

faculty footnotes



From publishing scholarly legal articles and books to organizing conferences, the USD law faculty is committed to advancing the study and practice of law. In these pages, learn how our professors are transforming the global legal landscape.

Lawrence Alexander

Lawrence Alexander had numerous articles published in 2011, including "Duff on Attempts," in *Crime, Punishment, and Responsibility: The Jurisprudence of Antony Duff* (R. Cruft, M. Krause and M. Reiff, eds.) (Oxford University Press, 2011); "Culpability," in *The Oxford Handbook on the Philosophy of Criminal Law* (J. Deigh and D. Dolink, eds.) (Oxford University Press, 2011); "Beyond the Special Part," in *Philosophical Foundations of Criminal Law* (with Ferzan) (A. Duff and S. Green, eds.) (Oxford University Press, 2011); "Constitutionalism," in *Encyclopedia of Jurisprudence* (D. Reidy, ed.) (forthcoming, 2012); "Freedom of Expression," in *Encyclopedia of Modern Political Thought* (G. Claeys and L.T. Sargent, eds.) (Taylor and Francis Group, forthcoming, 2012); "Freedom of Expression," in *Encyclopedia of Applied Ethics* (R. Chadwick, ed.) (Academic

Press, forthcoming, 2012); "Simple-Minded Originalism," in *The Challenge of Originalism: Essays in Constitutional Theory* (G. Huscroft and B.W. Miller, eds.) (Cambridge University Press, 2011); "Legal Objectivity and the Illusion of Legal Principles," in *Institutionalized Reason: The Jurisprudence of Robert Alexy* (M. Klatt, ed.) (Oxford University Press, forthcoming, 2012); "Fletcher on the Fault of Not Knowing," in *Essays on Criminal Law* (with Ferzan) (R. Christopher, ed.) (Oxford University Press, 2011); "Risk and Inchoate Crimes: Retribution or Prevention?" in *Seeking Security: Pre-empting the Commission of Criminal Harms* (with Ferzan) (G. R. Sullivan et al., eds.) (Hart, forthcoming, 2012); "Precedential Constraint, Its Scope and Strength: A Brief Survey of the Possibilities and Their Merits," in *On the Philosophy of Precedent* (T. Bustamante et al., eds.) (Ashgate, forthcoming, 2012); "Self-Defense," in *The Routledge Companion to Philosophy*

of Law (A. Marmor, ed.) (Routledge, forthcoming, 2012); and "Voluntary Enslavement," in *Paternalism: Theory and Practice* (C. Coons and M. Weber, eds.) (forthcoming, 2012).

Alexander also has many forthcoming essays to be published in 2012, including: "There Is No First Amendment Overbreadth (But There Are Vague First Amendment Doctrines); Prior Restraints Aren't 'Prior'; and 'As Applied' Challenges Seek Judicial Statutory Amendments," in *Constitutional Commentary* (forthcoming, 2012); "Michael Moore and the Mysteries of Causation in the Law," in *Rutgers Law Journal* (forthcoming, 2012); "Deontological Constraints in a Consequentialist World: A Comment on Law, Economics, and Morality," in *Jerusalem Review of Legal Studies* (forthcoming, 2012); "What's Inside and Outside the Law," in *Law and Philosophy* (forthcoming, 2012); "You Got What You Deserved," in *Criminal Law and Philosophy* (forthcoming, 2012); "Redish on Freedom of Speech," in *Northwestern University Law Review* (forthcoming, 2012); "The Method of Text and ?: Jack Balkin's Originalism with No Regrets," in *University of Illinois Law Review* (forthcoming, 2012); "'Moore or Less' Causation and Responsibility," in *Criminal Law and Philosophy* (with Ferzan) (forthcoming, 2012); and "Danger: The Ethics of Preemptive

Action," in *Ohio State Journal of Criminal Law* (with Ferzan) (forthcoming, 2012).

Alexander was an organizer and participant in the "Conference on the Morality of Preventive Restrictions of Liberty" in San Diego (April 2011); an organizer and participant in the "Analytic Legal Philosophy Conference" in San Diego (April 2011); a presenter at the "Meeting of the American Philosophical Association, Pacific Division" in San Diego (April 2011); a presenter at "Conference on Targeted Killing" in Philadelphia (April 2011); a presenter at "Conference on Jack Balkin's Living Originalism" in Champaign, Ill. (April 2011); and a presenter at "Conference on Paternalism" in Bowling Green, Ohio (April 2011).

