

# campus briefs



USD Law

*Cherie Blair spoke at USD Law about implementing the rule of law in Africa.*

## Partners With Africa Justice Foundation

**I**t's absolutely vital as lawyers that we don't just think of the laws in our own country," said Cherie Blair, well-known barrister, wife of former British Prime Minister Tony Blair and co-founder of the African Justice Foundation. "We have to think globally when we talk about the rule of law and ensure the law is seen as a force for good."

USD School of Law Dean Stephen C. Ferruolo welcomed Blair to campus on September 14 to announce a new partnership with the Africa Justice Foundation (AJF), which provides legal education to high-ranking African government officials. Armed with this advanced legal training, officials can then return to their respective countries prepared to incorporate clear, progressive and internationally recognized legal principles into



*Skip Horne*

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*Dean Stephen C. Ferruolo  
with Cherie Blair*

their country’s business laws. Now in its third year, AJF began providing legal training to government officials in Rwanda, but has now expanded to Nigeria, Ghana and Ethiopia.

USD is the first law school in the United States to partner with the Africa Justice Foundation.

Blair, who is also a respected human rights advocate, spoke with faculty and students during her September visit to discuss how she felt the rule of law can help rebuild many of Africa’s war-torn countries. She explained that companies are hesitant to invest in Africa because they’re not sure their money would be safe or their contracts would be honored. Likewise, government officials are frustrated because their lack of training in commercial contracts leaves them feeling vulnerable in negotiations.

AJF chose USD based on the school’s well-known and internationally respected Master of Laws (LLM) in Comparative Law program. USD will provide two scholarships each academic year. The program’s

first student, Fekadu Senbeta, from the Ethiopian Ministry of Justice, will begin classes in January 2012.

“USD’s graduate programs are small enough to offer individual attention to the special needs of international students, but large enough to offer an esteemed faculty of leading legal scholars and expert practitioners, as well as key centers and institutes of legal study,” said Skip Horne, director of Graduate Programs and Continuing Education at USD School of Law.

Funding for the program comes from a variety of sources. Students are traditionally sponsored by a mix of support from the law school they will attend, a law firm in the school’s region and the prospective student’s home country government.

Ferruolo added that AJF’s goals blend nicely with the university’s own interests in social justice and global entrepreneurship.

On March 11, 2011, USD School of Law welcomed Yale Law School Dean and Sol & Lillian Goldman Professor of Law Robert Post for the 27th Nathaniel L. Nathanson Memorial Lecture. Post discussed “Academic Freedom as a Constitutional Principle.”

Idealists would like to believe that professors have unlimited freedom for academic speech, buttressed by their First Amendment rights and intellectual autonomy guaranteed through tenure. Post refuted this assertion, saying that, yes, the First Amendment will protect a professor’s right to make any assertion, but it will not keep that professor tenured.

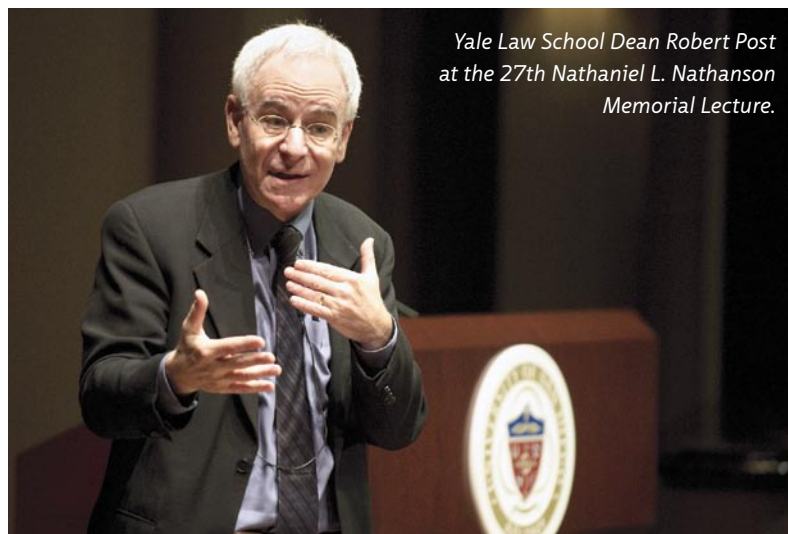
The American Association of University Professors (AAUP) defines academic freedom as “freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action.”

So, who owns academic freedom? If the university owned academic freedom, it would be free from litigation and free to regulate professors based on their comments. If professors owned academic freedom, they would be free from litigation and reprimand. As a professor and administrator, Post understands the importance of resolving this ambiguity. The AAUP intended to provide the profession with opportunities to pursue truth while requiring professors to fall within a set of disciplinary norms.

Academic freedom, then, does not refer to the individual’s right to speak or to an institutional right of independence, but to the health of ongoing disciplinary practices of knowledge creation and dissemination.

