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MOTIONS

University of San Diego School of Law

Volume 40, Issue 6 April 2005

ATLA Spring Tournament Yields Record 13 New National Mock Trial Team Members

Tommy Feiter, *Staff Writer*

Objection! This is a phrase you will be sure not to miss if you attend any Mock Trial Tournament – and this year’s ATLA Intramural Tournament was no different. On April 1- 3, the USD Student Chapter of the Association of Trial Lawyers of America (“ATLA”) put on its annual tournament at the downtown Superior Courthouse. Any USD Law student was able to participate, with the exception of those who have been formally coached in trial advocacy (e.g., National Mock Trial Team Members).

This year there were 21 teams competing against each other to be the best of the best in oral advocacy here at USD Law. There were two preliminary rounds on Friday, April 1st and Saturday, April 2nd. Those teams with the highest combined scores advanced to the semi-finals held that Saturday afternoon. Finally, four teams (two from the plaintiff’s side and two from the defendant’s side) advanced to the final round held on Sunday, April 3rd. In the end, the

scores came in and both teams on each side tied for first.

For those of you who have ever prepared for a mock trial, you know that it is no easy task. Not only do you have to read over a cumbersome case file and research the applicable laws, but you also have to prepare and memorize your opening statement, your direct and cross examinations for each witness and your closing argument. Of course, this is all after you have found someone to play your witness and prepared them for both your direct and opposing counsel’s cross. All that is left then is making sure all your exhibits are in order (enlargements made where necessary) and your suit is clean. If you can handle all that, you are about halfway to being successful in a mock trial tournament. The majority of your success, in my opinion, will lie in your ability to deliver all the information in a clear and cogent manner: your disposition is vital; your tone will need to be convincing yet sympathetic, aggressive but appropriately controlled; utilization of different volume, pitch, speed and tempo in your opening statement and closing argument will help win the jury; all while giving proper deference to the court.

This was the 4th Annual Spring Tournament put on by ATLA. It was originally initiated by the suggestion of Dean Rodriguez to Professor Richard “Corky” Wharton and Administrator Lisa Hillan, Esq., in an effort to offer a competitive mock trial opportunity to students not on the National Team. As a way of encouraging participation in the tournament, the administrators decided to use this as a secondary recruiting vehicle to find new members for the National Mock Trial Team. More and more, the coaches have found it to be an invaluable means of identifying outstanding oral advocates here at USD. This year’s tournament was particularly competitive and resulted in a record number of ten offers to students to join the National Mock Trial Team.

The traditional method of identifying new team members has been the Annual Thorsnes Closing Argument Competition held each fall semester. In the past, the majority of new members were chosen that way, leaving only two to four spots to be filled by the spring ATLA tournament. But this year, ten

1L’s were invited as a result of their outstanding display of oral advocacy in the ATLA tournament. Now the team coaches see this event coming into parity with the Thorsnes Closing Argument Competition.

The main difference between these two competitions is that you have three days of full-blown trials in the ATLA tournament versus only one 8-10 minute closing argument for Thorsnes. However, in ATLA you compete with a partner whereas in Thorsnes you compete alone. Professor Wharton has stated that he much prefers the ATLA selection process and will encourage expansion of selecting trial team members in this manner. “I want first-year law students to be involved in the trial process so that we can get them involved early on in the second year,” according to Wharton.

1L Christine Yung represented the plaintiff in the ATLA Tournament and was a first-time competitor. Ms. Yung and her tournament partner, Trevor Flynn, won in the first two preliminary rounds of competition against their opposing counsel. Yung said that she found the second preliminary round “much more challenging” because she and her partner (both 1L’s) were paired up against a 2L team, as opposed to going up against another 1L team as they did in the first round.

All competitors presented evidence, examined witnesses and made statements and arguments before the court at the downtown Superior Courthouse. After each trial, they were given feedback on how to improve their techniques from the judges (played by attorneys). (ATLA Chapter President Kirstie Nooris would like to thank the following members of the USD Mock Trial Team who helped balance numbers as partners and “straw team” competitors: Nate Bear, Aaron Hand, Tate Lounsbery, Victoria Steely, and Pamela Tahim.)

In addition to the ATLA tournament, USD Law also has another opportunity each fall for students to show off their abilities in a courtroom by hosting an

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University of San Diego
SCHOOL OF LAW

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Our mission is to provide news, information, analysis and commentary to the students, faculty and staff of the University of San Diego, the University of San Diego School of Law, and the general legal community of San Diego. We believe that journalistic excellence is the soundest foundation for success. We pledge to seek and report the truth with honesty, accuracy, and fairness. These principles are cautiously guarded by each member of the Motion staff.

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Motions welcomes all letters, guest columns, complaints and commentaries. All submissions must be signed and include daytime and evening telephone numbers. We do not monetarily compensate contributing writers. We reserve the right to edit for content, length, style and the requirements of good taste.

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An Interview with Interim Dean Cole

Our own staff writer Troy Pickard recently had the opportunity to chat with upcoming Interim Dean Kevin Cole. Here, Professor Cole opens up about the position and his plans...

Troy Pickard, Staff Writer

T: Why do we need an interim dean? What's happening with the current dean?

After seven years of service, Dean Rodriguez has decided to return to full-time teaching effective at the end of this academic year. We need an interim dean while we conduct the search for our next permanent dean.

T: What are the main functions of the law school dean?

The dean represents the law school before various constituencies. For example, the dean makes budget requests on behalf of the law school with the central administration. The dean meets with supporters and potential supporters of the law school to keep them abreast of law school activities. The dean supervises the law school's administration and presides at faculty meetings.

T: How were you selected for the position of interim dean?

Our provost, Dr. Anne Donnellan, solicited input from the law school faculty and administrators. I assume I was chosen because of my fashion sense.

T: How long will your position last?

We expect that the search for a new permanent dean will conclude during the coming academic year with the new dean to begin in academic year 2006-07. So my tenure will most likely conclude at the end of June 2006.

T: Who are the current candidates for the next dean? Are you one of them?

There are no candidates right now. The Dean Search Committee will be formed soon, and then nominations will be solicited.

T: If you were nominated for the permanent position, would you accept?

The interim dean is not eligible to be a candidate for the permanent position. I expect the search will turn up several promising candidates.

T: What challenges will you face as interim dean?

We are in the middle of a capital campaign, and so I expect to spend a good deal of time spreading the story

of USD Law School to current and potential supporters.

T: Can yours be characterized as a "lame-duck" administration?

If you'd like. But when you imagine most lame-duck administrations, you envision the inability to accomplish useful ends because the administration lacks the ability to carry out deals or retaliate for non-cooperation. On the other hand, the law school administration has several purposes that are completely uncontroversial with faculty and central administration. I think we'll be able to accomplish a good bit.

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9 Questions for Dean Rodriguez

Aaruni Thakur, *Staff Writer*

1. You've had a remarkable career so far, a very successful one with seemingly no stopping your rise to the top of your profession, from Cal State Long Beach, to Harvard Law, to clerking in the 9th Circuit, to teaching at Berkeley. What interests me most is the start of your career at Cal State Long Beach.