Laura Berend

Laura Berend completed *Criminal Litigation in Action, 2nd Ed.* (with Ramirez) (Carolina Academic Press, forthcoming, 2012). She also presented "Procedural Stages in the Criminal Trial Court" at the University of California, San Diego Global Leadership Institute.

Roy L. Brooks

Roy L. Brooks published his fourth casebook, *The Law of Discrimination* (with Selmi and Carrasco) (LexisNexis, 2011). He also contributed "Reparative Justice and Modern Slavery," to an edited

› **In the News:**
In May 2011, Professor Nancy Carol Carter was interviewed on KPBS radio's *Midday Edition* about the maintenance, preservation and proposed renovation of San Diego's beloved Balboa Park, which will celebrate its centennial in 2015. A student of San Diego history, Carter discussed the history of the park and a few of the unconventional ideas that have been proposed over the past century. To learn more or to hear the full interview, go to law.sandiego.edu/balboapark.

In the News:
Professor Lesley McAllister was awarded a Fulbright Scholar grant to pursue research at the University of Granada in Spain during the 2011-12 academic year. McAllister will conduct research on Spain's implementation and enforcement of the European Union emissions trading scheme, a cap-and-trade program established in 2005 to promote European compliance with the Kyoto Protocol.

collection on modern slavery that will be published in the United Kingdom; "The Psychology and Socioeconomics of Slavery in 21st Century America," to *Race/Ethnicity*; and "Making the Case for Atonement" to a symposium issue of *The Journal of Gender, Race and Justice*. His reflections on culture have been abstracted in the current issue of *The Review of Metaphysics*. *The Monist*, one of the world's oldest philosophy journals, will publish an article based on his works in 2012. Brooks also delivered numerous speeches and papers, including "Juridical Subordination," at Maryville University (January 2011), "Critical Theory," at Bloomsburg University (April 2011); the keynote address "Modern Slavery, Redress and Human Development," at York University in Toronto (June 2011); "The Right to Privacy and Full Faith and Credit in International Law," at The Law and Society Association annual meeting in San Francisco (June 2011); and "The Problem of Race in the Age of Obama," at the University of San Diego (September 2011). He was also appointed to the advisory board of a new legal publication, *The Journal of Law*.

Karen Burke

Karen Burke completed the casebook *Corporate Taxation* (with Yin) (Aspen Law and Business, 2012). She also

published two articles: "Reframing Economic Substance," in 31 *Virginia Tax Review* (forthcoming, 2012) and "Illusory Partnership Interests and the Anti-Anti-abuse Rule," in 132 *Tax Notes* 813 (with McCouch) (2011). In addition, she presented "Reframing Economic Substance" at the University of Virginia (March 2011) and the University of Florida (October 2011).

Nancy Carol Carter

Nancy Carol Carter published the chapter "Native American Tribal Law," in *The Fundamentals of Legal Research, 9th Ed.* (forthcoming) and "U.S. Federal Indian Policy: An Essay and Annotated Bibliography," in 30 *Legal Reference Services Quarterly* 210 (2011). She was the keynote speaker at the Committee of 100 Annual Luncheon in San Diego (May 2011).

Lynne Dallas

Lynne Dallas completed "Short-Termism, the Financial Crisis and Corporate Governance," in 36 *Journal of Corporation Law* (2011).

Robert C. Fellmeth

Robert C. Fellmeth published his book, *Child Rights and Remedies, 3rd Ed.* (Clarity Press, 2011). Fellmeth serves as the executive director of the Children's Advocacy Institute (CAI)

and holds the Price Chair in Public Interest Law.

Mark Hoose

Mark Hoose reported on the “Dividend Taxation Under Tax Treaties and EU Law” conference in Milan, Italy. His report from the conference will appear as a chapter in a book to be published by the International Bureau of Fiscal Documentation (IBFD) in early 2012. Hoose also addressed both the San Diego County Bar’s Young Tax Lawyer’s Group (August 2011) and the County Bar’s Tax Section (November 2011) on the topic of the federal government’s debt ceiling controversy and overall fiscal situation. He acted as a panel moderator for the USD-Procopio International Tax Institute. Hoose acted as a guest lecturer in USD Professor Avi Spiegel’s international relations class. He has been invited to teach a class in international taxation at USD’s School of Business in Summer 2012.

