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MOTIONS

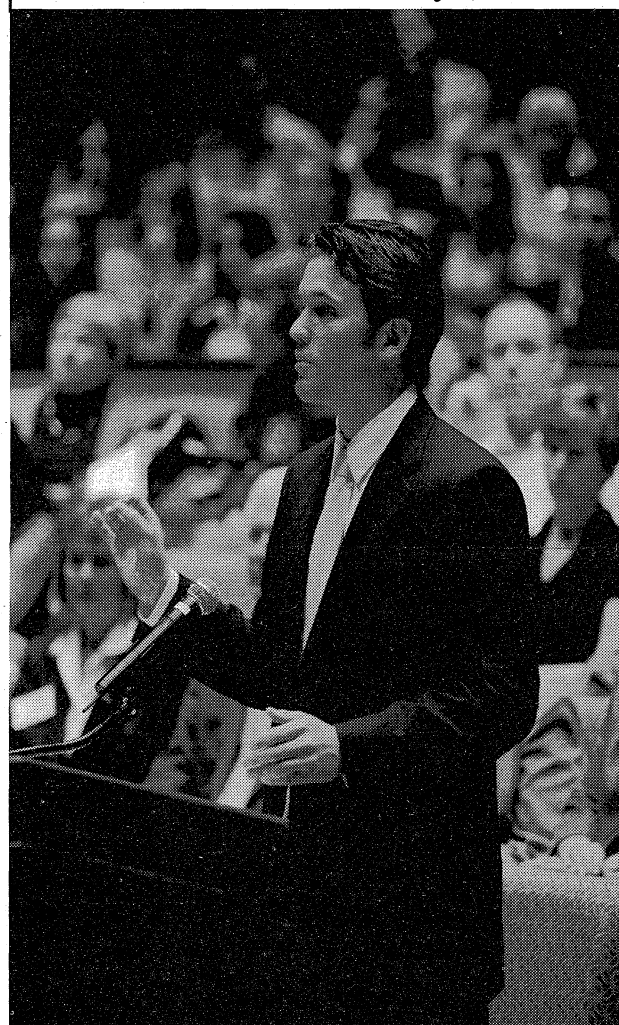
University of San Diego School of Law

Volume 43, Issue 6

April 2008

McLennon Competition Highlights Successful Year and Honors “The Man Behind the Name.”

by Nicole Cusack, *Staff Writer*



Second year student Ben Shiftan, also an Associate Moot Court Board member, took top honors in the 2008 Paul A. McLennon, Sr., Moot Court Competition.

While over 70 people may have slept outside the Supreme Court in hopes of securing public seating for its December 5, 2007 argument, the turnout for the University of San Diego's argument on the same issue held its own. Students, faculty, members of the legal community, family, and friends packed the Joan B. Kroc Institute for International Peace and Justice Theatre to witness the 2008 Paul A. McLennon, Sr. Honors Moot Court Competition Finals.

Finalists Ben Shiftan and Matt Ichinose argued a case involving the rights of detainees at Guantanamo Bay, Cuba, which went before the Supreme Court this past winter. Facing an elite panel of judges before an audience of over 280 people is alone unnerving. Tackling such complex legal issues significantly augments the challenge.

Throughout the tense forty minutes of arguments, the competitors presented their sides while being peppered with questions by the judges. Judge M. Margaret McKeown (United States Court of Appeals for the Ninth Circuit), Judge Richard R. Clifton (United States Court of Appeals for the Ninth Circuit), and Judge Thomas J. Whelan (United States District Court, Southern District of California) comprised the distinguished panel of final round judges. It was clear from the judges' aggressive questioning that they were approaching the case with as much commitment as the competitors before them.

Despite the thorough grilling, neither competitor stumbled or caved. Shiftan was declared the winner, but the panel was quick to comment on the extraordinary level of skill and professionalism exhibited by both Shiftan and Ichinose.

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US News Rankings of USD Law: The Sound and the Fury

by Jeremiah Newcomb, *Staff Writer*

Every year, around March, the deans of our nation's law schools cringe. A storm sweeps across the bucolic landscape of legal education and deans brace themselves for its icy blast. It doesn't contain hail, sleet, or snow, but it does have a thunder and lightning show that is pretty spectacular. This storm is all sound and fury, dog and pony show, and it must be shown for what it is. It is, in short, a group of journalists who are out of their depth, publishing sensational information about highly complicated topics.

The US News and World Report decided many years ago that it would be a good idea to publish a list of US law schools, ranked from best to worst. The problem, according to Brian Leiter, a law professor at the University of Texas at Austin, is that the rankings are poorly weighted (Leiter himself ranks law schools by calculating how many times faculty works are cited and by other academic means). He has two main points on this subject. First, just over half the ranking points are awarded to schools based on their reported numbers, which are all open to manipulation. Second, over one third of the score comes from data that is better for

smaller schools.

It is important to break down exactly how the data gathered by US News informs the ranking and how that data is collected. On this subject Leiter is invaluable.

According to Leiter, 25% of the score comes from asking around 700 deans and faculty (about two-thirds respond) to rank 180 law schools into five categories. The problem is that the deans are only presented with school names, thus the results differ substantially when the deans are also given lists of each school's faculty, which Leiter does in his test. Operating from merely the name of the schools has resulted in the US News survey often coming out with similar groups of schools hanging together in each category by tradition, without much thought given to the merits of each school.

Next, US News surveys lawyers at large firms and federal and state judges, of which only one third respond. Large firms are also geographically skewed towards New York City and the Northeast, which means that schools with many alumni in NYC do pretty darn

See US News Rankings, page 7 -

Order! Order! SBA Resolves Election Dispute

by Jenn Chou, *Core Staff*

The 2008 SBA elections were challenged on the ground that certain eligible voters were denied the right to vote, and that the election results were therefore inaccurate. The SBA sought to resolve the matter on March 25, and the final vote ultimately upheld the results.

Polling took place Tuesday and Wednesday before Spring break. The initial conflict arose when an LLMC student attempted on Tuesday morning to vote. According to the Article II, §2 of the bylaws, JD candidates vote because they pay SBA dues and are members. LLMC students are not permitted to vote because they do not pay dues.

Article I of the constitution indicates that all School of Law students are voting, dues-paying members. On the other hand, Article II section 2 of the bylaws describes SBA members as "J.D. candidates currently registered for classes at the University of San Diego School of Law." It leaves out LLMC students, "because they do not pay dues and therefore are not SBA members under Article I of the SBA Constitution." However, LLMC students pay SBA dues.

There is a clear discrepancy, and the Committee had to make a decision based on the knowledge they had at hand, which did not include the knowledge that LLMC students pay dues. Based on the text, the Election Committee determined that LLMC students were not eligible to vote.

Anna Sambold, an LLMC student, took initiative to clear up the matter. She contacted the dean on Tuesday and followed up early Wednesday, but did not receive a reply from the administration until Wednesday at 5:55 p.m. She learned that LLMC's in fact do pay SBA dues and are permitted to vote. "I ran out of the library as soon as I got the email and ran to the polls, but everyone had gone to start the count," said Sambold.

Sambold emailed the election committee when she got home -- at about eight or nine p.m. -- and the election committee responded to her concern early the next morning. They stated that the votes had been counted and the results were already announced, but that LLMC candidates would certainly be able to vote the next year.

The confusion arose because all LLMC students generally have a mandatory requirement to finish their curriculum in six years. The administration decided it would be unfair to charge them fifty dollars a year for the duration; thus they were not required to pay SBA dues. However, LLMC's only take three years to finish their degree, and the administration made an exception for LLMC's to pay dues and participate in the SBA.

Sambold was disappointed, and felt she did not get a lot of support or cooperation in her effort to clear up the voting issue. She made a good-faith effort to immediately consult the administration. "I feel that they could have delayed announcing results after they received my email. And the whole thing could have been avoided if they had simply inquired a little more. I had to go beyond my due diligence to investigate the whole thing."

In its defense, the Election Committee maintains that the constitution specifically provides that in regards to issues with voting eligibility, the burden is not on

See Election Dispute, page 5 -



University of San Diego

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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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PILF: "We Raise"

by Austin Evans, *Staff Writer*

USD's Public Interest Law Foundation took over the second floor of Warren Hall on March 29th with its annual poker tournament, wrapping up its week-long fundraising efforts for the school's Loan Repayment Assistance Program. USD 2L Craig Boehr took the final pot, winning himself a full Barbri package.

"We had a great turnout this year, and hopefully next year's will be even better," said Sherlin Tung, PILF's president. "We're all thankful to Ted [Fiorito] and all the students and professors who helped out." The overall atmosphere was at times tense, and at other times full of shouts as the cards turned.

