against corporate fraud is the Department of Justice, which is in charge of criminal oversight of the stock exchanges. Second, the Securities and Exchange Commission provides for civil oversight. Third, private attorneys are authorized to file civil suits on behalf of shareholders under the Federal Securities and Exchange Acts of 1933 and 1934. Fourth, an organic body of state law regulates corporate disputes.

Lerach specializes in civil suits to prevent the various kinds of deceptive practices that developed with the growth of the securities industry. He firmly believes that the government cannot by itself effectively regulate the markets; and the securities class action suits filed by private attorneys act as a built-in check on the other “legs” of the regulatory system. The full force of Mr. Lerach's role in this four-part scheme would not fully be understood, however, without

understanding the history and role of class action suits.

In the wake of the 1929 stock market crash, Congress passed the Securities Acts of 1933 and 1934 to address the problems of massive self-dealing by Wall Street banks and accounting firms. President Roosevelt also persuaded Congress to create the Securities and Exchange Commission to oversee and regulate the exchanges. In the decades that followed, however, shareholders continued to suffer losses as a consequence of corporate fraud, and individuals could still not afford to sue big companies.

“In 1967, Federal Rule of Civil Procedure 23 changed the securities litigation world forever by introducing the common fund class action lawsuit,” explained Lerach. Plaintiffs could now combine small but similar complaints into one big lawsuit, thereby sharing the cost of litigation. “Thus, the procedural device [of Rule 23] and the substantive weapon [of the 1934 Act] came together to create an effective remedy.”

Lerach described a number of occasions in recent history when government deregulation of the financial markets has led to growth, and then to financial catastrophe. In 1995, “Wall Street bankers descended on D.C. and demanded that Congress gut securities laws. This led Congress to pass the Private Securities Litigation Reform Act (PSLRA).” Lerach explained that, “the true purpose of the law was to shield corporate executives, accountants and Wall Street financiers from liability under securities class action suits.” Their lobby persuaded Congress with a tsunami



“If the antifraud provisions of the securities laws are gutted, in 10 or 15 years you will be holding another hearing that will make you remember the S&L mess with fondness.”

of special-interest money and the promise of a future filled with economic growth and competitiveness.

In his testimony before Congress against this Act, Lerach stated, “If the antifraud provisions of the securities laws are gutted, in 10 or 15 years you will be holding another hearing that will make you remember the S&L mess with fondness.”

“The PSLRA resulted in the worst rollback of our investor protection laws in 60 years,” said Lerach, who feels that the PSLRA made obtaining court approval for securities class action suits more difficult because the heightened pleading standard was onerous; the law prohibited discovery while a motion to dismiss was pending.

“When the new law was passed, some very fine cases got thrown out,” contended Lerach. “That emboldened executives.” For this reason, Lerach feels that he correctly predicted the stock market crash of 2000, which unfortunately came sooner than expected.

Today, Lerach feels that the fiascos in public companies like Enron and WorldCom were a result of the “complete breakdown” of the government oversight, corporate governance and professional gatekeeper systems. These frauds “could not have been perpetrated by a few corporate executives, no matter how dishonest or energetic they may have been.” He argued that the frauds occurred because the SEC had failed and that “the complicity and assistance” of the boards, accountants, lawyers, Wall Street banks and securities analysts contributed to the fiascos.

As for the future of our securities markets, Lerach warned that “just as the jokes about the 1929 crash could not prevent the social and political revolution that followed, you can be sure that humor about recent problems will not help us avoid the coming pension fund crises.”

“Adversarial litigation,” Lerach said, plays a vital role in protecting investors and creating changes in corporate governance, ensuring legal compliance in our markets. In light of the fact that many companies are “cooking the books” to hide true costs and adversely impacting pension fund obligations, Lerach implored members of the audience to learn from the lessons of history to address our clients’ needs in the future.



faculty FAREWELL

Former School of Law Dean Asks: What's the Big Idea?



“**N**at Nathanson’s ability to attract distinguished faculty to our school and thus elevating the school’s academic status stemmed from his own academic distinction,” said USD School of Law Dean Kevin Cole at the 23rd Annual Nathaniel L. Nathanson Memorial Lecture Series. “Tonight’s distinguished speaker, former dean and professor of law Daniel B. Rodriguez, has done much to build our school as well. Serving as dean for more than seven years, he oversaw a spectacularly successful faculty recruitment effort that brought the law school into national prominence.”

Rodriguez served as dean and professor of law of the USD School of Law from 1998 to 2005, teaching and writing in the areas of administrative law, local government law, federal and state constitutional law, property, and the political economy of regulation and government. Unfortunately, this fall he will surrender his role as Warren Distinguished Professor of Law at USD to become the Minerva House Drysdale Regents Chair in Law at the University of Texas at Austin Law School.

In April 2007, Professor Rodriguez spoke for the last time as a member

of the USD school of law faculty to a captivated audience of students, faculty, alumni, friends and family. As keynote speaker for this year's Nathanson Memorial Lecture Series, Rodriguez introduced and discussed, "State Constitutionalism and Modern Governance: What's the Big Idea?"

State constitutional law is a hot topic. Tackling issues such as gay marriage, immigration, property rights and police power, attorneys often turn to state constitutions for sources of protection for individual rights overlooked by the federal Constitution.

"The Nathanson Lecture is described as an opportunity to discuss issues of national significance. You may wonder why, with all the important issues of law and public policy available for sustained discussion, I choose to focus here on state constitutions" said Rodriguez. "Given the Supreme Court's new attention to federalism, we should be especially interested in the nature and scope of state authority."

State constitutional law is a hot topic. Tackling issues such as gay marriage, immigration, property rights and police power, attorneys often turn to state constitutions for sources of protection for individual rights overlooked by the federal Constitution.

Historically, state constitutional politics involved struggles over the proper role of state and local government in reforming citizen character and promoting moral virtue. A century ago, the biggest issues in state politics were liquor and lotteries—ironic since most state-sponsored gambling and lotteries now act as a major source of revenue. And while the 21st Amendment repealed prohibition, there are many state constitutions that, to this day, regulate and restrict the production, sale and use of liquor.

"Nowadays the issues are different, but citizen character is still front and center," said Rodriguez. Today, the three most conspicuous morality issues being discussed at the state level are school vouchers, gay marriage and affirmative action.

"State constitutions are the battleground on which these powerful political struggles are waged," he explained.

So, when it comes to state constitutionalism and governance, what is the big idea?

"We must consider state constitutionalism in light of the objectives that are distinctly related to the circumstances, histories and predicaments of the states as states," said Rodriguez and then added, "that's mighty abstract, so I should bring this somewhere closer to the ground."

To explain, Rodriguez focused on three insights. The first relates



to state constitutions configuring the structure of governance within the state, assigning powers in specific ways. For example, unlike the unitary federal executive, nearly all state constitutions have created a plural executive made up of independently elected officials.

State constitutions were obsessed with restricting the power of the legislature, fixated on deterring legislative excess and corruption. Some of the anti-legislative bias was extreme. In 1879, a delegate to the California Constitutional Convention proposed that, “there shall be no legislature convened from and after the adoption of this constitution and any person who shall be guilty of suggesting that a legislature be held, shall be punished as a felon without the benefit of clergy.”

The second insight relates to the mobilization of state and local government in the service of national welfare, which immediately presents a paradox. Is the state working

within its own boundaries on behalf of national welfare?

Despite the fact that the federal government has the power to take on the external aspects of the ongoing War on Terrorism, disputes over the Patriot Act, foreign surveillance and other policy matters designed to protect citizens, are waged primarily at the state and local level. The detailed tasks such as quarantines, curfews and security check points cannot be conducted on a national level, so it becomes the responsibility of the state and local governments.

Over the past few years, Rodriguez stated, an argument has been brewing over “whether and to what extent the national government should and can commandeer state and local authorities in the service of national aims.” Thus far, by a slender majority, the Supreme Court has said, “no, they may not.”

The last insight focuses on inter-state competitiveness. States compete against each other for

such things as resources, people and political influence, helping to produce a more efficient production and provision of goods. State constitutions fulfill a key objective in enabling state and local authorities to pursue their goals actively and compete more effectively with other states and localities in the inter-state market for goods, services and even ideas.

“State constitutionalism can be understood as a functional system that is grounded in the three simultaneous objectives of state constitutionalism—governance rules, national welfare and inter-state competitiveness,” said Rodriguez. “Each state approaches these objectives in different ways, but all state constitutions in their features, logic and theories ought to be in the business of promoting these three objectives.”

So, how should courts interpret state constitutional rights where there is truly an overlap between state and federal rights? With each



“It is by our neglect of state constitutions that we get what we deserve—that is, poorly designed structures of governance.”

state, the three aforementioned objectives do not always lead to the same result. What underlies is a path of independent and practical interpretation.

For example, in terms of an individual's right to privacy, most states have their own provisions in this area—some explicit and some implied. Thirty years ago, the Supreme Court of Alaska considered a constitutional challenge to a law criminalizing the possession of marijuana for personal use. However, the court was prepared to uphold the right to possess and ingest marijuana in a purely personal, non-commercial context in the home as part of the fundamental right to privacy under its state constitution.

Rodriguez concluded by questioning his own assertions by asking, “doesn't this analysis rely on what is an ideal type of state constitution—one that represents a perfected version of the national constitution? After all, state constitutions are big, overgrown documents that are easily changed and filled with every sort of crack-pot idea that has managed to pick up suitable minority support.”

“I have to admit that some of this critique is on the mark,” he conceded. “State constitutions aspire to be great by articulating broadly agreeable public values that help the state become successful. It's difficult to see how rules about the right to fish or the location and width of ski trails should be made, accomplish anything of value.”


Rodriguez suggested three arguments for this critique. First, in state constitutions, malleability functions

as an asset rather than a liability. Their adaptability is imperative for ordinary political processes and effective public governance. They may be mundane, but are important provisions that go far beyond just fundamental law.

Second, the federal constitution is ruled by judicial intervention. By contrast, state constitutions can leave these decisions in the hands of elected representatives. And last, a more informed theory of state constitutionalism in modern governance would help us in reshaping our state constitutions to look like the type of documents that truly aspire to be great.

“The ‘kitchen sink’ quality of these documents reflects in major ways, the lack of sustained attention focused by legal scholars, lawyers and public officials by would-be reformers of all stripes.”

“It is by our neglect of state constitutions that we get what we deserve—that is, poorly designed structures of governance,” Rodriguez concluded. “In the end, I actually need not idealize state constitutions in order to see the task of state constitutional theory as improving our current situation, as making state constitutions better thereby improving governance in the nation.”

To watch this lecture in its entirety, visit www.law.sandiego.edu/webcast. The USD School of Law is a State Bar of California approved MCLE provider and certifies this activity is approved for self-study credit in the amount of one hour of general credit. 



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. Nathanson, a graduate of Yale University, Yale Law School and Harvard Law School, served as law clerk to the Honorable Julian Mack of the U.S. Court of Appeals for the Second Circuit, as well as to the Honorable Louis D. Brandeis of the Supreme Court of the United States. He taught law at Northwestern University School of Law from 1936 to 1977, where he was named professor emeritus. That same year, he was named a Distinguished Professor of Law at the University of San Diego. He spent alternate semesters at the two law schools until his death in 1983.

Nathanson was best known for his work in the areas of administrative law, constitutional law, civil liberties, international law and human rights. In these and other areas, he authored or served as editor of seven books and had published almost 100 major articles, reviews and papers. He continued to pursue these interests through service to government, the American Society of Legal Studies, the American Academy of Arts and Sciences, the Constitutional Convention of Palau, the American Civil Liberties Union and the Anti-Defamation League of B'nai B'rith.

A woman with shoulder-length brown hair, wearing a black blazer over a white and black patterned top, black trousers, and black high-heeled shoes, stands next to a medium-sized brown dog. She is holding a blue leash in her right hand. The background is a plain, light-colored wall.

Dogs, Cats, Birds and Even Horses Have Their Day in Sacramento

By Ashley Wood and
Sarah Speed, '07

Yvonne Stromer tried to leave her abusive husband for months, but her courage was deflated each time she summoned the strength to leave when her husband threatened to murder her beloved pet beagle, Baby, if she ever left him. Since most shelters for abused women do not allow pets, Yvonne felt she had no other option but to stay. That is, until University of San Diego School of Law student, and now alumna, Sarah Speed, '07, came along.

“If I’d had the ability to protect my dog sooner, I think I would have left sooner,” says Yvonne. “Restraining orders can protect cars and furniture. Why not protect something living and breathing?”

Speed agreed and thus, the idea for Senate Bill 353 was bred at the University of San Diego School of Law’s Center for Public Interest Law (CPIL) where she was interning last year. The legislation is designed to allow victims of domestic violence, like Yvonne, to add animals under the protection of restraining orders. When a victim of domestic violence decides to leave her or his abuser, she or he could apply for a temporary restraining order, which would force the abuser to stay away from the victim, the children and the animals. Thus, in addition to the possibility of conviction for animal cruelty, the abuser would be barred from making contact with the victim’s pets under penalty of misdemeanor contempt.

Currently, the pets of abuse victims are only under the protection of the restraining order if they are near the victim, which is often impossible as domestic violence shelters do not accept animals. If passed, Senate Bill 353 would allow the animal to be placed with a friend, family member or safehouse program, yet still protected from harassment.

“It was well-known at CPIL that I am an animal nut and am a past president of the Student Animal Legal

Defense Fund,” said Speed. “So when Maine passed a bill to allow animals to be included in protective orders in domestic violence situations, Julie Fellmeth, associate director of the CPIL, sent me the article.”

That article inspired Speed to examine California law only to discover that some judges voluntarily include animals in protective orders when the animal’s names were included on the application. Other



California State Senator Sheila Kuehl sponsored Senate Bill 353.

judges, however, considered awarding the custody of an animal a pretrial division of property and would refuse to include animals. Speed's research further revealed a high correlation between domestic violence and animal abuse.