Post suggested that academic freedom is derived not from the First Amendment but from “the constitutional value of democratic competence.” This refers to the creation and dissemination of knowledge necessary for the maintenance of democratic self-determination.

# Academic Freedom as a Constitutional Principle



Yale Law School Dean Robert Post at the 27th Nathaniel L. Nathanson Memorial Lecture.

Oliver Wendell Holmes in the dissenting opinion for *Abrams v. United States*, suggested that the “best test of truth is the power of the thought to get itself accepted in the competition of the market.” This statement has been interpreted to conceptualize the university as a “marketplace of ideas,” which applies the concept of a free market to the proliferation of knowledge. Post discarded that interpretation because the “marketplace of ideas” is inherently egalitarian. His experience with the profession has shown otherwise.



*Members of the 2010-11 USD Moot Court Executive Board. From left to right, back row: Ted Sanders, Natalie Price, Nicholas Fox, Tyler Hazen, Bill Healy, Kate Kirschbaum and Dane Voris. Middle row: Joy Utomi, Miriam Milstein, Camille Lucidi, Kianne Holnagel, Andrew Minear, Brooke Meling, Andrew Mullen and Methab Sandhu. Front row: Tyler Lopez, Jessica Liu, Janet Chen, Claire Auther, Amy Carroll, Christine Wu and Lauren Gonzalez.*

## Mastering Moot Court

On March 2, 2011, USD School of Law hosted the final round of the annual Paul A. McLennon Sr. Honors Moot Court Competition to resolve the fictional case *Oak Park Unified School District v. Wayne*. In the case, the school principal suspended a 17-year-old student for posting an offensive rap song online.

Arguments were heard by a three-judge panel consisting of the Honorable Carlos T. Bea, circuit judge for the U.S. Court of Appeals, Ninth Circuit; the Honorable Larry Alan Burns, district judge for the U.S. District Court, Southern District of California; and the Honorable Judith McConnell, presiding justice of the First Division, California Fourth District Court of Appeal.

For moot court purposes, the court reviewed whether the petitioner had authority over the respondent's off-campus speech and, if so, whether the discipline was proper in accordance with the Supreme Court's special rules regarding school speech.

Melissa McKellar, '12, appearing on behalf of the petitioner, discussed pervasive cyber bullying and the need for policy enforcement in schools. She argued that civil and criminal litigation for cyber bullying is inefficient, impractical and contrary to the public's desire to resolve schoolyard disagreements.

Craig TenBrook, '12, for the respondent, argued that the rap song did not create a sufficient disruption to warrant suspension. Furthermore, First Amendment concerns for students far outweigh the desire to control writing in a genre that is inherently violent and vulgar.

The judges congratulated the finalists as well as the 58 other participants in the competition. Though both sides offered poised, reasoned arguments, the judges awarded the top honor to Craig TenBrook.

Professor Michael Devitt and his family endowed the moot court competition in 2001 to honor long-time family friend, attorney and naval officer Paul A. McLennon Sr., who passed away on October 11, 2011. The competition provides students an opportunity to develop their brief-writing and advocacy skills by testing them in an open and rigorous competition.

# USD School of Law Advancing a Clean Energy Future

On April 15, 2011, USD School of Law's Energy Policy Initiatives Center (EPIC) and *San Diego Journal of Climate & Energy Law* hosted the third annual Climate & Energy Law Symposium. The symposium, "Advancing a Clean Energy Future," examined emerging law and policy approaches to encourage clean energy. Speakers stressed the importance of shifting to cleaner energy in order to mitigate climate change and limit our impact on the environment.

The symposium brought together three panels of legal and policy experts from across the country, including USD's own Professor of Law Lesley McAllister, Adjunct Professors of Law Michael Reed and Nilmini Silva-Send, and EPIC Director Scott Anders.

Panelists addressed a variety of issues, including the coordination of state and federal roles in the clean energy sector; the design of policies and markets for renewable energy and energy



*Jon Wellinghoff, chairman of the United States Federal Energy Regulatory Commission, spoke at the Climate & Energy Law Symposium in April. He discussed ways to "squeeze out the inefficiency" in the energy market.*

JOSHUA ROBERTS / GETTY IMAGES

efficiency; and the balance between energy and environmental protection. This year's keynote speaker was Jon Wellinghoff, chairman of the United States Federal Energy Regulatory Commission (FERC).

In 2009, President Obama appointed Wellinghoff chairman of FERC, the agency that regulates wholesale electricity transactions, interstate electricity transmission and natural gas transportation in the United States. His priorities at FERC include opening wholesale electric markets to renewable resources, providing a platform for participation of demand response and other distributed resources in wholesale electric markets, and promoting greater efficiency in our nation's energy infrastructure through the institution of advanced technologies and system integration.

During the symposium, Wellinghoff spoke of the tremendous amount of inefficiency in energy use in the United States. He showed the audience artist Chris Jordan's piece titled *Running the Numbers: An American Self-Portrait*—which uses 28,000 42-gallon barrels, the amount of oil consumed in the United States every two minutes, to depict the Earth and its magnetic field—and discussed his goals of “squeezing out the inefficiencies in the system” and getting the system to “function more efficiently given the jurisdiction and technology we have.”