The tournament itself had 120 players face off in a multi-table, no-limit Texas Hold 'Em tournament. Among initial player fees, rebuys, raffle tickets and donations, the tournament itself raised over \$6,500 for LRAP. The tournament boasted its largest participation from San Diego area lawyers and other community members, as well as those players rebuying in for a second chance to play. "At least \$3,000 was raised based on rebuys alone," stated Tung, noting either the willingness of participants to help out the tournament's cause or a flood of people going all in on bluffs. "Did he even look at his cards?" asked one onlooker as participant Chuck Billinger put thousands of dollars worth of chips into the pot. Billinger later lost the hand.

The tournament featured USD's local celebrities as dealers, including Professors Kelly, Martin, Panikowski and Bellin. The professors took time out of the weekend to help run the tournament.

"It's hugely fun to see the students outside an academic setting," noted Professor Shaun Martin. "It's great to see the talent of our students, and show that us professors are not a bunch of dweebs."

Saturday's tournament ended PILF's annual push fundraising for the school's LRAP effort, a program established to help graduates in the public interest pay off their student loans. Soliciting donations from students, faculty, staff and the community alike, PILF raised nearly \$16,000 for the program. Dean Cole pledged to match what PILF would raise, netting nearly \$32,000 for this year's week of efforts.

Community members were also happy to help out. Ballast Point and Firehouse donated refreshments for tournament players, and several local businesses donated prizes for the raffle. Emmanuel's bar prep donated two gift packages for the final table, and Barbri donated a full bar package for the top card player. "We're all really thankful for our donors, and hope to see them help us out again next year," noted Tung.

Present Investment?

by Kevin Cowan, *Core Staff*

In the aftermath of the U.S. News Rankings Report's latest release showing USD Law still mired in the lowly 80's, the lower east side of campus has been abuzz. There is the saber rattling and rhetoric of campus politicians and professors wanting to spark change, the slightly aloof and disengaged response of students too deep in last-minute preparations for finals to really do anything at the moment, the slightly louder questions raised by concerned students attending SBA meetings, and some openly disinterested remarks from outgoing third years. But amid the varying *modi operandi*, egos, and goings-on, there has emerged one talking point that is gaining momentum as more students become aware of what that issue is.

The issue is this: at a time before the law school experienced its drop in comparative national rating, the USD board of trustees, on recommendation from the then Vice President of financial affairs, passed a resolution that added a percentage (5 or 6%) to each tuition bill, to be deposited directly into the University's Endowment Fund. Every USD student—nursing student, undergrad, law student, etc.—pays into this fund. The benefit to USD is more leverage when negotiating interest rates for loans to do things like building an IPJ building or a student pavilion. The benefit to the law school is much less apparent.

Endowment Funds are the funds that alumni donations are put into. Almost universally, they are funded by alumni gifts and other charitable donations. It is very unusual for a school to divert tuition money to the endowment fund.

All money collected from each individual school is accounted for. It is put into a general fund to collect interest. Each school's contribution is kept track of, and ours will eventually be used for the law school itself. To concerned law school professors and students however, the benefits of using tuition dollars this way is outweighed by its lack of tangible benefits to the law school, and there is a general feeling that the \$2.3 million collected last year (and each subsequent year) could be more useful if added to the law school's operating budget, to be used directly by the law school, for the law school.

As previously mentioned, this was a decision that was made before our drop in the rankings. It was made with good intentions: USD as a whole needed to get in gear to compete with the larger schools. To do that, it had to make itself look better on paper, and to that end, it enlisted each and every one of us to help.

Last year, the amount per student was around \$2000. So by the time I graduate, I will have donated over \$6,000 to the endowment fund...with a combination of subsidized and unsubsidized student loans. I'm no econ guy, but I know I'm going to end up paying more than that by the time those loans get paid.

See Investment, page 7 -

Graduation Just Around the Corner

by Theresa Hrenchir, *Assistant Director for Student Affairs*

As classes wind down and students begin to prepare for exams, some will soon move on to summer jobs, travel, and even the bar. But celebration is ahead, too. On Friday, May 16, commencement weekend begins with the Annual Law Mass at 2:30 p.m. in Founders Chapel in Founders Hall. Students of all faiths are welcome to attend this special service of thanksgiving and hope as students begin their formal legal careers. Graduating students are needed as readers, cross bearer, gift bearers, and Eucharistic Ministers. Interested students may contact Theresa Hrenchir, Assistant Director for Student Affairs, WH 206, or by email at hrenchir@sandiego.edu.

The Graduation Awards Ceremony follows the Mass on Friday, May 16 at 4:00 p.m. in the Shiley Theatre in Camino Hall. A reception follows in the Shiley Courtyard. This annual ceremony recognizes excellence in academic achievement and outstanding service by law students. Information on some of these awards may be found on the Law School web site in the Student Handbook under Student Resources. Follow the link to Graduation Awards. If you think you may be eligible for Merit and/or Service Certificates for your role as an officer or board member in a club or organization and you have not previously submitted your information on the form distributed in your Graduation Packet, please turn in your information immediately to Theresa Hrenchir.

Distinguished alumni Thomas P. O'Brien, of the Class of 1993, will be the featured speaker at the Law commencement ceremony which caps off commencement weekend on Saturday, May 17, 2008 at the Jenny Craig Pavilion. A reception follows in the Hahn University Center. Tom O'Brien was nominated to be the United States Attorney for the Central District of California by President George W. Bush on July 12, 2007. He was unanimously confirmed by the United States Senate on October 4, 2007, and was sworn in as United States Attorney the next day. As the senior federal law enforcement official in the Central District of California, O'Brien is responsible for all federal criminal investigations and prosecutions, as well as all civil matters involving the United States, in the largest federal district in the country. Mr. O'Brien graduated from the United States Naval Academy in 1981 and from the University of San Diego School of Law in 1993, where he was an Associate Editor of the San Diego Law Review and received his degree with honors. He has accumulated 2,000 flight hours as a Radar Intercept Officer in the F-14 "Tomcat" fighter aircraft, and is a graduate of the United States Navy Fighter Weapons ("Top Gun") School.

All students, whether graduating or not, are welcome to attend graduation festivities and celebrate the achievements of the Class of 2008. If you have any questions, or need further information, please contact Theresa Hrenchir in WH 206 or at hrenchir@sandiego.edu.

In Defense of Warrantless Wiretapping

by Peter Stockburger, *Core Staff*

Is a warrant required for foreign intelligence surveillance? Does the President have the inherent authority to wiretap communications to spy on al Qaeda after September 11th? These complex questions have been at the forefront of foreign relations legal studies since it was revealed that President Bush, in 2002, signed an executive order authorizing the National Security Agency (NSA) to intercept the "international communications of people with known links to al Qaeda and related terrorist organizations." In particular, the President authorized the NSA to engage in electronic surveillance, without a FISC (Foreign Intelligence Surveillance Court) warrant where there is a "reasonable basis to conclude that one party to the communication is a member of al Qaeda, affiliated with al Qaeda, a member of an organization affiliated with al Qaeda, or working in support of al Qaeda." The purpose of this article is to illustrate some of the legal justifications for this program as it was authorized by the President, and perhaps dispel some misconceptions about the program. This article doesn't touch on the latest developments regarding this program (Congressional authorization, i.e., The Patriot Act, the Protect America Act, telecommunications immunity).

The first argument in defense of the NSA program, as authorized in 2002, is the President has the inherent constitutional authority to authorize such electronic surveillance because of historical precedent and the implicit authority found within Article II of the United States Constitution. Wiretaps for the purpose of gathering foreign intelligence have been authorized, and utilized, by United States Presidents since the administration of Franklin Roosevelt. More specifically, warrantless electronic

surveillance of wartime communications has been conducted in the United States since electronic communications have existed. Thus, the executive branch has a historical argument for the constitutional authority, under Article II, to authorize this program. The Supreme Court has also supported this position in a number of decisions. But perhaps the most pertinent judicial decision came from the FISA review court in 2002 that stated the President does have the inherent constitutional authority to authorize warrantless wiretapping for foreign surveillance purposes.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The second argument in favor of the NSA program is that the Authorization to Use Military Force (AUMF), as passed by Congress on September 14, 2001, authorizes the President "to use all necessary and appropriate force," which the Supreme Court has interpreted to mean actions that are fundamental incidents of war, to fight al Qaeda. The history of warfare demonstrates that warrantless intelligence surveillance against the enemy is a fundamental incident of the use of military force. Thus, arguably, the AUMF confirms and supplements the President's

authority to authorize the NSA program.

The NSA program is also arguably consistent with the existing statutory framework governing electronic surveillance. For example, the principle opposition to the program is that electronic surveillance for foreign intelligence purposes requires a judicial warrant under the procedures laid out in FISA (Foreign Intelligence Surveillance Act of 1978). However, FISA also recognizes in Section 109 that FISA procedures could be circumvented where "authorized by statute." Arguably, the AUMF authorizes such surveillance and thus constitutes a "statute" for the purposes of not applying FISA procedures.