Currently, there are safehouse programs for pets of those who enter domestic violence shelters. This is a network of homes where animals are temporarily cared for and hidden from the abuser while the victim receives the help and treatment she or he needs. In San Diego, Christine Hartline runs the Rancho Coastal Humane Society's Safehouse Program, which takes in animals of domestic violence victims, treats them for any medical problems, neuters or spays for free, and then sends the animal to anonymous housing for a few months with the ultimate goal of reuniting the animal with the family.

In Hartline's experience, it is often not until the abuser threatens or harms an animal that the victim finally decides to leave.

"I think that's really telling about the issues of self-esteem that these women have, and what they've been subjected to for so long," she says. "They've gotten to a point where they really care very little about themselves, but their

animal may be what prompts them to get help."

Studies have shown that very few people are more attached to their pets than victims of domestic violence. Psychologists speculate that it's important for victims to feel compassion and love for a creature who poses no threat, unlike their human relationship. Others believe pets offer abuse victims some means of control over their lives. Regardless of

the reason, abusers often prey upon this attachment as a means of control. In one such case, an abusive boyfriend responded to a woman's announcement she was leaving by wrestling her pet bird from her hands and breaking its neck. The boyfriend was charged with animal cruelty and spent some time in jail. Upon his release, the boyfriend broke into her home and stole the bird's cremated ashes. He is now serving 15 years for breaking and entering, and burglary.

"Of women surveyed upon entering domestic violence shelters, 84 percent revealed that they had seen their abuser harm an animal and 63 percent of their children had seen animal abuse," said Speed.

Armed with these statistics, Speed began her pursuit of legislation that would allow animals to be specifically named—like other types of property—on protective order applications.

In November 2006, Speed attended the National Animal Law Conference where she received the inaugural Jack Rodgers Animal Law Scholarship in recognition of her work in animal law. Through networking with experts in the field of animal law, she learned of similar work being conducted by students from the USD School of Nonprofit Management. The students promptly combined their efforts to create the beginning of a coalition in support of the issue. Members included the United Animal Nation, the Humane Society of the United States, the American Society for the Prevention of Cruelty to Animals and the California Partnership to End Domestic Violence.

Studies have shown that very few people are more attached to their pets than victims of domestic violence.



Just a month later, the coalition was invited to attend a meeting with Beverlee McGrath, a lobbyist with the Humane Society of the United States, to make a pitch for the bill to one of California State Senator Sheila Kuehl's aides.

Speed presented the research and within one week, the aide responded to let the team know that Senator Kuehl was seriously interested in sponsoring the bill. However, to ensure the bill would be introduced in this legislative session, the coalition took a trip to Sacramento to lobby other legislators as possible sponsors or co-sponsors. Many other legislators were interested in sponsoring the bill and the next day the coalition received great news—Senator Kuehl would introduce the bill.

The bill was submitted to the Senate Judiciary Committee where Speed, as well as the California Partnership to End Domestic Violence and SPCA (Society for the Prevention of Cruelty to Animals) Los Angeles, which runs one of the largest and oldest animal safehouse programs in California, testified in support. The bill passed the Senate Judiciary Committee on a vote of 3-0 with a few minor adjustments to the language and was approved for funding by the Senate Appropriations Committee. In May, the bill passed the California State Senate floor on a vote of 31-7 and is on its way to the Assembly.**

Speed credits her work on this bill to the strong foundation in animal law USD Law School provided when she first attended the school. However, despite her efforts in perpetuating interest in animal law, membership in USD's Student Animal Legal Defense

Fund has dwindled and this year USD's only animal law class was, unfortunately, suspended indefinitely.

"The change in the law is very simple," explained Speed. "Yet, it could mean the world to a woman like Yvonne who is torn between the desire to leave her abuser and protect herself and the safety of a beloved animal."



Animal law is a burgeoning area of law that is continually getting more recognition in the wake of catastrophic events like Hurricane Katrina and the March 2007 pet food recall. Animals are now being added to antenuptial agreements, divorce paperwork and wills. USD has been on the forefront of public interest law for many years, and it is important that blossoming public interest lawyers attend a school that fosters and encourages community involvement and public interest work. Animal law is interrelated with criminal law, domestic violence, family law, wills and trusts, environmental law and many others. Thus, training in animal law will allow students entering the workforce competence in these growing areas of practice. ♿

***Status of this bill is based on the publication date of August 3, 2007.*

THE ETHICS OF ETERNAL SUNSHINE:

Adam Kolber Discusses the Legal and Ethical
Implications of “Memory Dampening”

By Ashley Wood

The notion of erasing memories has long been a subject of fiction. Nearly half a century ago, William Shakespeare wrote a scene in Macbeth where the main character begs a doctor to treat Lady Macbeth and, “pluck from the memory a rooted sorrow, raze out the written troubles of the brain, and with some sweet oblivious antidote cleanse the stuff’d bosom of that perilous stuff which weighs upon the heart.”



In 2004, actors Jim Carrey and Kate Winslet brought memory erasing to the big screen in a romantic comedy titled *Eternal Sunshine of the Spotless Mind*. The movie introduced a fictional, non-surgical procedure called targeted memory erasure that allowed the characters to permanently expunge the painful memories of a failed relationship.

And who could ever forget Agent K's "flashy thing" in *Men in Black*?

complications such as depression, drug abuse and even suicide. But is this a good thing?

Professor Adam Kolber writes and teaches in the areas of neuroethics, bioethics and criminal law at the USD School of Law. In his recently published article "Therapeutic Forgetting: The Legal and Ethical Implications of Memory Dampening," 59 *Vanderbilt Law Review* 1561 (2006), he discusses how these scientific advances may impact legal proceedings.



Erasing memories is not a new concept, but in real life, recalling our past has always been just another part of being human. But what if doctors were able to administer a pill that could wipe away unwanted memories?

Neuroscientists continue to make significant advances in the identification and development of memory-dampening drugs. Nearly five million Americans between the ages of 18 and 54 suffer from post-traumatic stress disorder at any given time. These victims, who are haunted by traumatic events such as terrorism, military conflict and assault, may now have a way to forget the fear and horror—avoiding lasting social and psychological

We sat down to talk with Professor Kolber on his thoughts about the ethics of eternal sunshine:

ADVOCATE: Is it really possible that one day we might be able to pharmaceutically change our memories of traumatic events?

KOLBER: While memory erasure is still the domain of science fiction, less dramatic means of dampening the strength of a memory may well be possible. Some experimental evidence suggests that we can pharmaceutically dull the emotional pain associated with the memory of a recent traumatic event. In principle, drugs of this sort may affect both emotional and informational aspects of memory. Several

studies are underway in humans and animals to try to demonstrate the effects of memory-dampening.

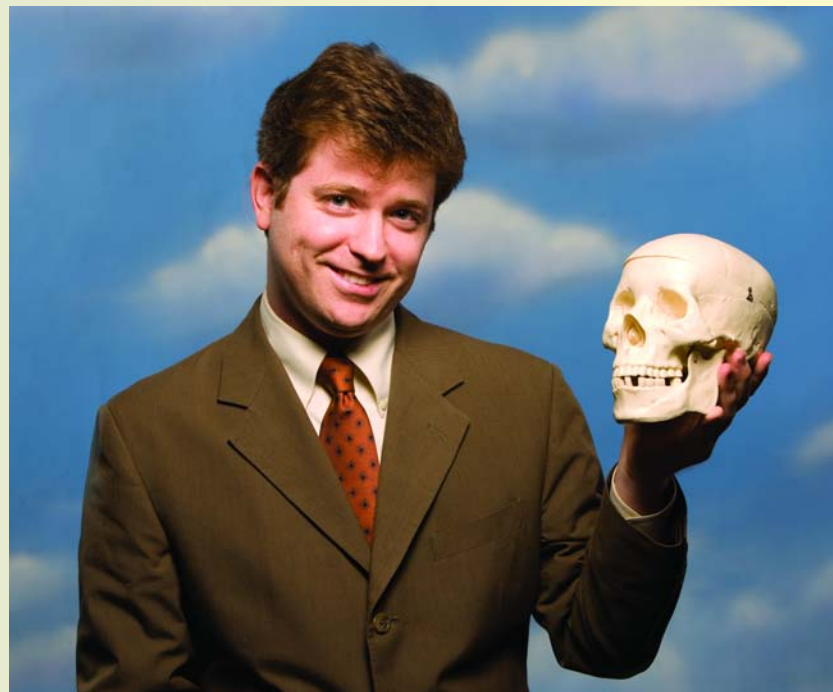
ADVOCATE: Clearly, there are emotional benefits of dampening or erasing traumatic memories. We've all had a relationship or two that we'd rather not remember. But ethically, what is your take on this type of science?

KOLBER: In 2003, the President's Council on Bioethics (a group of doctors, lawyers, scientists,

limited regulation of memory-dampening drugs.

ADVOCATE: Considering the negative psychological impact traumatic events may have on a person, are there any cases where memory dampening might be considered not only legal, but also ethical?

KOLBER: Absolutely. Many traumatic incidents are simply the result of very bad luck. People have memories of awful experiences that can seriously interfere with the quality of their lives. In many



theologians, philosophers and other academics appointed by President Bush) released a report that discussed the ethics of memory dampening. The Council was concerned that future memory-dampening drugs might: (1) prevent us from truly coming to terms with trauma, (2) tamper with our identities, leading us to a false sense of happiness, (3) demean the genuineness of human life and experience, (4) encourage us to forget memories that we are obligated to keep, and (5) numb us to the pain of others. I think that, while a number of these issues are legitimate concerns, the Council is unnecessarily fearful of the technology. Many of these issues could be addressed by

cases, there will be little harm from dampening the emotional intensity (or even the informational aspects) of such memories.

Even if potent memory-dampening drugs are still many years away, the policy questions they raise are very much alive today because drug researchers and manufacturers must decide on a daily basis how they will invest their resources. Fear that the successful fruits of their labor could be blocked or heavily restricted by the government may slow their efforts. I make the case that research into memory dampening should be encouraged, free of the fear that it is generally unethical to dampen memories.

ADVOCATE: Aside from the ethical issues raised, why is memory so important to the law?

KOLBER: Memory is critically important to the law in two distinct ways. First, memory plays an essential role in fact-finding (for example, in depositions, police lineups, trial testimony and so on). We value these memories because of the information they contain. Second, memory is important to the law because of the feelings we attach to them.



Memories can be painful and upsetting. In some cases, distressing memories can form part of the basis for a claim of damages.

ADVOCATE: What are some of the legal issues that could be raised in a world with memory dampening?

KOLBER: A memory-dampening drug that affected factual recall could raise questions about the admissibility of hearsay evidence recorded prior to dampening. It could also raise issues about whether the government can force us to retain unpleasant memories when they are needed for judicial proceedings.

A memory-dampening drug that affected the emotional intensity of a memory could raise many

interesting tort questions. For example, when might it constitute malpractice to dampen a memory? When might it be malpractice not to? How do we calculate damages from dampening a memory that should have been left alone, and how do we calculate damages from continuing to have a memory that should have been dampened? There are also issues related to informed consent, the mitigation of emotional distress damages, and a number of others that I discuss in the article.

ADVOCATE: How would a jury respond to a victim who testified about the facts of a crime without any emotional depth or intensity?

What are some of the legal issues that could be raised in a world with memory dampening?

KOLBER: In its report, the President's Council raises precisely this example. If a crime victim testified about horrific events with a dull, flat affect, the result would indeed be very puzzling to jurors. We expect people to be upset when they describe upsetting memories. Perhaps expert testimony could explain to jurors the effects that a memory-dampening drug has on a person's recall. Alternatively, perhaps this is one of those areas where we would need to regulate memory dampening to avoid some of these scenarios.

ADVOCATE: On the flip side of this coin, do you see any legal or ethical issues related to drugs that might help IMPROVE the memory of a plaintiff, defendant or witness?

KOLBER: There is much debate over the merits of all sorts of methods of enhancing our cognitive abilities. The issues come up a lot in the educa-

tional context, where some bioethicists raise concerns that cognitive enhancement will increase inequality or discourage traditional methods of self-improvement. By and large, I think that safe and effective ways of improving memory would be good to have. I can imagine some interesting issues, however. For example, what if the government wants to force someone to enhance his memories against his will (perhaps to make him a better witness or a better spy)?

ADVOCATE: You mention “freedom of memory.” Can you explain what this means?

KOLBER: As you note, neuroscientists are working to develop methods to not only dampen memories, but also to enhance them. They are also developing improved methods of brain imaging that may someday allow us to make inferences about a person’s memory without asking the person (to determine, for example, whether the subject recognizes the image of a drug kingpin). Given emerging and projected technologies to manipulate memory, we can begin to consider the bundle of rights we should have to control our own memories. For example, we arguably ought to have limited rights to dampen memory, to enhance memory or memory-retention skills, to keep memories private, and to be free of certain invasions into our memories from forced enhancement, forced dampening and forced memory revelation. I label this bundle of rights our “freedom of memory.”

ADVOCATE: You went from business ethics at PricewaterhouseCoopers to neurolaw. How did this transition happen?

KOLBER: I very much enjoyed the time I spent as a business ethics consultant at PricewaterhouseCoopers. However, I always planned to go back to school after college, and I went to law school with the intention of seeking an academic job. Through my research at USD, I quickly realized that advances in neuroscience are raising a number of interesting theoretical and practical issues that lawyers and legal academics should start to consider.

ADVOCATE: Your “Neuroethics & Law Blog”


features a number of fascinating topics—brain-computer interfaces, updates on Dr. Kevorkian and even a line from famed tennis champ Martina Navratilova. What led you to start the blog?

KOLBER: When I started the site in February 2005, there were no blogs that focused specifically on the legal and ethical issues raised by advances in the mind and brain sciences. Because the field is so interdisciplinary, I think the blog helps connect scholars and practitioners, in diverse but related fields, who might not otherwise cross paths in the brick-and-mortar world.

ADVOCATE: What is the most fascinating neuroethics-related story that you’ve come across?

