

Advocate

UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

23:2 WINTER 2006/07

MESSAGE from the dean

Commitment to Excellence



Every day, our alumni and faculty build the reputation of the USD School of Law through their professional accomplishments.

As a long-standing Chargers fan, I am loathe to employ a phrase most often associated with Oakland Raiders owner

Al Davis—"Commitment to Excellence." However, the phrase aptly captures what we look for when we admit students and recruit faculty. We seek to identify those who will strive for success. It is not surprising, then, when our alumni go on to great accomplishments, or when our faculty distinguish themselves through their scholarship, their public service, and their work in the classroom.

Success can occur in many worthy fora, of course. The alumni and faculty I profile here have achieved excellence in a variety of worthy undertakings.

The 2006 recipients of the Law Alumni Association's Distinguished Alumni Award share much in common but also have pursued quite different paths. G. Edward Arledge (Class of '73) and Thompson Fetter (Class of '67) have each devoted considerable amounts of their talent to civic non-profit organizations and to the USD School of Law. But while Mr. Arledge has built his professional reputation as a practicing business lawyer, Mr. Fetter has used his law degree to help him build successful business ventures. Both were honored at a downtown luncheon in November attended by 160 friends and colleagues. You can read more about them in the article on page 7 of this issue.

Each year, the law school is also able to honor two of its faculty for their accomplishments, thanks to the generosity of our supporters. This year, Professor Lawrence Claus occupies the position of Herzog Endowed Scholar, and Professor Fred Zacharias occupies the Class of 1975 Professorship. These positions provide temporary reductions in teaching load to accomplished scholars to permit them to make accelerated progress on pending research projects. These awards help us to retain the high-caliber faculty we have attracted, who are increasingly coveted by other institutions.

Professor Claus is an engaging teacher and thoughtful scholar interested in constitutional history and comparative law. A native of Australia, Claus earned his doctorate in law at Oxford and practiced as a foreign service national attorney at the U.S. Embassy in London before coming to the United States as a law clerk for the Honorable Frank Easterbrook on the U.S. Court of Appeals for the Seventh Circuit in Chicago. He joined our faculty in 2001. Professor Claus's most recent work casts doubt on the constitutionality of efforts to deprive the U.S. Supreme Court of jurisdiction to determine the legality of military detentions at Guantanamo Bay, Cuba, as well as other "jurisdiction-stripping" proposals.

Professor Zacharias, who has taught legions of students in his courses on professional responsibility and constitutional law since joining our faculty in 1990, is one of the country's leading experts on legal ethics. No list sufficiently short for this space could convey the scope of his writing in the area of ethics; a suggestive beginning would include prosecutorial ethics, lawyer advertising, coercion of clients and the proper limits of advocacy. Professor Zacharias has chaired the professional responsibility section of the Association of American Law Schools and has served on the consultative groups of the American Law Institute on the restatements of agency and of the law governing lawyers.

These four individuals bring honor to USD through their achievements. Ed Arledge, Tom Fetter, Laurie Claus and Fred Zacharias differ in many ways. But they share a commitment to excellence. By honoring them, the law school affirms a similar commitment—and demonstrates our progress in achieving it.

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

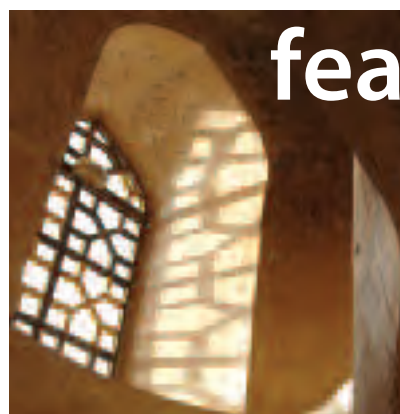
Kevin Cole
Dean and Professor of Law

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Please address all correspondence to:
The *Advocate*
University of San Diego
School of Law
5998 Alcalá Park
San Diego, CA 92110-2492
Phone: (619) 260-4207
E-mail: lawpub@sandiego.edu

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EDITOR

Ashley Wood

WRITERS

Prof. Karen Burke

Vincent Lapietra '07

Prof. Grayson McCouch

Prof. Miranda McGowan

Patrick Riedling

Ashley Wood

CONTRIBUTORS

Aimee Axelrod

Abigail Gurney

Trevin Hartwell

Debra McIntyre

PHOTOGRAPHERS

Brigid Ann Bennett

Larry Blankenbecler

Angie Jensen

Pablo Mason

Brent Wakefield

DESIGN

Paterra Design

COVER PHOTO

Larry Blankenbecler

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on the DOCKET

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

January

JANUARY 2007

Alumni Reception in New York
The Harvard Club of New York City—
35 West 44th St., New York, NY 10036
Contact the Office of Development
and Alumni Relations
(619) 260-4692

JANUARY 4, 2007

Alumni Reception in Washington
6:30 p.m. - 8:30 p.m.
Elizabeth's on L - 1341 L Street NW,
Washington, D.C. 20005
Contact the Office of Development
and Alumni Relations
(619) 260-4692

JANUARY 19, 2007

Board of Visitors Winter Meeting

JANUARY 25, 2007

Maudsley Fellows Reception
Contact the Office of Development
and Alumni Relations
(619) 260-4692

JANUARY 31, 2007

Law School Diversity Alumni Student Mixer
Joan B. Kroc Institute for Peace & Justice
Contact the Office of Development
and Alumni Relations
(619) 260-4692

February

FEBRUARY 7, 2007

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

FEBRUARY 2007

Mock Interview Program
Contact the School of Law
Career Services Offices to participate
(619) 260-4529

FEBRUARY 12, 2007

Debate: "The War on Terror and the
Original Understanding of the Constitution"
John Yoo, Professor of Law,
University of California, Berkeley
Michael Ramsey, Professor of Law,
University of San Diego
Contact School of Law Dean's Office
(619) 260-6848 or
usdlawevent@sandiego.edu

FEBRUARY 15-16, 2007

USD School of Law—
Procopio International Tax Institute
Contact Fabiola Franco at
(619) 515-3225

FEBRUARY 17, 2007

USD School of Law—
Investing in Mexican Real Estate
Contact Fabiola Franco at
(619) 515-3225

FEBRUARY AND MARCH 2007

Spring Recruiting
Contact the School of Law
Career Services Office to participate
(619) 260-4529

March

MARCH 2007

Alumni Spring Receptions in
Orange County, Los Angeles
and San Francisco
Contact the Office of Development
and Alumni Relations
(619) 260-4692

MARCH 9, 2007

McLennon Moot Court Competition
Final Round
Peace & Justice Theatre
Joan B. Kroc Institute for Peace & Justice
RSVP by March 2: (619) 260-6848

MARCH 13, 2007

Meizhen Liao Lecture
Peace & Justice Theatre
Joan B. Kroc Institute for Peace & Justice
Contact Ed Starkey
(619) 260-2369

April

APRIL 19, 2007

Nathaniel L. Nathanson Memorial Lecture
Distinguished Lecturer:
USD School of Law Professor
Daniel Rodriguez
Contact School of Law Dean's Office
(619) 260-4527 or
usdlawevent@sandiego.edu

APRIL 21, 2007

University of San Diego Alumni Honors
Jenny Craig Pavilion
Contact Office of Alumni Relations
(619) 260-4819



“Disdain for judicial activism is so widespread, so visceral, that you would have to be crazy to stand up for it.”

Clint Bolick Makes Case for Activist Judiciary

Bowes–Madison Series Brings Noted Author, President of the Alliance for School Choice, to USD

At the same time conservatives such as Mark Levin are writing books like *Men in Black: How the Supreme Court is Destroying America* (Regnery, 2005), so too are liberals like Cass Sunstein writing books with titles like *Radicals in Robes: Why Extreme Right-Wing Courts are Wrong for America* (Basic Books, 2005). The same theme applies no matter which side of the debate: judicial activism is seen as tearing apart America.

“Disdain for judicial activism is so widespread, so visceral, that you would have to be crazy to stand up for it,” says Clint Bolick, the 2006 speaker for the School of Law’s third annual Joan E. Bowes–James Madison Distinguished Lecture Series. But that’s precisely what he did on October 30 at the Peace & Justice Theatre on the USD campus.

Guests turned out for a chance to meet the noted lawyer and author and hear a preview of his forthcoming book *David’s Hammer: The Case for an Activist Judiciary*, due to be released by the end of May. Bolick clearly defined and laid out the

premise of his case for an increased “activist judiciary.”

He explained that differentiating between “judicial lawlessness,” a term borrowed from his friend and Federalist Society president Eugene Meyer, and “judicial activism” is important. When people think of an activist judiciary, they usually imagine liberal judges interpreting law based upon contemporary cultural issues and social movements, an interpretation that could lead these activist judges to strike down laws that threaten to create a “majoritarian tyranny.”

Many nay-sayers would point to the number of laws struck down by the courts as evidence of an over-activist judiciary. In recent years, the Supreme Court has struck down more laws than at any other time in our country’s history. Bolick explained that it is not due to an increased activist judiciary, but due to the staggering number of regulations being enacted by a government bureaucracy growing exponentially.

Bolick stated it is the job of the judiciary to strike down laws. They



“If someone who believes laws should be struck down regardless if the precious rights they violate are property or privacy, then color me moderate.”

take an oath to uphold and defend the Constitution. What Bolick has issue with is what else happens within the opinions of the courts on local, state and federal levels.

“When a court goes beyond striking down a law and takes over the governance of prisons or school systems, it is not exercising judicial powers, but executive powers,” explained Bolick. “When a court goes beyond striking down a law to rewrite the law, such as the Miranda case or *Roe v. Wade*, it is not exercising judicial powers, but legislative powers.”

Bolick pointed out that true cases of judicial activism do not fall on either the conservative or the liberal side. “Interestingly, two of the most activist justices—often voting with both conservatives and liberals to strike down laws—are the justices most often characterized as the court’s moderates, Sandra Day O’Connor and Anthony Kennedy.”

Driving his point home, Bolick stated, “If someone who believes laws should be struck down regardless if the precious rights they violate are property or privacy, then color me moderate.” As a person rarely described as anything other than a staunch conservative, Bolick

provided the attentive crowd not only with a joke but also with a new perspective of the issue.

Bolick finished his address by recounting three cases he had argued, all of which he deemed exemplary incidents of judicial activism. The cases involved the “Goliath” of government keeping the “David” of the common man from reaching his or her potential. Due to an activist judiciary, David’s Hammer—the gavel of justice—ultimately prevails in all three cases. Bolick’s point was made as clear as the imaginary glass he raised at the end of his presentation in toast to judicial activism.

Clint Bolick is president and general counsel of the Phoenix-based Alliance for School Choice, the nation’s leading advocacy organization for school choice. He also co-founded and served as vice president of the Institute for Justice, a Washington, D.C.-based libertarian public interest firm. Bolick led the litigation team that defended the constitutionality of school choice programs across the nation, which culminated in the 2002 successful defense of the Cleveland program in the landmark U.S. Supreme Court decision, *Zelman v. Simmons-Harris*.

Longtime La Jolla resident and civic activist, Joan E. Bowes, continued her family’s passion for learning by establishing the Joan E. Bowes–James Madison Distinguished Speaker Series through the University of San Diego School of Law. Established in 2004, the series is designed to inspire law students and other members of the San Diego community and promote the open exchange of ideas.



Lecture series attendees, including event benefactors Joan Bowes and Larry Davis (second and third from left, bottom row) look on at the annual Bowes-Madison Distinguished Lecture.

Battle of the Brains Raises Funds and Builds Awareness



Is Ottawa the capital of Canada or is Ottawa the home of the NHL Senators—or both? Not sure? Just ask Professor Allen Snyder. His correct answer to this question gave the faculty team of Snyder, Professor Laurie Claus and Professor Mike Kelly the victory in the School of Law's first annual *Battle of the Brains*.

Held over a two-week period in November, the *Battle of the Brains* pitted USD law school students against faculty members in a clash of wit and wisdom. More than 25 student teams entered for a chance to participate, but after a written competition, only two were invited to return and compete in the semi-final round. In front of a live audience at the Joan B. Kroc Institute for Peace & Justice Theatre, the two student finalist teams faced off as did the two faculty teams. The win-

ners of student and faculty competitions then squared off for the *Battle of the Brains* trophy.

Known collectively as “Sustained Objections,” the faculty team of Snyder, Claus and Kelly had a few strokes of good luck to help them secure the trophy. Claus, who was reluctant to participate because he didn’t “know anything about popular culture,” drew the category of “Supreme Court Trivia” in the final round, and Snyder, a frequent traveler, drew “World Capitals.” “DJT,” the opposing team of student players that included Dustin Monroe, ’07; JP Teague, ’07; and Thomas Rausch, ’07, graciously accepted defeat.

The brainchild of Professor Junichi Semitsu, the faculty advisor to the newly-formed USD Law Diversity Committee, the *Battle of the Brains* event raised more than \$7,000 for the USD Legal Clinics.

“In order to make our presence known to the faculty, staff and students on campus, we wanted to have

a big community service event where we would do something to help the underserved population,” says Diversity Committee founding member Hali Henderson, ’08.

Founded at the beginning of the 2006 fall semester, the USD School of Law Diversity Committee is working to promote respect for the variety of students within the law school as well as for all people who comprise the greater global community. The committee works to create a knowledgeable and aware student body by planning events that celebrate various cultural, ethnic, racial and religious heritages, as well as people of all sexual/gender orientations.

The organization’s mission is to provide advice and education on diversity issues and to create an inclusive environment at the USD School of Law. The committee advances the recognition and celebration of diversity, placing value on all individuals and the different perspectives of those individuals.



USD School of Law Professor Junichi Semitsu (center) explains the rules of the first annual *Battle of the Brains*. In the student semi-final competition, “The Illuminati” (left): Buck Endemann, ’07; Mark Rackers, ’07; and Nathan Smith, ’07, squared off against “DJT” (right): Dustin Monroe, ’07; JP Teague, ’07; and Thomas Rausch, ’07.

2006 Distinguished Alumni Award Honors

Each year, the USD School of Law and the Law Alumni Association's board of directors present the Distinguished Alumni Award. This honor recognizes alumni who have distinguished themselves in the legal field or other chosen profession at an exemplary level as well as those who embody the high ethical standards and commitment to community service the School of Law seeks to instill in its graduates. The 2006 honorees are G. Edward Arledge, '73, and Thompson Fetter, '67.

G. Edward Arledge, '73, received his J.D. in 1973 from the USD School of Law while serving in the United States Naval Reserve. He obtained his B.B.A. from Southern Methodist University in 1965.

Arledge is a partner at the San Diego office of Luce, Forward, Hamilton & Scripps LLP, in their business practice group, where he has worked for the past 29 years. He specializes in general business with an emphasis on corporate formations, mergers, acquisitions, divestitures and business start-ups.



Dean Cole presents the 2007 Distinguished Alumni Award to G. Edward Arledge, '73.



Dean Cole presents the 2007 Distinguished Alumni Award to Thompson Fetter, '67.

“Ed is a person I consider to be a tremendous partner in business and partner in life,” says Chuck Hellerich, a partner at Luce, Forward, Hamilton & Scripps LLP. “He’s the person that I look to frequently to shoulder the burden and to get through the hard issues and the hard times that naturally occur in business.”

Arledge and his wife, Donna, have three sons: Russell, Richard and Stewart.

Thompson Fetter, '67, grew up in the Point Loma area of San Diego and

graduated from Point Loma High School. He earned his undergraduate degree in biological sciences from Stanford University and received his MBA from the Graduate School of Business also at Stanford. In 1967, he received his J.D. from the University of San Diego School of Law.

“Tom just had this innate ability to be able to speak to you on a very down-to-earth level,” says Judy Epler, director of BusinessLink USD.

Fetter is the owner and president of T. Fetter & Co., Inc., a gasoline service station and car wash company with seven locations and 250 employees. Prior to starting his own business in 1972, Fetter was a lieutenant in the U.S. Army and a manager of administration at a local aerospace company. He has also owned two large recreational maritime businesses.

Fetter’s family includes his wife, Jane; three children, Trevor, Margaret and Jennifer; and seven grandchildren.

USD Law Students Make Case for International Arbitration

USD School of Law students traveled to Vienna, Austria and Hong Kong to participate in the 2006 Willem C. Vis International Commercial Arbitration Moot with 136 schools from around the world. In March, Peter Rosel, '07; Dustin Jones, '07; Min Kang, '06; and Karen Luong, '06, argued in Hong Kong. In April, Nicole Bayer, '07; Sondra Levine, '07; Maria Mahecha, '07; Jean Wu, '06; and Bill Restis, '06, argued in Vienna. Bruce Elder, '08, and Cole Cannon, '08, were non-traveling members of the teams.

The goals of the Vis Arbitral Moot are to train law leaders of tomorrow in methods of alternative dispute resolution and to foster the study of international commercial law and arbitration for resolution of international business disputes through its application to a concrete client problem.

"It was a tremendous learning experience," said Nicole Bayer, '07, a member of the Vienna team. "Through listening to our critiques and observing differing presentation styles, we learned a valuable lesson in arguing international commercial issues. It's not always best to be so—'American.'"



Willem C. Vis International Commercial Arbitration Moot Vienna team members and faculty advisor (left to right) Maria Mahecha, '07; Jean Wu, '06; Professor Allen Snyder; Sondra Levine, '07; and Nicole Bayer, '07.

The Vienna team softened its approach, relinquishing the premise that negotiations must be spirited, passionate and aggressive to get what you want. Although they did not make it to the competition's finals, the judges did acknowledge the USD Vienna team's adaptability.

Bayer and teammate Sondra Levine, '07, stayed to observe the remaining competition rounds, learning what they could from the schools that advanced. "The schools in the finals were amazing to watch," said Bayer.

"The organization of this competition was impressive—better than anything I have ever seen," said faculty advisor Professor Allen Snyder. "They had a top-drawer group of arbitrators."

Most notable among the competition judges was the General Counsel for the United Nations. "It was the crème of the crop of today's world-

class professionals in this field," said Snyder.

Andy Spanogle, an authority on international business who with Ralph Folsom and Michael Gordon co-authored *International Business Transactions In A Nutshell* (West Group Publishing, 2000), is a friend of Snyder's. When Snyder spoke to Spanogle about the Vis Moot competition, "Andy went rhapsodic about it. He told me he needs to write more about [the competition]," referring to the growing movement to get American law students thinking on a more global level.