My route to college was a non-traditional one; certainly non-traditional one from the perspective of a typical career trajectory of someone who goes to a prestigious law school and on to an academic career. I was the first person in my family to pursue a college education. Growing up it was by no means obvious to me that that would be the next step. Even as I went through Jr. High School and High School with a fair amount of ambition and academic skills, I didn't have the obvious mentoring or even background that would give me the opportunity to connect the dots from an academically rigorous program in high school to academically rigorous college. I grew up in Long Beach, and I went to college at Cal State Long Beach as an evening student until the last year of college, so I graduated in five years and even that required me to do a heck of a lot of work in the last year. I worked full-time at different jobs while going to college at night. It wasn't until my last year in college that it occurred to me to gather together both the initiative and the skills to pursue higher education at the conventionally prestigious pathway. I don't have any regrets about the path that I chose, but obviously what I would advise to younger people including my own daughter is not to do it the hard way. I don't think there is anything noble about having pursued the education in that route rather than other routes available, but that's what I did given the opportunities and resources available to me at the time.

And I'm sure that played a factor in Harvard and other law schools' decisions to admit me, and I'm glad that they did.

2. Why are you giving up the position of Dean here at USD?

I am giving it up primarily to return to my first love, which is full-time law teaching and research and writing, and that is all there is to it. By the time I leave at the end of June, I will have served for seven years, which is not too short and not too long. I think it is a traditional tenure of Law Deans, and it is enough for me. I'm not leaving exhausted, and I'm not leaving with massive goals unfulfilled, but at the same time I'm leaving with a sense of optimism, not only about the school's future, which I know will be in excellent hands, but also in my

future, because I know I can return with full energy to full-time teaching and scholarship...after a year off! I'll be taking a year-long sabbatical, and won't be teaching full-time. I will still be doing academic work, primarily writing.

3. Is there a single achievement you are most proud of having accomplished while Dean?

There are several. I would put near the top, if not at the very top, participating in hiring excellent faculty, and also keeping faculty, that have been sought after by the best law schools in the country. That's a challenge; with better caliber faculty you hire, the more they are constantly in demand. I take some credit for that, but certainly the faculty deserves the lion's share of the credit, for working with me to, there's no way to put it, "raid" other law schools' good faculty talent. In the last few years we've hired more than half a dozen faculty from law schools that are higher ranked than us, and we've retained faculty in the face of offers from schools that are ranked higher than us. I would also include on that list curriculum reform, which directly benefits the students. Students may not immediately grasp why that is so important, but trust me when I say that the way we've modernized the curriculum over the last couple years will have major dividends for the academic and professional experiences of our students. Related to that point, we changed the grading system, too, and that trilogy of policies really needed improvement. Finally, I hope I've helped to increase the national profile of the school, not only in San Diego, but beyond San Diego.

4. What goal(s) had you planned on achieving that is/are unmet, if any?

That's a fair question, and a couple come to mind. I wish we were farther along in raising resources, not from students, but from external fundraising. The largest gift in the history of the law school was received this year, \$2.7 million donation for a new energy program, and the largest gift ever from an alum was also received this year. But that said, other schools of our caliber are much further along in terms of well-developed fundraising from alumni, and that goal is still unmet. I believe that the next Dean, maybe the next couple Deans, will have more success at raising the multi-million dollar level contributions from our 10,000 alums, many of whom can afford making the kind of transformative gifts to the school that will help us get to the next level.

Another goal that is still unmet is grappling with the frustration of University-Law School relations. We know we're the crown jewel of this University, and that means no disrespect to the rest of the University of San Diego; the rest of University

knows that, but they haven't yet accorded the tangible and meaningful respect in terms of the budget they provide for us, and in terms of understanding that they can't soak our students for the unbelievably large tuition increases that they have. We've made some progress, but this goal is unmet. The goal is not decoupling ourselves from the rest of the University, but it is developing a relationship where we can persuade them that they really need to treat the law school and its students and faculty as a crown jewel.

5. What is one thing you absolutely cannot stand about lawyers?

One thing I can't stand is the complaints lawyers make about how hard they work, understanding that many of them do work very hard, how beleaguered they are, and to not appreciate what a great privilege they occupy as leaders in society. Often, but not always, they are very well compensated for their efforts, and the privilege they've had to receive such education, regardless of where they went to law school is, should be considered. Although law practice is demanding, many aspects are unfair, and some aspects are grueling, I can't really stand the complaints and, on some occasions, not all occasions, the self-pitying that comes from lawyers who, in the great pecking order of society, have it pretty good, but don't really appreciate that.

6. Who has been the greatest influence in your life and why?

I'll put a category of people. The Professors I had at Cal State Long Beach. I had a handful of Professors, particularly in the Political Science Department, and the reason they were such great influences on me was that they took, in my case someone who had fairly limited aspirations or ambitions for what was going to come next professionally, and encouraged me to pursue the highest level of post-graduate education and careers in the law. When I went back to Cal State Long Beach, I had the great fortune of getting the Distinguished Alumni Award a few years ago, and it's something I'm very proud of.

7. What book(s) are you reading right now or do you plan to read in your spare time?

I'm in the middle of reading a book from one of our faculty members, Steven Smith, whom we hired a couple years ago from Notre Dame. He wrote a book called *Law's Quandary* published by Harvard Press, which I highly recommend, particularly if you're interested in issues of

See Dean at page 5

TORRERO TEMPLATE OF SUCCESS:

Aaruni Thakur, Staff Writer

Attorney Jim McElroy is the real deal. He graduated from USD Law in 1977, and since then he has become San Diego's best civil rights attorney, working on his own and with the Southern Poverty Law Center. His clients include institutions such as Planned Parenthood and individual victims of hate-crimes. McElroy's commitment to civil rights and his legal skill have won him numerous awards and accolades. In 1994, Lt. Governor Leo McCarthy appointed McElroy to the California State Commission on the Prevention of Hate Violence. The same year, the Anti-Defamation League bestowed on McElroy its National Civil Rights Achievement Award in recognition of his pro bono work. In 1995, McElroy was awarded the Margaret Sanger Award by Planned Parenthood for his work on behalf of women's rights, and in 1996 Womancare Health Center recognized his "outstanding work in protecting the rights of women." Last year, the San Diego County Bar Association designated Jim McElroy as its Outstanding Attorney of the Year.

Mr. McElroy was seated behind his large, cherry oak desk when I entered his office to conduct this interview. He promptly stood to shake hands with me and I started to sit down across from where he had been sitting. Still standing, he brought himself a chair and joined me on the visitor's side of his desk. He is

definitely the real deal.

Motions: *Why did you decide to come to law school?*

I wanted to change the world, and I grew up in the late 1960s, early 1970s, when Civil Rights and the Vietnam War were very much at the forefront. I was very active and just wanted to be involved in something that would help change the world.

Motions: *You graduated from USD Law. How did you enjoy your time there and how did you keep busy?*

I was not crazy about law school, quite frankly. I came from a Big Ten university, the University of Illinois, and was there during a very tumultuous time. I really enjoyed the discussion about issues that occurred in and out of the classrooms there. When I came to USD, due to the nature of Law School, not because it was USD, we studied arcane property law from the 1600's and the rule in Shelly's case. One day during my first year, Supreme Court Justice William O. Douglas died. Whether you liked him or not, he was a pretty important figure on the Court, and not a word was said about it in any of my classes. I thought, boy, law school sure is different from college.