Most importantly, the NSA's program is most likely consistent with the Fourth Amendment. The new conflict in which the United States finds itself certainly places the foreign intelligence gathering within the "special needs" exception to the warrant requirement. Also, it is certainly arguable that the government's interests in preventing another catastrophic attack override any minimal privacy considerations of those engaged in these communications. Most notably, however, it is not clear that every type of communication intercepted is entitled to Fourth Amendment protection, because it is not clear whether there are reasonable expectations of privacy involved in Voice over Internet Protocol discussions, or with email.

In sum, I think it's a debatable point. It was once said that those who see the world in absolutes are either prophets or fools. I'd encourage anyone reading this to not view this issue in absolutes. I doubt any of us are prophets.

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Moot Court Excels on National Stage

by Joseph Gorman, *Staff Writer*

This semester, the talented members of one of the hardest-working organizations on campus did their part spreading USD Law's good name across the nation. The University of San Diego Appellate Moot Court National Team - made up of those students who distinguished themselves in the school's three intramural tournaments - argued in seven National Competitions this spring, bringing plenty of trophies and awards back home to America's Finest City.

The tournaments provide an opportunity for students to show off their brief-writing and advocacy skills, receive feedback from judges during "debrief," and represent the talented group of students here at USD Law on the national stage. Moot Court competitions also allow National Team members to show off their talents to friends and family. Earlier this semester, one of USD's most talented advocates and coaches, Carolina Bravo-Karimi, had some Italian friends come observe her talents at the Jerome Prince Competition in Brooklyn. Despite the cold New York weather, teammate Andrew Haden says Carolina brought her own heat. The pair defeated Santa Clara, The University of Maine, and Saint Johns, truly representing USD Law in the Big Apple.

Recently, Andrew Haden - the Moot Court Board's fearless leader and the 2007 McLennon Champ - along with Hasmik "Badass" Badalian, tore it up in Columbus, Ohio, at the Capital Child Welfare and Adoption Tournament. The judges described their performance as Badalian pouring the gasoline all over her opponent's argument, and Haden lighting the match. Not only is Haden a powerful advocate -Bravo-Karimi's above-mentioned Italian friends stated, "I do not know what you say, but you are strong (fist pump)" - but he can

also tug the heartstrings. One of the judges started crying during debrief about the way Haden delivered his argument on the sensitive adoption issue. After defeating countless schools from across the nation, Haden and Badalian came home with plenty of hardware for USD's trophy case. Badalian received second place oralist and was the only person to receive a perfect score in a round, while the pair came back with the National Runner-Up Trophy.

Just this April, two of Moot Court's up-and-coming stars, Frankie DiGiacco and Britton "Fabulous Robot" Lacy, represented USD near our home turf, at the Roger J. Traynor California Moot Court Competition. As part of the preparation, Coach Agnieszka Jones gathered the team around the 1400-gallon aquarium in the hotel lobby. While mesmerized, the team watched, as a big fish swim to the top of the tank and defecated on all of the other fish. Emulating the giant fish, Britt and Frankie dominated their competition, including JFK and Boalt Schools of Law. The pair argued a problem that included a 363-page record in front of five appellate law specialists and one California Court of Appeal 5th Division Judge. Their hard work and talents won them numerous awards, including Excellence in Appellate Advocacy: The Bernard E. Witkin Award, 4th Place; Best Oral Argument: The Roger Traynor Award, Special Merit; and Outstanding Individual Achievement in Oral Argument, for both Frankie and Britt.

The competitors often draw inspiration from their host city. Earlier this semester in Washington, D.C., at the ABA National Appellate Advocacy Competition, Coach Rob Uriarte brought one of the National Team's most gifted duos, Jimmy DeSilva and Kelley O'Connell, on a stroll past the White House before their arguments. Meanwhile, the National Team's Constitutional Law

experts, Agnieszka Jones and Amanda Villalobos, along with Coach Jerry Gonzalez, decided to do as the Nashvillians do by hitting the town to get some barbeque, listen to some country music, and show off their talents in mechanical bull riding, before taking on Duke, Boston College, Wisconsin, and Maryland at the Vanderbilt First Amendment Center.

Not only are the tournaments excellent venues for showing off oral advocacy skills, they often require students to master complex legal issues. This February, the National Team's International Law gurus (Dan Owens, Peter Stockburger, Kristen Clement, and Kevin Cleveland) represented USD at the Jessup International Law Regional Competition in Santa Clara. Coaches Lyndsey Tadlock and Carolina Bravo-Karimi said the judges were blown away by the team's grasp of the problem. Similarly, at the AIPLA Giles Sutherland Rich Intellectual Property Competition in Silicon Valley, Coach Amanda Villalobos commented that Greg Geissinger and Justin Kissinger delivered an incredible argument, outclassing their opponents in every way.

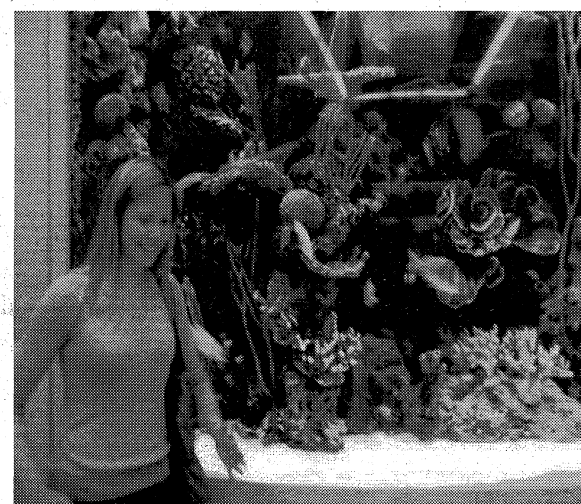
The Moot Court Executive Board recently selected next year's National Team, which will send at least fourteen pairs across the country accompanied by the wealth of knowledge gained this year. Alex Lowder - the new Executive Board Chair and National Team member - is ready to lead the fresh group of advocates to national success, offering these encouraging words: "The stage is set. This spring, the Moot Court National Teams dominated the competition in L.A., N.Y.C. and Ohio. Rest assured that the New Board is going to run with that success and lay the smack down in '08 - '09."



3L students Andrew Haden and Hasmik Badalian rounded out their impressive oral advocacy resumes by bringing some hardware back to USD Law.



Frankie DiGiacco, Agnieszka Jones and Britton Lacy strike a pose before emulating the "giant fish."



Britton Lacy, leaving little doubt that she is, indeed, the "Fabulous Robot."

Modified Mock Trial Program Proves Successful

by Hasmik Badalian, *Staff Writer*

Although one of the oldest and strongest national programs in the nation, the USD National Mock Trial Team felt this year was the time to make a large overhaul of the program, and the results are overwhelming.

For the first time in Trial Team history, members of the team were required to enroll in a class that met three times a week, in addition to the usual Friday and Saturday practices. This new setup had many advantages. Students were given more credit for the time they put into competitions, which allowed them to take less units in other classes. Additionally, the class structure ensured that all team members were available for all practices. Lastly, based on funds made available by Dean Cole and generous alumni donors, the program was financially able to hire three alumni coaches to help the various teams throughout the year.

The changes to the program had significant positive repercussions as one of the San Diego Defense Lawyer teams took home the first place trophy, and one of the ABA Labor and Employment Law teams took second in the fall. The Spring semester proved no exception when it came to success.

Like every other year, the Trial Team competed in two of the nation's most prestigious competitions.

TYLA

In the spring, the Texas Young Lawyers Association (TYLA) hosts the National Trial Competition (NTC). Co-sponsored by the American College of Trial Lawyers, NTC is one of the oldest and most prestigious mock trial competitions in the United States.

Every ABA-accredited law school in the country

is invited to compete in this annual competition. The top 2 teams from each of the 13 regional tournaments advance to the championship rounds in Texas.

The TYLA tournament is distinct from most other mock trial competitions because teams are made up of 3 students, not 4, and witnesses are not played by team members. Instead, local law school students volunteer to play the roles of the corresponding witnesses. Advocates are given 15 minutes prior to the start of a round, to meet with and prep their witnesses for direct examination.

"Not having your own witness made this tournament a lot more interesting," said Greg Smith, 3L. "Granted, you couldn't trust that your witness would understand the fine intricacies of the case when they were being cross-examined and so it was hard to trust them and the answers they may/may not give."

"However, not having prepared witnesses helped separate the good advocates from the average ones because it was clear who could properly prepare his witness in a short amount of time and do damage control the best - which is more likely to occur in the 'real world.'"

This year, USD sent two teams of three students each to the regional competition in Santa Monica, CA on January 31-February 2. Here, USD competed against 24 other teams for the top two spots.

The TYLA case file involved a fatal car accident when an electric company's bucket truck backing out of a cemetery driveway struck the plaintiff's car, who had been driving down an access road in a remote area in Texas.

The plaintiff's family accused the defendant of backing up without paying attention, while the defense laid blame on the plaintiff and alleged that the plaintiff was drunk and had smoked marijuana during his drive.

The case included problems of character evidence, establishing expert opinions, and typical hearsay issues. Students also had to attempt to bring in statements of unavailable witnesses.