"From the point of view of a teacher, the best part of this project was that I dealt with an all-volunteer army," said Snyder. "As a student-driven initiative, there were no idle, involuntary members of the team. They were all wildly enthusiastic and willing to work for something in which they believed."



The Vis Moot team was created from student interest to participate in an international commercial arbitration contest. Although travel to exotic locations may have influenced students, they also expressed a wish to learn something invaluable that could help them expand their career options globally. The students recognize the global village is pushing existing business into new international territory, and there will be a demand for professionals with international arbitration skills. Vis Moot is where those skills are honed.

After the competition, Snyder became more involved. He created a Vis Moot class to better prepare students for the competition. He notes, “The students and I sat down and asked ourselves what we need to learn?” The students then found resources and people in the international business community who were willing to pass on industry knowledge and provide tools to develop the necessary skills for effective international arbitration.

The class has generated greater interest in Vis Moot and international arbitration. More than 40 students vied for space on the teams heading to Vienna and Hong Kong in 2007. The fall semester found students preparing briefs, writing client arguments and responses. Preparations are well under way.

“Coming into face-to-face contact with other cultures and learning different approaches to arguing a case really opened my mind to alternative possibilities,” said Bayer. “It was a chance of a lifetime.”



Why Foreign Law?

Visiting professor of law Pierre LeGrand lends international perspective to law studies

Recent U.S. Supreme Court decisions such as *Atkins v. Virginia* (2002), *Lawrence v. Texas* (2003) and *Roper v. Simmons* (2005) have highlighted the controversy over the relevance of foreign law to U.S. adjudication. In September 2006, Pierre LeGrand, visiting professor of law at USD and law professor and director of the postgraduate program in comparative legal studies at the University of Paris-Sorbonne, gave his perspective on the relevance of foreign law.

LeGrand’s lecture focused on the impossibility of transplanting foreign law without considering the law’s original context and intent. He argued that, in the current era of globalization, law students must understand that law and its practices have taken many different forms in countries around the world.

“The reference to foreign law can prove very rewarding in other contexts such as legal education,” explained LeGrand. “Law students must realize that the law they are taught, be it contract, administrative, or tax law, does not have any claim to

being universally ‘right’ or ‘correct’ or ‘true’—a fact that is often forgotten in the heat of the moment and which may prompt unacceptable ethnocentric or imperialistic attitudes.”

LeGrand explained that all laws are derived from local knowledge and are specific to geographic and geopolitical areas they cover. It is imperative students understand this concept. The laws students learn, be they American or Korean students, answer a social or economic demand based on the area’s historical and political circumstances. He explained that to best understand the nature of law, students must be able to comprehend why different laws make good sense in one location and perhaps not in another.

“One does not challenge foreign law because one’s own law is inherently superior,” said LeGrand. “In the current era of transnationalism, no law school can fail to impress upon its students that the law they are taught is simply one amongst many—no matter how good it looks from a local vantage point.”

USD Distinguished Visiting Law Professor Named One of the 100 Most Influential Lawyers in America by *The National Law Journal*

While teaching at USD, Pamela A. Bresnahan was named one of the 100 most influential lawyers in America by *The National Law Journal*. She is one of only fourteen women lawyers in the United States to be selected by the prestigious New York City-based legal publication for the list.

As a distinguished visiting faculty member at USD School of Law in summer 2006, Bresnahan taught a course on professional responsibility. The course covered ethics, professional liability and discipline issues with an emphasis on practical problems confronted by practitioners.

Bresnahan is a partner and chairwoman of the litigation practice group for the Washington, D.C., office of Vorys Sater Seymour and Pease, LLP. The veteran lawyer blends policy and counseling work with trial practice, and advises law firms and lawyers on management and discipline matters.

The National Law Journal described Bresnahan as “widely admired” among her professional peers. The publication chooses lawyers who not only have a national impact within their fields, but also within the greater national community. Lawyers who make the list, “have the power to shape public affairs, launch industries, shake things up and get things done.”



Noting a series of accomplishments that propelled her to the elite list, *The National Law Journal* cited Bresnahan’s being tapped by the American Bar Association in 2005 to lead the investigation into John G. Roberts Jr.’s ability to serve on the United States

Supreme Court. She then served as an investigator and witness before the United States Senate on behalf of the ABA during the nomination proceeding for Roberts.

“The School of Law continuously seeks and locates special opportunities that enhance the education of our students,” says Dean Kevin Cole. “Having Pam Bresnahan, one of America’s most influential and experienced lawyers, teaching students the importance of professional responsibility is one such example.”

USD School of Law provides students with experienced professionals and top lecturers from the national and international community to complement the school’s already stellar full-time and adjunct faculty.

School of Law Welcomes New Faculty



Richard Speidel joined the tenured faculty after a long and distinguished career, most recently as the Beatrice Kuhn Professor of Law at Northwestern University School of Law. Professor Speidel is an internationally renowned expert in contract and commercial law. He served as reporter for the revision of Article 2 of the Uniform Commercial Code. Recently, he co-authored *Arbitration Law in America: A Critical Assessment* (Cambridge University Press, 2006), and he is currently completing a book titled *Contract Excuse Doctrine and Retrospective Government Acts* for Carolina Academic Press.

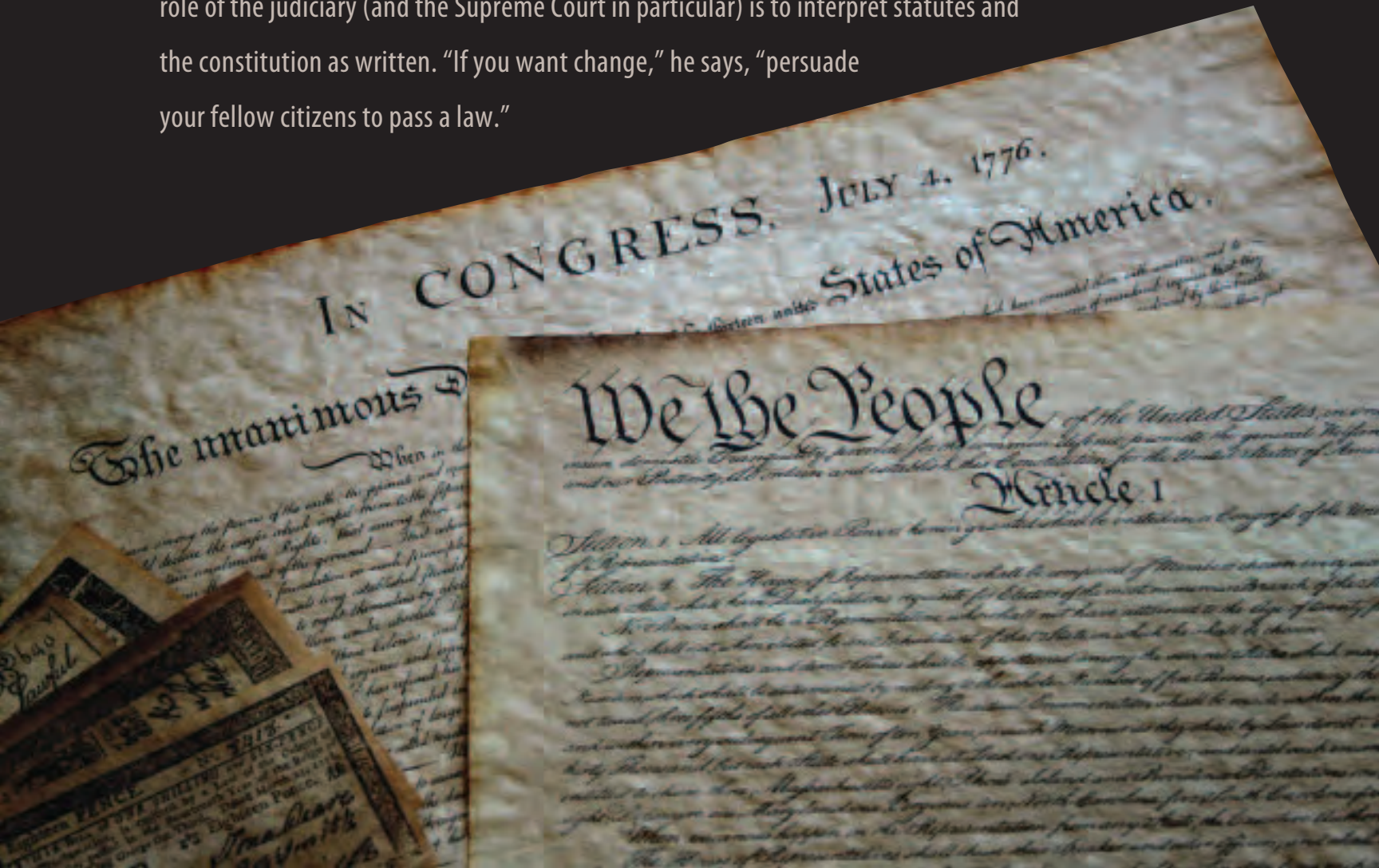


Richard B. Stewart will serve in the spring 2007 semester as the inaugural holder of the Stanley W. Legro Professorship in Environmental Law. The professorship allows the law school to bring distinguished visitors to campus in the environmental law field. Professor Stewart, a leading figure in the field, is the John Edward Sexton Professor of Law and director of the Center for Environmental and Land Use Law at New York University Law School.

Story by Vincent Lapietra, '07
Photos by Pablo Mason

A True Originalist

There are many people in this great country who will tell you that one of the most important functions of the judicial branch is to protect the constructively disenfranchised from majority oppression. United States Supreme Court Justice Antonin Scalia is not one of these people. A true "originalist," Justice Scalia spent a week at the University of San Diego School of Law to discuss, among other topics, his belief that the role of the judiciary (and the Supreme Court in particular) is to interpret statutes and the constitution as written. "If you want change," he says, "persuade your fellow citizens to pass a law."





“I don’t have to prove that originalism is perfect. It’s not perfect. I just have to prove that it’s better than anything else.”



Distinguished Jurist-in-Residence

In August 2006, Justice Scalia spent a week at USD School of Law as a Distinguished Jurist-in-Residence. During this time, he spent several days guest lecturing in classes as diverse as administrative and constitutional law. Despite the political divide that Scalia’s visit seemed to evoke on campus, or perhaps because of it, his lectures drew unprecedented crowds. The school was forced to regulate the number of attendees by implementing a lottery system. Fourth-year law student Alex Chen explained, “You know you’re a law student when you get equally excited about either a Supreme Court Justice or a movie star.”

Justice Scalia used the opportunity to expound upon the virtues of his theory of constitutional interpretation, which he classifies as “the only game in town.” Non-originalism, he explained, isn’t a theory of interpretation at all. “It’s just not originalism.” When challenged with a hypothetical or historical example of flaws in originalism, Justice Scalia replied, “I don’t have to prove that originalism is perfect. It’s not perfect. I just have to prove that it’s better than anything else.”

One student pointed to the fact that the United States Constitution is shorter than most, if not all, European constitutions to support his belief that it embodied a system of principals that the drafters wished us to adapt to our ever-changing situation. Scalia responded by asking the student if he wanted such important decisions as the extent of the separation of church and state to be made by five out of nine lawyers. He went on to explain that constitutions, by definition, are not mechanisms of change. “They are instruments of rigidity. They are meant to prevent change.”

Constitutional Interpretation

The highlight of the week was Justice Scalia’s inaugural lecture for the school’s new Center for the Study of Constitutional Originalism. The center’s mission is to educate the legal academy, the bar and the bench, law students and the public regarding the meaning of various constitutional provisions and to evaluate the methodologies appropriate to ascertain their meaning.

The lecture was open to the public, and the room quickly filled to capacity. It drew an audience of more than 600 students, alumni and members of the San Diego legal community to Shiley Theater. An additional 200 people observed via closed-circuit television. At the lecture titled “Constitutional Interpretation,” Justice Scalia explained that the framers of the Constitution intended for Congress, acting upon the wishes of the people as expressed through the ballot box, to be the government’s mechanism for change. The Constitution on the other hand, was meant to be an “unchanging rock to which society is chained.”

Scalia explained that there was nothing to guarantee the framers that each succeeding generation would be as magnanimous as the last. It was with this in mind that they created the Bill of Rights as a benchmark below which we dare not depart. Scalia used the example of the cruel and unusual punishment clause to illustrate his point. He pointed to the fact

that one can no more add to the idea of what was cruel and unusual in the late 1700s than one can take away from it.

Justice Scalia believes that Congress has been too worried about finding Supreme Court Justices that will side with them on specific issues and not enough time finding good lawyers who can read law. “Back in 1986, I was confirmed by a vote of 98-0.... Today, I wouldn’t be able to get 60 percent.” This is, he said, because in the eyes of many Senators, his methods of constitutional interpretation have led him the ‘wrong way’ on too many hot button issues.

proof that originalism is non-partisan. In *Romer*, the court held unconstitutional an amendment to the Colorado state constitution that would have prevented any city, town or county from taking action to protect homosexuals from discrimination based on their sexual orientation. This case was decided in accordance with the principles of originalism and was a celebrated victory by liberals across the country.

In *BMW*, on the other hand, the court ruled that excessive punitive damages violate the due process clause of the Constitution. Scalia explained that there is no basis for this in the

“No matter what one’s personal persuasions or ideologies are, the chance for a law student to have contact with a Supreme Court justice, especially one as influential as Antonin Scalia, is an opportunity too spectacular to miss.”

—USD School of Law student Kendra Carney, ’07

Non-Partisan Originalism


Scalia believes constitutional interpretation “is not a conservative versus liberal debate.” Rather, a ‘non-originalist’ may decide a case based on how he feels it *should* come out, while an originalist will adhere to the meaning of the constitution, not allowing partisan politics to influence his or her decision.

For example, Justice Scalia was among the majority in *Texas v. Johnson*, which invalidated several state laws criminalizing the desecration of the American flag. He was personally not happy with the fact that “sandal wearing hippies” were allowed to burn the American flag. “If I were King,” he said, “I would round them all up and throw them in jail.” He went on to explain, however, that the First Amendment clearly protects this form of political speech and that, as an originalist, he was bound to the principles of the Constitution. The irony of an old school conservative becoming the champion of liberal demonstrators was not lost on his wife. “When I came down to breakfast the next morning ... my wife was humming ‘It’s a Grand Old Flag.’... I don’t need that.”

Furthermore, Justice Scalia pointed to the cases of *Romer v. Evans* and *BMW v. Gore*, which came out on the same day, as

Constitution and therefore, this case, which is the darling of conservatives nationwide, was not governed by originalist principles.

Justice Scalia’s warm demeanor, quick wit and disarming sense of humor made his visit a true pleasure and privilege. Third-year law student Kendra Carney said it best, “No matter what one’s personal persuasions or ideologies are, the chance for a law student to have contact with a Supreme Court justice, especially one as influential as Antonin Scalia, is an opportunity too spectacular to miss. So much of our education has been centered upon cases he wrote. For that week, he was not just the author of a decision. He was a professor, a lecturer, a comedian and a real person who was as dynamic as he was approachable.”

Justice Scalia was appointed to the Supreme Court by Ronald Reagan in 1986. Until the appointment of Justice Clarence Thomas, he was the only originalist on the bench. Justice Scalia has visited the University of San Diego School of Law several times in the past and greatly contributes to the school’s tradition of providing its students with a diverse and up-to-date education. 

Military Justice?

School of Law Hosts Forum to Discuss Military Law in a Time of War

By Ashley Wood and Patrick Riedling

Is there such a thing as military justice? Does a military defendant have full and complete access to all pertinent information to assist in the formulation of his or her defense? Does improper political and military command influence exist in high-profile cases making it almost im-

possible for a defendant to receive a fair trial?

How much constitutional protection do we give our servicemen?

In late 2006, eight Camp Pendleton servicemen sat in the brig awaiting trial for the murder of an Iraqi civilian, making military justice a topic of great debate in San Diego and across the country. To find out the answers to these and other questions and to discuss the differing concepts of military and civilian law, the USD School of Law hosted a panel of experts on October 16 at the Joan B. Kroc Institute for Peace & Justice.

"It's lost on many civilians that there is an entirely separate and distinct criminal justice system out there for the military," said moderator and USD Professor of Law Michael Devitt. "Why have a separate system for military justice? Today we'll have an opportunity to explore, discuss and debate this and other related issues."

The panel included former military prosecutor and Deputy District Attorney Kevin Vienna; former military judge and USD School of Law alumnus Robert Wities, '84; and defense attorney Joseph Casas who represented Pfc. John J. Jodka III, one of the accused Marines. Devitt began the evening by presenting the details of the alleged murder of a retired Iraqi policeman,

Hashim Ibrahim Awad, which took place on April 26, 2006, in Hamdania, Iraq:

"A Navy corpsman and seven Marines are accused of kidnapping and murdering Awad in the middle of the night, dragging him from his home, shooting him numerous times and staging a crime scene to make it look as though he was an insurgent

planting a roadside bomb. All have been charged

with kidnapping, conspiracy, larceny, house-breaking, murder and making false statements in conjunction with Awad's death."

Defense attorney Casas began his comparison of military and civil justice proceedings by pointing out that the military courts restrict the defense's access to evidence prior to the appointment of a judge. Until court is convened, there is no judge.

"There's a problem when the rules say to you that you're going to have a fair and impartial hearing at an Article 32 preliminary investigation, yet you don't have the evidence to put on a fair and impartial defense," said Casas.

However panelist Kevin Vienna, a deputy district attorney who previously served as a military prosecutor for the Judge Advocate General Corps of the United States Navy, was able to give perspective from both sides of the coin. He explained that the military and civil justice systems are similar in many ways.

"Like the military, in the civilian court system there is little time to prepare and a lack of access to evidence," he explained. "Ninety-nine percent of [civilian] cases begin with a preliminary hearing. In those hearings, the judge determines what evidence can or cannot be admitted."





Casas also raised concerns over the fact that those awaiting court proceedings are not allowed to post bail pending the outcome of the judicial proceedings. “Because there is no bail in the military system, it begs the questions, ‘Should there be, and if not, why not?’”