Motions: *You've been in the news quite a bit these days over a very divisive issue. Can you explain how you got involved, what the issue is, and what is*

Jim McElroy

going on now?

I do a lot of pro bono work. Much of it involves hate-crimes; I work with the Southern Poverty Law Center, and I've been involved in fighting several organized hate groups, primarily white supremacy, skinhead and neo nazi groups. This case involving the Cross on Mount Soledad was ongoing and a couple of attorneys in town asked if I would help out the plaintiff who was in pro per at the time, because they knew I did cases that involved civil rights kinds of issues and that I was willing to do pro bono work. Quite frankly, separation of Church and State was not an issue in my top five list of important things at the time, but I did understand it as a tolerance issue and a diversity issue. The more I got into it, the more I saw what an important issue it really was. Are we going to be an inclusive society, are we going to respect our religious freedoms and our religious diversity, is our government going to take the lead in this respect as we become not only racially but religiously a more diverse society everyday? Given that the religious make up of our society is changing so much, it's more important than ever that our government take the lead in being inclusive and in accepting and respecting our religious diversity and not be divisive and exclusive. The more that this city fights the fifteen years of court decisions against it and the more taxpayer money it spends to promote one religion over all other religions, the more offensive its conduct is. As the City knows, there is not one single reported case that supports their position that a huge Christian symbol such as this can remain on public property yet every case that has ever addressed the issue, holds that a Latin cross is the pre-eminent symbol of one religion and as such its presence on government land is unconstitutional. A Latin cross is not a Ten Commandments monument, which some argue may have a historical context or perspective, it is the preeminent religious symbol of Christianity. It predates the founding of our country. So clearly this religious symbol belongs on private property. It belongs on church property, which we've tried to move it to about a thousand yards down the road. It does not belong on public property at taxpayer expense. Lots of people find it offensive that the city refers to it as a war memorial, as if we are ignoring or refusing to honor any veteran of any other religion who has ever died in a war fighting for our freedoms and our Constitution, instead we are only honoring the Christian veterans? Are we going to only honor Christian veterans on our taxpayer supported public property? So, as I became more involved in the

Stu's Views

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Where Does Your Money Go?

Susanne Calabrese, *Staff Writer*

USD's charges \$33,866 to full-time students in tuition (those taking 14 to 16 credits). When we break it down, where does that money go?

The Helpful Breakdown:

Even if we take the most units we can each semester, being 16 (and remember folks, you pay the same amount no matter how many credits you take, 14 through 16), then our tuition for a breaks down into \$1,058.31 per credit (\$33,866 divided by 32). So, a 4-credit course costs us \$4,233.25, or \$264.58 per week over our 16-week semester. A 3-credit course costs \$3,174.94 or \$198.44 per week.

"So what," you ask? You could have done this simple math yourself. The problem is that students take for granted the money we spend to sit in class. Not only every time you miss a class are you forking over a large chunk of change for nothing, but every time your fellow classmate (and you know the ones I am talking about) ask completely irrelevant and time consuming questions, we should send them a bill. An irrelevant question that goes on a fifteen-minute tangent breaks down to roughly a \$20 cost to each student sitting there. And none of this includes the interest.

But alas, remember too, there is always something free. What you should really do is get your moneys worth by visiting the FREE office hours. (No, the university doesn't charge for this although maybe it acts as our \$264.58 refund when professors cancel class for a week – all right, maybe nothing is free.)

The Problem:

We all know our tuition isn't

just for classes. It is for help and guidance in our law careers. What is concerning is that so many of my fellow students and I are lost and have not received this help and guidance.

Many of the offices give no notice of procedure, dates or deadlines to the student body, and then charge harsh penalties for not knowing their policies. Our website is full of inconsistent information that often is intermingled and confused with the undergraduate departments or is outdated. None of the student body is assigned an individual faculty advisor, as is the practice with many other institutions. Even advice from other students isn't given a proper forum for postings, electronic or otherwise, by the university.

The list of specific grievances protested among the student body is lengthy. Granted, there are many excellent professors to whom you may address many types of questions (remember, this is free... see above.). But the real problem is that law students have enough to worry about without additional problems from not getting the guidance they pay dearly for. Not to mention the programs we pay for, but miss, because of the void of information on campus.

When their time to make alumni contributions comes around, they might not have such a warm and fuzzy feeling about USD as an institution.

So what is my point? How hard is it to send us an e-mail or stick a flyer in our mailbox? These things are greatly appreciated. But, for now, if we aren't getting the guidance we pay for, maybe we should take advantage of all USD has to offer. Use the health center on campus. Rent cheap gear from the student activities center. Eat the free appetizers. You should, you're paying for it.

Dean, continued from page 3

jurisprudence. I also try to read novels whenever I can, and in the last couple years I've become very interested in Japanese novelists, so Murakami is a very creative, interesting novelist to me. I also finished recently Philip Roth's book *The Plot Against America*, which was very good. The other area I try to read in is books on environmentalism and environmental issues. There was a wonderful book that I recommend by Jared Diamond called *Collapse*.

8. Who are some of the candidates for your replacement?

I say blissfully that I will have very little to do with the Dean search because it's entirely appropriate to me that the Law School will look forward and not have my influence to any great degree in the selection of the next Dean...

One thing you'll know is when the candidates are on campus, so I encourage students to talk to them.

9. Complete the following sentence, please: I wouldn't be here right now if it hadn't been for...

That's a good question. I wouldn't be here if it hadn't been for my wife, Leslie Oster, who directs the Lawyering Skills program here. Both her encouragement to do this, and obviously her willingness to move, were certainly necessary conditions. Not just that she had to agree that we would make this move, but her encouraging me to make this very significant career detour. I wouldn't be here as Dean if it wasn't for her.

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TO THOSE OF YOU GRADUATING THIS MAY...

MOTIONS WOULD LIKE TO WISH YOU THE BEST IN YOUR ENDEAVORS!

TO THE REST OF YOU...

GOOD LUCK ON FINALS! WE WILL BE BACK FOR THE FALL SEMESTER WITH NEW ISSUES STARTING IN AUGUST.

ATLA, continued from page 1

interscholastic tournament with the two other San Diego law schools, Thomas Jefferson and California Western School of Law. It is called the Fall Inter-city Interscholastic Intramural. This fall will be the 3rd annual tournament. (Be sure to watch for flyers and signs in the Fall if you think you might want to compete.)

Being a member of the National Mock Trial Team is a serious commitment. Team members are coached intensively by Head Coach and Mock Trial Team Founder Professor Corky Wharton and Assistant Coach Lisa Hillan on all matters that a trial entails. Practice is four days a week and every Saturday morning during the semester. These are mandatory practices and theoretical workshops that are put on by the coaches and some of San Diego's most successful trial attorneys.

In preparation for each tournament, the team members work in groups of four, who work together to help one another find the best ways of entering evidence, handling exhibits, overcoming objections, preparing and impeaching witnesses and delivering the most effective opening statements and closing arguments. In the Fall semester alone, there are three tournaments in which our trial team competes – The San Diego Defense Lawyers Tournament, The Consumer Attorneys of San Diego Competition, and the Buffalo-Niagara Invitational Tournament.