Bert Lazerow

Bert Lazerow completed chapters on United States historic preservation and moral rights for his forthcoming book, *Mastering Art and Museum Law*. The chapter on U.S. historic preservation covers historic preservation, archaeology on land, underwater archaeology, and the treatment of Native American

remains and artifacts. The moral rights chapter deals with the moral rights of attribution and integrity as well as artist’s resale rights.

Orly Lobel

Orly Lobel is currently working on the completion of her book on innovation, human capital and intellectual property (Yale University Press, forthcoming, 2012). She had numerous articles



Professor Orly Lobel Invited to Present at Chinese Law Symposium

University of San Diego School of Law Professor and Herzog Endowed Scholar Orly Lobel was invited to participate in Beijing University’s Symposium on the Practice and Theory of Soft Law and Regulation. As one of a few international invitees, Lobel presented information on how behavioral economics informs law and governance in the United States.

“Soft law means all sorts of things,” states Lobel, “but the Chinese wanted to learn about comparative approaches to regulation, enforcement and compliance in different legal systems, including use of private ordering, public/private cooperation and the interactions between multilevel regulatory agencies.” With much of Lobel’s legal scholarship translated into Mandarin and Cantonese, her work is well respected amongst the Chinese. She was invited to sit on a panel with Bixin Jiang, vice president of the Supreme People’s Court.



Professor Frank Partnoy featured on NPR's *Fresh Air*

On the August 17 episode of NPR's *Fresh Air*, Professor Frank Partnoy joined host Dave Davies to discuss Standard and Poor's decision to downgrade the U.S. default rating. Partnoy's message was comforting. "It doesn't actually tell us anything about the chances of the United States defaulting."

Originally, credit rating agencies were created to determine the value of railroad bonds. Today, the scope of ratings agencies is vast. Many investment firms rely on the analysis of the Big Three—Moody's Investors Service, Fitch Ratings and Standard & Poor's—for investment strategies and market forecasting. According to Professor Partnoy, that dependence is to blame for the recession.

"The credit rating agencies were absolutely at the center of the crisis," he alleged. "They enabled and facilitated all of the complex financial instruments that really were at the core of why the markets melted down."

The ratings agencies evaluated the default risk of the subprime mortgages that led to our housing bust. Had their analysis been more accurate, banks would not have purchased the bonds. So, before you flee the AA+ United States for the AAA rated Isle of Man, remember what they said about those subprime mortgages.

published, including: "Whistleblowers and Social Enforcement," in *Explaining Regulatory Compliance* (with Yuval Feldman) (Nielsen and Parker, eds.) (Elgar, 2011); "Employment and Labor Law and Economics," in *Law and Economics* (with Feldman) (Procaccia

and Luria, eds.) (forthcoming, 2012); and the chapter "New Governance as School of Thought and Policy Approach," in *Oxford Handbook on Governance* (Fagerberg, Mowery and Nelson, eds.) (Oxford University Press, 2011). In August 2011, Lobel won an award from Tilburg University in Holland for her research on risk and health/pension policy. In June 2011, Lobel participated at Beijing University's Symposium on Regulation. As one of a few international invitees, Lobel illustrated how behavioral economics informs law and governance in the United States. Her article on regulation and governance, published in the *Minnesota Law Review*, was translated into Chinese and published in a book by the Peking University Press. Lobel also presented her research at the University of Pennsylvania School of Law, the Law and Society Association Annual Meeting in San Francisco, the American Law and Economics Association, the University of Pittsburgh School of Law, Pepperdine Law School and Boston University School of Law (Spring and Summer 2011). She also participated in the National Health Policy Conference at Arizona State University as part of her Robert Wood Johnson Foundation grant to study behavioral economics insights for regulating health policy. Lobel serves on the advisory board of the San Diego lawyer chapter of the American Constitution

Society and the Employee Rights Center. She is an international advisory board member for *Oxford Handbook on Governance* and the academic advisory board of the Government Accountability Project, Washington, D.C., and also serves as vice chair in the Section of Administrative Law and Regulatory Practice of the American Bar Association.