Vienna countered by explaining that the military does offer bail. However, the right to bail is often “illusory” since serious charges translate to large bail amounts—typically between \$1 million and \$3 million for murder cases. Most military families cannot even afford the 10 percent bondsman fee, which would be \$100,000 for a \$1 million bail.

Another core difference between civilian and military justice systems is the absence of a standing court in the military system. Civilian courts are regularly in session with an experienced judiciary overseeing the entire process, including the initial hearing. A military court, on the other hand, is not convened until probable cause for a court martial is determined by an Article 32 investigation. Only the actual court martial proceeding is overseen by a judge. The commanding officer, neither an attorney nor a judge, decides whether to refer the matter to a court martial.

“He or she is someone who has ships to sail or marines to put overseas,” says former military judge Wities. “He or she does not spend much time with legal issues. They deal with military issues.”

Similarities do exist when the court martial actually begins. A military courtroom is not unlike a civilian courtroom in process and physical layout with a judge, a jury, a witness stand, and prosecution and defense attorneys. A judge keeps procedural checks on attorneys as they argue their cases before a jury. The only difference may be the jury itself. Military jurors are better educated but more likely to be idealistic, giving heavier weight to character evidence while at the

same time better comprehending the rights of the accused.

And perhaps “a jury of your peers” doesn’t ring as true in the civil courts as it does in the military justice system. Military jurors know what it means to be a soldier and know what it means to follow orders. With that understanding brings the possibility that command influence may play a little part in the process. All three panelists agreed with Vienna pointing out that it may be no different than how political pressures may affect civilian courts.

“[Military court jury] members do want to do the right thing,” says Wities. “Is there command influence? Maybe. I think overall it is a fairly good process. Can we make it better? Absolutely.”

The United States created a uniform code of military justice that has been and will continue to be changed over time.

Since the panel discussion, Petty Officer 3rd Class Melson J. Bacos pled guilty to reduced charges of kidnapping and conspiracy to obstruct justice. Pfc. John J. Jodka III and Lance Cpl. Tyler A. Jackson pled to reduced charges of aggravated assault and conspiracy to obstruct justice. In return for their testimony, prosecutors dropped the more serious charge of murder.

Bacos will serve less than one year in the Camp Pendleton brig, Jodka will serve 18 months and Tyler will serve 21 months. All three could have faced imprisonment for life if they had been found guilty on the more serious charge of murder. Prosecutors said before the hearing that they would not seek the death penalty against the three servicemen.

Lance Cpl. Jerry Shumate is expected to formalize a plea bargain. Lance Cpl. Robert B. Pennington and Sgt. Lawrence G. Hutchins III are awaiting arraignment; and Cpl. Marshall L. Magincalda and Cpl. Trent D. Thomas are scheduled to be court-martialed in February and March 2007, respectively.

The panel discussion on military justice at USD School of Law is one example of the school’s commitment to providing superior educational experiences.

“Giving students personal access to lawyers arguing significant current issues and cases helps students understand and experience the law in action,” says Kevin Cole, dean of USD School of Law. “Our top-notch classroom instruction, lectures and panel discussions such as this one drive home the excellence of USD’s legal education.”

There’s a problem when the rules say to you that you’re going to have a fair and impartial hearing at an Article 32 preliminary investigation, yet you don’t have the evidence to put on a fair and impartial defense.



Joseph Casas, defense attorney for accused Marine PFC John J. Jodka, III.

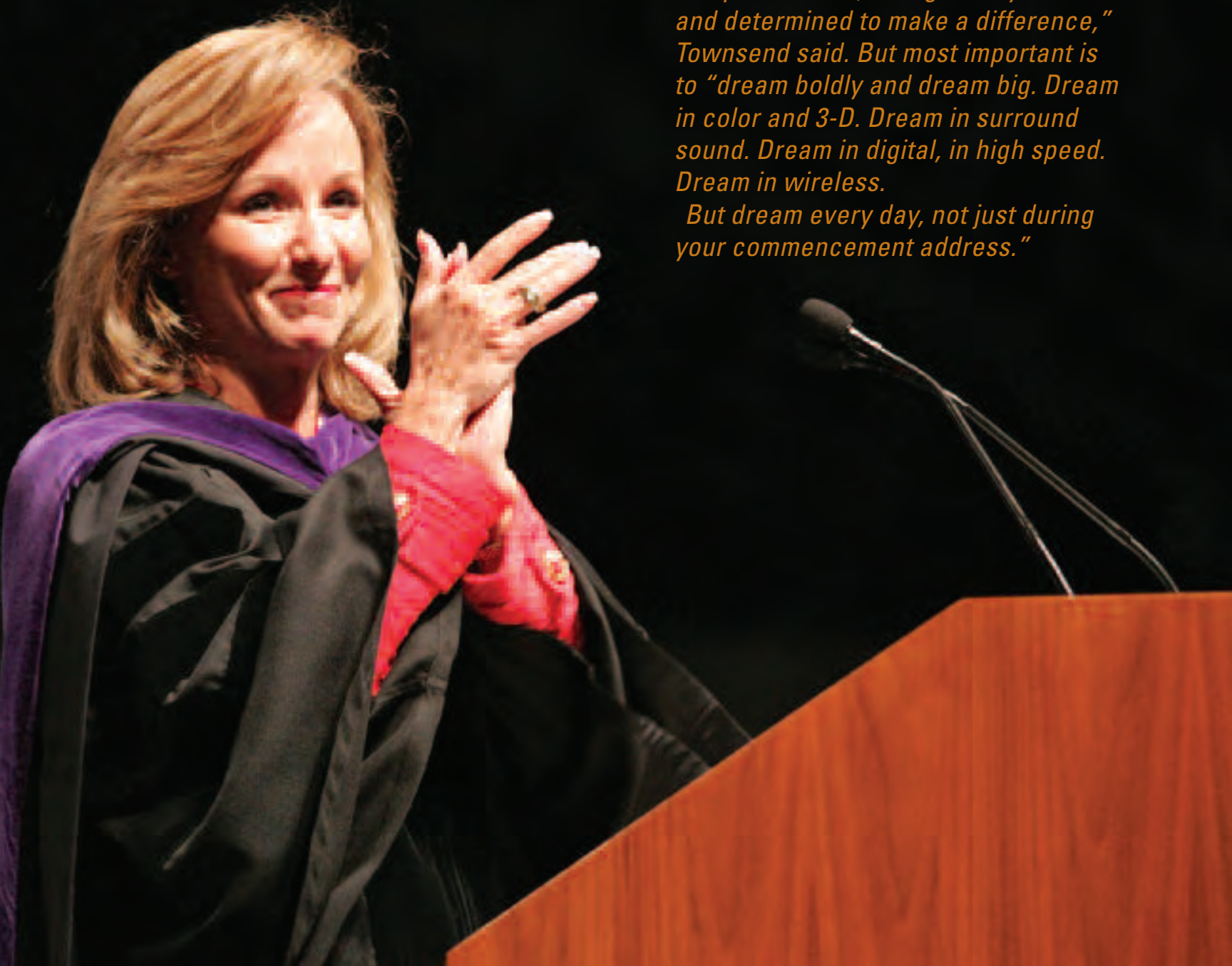
PHOTO CREDIT: ROBERT BENSON FOR THE NORTH COUNTY TIMES.

2006 GRADUATES **DREAM BOLDLY**

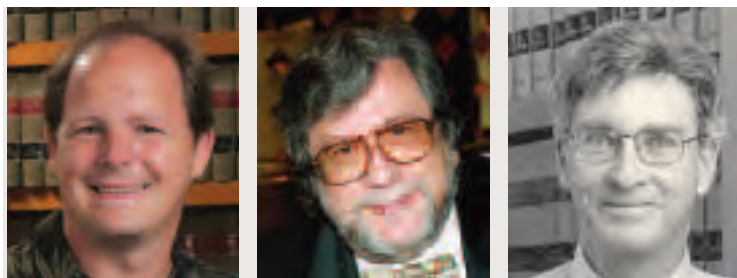
On Saturday, May 27, 2006, thousands of friends and family members looked on as diplomas were awarded to 375 graduates of the University of San Diego School of Law. Frances Fragos Townsend, a 1985 USD School of Law graduate and President Bush's homeland security adviser, delivered the commencement address urging graduates to "dream boldly."

"Approach each day with both passion and persistence, loving what you do and determined to make a difference," Townsend said. But most important is to "dream boldly and dream big. Dream in color and 3-D. Dream in surround sound. Dream in digital, in high speed. Dream in wireless.

But dream every day, not just during your commencement address."



Faculty Awards



From left to right:

- Professor Shaun Martin, 2005-2006 Thorsnes Prize for Excellence in Teaching
- Professor Robert Wesley, 2005-2006 Award for Excellence in Teaching by an Adjunct
- Professor Larry Alexander, 2004-2005 Thorsnes Prize for Outstanding Legal Scholarship

Graduation Awards



Advocacy Awards

Center for Public Interest Law

- Outstanding Contributor to the *California Regulatory Law Reporter*: Hanna V. Gibson
- Outstanding Public Interest Advocate Award: Joshua M. Kagan

Children's Advocacy Institute

- James D'Angelo Outstanding Child Advocate Award: Melanie Wissink Delgado, Kriste Ann Draper, Jessica Lee Paulson and Summer L. Stech

Community Defenders, Inc. Award

- Abby J. Taylor

International Academy of Trial Lawyers Award

- Matthew D. Caron

American Board of Trial Advocates Award

- Outstanding team: Cameron J. Gharabiklou, Brooke M. Maurer and Olivia B. Perry

Michael K. Thorsnes Award

- Excellence in Trial Advocacy: Daniel P. Fallon

Order of Barristers Awards

- J. Bradley Bigos, Matthew D. Caron, Thomas B. Feiter, Jennifer L. Gmitro, Aaron R. Hand, Mark D. Kafka, Jennifer A. Noble, Emily T. Patajo, Victoria Steely and Christopher Turtzo
- Statue of Justice: Jennifer M. Hill



Legal Clinic Awards

Outstanding Civil Clinic Intern: Andy M. Kvesic

Outstanding Criminal Clinic Interns: Suzanne M.

Ferguson (Defense) and Michelle A. Cella (Prosecution)

Outstanding Entrepreneurship Clinic Intern:

Alice M. Dostal

Outstanding Environmental Clinic Intern, the Professor

Robert & Dolores Simmons Award: Joshua M. Simmons

Outstanding Immigration Clinic Intern: Min K. Kang

Outstanding Land Use Clinic Intern: Michael L. Shirts

Outstanding Small Claims Clinic Intern: Lisa M. Gentile

Outstanding Special Education Clinic Intern:

Joseph R. LaMagna

Outstanding Tax Clinic Intern: Richard J. Cordes

1. Margaret Dalton, Administrative Director of the USD Legal Clinics, recognizes Legal Clinic Award winners.

2. Outstanding Civil Clinic Intern award winner Andy Kvesic.

San Diego Law Review Awards

Members: Caryn M. Anderson, Bradley W. Blank, Michelle A. Cella, Elizabeth A. Cree, Brian R. Fellner, Elan D. Kidd, Angel Lawrence, Elizabeth M. McElwee, Joshua D. Meier, Nicholas C. Miller, Tiffany C. Miller, Angelee Mullins, Shaun P. Mulreed, Monica M. Nguyen, Nathan J. Nouskajian, Jason K. Petrek, Robert J. Pribish, Nicole R. Schwarz, Jacqueline S. Treu, Benjamin L. Wagner

Editors: Phillip S. Askim, Brent R. Avery, Hollie K. Bierman, W. DaMarr Boyd, Tahra C. Broderson, Henry G. Broome III, Rebecca A. Byrne, John N. Carter, Gregory A. Davis, Dustin S. Dodgin, Nicholas A. Fromherz, Melanie D. Goforth, Aaron R. Hand, Lori M. Loiselle, Peter R. Lucier, Kevin O. Moon, Danielle K. Morone, Sarah B. Pinkerton, Melissa K. Schamun, Nathan L. Slegers, Aarti K. Sujan

Editor-in-Chief: Hollie K. Bierman



3

3. (From left to right) Wendelin Staats of Germany, Martin Spornberger of Austria and Emidia Silva of Brazil were among international graduates of the Master of Laws in Comparative Law.

4. Dean Kevin Cole recognized accomplishments and presented awards at the 2006 Graduation Awards Ceremony.



4



San Diego International Law Journal Awards

Members: Charles M. Billy, Asparajit Bhowmik, Elizabeth I. Drake, Anna N. Furniss, Nicole Gale Reynolds, Jennifer L. Gmitro, Kate C. Hunter, Theresa M. Johnson, Jeffrey S. King, Joseph R. LaMagna, Emily T. Patajo, Kara M. Peterson, William R. Restis, Kim J. Rowland, Noah D. Sacks, Bardis Vakili, Victor P. White

Editors: Tahra C. Broderson, Tiffany K. Brown, Matthew D. Caron, Daniel Y. Chu, Nils Cousin, Juan J. Fogelbach, John R. Garner, Lucas Gjovig, Maureen A. Bottlieb, Elizabeth Hanley Delong, Anica John, Joshua M. Kagan, Michael D. Klippert, Michael P. Liu, Eric Luedeke, Stephanie J. Ly, Harold W. Magistrale, Emily McGough, Caitlin Y. Pannese, Jessica L. Paulson, Michelle Rapoport, Leslie A. Robinson, Allan L. Segal, Amber A. Ward

Editor-in-Chief: Leslie A. Robinson



5. Nicholas Fromherz looks on as Dean Cole congratulates Caryn Anderson. The two students earned the highest cumulative GPAs in the day and evening divisions.
6. Jennifer Gmitro holds on to her cap and joy at receiving an award from the Order of Barristers.
7. Valedictorian Nicholas Fromherz.
8. Friends and family of Michael Brusselback helped celebrate his achievement.
9. Graduate Daniel Kawamoto smiles after receiving his juris doctor.
10. Mary Blumberg (left) receives a high-five from classmate Lindsey Bley.
11. (From left to right) Classmates Emily Torralba, Derek Wilson, Tiffany Bailey and Charles May stopped celebrating long enough for a photo.
12. Sara Baxter leads a long line of fellow students to the graduation assembly.

Academic Awards

Judge Gerald Brown Progress Award

Greatest Increase in Grade Point Average, First to Third Year:

Nathan W. Bear

Irvin J. Kahn Award

Excellence in Real Property Courses: Dru M. Dillard

Ralph Gano Miller Tax Award

Excellence in Taxation Law: Rebecca L. O'Toole

James R. Webb Environmental Law Award

Outstanding Student in Environmental Law: Joshua M. Simmons

Paul, Plevin, Sullivan & Connaughton Award

Highest Cumulative Grade Point Average in the General Master of Laws, Master of Laws in Business and Corporate Law, or Master of Laws in International Law Programs: Edward William Racek

David Froman and Sandram M. Wagner Comparative Law Award

Highest Cumulative Grade Point Average in the Master of Laws in Comparative Law Program: Hermann Ali Hinderer

Dean's Tax Scholar Award

Highest Cumulative Grade Point Average in the Master of Laws in Taxation Program: Elisa Anne Brandes

Legal Scholarship Awards

Highest Cumulative Grade Point Average, Evening Division:
Caryn M. Anderson

Highest Cumulative Grade Point Average, Day Division:

Nicholas Anthony Fromherz

Valedictorian Award

Nicholas Anthony Fromherz

Order of the Coif 2006

Caryn M. Anderson

Cynthia Marie Arko

Phillip S. Askim

Hollie Klatzko Bierman

Bradley William Blank

W. DaMarr Boyd

Rebecca Ann Byrne

John Nolan Carter

Michelle Cella

Nils Cousin

Gregory A. Davis

Nicholas Anthony Fromherz

Melanie D. Goforth

Aaron Richard Hand

Elan Daniel Kidd

Lori Michelle Loiselle

Peter R. Lucier

Elizabeth M. McElwee

Nicholas C. Miller

Kevin O'Conner Moon

Shaun P. Mulreed

Nathan James Nouskajian

Rebecca Lynn O'Toole

Leslie Robinson

Kimberly J. Rowland

Noah David Sacks

Nicole Renée Schwarz

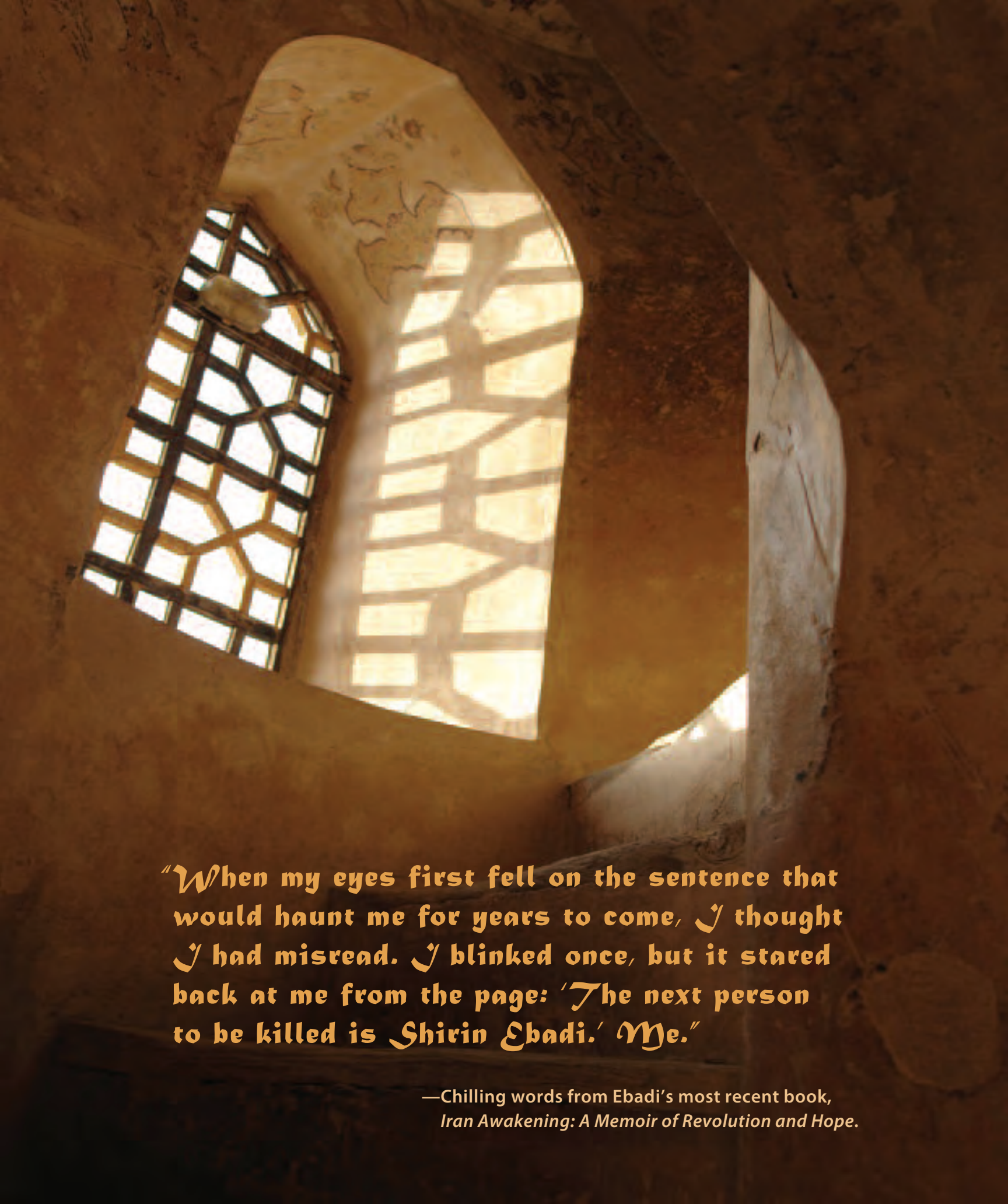
Nathan Leonard James Slegers

Kerrie Taylor

Jacqueline S. Treu

Benjamin L. Wagner 





“When my eyes first fell on the sentence that would haunt me for years to come, I thought I had misread. I blinked once, but it stared back at me from the page: ‘The next person to be killed is Shirin Ebadi.’ Me.”

