

# Transcript

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## SPLIT DECISIONS, by John Patrick Quigley

The nation approaches a Presidential election deeply divided ideologically. The division is expressed most sharply in hopes for the appointment of sympathetic judges, especially Supreme Court Justices, whom the electorates, both liberal and conservative, have increasingly come to view as the most critical branch of government.

The ideological division of the current Supreme Court is clear from the consistent division of the Court's decisions into opinions by equal liberal and conservative blocs of justices. The liberals include Justices Breyer, Ginsburg, Stevens, and Souter, appointed by Presidents Clinton, Ford, and the elder Bush. The conservatives include Chief Justice Roberts and Justices Alito, Thomas, and Scalia, appointed by the current President, the elder Bush and President Reagan. The wild card in this mix is Reagan's appointee, Justice Kennedy, who cast the deciding vote in the below cases. We refer to the other eight Justices as "liberals" and "conservatives" for convenience, and also to make a point. One might almost conclude that they could be retired and leave Kennedy to make all the decisions.

We briefly describe the decisions, with references to the Constitution. Of course, they are more profound than our comments indicate. For more detail, Google "wall street journal split decisions", which list them and others, with links to the cases.

**PRISONERS OF WAR:** *Boumediene v. Bush*, 128 S.Ct. 2229 (2008)

*"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."* - Article I

Justice Kennedy joined the four liberal Justices and wrote the opinion striking down a statute, intended by Congress and the President to govern handling of foreign combatants captured in Afghanistan and detained at Guantanamo Naval Base, for periods up to six years, without adjudication. Relying partly on the separation of powers doctrine, they ruled that the statute could not substitute for the constitutional clause. The four conservative Justices dissented, claiming that the Writ had never been used to protect foreigners captured and detained in foreign countries. They cited reports that at least 30 of the detainees, who had been released by the Army, returned to the battlefield, and claimed that number would probably increase with judicial intervention.

**CAPITAL PUNISHMENT:** *Kennedy v. Louisiana*, 128 S.Ct. 2641 (2008)

*"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."* - Eighth Amendment

(Continued on page 2)

### INSIDE THIS ISSUE:

Recent Acquisitions	3
Ask a Librarian	3
Looking at the Web	3
Free Legal Clinics	4
Research Guides	4
National Inventors' Month	5

Split Decision

(Continued from page 1)

Justice Kennedy also joined the four liberal Justices and wrote the opinion setting aside the execution of a man for the brutal rape of his eight year old step-daughter. They held that when the crime did not intend or result in death of the victim, execution violated the Eighth Amendment, drawing its meaning from “the evolving standards of decency that mark the progress of a maturing society.” They claimed a national consensus against execution for child rape, by only six states having that penalty and none imposing it.

The four conservative Justices disputed any such consensus, arguing that four states had approved the death penalty for child rape since 1995, and that more might have done so if the Court had not outlawed the death penalty for the rape of adult women.

**SEARCH & SEIZURE:** *Georgia v. Randolph*, 126 S.Ct. 1515 (2006)

*“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizure, shall not be violated,...”* - Fourth Amendment

Justice Kennedy and the four liberal Justices excluded cocaine evidence found by police responding to a domestic dispute. The defendant had objected to their entry into their home, but his wife consented to a search, told them that defendant was using a substantial amount of cocaine, and led them to it. The majority ruled that the cocaine was inadmissible under the Fourth Amendment because the police had no warrant.

Three conservative Justices dissented, saying that the Fourth Amendment only protects a right of

privacy, which a person gives up by sharing his home, just as he would if he shared personal information with a friend who later conveys it to police.

**ABORTION:** *Gonzales v. Carhart*, 127 S.Ct. 1610 (2007)

Justice Kennedy joined the four conservative Justices and wrote the opinion approving Congress’s Act to outlaw partial-birth abortions, passed in response to the Court’s earlier ruling striking down a Nebraska statute outlawing such abortions, which tears apart the body of the fetus and/or crushes or pierces its skull, in order to remove it from the mother’s body. The majority distinguished the Congressional Act in that it only criminalized a doctor knowingly extracting “a living fetus” partially “outside the body of the mother.” They held that an Act isn’t invalid if there is uncertainty as to whether the process is ever necessary for a woman’s health, where other procedures are available.

The four liberal Justices dissented, emphasizing that the Act fails to adequately allow for abortions that might be necessary to preserve the health of the mother.

**GUN RIGHTS:** *District of Columbia v. Heller*, 128 S.Ct. 2783 (2008)

*“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”* - Second Amendment

Justice Kennedy also joined the four conservative Justices in striking down a Washington, D. C. ordinance that essentially outlawed all handguns and required that long guns be registered and kept in an

unusable condition. The Court ruled that the introductory phrase does not restrict the rest, which protected an individual’s Common Law right to own guns for self defense, subject to reasonable limitation.

The four liberal Justices felt that the Second Amendment only protected a right to keep arms for service in State militia, and that the ordinance was a reasonable limitation.

**SCHOOL INTEGRATION:** *Parents Involved in Community Schools v. Seattle School District No. 1 and Meredith v. Jefferson County*, 127 S.Ct. 2783 (2007)

Justice Kennedy concurred separately with the judgment of the four conservative Justices, which struck down race-based integration plans in Seattle and Kentucky. The plurality emphasized the strict scrutiny by the courts of such plans, ruling that the avowed diversity purpose of the plans was not served by dividing students into white/non-white and black/other. They also emphasized that the Seattle School district had never been found to promote segregation, and that the Kentucky district had been found to be in compliance with a previous federal court order.