Lesley K. McAllister

Lesley K. McAllister published "The Enforcement Challenge of Cap-and-Trade Regulation," 40 *Environmental Law* 1195 (2011) and "Enforcing Cap and Trade: A Tale of Two Programs," 2 *San Diego Journal of Climate and Energy Law* 1 (2011). As faculty advisor to the *San Diego Journal of Climate & Energy Law*, she organized the law school's Third Annual Climate and Energy Law Symposium in April 2011, "Advancing a Clean Energy Future." McAllister gave lectures and colloquium talks at Florida State University College of Law (February 2011), Stanford Law School (June 2011) and at the University of Utah School of Law as the 2011 Wallace Stegner Center Young Scholar (November 2011). She also spoke on panels at the *Brigham Young University Law Review* Conference on Disasters and the Environment (February 2011), International Law Weekend—West (February 2011), the Rocky Mountain

Mineral Law Foundation Natural Resources Law Teachers Institute (May 2011), the Law and Society Association Annual Meeting (June 2011), and the annual American Bar Association Water Law Conference (October 2011). McAllister serves as a member of the American Bar Association Section of Environment, Energy, and Resources Task Force on Policy and Coordination, and as a member scholar of the Center for Progressive Reform. McAllister also contributes to the Environmental Law Prof Blog, which may be viewed at lawprofessors.typepad.com/environmental_law.

Grayson McCouch

Grayson McCouch published *Federal Estate and Gift Taxation, 10th Ed.* (with Bittker and Clark) (Thomson/West, 2011), *Federal Estate and Gift Taxation, 7th Ed.* (with McNulty) (Thomson/West, 2011), and "Illusory Partnership Interests and the Anti-Anti-abuse Rule," in 132 *Tax Notes* 813 (with Burke) (2011). He also presented "Illusory Partnership Interests and the Anti-Anti-abuse Rule," at the University of Florida Levin College of Law (September 2011).

David McGowan

David McGowan published *Developing Judgment About Practicing Law* (West,

› **In the News:**
Professor Grant Morris was named Professor of Law Emeritus as voted by the law school's faculty and approved by the university's Board of Trustees. Appointment to emeritus status may be granted for uncommonly meritorious teaching, scholarship or service to the university. Morris, who joined the law faculty in 1973, has taught and written in the areas of torts and law, and psychiatry. Morris served as a Superior Court mental health hearing officer and is currently a member of the Atascadero State Hospital Advisory Board.

In the News:

Mary Jo Wiggins, who has served as associate dean of academic affairs since July 2006, was appointed vice dean of academic affairs in September 2011. As vice dean, she will focus on academic planning and faculty development efforts. A favorite of USD School of Law students, Dean Wiggins will continue teaching classes in property, bankruptcy, debtor-creditor law and legal theory at the law school.

2011), the first casebook to treat legal ethics as a problem of judgment and strategic decision-making. The Association of American Law Schools selected his paper "Lawspeech" for presentation at their annual meeting, where he will participate in a panel. Professor McGowan moderated a panel on antitrust and open-source software hosted at Stanford Law School by the American Bar Association (October 2011), and spoke on judicial ethics at the annual meeting of the Association of Business Trial Lawyers in Santa Barbara, Calif. (October 2011).

Jean Ramirez

Jean Ramirez completed *Criminal Litigation in Action*, 2nd Ed. (with Berend) (Carolina Academic Press, 2012).

Lisa Ramsey

Lisa Ramsey spent the spring as a visiting scholar at the University of Melbourne, where she researched Australian trademark and free speech law. Her book review of *Australian Trademark Law*, by Robert Burrell and Michael Handler, was published in the *Media and Arts Law Review* (2011). While in Australia, Professor Ramsey presented "Brandjacking on Social Networks: Trademark Infringement by Impersonation of Markholders,"

at the Sydney and Melbourne offices of the law firm Baker and McKenzie (March 2011). *The Law Report's* Damien Carrick interviewed her on the topic of brandjacking on social networks on Australian national radio (March 2011). In addition, Ramsey presented "How Trademark Law Harms Free Speech and What to Do About It," to the law faculty at Melbourne Law School at the University of Melbourne (March 2011) and TC Beirne School of Law at the University of Queensland in Brisbane, Australia (March 2011). In June 2011, Ramsey served on a panel at the Law and Society Association annual meeting and discussed technology, social media and liminal IP (June 2011). She presented "What the United States Can Learn from Australian Trademark Law" at the 11th Annual Intellectual Property Scholars Conference (August 2011) and "Hot Topics in Trademark Law for Non-IP Attorneys," at the California State Bar annual meeting (September 2011).