—Chilling words from Ebadi’s most recent book,
Iran Awakening: A Memoir of Revolution and Hope.

A Light in the Shadows of Reform

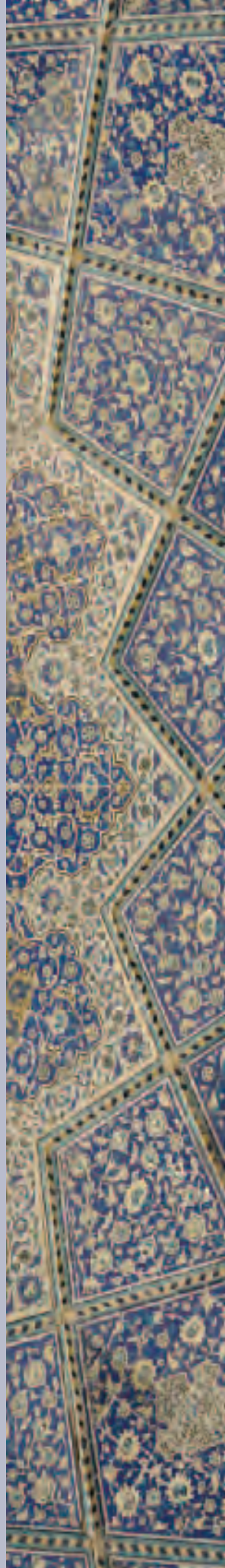
**Iranian Nobel Prize Winner
Shares Her Story of Revolution and Hope**


By Ashley Wood

Shirin Ebadi is not just one of the few women to have won the Nobel Peace Prize; rather, she is the only Iranian *person*—man or woman—to receive this honor. This is an amazing accomplishment considering that the current laws in Iran value the life of a woman as only half that of a man.

In September 2006, Ebadi hypnotized a crowd of approximately 1600 at the Jenny Craig Pavilion on the USD campus as she recounted her fascinating, and sometimes troubling, memoirs of life in Iran. The event was held in conjunction with the Joan B. Kroc Lecture Series and was the inaugural address of the USD School of Law's Jane Ellen Bergman Distinguished Lecture Series.

“There could not be a more appropriate person than our speaker this evening to launch this series,” said USD President Mary Lyons in her introductory remarks.





“People in Iran are unsatisfied with the situation they have and are critical of the government for that. But the promotion of democracy is a responsibility that rests on the shoulders of the Iranian people; it has nothing to do with American soldiers. A military attack on Iran will lead and convince the government to repress freedom seekers under the guise of national security.”

“We are honored this evening to be joined by Dr. Barbara Yates, a close friend of Ms. Bergman, who helped realize Ms. Bergman’s wishes for this lecture series,” said School of Law Dean Kevin Cole. “In the words of Dr. Yates, Ms. Bergman was just an ordinary citizen who gave us an extraordinary gift. She wanted her estate to further awareness about the human rights of women and children, and with tonight’s lecture by Ms. Ebadi, we are able to fulfill Ms. Bergman’s final wishes.”

“Since its inception, the School of Law has been an advocate for social justice,” explains Cole. “For example, our legal clinics have been serving clients unable to afford private attorneys for the past 35 years. This event is just another example of how our curriculum extends beyond the traditional classroom walls, allowing students to learn firsthand how a person can make history through courage and perseverance.”

Speaking through a translator in her native Farsi, Ebadi shared many stories about her work in Iran, which has landed her in jail several times. And with recent word that the Iranian government is threatening to shut down her Defender of Human Rights Center in Tehran, she faces arrest once again.

“Of course, members of the center and I do not intend to shut down the center and we shall continue our activities,” said the spirited Ebadi. “However, there is a high possibility that they will arrest us. The government’s action in this regard is illegal.”


Raised in a modest Tehran household, Ebadi and her two sisters were given the same educational privileges as their brother. She enrolled in the University of Tehran College of Law in 1965 from where she received her law degree. After her graduation in 1969, Ebadi became the first female judge in Iran and in 1975 she was named President of Bench 24 of the Tehran City Court.

However, with the Islamic Revolution of the ayatollahs in 1979, female judges were removed from their positions and Ebadi was made a clerk in the very court where she had once presided. She resigned immediately, but continued to show up at her office and refused to do any work as a sign of protest.

After many jobless years, Ebadi was finally granted a private law license in 1992 and began to take on many high-profile cases, particularly those related to freedom of speech and political freedom. When recognizing Ebadi in 2003, the Nobel committee cited her efforts for democracy and human rights, focused especially on the struggle for the rights of women and children, who are inflicted by numerous humiliations by the Islamic regime.

In her book *Iran Awakening: A Memoir of Revolution and Hope* (Random House, 2006), Ebadi describes many of the atrocities that occurred in her country by sharing details of the cases she handled as a lawyer. In one case involving two convicted rapist-murderers of an 11-year-old Kurdish girl, Leila Fathi, the presiding judge ruled that the men could not be executed because, by Islamic standards, the life of each man was worth twice as much as one woman. The ‘blood money’ for the men’s lives was valued at four times that of their victim.

For this reason, the judge ruled that the victim’s family must raise thousands of



dollars to finance the executions of the men. The girl's parents sold all of their modest possessions, including the clay hut where they slept, in hopes of reclaiming the honor of their daughter by offering this money to the court. But the money raised was not enough.

The desolate family erected a cloth tent outside the courthouse. Two days before the scheduled executions, one of the convicted men escaped prison and the case was reopened. It was at this point that Ebadi became aware of the situation and decided to take on the case.

"I paid a visit to the family at their tent outside the courthouse," she writes in her memoir. "And after listening to their account of the long, sordid tale, I agreed to represent them."

Although the case notes were stark, Ebadi felt that the defense was simple: it was unjust for a girl to be raped and killed, and for her family to have lost every possession and become homeless through the legal proceedings that followed. It was unjust that the victims were now being victimized further by the law.

Over the course of the proceedings, the court acquitted both defendants, then overturned the acquittals, then re-launched the investigation. When Ebadi was finally able to present this defense, the judge responded with a stern warning: "Do not criticize Islamic law."


"I was nervous," explains Ebadi. "While I was arguing Leila's case, the judge repeatedly accused me of speaking against Islam and its sacred laws. In the politico-religious worldview of such traditionalists, a person who challenges Islam is easily considered an apostate. To argue that Leila's family should not have to finance the execution of her killer or to argue that a woman's life should equal a man's before the law, I too had to draw on Islamic principles and precedents in Islamic law."

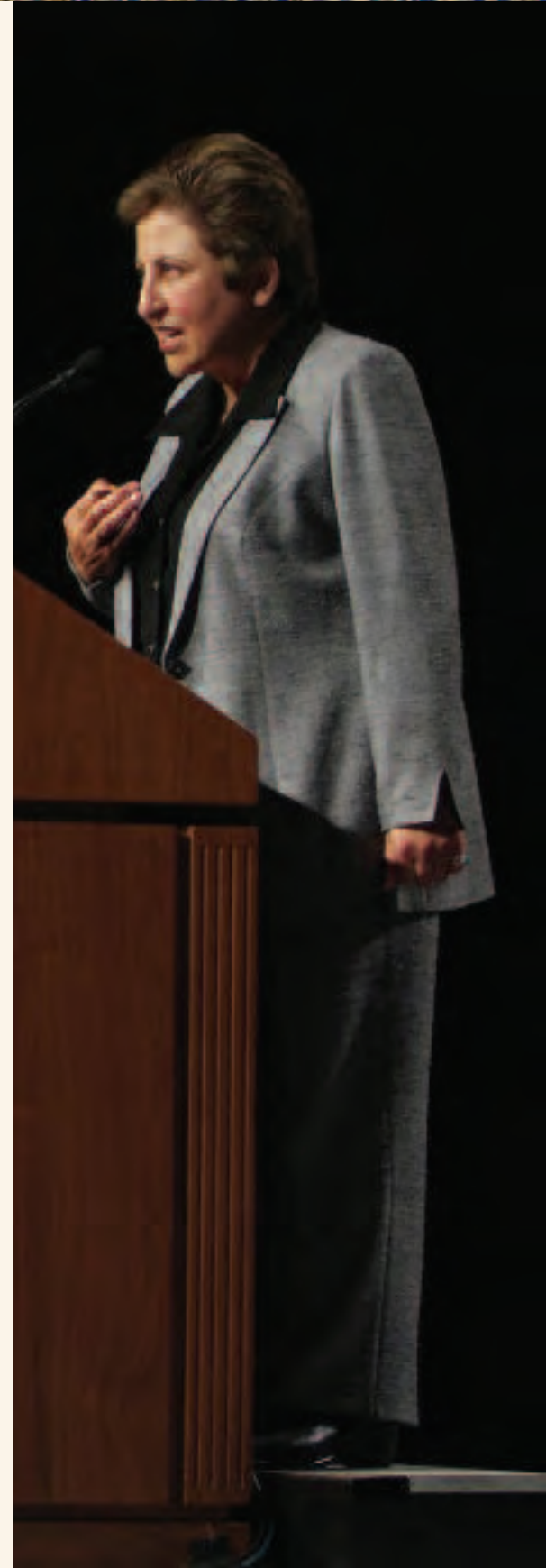
To this day, the case has not been resolved and is still open. Yet, it brought the flaws in Iranian law concerning women and children to the attention of the nation.

"Ms. Ebadi's speech was empowering and has renewed my interest in public interest law," said recent USD law school graduate Maryam Mojjani, '06. "It was inspirational to hear about how this attorney and former judge has led efforts to change discriminatory laws against women and children and to help free political prisoners in Iran. Ms. Ebadi's speech was especially moving because she took on this challenge despite continued threats to her security, harassment and even imprisonment."

Ebadi ended her speech by bringing the audience to its feet with the following:

"People in Iran are unsatisfied with the situation they have and are critical of the government for that. But the promotion of democracy is a responsibility that rests on the shoulders of the Iranian people; it has nothing to do with American soldiers. A military attack on Iran will lead and convince the government to repress freedom seekers under the guise of national security."

She continued, "We love our country Iran. We want an Iran that is free and developed. We will not allow Iran to turn into another Iraq." 



faculty ESSAYS

Bound and Determined? The Questionable Constraints of Originalism

By Miranda McGowan

How should judges decide constitutional cases? Take the language of the 14th Amendment: “no state shall deny to any person ... the equal protection of the laws.” Is this rule broken if states segregate blacks and whites or refuse women licenses to practice law?

Justice Antonin Scalia thinks such questions should be decided by reference to the text of the Constitution as it was originally understood by a reasonable speaker of the language (in 1787-88, or for amendments, when adopted).

Justice Scalia claims that originalism has three virtues. The first is that it simply reflects the way law works. Anything other than this kind of originalism is not constitutional interpretation at all. Revisionism, perhaps, or law-making, but it is not constitutional interpretation. Second, the process is formal. Whatever their personal values, if judges use this method, they will reach the same result. Third, the process yields fixed meanings that do not change over time. A constitution should put rigid limits on government power. If changing times call for new laws, democratic majorities should change them—not unelected judges.

These virtues are at best comparative. Justice Scalia freely admits his originalism does not eliminate judicial discretion. Historical research is hard, and sometimes it does not produce definite answers. Even judges committed to this method may disagree.

Still, this method may constrain judicial discretion more than alternative approaches. If judicial constraint is what we desire most, then originalism may represent a comparative advantage. We can test this method with the two examples above.



When the 14th Amendment was passed, laws treated blacks and whites and men and women differently in many ways. Segregation was commonly enforced in schools. Yet when asked whether he would have voted to strike down the segregation at issue in *Brown v. Board of Education*, Justice Scalia said that he would have: “An originalist is first and foremost a textualist,” he said.

That answer seems appealing. Equal means equal, and segregation institutionalized inequality. But things are not so simple. Segregation formally treated blacks and whites equally—it forbade whites from associating with blacks and blacks from associating with whites.

This formal equality problem can be avoided if we say that the concept of equality must be understood in context. Perhaps segregation was formally equal, but it was still unequal in substance, because the point of segregation was to keep blacks down and keep them from participating in important parts of society. But if words get meaning from context, we come back to the fact that the context in which the word “equal” was adopted was also one in which no one thought the word meant what Justice Scalia would have “interpreted” it to mean.

What about the equal right of women to practice law? In *Bradwell v. Illinois*, in 1872, the court rejected Myra Bradwell’s challenge to a state law that denied women licenses to practice law. (She challenged it under the privileges and immunities clause, but it makes no difference.) Equal protection requires that similarly situated people be treated similarly, but the ordinary person reading the language of the 14th Amendment would not have thought that men and women were similarly situated. A reasonable speaker of the language would no more have thought that “equal” meant women had a right to practice law than he (and in 1872, the reasonable speaker would be a *he*) would have thought it meant that blacks had the right to attend schools with whites.

Perhaps this problem can be avoided by distinguishing the reasonable speaker’s understanding of the law’s words from the way he would apply that law. Perhaps “equal” just means “equal,” and that concept of equality transcends any particular application.



Miranda McGowan

If changing times call for new laws, democratic majorities should change them—not unelected judges.

This tack produces some odd results. First, it divorces the meaning of a word from its common usage, which includes examples of what the word does and does not apply to. Ordinary speakers commonly test words by example and understand the word in light of the examples. If historical evidence shows that the reasonable person understood language in light of social practices, it would betray history and the “original” meaning to read the language abstractly rather than as embedded in the real world in which it was used.

The second oddity has to do with constraining judges. If an originalist judge may abstract meanings away from the context people of the time used to make sense of them, then judges are much less constrained than originalism advertises.

To say that women are now similarly situated to men, and therefore to apply the word “equal” to strike down laws restricting their employment is not faithful to the original understanding of equality. It re-writes the meaning to fit our times and values better. That is just what originalism is supposed to stop.

In some cases, Justice Scalia says that the social practices of the time do restrict the meaning of the Constitution. Because the death penalty was widely practiced when the Constitution was adopted, Justice Scalia thinks it clear that the “cruel and unusual punishments” clause does not prohibit it. (Indeed, the death penalty was the only common law penalty for felonies.) Why do we vindicate the on-the-ground expectations of the Eighth Amendment’s contemporaneous reasonable reader but trump those of the 14th Amendment’s?

Justice Scalia might reply that “cruel and unusual punishments” was a common law term of art, and its applications exemplified its meaning. But the equal protection clause cannot be so easily distinguished. In 1866, many understood the phrase “equal protection of the laws” to guarantee equal *civil* rights, as opposed to equal political rights or equal social rights. Civil rights included the right to contract, the right to own property, and the right to sue and be sued. Laws abridging the right to vote denied political not civil rights, which is why the 15th Amendment was added. Segregated public facilities did not deny equal *civil* rights. Integration was a matter of social equality, and the equal protection clause said nothing about that.

Nevertheless, even if segregated public schools were not unconstitutional in 1866, an originalist judge could still hold that they violated the equal protection clause in 1954. By 1954, public education had become a civil, not a social, right. In 1954, public schools played a central role in American society; in 1866, they did not. Education was not compulsory in 1866; it was a luxury. Some states did not have public schools at all. In 1954, school attendance was compulsory in all states because education was necessary for people to exercise their civil rights.

The death penalty is not so different. Today, the meaning of “cruel and unusual” probably has not changed much from the late 18th century—punishments exacted for the sake of inflicting pain. Today, juries do not impose the death penalty because it is the only punishment available, as they did at common law. (Prisons did not exist until the 19th century.)

Today, juries impose the death penalty out of a desire for retribution. If that is true, the death penalty might be—as it is practiced today—a “cruel and unusual punishment” within the original meaning. An originalist judge could therefore rule the death penalty unconstitutional.

When does a word’s original application constrain a judge and when can it be safely ignored? There is no easy answer. Disputes about how the original application of a word affects a word’s meaning cannot be resolved as a matter of linguistics, logic or fact. We simply cannot say what a reasonable person in 1866, who knew of women’s modern roles or of the changes in the institution of public schools, would make of modern applications of the language “equal protection of the laws.” Would that speaker think we are talking about the same concept with different applications or that we are talking about different concepts altogether? Nor can we say whether a person in 1789 who spoke of “cruel and unusual punishments” would think the death penalty perfectly acceptable if, as is the


case today, all felonies but some kinds of murder were punished by imprisonment.

