

# California LAWYER

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## CALIFORNIA LAWYER MAGAZINE ANNOUNCES 2011 CLAY AWARD WINNERS

SAN FRANCISCO, February 15 — *California Lawyer* magazine has named 45 attorneys around the state to receive the 15th annual California Lawyer Attorneys of the Year Awards. Their achievements had a significant impact in 2010, or their work is expected to have such an effect in the coming years. The awards recognize 27 accomplishments in 23 areas of legal practice.

The honored attorneys include government lawyers, law professors, attorneys from international law firms, public interest lawyers, and members of the Assembly Judiciary Committee. The recipients of the CLAY Awards will be featured in the March 2011 issue of *California Lawyer*.

The attorneys and their achievements are briefly described below:

### **JOSEPH M. ALIOTO JR.**

Alioto Law Firm, San Francisco

#### **Category: ANTITRUST**

ALIOTO won a unanimous decision by the state Supreme Court narrowing the availability of the pass-on defense used by pharmaceutical price-fixers under California's Cartwright Act.

### **JOSÉ R. ALLEN**

Skadden, Arps, Slate, Meagher & Flom, San Francisco

### **LAURENCE PARADIS and MARY-LEE KIMBER SMITH**

Disability Rights Advocates, Berkeley

#### **Category: DISABILITY RIGHTS**

ALLEN, PARADIS, and SMITH secured a \$1.1 billion settlement from the California Department of Transportation, the largest single award of its kind in the nation, in two class actions alleging Caltrans denied people with disabilities effective access to 2,500 miles of sidewalk and Park and Ride facilities. As a result of the litigation, Caltrans must now improve its sidewalks and facilities over the next 30 years and follow federal and state accessibility guidelines when undertaking new construction.

### **DAVID M. AXELRAD and LISA PERROCHET**

Horvitz & Levy, Encino

#### **Category: Ethics**

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In a case that will have an impact on courtrooms and law offices for years to come, PERROCHET and AXELRAD won a groundbreaking ruling that established standards for ethical walls within firms (*Kirk v. First American Title Insurance Company*).

### **HENRY C. BUNSOW**

Howrey, San Francisco

#### **Category: Intellectual Property**

BUNSOW prevailed in two high-profile patent disputes this year, first ending a long-running case in favor of client Acushnet Co. over its popular Titleist Pro V1 golf ball. After persuading the U.S. Court of Appeals to send the case back for a retrial, Bunsow convinced a Delaware jury that rival golf ball company Callaway Golf Company's patents were invalid, saving Acushnet a potential \$250 million in damages. He also successfully defended DuPont Air Products NanoMaterials in a patent dispute with Cabot Microelectronics Corp. over materials used in making semiconductors. [*Note: Bunsow joined Dewey & LeBoeuf in January.*]

### **OWEN J. CLEMENTS**

City Attorney's Office, San Francisco

#### **Category: Government**

CLEMENTS won a unanimous ruling from the California Supreme Court that allows local governments to hire private counsel on a contingency basis to pursue complex litigation (*County of Santa Clara v. Superior Court*). He did this by demonstrating that the outside attorneys were not replacing government counsel, but rather working alongside them, with public counsel maintaining control of the litigation.

### **BERNICE CONN and ROMAN M. SILBERFELD**

Robins, Kaplan, Miller & Ciresi, Los Angeles

#### **Category: ENTERTAINMENT LAW**

CONN and SILBERFELD won a \$269.4 million jury verdict, plus \$50 million in prejudgment interest against Walt Disney Co. on behalf of Celador, the British producer of the hit TV game show *Who Wants to Be a Millionaire*. The case verdict was considered the largest judgment ever obtained in a "Hollywood accounting" lawsuit.

### **MICHAEL J. CROWLEY and W. TIMOTHY NEEDHAM**

Janssen, Malloy, Needham, Morrison, Reinholtsen, Crowley & Griego

### **CHRISTOPHER J. HEALEY**

Luce, Forward, Hamilton & Scripps

### **MICHAEL D. THAMER**

Law Offices of Michael D. Thamer

#### **Category: Elder Law**

These four attorneys won a \$676.8 jury award against a large nursing home chain (*Lavender v. Skilled Healthcare Group*) by proving that Skilled Healthcare Group understaffed its 22 nursing homes in California. After a six-and-a-half month trial, the jury found that the chain was responsible for 1.2 million violations at a potential cost of \$500 each. Two months after the

## 2011 CALIFORNIA LAWYER ATTORNEYS OF THE YEAR AWARD

verdict, Skilled Healthcare Group agreed to pay \$50 million in a cash settlement and \$12.8 million to cover the cost of an earlier injunction.