USD's National Mock Trial Team has garnered a lot of prestige over the years by winning many tournaments, including National Championship

Titles. Because of the high caliber of our current team members, both Coaches Wharton and Hillan are looking

forward to next year's competitions with great anticipation.

Winners of the 2005 ATLA Tournament:

Plaintiff's Side: Cameron Gharabiklou and Olivia Perry (2L's) tied for first-place with Nadeem Shoukry and Justin Murphy (3L's).

Defendant' Side: Hanna Cole and Katie Payerle (1L's) tied for first-place with Chris Turtzo and Bron D'Angelo (2L's).

Best 2L Oral Advocate Award: Brad Bigos.

Best 1L Oral Advocate Award: Anne Warner

Best Witness Award: Tommy Feiter

New National Mock Trial Team Members:

Brad Bigos
Cameron Gharabiklou
Olivia Perry
Bron D'Angelo

1L Invitees – In Training

Anne Warner
Samantha Campbell
Trevor Flynn
Christine Yung
Katie Payerle
Hanna Cole
Dana Brown
Byron Holz
Leslie Flint
Conor Hulburt

USD Sends First Team to Vis International Commercial Arbitration Moot

Aaruni Thakur, Staff Writer

Leaving it up to the rest of us to ensure USD Law's stature grows in California and in the country, five USD Law students have taken it upon themselves to take USD Law international by forming a team and entering themselves in The Annual Willem C. Vis International Commercial Arbitration Moot, a twelve year-old Moot Arbitration competition run by Pace University School of Law. The competition is open to any law school, provided the team pays the \$500 entry fee, turns in the briefs on time, and physically makes it to the competition in Vienna or Hong Kong.

By all accounts, Bill Restis was the first to spread the word about the program, having heard about it from a friend who competed last year. Joining Restis were Anica John, Min Kang, Michael Klippert, and Karen Luong. According to Luong, Restis got the ball rolling by sending out a few well-placed emails to other USD Law students asking if they wanted to try and get a team together. Once

the Board had been put together early last fall, the team began their dash to find funding and also keep up with the demands of the program, all the while clamoring to keep up with law school. Kang said the sixty page fact-pattern was made available in August, with a brief for Claimant due in December and a brief for Respondent due in January. Each 45-page brief required teams to determine 1) liability in a breach of contract case, 2) calculation of damages in the case of liability, and 3) the arbitral tribunal's jurisdiction over a counterclaim. Oral arguments took place over spring break.

USD was able to send a team to Vienna this year because the Board took such an active role throughout the process. Thanks to the Dean, the Provost, the SBA and help from regular USD benefactor Michael Thorsnes, the remaining out-of-pocket expenses bore by the students were not a significant bar to participation.

Despite the challenges, and the sheer improbability of the notion, USD Law entered its first team in the Vis International Arbitration

Competition, with commendable results. 154 teams competed in Vienna representing all the habitable continents. USD won an impressive three out of four oral arguments this year, but Stetson University ultimately triumphed.

Most Board members had similar comments when asked about their experiences. For example, Anica John and Min Kang spoke of the team's difficulty with not having a coach or a formal program like many of the other schools do. Still, Michael Klippert and Karen Luong also expressed the Board's overall satisfaction, highlighting how the program allowed them to meet other law students from all over the world and see the varying argument styles.

Students interested in participating in the program next year can email the Board at: usdvismoot@yahoogroups.com. For more information on the competition, visit: <http://www.cisg.law.pace.edu/vis.html>.

The Results Are In: SBA Election 2005!

Tommy Feiter, *Staff Writer*

On March 15th and 16th, over 400 members of the student body here at USD Law came out to vote for their Student Bar Association ("SBA") executive board and representatives. Considering that there are only approximately one thousand law students that are eligible to vote, that was a pretty decent turnout, especially compared to previous years. Much of that probably had to do with the fact that there were six presidential candidates, compared to the usual two or three. In fact, because the SBA Bylaws stipulate that a presidential candidate needs a majority (50% plus one) of the vote, and no single candidate secured that, there needed to be a run-off between the top two candidates, Aaron Dumas and Dan Rawlins.

The Runoff Election was held after Spring Break on March 30th and 31st. In the end, Dan Rawlins was elected our new SBA President. Rawlins reacted, "There were many great candidates and I am honored to have been elected to represent the SBA. The new Executive Board and I will listen to student concerns and we will work hard to be responsive and bring back the fun."

The Spring Election Committee was in charge of all the campaign parameters, enforcement of the rules pertaining to the elections, and the counting of the votes. Charlotte Hasse and Alex Calero had the distinct pleasure of heading up the committee this year. This job is never an easy task. However, Hasse said, "We were excited to see all the interest from the students in becoming an active part of the SBA and we highly encourage them to stay involved next year." (SBA meetings are open to all students who care to attend. Information, including meeting minutes, can be found on the SBA website at <http://www.sandiego.edu/usdlaw/sba>.)

The positions and offices of SBA Executives and Representatives are open to all USD law students pursuing a JD. While some positions are not enumerated, some come with "activity grants." The non-enumerated positions include Honor Court Justices, Class Representatives, and the ABA Vice-Chair. Positions that are awarded "activity grants" by the University include the Secretary, Treasurer, the Evening Vice-President and the Day Vice-President. Each of these Executive Board Officers receives approximately \$2000 per year from the University. The SBA President is awarded \$14,950 from the same fund for his or her duties during the Fall and Spring Semesters.

While some students are surprised to hear of this "compensation," outgoing presidents have often expressed how the job of the SBA President is not one that is at all adequately compensated. I concur.

The duties of the SBA President include (1) the appointment of many positions including a social chair, a representative for the Graduate School Council, web designers, Sidebar/publicity people, a community service representative, a University Senate Representative, and more; (2) chairing the Dean's Student Advisory Committee; (3) attending faculty meetings; (4) attending Alumni Association Board meetings; (5) coordinating with the graduation committee; (6) helping to plan and coordinate all SBA law school functions; (6) ensuring all other executive board officers are fulfilling their duties, (7) running all the SBA meetings, and finally (8) always being "on-call" to the needs of the students and faculty.

After reading that non-

exhaustive list of presidential duties, I do not think we would argue that a \$14,950 stipend is excessive. Especially when you consider that the SBA President is a law student just like the rest of us. Immediate Past President Tim Cross adds that, "the stipend from the University provides an important incentive for potential candidates who otherwise might be deterred by the amount of time commitment involved." I would have to agree with that as well.

Although I made a run for the office of SBA President and lost, I have every confidence that Dan Rawlins will do a great job and make us all proud by representing us well. I know I speak for many of us when I wish Dan and the rest of the Executive Board all the best in the upcoming academic year.