So the benefits originalism is supposed to produce—constrained judging and fixing the constitution’s meaning in time—are not as clear as we might have thought “originally.” But I should not overstate this point. Certainly, many questions of original meaning can be answered in a way that does not divorce meaning from usage. In those cases, originalism would indeed constrain a conscientious judge. My hunch,

though, is that those are cases in which *any* conscientious judge using *any* methodology—originalism, purposivism, textualism or something else—would reach the same result.

But that is not all. Constraint may be a virtue, but it is not the only one. Compassion is a virtue, too, as are things like justice, fairness and efficiency. What is so great about con-

straint? Justice Scalia’s answer seems to be that originalism just is what it is for a judge to judge rather than legislate. This stipulation counts for less when originalism requires the same kinds of value judgments that Justice Scalia decries when practiced by non-originalist judges.

Perhaps there is a benefit to concealing a judge’s value judgments beneath the veneer of interpreting the “original” meaning of the constitution, but I doubt it. The one indisputable constraint of originalism is that it allows judges to avoid facing up to the fact that a decision not to be flexible is, in the real world, as much a value judgment as is its opposite. They fool only themselves at the cost of honest debate about the choices they are making, which is why judicial nominations provoke pitched battles. If judges inevitably weigh competing values when deciding constitutional cases, I’d rather see those values weighed and debated openly where you and I can see it. But that is just a value judgment. 

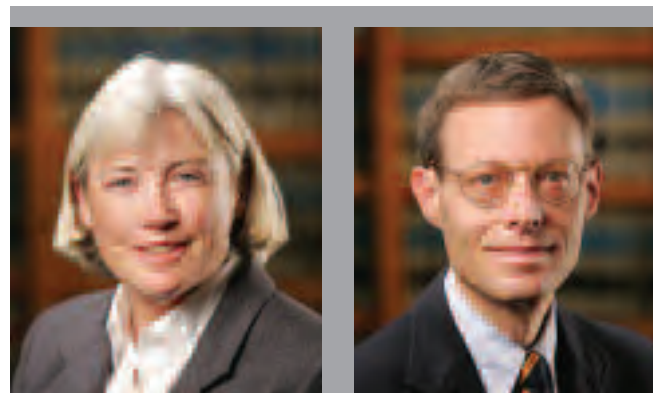
If judges inevitably weigh competing values when deciding constitutional cases, I’d rather see those values weighed and debated openly where you and I can see it.

Death by a Thousand Cuts

By Karen Burke and Grayson McCouch

The federal estate tax has been on the books for 90 years. Although it raises relatively little revenue and affects only the richest one or two percent of the population, the estate tax has long been viewed as an emblem of the American commitment to progressive taxation and equal opportunity. Yet in recent years the estate tax has become widely unpopular, and in 2001 Congress voted to repeal it, albeit only in 2010 and only for one year. In a new book, *Death by a Thousand Cuts: The Fight Over Taxing Inherited Wealth* (Princeton University Press, 2005), Michael Graetz and Ian Shapiro consider three puzzles. How did the estate tax become so unpopular? Why did the campaign for repeal encounter so little resistance? And what held the anti-estate-tax coalition together in demanding complete repeal rather than settling for a pragmatic compromise? Drawing on a wealth of theoretical insights, practical experience and interviews with key players, Graetz and Shapiro offer a fascinating glimpse into the workings of American politics in “the age of polls, sound bites, think tanks, highly organized membership organizations and single-issue coalitions.” No one who reads their book will ever look at the politics of tax reform in quite the same way again.

As recently as 1994, the notion of estate tax repeal hovered at the fringe of national politics. Even traditional opponents of the estate tax—owners of closely held businesses and family farms—sought targeted relief, not repeal. The campaign for repeal began outside the beltway in the early 1990s when an assortment of quixotic but dedicated anti-tax activists, with financial backing from a few extremely wealthy families, began to mobilize public sentiment. According to conventional wisdom, most Americans would not support the repeal of a progressive tax that they themselves would not pay. Public opinion, however, is notoriously multifaceted. Individuals often hold contradictory views (for example, simultaneously favoring tax cuts, public spending and balanced budgets), and their responses vary depending on how issues are framed. The tactical challenge, therefore, was to pitch the anti-tax message in terms that appealed to the general public. Viewed in isola-



Warren Distinguished Professor of Law Karen Burke and Professor Grayson McCouch.

tion, taxes rarely inspire enthusiasm, and the estate tax (relentlessly labeled the “death tax” by opponents) proved an especially vulnerable target.

The attack drew on “studies” propagated by conservative think tanks to bolster claims that the estate tax stifled economic growth and raised little or no net revenue. Opponents also compiled and recycled a series of freely embellished anecdotes depicting the plight of hard-working, thrifty business owners confronted with the prospect of a forced sale of the family business to pay estate taxes. These “horror stories” evoked a powerful emotional response. They appealed directly to the mythology of the American dream of upward mobility, invoking traditional values of work, frugality and entrepreneurship. At the same time, the stories conjured up a graphic picture of the estate tax as a deadly menace stalking ordinary families. Even more importantly, they fueled a sense of moral outrage by portraying the estate tax as an unfair “double tax,” a government-imposed penalty on virtue. By framing the estate tax debate in moral terms as an abstract issue of fairness, the repealers deflected attention from real world concerns about winners and losers, alternative sources of revenue and overall budget and spending priorities. They presented repeal as a seductively simple, unambiguous moral imperative that appeared

to promote both virtue and justice while finessing the tradeoff between efficiency and equity. The promise of a painless “win-win” solution offered the public “an issue they can relate to and values they embrace—not economic arguments they must struggle to understand.”

Small wonder that opinion polls showed rising popular disenchantment with the estate tax. Several widespread misperceptions about the actual impact of the estate tax played into the hands of anti-tax activists. Many Americans are “unrealistically optimistic,” overestimating their own wealth compared to others and exaggerating the probability that they will become richer. (Around 40 percent believe they are or soon will be in the richest one percent!) For opponents of the estate tax, the accuracy of public perceptions mattered far less than polling data that appeared to indicate a groundswell of popular anti-tax sentiment. Having framed the polling questions to elicit the desired responses, the repealers used the results to “rally the faithful, get media attention and intimidate political opposition.” In remarkably short order they took control of “the running room of public opinion.”

To gain political traction, the anti-tax activists approached legislators inside the beltway and mustered support for estate tax repeal. Here again they showed imagination and perseverance. Although they turned to lobbyists and interest groups for assistance, they did not pursue the time-honored technique of making large campaign contributions in exchange for political favors. Instead, they courted an array of groups representing diverse interests across the political spectrum—a veritable rainbow coalition comprising small business owners, farmers, women, minorities, gays and lesbians. They also enlisted “super-constituents”—business owners and community leaders—to bring estate tax repeal to the attention of representatives in Congress. The strategy portrayed repeal as an issue with broad popular support and also provided political cover for legislators who were not strongly committed to the cause but wished to avoid alienating influential constituents. Supporting repeal became easy and politically costless, but opposition could provoke retribution.

The campaign for repeal encountered surprisingly little resistance. A partial explanation comes from the standard account of

interest group politics. The benefits of repeal were concentrated in a small, relatively cohesive group (i.e., the super-rich), while the costs were much less obvious and more diffuse. Other factors were also at work. The defenders of the estate tax were disorganized, outgunned and outmaneuvered. They might have responded in-kind with moral arguments about equal opportunity and democratic values and stories of prodigal heirs “who are born on third base yet behave as though they have hit triples.” Instead, they responded only with dry technical arguments and appeals to outmoded soak-the-rich populism. Another key factor was the complacency of the estate tax’s defenders, who wishfully underestimated their opponents and

downplayed the risk of repeal; by the time they woke to the seriousness of the threat, it was too late. Several interest groups had a stake in saving the estate tax, but they were paralyzed by internal divisions: organized labor, preoccupied with self-preservation, had little interest in tax issues; charities stood to lose substantial bequests but could ill afford to offend wealthy donors who supported repeal; and life insurance companies reflexively favored tax relief even though they derived substantial business from tax-driven financial planning (for them, oppos-

ing repeal was “like the Bayer Corporation trying to scuttle a cure for headaches”). As a result, the repealers found themselves “pushing against an open door.”

As estate tax repeal moved from the political margins to center stage, the focus of activity shifted from scattered single-issue groups outside the beltway to a larger, more centralized coalition. Shortly after taking office in 2001, the Bush administration began to formulate its ambitious tax-cutting plan, including estate tax repeal along with across-the-board income tax cuts. The newly-formed Tax Relief Coalition brought together several powerful business groups to spearhead enactment of the administration’s plan. The coalition signaled mainstream business support for the administration’s plan and also enforced discipline among members. The formation of the coalition also marked a turning point in the campaign for estate tax repeal. To ensure that repeal would retain a high priority in the tax-cutting agenda, opponents of the estate tax had to join the broader coalition and pledge their unwavering support for the administration’s program.




The agenda for progressive taxation is very simple: “death by a thousand cuts.”

In the run-up to the 2001 Act, the coalition held together despite internal tensions and external pressures that threatened to splinter it. One point of friction stemmed from budget constraints on the size and duration of the total tax-cutting package. Legislators adopted several gimmicks to keep the overall revenue loss within agreed limits. To reduce the cost of estate tax repeal and make room for the administration's income tax cuts, they put off repeal until 2010, introduced complex new carryover basis rules for inherited property, and retained a stand-alone gift tax. Moreover, to clear the Senate with less than 60 votes, they added a "sunset" provision to terminate all of the tax cuts beginning in 2011. As the 2001 Act took shape, decision making within the coalition became "a top-down affair." The coalition leaders ceased to consult with their constituents about alternative approaches, and the rank and file members were in no position to dictate terms. By the time the 2001 Act was signed into law, the promise of estate tax repeal had been whittled down to a temporary one-year moratorium in 2010, coupled with the elimination of unlimited basis step-up for inherited property. This outcome may have been acceptable to super-rich constituents who stood to gain the most from repeal and could afford to hold property indefinitely—they may have expected that, once on the books, repeal would eventually be made permanent. But many small business owners and farmers must have been deeply disappointed to discover that estate tax relief was so long delayed, so uncertain and so heavily qualified.

The coalition leaders consistently insisted on full estate tax repeal and categorically rejected proposals to retain the estate tax with lower rates and higher exemptions, even though a compromise would probably have satisfied the concerns of most coalition members and provided more immediate and stable tax relief. In part, the unwillingness to compromise on full repeal stemmed from disenchantment with earlier targeted relief measures that failed to live up to expectations. In addition, the coalition leaders may have understood that it would have been difficult, if not impossible, to agree on any particular compromise solution. Full repeal provided a simple, easily understood goal that helped to hold the coalition together and mask internal tensions. Finally, for true believers, estate tax repeal had become a moral issue on which any compromise was unacceptable as a matter of principle. It remains to be seen, of course, whether estate tax repeal will become permanent or will instead give way to a compromise

proposal leaving the tax in place with reduced rates and a larger exemption. It would be foolish, however, to discount the strategic vision, the tactical skill, the moral fervor or the political clout of the repealers.

For all the sound and fury accompanying the assault on the estate tax, it is only the opening round in a much larger battle looming ahead. For many years anti-tax activists have made no secret of their hostility to the concept of progressive taxation. Their long-term goal is "to strip from our nation's tax system the very idea that those who have more should shoulder a larger share of the tax burden" and to shift the burden away from capital and onto labor. Recognizing that such a radical transformation cannot be accomplished all at once, they have developed a strategic plan of incremental tax cuts, beginning with estate tax repeal and followed by elimination of taxes on capital gains and dividends, expansion of tax-free savings plans and expensing of business assets. The agenda for progressive taxation is very simple: "death by a thousand cuts."

According to the anti-tax creed, the end of progressive taxation is inextricably linked with the end of big government. By "starving the beast" of revenue, the leaders of the anti-tax movement hope ultimately to force "irreversible change," including the dismantling of federal entitlement programs like Social Security and Medicare. This strategy amounts to a risky gamble that immediate tax cuts will lead to future spending reductions. In the short term, the gamble is politically attractive as long as attention focuses exclusively on specific, popular tax cuts rather than unspecified, future spending cuts. Unfortunately, however, the large budget surpluses projected in 2001 have turned into record deficits extending forward as far as the eye can see, and Congress shows no sign of enforcing budget discipline or curtailing popular entitlement programs. As the consequences of deficit spending and unbridled tax cuts become clearer, it will be increasingly difficult to satisfy the demands of the numerous groups clamoring for permanent tax relief. If Congress proves unable to resist further tax cuts and incapable of cutting government spending, "the deficits themselves will be our future," possibly leading either to financial collapse or to a polarized society of haves and have-nots. In that event, the moral clarity and exuberant promises of the anti-tax movement may seem quaint indeed. 

This article originally appeared in 107 Tax Notes 1583 (June 20, 2005).

A catalog of the faculty's significant publications and presentations from September 2005–December 2006.

faculty FOOTNOTES

LAURENCE CLAUS
STEVEN HARTWELL
ADAM J. KOLBER
DAVID S. LAW
ORLY LOBEL
LESLEY MCALLISTER
JOHN (JACK) H. MINAN
GRANT H. MORRIS
MICHEAL RAMSEY
MICHAEL RAPPAPORT
STEVEN SMITH
ALLEN SNYDER
LESTER B. SNYDER
MARY JO WIGGINS
FRED ZACHARIAS



Laurence Claus was named the 2006-2007 Herzog Endowed Scholar. The Herzog award recognizes meritorious teaching or scholarly productivity and provides funds for professional development or for increased time for research or teaching for a one-year period to younger School of Law faculty. He published "Montesquieu's Mistakes and the True Meaning of Separation," 25 *Oxford Journal of Legal Studies* 419 (2005). Claus also presented his paper, "Constitutional Guarantees of the Judiciary: Jurisdiction, Tenure and Beyond," 54 *American Journal of Comparative Law* 459 (2006), at the International Academy of Comparative Law Congress in Utrecht, Netherlands, July 2006.



Steven Hartwell taught as an ongoing faculty member in the Continuing Judicial Studies Program of the California Judicial Education and Research in Pasadena, Calif., October 2006. He presented "Humor, Anger, Rules & Ritual," at the USD Law School faculty forum, November 2006. The article explores the role of humor and anger as social cues in regulating values informally, the role of anger in moving values to formal status when such values are incorpo-

rated into formal rules and then the role of ritual as a vehicle for conveying formal rules with affective power.

Adam J. Kolber's article, "Therapeutic Forgetting: The Legal and Ethical Implications of Memory Dampening," appeared in the 59 *Vanderbilt Law Review* 1561 (2006). He has presented this article at a number of scholarly meetings, including the University of Pennsylvania's Neuroethics Talk Series, the New York University *Journal of Law & Liberty's* Lecture Series, University College London's Law, Mind & Brain Colloquium, the Annual Health Law Teachers Conference and the University of California, San Diego's Neuroscience Meets Society event. In addition, he presented a draft of his paper on informed consent to placebo therapy at the 2006 Health Law Scholars Workshop. Professor Kolber was interviewed by the Canadian Broadcasting Corporation for a radio program on memory that is set to air in February 2007.



David S. Law recently presented a paper at a faculty colloquium at the University of Texas at Austin and gave a guest lecture at the University of California, Hastings College of the Law on the subject of comparative



rights adjudication. He has been selected to participate in a panel on Rights, International Law and Contemporary Crises at the 2007 annual meeting of the Midwest Political Science Association in Chicago. Professor Law is currently working on a pair of interdisciplinary papers. One explores the impact of globalization on the development of constitutional rights doctrine here and abroad. The other discusses the potential causes and likely geopolitical impact of constitutional convergence. He also served as editor of the recently published 15th volume of the *Journal of Contemporary Legal Issues*, which featured a collection of scholarship on the subject of positive political theory and the law, and he continues to evaluate submissions to the *Law & Society Review* and *American Politics Research*.



Orly Lobel has forthcoming articles titled “The Paradox of ‘Extra-Legal’ Activism: Critical Legal Consciousness and Transformative Politics,”

Harvard Law Review (forthcoming, 2007); and “Reflections on Gender Equality and the Regulation of Sexuality in the Workplace: A Response to Kim Yuracko,” 43 *San Diego Law Review* (2006). The comment is part of the symposium on the rights and wrongs of discrimination organized by the law school’s Institute of Law and Philosophy in May 2006. Lobel’s book chapter, “Form and Substance in Labour Market Policies,” will be published in *The Intersection of Rights and Regulation*, (Brownen Morgan, Ed., Ashgate Press). As part of a symposium on employer-based health care, “Walmartization and the Fair Share Act,” will be published in the *St. Thomas Law Review* (forthcoming, 2007) (with Julia Contreras). Lobel’s article “The Four Pillars of Work Law,” was published in 104 *Michigan Law Review* 1539 (2006). It will also be reprinted in *ICFAI Journal of Employment Law* (India).

Lobel’s article, “Interlocking Regulatory and Industrial Relations: The Governance of Worker Safety,” 57 *Administrative Law Review* 1071 (2005) (winner of the 2005 Irving Oberman Memorial Award for best paper on a current legal issue in law and governance), was reprinted in the new casebook, “Mark Tushnet and Lisa Heinzerling,” *The Regulatory and Administrative State* (Oxford University Press). In October, Lobel spoke at a symposium of the *Connecticut Law Review* on “Wal-Mart Matters.” Also in October, Lobel presented her research on legal developments in whistleblower protections at the Inaugural Annual Colloquium on Current Scholarship in Labor and Employment Law at Marquette University. In July 2006, Lobel spoke at the Law and Society Association’s annual meeting in Baltimore and participated at the Labor Law Group Annual Meeting in Saratoga Springs, N.Y. In October, Lobel was featured on National Public Radio (NPR) commenting on ways in which the hit series “The Office” reflects managerial and organizational characteristics of the new workplace.