KOLBER: Here’s one that I’ve been writing on lately. Using neuroimaging, we can identify regions of the brain that are more active when a person experiences acute pain. It seems that we can also identify structural changes in the brain that result from long-term chronic pain. Someday, in a slip-and-fall case, lawyers may seek to introduce neuroimaging evidence to support or refute a plaintiff’s pain claims. The same kind of technology may give us insight into the pain experiences of those who are too young or too cognitively impaired to tell us about the pain they experience. The use of neuroimaging as a pain detector raises interesting issues about the privacy of our mental lives and the kinds of evidence that we should make available to jurors.

Professor Kolber was recently awarded a Laurance S. Rockefeller Visiting Fellowship at Princeton University’s Center for Human Values, which supports research and scholarly exchange in law, ethics and public policy. Selected from a highly competitive pool of scholars from around the world, Kolber will visit at Princeton University from September 1, 2007 to July 1, 2008.

To read more about Professor Kolber’s views on memory dampening and a number of other legal and ethical issues related to the brain and cognition, you can access the “Neuroethics & Law Blog” at kolber.typepad.com. 



EXECUTIVE AUTHORITY IN TIMES OF WAR

By Patrick Riedling

UC Berkeley, Boalt Hall School of Law Professor
John Yoo (left) debated USD School of Law Professor
Michael D. Ramsey (right) concerning executive and
legislative powers leading up to and during war time.





Nearly six years after the events of September 11, 2001, the question of war power has continued to be at the forefront of public and scholarly debate and protest. So it was no surprise when a group of protesters, some dressed as Abu Ghraib prisoners replete with hood and bound wrists, were outside the Joan B. Kroc Institute for Peace & Justice on February 12, 2007 to protest the arrival of University of California, Berkeley, Boalt Hall School of Law Professor John Yoo.

Professor Yoo was on the University of San Diego campus to debate USD Professor of Law Michael D. Ramsey concerning executive authority in times of war. The two are considered leading national scholars and experts on the subject of war power and constitutional law.

From 2001 to 2003, John Yoo served as a deputy assistant attorney general in the Office of Legal Counsel of the U.S. Department of Justice. He was a key member of President George W. Bush's team that crafted the controversial Patriot Act. Yoo is also the author of the now infamous "torture memos."

The memos stated that international law had not stipulated the precise meaning of the word "torture," therefore United States military and intelligence gathering agencies could use questionable interrogation tactics that aren't legally defined as torture. Furthermore, even if it were illegal under domestic and international law, the president had the right to order torture and could not be stopped.

"It's obscene. It's so ugly you don't even want to look at it," said protester and San Diego resident Tanja Winter. "Lawyers use language and definitions as tools to confuse people and to get away with murder. It's an abuse of power."

And it was power that was at the core of this debate. Brought together by the USD School of Law's Center for the Study of Constitutional Originalism, Ramsey and Yoo

debated the intent of the U.S. Constitution with regards to the powers provided the executive and legislative branches of government leading up to and during war time.

Yoo opened the debate stating, "I want to say at the outset that this is not, it seems to me, a constitutional question right now with regard to the wars in Afghanistan and Iraq, where Congress has passed statutes in both wars authorizing beginning hostilities."

Yoo went on to add that the question *would* arise if the president were to believe it was necessary to launch a limited strike on nuclear facilities in Iran or to pursue Iranian forces thought to be assisting the Iraqi insurgency. The question would also come up if Congress were to retract the 2002 authorization for the use of force in Iraq, something that both he and Ramsey mentioned frequently during the debate.

"Congress has to give its pre-approval before hostilities can start abroad except for cases of self-defense, where the country has already been attacked," stated Yoo.

But he pointed out that this view is inconsistent with many of the wars in which the U.S. has engaged throughout its history, particularly those wars fought after World War II.

"If you take the first war after World War II, Korea, there was no declaration of war or authorization by Congress. If you want to take the last war before 9/11, the war in Kosovo, where the United States bombed and attacked another sovereign country, there was no declaration of war or authorization by Congress for hostilities."



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"Lawyers use language and definitions as tools to confuse people and to get away with murder. It's an abuse of power."

Having laid the foundation of his arguments, Yoo then took issue with the “declare war clause” of the Constitution as the answer to a quarrelsome ratifying convention in Virginia in May of 1776. He told a story about a famous critic of the Constitution, Patrick Henry, who criticized it on the grounds that it could create a system where the president would use his power over war to elevate the executive branch of government, in essence creating a military dictatorship.

James Madison, who we commonly think of as the father of the Constitution, did not say, “Well, the declare war clause will prevent the president from doing that.” Instead, stated Yoo, Madison used England as an example. Parliament had the power of the purse and the King had power of the sword. This provision allowed Parliament to control the King. Yoo speculated that the English Parliament was the primary model to which Madison and other framers frequently referred.

“It seems to me that Parliament was a very good example of the thinking of the framers,” Yoo said. He went on to argue that the framers did not suggest the declare war clause as a compromise, but rather they gave Congress the power of the purse to provide a fundamental check on the power of the presidency.

Yoo believes that the Constitution gives both the executive and the legislative branches of government war powers. It gives the president initiative to decide to use force, but also provides Congress with the ability to prevent hostilities from ever beginning by denying approval to use the military in the first place. Congress can also shut down or cut off wars that are already in progress by denying funding during budget appropriations.

How does war power work today? Take the Iraq War for example. In Professor Yoo’s opinion, the presidency has access to information and, more importantly, it is not composed of 535 leaders. It can act quickly and decisively to protect the country’s security. That’s why the presidency is granted its war powers.

Congress is not powerless though. According to Yoo, Congress could easily stop the president from executing his troop surge plan in Iraq—it has the power of the purse. Congress simply has to refuse to pass additional money for the Iraq War, refuse to pass additional funds for the troop surge and thus end the war.



Ramsey stated that in the 18th century, when the Constitution was drafted, “declare war” meant both a formal announcement of war as well as any open attack that created a state of war.

“Congress, I think, institutionally just doesn’t want to take that responsibility,” Yoo speculated. “It doesn’t want to vote on something that’s going to make 40 percent of its electorate angry with it, no matter what it does. And it doesn’t want to take the risk of preventing actions in Iraq that may turn out to be disastrous for the country.”

Yoo told the audience that there wasn’t a defect in the constitutional system. The current issues and frustrations in Washington concerning the war are not caused by the question of powers written within the U.S. Constitution. “What we are seeing is a failure of political will on the part of Congress to use the Constitutional powers it already has to end a war it disagrees with.”

Professor Ramsey agreed with Yoo on that point, and perhaps that point only.

Ramsey and Yoo began at the same place, at the declare war clause, but differed in its interpretation. “Professor Yoo reads it to give Congress the power to make a formal declaration of war, a written statement entitled ‘declaration of war,’” quipped Ramsey.

He suggested that in the 18th century, “declare war” not only meant a formal announcement but also meant any

open attack that created a state of war. Key 17th and 18th century writers such as John Locke, Emerich de Vattel, Christian Wolfe and William Blackstone influenced the framers use of the concept.

Ramsey quoted Vattel, “When one nation takes up arms against another, she from that moment declares herself an enemy to all the individuals of the later.” Directly after, he quoted Locke, “By declaring by word or action puts a person in a state of war with him against whom he has declared.”



“I certainly agree that it’s not perhaps the clearest phrase, at least with the perspective across 200 years of changing language,” said Ramsey. “But to them, remember, declare meant to either make a formal declaration or to simply launch a form of attack.”

In Ramsey’s opinion, the ratification page and subsequent practice confirmed the broader meaning of the word “declare.” During the ratification debates, key political influentials of the time such as Alexander Hamilton, James Wilson,

James Iredell and Charles Pinckney all emphasized the declare war clause as an important limit on the president.

“They didn’t exactly say what the declare war clause meant,” said Ramsey, “but if you think about it, denying the power to the president simply to make a formal pronouncement doesn’t limit his power in any material way.”

According to Ramsey, after ratification, key leaders including Hamilton, Washington, Jefferson, Madison and Marshall all said that Congress had war initiation power. In 1793, Hamilton, who in general was an advocate of expansive presidential powers, said, “It is the province and the duty of the executive to preserve to the nation the blessings of peace. The legislature alone can interrupt them by placing the nation in the state of war.”

Ramsey also pointed out that a few years later John Marshall wrote in his Supreme Court opinion, “The whole powers of war are by the Constitution of the United States vested in Congress.” Ramsey’s main point was that no one during this early period made the suggestion that the president could initiate war on his own.

In fact, it is precisely the way it worked out in practice as well. Early presidents George Washington and John Adams consulted with Congress and asked for Congress’s approval in deciding on war. Neither Adams nor Washington started war or even contemplated starting war without the approval of Congress.

“So all of these things lead me to conclude that the framers understood the word declare in the sense that I am proposing,” said Ramsey. “Declare means both to issue the formal proclamation but also, more broadly, to begin a state of war.”

Applying Ramsey’s interpretation of the declare war clause to the modern situation, the president cannot attack Iran either to prevent its nuclear program or to respond to Iran’s support of the Iraqi insurgents without first going to Congress for approval.

Ramsey then argued that while the framers were certainly aware of the English parliamentary system, they rejected it. They thought that it did not sufficiently check the executive. They strongly objected to the first draft of the Constitution precisely because it contained language that might seem to suggest the English system. The framers opted to adopt the system we have now. Ramsey explained, “It’s one of our famous checks and balances.”



Ramsey did agree with Yoo that one check on the president arises from Congress's power over appropriations. He asked Yoo how far he was willing to go with this concept. Could Congress pass a law that says, "No money can be spent on any further troops being sent to Iraq although we will continue to fund the Iraq War? We do not want any money spent on additional troops." Could Congress say, "We don't want any money spent on wire-tapping? We are willing to create a national security agency and fund it, but we are going to say that this agency cannot use its money for wire tapping." Could Congress say, "We are going to create an army and we are going to allow that army to detain people in battle and interrogate them, but we are not going to allow the interrogators to torture people that they capture or use other coercive methods that may not amount to torture."

Ramsey went on to add, "The reason I mention this is because at least some things that Professor Yoo has written in statements that the Bush administration made, have suggested that Congress is constrained in its ability to regulate the president's activity during war time, that Congress cannot restrict the president's wire-tapping activity, that Congress cannot limit coercive interrogations, that Congress cannot limit the number of troops sent to Iraq."

Professor Yoo did not fully address the questions his fellow debater raised.

Professor Ramsey believes that under the original understanding of the Constitution, Congress does have these powers. He ended his argument by concurring with Yoo on the one point in which they both agreed, "Whether Congress chooses to exercise its powers or not is, as Professor Yoo says, a question of political will."

The wars in Iraq and Afghanistan have brought forth important questions for legal minds to contemplate and debate. As the Iraq War trudges along in its fifth year and last fall marked the end of a blank check Republican majority in Congress, the main legal debate of which government branch has the power to maintain or cease hostilities with a foreign adversary will continue to spawn new theories by legal scholars. It could also, quite possibly, influence "political will."

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At press time, President Bush had vetoed a war spending bill in mid-May because it placed a time limit on withdrawing troops from Iraq. Congress did not have the votes necessary to override the veto. Members of Congress and President Bush's administration sat down to strike a deal, but talks collapsed and no compromise was made.


On May 25, 109 days after he requested the emergency spending bill, President Bush signed a bill to pay for military operations in Iraq. The bitter struggle with Democrats in Congress ended with the executive branch clearly dominating war power.

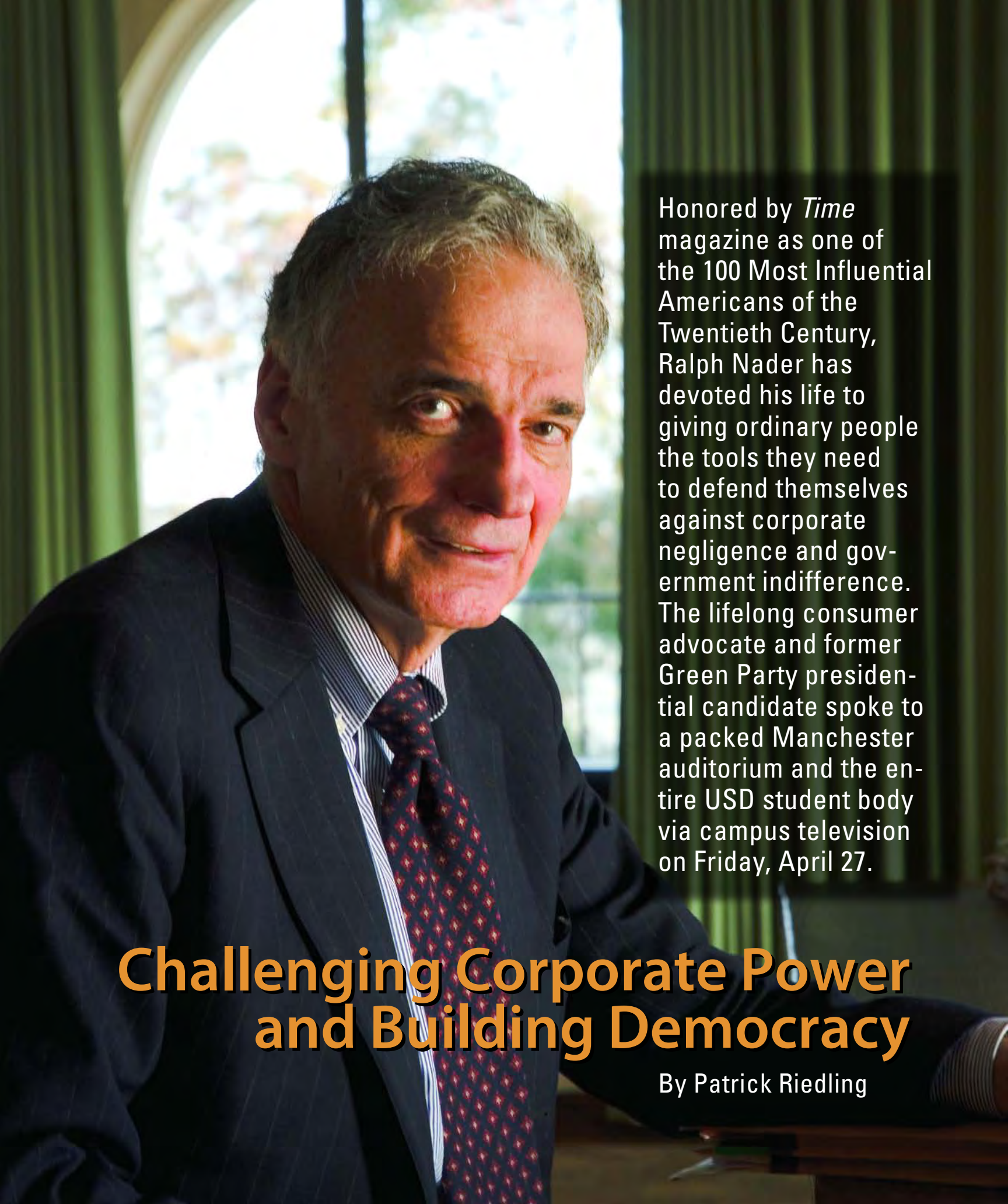
The newly elected Democratic majority in Congress led by Speaker of the House Nancy Pelosi (D-Calif.) and Senate majority leader Harry Reid (D-Nev.)

vowed that the days of a blank check Congress were over. It seems those days will have to be over some other time. Pelosi was quoted by the Associated Press saying simply, "Our troops will be funded."