Michael Ramsey

Michael Ramsey coedited *International Law in the U.S. Supreme Court: Continuity and Change* (with Sloss and Dodge) (Cambridge University Press, 2011). In addition to serving as an editor, Professor Ramsey authored or coauthored several chapters in the book, including "International Law in the Supreme Court to 1860," and

"Customary International Law in the Supreme Court, 1901-1945." *The Texas Law Review* accepted his review (with Prakash) (forthcoming, 2012) of Eric Posner and Adrian Vermeule's book, *The Executive Unbound*. He also gave presentations on the constitutional status of international law in Melbourne, Australia, at Monash University and the University of Melbourne, as well as in San Francisco at the Association of American Law Schools' annual meeting. Ramsey debated University of California, Berkeley, Professor John Yoo at Stanford Law School on the constitutionality of the Libya intervention and participated in a panel discussion at Pepperdine Law School on corporate liability for international human rights violations. Ramsey also presented a work-in-progress article on customary law at the Harvard Law School foreign affairs law workshop.

Ted Sichelman

Ted Sichelman published "Life After *Bilski*," 63 *Stanford Law Review* 1315 (with Lemley, Risch and Wagner) (June 2011) and "Taking Commercialisation Seriously," 33 *European Intellectual Property Review* 200 (January 2011). Sichelman also contributed "Fixing the First Inventor to File One-Year Grace-Period Provision of the Patent Reform Bills," on PATENTLY-O (April 12, 2011), and "What We Said (and Didn't Say) in the Berkeley Patent

Study," also on PATENTLY-O (with Merges and Samuelson) (August 5, 2011). He presented: "Purging 'Private Law' from Patent Law Remedies," at Northwestern Law School (September 2011); "Commercialization of IP and the America Invents Act of 2011," at the University of Nevada, Las Vegas School of Law (September 2011); and "Purging 'Private Law' from Patent Law Remedies," at DePaul Law School (August 2011).

Professor Lisa Ramsey Discusses Social Media's Dark Side

In March, Damien Carrick of *The Law Report* on Australia's ABC National Radio hosted Professor Lisa Ramsey to discuss brand-jacking on social networks.

Brandjacking is "the unlawful use of trademarks online." As companies strive to connect with their customers, some individuals have taken the opportunity to defame brands and exploit their followers. In one case, a fraudulently named Facebook group, "Nine West Model Auditions," invited women to send in pictures of their faces, bodies and feet, along with personal contact information for a chance to win a free trip to New York to model the brand. By the time Facebook removed the site more than 400 women had applied.

Can a brand take action against these violators?

For now, the answer is uncertain. "In the United States, you have to use the trademark in commerce...one of the challenges in these cases is that a lot of people are engaging in noncommercial expression."



Professor-in-Residence Junichi Semitsu's Paper Lands on Top Download List

Professor-in-Residence Junichi Semitsu's paper "From Facebook to Mug Shot: How the Dearth of Social Networking Privacy Rights Revolutionized Online Government Surveillance" (31 *Pace Law Review* 291) secured a spot on the list of top 10 recent Social Science Research Network (SSRN) downloads of criminal law and procedure e-journals. The article explores the privacy policies of popular social networking sites and their relation to the Fourth Amendment. How can Facebook users ensure that their content will not be released to the general public? Semitsu says, "Don't die." Social networking evolves so fast, if you do not check the Facebook site governance page every day, you might risk having yourself exposed.

Jorge A. Vargas

Jorge A. Vargas published his latest work on the law of the sea, *Mexico and the Law of the Sea: Contributions and Compromises* (Martinus Nijhoff Publishers, 2011).

Mary Jo Wiggins

Mary Jo Wiggins revised, updated and published six chapters of *Collier on Bankruptcy*. She finished a draft article on the bankruptcy jurisprudence of Supreme Court Justice Clarence

Thomas. She gave welcome remarks to prospective students at each Campus Visit Day admissions event in the Spring semester. Wiggins also chaired the USD School of Law Dean Search Committee, a search that culminated in the appointment of Dean Stephen C. Ferruolo. Wiggins was recently promoted to vice dean of the law school. Wiggins made numerous presentations to the law school community and to various external constituencies throughout the year. She also served as coach and faculty advisor to the law school's Duberstein Bankruptcy Moot Court team for the seventh consecutive year. Wiggins continues to serve as a faculty member to the law school's Center for the Study of Corporate and Securities Law as well as the faculty advisor to the Women's Law Caucus.

ADJUNCT FACULTY

Alex Landon

Alex Landon published *A Parallel Universe* (with Halleck) (Poetic Matrix Press, 2011). The book explores the effect of laws enacted in the aftermath of brutal child abductions and murders on those accused of lesser sexual crimes or those falsely accused, on society as a whole.