After two rounds, only the top 8 teams moved on to the next round. In the first preliminary round, the TYLA team consisting of 3Ls Hasmik Badalian, Indra Bennett and Gregory Smith was pitted against the Pepperdine team that eventually won the tournament. Unfortunately, this USD team did not advance past the preliminary rounds of the competition.

On the bright side, however, the team comprised of 3Ls Hali Henderson, Joe Kinzel, and Colin Yuhl advanced past the round of 8 to the round of 4 only to lose to the same Pepperdine team that had defeated their fellow USD team in the preliminary rounds. Loyola and Pepperdine won the top two places in the tournament, earning them a spot in the national tournament in Texas.

In addition to Head Coach Corky Wharton, the TYLA teams were coached by Deputy District Attorney Mark Skeels and Public Defender Zaki Zehawi, alumni members of the trial team from 2000 and 2001, respectively.

All team members were saddened at the prospect of ending their Mock Trial careers with this tournament.

"We may not have taken home the title but I would not have traded in the experience for anything," said Hali Henderson, 3L.

"To have both a public defender and a prosecutor as a coach was invaluable, both for this tournament and our legal careers in the future."

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You're in GOOD Company!

by Marshall Skaletsky, *SBA President*

Hello fellow SBA Ladies & Gentlemen! This is Marshall Skaletsky, your fellow classmate and new SBA President. On behalf of the entire Executive Board, I would like everyone to know that we are all very honored, excited and dedicated to serve you faithfully over the next year. We have already begun the transition into our new roles and would like to thank the outgoing SBA for their great accomplishments at USD this past year. I have many ideas for SBA during the upcoming year and will always be striving to represent the best interests of the student body. I encourage everyone to feel free to express your own thoughts and suggestions. Here are a few of the committee's ideas, which we will be implementing over the next year:

Orientation: We all remember how crucial orientation was in getting us started on the right foot. This is a fun opportunity to be in a group of orientation leaders that facilitate orientation in the fall. Having the first experiences of law school run smoothly is an important step to succeeding as a 1L and our new Day VP, Sherlin Tung will be directing everyone. Email usdlawvp@gmail.com if you are interested!

Mentor/Mentee: It is not easy to acclimate oneself in the first few months of law school. Many people had the opportunity to have a mentor who they could meet with and get tips on studying, classes and law school life in general. We will be adding to the experience by organizing a group volleyball/BBQ event next year. Email our new Evening VP, Ric Fukushima at usdlawevp@gmail.com if you are interested!

Attorney Outreach Program: We want to increase the opportunities for our students to effectively reach out to USD alums and local attorneys. We will be organizing a joint SBA/Career Services effort to pair up students with local attorneys for mentorship and a "shadow day" experience. Please email usdlawpres@gmail.com if you are interested!

Alumni-Student Interactive Program: Many of you participated in this program, which brings alumni together with 1L students in a variety of different settings. This year we had golfing, BBQ's, wine tasting, sail boats, etc. The program will begin next fall and provides a great opportunity to interact with the USD Law

Alumni Board and local alumni in new activities. Email usdlawpres@gmail.com if you are interested!

Constitutional Reform and Elections: Considering that the USD Law SBA Constitution has been around for a long time without change, we are in need of some amendments to properly reflect the times. We need a better working document to eliminate inconsistencies and add clarity. If you are a constitutional scholar in-training or have any interest in leaving your mark on USD, please email usdlawpres@gmail.com.

Revenue: Attention all business minds and sales/marketing people! A big goal of mine is to increase the pool of money that we can generate through various sponsorship opportunities and innovative ideas, such as new Vending machines in the library. All additional funds will be funneled back into SBA for all clubs and students to utilize. Email usdlawpres@gmail.com if you are interested!

Book Exchange: After the successful implementation of this last year, we are looking to take the outgoing SBA's accomplishments and add to them. Digitizing the book exchange so that students can log in online to print out their book lists and see what is still available for sale will allow for a smoother process. Please email usdlawtres@gmail.com if you are interested.

USD Law Campus Involvement: This is a great opportunity to become involved in a myriad of activities. Throughout the year, there are many campus committee meetings, info sessions and seminars where certain students can sporadically attend on behalf of USD Law so that we properly represent ourselves in the University. If you would like to vigorously promote our interests, then email usdlawevp@gmail.com and let us know!

As our outgoing Moot Court Chair, Andrew Haden, said with a giggle: "You obviously have a lot of exciting things going on next year but that's probably only a flavor of what you have brewing. Please no decaf allowed! Haden out." Well, that is true (although the humor could use some work) and we are happy to have as many qualified and interested people involved with SBA activities. Thank you again for your support and good luck with finals! You can always contact me at usdlawpres@gmail.com!

Election Dispute, from page 1:

the Election Committee to investigate. Further, the constitution requires the committee to count the votes immediately after polls close.

At the meeting on March 25, the possible remedies considered included amending the bylaws but accepting the election results, allowing LLMC candidates to vote and adding their votes to the final count, and conducting a new election entirely.

Sambold asserted at the meeting that she would not be satisfied with a mere amendment to the bylaws, and wanted a chance to vote. She proposed allowing LLMC's a chance to vote, rather than doing the entire election over.

However, Marshall Skaletsky pointed out that election results, including the margins of victory for each position, had become widespread knowledge. Allowing LLMC's to vote post facto would pose significant problems in terms of fairness, as the LLMC's could potentially form a bloc vote and single-handedly upset the outcomes of several races. Additionally, holding a completely new election for both JD and LLMC students would be time-consuming and impracticable.

The meeting got rough at times, with people talking out of turn, and others taking on irritated and defensive tones. Doug Wacker was explaining the problematic provisions of the constitution, which indicates that LLMC foreign law students are not allowed to vote, when a member sitting towards the back snidely declared that no one really cared if foreign students could vote anyway. This prompted a furious response from an LLMC student that they were not "just foreigners," and that some of them intended to remain in the country.

Sambold was critical of the process. "Although Marshall recused himself from conducting the hearing he still voted. As a member of the club, anyone affected by the decision should really not have been there to make decisions." She also felt that she was not able to explain everything she had hoped to explain. "People got heated and agitated. I tried to explain it in a straightforward way in five minutes, but I felt overwhelmed."

Presidential candidate Thomas Del Monte was glad the review process went through, but was ultimately disappointed with the procedure. "I was not as concerned with the result, but in terms of procedure, there were some decisions made that did not look right." Del Monte

mentions that having the newly elected board resolve the issue of a valid election implicated conflicts of interest.

Even so, Skaletsky maintains that he followed protocol. "In regards to what I did, everything I did was per the constitution, as best as I could." In response to the conflicts of interest issue, Skaletsky points out that people on the other side similarly voted. And it should be noted that the newly elected board only took office pursuant to the SBA constitution, which requires that members take office immediately. There is no contingency plan in the event of a disputed election.

Further, the vote was 28-14, with one abstention, in favor of upholding the vote. Thus, the votes of the newly elected board were not determinative. Skaletsky also brings up the fact that if the newly elected board had not voted, there would not have been the necessary quorum for the proceeding. "This was an unfortunate situation, but it wasn't any of our faults," Skaletsky adds.

Del Monte suggests that in situations in which an individual's eligibility to vote is in question, the vote should be taken and set aside so that the issue can be resolved without the risk of permanently barring someone from voting. "The way it was handled from that point on precluded any fair resolution without a full new election," says Del Monte.

Still, Del Monte believes the new board handled the situation well. "Given what position they were put into, the new board did an excellent job in holding the SBA together and trying to be as impartial as possible."

As for further action, Skaletsky expresses an interest in amending the SBA constitution. "The constitution is badly written in some areas; it has so many logical fallacies and problems," Skaletsky explains. "My new platform will be election and constitution reform, and I have two committees formed for that."

The current board is also working on refunding SBA dues to LLMC students. Currently, the board is verifying that the dues were charged and given to the SBA, rather than the administration. Skaletsky intends on bringing the resolution in the next two meetings, and having the council vote on the refund. "I am pretty confident it will pass," he says. The total refunded will amount to about \$1,200, and will come out of the SBA's working budget. "It's a bit of money, but we will absorb it. It's the best I can do to remedy it for this year."

Tibet and the American Media

by Jenn Chou, *Core Staff*

Those who are thinking of jumping on the bandwagon in Olympic-protest madness should be sure they are fully informed first.

Issues such as these are inevitably complex; the current view taken by the Western media is unbelievably simplistic and biased. American media once again show their disturbing loyalty to the good versus evil, black-and white, reductionist version of reality.

Contrary to what the rioters in San Francisco will tell you, Tibet was no peaceful society prior to Chinese rule. In fact, it was a pretty scary place to be, and ironically, countless human rights problems existed before the Chinese ever set foot on Tibetan soil.

The monks prior to communist takeover ruled over the vast majority of the population in a feudalistic society, and individuals had very little rights, few ways of recourse, suffered physical abuses, and had limited social mobility.