The following are the 2005 SBA Spring Election Results:

President: Dan Rawlins

Day VP: Stephanie Fink

Evening VP: Matt Bresnahan

Treasurer: Tiffany Bailey

Secretary: Kirsten Widner

ABA Vice Chair: Angie Anastasopoulos

3L Class Representatives: Min Kang, Karen Luong, and Mike Klippert

2L Class Representatives: Phoenix Ayotte, Laura Fabrick, and Todd Harrison

Honor Court Justices: Greta Proctor, Kabu Adodoadji, and Nate Bear

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Torrero, continued from page 4

issue, I got much more passionate about the issue. I think that now, after fifteen years of litigation, we're now seeing the light at the end of the tunnel. The City has run out of scams. Unfortunately, the city has tried every dodge it could possibly try, which I think is very disrespectful of Christians and non-Christians alike. There are several Christians who have expressed their support for our position on this and think that the government should not be involved in the business of religion. I think it's very disrespectful of the City to be fighting this illegal battle so hard, it is an insult to the religious minorities in our community. It shows a lack of respect for the rule of law for the City to refuse to accept the court's rulings.

Motions: *Has taking this case affected you personally?*

It's made me a much more unpopular guy, but I've gotten a lot of that over my career. I also do a lot of pro bono work for Planned Parenthood against anti-abortion fanatics. I have a lot of family members in the Midwest, part of my big Irish family, that feel strongly on both sides of this issue. I respect the fact that people have strong opinions about this issue, it's very important. But I'm just trying to protect people from being shot and harassed and having their property destroyed by the fanatics who don't treat people that have differing opinions with respect, which I think we all need to do. So I've been very unpopular in that battle; I get a lot of hate mail, and I get a lot of death threats, and even the good Christians who support this Cross have provided me with ample death threats over the years. But you know, I figure if you're going to get in the arena of important issues where people feel passionately, then it kind of comes with the territory.

Motions: *Does that tend to hurt business or help business?*

Oh, it certainly doesn't help business. I also do some civil litigation in the field of professional negligence, medical malpractice and legal malpractice, and I've had a case recently referred to me, but when they connected me with the Cross case, they went elsewhere. I'm sure it doesn't help me business-wise and I'm sure that, if anything, it hurts me.

Motions: *For people that only know about you from the Cross case and think that it defines your career, what other cases would you want to tell them about?*

Oh, I don't think the Cross is going to define my career, or at least I certainly hope not, because it's just one blip on the radar screen. I hope I'm remembered more for my representation of Carlos Colbert, an

African-American Marine at Camp Pendleton who was beaten by white supremacists in Santee. He's a quadriplegic now and he'll never walk again. We were able to prosecute that case and settle some of it for insurance money, which made his life better. We also won a judgment of \$9 million against the main perpetrator which, of course, we haven't collected any of yet, but I hope my fighting for the underdog and the little guy against those bullies in the world, whether it involves hate-crimes against gay folks, or black people, or Hispanics or Jews, or fighting for the reproductive rights of women, or trying to help the staff and physicians of women's health care clinics stay safe from the anti abortion bullies, or whether it's trying to protect religious minorities from the unconstitutional acts of the government in this Mt Soledad case, will be of some worth. I've always believed that one of the most important things about our Constitution is that it was meant to protect the minority against the tyranny of the majority. I think that what's happening with the Cross right now is very much like what happened to Rosa Parks in the south. If you would have taken a vote in Alabama in the 1950's on the issue, she would have been forced to stay on the back of the bus. But this is not something you vote about, it's a fundamental constitutional right, and it's unfortunate that our politicians don't respect our courts more. Look at what Tom DeLay is saying these days. The acts of our current Mayor remind me of George Wallace standing in the steps of the schoolhouse saying, "Segregation yesterday, segregation today, segregation forever" in violation of a federal court order to integrate the schools.

Motions: *For students coming out of law school, do you see any trends that we should be aware of?*

Well, rather than talking about boring trends in the legal profession, if I've got a message for students that are about to leave USD Law, it's that lawyers have a lot of power in their communities, whether they exercise that power and knowledge in a courtroom representing clients or, because we are a little more sophisticated about how our system works, exercise it on school boards or in other civic ways, we tend to be leaders in our communities. The message I would send, then, is that the world ain't gonna change much unless we do it. There's still an awful lot of hatred out there, there's still an awful lot of racism out there, and hate-crimes are being committed every single day in this country. There is still a lot of bigotry and prejudice out there, and if we're going to make the world a better place, then it's up to the lawyers who know how the system works, who have an appreciation and an understanding of things like the Constitution and why we need to protect the minority against the tyranny of the majority. So I would

urge you all to not lose your idealism, and not get too wrapped up in making money, because after making money for twenty years in the profession, one can still be an extremely unsatisfied and unhappy lawyer. I know a lot of them. They are making a helluva lot more money than I am, and aren't half as happy as I am. I am one happy, lucky son of a gun. I have gotten to do things I care passionately about that generally don't pay financially. Other lawyers tell me they're excited about doing what I do, but they say they can't afford it. Well, I don't know how I afforded it either, but I never really thought about it. I thought, "Do I care about this case? Can I help this person? Is this what I want to do with my life?" And at the end of the day, when I'm dead and gone, I hope there are a few more plus checkmarks than negative marks, meaning that I've left the world a slightly better place than when I came in. So I would urge those graduates that are going out in the community to remember their ideals and remember what's important in life. Money comes and money goes; that's not what's important in life.

Motions: *Thank you so much for your time, Mr. McElroy! Please tell me whom I should interview next.*

Harvey Levine. He was a professor at USD, and he's an attorney that I admire very much. He does good things in the community, and he's an excellent lawyer.

The San Diego Law Review and the San Diego International Law Journal Joint Write-On Competition...

The SDLR will be accepting applications from 1L's and the Law Review will be accepting applications from both 1L's and 2L's.

Participation in this competition is *required* for membership onto the San Diego Law Review and the International Law Journal.

The write-on problem will be distributed Friday, May 20th. The assignment will include a closed memo assignment and footnote corrections. The problem will be due Wednesday, June 1st by 8 p.m.

For more information, email: dmorene-06@sandiego.edu or jkagan23@hotmail.com

P2P Saga Continues: Supreme Court Poised to Rule in Grokster

Laura A. Slezinger, *Staff Writer*

On March 29th the Supreme Court heard the oral arguments for *MGM Studios v. Grokster*, which pits 28 of the world's largest entertainment companies, including all the major movie studios and record labels, against Grokster and StreamCast Networks, two operators of file-sharing devices and makers of Morpheus, Grokster and KaZaA software. The interest this case has stirred was evidenced by the mass of people that lined up outside the Supreme Court building, starting at 2:30 p.m. the day before in hopes to secure a seat for what is sure to become a landmark case in Copyright Law.

Grokster will decide the legality of decentralized peer-to-peer file sharing, and will influence the business plans and architecture of much technological innovation in the future. As we learned with Napster, the future of peer-to-peer file sharing is inextricably linked with copyright law. Grokster was engineered to avoid being the next Napster, which allowed people to swap files by connecting into central

servers that created a constantly updated index of files available for download. To download a file, a direct link would be established between two computers. No files actually flowed through Napster's central servers, but without them no index could be created.