Lesley McAllister completed an article that is forthcoming in the 59 *Administrative Law Review* (2007) titled, “Beyond Playing ‘Banker:’

The Role of the Regulatory Agency in Emissions Trading.” Based on an empirical study of the Los Angeles Regional Clean Air Markets (RECLAIM) Program, the article analyzes the role of administrative agencies in cap and trade programs, one of the most important regulatory approaches in the new era of market-based regulatory governance. McAllister presented the article at the Law and Society Association’s annual meeting in Baltimore in July 2006 and at the Fourth IUCN Academy of Environmental Law Colloquium at Pace University Law School in October 2006. Also in October 2006, McAllister participated

in a Roundtable on Consumption, Law & the Environment held at Vanderbilt Law School. The roundtable involved discussion of five topics including “Intra- and Intergenerational Equity” and “Religion and Consumption,” as well as “Regulatory and Policy Options,” which was co-led by McAllister. In September 2006, McAllister spoke at the 10th Annual Cities on the Cutting Edge Conference, “The Supreme Court Giveth, Will the People Taketh Away? Kelo, San Remo, Lingle and Beyond...” The event was co-sponsored by the Municipal Law Institute of the City Attorneys Department and the Center for State and Local Government Law at the University of California, Hastings College of the Law, and hosted by the USD School of Law. McAllister presented on the environmental aspects of the Kelo decision and its aftermath. Presently, McAllister is working on a book chapter analyzing environmental litigation in Australia related to climate change. The chapter will form part of a forthcoming volume, “Adjudicating Climate Control: Sub-National, National and Supra-National Approaches,” to be published by Cambridge University Press. McAllister was also appointed to be the new chair of the Air Resources Subcommittee of the ABA State and Local Government Section’s Environmental Law Committee.



John (Jack) H. Minan published an article titled “Wetlands Regulation and the United States Supreme Court,” 38 *Urban Lawyer* 523

(2006). He also supervised the publication of four law student articles, which appear in the same issue. Minan was an invited presenter at the meeting of the American Bar Association (ABA), Section of Environment, Energy and Resources, held in San Diego on October 5, 2006. His paper titled “Sanitary Sewer Overflows: Times, They are a Changin’,” was published in volume one of the program proceedings

dealing with national infrastructure needs. Minan also gave a presentation to the San Diego Environmental Professionals on October 18, 2006. His speech was titled “My Years on the Water Board: Past Reflections and Future Predictions.” Relying on Yogi Berra’s advice that “if you don’t know where you’re going, you might wind up someplace else,” Jack outlined the numerous cases and other topics at the outset of his speech. Minan, who serves as the chair of the Regional Water Board, attended the Water Quality Coordinating Committee (WQCC) meeting in Sacramento on October 30, 2006, and submitted a discussion paper responding to proposed legislative changes to the Regional Water Board structure. Professor Minan has several upcoming professional activities on his agenda. As chair of the Environmental Law Committee of the ABA Section of State and Local Government, Jack is organizing and coordinating the 2007 spring program on supplemental environmental projects

(SEPs) to be held in Puerto Rico. Minan also will be writing an article on SEPs for the program materials. He is the program coordinator for an environmental program to be held by the ABA in San Francisco in August 2007. To occupy his leisure time, Minan has several writing projects underway, including a book scheduled to be published by the ABA in the summer of 2007. The book is called *Golf Law: The Real Rules of Golf*. Its goal is to entertain and enlighten by taking the reader through 19 litigated golf-related cases. The cases include, for example, a golf course’s liability to a neighbor for stray golf shots, a dispute between a wannabe golf professional and the IRS over his tax deductions, the copying of a golf course design as an infringement of intellectual property rights, a patent infringement case involving the design of a golf ball, an endangered species case and the consequences of a golfer drinking too much on the 19th hole—bankruptcy and criminal charges.



USD School of Law Professor Allen Snyder Receives Bernard E. Witkin Award

Professor Allen Snyder was honored in November 2006 with the Bernard E. Witkin Award for Excellence in the Teaching of Law. Created by the Law Library Justice Foundation, the award recognizes members of the San Diego legal community for civic leadership and excellence in the teaching, practice, enactment or adjudication of the law.

Professor Snyder practiced commercial law with a private law firm and poverty law with the San Diego Legal Aid Society before joining the faculty in 1978. He has worked extensively with the National Institute for Trial Advocacy and the San Diego Mediation Center, and serves on numerous boards of non-profit organizations. Most of his teaching is in the legal clinics, including the areas of negotiations, interviewing and counseling, trial practice, and live-client clinics. In addition, he co-teaches classes in law and medicine, and law and mental disorder. He has published articles in the field of patient competency and co-authored *A Practical Guide to California Evidence* with Anthony J. Bocchino and David A. Sonenshein (National Institute for Trial Advocacy), and co-authored *Mental Disorder in the Criminal Process* with USD School of Law professor Grant H. Morris (Greenwood Press).



Grant H. Morris authored a book titled *Refusing the Right to Refuse: Coerced Treatment of Mentally Disordered Persons*, (Vandeplas Publishing,

2006). Morris discusses various devices that are used to deny mentally disordered persons their right to withhold consent to treatment with psychotropic medication even if the individual is competent to make the medication decision and no emergency exists that necessitates treatment to save the person’s life. For example, some courts substitute a “limited due process” model for a “full due process model,” allowing doctors to decide whether the proposed treatment is appropriate, rather than requiring a court’s determination of the patient’s competence to withhold consent. Some states substitute the decision to involuntarily commit the patient, or a decision to appoint a guardian or conservator to assist the patient, for the requirement that the patient be incompetent to make treatment decisions. In some states, the limited emergency exception to the requirement of informed consent has been expanded to allow involuntary treatment of dangerous patients—without requiring that an emergency exists. In some states, the requirement of voluntary and informed consent has been replaced by uninformed or coerced assent. Morris asserts that these various devices erode the competent patient’s right to autonomous medical decision-making. In turn, the right of competent, though mentally disordered persons to refuse treatment is, in reality, refused.



Michael Ramsey published a book review of John Yoo’s book, *The Powers of War in Peace* in the *106 Columbia Law Review* 1450 (2006).

Professor Ramsey gave scholarly presenta-

tions at the University of Utah and the University of California, San Diego and is continuing to work on his book *The Constitution's Text in Foreign Affairs*, with publication expected in 2007.

Michael Rappaport published "The Judicial Filibuster, the Median Senator and the Counter-majoritarian Difficulty," *Supreme Court Review* 257 (2006) (with John McGinnis). In the coming months, he will publish "A Pragmatic Defense of Originalism," 101 *Northwestern Law Review* (forthcoming, 2007) (with John McGinnis); "Majority and Supermajority Rule: Three Views of the Capitol," *Texas Law Review* (forthcoming, 2007) (with John McGinnis); and "The Condorcet Case for Supermajority Rules," *Supreme Court Economic Review* (forthcoming, 2007) (with John McGinnis). In addition, Rappaport presented "The Judicial Filibuster, the Median Senator, and the Counter-majoritarian Difficulty" for the Panel on Court, Executive and Legislative Power Struggles at the American Political Science Association Meetings in Philadelphia, August 2006; and presented "The Case for the Judicial Filibuster" for the debate on the judicial filibuster at the Federalist Society Faculty Colloquium, in Washington, D.C., January 2006.



Steven Smith gave a lecture at the Chicago-Kent law school in March, titled "Taxes, Conscience and the Constitution." The lecture will be published in 23 *Constitutional Commentary* (2006). Smith also presented a lecture at Notre Dame Law School titled, "The (Always) Imminent Death of the Law," in connection with a conference sponsored by Notre Dame and devoted to his book *Law's Quandary* (Harvard University Press, 2004). The spring 2006 issue of



the *Catholic University Law Review* was devoted to essays discussing *Law's Quandary*. In October, Professor Smith contributed a paper to and participated in a conference at the University of Western Ontario on constitutional interpretation. His article, "The Jurisdictional Establishment Clause: A Reappraisal," is forthcoming in the *Notre Dame Law Review*. With Professor Sai Prakash, Smith co-authored an article called "How to Remove a Federal Judge," that was published in the 116 *Yale Law Journal* 72 (2006). Smith's article "Hart's Onion: The Peeling Away of Legal Authority," was published in 16 *Southern California Interdisciplinary Law Journal* (2006), with a response by Professor Michael White of Arizona State. His article, "Is the Harm Principle Illiberal?" is forthcoming in the *American Journal of Jurisprudence*. In early December, Smith is to give one of the keynote lectures at a conference on modernity sponsored by the Notre Dame Ethics Center. His lecture is titled "Modernity, Autonomy and Authority."


Lester B. Snyder has completed his book, *Double Take: Unequal Taxation of Equals*, and has submitted it for publication.



Mary Jo Wiggins was recently elected to the American Law Institute. She is at work on an article titled "Rethinking Plain Meaning: Statutory Interpretation, Textualism and the 'New' Bankruptcy Code." This article considers the implications of the new bankruptcy law for debates on the proper role of textualism in bankruptcy jurisprudence. The article details how congressional work on the 2005 Reform Act differs significantly from its work on the 1978 Act, both in terms of intent and execution. The article then considers the normative implications

of this historical analysis for contemporary debates about the best way to interpret the bankruptcy code. She also has an article forthcoming in the *Business Law News* on small business and single asset real estate bankruptcies under the new bankruptcy law. Dean Wiggins was an invited faculty member at the 32nd Annual Southeastern Bankruptcy Law Institute in Atlanta. In addition, she was an invited faculty member at an ALI-ABA program on bankruptcy practice after the Bankruptcy Act of 2005 in San Diego. Dean Wiggins spoke at the American Bankruptcy Institute's Winter Leadership Conference in Palm Springs, Calif. She was the moderator of a program sponsored by the San Diego Federalist Society on the topic, "Should the City of San Diego File for Chapter 9 Bankruptcy?" She also appeared as a commentator on the KOCT television program "Lawyers on the Line," where she discussed the new bankruptcy law.



Fred Zacharias was named the Class of 1975 Endowed Professor. The Class of 1975 Endowed Professorship, established by the class of 1975 as its 25-year reunion gift to the School of Law, recognizes and rewards teaching, leadership and academic accomplishments. This rotating professorship is held by a law faculty member for two consecutive academic years. Zacharias published "The Images of Lawyers," in 19 *Georgetown Journal of Legal Ethics* (2006) and "Permissive Rules of Professional Conduct," in 91 *Minnesota Law Review* 265 (2006) (with Bruce A. Green). Other recent published works include "The Legal Profession in the Year 2050," in 15 *Widener Law Journal* 253 (2006), "Coercing Clients," in 47 *Boston College Law Review* 455 (2006), and "What Direction Should Legal Advertising Take?" in the 2005 symposium issue of *The Professional Lawyer*, Issue 45 (2006). 



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Alexander A. Harper recently celebrated his 45th wedding anniversary with his wife, Edna, and does arbitration work for the California State Bar. He is semi-retired and an avid motorcycle rider.

'67

John "Jack" Phillips was named a Criminal Law finalist by the *San Diego Daily Transcript*. He currently practices white-collar criminal defense and complex business litigation at Cooley Godward Kronish LLP.

'68

Carmine J. Bua became securities counsel for ChemCon, an alternative fuel manufacturing holding company. Bua has been practicing securities law for more than 25 years and has represented more than 200 companies.

'72

Jac Crawford was appointed to the San Luis Obispo Superior Court in June 2006. He had served as assistant counsel for San Luis Obispo County since 1977.

Frank Ragen and **Thomas J. Warwick** were named Criminal Law finalists by the *San Diego Daily Transcript*.

'74

Todd Stress is working as deputy county counsel for Plumas County. He had been living in San Francisco where he served on the board of directors of the San Francisco City Guides.

'75

Robert Hanna was named a Real Estate & Construction Litigation finalist by the *San Diego Daily Transcript*. He has been an adjunct professor at the USD School of Law since 1985.

'76

David Huffman was named a Family Law finalist by the *San Diego Daily Transcript*.

'77

Jim McElroy is representing the plaintiff in the ongoing Mt. Soledad cross case. No stranger to controversy, McElroy has gone against white supremacists and anti-abortionists during his legal career.

Harold "Mac" McSherry (LL.M.) was appointed interim city treasurer of the city of Carlsbad, Calif. He had previously served as Mayor Bud Lewis' accountant.

'78

David Branfman was named an IP Transactional finalist by the *San Diego Daily Transcript*. He founded Branfman + Associates in 1994.



Frederick Schenk is a partner at Casey Gerry Schenk Francavilla Blatt & Penfield, LLP and the immediate past president of the board of directors of the Civil Justice Foundation. He was honored for his contributions as president over the past year at the foundation's 20th annual "Breakfast of Champions," held in Seattle.

'79

Paul W. Leehey is still living and practicing law in Fallbrook, Calif., where he is active in his church and is the local Rotary Club president. He has a wife, Gail, and three children (8, 12 and 14). He says, "Life is still crazy but fun!"

Thomas L. Ludington was appointed to the U.S. District Court for the Eastern District of Michigan. He had been a Midland County Circuit judge since 1994.

Abby Silverman was named a Labor & Employment finalist by the *San Diego Daily Transcript*. She is the managing partner of Baker & McKenzie's San Diego office.

'80

Alex Barrett lives in Hawaii and works with the state's Department of the Attorney General.

Robert P. Cheney was named one of the Best Lawyers in America by Woodward/White. He is a partner at Sheehan Phinney Bass + Green and lives in New Hampshire.

Lynne Lasry was named a Corporate Litigation finalist by the *San Diego Daily Transcript*. She is a trial partner with Sandler, Lasry, Laube, Byer & Valdez LLP.

Cliff Levy was appointed presiding judge, Workers Compensation Appeals Board for San Diego on September 14, 2006.

Deborah A. Wolfe, founder of the Wolfe Legal Group, was named an Insurance finalist by the *San Diego Daily Transcript*.

'81

Hazel M. Aker is senior vice president of operations and business affairs for Ambrx Inc. She has held senior positions with biopharmaceutical and medical device companies in the past.

Lilia Garcia was named a Municipal & Government finalist by the *San Diego Daily Transcript*. She is currently working for the California State Attorney General's office.

'82

Harvey Berger was named a Labor & Employment finalist by the *San Diego Daily Transcript*. Berger is a partner with Pope, Berger & Williams, LLP.

Craig Dingwall retired from as his role as director and general attorney after more than 23 years with the Sprint Nextel Corporation. He is now of counsel in the communications section of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo in Washington, D.C.

Jane Via was ordained and became the new priest of the independent Mary Magdalene Apostle Catholic Community, which meets every other Sunday evening at Mission Hills United Methodist Church. She is a deputy district attorney in San Diego.

USD School of Law Graduate Named to the Federal Bench



USD law school graduate Thomas L. Ludington, '79, was appointed to the U.S. District Court in eastern Michigan by the U.S. Senate in a unanimous vote June 9, 2006.

President George W. Bush originally nominated Ludington to serve on the federal bench in 2002, but the process was stalled due to partisan contention within the U.S. Senate over Michigan court appointments. Ludington was finally commissioned in June 2006.

Prior to his appointment, Ludington practiced with the law firm of Currie Kendall, P.L.C., from 1980 to 1995. He was elected to the 42nd Circuit Court, State of Michigan, beginning his term on January 1, 1995, and served as chief judge in that court until his appointment to the federal bench. While he served at the 42nd Circuit Court of Michigan, Ludington helped organize the Midland (Mich.) Alliance

for Justice, a foundation for the local bar association that provides legal representation to indigent parties.

Judge Ludington is also a member of several state and local bar associations and belongs to numerous professional and community organizations. He was selected as a Fellow of the American Bar Association and the Michigan State Bar Association. Ludington serves as a director with the Albion College Board of Trustees, Saginaw Valley State University Foundation and Rollin M. Gerstacker Foundation.

'83

Georgine Brave is currently a partner at Brave, Weber & Mack, APLC in San Diego and specializes in family law. She is entering her 12th year of service as a board member for the Women's Legal Center and her sixth year working pro bono for HIV-positive clients through San Diego Volunteer Lawyers.



E. Scott Douglas, a full-time mediator since 1997, mediated his 1000th case in 2005. In 2006, he was appointed to a three-year term as chair of the Mediation/Alternative Dispute Resolution Subcommittee of the National Arbitration and

Mediation Committee, an advisory committee to the National Association of Securities Dealers. His practice focuses on securities, insurance, employment and business disputes. He was recently profiled in the *Los Angeles Daily Journal*.

Susan Etezadi is a San Mateo County Superior Court judge. Previously, she was a prosecutor at the San Mateo District Attorney's Office and a private defense attorney.

'84

Mary Gillick was named a Family Law finalist by the *San Diego Daily Transcript*. She is a partner at Luce, Forward, Hamilton & Scripps LLP.

Bob Gaglione, Tim Principe and Gerry Schmelter began playing softball together

in their first year of law school 25 years ago. Their law school team, the Nosox, won a championship in their last semester of school. Twenty-two years later, the three classmates play together on a team called Independent Counsel, which won the 2006 San Diego County Bar Association Championship in October.

'85

Susan Lee Daly was named a Real Estate & Construction Transactional finalist by the *San Diego Daily Transcript*. She is a partner at Hecht Solberg Robinson Goldberg & Bagley LLP.

Dick Semerdjian was recently named by the *San Diego Daily Transcript* as one of the Top 10 Attorneys in San Diego. In 2006, he was elected by the ABA to the

The Honorable William J. Howatt, Jr., '68, and Susanne Stanford, '75, Receive Bernard E. Witkin Award



Alumni William J. Howatt, Jr., '68, and Susanne Stanford, '75, were honored in November 2006 with the Bernard E. Witkin Award for Excellence in the Adjudication of Law and in the Practice of Law, respectively. Created by the Law Library Justice Foundation, the award recognizes members of the San Diego legal community for civic leadership and excellence in the teaching, practice, enactment or adjudication of the law.

Judge Howatt was appointed to the Superior Court in 1987 by Governor Deukmejian. Prior to his Superior Court experience, Judge Howatt was a municipal court judge in the El Cajon judicial district, appointed in 1979 by Governor Brown. He was elected presiding judge of the San Diego Superior Court for the years 1996-97 and elected assistant presiding judge for the court for the years 1994-95.

Judge Howatt currently serves on the Response to Unfair Criticism of Judges and Courts Committee of the California Judges Association, San Diego County, and has also served three years on the organization's ethics committee. He is a past member of the Trial Court Coordination Advisory Committee and the Presiding Judges Advisory Committee of the California Judicial Council. Howatt also served as the president of the board of trustees of the San Diego County Public Law Library for 2005.