* * *

The Center for the Study of Constitutional Originalism at the University of San Diego School of Law studies a family of theories which share the starting point that a Constitution (or statute) has a fixed and knowable meaning that is established at the time of passage or ratification. The center is devoted to education of the legal academy, the bar and bench, law students, and the public regarding the meaning of various constitutional provisions and the methodologies appropriate for ascertaining that meaning. To this end, the center develops and hosts academic conferences, public lectures and debates, and educational roundtables both on campus and in the local community. The members of the center serve as resources on questions of original meaning for law students, faculty colleagues and members of the legal community.


To watch the War Power Debate in its entirety, please visit www.law.sandiego.edu/webcast. The USD School of Law is a State Bar of California approved MCLE provider and certifies that this activity is approved for self-study credit in the amount of one hour of general credit. 

A portrait of Ralph Nader, an older man with grey hair, wearing a dark suit, a light blue striped shirt, and a dark tie with a red and white pattern. He is smiling slightly and looking towards the camera. The background is a window with green curtains and a view of trees outside.

Honored by *Time* magazine as one of the 100 Most Influential Americans of the Twentieth Century, Ralph Nader has devoted his life to giving ordinary people the tools they need to defend themselves against corporate negligence and government indifference. The lifelong consumer advocate and former Green Party presidential candidate spoke to a packed Manchester auditorium and the entire USD student body via campus television on Friday, April 27.

Challenging Corporate Power and Building Democracy

By Patrick Riedling



Nader presented “Challenging Corporate Power and Building Democracy,” where he discussed the growing “imperialism” of multinational corporations. From his perspective, the relationship between growing corporate power and dwindling personal liberties has created a dangerous convergence that adversely affects the lives of everyday Americans.

Nader opened stating that corporate power has steadily broken down one boundary after another, boundaries that were originally erected to keep mercantile activity in check. Pointing out his over-generalization to make his point, Nader stated that today everything corporate power touches is for sale.

“In a democracy, there’s got to be sanctuaries where nothing is for sale,” he said. “We cannot allow our elections to be for sale, our government to be for sale, our childhood to be commercialized and for sale, or our universities, or our law schools.”

In a brief history of American corporations, Nader provided a snapshot of the colonists’ angst toward the chartered English corporations and companies. The forefathers of the United States agreed that corporations needed to be instruments that served the people rather than instruments of wealth and power for a select few. As a result, corporate charters were granted by each state rather than the federal government in order to ensure local needs were being met. The system worked well until the late 1800s.

An Era of Corporate Personification

In the 1886 case of *Santa Clara County vs. Southern Pacific Railroad*, the U.S. Supreme Court deemed that a private corporation was a “natural person” under the U.S. Constitution and therefore entitled to protection under the Bill of Rights. With this judgment, corporations were given all the rights and sovereignty previously enjoyed only by “the people,” including the right to free speech.

Considering the vast financial resources of corporations, Nader argued that the court’s judgment actually gave them far more power than that of the average citizen. The Santa Clara decision changed history. With one case, the intent of the American Constitution—that all citizens have one vote, and exercise an equal voice in public debates—had been undermined. The corporation had been altered from an instrument of the people to that of an actual person.

“So now corporations have all the rights that real, flesh and blood people have, except the Fifth Amendment,” said Nader. “Corporations have not been allowed to plead the Fifth . . . yet. They also don’t have the right to vote . . . yet, but give them time.”

The most extreme case of corporation personification was a billing-insert case in California. The California Regulatory Agency allowed a non-profit consumer group to put an insert into the monthly utility billing envelopes of PG&E customers at no cost to PG&E.

PG&E objected and said it was an intrusion on its rights. PG&E lost at trial court, lost at California Supreme Court, went to the U.S. Supreme Court and won five to three on the grounds that an electric monopoly, a corporation, had a First Amendment right not to be coerced into responding to and rebutting an insert inside its own monthly bills. Hence, the right to remain silent was given to a corporation.

Although Chief Justice Rehnquist tore the majority opinion to bits, the issue never returned to the Supreme Court. The court's decision broke the back of a major accountability lever used to curtail consumer abuses by corporations.

Lobbying for the “Corporate Citizen”

Lobbyists influence decisions that affect “the people,” which now with the advent of corporate personification includes more “corporate citizens” than ever before. According to a June 2005 *Washington Post* article, there are approximately 35,000 corporate lobbyists, a number that doubled from 2000 to 2005. Drug companies alone have one lobbyist for almost every member of Congress. These “corporate citizens” have more resources and thus greater access to power.

Another interesting development is the phenomenon of large companies pushing to have members of their upper management teams appointed to government posts. Once inside, upper management hires other industry corporate employees, and together they work to keep policy good for their specific industry.

Corporations then rehire the corporate-turned-government officials after a few years of “on-the-job training.” They return to the corporate world knowing the system, and knowing how to work around it.

The attack from lobbyists on the outside and the attack on policy from the inside have afforded corporations greater and greater power to affect decisions that directly impact their bottom lines.

“You can’t distinguish between the government and big business,” extolled Nader. “How do you divide the line?”

Corporate Academia

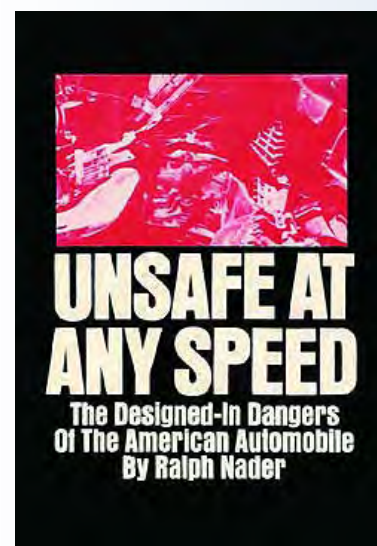
Nader turned his attention to how public institutions are being affected by corporate power. Schools are becoming commercialized with educational programming full of product placements and advertising.

Universities have become heavily reliant on corporate contributions and determination of joint projects between private computer companies, genetic engineering firms and pharmaceutical research start-ups.

“Corporate science is beginning to seriously erode academic science, and the two are not the same,” said Nader. “Corporate science is not as peer-reviewed as academic science. It’s not as open as academic science. It exercises its political power in Washington, which a lot of academic sciences do not. When the two go head-to-head, corporate power wins, and it isn’t a fair fight.”

When a nationally noted scientist at the Massachusetts Institute of Technology (MIT) pointed out inaccuracies of the much-televised Patriot missile systems, a joint defense project between MIT and Raytheon, executives at Raytheon became enraged. The corporation used its influence to pressure the administration of the school to squash the damaging reports and the administration obliged.

Nader stated there should not be an incident where a university has to place a company’s corporate profit above the science it conducts in order to keep scholastic funding levels growing, “but that’s what is happening at our research universities in this country.” Growing corporate power is not only influencing government policy, but also influencing institutions that have traditionally been within the public domain.



In 1965, Ralph Nader took on the Goliath of the auto industry with his book, *Unsafe at Any Speed*, a shocking exposé of the disregard carmakers held for the safety of the drivers and passengers. The Senate hearing into Nader’s accusations and the life-saving motor vehicle safety laws that resulted, catapulted Nader into the public sphere.



Working with lawmakers, Ralph Nader was instrumental in creating the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA) and the Consumer Product Safety Commission. Laws he helped draft and pass include the Safe Drinking Water Act, the Meat and Poultry Inspection Rules, the Air and Water Pollution Control Laws and the Freedom of Information Act.

The Economy is Good? Right?

Critics may argue that the economy is at an all-time high. The only problem is the nature of the corporate-created wealth and its lack of distributional equity. Nader proposed, “Are you sure the economy is good? How are you measuring that goodness?”

“The yard sticks by which our economy is defined are corporate-defined yard sticks,” he stated, “and if you control the yard sticks, you control the agenda and you control the policies.”

“We don’t have distributional indicators,” explained Nader. “We have 50 million poor people, including millions of children. We have huge consumer debt that has individuals lying awake at night. We have one percent of the richest people having the financial wealth of the bottom 95 percent.”

Those are not good economic indicators.

There is a rampaging epidemic of corporate crime that is looting trillions of dollars from pensions, investors and workers. “The state of the economy is not good,” said Nader.

“The top 10 percent of Americans are doing very well, the top five percent exceedingly well, and the top one percent wildly well,” said Nader. “It doesn’t make sense when you have the head of Wal-Mart making \$10,000 to \$12,000 an hour, every hour, and his workers are making \$6, \$7, \$9, or \$10 an hour.”

Three Words: Regulation, Litigation, Antitrust

How do you get at corporate power? Nader pointed out that the three tools traditionally used to deal with corporate abuses have been failing but are still available.

Number one is regulation. Although regulation has been shredded very heavily at both federal and state levels, it doesn’t mean that advocates can’t resurrect it with new political movements. A push for smarter regulation is needed.

Number two is litigation. Nader warned that corporations, having conquered two branches of government, are now going after the judiciary with levels of propaganda that would shame Joseph Goebbels, the Nazi minister for public enlightenment and propaganda.

“They have succeeded in convincing 70 percent of the American people that ours is an overly litigious society, that all you really have to do when you have a cut finger is hire a lawyer, sail into a courtroom, the jury will give you \$1 million, and the judge will say to the jury, ‘Why so little?’”

“Look at the data,” instructed Nader. “As Galanter and Rogers at the University of Wisconsin Law School pointed out, there was a far higher level of civil litigation per capita in 1840, and even in the Jamestown colony, than there is today. Litigation is still a good tool. That’s another lever for civic and political movement.”

The third tool is antitrust. “I don’t have to tell people here how tough private antitrust law suits are,” said Nader, “and you can almost forget about the FCC and Justice Department antitrust divisions working in your favor.” Nevertheless, it is an effective and available tool. “Let’s use it.”

Intersecting Corporate Power

Nader proposed we start at the constitutional level by first stripping the corporation of its personhood and giving it back to real human beings.

“It is time to subordinate a commercial priority to a human rights priority, to an environmental priority, to an auto safety priority,” said Nader. “We need to attack it at the constitutional level so we’re not subjected to absurd, grotesque equating with artificial persons all the rights that real persons have. Would we give all these rights to an articulated robot?”

The second way to intersect corporate power is through corporate structure itself. Deal with the antitrust laws that are in place and deal with the original chartering mechanisms. Nader stated, “We need federal chartering of large corporations, which was first supported by Presidents William Howard Taft and Teddy Roosevelt.”

The last way to intersect corporate power is through corporate operations. “The key word here is displacement,” said Nader. “Corporations produce goods and services, coal, oil, etc., but we can produce solar power and displace them. We can produce more energy-efficient technologies for automobiles, heating and air conditioning systems and displace Exxon sales and PG&E sales. Growing more gardens so it becomes a community tradition can displace companies like General Mills.”

A Freer Society

Start with the constitutional principle of subordination of corporations to natural people and end with the displacement of corporations that do more harm than good. Nader stated, “In the process, we become a freer society.”


When Marcus Cicero defined freedom over 2000 years ago, he put it in one brief sentence. He said, “Freedom is participation in power.” By that standard, corporations have an extraordinary amount of freedom; citizens have very little. “It’s time to change that,” said Nader.

“Even though Daniel Webster represented the National Bank as a private client,” joked Nader, “let’s again see the wisdom of his words that justice is a great work of human beings on earth. Freedom is participation in power, and you are the ones that will help others participate in power and find justice.”

Nader addressed the students and recent law school graduates in the audience directly saying, “We expect a lot of you. You come from a law school that has a lot of publicly spirited faculty and in-house institutions of advocacy. We really expect a lot of you, and what you have to combat is the lucrative trivialization of your skills at work. Because you’ve got much more important work to do in this world. Much more. You have to have a higher estimate of your own significance.”

In the spirit of shrinking corporate power and expanding justice and power of the people, Nader issued a call-to-action to the audience of lawyers, professors, administrators and students. He quoted an ancient Chinese proverb, “To know and not to do, is not to know,” and urged the legal community to step forward and take on a cause, one cause or one individual during the course of a career.

“Get involved with something you believe in,” Nader implored, stating that even a small amount of time spent doing advocacy work makes an immeasurable difference.

To watch the Ralph Nader lecture in its entirety, please visit www.law.sandiego.edu/webcast. The USD School of Law is a State Bar of California approved MCLE provider and certifies that this activity is approved for self-study credit in the amount of one hour of general credit. 