“We believe we have the technology to make this work,” Wellinghoff said. “We have to figure out how to all work together—to use the technology that we already have and to develop new technology—in order to create a construct, put it to use and work in an efficient manner.”

Wellinghoff's goal is clear: clean, efficient and affordable energy. He spoke about the obstacles and barriers to this ultimate target, citing the overpricing

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of energy and inefficiency as roadblocks. He also pointed out constructs that do work, mentioning South Korea's improved efficiency and green automobiles as assets to a cleaner energy future.

Wellinghoff recognized specific companies that are moving in the right direction, such as OPower, a customer engagement platform for the utility industry. The platform helps people use energy more efficiently with the incentive of saving money on energy bills and, in doing so, is helping to reduce energy use. He pointed to new companies like OPower as a step in the right direction.

Visit [law.sandiego.edu/webcasts](http://law.sandiego.edu/webcasts) to watch video of Wellinghoff's keynote speech and the three panels.

## Finance Expert Gains Edge With Legal Training From USD Law

USD's Master of Science (MS) in Legal Studies program offers specialized legal education for non-attorneys. It is designed for graduate students and professionals who do not aspire to be attorneys but would benefit from further study of the legal system. Brad Lunn, 47, is one of three new additions to the program this year. He has a background in finance and spoke to the *Advocate* about starting the program at USD:

**Q: Where did you attend college?**

**A:** I attended the University of Colorado and Harvard University, where I studied finance. I also have a master's degree from Claremont Graduate University in management.

**Q: Are you currently working?**

**A:** Yes, I am working full-time for General Atomics, as the director of operations and planning. I am also a corporate director and audit chair for USA Taekwondo, which is part of the Olympic family.

**Q: What was your previous career?**

**A:** I spent 13 years at McDonnell Douglas and Boeing, working in the finance sector, as well as in mergers and acquisitions and corporate finance.

**Q: Did your work in finance spur your desire to study law?**

**A:** Yes. Complex business issues have, at their core, very complex legal issues, so it is artificial to try to separate them. Having people on the team who have both legal and business acumens will lead to better results. I took a course in corporate

governance at Harvard Business School, which was taught by a professor from the law school, making it obvious that legal dimensions to business are growing.

**Q: What exactly were you looking for in a legal studies program?**

**A:** I did not want to enroll in an online program because I wanted to witness interactions between very capable colleagues and professors. The online approach might be more convenient, but my priority was to find a high-quality, rigorous program. The search took a long time, and I didn't expect to find the program in my backyard [Lunn lives in Carlsbad.]

**Q: What attracted you to USD?**

**A:** The program is really ideal for someone like me who is not interested in practicing law but wants to leverage what can be learned from the legal field into business experiences. It also provides me with adequate flexibility while maintaining a rigorous curriculum.

Ideal candidates for the MS in Legal Studies program include graduate students in other disciplines or professionals from different fields who will benefit from studying law but do not wish to become attorneys. The application deadline for Fall 2012 is July 1, 2012. For more information on the program, go to [law.sandiego.edu/msls](http://law.sandiego.edu/msls).



*Professor Adam Kolber returned to USD as a panelist for the Institute for Law and Philosophy's Neuroscience and Law event.*

# Legal Mind Reading

In September 2011, USD School of Law's Institute for Law and Philosophy assembled a panel of academic experts from around the country to discuss the intersection of neuroscience and the law. The six distinguished panelists discussed the implications of using neuroscience and its findings as a legal tool.

Panelists included former USD Law Professor Adam Kolber of Brooklyn Law School along with Deborah Denno of Fordham University School of Law; Michael Pardo of the University of Alabama School of Law; Stephen Morse of the University of Pennsylvania; Michael Moore of the University of Illinois; and Walter Sinnott-Armstrong of Duke University.

Kolber sees neuroscience as complementary to the subjective analysis of evidence used today. Magnetic resonance imaging (MRI) scans of the brain could provide important functions such as lie detection and subject experience analysis for the legal community.

In the past, pain, anxiety, panic and emotional distress were often downplayed by the law because they are difficult to measure. Neuroscience may change that.

So, how do the courts measure fair compensation for subjective claims? The current tort system does not say, for example, that a broken arm is worth \$10,000 or a broken leg is worth \$20,000 because there is no way to definitively assess pain or duress.

Kolber says new technologies could be used to reveal, validate and measure a person's claim of emotional distress or pain: "It's only a matter of time before a court's going to be presented with a question about whether this evidence should be admissible."

Pardo cautioned that the use of MRIs as a legal tool raises philosophical questions related to a suspect's right to plead the Fifth Amendment to be protected from self-incrimination.

View the complete panel discussion at [law.sandiego.edu/webcasts](http://law.sandiego.edu/webcasts).