### **RICHARD T. DRURY**

Lozeau Drury, Oakland

### **RICHARD M. FRANK**

U.C. Davis School of Law, Davis

#### **Category: ENVIRONMENTAL LAW**

FRANK and DRURY convinced the California Supreme Court to strike down an air district's 2004 approval of a plan to retool the 56-year-old ConocoPhillips oil refinery in Wilmington, Los Angeles County. The decision is likely to have far-reaching ramifications beyond Southern California since *Communities for a Better Environment v. South Coast Air Quality Management District* sets new guidelines on how businesses throughout the state can proceed when proposing equipment modifications to their aging industrial facilities.

### **JONATHAN M. EISENBERG and BARBARA M. MOTZ**

Office of the Attorney General, Los Angeles

### **KATHLEEN E. FOOTE**

Office of the Attorney General, San Francisco

#### **Category: ANTITRUST**

EISENBERG and MOTZ won a significant ruling by the Ninth Circuit that a profit-pooling scheme by Southern California supermarkets used during a labor strike violated section 1 of the Sherman Act. In a second case initiated by FOOTE, Eisenberg settled an Alameda County case brought by the Office of the Attorney General to reiterate that vertical price-fixing in California remains illegal under state antitrust law despite a recent ruling by the U.S. Supreme Court.

### **JON B. EISENBERG**

Eisenberg and Hancock, Oakland

#### **Category: CONSTITUTIONAL LAW**

In a district court case in San Francisco, EISENBERG won a ruling that procedures established under the Foreign Intelligence Surveillance Act for reviewing classified evidence preempts assertions of the state secrets privilege.

### **LAURA L. FAER**

Public Counsel, Los Angeles

### **SHAWNA L. PARKS**

Disability Rights Legal Center, Los Angeles

### **MARK ROSENBAUM**

ACLU of Southern California, Los Angeles

#### **Category: JUVENILE LAW**

FAER, PARKS, and ROSENBAUM secured a landmark settlement in a class action alleging that youths detained at a complex of six Los Angeles County probation camps were denied a constitutionally adequate education. The settlement calls for systemic reforms at Camp Challenger.

**JEROME B. FALK JR.**

Howard Rice Nemerovski Canady Falk & Rabkin, San Francisco

**Category: APPELLATE LAW**

FALK won a major victory when the Ninth U.S. Circuit Court of Appeals held in *Vernor v. Autodesk* that consumers “license” only the use of software they purchase and do not “buy” it outright with resale rights. He also won two more cases at the Ninth Circuit. The court ruled that F.B.T. Productions, Falk’s client and producer of rapper Eminem, was entitled to higher royalty fees (*F.B.T. Productions LLC v. Aftermath Records*). And in *Advertise.com v. AOL Advertising* the circuit favored another Falk client, Advertise.com by reinforcing the notion that AOL Advertising could not trademark a generic word.

**SEAN P. GATES**

Morrison & Foerster, Los Angeles

**Category: PRO BONO**

Working closely with Public Counsel and the ACLU of Southern California, GATES and his team of MoFo attorneys won an innovative class action settlement on behalf of students at three middle schools in *Reed v. State of California*. As a result, the Los Angeles Unified School District must consider equal protection implications as well as teacher seniority in making layoff decisions. In October, LAUSD broadened the settlement class to protect up to 45 schools that the district determines would be disproportionately harmed by teacher layoffs

**LEORA GERSHENZON and DREW LIEBERT**

Assembly Judiciary Committee, Sacramento

**Category: FAMILY LAW**

GERSHENZON and LIEBERT accomplished a rare feat last year when they helped turn a set of task force recommendations into meaningful legislation, AB 939 and AB 1050. The Elkins Family Law Task Force was charged with proposing ways to make family court proceedings more efficient, fair, and accessible to litigants. AB 939 codifies revolutionary changes for family law practice in the state and AB 1050 allows children age 14 and older to testify in custody and visitation proceedings.

**RICHARD M. HEIMANN**

Lieff Cabraser Heimann & Bernstein, San Francisco

**Category: CONSUMER LAW**

HEIMANN led the trial team for Lieff Cabraser Heimann & Bernstein in winning an eye-catching \$203 million class action restitution—the largest consumer class award in 2010--against Wells Fargo Bank, capping two-and-one-half years of litigation over the bank’s manipulation of overdraft fee processing.

**PETER A. HERNANDEZ and KEVIN S. ROSENBERG**

U.S. Attorneys Office Central District of California, Los Angeles

**Category: Criminal Law**

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HERNANDEZ and ROSENBERG took on largest gang indictment in U.S. history at the time. With 102 defendants, six indictments, and multiple trials, two of which took place in 2010, the complicated case involved charges of unprovoked attacks on African-Americans as well as charges of racketeering and narcotics distribution.