A catalog of the faculty's significant publications and presentations from January to June 2007.

faculty FOOTNOTES

LARRY ALEXANDER
LAURA BEREND
KAREN C. BURKE
NANCY CAROL CARTER
ROBERT C. FELLMETH
YALE KAMISAR
MICHAEL B. KELLY
ADAM J. KOLBER
DAVID LAW
SHAUN MARTIN
GRAYSON M.P. MCCOUCH
JOHN (JACK) MINAN
FRANK PARTNOY
SAIKRISHNA PRAKASH
LISA P. RAMSEY
MICHAEL D. RAMSEY
STEVEN D. SMITH
THOMAS A. SMITH
LESTER B. SNYDER
JORGE A. VARGAS
MARY JO WIGGINS



Larry Alexander published an article titled "Law's Limited Domain Confronts Morality's Universal Empire," in 48 *William & Mary Law Review* 1579 (with Frederick Schauer) (2007).



Laura Berend organized and moderated "Discovery: You Can't Always Get What You Want, but You Must Always Get What You Need," a conference held on January 27, 2007, at USD. The seminars were funded by a grant from the Federal Community Defenders, Inc. of San Diego, a nonprofit organization that also funds graduation awards and other projects focused on indigent criminal defense. The seminar was attended by approximately 100 people, including students, mental health professionals and criminal defense attorneys.



Karen C. Burke's recently published "Social Security Reform: Lessons From Private Pensions," in 92 *Cornell Law Review* 297 (with McCouch) (2007). Professor Burke presented a paper on social security reform at the

UCLA Tax Policy and Public Finance Workshop. Burke also submitted comments to the U.S. Treasury concerning revised partnership regulations, and she was quoted in the *Wall Street Journal* concerning corporate tax shelter litigation. Professor Burke is currently working on a revised sixth edition of *Federal Income Taxation of Corporations and Stockholders* (West Group, forthcoming 2008).



Nancy Carol Carter's recent publications include "Being Faculty," a chapter in *Beyond the Books: People, Politics, and Librarianship* (Hein, Inc., 2007) as well as a book review in 53 *Journal of San Diego History* 76 (2007) of Vanessa Ann Gunther's *Ambiguous Justice: Native Americans and the Law in Southern California, 1848-1890* (Michigan State University Press, 2006). Carter presented her popular "Indian Gaming in Perspective" at the Escondido (Calif.) Sunrise Rotary Club on January 11, 2007, and the Valley Center (Calif.) Rotary Club on May 21, 2007. She also presented "The Federal Documents of American Indian Tribes" at the Annual Meeting of the National Council on Public History held in Santa Fe, N.M. on April 12, 2007.



In early 2007, **Robert C. Fellmeth** presented twice at the International Child Welfare Conference sponsored by San Diego Children's Hospital and the Chadwick Center, once on *Multidisciplinary Training of Child Advocates*, and another session on *Ethics and the Child Welfare System*. Fellmeth submitted a chapter on child advocacy in the fourth edition of the graduate school text: *Health and Welfare for Families in the 21st Century* (Harcourt Brace, 2007). Four of his opinion pieces have appeared in the *Los Angeles Daily Journal* and the *San Diego Union-Tribune* recently. The Children's Advocacy Institute, directed by Fellmeth, received the exclusive contract from the State of California under the federal Children's Justice Act to create the statewide training program for new attorneys who represent abused children in California in juvenile dependency court. Working with collaborators throughout 2007, Fellmeth will be developing curriculum with a distance learning component. He also assisted in the preparation of the Children's Advocacy Institute's 57-page report and study *Expanding Transitional Services for Emancipated Foster Youth: An Investment in California's Tomorrow*, which was released at a Sacramento, Calif., press conference in January; SB 348 (Migden) will carry the report's recommendations in the legislature in 2007. Fellmeth currently serves as vice chair to the board of the National Association of Counsel for Children.



Yale Kamisar's article, "On the Fortieth Anniversary of the Miranda Case: Why We Needed It, How We Got It—and What Happened to It," will appear in 5 *Ohio State Journal of Criminal Law* (forthcoming, 2007). He is also writing the foreword to a forthcoming

Michigan Law Review symposium, "On the Tenth Anniversary of the Physician-Assisted Suicide Cases, *Glucksberg* and *Quill*" (2007). In the summer of 2007, he and his co-authors will publish a new constitutional law casebook, *Leading Constitutional Law Cases: Materials for a Compact Course on Constitutional Law*. On March 13, 2007, "Clarence Darrow Day" at the Santa Clara University School of Law, Kamisar participated in a panel discussion on Clarence Darrow as a role model for 21st century lawyers.



Michael B. Kelly was recently named Associate Dean of the University of San Diego School of Law. Kelly also published *Principles of Remedies Law*, a book he co-wrote with Russell Weaver and Elaine W. Shoben (West Conscience Hornbook Series, 2007).



Adam J. Kolber delivered a James A. Moffett lecture at Princeton University on the legal and ethical implications of memory-dampening drugs. In addition, he presented his article, "Pain Detection and the Privacy of Subjective Experience," at the *American Journal of Law & Medicine's* Brain Imaging and the Law symposium held at Boston University School of Law. In May, he spoke on the same topic at the annual conference of the Gruter Institute for Law and Behavioral Research. Professor Kolber has received a Laurance S. Rockefeller Visiting Fellowship for academic year 2007-2008 at the Princeton University Center for Human Values, where he will write about the theory of punishment and how advances in our understanding of the mind and brain ought to inform our punishment practices.



David Law's latest article, "Globalization and the Future of Constitutional Rights," has been accepted for publication in the spring 2008 issue of the *Northwestern University Law Review*. He recently presented papers at the Duke University Seminar on Global Governance and Democracy, the Yale Junior International Law Scholars Roundtable, and the 2007 Annual Meeting of the Midwest Political Science Association in Chicago. He will also be co-chairing a panel on "Globalization and the Future of Public Law" at the 2007 Annual Meeting of the Law & Society Association in Berlin. Closer to home, Professor Law gave a presentation on his research in comparative constitutional theory and global constitutional convergence to the USD School of Law Board of Visitors at its January 2007 meeting. He has continued to review interdisciplinary grant proposals and submissions in the area of political science and law for a variety of organizations and journals, including the National Science Foundation and Jones & Bartlett Publishing.



Shaun Martin published "Substitution and Interested Parties," 74 *Tennessee Law Review* 545 (2007). In January, Professor Martin also published a brief solicited piece for Findlaw.com titled, "Who's the Kangaroo Court Now?"



Grayson M.P. McCouch recently published *Gratuitous Transfers*, 5th ed. (with Clark et al.) (West Group, 2007) as well as "Social Security Reform: Lessons From Private Pensions," 92 *Cornell Law Review* 297 (with Burke) (2007).



John (Jack) Minan was honored in February 2007 by the San Diego Regional Water Quality Control Board for his dedicated service to the San Diego region and state of California. The official resolution adopted by the board recognized his eight years of service (1999-2006), including six consecutive years as its chairman, and his service to the San Diego River Conservancy and Wetlands Recovery Project. In May 2007, Professor Minan was nominated to the council of the section of state and local government of the American Bar Association (ABA). He currently serves as chairman of the Environmental Law Committee for the section.



Frank Partnoy is co-author of the recently published, sixth edition of the West casebook *Corporations Law and Policy: Materials and Problems*, (with Jeffrey D. Bauman and Alan R. Palmiter) (Thompson West, 2007). Partnoy contributed a chapter, "Gap Filling, Hedge Funds, and Financial Innovation," to *New Financial Instruments and Institutions: Opportunities and Policy Challenges* with Randall Thomas (Brookings Institution Press, 2007). He also published a law review article, "Second-Order Benefits from Standards" in 48 *Boston College Law Review* 169 (Spring 2007), and an op-ed about New York Governor Eliot Spitzer's new financial services committee in the *Financial Times* on June 6, 2007. His law review article, "The Promise and Perils of Credit Derivatives," is forthcoming in 2007 in the *University of Cincinnati Law Review* (with David A. Skeel, Jr.). Professor Partnoy presented his paper, "Hedge Fund Activism, Corporate Governance, and Firm Performance," at the securities regulation section of the Association of American Law Schools' annual meeting

held in Washington, D.C., on January 5, 2007, and at the University of Kansas School of Business finance department in Lawrence, Kan., on March 2, 2007. On January 22, 2007, he presented "Derivative Investment Risks, Conflicts-of-Interest, and Self-Regulation of the Exchanges" at the Directors Forum 2007 conference held in San Diego. He also presented "The Law and Finance of Credit Derivatives" at the annual meeting of the American Law and Economics Association held at Harvard Law School in Boston on May 5, 2007. Professor Partnoy was appointed chair-elect of the Association of American Law Schools Section on Business Associations, and was named a research fellow of the Corporate Governance Institute.



Saikrishna Prakash will publish an article titled, "Delegation Really Running Riot," with Larry Alexander in 93 *Virginia Law Review* (forthcoming, 2007). Prakash's speaking engagements include a presentation about the President's duty to disregard unconstitutional laws at the USD Faculty Colloquium in January 2007 and at the Georgetown Constitutional Law Colloquium on April 5, 2007; a response to Sanford Levinson's *Our Undemocratic Constitution* (Oxford University Press, 2006) at Drake Law School on April 7, 2007; a paper at the Commander-in-Chief, Congressional Control, and Judicial Review Conference at the Cardozo School of Law on April 16, 2007; a talk on "The Meaning of 'Declare War'" at Northwestern University School of Law, Federalist Society Chapter on April 18, 2007; and a talk on disciplining judges who misbehave at University of Nevada, Las Vegas Law School on May 5, 2007.



Lisa P. Ramsey presented her article, "Intellectual Property Rights in Advertising," at a number of intellectual property law conferences, including the Works-in-Progress Intellectual Property Colloquium co-sponsored by Washington University School of Law and St. Louis University School of Law; the Second Annual Intellectual Property and Communications Law and Policy Scholars Roundtable at Michigan State University College of Law; and the Fifth Annual Intellectual Property Scholars Conference, co-sponsored by Boalt Hall School of Law, Benjamin N. Cardozo School of Law, De Paul College of Law and Stanford Law School. In January 2007, her book chapter "First Amendment Limitations on Trademark Rights" was published in 3 *Intellectual Property and Information Wealth: Issues and Practices in the Digital Age* 147 (Peter Yu ed., 2007). In March 2007, Ramsey gave a presentation regarding trademark law and commercial speech doctrine at the Fourth Annual Intellectual Property and Communications Law Program Symposium: "What Ifs and Other Alternative Intellectual Property and Cyberlaw Stories" at Michigan State University College of Law.



Michael D. Ramsey's latest book, *The Constitution's Text in Foreign Affairs*, was published in April 2007 by Harvard University Press. Professor Ramsey contributed to a symposium on executive power in the *Harvard Journal of Law and Public Policy*. "The Textual Basis of the President's Foreign Affairs Powers" is featured in 30 *Harvard Journal of Law and Public Policy* 141 (2007). Professor Ramsey gave scholarly presentations at Columbia University Law School, the University of Utah and the University of California, San Diego.



Steven D. Smith's article, "The (Always) Imminent Death of the Law," will be published in 44 *San Diego Law Review* (forthcoming, 2007). In

January, Smith presented a paper entitled "How are Americans 'Divided by God'?" at the law and religion section of the Association of American Law Schools convention in Washington, D. C. Later in January, he spoke at Westminster Seminary in Escondido, Calif., responding to Daryl Hart concerning his new book called *A Secular Faith*. Smith presented "Persons Pursuing Goods" in a conference on the work of Oxford natural law theorist John Finnis sponsored by the Center for Ethics at Georgia State University in March. Smith also presented a colloquium at Duke Law School in April. Also in April, he participated in a conference on religious freedom at West Virginia University in Morgantown, W.Va. In May, he participated in a conference on "Human Personhood" in Brunswick, Ga.



Thomas A. Smith's "The Web of Law," will be published in 44 *San Diego Law Review* (forthcoming, 2007). Smith also has a forthcoming

article titled "Warren Court Precedents in the Rehnquist Court" that will be published in *Constitutional Commentary* (with Frank B. Cross and Antonio Tomarcho) (2007).



Lester B. Snyder's new book, *Double Take: Unequal Taxation of Equals*, was published in May 2007 by Vandephas Publishing. The book ex-

poses a number of areas in the tax law that illustrates how discrimination has become deeply embedded in the American tax system over the past 80 years. The special tax

benefits received by one group of taxpayers are paid for by those who do not receive the benefits, even where the two groups are essentially in the same "income" class. The book demonstrates how Congress and the IRS are locked into a system that is replete with time-worn dichotomies, while lobbyists and many tax

experts thrive on the complexities of a broken system. The book proposes some innovative solutions to these problems, including a single-rate tax structure for all sources of income, which would eliminate the built-in discrimination against working people, widows and single persons.

Congress Appoints USD School of Law Professor to U.S. Commission on Civil Rights



University of San Diego School of Law Professor Gail Heriot has been appointed to the U.S. Commission on Civil Rights by Senate President Pro Tempore Robert C. Byrd, D-W.Va., at the recommendation of Senate Minority Leader Mitch McConnell, R-Ky.

Professor Heriot has been a member of the USD School of Law faculty since 1989 and is the author of several scholarly articles. Additionally, she serves as Chair of the California Advisory Committee of the U.S. Commission on Civil Rights. Before assuming her position at USD, she practiced law at Hogan & Hartson in Washington, D.C. and Mayer, Brown & Platt in Chicago. Professor Heriot also spent a year as judicial clerk to

Justice Seymour Simon of the Illinois Supreme Court. Heriot is a graduate of Northwestern University, 1978, and earned her J.D. at the University of Chicago Law School in 1981, serving as an associate editor of the law review.

The commission is comprised of four presidential appointees and four members appointed by Congress. Commissioners serve six-year terms. The Commission vacancy being filled by professor Heriot resulted from the departure of Commissioner Russell G. Redenbaugh.

Chairman of the commission Gerald A. Reynolds said, "Gail Heriot is a very distinguished scholar of civil rights law, and I am confident that she will make an excellent commissioner."

The U.S. Commission on Civil Rights is an independent, bipartisan agency charged with monitoring federal civil rights enforcement. Current members include Chairman Gerald A. Reynolds, Vice Chairman Abigail Thernstrom, and commissioners Jennifer C. Braceras, Peter N. Kirsanow, Arlan D. Melendez, Ashley L. Taylor, Jr. and Michael Yaki.