In 1980, Stanford became the first female to be named partner at Luce, Forward, Hamilton & Scripps LLP where she was head of the firm's family law department out of the San Diego office. Now retired, Stanford remains of counsel in the firm's business/complex litigation practice group.

Stanford is a master and member of the executive committee for the American Inns of Court. She is a member of the board of trustees for the Museum of Photographic Arts, and is on the board of directors of the University of San Diego School of Law. She is a past member of various committees of San Diego County Bar Association, including the committee to draft a code of ethics/conduct for civil attorneys; judicial evaluation commissions; and a delegate to bar conventions. She is a past president of the Lawyers Club of San Diego, as well as a past member of the board of governors for California Women Lawyers.



Trial Tort and Insurance Practice Section Council (board of directors) for a three-year term and is the vice chairman of the ABA Business Litigation Committee. He is on the board of directors of the San Diego County Bar Association and a master of the William B. Enright Inn of Court. He is the incoming chairman (2007) of the San Diego International Sports Council—an organization consisting of top San Diego business executives that promotes economic development through sports (such as the NFL Super Bowl, Major League All-Star Game, World Baseball Classic, Action Sport and X-Games) to the San Diego and Tijuana region. Dick is a partner of the law firm Schwartz Semerdjian Haile Ballard & Cauley LLP (www.sshbclaw.com) with offices in San Diego and Los Angeles.

'86

Crystal Crawford is the mayor of Del Mar and general counsel for Molsoft L.L.C., a La Jolla-based software firm.

Leonard M. Shulman's firm, Shulman Hodges & Bastian LLP, successfully completed its 5th Annual 9-11 walk, raising \$50,000 for the Orange County Fire Authority Benevolent Association. The law firm continues its charitable efforts with, among other things, Leonard completing his first year of a two-year commitment as president of the Pediatric Cancer Research Foundation.

'87

Katherine Nakamura is on the San Diego Unified School District Board of Education.

'88

Jon Ferguson was appointed a San Bernardino Superior Court Judge. Prior to that, he served as deputy district attorney from 1989 to 2005.

Roger Haerr was named a Real Estate & Construction Litigation finalist by the *San Diego Daily Transcript*. He is a partner at Luce, Forward, Hamilton & Scripps LLP.

'89

Sharon L. Kalemkiarian was named a Family Law finalist by the *San Diego Daily Transcript*. She is a partner at Ashworth, Blanchet, Christenson & Kalemkiarian.

'91

J. Anthony Girolami was named counsel at Thacher Proffitt & Wood in Mexico City.

Kathleen M. Lewis was appointed by Governor Arnold Schwarzenegger to the San Diego Superior Court. She was also named a Municipal & Government finalist by the *San Diego Daily Transcript*.

'92

Gregg Vermeys is a partner at Kummer Kaempfer Bonner Renshaw & Ferrario in Las Vegas and handles business transactions.

'93

Cindy D. Davis became a San Diego court commissioner after spending six years as head of the San Diego City Attorney's consumer and environmental protection unit.

'95

Andrew Campion is currently senior vice president of corporate development for the Walt Disney Company, responsible for leading the company's assessment and execution of mergers and acquisitions. He and his wife, Shelby, now have two sons, Miles (3 years) and Lou (10 months), and live in Pasadena.

Kim Knowles is a Tuolumne County court commissioner in charge of family law and child custody matters.



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:

Judge Robert C. Baxley, '64, died in his Point Loma home on June 12, 2006, at the age of 76. He was founding editor of the *San Diego Law Review* and went on to have a distinguished legal career culminating on the San Diego Superior Court bench, from which he retired in 1998 due to a stroke. Judge Baxley authored two books and, after retiring, was a world traveler.

Laura Bradley, '93, died suddenly on July, 14, 2006. She lived in Carlsbad, Calif, where she practiced law specializing in elder law. The family has requested that donations be sent to: Women's Resource Center, 1963 Apple St., Oceanside, CA 92054.

Ralph Salvatore Costantino, '72, quietly passed on September 7, 2006. He practiced real estate law for more than 30 years and was married for 51 years. He left behind a large, loving family and will be missed by all who knew him.

Phil Jacobsen, '73, was born March 15, 1924, in Madera, Calif. He served 28 years in the Navy before attending law school and went on to become the attorney general of Guam. He retired as chief deputy tax collector for San Diego County in 1992. He was a noted authority on cryptology and much of his work was dedicated to refuting the controversial theory that code-breaking had provided the United States Government with advanced warning of the attack on Pearl Harbor. Mr. Jacobsen died of pancreatic cancer on August 22, 2006. He was 82.

'96

Brian J. Coffey joined the law firm of Hall, Farley, Oberrecht & Blanton P.A. His practice is concentrated in civil litigation, and he has experience in the areas of insurance defense, construction defect and medical malpractice.

'97

Curtis L. Harrington (LL.M.) recently formed Harrington & Harrington with his wife, Katy. The new firm specializes in patent, trademark, copyright and trade secret matters as well as intellectual property taxation.

Tara Kamin recently joined Allen Matkins Leck Gamble Mallory & Natsis LLP's Los Angeles office as an associate in their land use, environmental and natural resources, and real estate practice group. She can be reached at tkamin@allenmatkins.com.

'98

Tammy Graff Cordova recently gave birth to her second child, Charles Richard III (Charlie), on July 19, 2006. He joins big sister Elizabeth who is 5 years old. Tammy is employed as assistant staff counsel for the Public Utilities Commission of Nevada, in their Las Vegas office.

Sharon Mehlman was named one of The Transcript 10 by the *San Diego Daily Transcript*. She is a partner at Larrabee & Zimmerman LLP.

'99

Susan Franke (LL.M.) started a law firm in Germany. She specializes in international inheritance/succession and commercial/corporate law. The firm has three German partners and one Spanish associate who practice international insolvency, employment and family law. Susan also published a book of last wills for entrepreneurs in 2003.

Brittany Oates was named a Family Law Finalist by the *San Diego Daily Transcript*. She is an estate planning attorney with Centara Legal Group, APC.

'00

David Gebhardt was named a Family Law finalist by the *San Diego Daily Transcript*. He is the senior estate planning attorney at Centara Legal Group, APC.

'01

Danielle Fitz married Lt. Col. Tom Sanzi, USMC on December 2, 2006 in Founder's Chapel. They will be moving back to North Carolina.

Shawn Weber has been named a partner at Brave, Weber & Mack, APLC in San Diego.



'02

Jennifer Eleuteria Baumann and her husband welcomed their second daughter, Natalie Elise, in March 2006. In May 2006, she joined Paul Plevin Sullivan & Connaughton LLP as an associate focusing on the representation and defense of California employers.

Noel C. Gillespie is a partner at Baker & McKenzie LLP. He is a member of the intellectual property practice, focusing on patent prosecution, patent litigation, licensing and other IP matters.

Alexandra Kwoka (LL.M.) was named a family law finalist by the *San Diego Daily Transcript*. She is an attorney at Branton and Wilson, APC.

Doron Ohel was elected treasurer of the Sunnyvale-Cupertino Bar Association. His Cupertino law office practices estate planning and real estate litigation.

Mari-Belleza D. Parlade is a child advocate with two beautiful babies (Genevieve Destiny, 5 and Gregg Anthony, 3) as her driving force. She balances motherhood with running a successful civil litigation practice encompassing Federal RICO actions, white-collar crime, real estate and homeowner litigation, as well as estate planning and corporate bankruptcy. She endeavors to return to California someday by serving as a direct commissioned lawyer for the U.S. Coast Guard.

Anna R. Salusky recently became engaged to her college sweetheart, Kevin Mahoney. They are planning a wedding for summer 2007. Anna has been working at Christensen Schwerdtfeger & Spath LLP for a little more than a year. She enjoys working at a boutique real estate litigation and municipal law firm with other fellow USD law alums.

'03

Brooke Alyea, '03 and **Edward Yount**, '04 were married April 29, 2006 in La Jolla, Calif. and live in Greensboro, N.C.

Brett Coffee (LL.M.) was named a Washington Top Lawyer finalist by the *Washington Business Journal*. In 2004, Brett helped found SemperComm, a charity that enables servicemen and women to communicate with loved ones.

Marion Curry Passmore was married to Matthew Passmore on July 9, 2005 in Solana Beach, Calif.

'05

Jim Fessenden and his wife Allison Fessenden gave birth to their first child, Reese Marie, on October 20, 2006. She weighed 6lbs., 4oz. Jim is an associate at King & Ballow and practices entertainment and employment litigation.

academic year in review

school events

USD faculty and student groups host a variety of extracurricular events that enrich intellectual life at the School of Law. The following events list includes highlights from September 2005–December 2006.



Justice Richard Goldstone Welcome Reception, Justice Richard Goldstone spent the fall semester at USD as Eminent Leader-in-Residence at the Joan B. Kroc Institute for Peace & Justice and Distinguished Jurist-in-Residence at the USD School of Law, September 12, 2005.

The Law and Social Justice Film Series: *The Gatekeeper*, hosted by USD School of Law Professor Orly Lobel with guest speaker Professor Jorge Vargas, September 16, 2005.

Military Court, USD School of Law hosted a special session of the U.S. Court of Appeals for the Armed Services, September 22, 2005.

The Red Mass, a mass traditionally celebrated on the first Monday in October where it coincides with the opening of a new session of the United States Supreme Court, celebrated by the Most Reverend Salvatore J. Cordileone, auxiliary bishop of San Diego, co-sponsored by the USD School of Law and St. Thomas More Society of San Diego, October 5, 2005.

The Law and Social Justice Film Series: *A Civil Action*, hosted by USD School of Law Professor Orly Lobel with guest speaker Professor Dan Mogin, October 6, 2005.

Law Alumni Weekend, included events such as the Alumni Golf Tournament, Law

Alumni Reunion Class Receptions, campus tours, tailgating party and School of Law Jazz Lounge Party, October 6-8, 2005.

"Tipping the Balance: A Review of the Confirmation Process and the Impact on the Future Direction of the U.S. Supreme Court," presented by professors Carl Auerbach, Gail Heriot, Michael Ramsey, Michael Rappaport and Daniel Rodriguez. The program discussed the Supreme Court's confirmation process, October 8, 2005.

Young Tax Lawyers of the State Bar of California Taxation Section Meeting, sponsored by the taxation section of the California State Bar and presented by The Honorable Judge Diane L. Kroupa of the United States Tax Court. Judge Kroupa offered an explanation of what is new with the tax court and a discussion of certain tax court procedural issues, October 18, 2005.

The Law and Social Justice Film Series: *The Verdict*, hosted by USD School of Law Professor Orly Lobel with guest speakers Professors Michael Devitt and Fred Zacharias, October 19, 2005.

Careers in Business Law, hosted by the Business Law Society and presented by Jennifer Kind, Cooley Godward; Robin Stemen, Equity Management, Inc.; and Evelyn Wiggins, Principal, Juniper Sanderson, October 20, 2005.

The Law and Social Justice Film Series: *Enron: The Smartest Guys in the Room*, hosted by USD School of Law Professor Orly Lobel with guest speaker Professor Frank Partnoy, October 28, 2005.

"Racism and Minority Pursuits in the Law," sponsored by the USD Asian Pacific American Law Students Association (APALSA), October 2005.

Bowes-Madison Distinguished Speaker Series: "Let's Talk About Segregation," with guest speakers Abigail Thernstrom, vice chair of the U.S. Commission on Civil Rights, and Stephan Thernstrom, Winthrop Professor of History at Harvard University, sponsored by the USD School of Law, November 3, 2005.

"Nation on Edge: Six presentations on the subject of land development and legal control in disaster-prone and other environmentally sensitive areas," November 7, 2005.

Distinguished Alumni Award Luncheon, presented by USD School of Law and the Law Alumni Association Board of Directors, honored James Krause, '75, and Michael Shames, '83, November 9, 2005.

Young Tax Lawyers of the State Bar of California Taxation Section Meeting, sponsored by the taxation section of the California State Bar and presented by Patrick Martin, Esq. and Enrique Hernández-Pulido, Esq. of Procopio, Cory, Hargreaves & Savitch LLP. The attorneys discussed the Foreign Investment in Real Property Tax Act (FIRPTA) and outbound Mexican real estate tax issues, November 15, 2005.

The Law and Social Justice Film Series: *Born Into Brothels*, hosted by USD School of Law Professor Orly Lobel with guest speaker Bob Goff, '85, president of Restore International, November 16, 2005.

Wohlmuth Highway Colloquium, "Law in Real Time: Rules of Engagement for the New Legal Discourse," presented by Bernard Hibbitts, professor of law and the associate dean of communication and information technology, University of Pittsburgh, November 16, 2005.

"Conference on Conceptual Issues in Constitutional Law," sponsored by the Institute for Law & Philosophy, November 18-19, 2005.

The Law and Social Justice Film Series: *Philadelphia*, hosted by USD School of Law Professor Orly Lobel with guest speaker Professor Miranda McGowan, November 30, 2005.

"Investigate Your Case: CSI for Lawyers," moderated by Alex Landon, Esq., and Professor Laura Berend and presented by Michael Burt, Esq.; Richard Ernest; Dr. Harry Bonnell; Professor Edward Imwinkelried; Janice Ophoven, M.D.; and Christopher Plourd, Esq. Seminar focused on legal and evidentiary challenges to forensic evidence including: fingerprints, ballistics, forensic pathology, child injuries and DNA, January 28, 2006.

Law Student Services Fair and Raffle, February 14, 2006.

The 2006 USD School of Law—Procopio International Tax Institute's U.S.-Mexico-Canada Cross-border Tax Issues, featured preeminent tax advisors discussing U.S.-Mexican cross-border tax law, sponsored by USD School of Law and Procopio, Cory, Hargreaves & Savitch LLP, February 23-24, 2006.

Young Tax Lawyers of the State Bar of California Taxation Section Meeting, sponsored by the taxation section of the California State Bar and presented by Phil Jelsma, a partner at Luce, Forward, Hamilton & Scripps LLP. Jelsma discussed AB

339, the California Revised Limited Partnership Act, and a legislative proposal to adopt a Statutory Trust Act in California, February 28, 2006.

Paul A. McLennon, Sr. Honors Moot Court Competition, with guest presiding judge The Honorable Diane P. Wood, Circuit Judge, United States Court of Appeals for the Seventh Circuit, sponsored by Professor Michael R. Devitt, his family and the Appellate Moot Court Board, March 3, 2006.

2006 Law School Visit Day for accepted applicants, included a tour, financial aid and career services overviews, a class presentation and lunch with members of the campus community, sponsored by the USD School of Law, March 6, 2006.

"America's National Security: The View from Space," presented by Michael Krepson, co-founder and president emeritus of the Henry L. Stimson Center in Washington, D.C., and sponsored by the Law & Diplomacy Club at the USD School of Law and the Joan B. Kroc Institute for Peace & Justice, March 7, 2006.

Young Tax Lawyers of the State Bar of California Taxation Section Meeting, sponsored by the taxation section of the California State Bar and presented by Cheryl H. Dean, the Planned Giving Counsel at The Scripps Research Institute. Dean discussed tax implications of planned giving and career insights, March 21, 2006.

2006 Law School Visit Day for accepted applicants, included a tour, financial aid and career services overviews, a class presentation and lunch with members of the campus community, sponsored by the USD School of Law, March 27, 2006.

LRAP Poker Tournament, event to raise money for the Loan Repayment Assistance Program (LRAP), sponsored by The Stu-

dent Bar Association, the Public Interest Law Foundation and the Alumni Relations Department of the USD School of Law, March 31, 2006.

"Losing Our Competitive Edge? The Importance of High-Skilled Professionals in Comprehensive Immigration Reform," a panel discussion on the impact of current federal immigration policies on the ability of high-technology and other U.S. firms to recruit and retain highly skilled employees from outside the U.S. Co-sponsored by the USD School of Law, the Trans-Border Institute, the Scripps Research Institute, the San Diego chapter of the American Immigration Lawyers Association, and the Immigration Policy Center at the American Immigration Law Foundation, March 31, 2006.

22nd Nathaniel L. Nathanson Memorial Lecture Series: "Property as a Human Right, According to the European Convention of Human Rights," with guest speaker Georg Röss, professor of international law, International University Bremen, and former judge of the European Court of Human Rights, April 4, 2006.

LL.M. In Taxation Information Session: "What Can Tax Law Do For Your Career?" information series about the USD School of Law LL.M. program, April 4, 2006.

Final Round of the 5th Annual Intramural Mock Trial Tournament, sponsored by the Association of Trial Lawyers of America (ATLA), April 23, 2006.

2006 Law School Visit Day for accepted applicants, included a tour, financial aid and career services overviews, a class presentation and lunch with members of the campus community, sponsored by the USD School of Law, April 24, 2006.

Young Tax Lawyers of the State Bar of California Taxation Section Meeting, sponsored by the taxation section of the California State Bar and presented by Judge Stephen Swift of the United States Tax Court. Swift discussed the path he took in becoming a judge and offered guidance to those interested in becoming a judge, April 25, 2006.

Reception for Alumni and Newly Admitted Law Students in San Diego, hosted by the USD School of Law and the Office of Development & Alumni Relations, April 26, 2006.

"How to Use Your Law and/or MBA Degree to Get into Sports Management," presented by law alumnus Leonard Armato, '78, CEO and commissioner of the AVP Pro Beach Volleyball Tour, April 26, 2006.

"More than Moussaoui: A Panel Discussion of Ethics in the Criminal Context a Look at the Larger Issues," presented by members of the Federal Defenders, the San Diego District Attorney's Office and the United States Attorney's Office, April 27, 2006.

"On the Front Lines of Justice," presented by Steve Bogira who is the author of *Courtroom 302*, nominated for the 2005 *Los Angeles Times* Book Prize. Bogira discussed why African-Americans make up 12% of the general population and 47% of the prison population, why the U.S. has more prisoners today than ever before and why the "drug war" has led to rampant police perjury and corruption, May 1, 2006.

2006 USD Alumni Awards honored School of Law alumnus Susanne Stanford, '75, May 6, 2006.

Mediation Training Program, co-sponsored by the ABA Senior Lawyers Division and the USD School of Law, August 21-25, 2006.