The Grokster platform operates in a similar manner to Napster, with some crucial differences. Software can be downloaded for free from servers operated by the Defendants. Once installed, a user may elect to "share" certain files located on the user's computer, including, music files, video files, software applications, e-books and text files. When launched on the user's computer, the software automatically connects to a peer-to-peer network (FastTrack in Grokster's case; Gnutella in the case of Morpheus), and makes any shared files available for transfer to any other user currently connected to the same peer-to-peer network.

FastTrack, a Dutch owned company, licenses its network technology and software to Grokster, which provides access to that network. FastTrack's network infrastructure works differently from that of Napster. FastTrack doesn't rely on central servers. Instead, it allows searches to flow through individual

computers in the network without ever going through a central company server. Grokster maintains Web pages, advertising streams and bulletin boards that show up through their software, but these bits of information are irrelevant to the process of searching and file swapping. Grokster merely licenses the FastTrack network, but has no actual control over it, and is not essential to the network operating.

Amusingly, MGM's rebuttal opened with a call for an injunction shutting down Grokster. I'm not sure what they think this will accomplish. You can shut down the company as a symbolic gesture, but, irritatingly enough for the copyright holders, the file-swapping network would remain.

Sending an mp3 of the latest pop song over the internet to a friend is considered direct infringement of copyright law (unless the song is in the public domain). In a pure P2P file-sharing system, the vendor of the file-sharing tool has no involvement in the copying or transmission of the files being shared. However, as in other areas of the law, secondary

See *Grokster* at page 11

The United Nations: Sixty Years of Success

Mary M. McKenzie, *Staff Writer*

As the United Nations approaches its sixtieth anniversary, it is overshadowed by allegations of ineffectiveness, mismanagement, and corruption. When the American nominee for UN ambassador, John Bolton, states that the "happiest moment" in his governmental career was when he signed the letter informing the UN of the U.S. renunciation of the Rome Treaty and the International Criminal Court, U.S. citizens ought to examine not only the UN's disappointments but also its many successes.

In 2005, we may fail to see the significance of the UN Charter itself. Originally signed by 51 nation states, the Charter now has 191 signatories. An international treaty, the Charter commits its members to preserving international peace, to maintaining human dignity and to working together to ensure the economic and social development of all its members. In the power-political framework that governed world politics in 1945, these were very radical goals. Has the UN been successful in achieving them?

In 2005, as the United States remains mired in war in Iraq, it is easy to overlook the success of the UN in preserving world peace. Although the UN did not join in this war on Iraq, since 1990, it has invoked the collective security provisions of the Charter numerous times and has set the path toward peace in Cambodia, Kosovo, and Sierra Leone. Additionally, and out of cold-war necessity, the United

Nations created peacekeeping missions, missions decided upon by the Security Council in which states volunteer troop and logistical support. Since the first in 1948, the U.N. has undertaken 59 peacekeeping missions around the globe. Currently, the UN is managing 17 missions including operations in Sudan, Liberia, Haiti, Bosnia and East Timor. Further, the UN maintains numerous post-conflict peace-building missions around the world assisting countries to rebuild after civil war.

In 2005, as we enjoy films like "Hotel Rwanda," we may simply accept that international action is necessary to preserve human rights in today's world. Such an assumption, however, discounts the world's violent past and the vital role of the UN. Symbolized most powerfully by the 1948 Universal Declaration of Human Rights, the UN's fundamental commitment to human rights makes a state's treatment of its own citizens an international concern. This, too, was a very radical idea in 1945 and remains one in 2005. The UN has a net of over 80 treaties securing specific human rights.

In 2005, we see the world still divided between the very rich and the very poor, and we may question UN success in global social and economic development. However, a multitude of UN agencies have had crucial success in eradicating disease, saving lives and preserving the environment. The World Health Organization eradicated smallpox and it is estimated that WHO immunizations save roughly 3 million children's lives annually. In the aftermath of the tsunami in December, the UN raised over \$1.087 billion

from 92 countries, individuals and non-governmental organizations for emergency relief, much of which has flowed through UNICEF. The UN's World Food Agency provides one-third of the world's food aid. Since the 1970s, the UN also has been a leader in halting damage to the environment by funding programs that promote biodiversity and decrease the risks of global warming in 150 developing countries and countries in transition. Over 300 treaties brokered by the UN protect various aspects of the environment.

Contrary to John Bolton's way of thinking, possibly one of the most important functions of the UN is its most unsung. The UN has contributed significantly to the codification and rule of international law with the promulgation of hundreds of international treaties protecting human rights, the environment, and ending conflict. The rule of law also was advanced by the creation of international criminal tribunals in the former Yugoslavia and Rwanda. In 1992, the International Criminal Court was created. Despite U.S. hesitation, names of suspected war criminals in Darfur have already been given to the ICC by Kofi Annan.

Do these UN efforts cost too much? The UN's operating budget is roughly \$1.3 billion; the peacekeeping budget is roughly \$3.87 billion. The entire UN system costs approximately \$12 billion each year. By comparison,

See *U.N.* at page 10

U.N., continued from page 9

the city of San Diego has a budget of approximately \$2.5 billion for this fiscal year. California's projected budget is \$82 billion; its projected budget shortfall alone is \$9 billion.

Thus, as we commemorate the sixtieth anniversary of the United Nations, let us reflect both on the good and the bad of an organization that has undoubtedly improved the lives of millions of people around the world on a relatively limited budget. San Diegans, too, ought to be aware of their own piece of UN history. San Diego is home to the sixth largest chapter of the United Nations Association, an organization dedicated to building public awareness of the United Nations. In a visit to the city in 1960, former First Lady and UN delegate Eleanor Roosevelt helped convince San Diego's City Council to lease the organization a building in Balboa Park, which continues to be known as San Diego's own UN Building.

In addition to being a 2L, Mary serves as Vice President for Model United Nations of the United Nations Association San Diego chapter located in the UN Building in Balboa Park.

PRO BONO LEGAL ADVOCATES would like to congratulate **Lisa Gentile, Tammy Lin, Erin Palacios, and Emily White** for being awarded a \$1,000 education award voucher from Equal Justice Works Summer Corps.

Summer Corps supports law students at public interest organizations around the country in a common purpose – to expand legal services delivery to those who need it most. The Summer Corps is an AmeriCorps-funded program that will provide 250 law students with the opportunity to earn a \$1,000 education award voucher for spending their 2005 summer in a qualifying internship at a non-profit, public interest organization.

Summer Corps members provide critically needed legal assistance in low-income or underserved communities in the U.S. on a broad range of issue areas.

Lisa Gentile will be working at Harvard Law School in Boston, Massachusetts Emily White will be working at Casa Cornelia Law Center in San Diego. Erin Palacios will be working at the Legal Aid Society, Juvenile Rights Division in New York City. Tammy Lin will be working at the Texas civil Rights Project in Austin.

Congratulations!

Supreme Court: Age Discrimination Claims Need Only Prove Disparate Impact, Not Discriminatory Intent

Jim Fessenden, *Staff Writer*

Earlier this month, the United States Supreme Court in *Smith v. City of Jackson* lightened the burden for older and middle-aged workers with age discrimination claims. Whereas workers once had to prove their employer engendered a discriminatory intent, the Court's ruling now requires workers with age discrimination claims to prove only that the employer's policies created a "disparate impact". In an anti-climatic ruling, however, the Court held that the plaintiff's allegations could not constitute a disparate impact claim and ruled in favor of the City-employer.