According to Tibet scholar Michael Parenti, young Tibetan boys were regularly removed from their families to receive training to become monks, and were frequently sexually abused or raped in monasteries. Monastic institutions also regularly drafted children for lifetime servitude as domestics, dance performers and soldiers.

Monks and secular leaders freely sold off family members, and it was very difficult for normal people to own their own land. In fact, serfs could not even choose what they could grow on the land on which they lived, unless they had "master's" approval. Cultural idealization of Tibet is severely misplaced.

Of course, this does not necessarily justify a foreign takeover. Indeed, the end does not always justify the means. But the western media is seriously and unduly biased. Tibet was a society that was essentially still operating under a form of slavery in the 1950s. If such a society existed today, we would likely be calling for international intervention - which is exactly what China did in 1959 (or somewhere around there).

We must acknowledge that Communist china, although quite flawed, and even initially brutal, has at least rid Tibet of slavery, invested substantial money to bolster the economy, and set up affirmative action plans for the employment of Tibetans. The Chinese government is not blind to the need for cultural preservation. 92-94 percent of Tibetans continue to speak their native tongue, and the education system does not introduce Mandarin until secondary school. Tibetans have an average of 3.8 children per family, whereas Han Chinese families are strictly limited by the nation's one-child policy. Is freeing a piece of land really more important than the economic and social development of the people who live there?

While some Chinese actions cannot be justified, I highly doubt there would be this much anger and self-righteousness if the people protesting were fully aware of Tibet's history. Informed people would probably be more loath to make quick judgments and would instead see the shades of gray.

Yes, we know that Chinese news is state-sponsored, and prone to censorship. However, photos exist, taken by journalists from other countries, showing Tibetans looting Chinese shops, and violently targeting ethnic Hans. We have pictures of burning shops and burning buildings. These photos are rarely shown in our media, and the Chinese government's response to these acts of arson and racial violence continue to be condemned as "heavy handed" and "oppressive" crackdowns. Contrary to what our media is shoving down our throats, this situation is clearly not a one-dimensional issue of good versus evil.

Tibetans attacking an ethnic Han (and other pictures) - http://www.foreignpolicy.com/story/cms.php?story_id=4234&page=4

On Tibetan feudalism and lack of social mobility - <http://www.case.edu/affil/tibet/tibetanSociety/social.htm>

On the good AND the bad that the Chinese Communist Party has done - <http://www.michaelparenti.org/Tibet.html>

And if Tiananmen comes to mind, giving rise to the proposition that China is deservedly criticized for its human rights record, that is yet another event that should be deconstructed and re-analyzed. In a retrospective analysis of news coverage of that event, there was an extreme disparity between different countries' approaches to media coverage.

See Media Manipulation, page 7 -

USD Pride Law

by Michelle Butler, *Staff Writer*

Diversity Week was celebrated by the Pride Law group on Thursday, April 3, when they hosted a panel of gay and lesbian lawyers speaking about their coming out experiences, as law students and at work, and what that meant to them both personally and professionally. The panel had a very broad range of experience, from a brand new attorney to very experienced advocates. Also, the panel was comprised of both criminal and civil attorneys, so just about everyone found something of interest. The speakers had compelling personal stories that inspired the audience and brought a lot of questions.

The first speaker was Richard Segal, a partner at Pillsbury Winthrop Shaw Pittman. Mr. Segal specializes in litigation involving unfair competition, consumer finance, and anti-trust. Segal was not even aware that he was gay when he was hired and did not come out until after he made partner. His public "transition" from straight to gay man was both comical and endearing, as he shared his anxieties about revealing his "true identity" to his colleagues. Segal was clear about what he thought was the most important element in the coming out process: to treat that aspect of life as "normal" and not make too big a deal of it. Segal is both the chair of the gay lawyers group at Pillsbury and the hiring committee; he sees any aspect of diversity in an application as a plus, and encouraged LGBTQ students to be "out" on their resumes.

Andrea Kimball, a partner at Luce Forward Hamilton Scripps who specializes in business and IP litigation, spoke of her experience as a judicial law clerk, and then as an associate working her way up the ladder to become partner. She had published a law review comment on same sex adoption, which was listed on her resume. A good barometer for deciding where she would want to work depended on the interviewer's reaction to that comment. Some ignored it; others mentioned it in passing with a raised eyebrow; and others addressed it directly in terms of its merit as a legal issue worthy of discussion. She had nothing but good things to say about the coming out process at work, agreeing with Segal that the main thing was just to be yourself. She would bring her "wife" to social gatherings and has her picture on her desk. Questioned about how "out" she was to clients, Ms. Kimball replied that it depended on their comfort level with personal issues. She said one of her best clients is a Utah corporation with mostly Mormon officers; having them get to know her professionally, and to trust her work, helped smooth the way for her eventual coming-out to them. It did not hurt that she had recently won a multi-million dollar verdict in their favor. She did say that she had real problems with a client of one of her partners, but that she had to "bite her tongue" when dealing with bigotry because she did not want to harm the good working relationship the firm had with this client. This was a compromise she acknowledged was still very much part of being a queer lawyer today. Being a good lawyer, she said, usually trumps anyone's issues about their attorney's sexual orientation, but not always.

Mr. Michael D. Sandulak, an associate at Haight, Brown and Bonesteel, was the newest attorney, having just passed the bar last fall. He specializes in civil litigation, construction defect, and insurance defense. Mr. Sandulak was active in his law school's gay group and had that listed on his resume. He came from the University of Maryland and had no friends, family or colleagues in San Diego, but he had clerked here and wanted to live here. He credited the networking he gained from joining the local bar's queer lawyer group, the Tom Homan Law Society, for helping get through the tough period between taking the bar and finding out his results. He ended up with a job at the small San Diego office of a larger California-based firm. The four-attorney office would have been problematic had any of them been unfriendly to gays. Fortunately for Mr. Sandulak, the senior partner in the San Diego office happens to be gay himself.

Also present was Mr. Stephen Marquardt, Deputy District Attorney assigned to the Superior Court Division of the DA's Office that does general felony trial work. Much of his work deals with domestic violence, and he specializes in prosecuting perpetrators of same-sex domestic abuse. He said that his perspective as a member of the LGBTQ community helped give him credibility to victims who had a fear of the police and government intrusion into their private lives. He felt good about being able to bring them the kind of justice that all victims of domestic violence are entitled to, not just those from heterosexual relationships. In the recent past, this was not always the case.

Some of the most interesting stories and comments came from the Honorable David Rubin, Superior Court Judge, whose background was also at the DA's office. Judge Rubin spoke about the harassment and discrimination he endured as the first and (for a long time)

See Pride Law, page 7 -

Breaking a Bag Habit

by Rachel Dorfman, *Core Staff*

The hippest and sexiest of new environmental legislative measures may be coming soon to San Diego. That's right, the plastic bag ban. Everybody's doing it. San Francisco passed the country's first last year, and since then dozens of other U.S. cities have enacted or are considering enacting, similar laws. The city of Santa Monica is in the process of passing an even stricter measure: banning the use of plastic bags and taxing the use of paper ones. Not to mention that countries such as China, Ireland, South Africa, Australia, and countless others have either completely banned plastic bags or have placed restrictions on them.

Here's the lowdown. Plastic carryout bags used in supermarkets, restaurants, convenient stores, and pharmacies are usually manufactured from high density polyethylene (HDPE) and are cheap to produce, thin, and intended to be used only once by customers before being recycled or disposed of. About 100 billion of these petroleum-based plastic checkout bags are used each year in the United States, requiring an estimated 12 million barrels of oil annually. Californians are responsible for the consumption of about 19 billion of these bags. Environmental groups estimate the worldwide annual usage to be between 500 billion and 1 trillion bags, and in the month of January alone, nearly 42 billion were used worldwide!

However, less than 5% of plastic carryout bags are actually recycled in California. Because they are so lightweight, these plastic bags often get blown out of the trash and into the environment. These then become an eyesore as well as a great danger to wildlife, particularly marine wildlife, which often ingest the bags or become entangled in the plastic and die. Municipalities spend millions of dollars attempting to clean up this trash and to recycle as much as possible; it costs California \$25 million annually to landfill discarded plastic bags, and public agencies in California spend more than \$300 million annually in litter cleanup. Plastic bags take about 1,000 years to break down, and result in potentially harmful particles that may be absorbed by animals and contaminate the food web.

Another fact to consider is that the overwhelming majority of plastic bags used are not recycled. Less than 5% nationwide are recycled, with some estimates ranging as low as 1% recycled each year. Plastic bag manufacturers and other organizations (almost all of which have a financial stake) oppose plastic bag bans, claiming that the bans interfere with recycling efforts. These opponents claim that better recycling programs are the answer to the plastics problem. Though this would reduce some of the negative affects on the environment, recycling the bags requires enormous amounts of energy and does not provide an answer to the petroleum problem.