### **GEOFFREY M. HOWARD**

Bingham McCutchen

#### **Category: Intellectual Property**

After four years of investigation and a three-week jury trial, HOWARD and co-lead counsel New York-based David Boies of Boies, Schiller & Flexner, won the biggest software piracy verdict ever, securing \$1.3 billion in damages for Oracle after proving that the German firm SAP AG was illegally downloading and reselling Oracle software.

### **RONALD KAYE and DAVID McLANE**

Kaye McLane & Bednarski, Pasadena

### **BARRETT S. LITT**

Litt, Estuar & Kitson, Los Angeles

#### **Category: CIVIL RIGHTS**

After a six-year legal battle KAYE, MCLANE, and LITT made the City of Long Beach agree to pay their client Thomas Goldstein \$7.95 million, the largest, pre-trial settlement for wrongful imprisonment in state history.

### **BRIAN C. LEIGHTON**

Law Office of Brian C. Leighton, Clovis

#### **Category: LITIGATION**

After 15 years of litigation brought by a former DEA agent who alleged he had been illegally wiretapped by superiors, LEIGHTON won the first known settlement of a state secrets privilege case.

### **STACEY M. LEYTON**

Altshuler Berzon, San Francisco

#### **Category: PUBLIC INTEREST**

Arguing before the Ninth Circuit, LEYTON successfully defended a district court ruling that halted state plans to cut the wages of Medicaid caregivers who provided in-home services for elderly and disabled Californians. She represented a class of approximately 100,000 caregivers and their clients, arguing that the state had failed to correctly evaluate the effects of a statute that would have reduced the providers' wages.

### **RICHARD A. MARCANTONIO**

Public Advocates, San Francisco

#### **Category: Land Use**

After four years of legal battles and an intervention from Attorney General Jerry Brown, MARCANTONIO got the City of Pleasanton to revoke the voter-approved flat cap of 29,000 housing units, which forced tens of thousands of local workers to commute from outlying areas.

The city agreed to implement a plan to reduce greenhouse gas emissions and zone land near the city's BART station.

**SHANA T. MINTZ and LIZABETH A. RHODES**

U.S. Attorneys Office Central District of California, Los Angeles

**Category: Drug Enforcement**

MINTZ and RHODES obtained the largest-ever civil penalty under the federal Controlled Substances Act with charges that the CVS Pharmacy Inc. allowed repeat sales of cold medicines containing a key ingredient used in methamphetamine production. In addition to paying a \$75 million penalty and \$2.6 million in profit forfeitures, CVS acknowledged criminal liability and agreed to change its drug-sale tracking practices nationwide.

**KENT L. RICHLAND**

Greines, Martin, Stein & Richland, Los Angeles

**Category: EMPLOYMENT LAW**

In his second win at the U.S. Supreme Court, RICHLAND successfully defended the City of Ontario's right to monitor racy text messages sent by police officers (*City of Ontario v. Quon*) using pagers provided by the city's police department, despite the fact that the police department had informally allowed officers to send personal messages.

**KATHLEEN RIDOLFI**

Innocence Project, Santa Clara University School of Law

**Category: Criminal Law**

RIDOLFI investigated more than 700 cases of prosecutorial misconduct in California and published her findings in a landmark report last fall for the Northern California Innocence Project. After revelations that only six prosecutors were ever disciplined, the State Bar of California has pledged to reexamine all allegations made in the report and increase efforts to educate prosecutors about its discipline process.

**ETHAN P. SCHULMAN**

Crowell & Moring, San Francisco

**JULIE YU-PING WENG-GUTIERREZ**

Office of the Attorney General, Sacramento

**Category: IMMIGRATION**

SCHULMAN and WENG-GUTIERREZ won a unanimous ruling at the state Supreme Court for their successful defense of a law that allows undocumented immigrant students to pay lower in-state tuition fees at public colleges and universities if they have attended a California high school for three years. They successfully argued that California's education law did not violate the equal protection clause of the U.S. Constitution nor was it preempted by federal law (*Martinez v. Regents of the University of California*).

**ROBERT S. TOWNSEND**

Morrison & Foerster, San Francisco

**Category: TRANSACTIONAL LAW**

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TOWNSEND led a team of Morrison & Foerster lawyers and was chief negotiator for Intel's acquisition of Infineon Technologies' wireless chip unit for about \$1.4 billion and Internet security company McAfee Inc. for \$7.68 billion. The acquisitions were among the biggest in 2010.

### **DANIEL J. WOODS**

White & Case, Los Angeles

#### **Category: PRO BONO**

WOODS and a team of lawyers he led won the first case facially challenging the constitutionality of the "don't ask, don't tell" act banning gays and lesbians from serving openly in the military (*Log Cabin Republicans v. United States*). At the federal trial last summer in Riverside, Woods introduced testimony that the military loses—or fails to enlist—5,000 men and women annually due to the policy. In October, U.S. District Judge Virginia Phillips issued a worldwide injunction ordering the U.S. military to stop enforcing "don't ask, don't tell."

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