Jorge A. Vargas has completed his book, *California Marina: Myths, Explorers & Gray Whales*.

This bilingual book includes three prefaces by leading marine scientists from Canada, the United States and Mexico, the three countries involved in the gray whale's annual migration. The book discusses not only the legal regime applicable to these marine giants but also includes narratives of the discovery of the Gulf of California by Spanish maritime explorers in the 16th and 17th centuries, the myth of Queen Calafia and the origin of the name "California," the commercial whale hunting activities in the U.S. and Mexico, and certain environmental threats affecting the existence and survival of the gray whale today. The book will be released in the U.S. and Mexico in 2007. Recently published or forthcoming articles by Professor Vargas include: "Mexican Law and Personal Injury Cases: An Increasingly Prominent Area for U.S. Legal Practitioners and Judges," in 8 *San Diego International Law Journal* (forthcoming, 2007); and "The California Gray Whale: Its Legal Regime under Mexican Law," 12 *Ocean & Coastal Law Journal* (forthcoming, 2007).



Mary Jo Wiggins will be a distinguished lecturer at Southern Vermont College as a part of the College's 2007-2008 Distinguished Lecture

Series on the topic of "Race, Gender and Change." Dean Wiggins is currently co-authoring a book on bankruptcy law with the Honorable Bruce A. Markell, a federal bankruptcy judge. The book is forthcoming in 2007 and will be published by Lexis-Nexis. Dean Wiggins is also at work on revisions to several chapters in *Collier on Bankruptcy*, the leading scholarly treatise in the field of bankruptcy

law. During the spring of 2007, Dean Wiggins served as coach and faculty advisor to the USD Bankruptcy Moot Court Team. The team participated in the 2007

Conrad Duberstein Bankruptcy Moot Court Competition at St. John's Law School on March 16-18, 2007 in New York City.

LRC Director Stepping Down



Nancy Carol Carter has announced that she is stepping down as director of the Legal Research Center (LRC) at USD School of Law. Next academic year, while a nationwide search for a successor is carried out, Carter will share responsibility for administration of the LRC with Associate Director Ruth Levor and will step in as acting director of USD's Institute on International and Comparative Law while Professor Bert Lazerow is on sabbatical.

Carter began her USD career in the fall 1987 semester. She was instrumental in helping the law school transition from its old library—the front portion of the current structure—into the nationally-recognized

facility it is today. Under Carter's watch, the LRC's collection has increased from 243,000 to 528,000 volumes, raising the ABA rank for unique titles from 69th to 12th.

"When Nancy came to the library, its computing resources consisted of four Kaypros," says Dean Kevin Cole. "With the renovation of our computer lab in 1996, we now have over 80 computers in the LRC."

She has also implemented monumental technology upgrades. Carter converted paper circulation records to an integrated electronic circulation system and built an online catalog that includes records from Copley Library. She helped organize the San Diego Library Circuit Consortium, which gives USD researchers electronic access to the library holdings at UCSD, SDSU and the San Diego County Library.

In addition to these accomplishments, Carter has found time to teach, direct summer programs abroad, and write 15 articles and three book chapters. Her article, "American Indians and Law Libraries: Acknowledging the Third Sovereign," (*Law Library Journal*, 2002) led to the Library of Congress reforming practices with regards to the treatment of American Indian tribal materials.

"We have been very lucky to have Nancy Carter as a colleague for twenty years," says Professor Bob Fellmeth, director of the Center for Public Interest Law. "Her feet may be small, but her shoes are large."

alumni BRIEFS

James M. Zimmerman, '87, Brokers Corporate Legal Understandings between U.S. and China

While attending USD School of Law, James (Jim) M. Zimmerman, '87, developed a keen interest in global issues such as international labor, trade law and environmental regulation. So it was no surprise that after his graduation, Zimmerman began helping companies understand and navigate legal issues associated with business in the San Diego-Tijuana border region.

As the markets of China opened up in the late 1980s and early 1990s, companies looking to break into this large and lucrative market sought out Zimmerman for his expertise.

In addition to his understanding of international business, he had studied China and written his master's of business administration thesis on Chinese politician and reformist Deng Xiaoping's plans to turn China into a major economic power. Zimmerman knew he had the background and theoretical expertise to help his clients' companies gain a footing in what is now the world's largest market.

His clients grew exponentially and by 1998, he was living with his wife and three girls in Beijing. Zimmerman is now the chairman of the American Chamber of Commerce





Zimmerman working from his Beijing Office.

(AmCham-China) in Beijing, where he represents the interests of approximately 900 foreign companies operating in China.

Zimmerman's experiences working with the Chinese led him to write *The China Law Deskbook*, published by the American Bar Association first in 1999 with a second edition published in 2005. The book includes most of the corporate regulations that affect foreign corporations doing business within China.

He has counseled multinational corporations in establishing and reorganizing operations inside China. His work also includes experience in merger and acquisition activities with respect to foreign investments in automotive, industrial equipment, food manufacturing equipment, pharmaceutical and medical devices, petroleum and petrochemicals, IT and telecommunications, and retail and franchising.

Considered an expert understanding corporate legal similarities and differences between the two countries, Zimmerman has acted as a consultant to Chinese authorities on the development of laws regarding intellectual property, real estate transactions, personal property rights and court procedures.


In April 2007, Chinese Vice-Premier Wu Yi held the 2007 High-Level Forum on Intellectual Property Rights Protection in



Pictured with Chinese Vice Premier Wu Yi, Zimmerman was invited to the 2007 High-Level Forum on Intellectual Property Rights in China.

China before more than 1000 government officials, business leaders and members of the diplomatic community. Representing AmCham-China, Zimmerman was invited to provide U.S. industry views on Intellectual Property Rights (IPR) protection in China. Zimmerman recognized China for its progress in supporting IPR protection but said “effective enforcement requires measurable results that reduce the rate of infringements in the market.”

He urged the Chinese government to “take bold steps that reflect that the law will be honored and that institutional resources are both actively engaged and producing substantive results in the battle to stop the manufacture, distribution and sale of pirated goods.”

Jim Zimmerman is currently living and working in Beijing with his wife and three daughters, who now speak fluent Mandarin. He returns to the United States a few times a year to bring delegations of AmCham-China business leaders to Washington, D.C. 

Michelle Paradise, '97, Voice of Victims from Riverside Courtrooms to NBC's Dateline

By Sarah Severson

Just ten years out of law school, University of San Diego alumna Michelle Paradise has developed a solid professional reputation as a Riverside County deputy district attorney, a career that has led her to be featured on NBC's Dateline "To Catch a Predator." Life has not always been easy for Paradise, but her experiences have given her a strength that has helped her have success in her career.

Paradise knew she wanted to be a prosecutor from the time she was a young child, and grew up fast in a dysfunctional, abusive family. As the oldest of four kids, she watched over her siblings and at the age of 21, Paradise became the legal guardian over her 12-year-old sister while working full time and completing her undergraduate degree.

"Taking responsibility of my sister was morally what I had to do," Paradise said. "I've had a lifetime of having to deal with different situations like that."

Paradise's undergraduate experience centered around the law, starting out at Riverside Community College, where she received an associate's degree in Administration of Justice, along with working full time for the Riverside Police Department as a public safety dispatcher. She also participated on the school's debate team and won national and state debate championship titles.

Paradise went on to complete her undergraduate and law degrees at the University of San Diego. In law school, Paradise took all of the possible criminal justice classes. She also gained experience in other fields, interning with a public defender's office and as a law clerk for Appellate Defenders. Paradise also served as a judicial intern for the Southern District of the U.S. District Courthouse. She then worked as a law clerk for the Riverside District Attorney's office before graduating and obtaining full-time status as a prosecutor with the same office.

Along with interning, Paradise participated on the law school's national mock trial team and felt the experience was great preparation for her career.

"The first time I did a trial for the district attorney's office, I was told afterwards that they were shocked it was my first trial because

Photos courtesy of Ed Crisostomo/The Press-Enterprise



I was seasoned and knew what I was doing," she said. "I knew it was because I had two years of training with the mock trial team."

Since that time, Paradise has had a broad range of assignments, as a misdemeanor attorney in the juvenile court to prosecutor on the felony trial team. She has experience in all units now and currently is a member of the homicide unit.

Paradise currently holds a trial record of 54 out of 56 felony convictions (with two hung), and eight misdemeanor trial convictions.

"Michelle Paradise is an experienced and accomplished prosecutor," said Riverside County District Attorney Rod Pacheco, a 1983 graduate of USD School of Law. "Our community is fortunate to have her commitment to protecting the men, women, and especially children and keeping them much safer."

In January 2006, Paradise was the trial team leader of the Sexual Assault and Child Abuse (SACA) unit and was ap-

proached about NBC's Dateline setting up a sexual predator sting in Riverside for the show, "To Catch a Predator."

"I began the Dateline sting by consulting with the NBC attorneys on the legalities of recording the suspects and whether or not there would be a violation of their first amendment rights," Paradise said. "From there, it grew into much more involvement and I was interviewed by NBC correspondent Chris Hansen on the show."

The Southern California show was the third in the "To Catch a Predator" series, and this was the first time that law enforcement was involved.

"Dateline had received some criticism for not prosecuting the people they were catching on the show," Paradise said. "The Riverside Sheriff's department got involved and our office would be prosecuting the cases."

Dateline worked closely with volunteers from the Web site, www.perverted-justice.com, who posed as boys and girls between the ages of 11-14 years old. The volunteers went online, set up a profile, and waited for predators to contact them.

"The conversations would start with the predators talking about sex. For the prosecution, there was no question—they laid out their intent in the chat log and would make it clear what they wanted to do to the child."



In just three days, 51 men showed up at the sting, the highest number of predators out of the 10 total shows in the Dateline series. It was such a large number that on the second day of the sting, there were even three men who showed up within minutes of each other. The district attorney's office filed criminal charges against all 51, and all were prosecuted with the exception of 17 who pled guilty, with no plea bargains or deals offered.

"We were the first county to prosecute these cases on this kind of magnitude," Paradise said. "We were hit with a lot of legal issues and defense attorneys filing every imaginable motion on the charges, so we had to address those, and it took a while."

After the Dateline episode aired, Paradise was flooded with calls from prosecution offices and law enforcement agencies from across the nation asking how to implement similar operations. She was interviewed on the Today Show, MSNBC's Abrams Report, BBC Television, and southern California radio stations such as news powerhouse KNX-AM.

"Dateline made people aware of the problem and its magnitude," Paradise said. "It's mind boggling—if 51 men came to this one street to molest a child, what is happening around the corner, in our city or county?"

The experience with Dateline was actually a portion of what Paradise was doing while working with the SACA unit. Paradise dealt with even more egregious cases on a regular basis, such as multiple victim cases and severe child abuse resulting in death. She worked specifically with child abuse cases and is now known as an expert in Shaken Baby Syndrome.

“Lately I’ve been the one with the medical experience, cross examining some of the best-known defense experts in the country on shaken babies, including the doctor who testified on behalf of the British nanny case,” she said.


Paradise delved into her first shaken baby case five years ago, and worked with a team at Loma Linda University Children’s Hospital to thoroughly understand how the brain, the eyes and spinal cord were affected by shaking.

“I worked with forensic pediatricians, ophthalmologists and neurosurgeons, and there was something new in each case I continued to learn,” Paradise said. “These cases are medically controversial and the defense usually wins with the most well-known doctors in the country. Jurors are often confused by the medical complexity of the trauma, so I had to learn how to teach them about it.”

In 2006, Paradise conducted nine jury trials and spent 89 days in trial. She secured convictions in all nine cases and had 63 guilty verdicts read, including two murders, six major sexual assault trials with 14 victims, and one child abuse case where the 19-month-old victim was left paralyzed on one side. The cases that dealt with offenses against children were often the most disturbing for her.

“It’s always worth it in the end though because I’m putting away the person that hurt the child,” she said. “Those are easy cases to get passionate about.”

Paradise suggests that students in law school find the area of law they feel most passionate about and then give it their best to make a positive difference. For those interested in prosecution, she says there is more to it than just getting trial experience.

“Don’t forget that you represent the people and the voices of the victims, so be real and empathetic,” she said. “And honestly, it’s the best job you could ask for because if you do the job right, then you have no moral dilemmas and your accomplishments are rewarding, even if it’s only recognized through self-satisfaction of knowing you helped someone.” 

USD School of Law Alumnus Karen P. Hewitt, '89, Named Interim U.S. Attorney




USD School of Law alumna Karen Peckham Hewitt, '89, was appointed interim United States attorney for the Southern District of California. Replacing outgoing U.S. Attorney Carol Lam, Hewitt was sworn in on February 16 by Chief U.S. District Judge Irma Gonzalez.

A San Diego County native, Hewitt graduated from Valhalla High School in El Cajon. She attended and graduated from the University of California at Berkeley in 1986 and USD School of Law in 1989. Hewitt worked in private practice before heading to Washington, D.C. in 1992 to work for the Department of Justice, where she specialized in constitutional law and civil rights cases.

Hewitt returned home in 2000 to prosecute civil fraud cases for the U.S. attorney’s office in San Diego. She served as assistant U.S. attorney until last year when she was appointed executive assistant U.S. attorney.

“Karen brought energy and insight into her job as executive assistant U.S. attorney, where she carried a wide range of responsibilities,” said former United States Attorney

Carol Lam, now senior vice president and legal counsel for Qualcomm. “She has excelled as a litigator and a manager, and I have no doubt that she will have great success as interim U.S. attorney.”

Hewitt “will serve on an interim basis until a United States attorney is nominated by the president and confirmed by the Senate,” according to a Department of Justice announcement. 



class ACTION

The Class Action section 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 and photos to lawalum@sandiego.edu.

'63

Hon. Victor E. Bianchini serves as a U.S. magistrate judge for the U.S. courts in Buffalo and Syracuse, N.Y. deciding habeas corpus and Social Security appeals. He was recently named to the San Diego High School "Wall of Honor." Judge Bianchini served as a San Diego Superior Court Judge for 20 years.