But if not plastic, then what? Although paper bags break down much more quickly, opponents of such plastic bag bans will point out that paper bags also cause a significant amount of harm to the environment. Since plastic bags are inexpensive to produce and light in weight compared to paper ones, they require less energy to transport. Promoting the increased usage of paper bags would result in more trees being cut down to produce them, and paper bags also require much more energy to recycle than plastic bags. Biodegradable plastic is not currently a feasible alternative (though it may be in the future), because of the lack of commercial composting facilities necessary to recycle them. A couple of lawsuits have even been filed claiming that cities passing bag bans should have to conduct environmental impact reports because of the negative environmental effects that would result from the increased use of paper bags.

The consensus in the environmental community is reusable bags. Reusables come in many different types and have potential to appeal to the public as a socially responsible, and perhaps even as a fashionable, way of shopping. They often cost less than a dollar (even less if mass produced), and thanks to a law enacted last year, it is required that they be sold in all major grocery stores. Yes, it is true that a ban will leave consumers with fewer bagging options, which one opponent claimed is "un-American." And it is true that each bag will cost an individual...gasp...as much as a pack of gum (or one jr. bacon cheeseburger). But environmentalists claim a ban has the potential to break people away from the plastic bag habit and into a practice that is much more environmentally safe and sustainable.

So are we next? Although petitions are already circulating in the nearby cities of Encinitas and Solana beach, calling for a ban, there is currently no indication that the city of San Diego is contemplating such a step. My bet, though, is that it is only a matter of time. After all, Green is the new black.

Prosecuting Genocide

by Mary Elizabeth Grant, *Staff Writer*

The credibility of the International Criminal Court rests in its ability to fulfill its mandate to investigate and prosecute perpetrators of genocide, war crimes, and crimes against humanity. The Court's current open investigations reveal the challenges the ICC faces in fulfilling its mandate. In order for the Court to overcome the challenges, the international community must strengthen its commitment to justice.

The International Criminal Court was established in 2002. In July 2004, it opened its first investigation into crimes perpetrated by the Lord's Resistance Army (LRA) in Uganda. It has opened investigations into crimes committed in the Democratic Republic of Congo, Central African Republic and Darfur. Since 2005, ten arrest warrants have been issued. Three suspects have been apprehended, two suspects died, and five suspects remain at large.

The ICC faces the challenge of harmonizing the international pursuit of justice with peace negotiations. The current situation in Uganda exemplifies this dilemma. Due to its weak judicial system, the government of Uganda, which is a state party to the International Criminal Court, requested that the ICC investigate war crimes and crimes against humanity committed in Uganda since 2002. The LRA has conducted a 20 year insurrection resulting in the deaths of tens of thousands of people and the displacement of 1.6 million civilians. The LRA has abducted approximately 20,000 children and forced them to fight as soldiers.

The ICC issued arrest warrants for Joseph Kony, the LRA leader, and his commanders, Okot Odhiambo and Dominic Ongwen. To date, no actual arrests have been made, but the issuance of the arrest warrants opened the door to peace negotiations between the LRA and the Ugandan government. Peace negotiators regard Kony's participation in the peace process as critical to disarming members of the LRA. However, Kony refuses to appear personally at the negotiation table for fear of arrest, and refuses to aid in the disarmament unless he and his commanders are granted immunity for their alleged crimes. The conflict between the pursuit of justice and peace negotiations has created a stalemate that perpetuates the violence.

While granting immunity might establish immediate peace, the question the international community must resolve is whether such policies establish lasting peace. The element of deterrence of future crimes is nonexistent when immunity is granted to perpetrators of crimes against humanity. 'Should crimes of such magnitude be forgiven?' is a question to resolve if the ICC is to be effective.

Another challenge the ICC faces is the lack of cooperation from member and nonmember states. The ongoing genocide in Darfur presents a key example of a government impeding investigations by the ICC. Since 2003, approximately 400,000 people have died and 2 million people have been displaced in Darfur due to genocide. The United Nations Security Council referred the Darfur conflict to the ICC for investigation in March 2005. In February 2007, the ICC issued arrest warrants for Janjaweed militia leader, Ali Kushayb, and Sudanese humanitarian affairs minister, Ahmed Muhammad Harun. The Sudanese government had Kushayb in custody for unrelated crimes, but ignored the ICC arrest warrant and released him due to a reported lack of evidence. The government further disregarded the warrants by placing Harun in charge of overseeing the deployment of the African Union forces in Darfur.

The Sudanese government argues that the ICC has no jurisdiction in Sudan, since the country is not a member state of the ICC. Consequently, the government has rebuffed entrance of investigators into the country, thereby dramatically hampering progress in the ICC's investigation into the systematic rapes of thousands of women, and the torture, mutilation, and mass murder of civilians.

Beyond issuing the referral to the ICC, the United Nations Security Council and international community have not applied enough pressure on the Sudanese government to aid ICC investigators, and ultimately, to stop the genocide. China in particular could exercise significant influence over Sudan, as it purchases much of its oil there, but its reliance on the oil is an obstacle. China currently consumes 7.3 million barrels of oil a day to serve a population of 1.2 billion people. In contrast, the United States consumes 20.6 million barrels a day to benefit a population of 303 million people. It seems likely that China will seek to increase its oil imports in order to provide for more of its population. Thus, it seems unlikely that China will jeopardize its relationship with Sudan. If

See Crimes Against Humanity, page 8 -

US News Rankings, from page 1:

well on this survey.

US News also bases 12.5% of the score on a school's median SAT score. Sounds great, right? Except that the small schools can manipulate this result simply because it is a median score, so it's easy to get 70 people with a 164 LSAT, which for a small school with 150 students would really bump their median score high, but a large school would have to get perhaps double the number of people with a 164 LSAT score in that same year to achieve a comparable median score. Also, US News must simply trust private schools to report the LSAT median accurately, since the ABA doesn't collect LSAT data.

Now we come to the exciting part. 12% of the score is from the employment rate nine months after graduation. Guess who decides if someone is employed and what category they fall into? Yup, the law schools decide. Some schools say that their students are employed even if you don't need a J.D. to do the job the graduate is performing (such as employing former students as "research assistants" for your own professors and counting that as employment, which Northwestern did).

Ten percent of the score is from the median GPA, which again means that the small schools win out automatically. Also, we all know that some undergrad schools are inflationary when it comes to grades, and there are easier majors at certain schools.

The last major data source is the average per capita expenditures for this year and the prior year for classes and the library. US News finally started adjusting this for cost of living, but it's still prejudiced towards small schools, since it is based on how much money is spent per student. Leiter reports that Harvard often has a better reputation survey result than Yale, but Yale wins out because Harvard has three times as many students.

Jumps of ten spaces or more are not unusual for many law schools, let alone smaller fluctuations. USD Law dropped from 65th to 85th last year and only rose three spots this year. Scores lag behind by two years, which means that last year's rankings were from the 2005 school year, and this year's rankings are from the 2006 school year. According to Dean Cole's e-mail on the subject last year, the main factor that caused the big drop in the rankings was our employment rate nine months after graduation, which fell significantly. This time around (data for 2006, ranking for 2008) our employment rate actually improved more than four percentage points, when on average the top one hundred schools actually suffered in their employment rates. But we only climbed up three spots to 82nd, when historically we have been ranked in the 60's. Our employment statistics for the class of 2007, which will be used next year, reflect further progress.

There were two main reasons for the initial big drop in the 2007 rankings (from 2005 data). One was that we didn't play the correct games in reporting our employed students, as some other schools did in 2005. The problem, as previously discussed, is that there is great flexibility regarding how schools report this sort of data, and once one group of schools starts doing something "creative" in how they report employment, the other schools will take a hit in the rankings until they catch on. Another reason is that the career services office was not up to par in 2005 and most of 2006. Career services was re-organized toward the end of 2006 and Cara Mitnick, the new assistant dean of career services, was hired just a week before the 2006 graduation. The data informing the current ranking of USD Law is from 2006. In the future the rankings should only improve. A lot of resources have been poured into career services and the rankings will start reflecting this next year. All new staff have been added, the offices have been re-modeled, and things are moving again. But given both the unpredictability of the rankings and the time it is going to take for career services to get established, the rankings may only rise gradually next year.

An additional problem in the current rankings is that some people in the class of 2006 didn't respond to inquiries regarding their employment. If you are angry about the spot that USD Law has in the rankings, here's an idea: make sure all your friends answer the survey when they graduate! Despite the failures to respond, our employment rate went up in the 2006 data by four percentage points, to 87.9%. If US News keeps the same employment formula for next year (not a safe bet - it has changed before) Dean Cole mentioned in his e-mail that we should have a nine month employment rate of around 93.3%, which will facilitate a nice gradual rise back up in the rankings.

Then there is the intra-university problem with the rankings, which I hesitate to address, except that several students brought it up at a meeting that Dean Cole held to shed light on the rankings issue. Specifically, the USD Central Administration would like us (the law school) to take \$2,000 from each student's tuition, and put it in the law school endowment fund. The idea is that schools with big

endowments are better schools, because their endowments generate interest, which provides a steady stream of money for fancy clinics and small class sizes.