Disparate impact is defined as a facially neutral policy that has the effect of discriminating against a disproportionate number of a protected category of workers. In the past, employer's written tests, height requirements, and weight requirements have been the subject of disparate impact claims.

Pursuant to the Age Discrimination in Employment Act (ADEA), *Smith* and several other workers brought suit against the City of Jackson (Mississippi) Police Department after it gave a raise to all of its Police officers. Workers with less than five years of service with the City, however, received proportionately larger salary increases than those with more than five years of service. Most workers over 40 (the cut-off

point under the ADEA) had more than five years of service. The City argued that the raises were designed to put its payment scheme in line with the regional average so that it could retain its officers, something it was apparently unable to achieve under its old scheme.

The district court granted summary judgment to the City. On appeal, the Fifth Circuit held disparate impact claims are unavailable under the ADEA. Interestingly, the Fifth Circuit noted that if proven, *Smith's* claims would constitute a disparate impact claim under the standard set forth in *Griggs v. Duke Power Co.*, the measuring stick for disparate impact claims brought under the Civil Rights Act (Title VII).

The Supreme Court granted certiorari. The Court's eldest Justice, John Paul Stevens wrote the majority opinion holding that the ADEA does allow disparate impact claims to provide the basis for age discrimination suits. Justice Stevens reasoned that because the relevant language of the ADEA and Title VII are identical – except that the ADEA substitutes "age" for "race, color, religion, sex, or national origin" – disparate impact claims are permissible under the ADEA. Two statutory differences between the ADEA and Title VII indicate that disparate impact claims may be brought under more narrow circumstances. First,

unlike Title VII, the ADEA permits any "otherwise prohibited" action "where the differentiation is based on reasonable factors other than age." Second, while Congress modified the Supreme Court's narrow and strict interpretation of disparate impact claims in a previous case, Congress did not mention age discrimination or otherwise modify the ADEA. Accordingly, age discrimination suits brought under a disparate impact theory require plaintiffs to identify a specific test, requirement, or practice of the employer that has an adverse impact on older workers. But, the plaintiffs here identified no such specific practice. Moreover, the Court held, the City's plan was reasonably based on factors other than age. Thus, as a matter of law, the plaintiffs presented insubstantial evidence to bring a disparate impact claims.

Justices Scalia, Souter, Ginsburg and Breyer joined in Stevens' majority, although Scalia wrote separately to note that while he read the ADEA to allow disparate impact claims, it did so for reasons different than those articulated in the majority opinion.

Justice O'Connor, joined by Kennedy and Thomas, concluded that plaintiff's claim should have been dismissed because the ADEA does not permit disparate impact claims of age discrimination.

Chief Justice Rehnquist took no part in the opinion.

Grokster, continued from page 9

liability may be found in the form of contributory or vicarious infringement.

The three elements required to prove contributory liability are: 1) direct infringement by a primary infringer, 2) knowledge of that infringement by the defendant, and 3) material contribution to that infringement. In *Napster*, the Ninth Circuit found "at least some" users to be primary infringers (probably a number of people reading this article fall into that category). *Napster* was also found to have actual knowledge of infringing activity, based on internal company e-mails, advertising using copyrighted songs, and notification of infringement by the RIAA. *Napster* fulfilled the material contribution element by providing the "site and facilities" for its users' infringement.

In the *Grokster* appeal, the Ninth Circuit looked to the seminal *Sony-Betamax* case and how it was applied under *Napster*. In *Sony v. Universal Studios*, 464 U.S. 417 (1984), the legality of the new Betamax home video recorders was at issue. Owners of copyrights on television programs charged that the machines were being used to infringe their copyrights. The court drew on patent law, holding that it would be sufficient to defeat a claim of contributory infringement if the product was capable of "substantial or commercially significant noninfringing uses." In *Napster*, the *Sony* rule was applied to the knowledge element. If a defendant could show that its product was capable of substantial noninfringing uses, then the level of knowledge required to find contributory liability was much higher. The copyright owner must prove that the defendant had reasonable knowledge of specific infringing files, rather than merely know of the product's potential for infringing uses. There is no dispute that *Grokster* is capable of substantial noninfringing uses, and due to its decentralized network, with no central index, *Grokster* has neither control over nor actual knowledge of the specific files being shared by its users. Unlike *Napster*, *Grokster* could not be found responsible for contributory infringement.

Vicarious liability (like the Torts doctrine of respondeat superior) requires: 1) direct infringement, 2) the right and ability of the defendant to control or supervise the infringing conduct, and 3) direct financial benefit to the defendant.

For the second element, the *Napster* court found that the ability to terminate user accounts or block user access to the system was enough to constitute "control." However, *Grokster* does not have a log-in process and no ability to actually terminate access to filesharing functions. Additionally, since the infringing material and index information do not pass through defendants' servers, they do not have the sort of monitoring and supervisory relationship that has supported

vicarious liability in the past.

Some of the issues that were important going into oral argument were: what standard should be applied if we don't apply *Sony*, as MGM has requested, and how can we protect copyright holders without chilling technological innovation?

MGM's proposed standard, instead of applying *Sony*, was that the legality of a technology should turn upon the type of business model the developer of that technology adopts to distribute it. For example, if it intends to make a majority of its profits off of infringing activities, that would make it more vulnerable to liability.

MGM had an interesting answer to the question posed by the court, "how could the inventors of the iPod know whether they could go ahead with developing their invention, since it is conceivable that someone might have the idea of marketing their device as a tool for infringement?" MGM's lawyers reasoned that the non-infringing uses of the iPod were manifest at the time it was invented, and used the example of ripping one's own CD's and storing it on the iPod. However, many on MGM's side probably don't feel that is legal at all, but now that they've conceded to the contrary in open court, if they win this case they will be barred from challenging "ripping" in the future under the doctrine of judicial estoppel. This iPod standard evaluates the legality of the technology based on the knowledge of the inventor at the time, not based on how it is subsequently marketed or exploited under a business