'68

Hon. William J. Howatt, Jr. (Ret.) has joined JAMS, the Resolution Experts, as a full-time mediator and arbitrator. Judge Howatt, a family law expert, joined the organization following 27 years on the bench, spending 19 of those years on the San Diego Superior Court. Judge Howatt will be based at JAMS San Diego Resolution Center.

'69

Stephen Cloud's oldest son, Steve Cloud, Jr., recently graduated from law school and took the bar exam in February. There's some fun pressure on Steve Jr. because dad passed it the first time. Stephen says he misses his day-class friends, and wishes they could be together one more time.

Edward B. (Ned) Huntington (LL.M.) has been selected by the Southern California Chapter of the American Academy of Matrimonial Lawyers as the San Diego Family Law Judicial Officer of the Year.

Gary Lane serves as general counsel to the Khoshbin Company in Irvine, Calif., which handles commercial real estate investments throughout the United States.

John P. Obenauer retired from the State of California, Employment Development Department (EDD) as assistant chief counsel on December 31, 2006, after 37 years in the EDD legal office.

'76

Albert V. De Leon joined Zurich Financial Services' Office of Compliance in North America as head of compliance, advisory and monitoring. He will have advisory and monitoring oversight responsibility for all Zurich entities in North America.

'77

Stephen H. Legomsky was installed as the John S. Lehman University Professor at Washington University School of Law on March 26, 2007.

'80

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

John R. Rende retired from the United States federal government, concluding 29 years of service as a local and federal law enforcement officer. During his career,

Irma Poole Asberry, '79, Appointed Riverside County Judge



USD School of Law alumna Irma Poole Asberry, '79, has been appointed Riverside County's first African-American female judge by Governor Arnold Schwarzenegger.

Asberry began her career with the Riverside, Calif. firm of Butterwick, Bright & Oluaghlin, Inc., working eight years with the firm before starting a sole proprietorship in family law in March 1998.

Asberry served as president of the Riverside County Bar Association (RCBA) from 1997 to 1998. She also served as vice-president and secretary and is the past chair and co-chair of the family law section of the organization. Asberry is the first African-American in the 109-year history of the organization to serve in those capacities. She is currently a member of the RCBA's Judicial Liaison Committee.

Asberry has taught family law classes, has been a guest lecturer at California Southern Law School in Riverside, Calif., and was a member of the speakers' bureau for the Riverside County Bar Association. She has provided pro bono services through the Public Service Law Corporation since 1984 and has served as a court-appointed minor's counsel for the Riverside Superior Court since 1998.

Along with her career as a lawyer, equally important has been her service to Vine-Life Christian Fellowship as a director of the youth and young adult ministry, coordinator of pre-marital seminars, and chair of the youth and young adult committee.

Rende served as San Diego County deputy sheriff, a special agent with the Naval Investigative Service, and for the last 26 years as a special agent with the Drug Enforcement Administration (DEA). He also served as an inspector with the Office of Professional Responsibility at the DEA headquarters. Rende will reside in Lorton, Va. with Candace, his wife of fifteen years, and intends to do volunteer work with local and federal legal services.

Mark K. Thomas joined the Chicago office of Winston & Strawn LLP as a partner concentrating on workouts, bankruptcy and restructuring. His work as lead bankruptcy counsel for Archibald Candy Corp. was named by *M&A Advisor* as the "U.S. Middle Market Deal of the Year" in 2004.

'81

Jeffrey A. Milman was named the 2006 Top Gun Trial Lawyer of the Year for Personal Injury by the Orange County Trial Lawyers Association. He has been a partner with Lopez, Hodes, Restaino, Milman, Skikos & Polos since 1996.

'82

Thomas E. Martin says, "Adios big firm, big firm mentality and dress codes. Aloha to solo practice with no billing minimums!" His practice is primarily plaintiff work with a focus on injured motorcyclists, but he still does defense work as well.

Jeff A. Saltzman started his own law practice on January 1, 2007. The Law Offices of Jeff A. Saltzman specializes in personal injury and workers' compensation cases for Chicago and its surrounding counties.

'83



Ned E. Tolbert recently spoke on "Unveiling the Mystery of Workers' Compensation Subrogation" at the 19th Annual Combined Claims Conference in Industry Hills, Calif. He practices with the subrogation and recovery department in the San Diego office of Cozen O'Connor.

'84



Steve Doyle, president of the San Diego/Riverside division of Brookfield Homes, has been named one of the 2007 inductees into the California Building Industry Foundation Hall of Fame. He is also a recipient of the City of Hope Spirit of Life Award and was recently named one of the *San Diego Daily Transcript's* Top 120 Influentials.

'85



Bob Goff is the founder and president of Restore International, an international social justice organization that currently works in India and Uganda to end human trafficking and other human rights abuses.

Rod Pacheco, '83, Elected Riverside County District Attorney



On January 2, 2007, USD School of Law alumnus Rod Pacheco, '83, was sworn in as district attorney of Riverside County by California Supreme Court Chief Justice Ronald George.

Pacheco began his career in 1984 as a deputy district attorney for Riverside County where he advanced in short order to senior deputy district attorney specializing in homicide and death penalty cases. During the last 10 years at the district attorney's office, Pacheco won every case he prosecuted.

Mr. Pacheco ran for the California State Assembly in 1996 and was the first Latino Republican elected to the assembly in a century. During

his tenure as an assemblyman, he served as leader for the Republican caucus, helped reform the Cal Grant System, and authored the successful Proposition 222—The Peace Officer's Safety Initiative—which prohibited the possibility of parole for those convicted of murdering a peace officer.

In 2002, Assemblyman Pacheco returned to Riverside County as a chief deputy district attorney and was promoted a year later to assistant district attorney for the western division of the Riverside County District Attorney's office.

Rod Pacheco was elected to the position of district attorney of Riverside County on June 6, 2006. He faced no opposition in his election and officially began his term on January 1, 2007.

Pacheco currently serves on the board of directors of the La Sierra University Foundation, the Community Foundation, Shelter from the Storm, the Barbara Sinatra Children's Foundation and the Law Enforcement Appreciation Committee, a nonprofit organization dedicated to honoring law enforcement officers.

William D. Goren is an associate professor of legal studies at Northwestern Business College in Naperville, Ill. where he has won several awards for teaching excellence. Mr. Goren also serves as a consultant/legal expert on matters associated with the Americans with Disabilities Act (ADA). He presents and writes extensively on the ADA and other topics. Among his many publications, are the books published by the American Bar Association (ABA): *Understanding the Americans with*

Disabilities Act: An Overview for Lawyers (ABA 2000); and *Understanding the ADA*, 2nd Edition (ABA 2006). Goren is a member of both the Illinois and Texas state bar associations.

'87

Laurel E. Davis became a director in the Las Vegas law office of Finnemore Craig, specializing in bankruptcy law.

'88



Paul G. Klockenbrink has been named to Virginia's Legal Elite by *Virginia Business* magazine. Klockenbrink is a lawyer at Gentry Locke Rakes & Moore, LLP, based

in Roanoke, Va.

'89

Michael S. Wildermuth was recently named as one of the Top 100 attorneys by the *San Fernando Business Journal*. He is a shareholder at Nevers, Palazzo, Maddux & Packard, PLC in Westlake Village, Calif. and is on the board of the Thousand Oaks-Westlake Village Chamber of Commerce.

'90

Clayton Brennan was elected to the Mendocino County Superior Court bench in June 2006. His wife, Mari Rodin, is the mayor of the city of Ukiah, Calif. They are enjoying small town life in the wine country of northern California with their two sons; Aaron, 15, and Jesse, 11.

Michael C. Spata was recently appointed assistant county administrative officer for Tulare County, Calif.

'91

Angel Bermudez has been appointed as a judge in Riverside County, Calif. by Governor Arnold Schwarzenegger.



Adam Levin has been selected as a *California Lawyer* Attorney of the Year award winner by *California Lawyer* magazine. He received the award for successfully litigating *Lyle v. Warner Brothers Television Production* before the California Supreme Court.

'92

Ann K. Bradley joined Duane Morris LLP as a partner in the firm's employment and immigration practice group in San Diego. She advises clients regarding compliance with federal and California employment law including hiring practices, discipline and discharge, leaves of absence and reasonable accommodation of disabilities, and internal investigations of harassment, discrimination and employee misconduct.

Regina Strickroth has become a partner in the law firm of Alford & Wilkins, P.C., which will now be known as Alford, Wilkins & Strickroth, P.C. Strickroth will be the managing partner for the real estate division of the firm.

'93

Gia Honnen-Weisdorn is currently an adjunct professor at Pepperdine University School of Law teaching securities regulation. She is also a lecturer in business law at Pepperdine's Graziadio School of Business and Management.

Joel Selik (LL.M.) has been elected vice president of the San Diego North County Bar Association. He has also been sworn in for another year as a board member of the Consumer Attorneys of San Diego.

'95

Kim Boyer co-authored a book, *Alzheimer's and Dementia: A Practical and Legal Guide for Nevada Caregivers* (University of Nevada Press, 2006). She is a certified elder law attorney practicing in Las Vegas.



Brad Roppe left the legal field to pursue a career in commercial real estate. He is now the president of the Carlsbad office of Lee & Associates Commercial Real Estate Services and a member of its board of directors.

'97

Curtis L. Harrington (LL.M.) has been appointed to the Taxation Law Advisory Commission, an advisory board of the California Board of Legal Specialization.

Michelle Paradise has been named the Prosecutor of the Year for the state of California by the California District Attorney Association. She received the award in Napa, Calif. on June 28, 2007.

'98

Luisa Bigornia is senior director of intellectual property at BioMarin Pharmaceutical Inc., a biotechnology company in the San Francisco Bay area that focuses on the development of therapeutics for life-threatening genetic disorders.

Jeffrey B. Harris has become a shareholder in the law firm of Seltzer Caplan McMahon Vitek. He practices general civil litigation with an emphasis on business and real property litigation.

Mark Stephen Borden continues to work as a partner with Borden & Goddard LLP, a growing family law practice. He and his wife just welcomed a new daughter named Brooke into the family. Newborn Brooke now lives with mom, dad and her two-year-old brother named Ryder in Oshawa, Ontario.

Jennifer Kurlan Sutton is specializing in medical malpractice defense. Her husband **Jeff Sutton**, '98, is the general manager of the Tehama Colusa Canal Authority. They have a son, Jake, born on November 12, 2005.

'99

Anna Choo is currently finishing her medical residency in physical medicine and rehab at Emory University in Atlanta.

Daniel J. Cross has been named a partner in the San Diego office of Ross, Dixon & Bell, LLP. He focuses his practice on corporate, business and real estate transactions.



Jason A. Femrite has been elected a partner in the Carmel Valley/Del Mar office of Luce, Forward, Hamilton & Scripps, LLP. He serves as co-chair of the mergers and acquisitions and corporate finance sections of the firm's business practice group.

Alan Hamrick (LL.M.) recently transferred to Coldwell Banker Residential Brokerage in downtown San Diego. He works as a professional, full-time realtor helping residential buyers and sellers throughout San Diego County.

Jeffrey Thurrell has been named a partner in the Irvine, Calif. office of Fisher & Phillips, LLP. He has successfully represented employers in all forms of employment litigation.

'00

Pierre B. Pine now practices entertainment litigation at McPherson & Kalmansohn in Los Angeles. He married Shawna Caudillo on July 2, 2005.

'01

Carrie Downey (LL.M.) is a Coronado councilwoman, and was nominated to sit on the California Coastal Commission. She works for the law firm of Horton, Knox, Carter & Foote.

'02

Maria Estela de Orduna (LL.M.) was admitted to the State Bar of California in December 2006 and is currently working as in-house counsel for a construction com-

pany that is developing a touristic project in San Felipe, B.C., Mexico.

'03

Navid Alipour married **Rita Warm**, '04, in December 2004. They have three children; eight-year-old Noah, two-year-old Tanner and newborn Hailey.

Robert M. Daniels along with a partner has opened a new law firm in Escondido, Calif. Skaja & Daniels, LLP handles real estate, business litigation and estate planning matters as well as legal needs of non-profit organizations.

David Freitas has accepted an in-house attorney position with Caterpillar Inc.'s logistics group. He will relocate to Chicago in January of 2007.

Marion Curry Passmore and her husband Matthew gave birth to their first child, Peyton Hailey, on December 9, 2006. She weighed 8 pounds, 8 ounces.

'04

Katherine H. Yu and **Jae K. Park** were married on October 7, 2006.

'05

Marsha Amin joined Procopio, Cory, Hargreaves & Savitch LLP as an associate and is a member of the firm's litigation practice group. Her practice encompasses all aspects of business litigation.

In September 2006, **Hilary Stauffer** was named a legal adviser to the Mission of Israel in Geneva, Switzerland. She focuses on human rights and humanitarian law, and specializes in representing Israeli interests at the U.N. Human Rights Council.

Class of 2007 Graduate Awarded Prestigious Emory Fellowship



USD School of Law graduate Kirsten Widner, '07, was awarded Emory University Law School's prestigious Barton Fellowship. The two-year fellowship provides recent law school graduates an opportunity to work with the Barton Child Law and Policy Clinic on issues of child neglect and abuse.

The clinic was established in 2000 to affect policy and process changes that will benefit children of the state of Georgia's child welfare system. The clinic provides multi-disciplinary, child-focused research, training and support for

practitioners and policy makers charged with protecting Georgia's children. Located at Emory Law School, the clinic collaborates with Emory's School of Public Health, School of Nursing, School of Medicine, Center for Violence Studies and other Georgia graduate colleges and universities.

Widner was the 2006-2007 president of the Public Interest Law Foundation (PILF), USD's chapter of Equal Justice Works, and executive comments editor and symposium coordinator for the *San Diego Law Review*. She is a past secretary of the Student Bar Association and a contributing writer to *Motions*, USD's law school newspaper. She has volunteered at the Emancipation Clinic, worked with the San Diego Volunteer Lawyers Program's special education advocacy program and volunteered her expertise at the San Diego Teen Court.