The problem is that the forced saving is keeping us from doing the sorts of things that generate more money, such as investment in career services, which could increase the number of employed graduates. This would in turn increase our prestige and the overall value of our education. But the current strategy is sort of like saving money for a rainy day while the rain is coming through the cracks in the roof. Now I hesitate a little bit to think of this as a big problem, because I am all about spending the money that we have in a better way, rather than throwing more money at the problem. But money is money, and it would be a good idea to try to get some donors to contribute to the endowment, instead of using tuition that could be spent elsewhere. For instance, Dean Cole just completed a fundraising drive, and which is the sort of thing that deans are always doing. If we take that two thousand from each student and spend it, capitalistic principles may mean we generate more revenue, by increasing our prestige at a time when it could use a kick start instead of a gradual increase. This is especially true, given that 80 million dollars are going into creating a law school at UC Irvine, which will threaten our regional dominance, and will pull applicants away, eventually.

The important thing to note about the rankings is that they just don't do a very good job. There are large jumps every year in individual school's rankings. There is the problem of including factors like bar passage rates, when everyone knows California has the hardest bar. There is the Northeast focus in only surveying large law firms which are predominately in the Northeast. The LSAT would be a good nationally administered statistical indicator, except that since it is calculated from a median of all students, smaller schools rank higher automatically. If US News ever hires some decent statisticians and philosophy of data collection employees, instead of just asking a magazine editor to make up a data collection scheme for these rankings, then our efforts in focusing on core academics will be reflected in the rankings. But since academics don't have a whole lot to do with the rankings (whereas tricks, geographical location and tradition do), we should ignore the rankings with respect to academic policy and continue plotting our own course in that regard.

Recently Michael Seringhaus, a Yale first-year student, wrote an article in the Hartford Courant decrying the insanity of relying on statistical conclusions made by magazine editors. Yale law school is listed as the number one law school in the latest US News and World Report, yet still Seringhaus protests. He feels that since the numerical ratings are not well done, and since numerical ratings can only tell one so much about a school in the first place, deans and administrators should step back and stop stressing over rankings that are simply inaccurate. In 2006 many of the nation's law school deans even signed onto a letter to potential students asking that they disregard the rankings and look at each school on all of the merits. The problem is that US News is a nationally published magazine, and people do pay attention. The hope, however, is that those who are really serious about going to law school will do something more than flip through a magazine in terms of research. Seringhaus makes the point that states have different bar exams and that most of the schools on the US News list cater to regional job markets. This means that US News is comparing apples to oranges. There are a few schools that are truly national, but most in the top hundred, even in the top fifty, aren't placing students nationally.

Pride Law, from page 6:

only gay attorney at the DA's office in the mid-1980s. He said that he was hired over the strenuous objections of many of the senior attorneys in the office. At first, he felt ostracized and alone, but by working hard and doing good work he proved that he was worthy of being there, and that his sexuality did not impact his performance at work. One assignment was problematic for him, however - even after he had been working as a DA for some time. He was assigned to the child abuse unit; there was an uproar over having a gay man in close contact with child victims of sexual and physical abuse. The stereotype of homosexual males as child abusers was something he had to challenge and combat first hand, and he persevered. Judge Rubin was truly a trailblazer who made it possible for the queer lawyers who came after him to be fully accepted.

Judge Rubin observed that this was a generational issue; because he began working at the height of the AIDS crisis and before full acceptance of LGBTQ people in most aspects of society, he had to run up against the full force of hatred, distrust and bigotry. The other panelists, who began work in the mid to late 1990s and later, had no significant issues at work about their sexual orientation. This was a relief to the attendees worried about the significance of their involvement with Pride Law, or with same-sex

Investment, from page 2:

But why is it the students' responsibility to take on more expense while we are still in school, rather than the alumni, who were supposed to have been contributing all along?

The short answer: alumni donations have not been too forthcoming. One hypothesis is that alumni have not been courted efficiently. It is hard to get people to give you money. It just is. And when you are not actively courting donations, many people are not going to show up and hand the money to you. One way to broaden USD's donation solicitation exposure is to get current students involved. There are a number of alumni capable of making donations. We just have to reach them.

Along the same lines, San Diego is a community of imports. A community school recruiting local students who stay local after graduation has an easier time courting donations from their alumni, who may have a more deep-seated community ethic. By contrast, USD boasts of its diverse student population, which is awesome, but once our students disperse nationally, they become more difficult fundraising targets.

It may be a question of incentive. If we are donating while in school why should I donate once I'm out of school, when my tuition is one of the most expensive, and my school is ranked lower than six cheaper California schools?

And it isn't so much that I am paying an "extra" \$2000 a year to the school. But if I am going to pay it, I want it to be used in a way that is advantageous to ME.

Basically, the law school wants to divert the \$2.3 million from USD's Endowment Fund back into the operating budget for the law school. Doing this will provide the extra money we need to jump start our trek back up through the rankings.

For example, most schools have a Lawyering Skills student to professor ratio of 40:1. USD's average is around 60:1. According to faculty, Lawyering Skills teachers are being paid substantially less here than at certain other schools like Santa Clara. These numbers directly affect our national ranking. Without an influx of money, one faculty member says, "Our hands are tied, but not being able to use this \$2.3 million per year is like tying our hands and feet."

We might ask to have it stricken from the tuition bill outright. Sure, it would get our tuition bills down. From the numbers I have been given, we are the 20th most expensive law school in the nation. But imagine what we could do with the money if we used it to bolster our lawyering skills program, or improve the library, or fund more journals, or improve marketing, recruiting, and donation solicitation efforts. I don't mind the \$2000 so much; but if they are going to mandate the charge, I want it used to improve my education in the most direct manner possible, and I don't think passively providing cheaper interest rates to build an on-campus student pavilion (read: hang out spot?) is the best way to use my money.

The SBA has drafted a resolution to address the issue. The faculty has as well. The provost of the school has responded. Things are happening, and hopefully this issue gets resolved before next year. We'll keep you posted.

Media Manipulation, from page 5:

For instance, Japan, which does not traditionally have friendly political ties with China, was far less critical of government actions in China, and this was reflected in media coverage of the event. The same was true of several other Asian nations. Western countries, driven by a commitment to democracy, cast a very different light.

In particular, American journalists fueled and encouraged the protesters, and even gave them ideas about hunger strikes. Meanwhile, the same American journalists dined with and interviewed these protesters during the alleged hunger strikes. This is deplorable and irresponsible creation and distortion of news by people charged with informing the American public. Despite all the criticism of the state-controlled press in China, we too must be continually suspicious and critical of our own media.

*And if there is any suspicion that I am merely a biased Chinese nationalist, I should say that I'm actually Taiwanese. My country is also being bullied by China, and I think that should mitigate some doubt as to my impartiality.

More Pride...

political or social groups, in terms of job hunting.

Most of the panel agreed that being yourself was the best approach, but this had to be tempered with an understanding of the particular organization you have applied to. Judge Rubin joked, "Don't go looking for work east of the Rocky Mountains." Mr. Sandulak, from Maryland, could only smile.

Mock Trial, from page 4:**AAJ**

The USD Trial Team also sent two teams to the AAJ National Student Trial Advocacy Competition, hosted every spring by the American Association for Justice. Teams are assigned to one of fourteen regional competitions. While a school can submit more than one team, only the top team from each region advances to the National Finals.

In general, teams are judged on their skills in case preparation, opening statements, use of facts, the examination of lay and expert witnesses, and closing arguments. Unlike TYLA, witnesses are not supplied by the hosting school. Rather, team members not acting as advocates play the witnesses for their peers.

AAJ's mock trial cases are always civil and tend to deal with products liability, personal injury, or medical malpractice/negligence issues. This year's case involved a medical malpractice lawsuit. The plaintiff's family sued the doctor on behalf of the deceased plaintiff for failing to properly diagnose the plaintiff's breast cancer, and not sending her in for a biopsy until the plaintiff's cancer had advanced and it was too late. The case raised questions about the introduction of medical reports and testimony, and statements made by an unavailable witness.

The AAJ Regionals took place in Santa Monica, CA the second weekend of March. Sixteen teams participated in the regional competition and each team was guaranteed to compete in 3 qualifying rounds. After the three rounds, a drastic cut was made and only four teams advanced to the semi-finals.

Unfortunately, the USD team comprised of 3Ls Scott Mason, Nicole Kukas, Karl Husoe and Katie McCurdy was ranked 5th at the end of the preliminary rounds, and narrowly missed the semi-finals. However, the USD team made up of 3Ls Viviane Pourazary, Joy Shedlosky, Jamal Kersey, and Bryan Zuetal made it to the semi-finals, only to be defeated by UC Berkeley. The top two teams from the final rounds that moved on to Nationals were two UC Berkeley teams.

Based on the way the schedule worked out this year, the USD AAJ teams had a long practice schedule for their competition and were able to bring in their experience from the Fall semester and spend the time honing their advocacy skills.