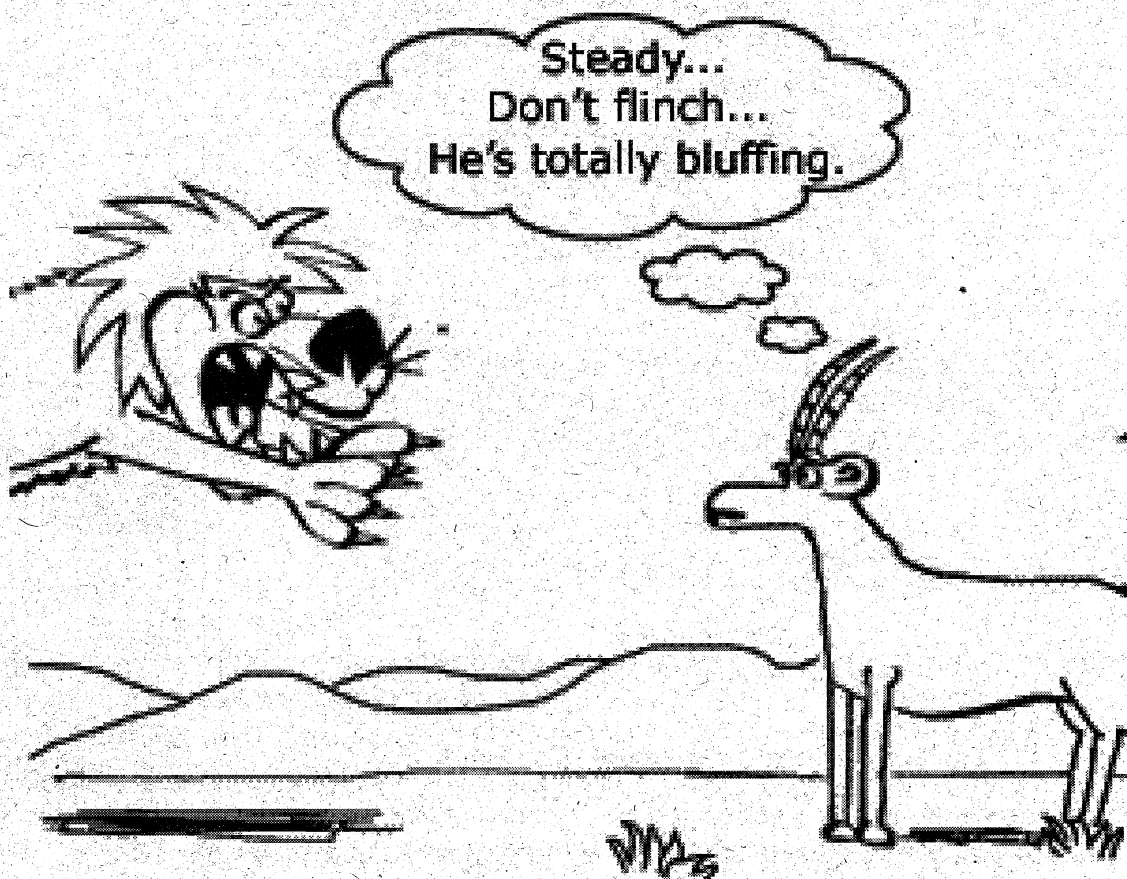
plan, as MGM had proposed.

At the time of the *Sony* decision, the market in renting pre-taped movies was as yet to be exploited, and the technology was merely 'capable of' such a venture. In retrospect, outlawing VCR's sounds like Luddism. The judges could not have foreseen Blockbuster and Hollywood Video, and luckily, under that standard they didn't have to. In March, Scalia sagely asked how long a technology must be given to develop legitimate uses. The political question may be how long a new technology must be given for the entertainment industry to figure out how to exploit it. Clearly the television, movie and advertising industries were not hurt by the Betamax technology. They found a way to make money off of it and my guess is they will continue to adapt their capitalist agenda to every new technology. For those of you who have heard of a thing called "radio," songwriters once tried to sue it out of existence, one broadcaster at a time. Then they came up with voluntary collective licensing, which is what ASCAP collects. By some estimates, putting a collective licensing scheme in place and charging users only five dollars a month for unlimited music downloads would make the music industry more money than it has ever made. Down the road, when they're raking in the cash, they may feel sheepish for putting up such a stink.

At press time, the Court's opinion was unreleased, but anticipated early this summer.

Stu's Views

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MOTIONS CROSSWORD

By JEREMY S. COWAN © 2004

THEME: "Zipped"

- Across
1. Female lyricist

8. Floats

13. Hen-peck

16. 58214

17. Relative by marriage

18. 46968

19. Jewel

21. Of a thing

22. Away from the wind

23. Dipsacus

25. 75681

30. 74001

32. Aye

33. Cuckoos

34. 55927

39. 25148

40. Leaf of the talipot palm

41. 19547

42. 29378

43. Almost tamed

51. Butea frondosa

52. Suspicious

53. 19340

54. Managed

57. 72712

61. 72663

62. Vapor

63. 31041

64. 03225
70. 11957

71. Four seasons

72. As well

73. Substitute

81. Large cask

82. 93647

83. Knit

84. 19th letter

85. 39661

86. Quashed
- Down
1. Nipple

2. Canadian hockey great, Bobby ____

3. The day before

4. Twitch

5. ____ Lilly

6. 14212

7. ____ Ste. Marie, MI

8. Ascended

9. Unwanted picnic guest

10. SC Airport

11. Ritual acts of body

12. Enfilade

13. Resounding

14. 90702

15. vacuum

20. Picture

24. 27007

25. Lady

26. 68452

1	2	3	4	5	6	7		8	9	10	11	12		13	14	15
16								17						18		
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70								71								
72				73		74	75					76	77	78	79	80
81				82						83						
84				85						86						

27. 51060

28. 79563

29. Always

30. Flurries

31. Field mouse

35. 68329

36. Ulmus

37. Born

38. 38922

39. 33865

42. 83454

44. Envisage

45. Papa
46. Dynamite comp.

47. Lalla ____, MA

48. Stagnated

49. 71465

50. 64854

54. Prostitute

55. Burdensome

56. Quills

57. Apron

58. Epoch

59. Contend

60. 71044

62. 72663
65. Belgian painter

66. Dallas, TX suburb

67. 43549

68. Fills

69. 57065

74. Syphilis

75. Pressure meas.

76. Fed

77. 100 lbs.

78. Bang

79. 67.5 degrees

80. Crimson

PUZZLED PASSAGES

Q U O T A T I O N

W N T R S R H T P

In the example above, the letter "R" is properly decrypted with "T"; similarly, "T" properly becomes "O". Find the proper letters to decrypt the puzzle. By Jeremy Cowan © 2004

B T R G T F L T I L T I B L Q Q L F

ROQZXAQ SXAFQG QX LKUXAYI

TYI ILDOYL QZLOF QFAL WLTYOYP

TYI XULFTQOXY. -- TBLKTYILF

Z T W O B Q X Y

ANSWER TO LAST MONTH'S PUZZLE: THE PATENT SYSTEM...ADDED THE FUEL OF INTEREST TO THE FIRE OF GENIUS. -- ABRAHAM LINCOLN

March Solution

P	O	E	T	E	S	S		R	A	F	T	S		N	A	G
A	R	V	I	L	L	A		I	N	L	A	W		O	R	A
P	R	E	C	I	O	U	S	S	T	O	N	E		I	T	S
						A	L	E	E			T	E	A	S	E
						M	O	U	N	T	E	N	T	E	R	P
A	V	A	N	T						Y	E	A		A	N	I
D	O	D	G	E	C	E	N	T	E	R			O	R	G	A
O	L	A				O	L	E	Y			U	N	A		
S	E	M	I	D	O	M	E	S	T	I	C	A	T	I	O	N
						D	A	K			O	N	T	O		D
C	O	P	E	D				B	E	N	T	O	N	V	I	L
O	N	I	A			A	I	R					I	D	E	A
C	E	N	T	E	R	B	A	R	N	S	T	E	A	D		
O	R	I	E	N	T				Y	E	A	R				
T	O	O				S	U	P	P	L	Y	T	E	A	C	H
T	U	N				O	R	O	S	I			E	N	T	W
E	S	S				R	O	X	I	E			S	T	E	T