Special Screening—*Soul of Justice: Thelton Henderson's American Journey*, a film by Abby Ginzberg, co-sponsored by the Earl B. Gilliam Bar Association, San Diego La Raza Lawyers, Pan-Asian Lawyers of San Diego and the Black Law Students Association of USD, August 26, 2006.

U.S. Supreme Court Justice Antonin Scalia served as Distinguished Jurist-in-Residence August 28-31 and marked the inauguration of the School of Law's new Center for the Study of Constitutional Originalism with a guest lecture discussing constitutional interpretation, August 30, 2006.

10th Annual "Cities on the Cutting Edge" Conference, examined consequences of court decisions, legislative and initiative responses, and what they mean for California's cities and counties. Co-sponsored by the Municipal Law Institute of the City Attorneys Department and the Center for State and Local Government Law at University of California, Hastings College of the Law and hosted by the USD School of Law, September 6, 2006.

Jane Ellen Bergman Distinguished Lecture Series in conjunction with the Joan B. Kroc Distinguished Lecture Series: 2003 Nobel Peace Laureate Shirin Ebadi addressed a crowd of 1600 alumni, students and friends at the Jenny Craig Pavilion on September 11, 2006.

"Why Foreign Law?," presented by Pierre Legrand, visiting professor of law at USD and law professor and director of the postgraduate program in comparative legal studies at the University of Paris-Sorbonne, September 19, 2006.

The Law and Social Justice Film Series: *North Country*, hosted by USD School of Law Professor Orly Lobel with guest speakers attorneys Joann Rezzo and Alice Robertson, September 28, 2006.

The Red Mass, a mass traditionally celebrated on the first Monday in October where it coincides with the opening of a new session of the United States Supreme Court, co-sponsored by the USD School of Law and St. Thomas More Society of San Diego, October 3, 2006.

Law Alumni Weekend, included events such as the Alumni Golf Tournament, Law Alumni Reunion Class Receptions, campus tours, tailgating party and School of Law Jazz Lounge Party, October 6-8, 2006.

35th Anniversary of Legal Clinics Luncheon, celebrated 35 years of USD School of Law legal clinics, October 7, 2006.

Military Justice Panel Discussion included former military prosecutor and Deputy District Attorney Kevin Vienna; former military judge and USD School of Law alumnus Robert Wities, '84; and defense attorney Joseph Casas who represented Private First Class John J. Jodka, one of eight servicemen accused of murder, sponsored by the USD School of Law, October 16, 2006.

San Diego Smart Grid Summit, presented by USD Energy Policy Initiative Center (EPIC), October 25-26, 2006.

The Law and Social Justice Film Series: *Tying the Knot*, hosted by USD School of Law Professor Orly Lobel and the National Lawyers Guild with opening commentary by Professor Barbara J. Cox, October 26, 2006.

Bowes-Madison Distinguished Speaker Series: "The Conservative Case for an Activist Judiciary," with guest speaker Clint Bolick, author as well as president and general counsel of the Alliance for School Choice, sponsored by the USD School of Law, October 30, 2006.

Sports & Entertainment Law Symposium, hosted by Sports & Entertainment Law Society of USD School of Law and Entertainment & Sports Law Society of California Western School of Law. Speakers included Jack Bechta, Bechta & Parker, LLC; Michael Bernstein, The Upper Deck Company; David Cohen, Los Angeles Angels of Anaheim; David Branfman, Branfman & Associates; Craig Fenech, The Sparta Group, LLC; Randy Grossman, Law Offices of Randy M. Grossman; Edwin F. McPherson, McPherson & Kalmansohn, LLP; Jim Miller, Jr., Off-Tackle Sports Management; and Monica Zent, Zent Law Group, November 11, 2006.

"Networking Strategies: Do's and Don'ts!" panel discussion of how best to professionally network. Speakers included James Ballard, Esq., '95, partner, Schwartz Semerdjian Haile Ballard & Cauley LLP; Victoria Chen, '92, assistant general counsel, Qualcomm, Inc.; Dennis Doucette, Esq., '86, hiring partner, Luce Forward Hamilton & Scripps LLP; Denise Hickey, '94, director—international property, Quidel Corporation; and Francisco Marty, Jr., '93, Commissioner of the San Diego Superior Court (formerly of the San Diego Office of the Public Defender), November 14, 2006.

The 2006 USD School of Law Distinguished Alumni Award Luncheon, presented by the Law Alumni Association Board of Directors to G. Edward Arledge '73 and Thompson Fetter '67, sponsored by the Office of Development and Alumni Relations, November 16, 2006.

First Annual Battle of the Brains, trivia bowl contest between USD law students and staff against the brightest and most popular USD law professors, sponsored by the law school's Diversity Committee, November 15 and 29, 2006.

USD Criminal Law Society Kick-Off Mixer, sponsored by the newly founded USD Criminal Law Society, November 16, 2006.

Bar Swearing-In Breakfast, USD School of Law alumni who passed the Bar Exam were invited to a special Bar Swearing-In Breakfast hosted by Dean Kevin Cole and the School of Law immediately prior to the Bar Swearing-In ceremony, December 1, 2006. 

academic year in review

faculty colloquia

A listing of the faculty colloquia presented from August 2005–December 2006.



USD School of Law professor Laurence Claus.

Lawrence A. Alexander, Warren Distinguished Professor of Law, USD School of Law: “Scalar Properties, Binary Judgments,” August 26, 2005.

Mark A. Lemley, William H. Neukom Professor of Law, Stanford Law School: “Patenting Nanotechnology,” September 2, 2005.

Julian Ku, associate professor of law, Hofstra University School of Law: “International Delegations and the New World Court Order,” September 8, 2005.

Justice Richard Goldstone, Distinguished Jurist-in-Residence and Eminent Leader-in-Residence at the Joan B. Kroc Institute for Peace & Justice, University of San Diego: “Constitutional Court of South Africa,” September 9, 2005.

Jason Kilborn, assistant professor, Paul M. Hebert Law Center, Louisiana State University: “The Hidden Life of Consumer Bankruptcy Reform: Danger Signs for the New U.S. Law From Unexpected Parallels in the Netherlands,” September 16, 2005.

Lisa P. Ramsey, assistant professor, USD School of Law: “Intellectual Property Rights in Advertising,” September 23, 2005.

Lior Strahilevitz, assistant professor, University of Chicago: “Exclusionary Amenities” (including zoning/land use and race discrimination), September 30, 2005.

Rex Ahdar, associate professor, Otago University, New Zealand: “The Idea of Religious Markets,” October 6, 2005.

Saikrishna B. Prakash, Herzog Research Professor of Law, USD School of Law: “How to Remove A Federal Judge: Understanding Good Behavior Tenure,” October 14, 2005.

Richard Redding, professor of law and director of the law and psychology program, Villanova University School of Law: “The

Brain-Disordered Defendant: Developing A Neurojurisprudence for the 21st Century,” October 21, 2005.

Jim Lindgren, professor of law, director of the Demography of Diversity Project, Northwestern University School of Law: “Testing Social Dominance: Is Support for Capitalism and Opposition to Income Distribution Driven by Racism and Intolerance?” October 26, 2005.

Kathy Zeiler, associate professor, co-director of the Law and Economics Workshop Series, Georgetown University Law Center: “Healthcare Policy,” December 2, 2005.

Stephen F. Smith, professor of law, University of Virginia School of Law: “‘Innocence’ and the Guilty Mind,” December 16, 2005.

Bradley Wendel, associate professor, Stanford Law School: “Lawyers, Citizens, and the External/Internal Distinction,” January 20, 2006.

Barbara H. Fried, William W. and Gertrude H. Saunders Professor of Law, Stanford Law School: “Risk and Rights,” January 27, 2006.

Richard Epstein, James Parker Hall Distinguished Service Professor of Law, faculty director for curriculum, and director of the Law and Economics Program, The

University of Chicago Law School: “ProCD v. Zeidenberg: Do Doctrine and Function Mix?” February 3, 2006.

Carl Auerbach, distinguished professor, USD School of Law: “Legislative Facts in *Gutter v. Bollinger*,” February 10, 2006.

Neil Siegel, assistant professor of law and political science, Duke University School of Law: “Getting off the Dole or Going Bananas: A Strategic Analysis,” February 17, 2006.

Daniel A. Farber, Sho Sato Professor of Law and director of the Environmental Law Program, University of California, Berkeley, School of Law: “The Rule of Law and the Law of Precedents,” February 24, 2006.

Adam J. Kolber, assistant professor, USD School of Law: “Therapeutic Forgetting: The Legal and Ethical Implications of Memory Dampening,” March 2, 2006.

Kathryn Zeiler, associate professor, Georgetown University Law Center: “Asymmetries in Exchange Behavior Incorrectly Interpreted as Evidence of Prospect Theory,” March 10, 2006.

Kristin E. Hickman, associate professor, University of Minnesota Law School: “The Need for Mead: Rejecting Tax Exceptionalism in Judicial Deference,” March 24, 2006.

Darren Schreiber, assistant professor of political science, University of California, San Diego: “Evaluating Political Questions: Evidence from Functional Brain Imaging,” April 7, 2006.

Mary Coombs, professor of law, University of Miami School of Law: “How Not to do Medical Malpractice Reform: Florida as a Case Study,” April 10, 2006.

Thomas Smith, professor of law, USD School of Law: “Web of Law,” May 5, 2006.

Antonio Tomarchio, graduate student in mathematical engineering, Politecnico di Milano: “Dynamics of Legal Citation Networks (selected excerpts),” May 5, 2006.

Matthew D. McCubbins, professor of political science, University of California, San Diego and **Daniel B. Rodriguez**, Warren Distinguished Professor of Law, USD School of Law: “When Does Deliberation Improve Decision-making?,” May 12, 2006.

Saikrishna B. Prakash, Herzog Research Professor of Law, USD School of Law: “Declaring War,” August 1, 2006.

Lesley K. McAllister, assistant professor, USD School of Law; **Michael D. Ramsey**, professor of law, USD School of Law; and **David McGowan**, professor of law, USD School of Law: “2006 Supreme Court Decisions and Forecasts,” August 25, 2006.

David McGowan, professor of law, USD School of Law: “Politics, Office Politics, and Legal Ethics: A Case Study in the Strategy of Judgment,” September 1, 2006.

Paul Finkelman, President William McKinley Professor of Law and Public Policy and senior fellow in the Government Law Center, Albany Law School: “Foreign Law and American Constitutional Interpretation: A Long and Venerable Tradition? Or Why Justice Scalia Needs a CLE in Legal History,” September 8, 2006.

William Eskridge Jr., John A. Garver Professor of Jurisprudence, Yale Law School: “Gay Marriage: For Better or for Worse?” September 15, 2006.

William A. Edmundson, professor of law and philosophy, University of Georgia School of Law: “The Virtue of Law-Abidance,” September 22, 2006.

On Amir, assistant professor of marketing, University of California, San Diego Rady School of Business: “In Search of Homo Economicus: Preference Consistency, Emotions and Cognition,” October 3, 2006.

Mathew D. McCubbins, visiting professor, USD School of Law, and professor of political science and Chancellor’s Associates Endowed Chair, University of California, San Diego; and **Cheryl Boudreau**, University of California, San Diego: “The Battle for Truth: Theory and Experiments Regarding Competition and the Adversarial System,” October 6, 2006.


David Stephen Law, assistant professor, USD School of Law: “Globalization and the Future of Constitutional Law,” October 13, 2006.

Darren Schreiber, assistant professor of political science, University of California, San Diego: “This Is Your Brain on Race,” October 19, 2006.

Laurence P. Claus, professor of law, USD School of Law: “The One Court That Congress Cannot Take Away: Singularity, Supremacy and Article III,” October 27, 2006.

Steven Hartwell, professor of law, USD School of Law: “Humor, Anger, Rules & Rituals,” November 3, 2006.

Peter Blanck, professor, Syracuse University College of Law: “Disability: Past, Present and Future,” December 1, 2006.

Michael B. Rappaport, professor of law, USD School of Law: “Reforming Article V: The Problems Created by the National Convention Amendment Method and How to Fix Them,” December 8, 2006. 

endowment campaign report

In just a few decades, the University of San Diego School of Law has grown from a small school with a part-time evening program to a nationally ranked center for legal education. To support this continuous upward trend and to build for the future, the Campaign for the University of San Diego School of Law was launched with the goal of doubling the size of the law school's endowment.

Over the years, endowments grow in value through sound investments, providing a major source of supplemental income for the school. Instead of depending entirely on revenues generated from tuition to fund its annual budget, this campaign will allow the law school to make significant long-term investments in its faculty, students and academic programs.

The School of Law gratefully acknowledges the following gifts and pledge commitments for our endowment campaign thus far:

Cash Gifts

San Diego County District Attorney	\$1.5 million
Anonymous	\$500,000
Lisa and David S. Casey, Jr. '74	\$250,000
Patricia and Bert Degheri BA '61	\$250,000
Estate of Herbert Peterfreund	\$156,855
Virginia C. Nelson '79	\$104,000
Jane Trevor Fetter and Thompson Fetter '67	\$100,000
Linden Root Dickinson Foundation/John R. Henkel '77	\$100,000
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Mary J. and Clayton M. Anderson '76	\$50,000
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Gwen T. and Robert Y. Nagata '70	\$50,000
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Planned Gifts and Bequests

The Honorable Lynn Schenk and Professor C. Hugh Friedman	\$2 million
Susan S. '86 and Jerry G. Gonick LLMT '84	\$1.75 million
Gale M. and James C. Krause '75	\$1 million
Deborah J. '84 and Michael J. Rider '83	\$150,000
Susanne Stanford '75	\$150,000
Leah S. Nathanson	\$50,000
Judy and Gary W. Schons '76	\$50,000



Dennis J. Doucette '86 is establishing an endowment fund to be used at the discretion of the dean of the school of law to address the highest priorities and needs of the school.

Virginia Nelson '79 directed her gift equally between the existing Lou Kerig Endowed Scholarship Fund and to create and endow the Virginia C. Nelson Graduation Prize in Advanced Advocacy.

The Honorable Lynn Schenk '70 and Professor C. Hugh Friedman will establish an endowment fund to create a professorship in corporate/business or securities law and to fund a continuing program in public policy and social change.

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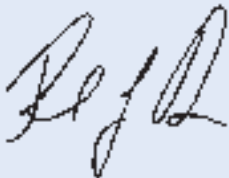
School of Law Annual Giving

As the 2005-2006 USD School of Law Annual Fund chair, I am pleased to present the University of San Diego School of Law's Annual Report on Giving for fiscal year 2005-2006 (July 1, 2005-June 30, 2006). We greatly appreciate the generous support and dedication of our alumni, students and friends. Your support is critical to the success of the school—it helps the School of Law remain healthy and allows us to meet the challenges of the future.

The USD School of Law received more than \$2,645,678 in cash contributions and grants during the 2005-2006 fiscal year. Contributions were used to help fund a variety of areas, including financial aid, the legal clinics, the Pardee Legal Research Center, the Center for Public Interest Law and the Children's Advocacy Institute, the Energy Policy Initiatives Center (EPIC), and various academic programs and support services. The generosity of our donors and how their contributions are being put to use are illustrated in the following chart.

To everyone listed in these pages, thank you for your support. If you were unable to contribute in 2005-2006, I invite you to join the thousands of alumni and friends whose donations have helped USD become one of the most prominent law schools in the country.

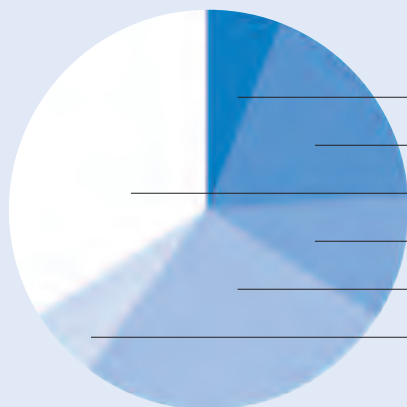
Your generous contributions are essential to the future of our school and our students.



Richard J. Doren '86

Annual Fund Chair 2005-2006

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Allocation of Gift Revenue Fiscal Year 2005–2006:

Financial Aid/LRAP	\$166,702
Law Annual Fund	\$464,838
Academic Programs	\$892,169
Student Services	\$251,423
CAI/CPIL	\$700,740
Legal Clinics	\$169,807
Grand Total	\$2,645,679

Dean's Circle

Founded in November 1995, the Dean's Circle recognizes those individuals and organizations whose cumulative philanthropy, including gifts and pledges through June 30, 2006, to the USD School of Law total or exceed \$100,000. USD is most grateful to these members of the Dean's Circle.

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Dean's Counsel	\$20,000–\$49,999
Senior Partners	\$10,000–\$19,999
Partners	\$5,000–\$9,999
Senior Associates	\$2,500–\$4,999
Associates	\$1,000–\$2,499
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October 6-8, 2006, more than 250 alumni gathered for the annual Law Alumni Weekend. On Friday night, alumni from the classes of 1966, 1971, 1976, 1981, 1986, 1991, 1996 and 2001 enjoyed cocktails and hors d'oeuvres while taking in stunning views from the top of the Omni Hotel in downtown San Diego. The entertainment continued on Saturday night with the All Law Alumni Jazz Lounge Party. Former classmates enjoyed live music at the Donald P. Shiley Science Center, which had been transformed into a chic jazz club.

law alumni WEEKEND



From left to right, top to bottom:

1. Members of the class of 1991 toast friends and USD School of Law.
2. Three '76 graduate classmates enjoy the breath-taking view of San Diego bay from the rooftop of the Omni Hotel.
3. Robert Wilder, '85; Katrina Petrosovich, '01; and Brigitta Herst, '01, relax, sip and listen to *Sharon Kline and the Bad Boyz of Jazz*.
4. Licia Vaughn, '96, with her daughter (and possibly a member of the School of Law Class of 2022).
5. Gary Schons, '76, and his wife Judy chat with Dean Kevin Cole and his son, Alex Cole, at the Saturday night jazz party.
6. Former classmates Christina Riehl, '01, and Zaki Zehawi, '01, say hello with a hug and a smile.
7. Donald P. Shiley Science Center transformed into a chic jazz club.



parting shot . . .

Retrospective: Advocate Covers
Over The Past 20 Years



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