"I really enjoyed being able to compete in a second competition in my final year," said Scott Mason, 3L.

"The competition in the Spring allowed us to do our basic learning in the Fall but work out the kinks and fine tune our skills in the Spring to become truly competitive."

The AAJ teams were coached by Head Coach Corky Wharton and Deputy District Attorney Paul Reizen, a 2004 alumnus of the Trial Team.

Intramural Tournament and Team Selections

Earlier this month, the local chapter of AAJ hosted the Spring Mock Trial Tournament. Students in all grade levels competed against each other, using the same case file the national AAJ team used.

The Trial Team historically uses this competition to recruit new talent and extend invitations to new team members. Results of this tournament and team selections will be announced school-wide soon.

With two national competitions in the Spring semester and an intramural tournament used to select the future of the Trial Team, the USD Mock Trial program continues to prepare some of San Diego's finest for the litigation world.

Based on the current successes of the modified program and talent of the upcoming class, the USD Mock Trial Team looks forward to continued success and bringing home more national victories in the upcoming season.

Crimes Against Humanity, from page 6:

there is a possibility for China to exercise influence over the Sudanese government, the next four months are crucial for the international community to apply pressure on China by using the Olympic Games as leverage.

Another challenge for the ICC is the logistical difficulty of investigating in conflict zones, such as the current situation in Democratic Republic of Congo (DRC). The jungles and brutal violence together pose great danger to investigators. Additionally, numerous militias operating independently of one another and perpetrating brutal crimes against civilians present a logistical nightmare for determining exactly who is responsible for what crimes. Congolese authorities have cooperated with the ICC and are responsible for capturing three suspects who are currently awaiting trial in ICC custody. Congolese authorities' capacity to provide investigative aid to the ICC is somewhat limited due to a weak judicial system.

For the International Criminal Court to be effective in fulfilling its mandate, the international community

McLennon, from page 1:

The McLennon Final Round was the culmination of two months of classes, preparation, and competition. Created to provide an opportunity for students to develop their brief writing and oral advocacy skills, the McLennon Competition was endowed through the generosity of USD law professor Michael Devitt and his family to honor longtime family friend, attorney and naval officer, Paul A. McLennon, Sr.. "The McLennon tournament is the most rigorous legal competition in the country," said Andrew Haden, the USD Moot Court Chair. He explained: "No other tournament requires the same depth of legal research, or [requires competitors] to deliver nine oral arguments over a two week period."

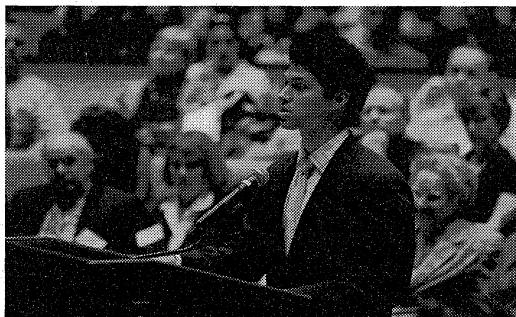
The tournament, which is organized and run by USD's Appellate Moot Court Board, begins in January with a one-credit course taught by Professor Devitt. This year's enrollment surpassed all previous years, and is evidence of the McLennon Competition's growing reputation. As a witness to the program's growth, Haden credits its founder: "Professor Devitt, through his dedication and generosity, has created a tradition at USD that highlights the talent of our law students and impresses the nation's legal community," said Haden.

Professor Devitt organizes the course to prepare students for both the written and oral aspects of the appellate process. After six weeks of lectures and eminent guest speakers, students turn in a brief summarizing their arguments, and begin preparing for oral arguments.

The legal problem presented to this year's competitors was particularly exciting, as it was a case pending in the Supreme Court. Written by Moot Court Executive Board member Lindsay O'Hair, the case involving the Guantanamo Bay detainees had been argued before the Supreme Court just one month earlier. "This made it exciting because after investing so much time in the competition, competitors can look forward to seeing how the Supreme Court actually rules on questions that they wrote and argued about," explained O'Hair.

Once the classes ended and the briefs were turned in, the rest of the Moot Court Board's months of organization and preparation were put into action. Tournament coordinators, Samira Seidu and Viviane Pourazary, oversaw the entire tournament. From reserving courtrooms to printing programs, the smooth execution of the tournament was the result of their hard work. Haden commended their dedication: "Samira and Viviane did an incredible job with every aspect of the tournament. The school, the competitors, and the moot court board are in their debt."

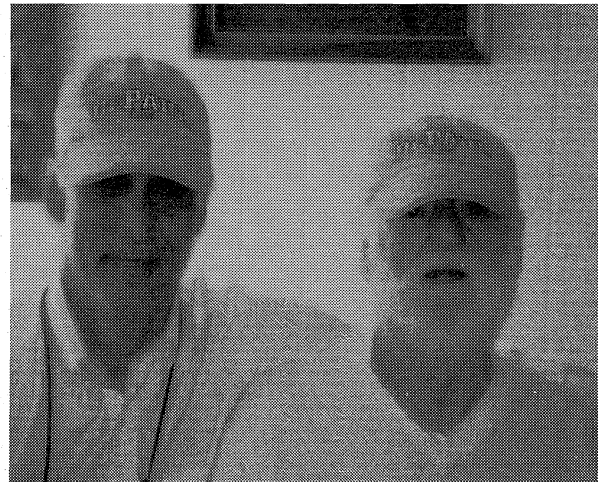
The significant increase in this year's enrollment meant more planning, more courtrooms, and more hours at the courthouse. "Over 400 San Diego attorneys volunteered their time to judge this year. This tournament would not be possible without their support," explained Haden. The increased participation also meant more competition. As a semi-final round judge and final round presenter, Dean Cole commented on the intensity of this year's competitors: "What was notable this year was the quality of the arguments and sophistication of the advocates. It was impressive to everyone in the room, the audience, and the judges."



Matt Ichinose argues in the final round.

**The Man Behind the Name:
Paul A. McLennon, Sr.**

The word, "McLennon" has become an everyday term for the students and faculty of USD's School of Law. It is a term that evokes pride, inspires competitive spirit, and, admittedly, arouses some stress. While the name "McLennon" represents a proud tradition here at USD, many of us are not familiar with the man we honor with this tradition.



Senior and Junior: "Halving the Potato."

Prior to graduating from DePaul University College of Law in 1950, McLennon had served in the Navy Air Corps during World War II. He flew Wildcats off the aircraft carrier *Sargent Bay* in Pacific Theater action, participated in the invasion of Okinawa, and was awarded the Distinguished Flying Cross.

After receiving his law degree, McLennon was a special agent for the FBI in Baltimore, Pittsburgh, and Chicago, until he began practicing law in 1955. He opened his own practice in Wheaton, Illinois in 1960. He is currently of counsel to his son's law firm in Chicago.

Upon learning of the founding of the annual McLennon Honors Moot Court competition, the Honorable Brian R. McKillip reflected on his friend:

"Paul practiced law as though it were an opportunity given to him by God and the Illinois Supreme Court to help his fellow man. He has no clients, just hundreds of friends who have repeatedly turned to him for help and advice - and sent their friends to him as well. He never refused.

Adding to the richness of one's experience with Paul McLennon is his marvelous command of the English language. He can turn a phrase in a way that conveys meaning and emotion and truth all at the same time. He is an Irish storyteller of the first order."

There is no question as to why we honor Paul McLennon, Sr., but students may wonder how USD Law came to dedicate an annual tournament to this Midwestern Irishman. USD's own Michael Devitt began his career in law with a visit to McLennon's Wheaton law office. Since Devitt's father died when he and his siblings were just children, McLennon had always been a support for the Devitt family. When Devitt shared his dream of becoming an attorney and sought McLennon's advice, his family friend became his mentor, as well. Professor Devitt and his family honored McLennon with the endowment to support the moot court competition.

Throughout his life, McLennon utilized his skills to touch and better the lives of others. As we prepare and compete, his name should constantly remind us to act in the same selfless spirit.

A message from Paul McLennon, Jr.:

Please accept my father's heartfelt personal congratulations to all competitors in this year's competition, an event which means so much to him and our whole clan. Talking about "the McLennon" with my parents yesterday, we got to reflecting on how the generosity and kindness of just one person to one other can build and be carried forward and repeated. To the McLennon family, the competition will always stand for a basic principle that Michael [Devitt] and Paul Sr. have always lived by, exemplified, and endeavored to pass on to their students, friends, clients and family:

What gifts we are given must be generously shared in order to be fully enjoyed and extended. If you know Michael or ever knew Dad at all, you surely know what we mean. (The Irish call it "halving the potato.")

Profound thanks once again to USD Law, Professor Devitt, the Devitt family, and all the students and staff who have made my Dad so proud and happy to be an honorary member of the USD legal community. No words I could conjure can describe what this honor has meant to him and how much it touches him.

God bless.

Paul McLennon Sr.

Paul McLennon Jr.