"It's an absolutely terrific opportunity for her," says Julie D'Angelo Fellmeth, administrative director for USD's Center for Public Interest Law, where Widner interned in her second year of law school. "She'll be participating in a program similar to the USD Child Advocacy Institute's policy clinic and engaging in legislative lobbying on child welfare issues."

In Memory of Mary E. Harvey, '59



Mary E. Harvey, the first female graduate of USD School of Law and the 1994 Distinguished Alumni Award recipient, passed away on May 9 at Scripps Memorial Hospital in La Jolla, Calif. Mary was 87.

In the 1950s, only three percent of lawyers were women. Mary broke into the profession by attending law school in the evenings while serving as the general manager of the San Diego Municipal Employees Association, where she went head-to-head with the city attorney and city council over issues such as employee benefits and retirement. Mary operated a private practice for more than forty years as a criminal

and civil litigator, practicing family and probate law.

Mary actively participated in 18 San Diego County Bar Association committees, served on the legal panel of the American Civil Liberties Union for 20 years and served as the vice chair of the State Bar Commission on Judicial Nominees for three years. Craig Higgs, '69, described Mary as a "combination of Ann Richards of Texas and Bette Midler." Mary, much like Ann Richards, the former governor of Texas, is remembered for opening the doors of law and government to women.

'06

Brian William Glassco has announced his engagement to Christina Grace Saylor. The couple will wed September 8, 2007.

Kevin O. Moon was recently named an associate at Seltzer Caplan McMahon Vitek. Moon focuses his practice in the area of general civil litigation.

Summer Stech, Equal Justice Works fellow, is working as the project supervisor for the San Diego-based Children & Youth Advocacy Project (CYAP). Stech advocates on behalf of school-age youth who are transitioning to post-secondary school. In addition to direct legal representation, Stech presents legal life skills training seminars to youth with developmental disabilities.

Licia Vaughn has been promoted to partner in the San Diego office of DLA Piper U.S., LLP. She is the director of intellectual property for the firm, concentrating in intellectual property protection and litigation.

CORRECTION

Curtis L. Harrington, '97 (LL.M.) recently formed Harrington & Harrington with his sister Kathy Harrington. The firm specializes in patent, trademark, copyright and trade secret matters as well as intellectual property taxation. Curtis heads up the west coast office in Long Beach, Calif., and Kathy leads the east coast office in McDonough, Ga.



In Memoriam

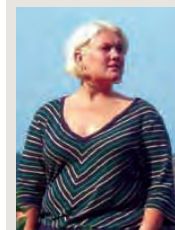
The University of San Diego School of Law community would like to extend its deepest sympathy to family and friends of the following alumni, students and administrators:

M. Isobel Law, administrator, died peacefully December 21, 2006. Isobel worked for the USD School of Law for 25 years, retiring in 1989. Isobel was predeceased by her loving husband of sixty years Edd Law, and is survived by her three sons, William, James and Douglas, and six grandchildren, Alison, Victoria, Kathryn, Brian, Alex and Keli.

David R. Eichten, '73, passed unexpectedly November 8, 2006, at the age of 58. He leaves behind his beloved wife, Debbie, as well as his father, Robert, his brothers, Noel, Carl and Jerry, his sister, Susan, nieces, nephews, friends and his loyal four-legged companion, Abby.

Kathy J. Payne, '90, passed away November 9, 2006, at her family's home in Chicago, Ill. Kathy was preceded by her father and brother, Michael, and is survived by her loving and devoted mother, Mrs. Katherine Payne, relatives and friends.

Heidi Lundblad, '09, was killed in an automobile accident in Mexico on the



weekend of April 14, 2007. She leaves behind father and mother, Chris and Karen, as well as two sisters, Dayna and Michelle.

academic year in review

school events

USD School of Law hosts a variety of extra-curricular events to enrich the intellectual life of the School of Law community. The following list includes highlights from January 2007–June 30, 2007.



JANUARY

Alumni Reception in Washington, D.C.,” sponsored by the Office of Alumni Relations and Development, the event provided an opportunity for Washington, D.C.-area alumni to reunite and network, January 4, 2007.

Alumni Reception in New York City, sponsored by the Office of Alumni Relations and Development, the event provided an opportunity for New York City-area alumni to reunite and network, January 9, 2007.

The Law and Social Justice Film Series: Confronting Genocide in Darfur, hosted by USD School of Law Professor Orly Lobel with guest speaker filmmaker John Prendergast, January 22, 2007.

“History of America’s Securities Laws: What’s Next for Our Markets?” William S. Lerach, chairman of the law firm of Lerach Coughlin, discussed the history and current issues affecting securities oversight, laws and law enforcement, January 23, 2007.

Young Tax Lawyers of the State Bar of California Taxation Section: Judge Mark V. Holmes from the U.S. Tax Court, “How to Lose in Tax Court (And How Not To),” sponsored by the taxation section of the California State Bar, Judge Holmes gave practice pointers for tax controversy work

framed in the context of cases that have appeared before his bench, specifically *Calarco v. Commissioner*, T.C. Summ.Op. 2004-94, 2004 WL 1616387, and *Hurst v. Commissioner*, 124 T.C. 16 (2005), January 23, 2007.

“Discovery: You Can’t Always Get What You Want, But You Must Always Get What You Need,” moderated by Professor of Law Laura Berend and Adjunct Professor Alex Landon of the USD School of Law, this seminar provided a broad overview of the law, guidelines for effective motion practice, electronic discovery, informant cases, discovery issues regarding expert witnesses, ethical obligations and duties, and an update on the challenge to the jury composition in San Diego County, including the relevant discovery issues, January 27, 2007.

FEBRUARY

Environmental Law and Compliance Issues, sponsored by the USD Environmental Law Society, Capt. Mark T. Hunzeker spoke about practicing environmental law and dealing with issues such as NEPA compliance, Clean Water Act permits, ESA compliance and RCRA/CERCLA, February 7, 2007.

25th Annual Careers in the Law Day, sponsored by the Alumni Board and the Office of Alumni Relations and Development,

panel discussion concerning careers in law and networking reception, February 7, 2007.

War Power Debate, USD Law Professor Michael D. Ramsey debated architect of the Patriot Act and law professor at UC Berkeley, Boalt Hall School of Law John Yoo concerning issues of presidential and congressional war powers such as declaring war, ending war, launching preemptive attacks abroad and conducting surveillance without a warrant, February 12, 2007.

The Law and Social Justice Film Series: *Rabbit-Proof Fence*, hosted by USD School of Law Professor Orly Lobel with opening remarks by Professor Kendra Sisserson, USD School of Leadership and Education Sciences, February 15, 2007.

The 2007 USD School of Law–Procopio International Tax Institute Conference, featured preeminent tax advisors discussing U.S.-Mexico cross-border tax law, sponsored by USD School of Law and Procopio, Hargreaves & Savitch LLP, February 15-16, 2007.

Women’s Law Caucus Faculty Auction, donations made by faculty members were auctioned off to raise money for Becky’s House in San Diego, a transitional home for victims of domestic violence and their children, and the Loan Repayment Assistance Program (LRAP), February 21, 2007.

MARCH

The Law and Social Justice Film Series: *Wal-Martization in Motion: A Debate Through Film*, hosted and commentary by USD School of Law Professor Orly Lobel, March 6, 2007.

McLennon Moot Court Competition Final Round, presiding judges included the Honorable Rosemary Barkett, Circuit Judge,

U.S. Court of Appeals, 11th Circuit and the Honorable M. Margaret McKeown, Circuit Judge, U.S. Court of Appeals, 9th Circuit, and USD School of Law Professor Michael Ramsey, sponsored by Professor Michael R. Devitt, his family and the Appellate Moot Court Board, March 9, 2007.

“Courtroom Discourse in China and the U.S.—A Comparative Analysis,” Dr. Meizhen Liao presented a comparison between Chinese and American criminal court judgments, highlighting the differences between the legal systems and the larger cultures, March 13, 2007.

The Law and Social Justice Film Series: *CRASH*, hosted by USD School of Law Professor Orly Lobel with opening remarks by Professor Jean Ramirez, USD School of Law, March 15, 2007.

LRAP Poker Tournament, event raised money for the Loan Repayment Assistance Program (LRAP), sponsored by the Student Bar Association, the Public Interest Law Foundation (PILF) and the Office of Alumni Relations and Development, March 16, 2007.

Young Tax Lawyers of the State Bar of California Taxation Section: Generation Skipping Transfer Tax, sponsored by the taxation section of the California State Bar, Louis Mezzullo discussed the daunting generation-skipping transfer tax, March 20, 2007.

USD School of Law’s 2nd Annual Diversity Formal, sponsored by the USD School of Law Diversity Committee, the event provided an opportunity for law students to meet and network with San Diego lawyers and members of the bench, March 23, 2007.

Alumni & Newly Admitted Student Receptions, sponsored by the Office of Alumni Relations and Development, the event

provided an opportunity for newly admitted students to interact with Orange County-area alumni on March 27, 2007, Los Angeles-area alumni on March 28, 2007, and San Francisco-area alumni on March 29, 2007.

APRIL

An Evening with Congresswoman Susan Davis, Congresswoman Davis, D-Calif., spoke about tensions between the legislative and executive branches in the area of foreign affairs and took student questions on a range of foreign policy topics, April 12, 2007.

23rd Nathaniel L. Nathanson Memorial Lecture Series: “State Constitutionalism and Modern Governance: What’s the Big Idea?” Warren Distinguished Professor of Law and former dean of USD School of Law Daniel Rodriguez discussed the use of state constitutions in legal practice with regards to issues such as gay marriage, education finance, property rights and police power, April 19, 2007.

University of San Diego Alumni Honors, honored School of Law alumnus Leonard Armato, ’78, April 21, 2007.

“Challenging Corporate Power and Building Democracy,” Ralph Nader, lifelong consumer advocate and former presidential contender, discussed current events regarding growing corporate power and the loss of consumer rights, sponsored by the USD School of Law and the Public Interest Law Foundation (PILF), April 27, 2007.

2007 USD School of Law Commencement address presented by Associate Justice Alan C. Page of the Minnesota Supreme Court. Justice Page is a former defensive linebacker for the Minnesota Vikings and National Football League (NFL) all-star, May 26, 2007.

academic year in review

faculty colloquia

A listing of the faculty colloquia presented from January 2007–June 2007.



USD Professor of Law Donald A. Dripps offered “Sixth Amendment Originalism’s Collision Course with the Right to Counsel: What’s Titanic, What’s Iceberg” on March 2, 2007.

Saikrishna B. Prakash, Herzog Research Professor of Law, USD School of Law: “The Executive’s Duty to Disregard,” January 26, 2007.

Barry Cushman, professor of law, University of Virginia: “Painful Duties,” February 2, 2007.

Mitchell N. Berman, Bernard J. Ward Centennial Professor in Law, University of Texas at Austin: “Originalism is Bunk,” February 9, 2007.

Steven D. Smith, Warren Distinguished Professor of Law, USD School of Law: “Our Agnostic Constitution,” February 16, 2007.

Donald A. Dripps, professor of law, USD School of Law: “Sixth Amendment Originalism’s Collision Course with the Right to Counsel: What’s Titanic, What’s Iceberg?” March 2, 2007.

Vicki Schultz, Ford Foundation Professor of Law and Social Sciences, Yale Law School: “Will Marriage Make Gay and Lesbian Couples Less Egalitarian? A Cautionary Tale,” March 5, 2007.

Vernon Walker, professor of law, Hofstra University: “Visualizing Legal Reasoning: Pedagogical Implications,” March 9, 2007.

Brett McDonnell, professor of law, University of Minnesota: “Sticky Defaults and Altering Rules in Corporate Law,” March 16, 2007.

Richard Speidel, professor of law, USD School of Law: “Contract Excuse Doctrine and Retrospective Government Acts,” March 23, 2007.

Guy Charles, professor of law and interim co-dean, University of Minnesota School of Law: “Democracy and Distortion,” March 30, 2007.

Adam J. Kolber, associate professor of law, USD School of Law; and Laurance S. Rockefeller Visiting Fellow (2007-2008), Princeton University: “Placebo Deception: When a Spoonful of Sugar is the Medicine,” April 13, 2007.

Kimberly Yuracko, professor of law, Northwestern University School of Law: “Illiberal Education: Constitutional Constraints on Homeschooling,” April 30, 2007.

Stanley Fish, professor of law, Florida International University; and former dean of the College of Liberal Arts and Sciences at the University of Illinois at Chicago: “How Hobbes Works,” May 4, 2007.

Saikrishna B. Prakash, Herzog Research Professor of Law, USD School of Law: “The Separation of Powers,” June 20, 2007.

alumni receptions

In 2007, a number of receptions were held for alumni, donors and friends of the School of Law in San Diego, Orange County, Los Angeles, San Francisco, Washington, D.C. and New York. Here are a few photos from our events:



Current USD law students, Kathryn Snyder and Justina Tate, at the 2007 Maudsley Fellows reception.



Professor Hugh C. Friedman, Honorary Alumnus, Leah S. Nathanson, and Lynn Schenk, '70, at the 2007 Maudsley Fellows reception.



Alex Tomasevic, '06, Noah D. Sacks, '06, Tiffany C. Bailey, '06, and Christine I. Pangan, '02, at the Recent Alumni Happy Hour at the Yard House in downtown San Diego.



Four law school friends enjoyed the Recent Alumni Happy Hour at the Yard House in downtown San Diego.



Judge Harlan G. Grossman, '75, Dean Kevin Cole, Jack W. Hodges, '75, and John A. Murphy, '75, at the Spring 2007 San Francisco reception.



Chad R. Fuller, '97, Trevin V. Hartwell, director of development and alumni relations, Susan Gonick, '86, and Michael T. Thorsnes, '68, at a law school reception at the law offices of Thorsnes Bartolotta McGuire.



parting shot . . .

USD Mock Trial Team Gets Tough

From left to right, 2007 graduates Anne Warner, Michael Etchepare, Trevor Flynn, Hannah Cole, Katie Payerlie and Alexa Treichel competed in the February 2007 Texas Young Lawyers National Mock Trial Competition, held in Salt Lake City.



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