The four liberal justices criticized the plurality for failing to distinguish between prohibited policies of exclusion and permitted policies of inclusion.📖

## Notable Recent Acquisitions by Steven Nadolny, Catalog Technician

**L**ooking to keep current in a particular area of law? Before the summer is over you may want to “check out”.

Looking to do some legal research? How about the new edition of: *Federal Legal Researcher* (GEN4: KF8810 .F43 2008);

Continuing our last issue’s focus: *Chapter 13 Bankruptcy: Keep Your Property & Repay Debts Over Time*, 9<sup>th</sup> ed. by Stephen Elias & Robin Leonard (REF, GEN4: KF1524.85 .L46 2008); *Family Lawyer’s Guide to Bankruptcy: Forms, Tips, and Strategies* by Shayna M. Steinfeld and Bruce R. Steinfeld (GEN4, DESK: KF1535 .D58 S74 2008) and *Employee Benefits and Executive Compensation in Corporate Bankruptcy: a Collier Monograph* (GEN4: KF1526 .E45 2008);

Bringing your law practice into the 21<sup>st</sup> century? Consider ABA’s: *The Lawyer’s Guide to Collaboration Tools and Technologies: Smart Ways to Work Together* by Dennis M. Kennedy and Thomas L. Mighell. (GEN4: KF320.A9 K46 2008);

Got kids? Children and the law in a nutshell, 3<sup>rd</sup> ed. by Sarah H. Ramsey, Douglas E. Abrams. (GEN4: KF479 .R36 2008);


Know a non-resident looking to work in the U.S.? *How to Get a Green Card* by Ilona Bray and Loida Nicolas Lewis is now in its 8th ed. from Nolo (REF, GEN4: KF4840.Z9 L49 2008);

Up for some continuing legal education credit listening and reading? We’ve added several MCLE titles: *Estate Planning & Administration: 23rd Annual Recent Developments* [Neil F. Horton (moderator); Elizabeth M. Engh, Charlotte K. Ito, and Bart J. Schenone, (panelists)] (GENA: CEB 1135 CD) -- *Family Law Practice: 26th Annual Recent Developments* [Hugh T. Thomson, (moderator); Margaret A. Patrick, Derek Woodhouse, (panelists)] (GEN A: CEB 1136 CD) -- *Business Law Practice: 28th Annual Recent Developments* [John E. Giusto, (moderator); Iain Mickle, Paul J. Pascuzzi, (panelists)] (GEN A: CEB 1137 CD) and many others;

With the potential for offshore drilling in the news: *Ocean and Coastal Law and Policy*, 1<sup>st</sup> ed. by Don C. Baur, Tim Eichenberg, and Michael Sutton. (GEN4: KF5627 .O273 2008);

Virtually confused? Try ABA’s: *Virtual Law: Navigating the Legal Landscape of Virtual Worlds*, (1<sup>st</sup> ed.), Benjamin Tyson Duranske.


Also look for code updates; books on trusts, wills, patents and inventions, school law, legal writing, litigation, franchises, entertainment law, electronic discovery, etc. For more possibilities see our recent acquisitions lists.

Happy reading and listening. And don’t forget to renew your Library membership. You depend on us. And we depend on You! 

## Ask a Librarian

by Lu Nguyen, Reference Librarian

**Q**: I would like to serve someone in the Orange County jail in California; and I would like to know what the procedures are?

**A**: See California Penal Code section 4013 and California Code of Civil Procedure section 415.20. You can access the California codes at this website: <http://www.leginfo.ca.gov/calaw.html>. 

## Looking at the Web

by Mora Prestinary, Reference Librarian

In honor of National Inventors Month, here are some patent and trademark web sites:

USPTO Patent Full Text & Image Database

<http://patft.uspto.gov/>

USPTO Forms

<http://www.uspto.gov/web/forms/>

European Patent Office

<http://ep.espacenet.com/>

Patent Electronic Business Center

<http://www.uspto.gov/main/patents.htm>

Official Gazettes, Patent and Trademark

<http://www1.uspto.gov/web/menu/og-PandT.html>

FTP Weekly Bibliographic Raw Data from Patent Grants and Patent Application Publications


<http://www.uspto.gov/web/menu/patdata.html>

Wacky Patent of the Month

[http://www.colitz.com/site/wacky\\_new.html](http://www.colitz.com/site/wacky_new.html) 

## Free Legal Clinics by Mora Prestinary

There's plenty of help out there for those who need it. The OCBA (Orange County Bar Association) and Public Law Center are among the sponsors of the following clinics:

- ◇ Chapter 7 Bankruptcy  
U.S. Bankruptcy Court Clerk's Office,  
Ronald Reagan Federal Courthouse  
411 W. Fourth St.,  
Santa Ana, 2<sup>nd</sup> Floor  
  
9 to 11 a.m.  
August 8, 22. Sept. 5, 19.  
Oct. 3, 17. Nov. 7, 21. Dec. 19.
- ◇ Guardianships  
Lamoreaux Justice Center  
341 City Dr.  
Orange, Dept. I-74  
  
1:30 to 3:30 p.m.  
Aug. 11, 18, 25. Sept. 8, 15, 22, 29.  
Oct. 6, 20, 27. Nov. 3, 17, 24.  
Dec. 1, 8, 15. Jan. 5, 12, 26.
- ◇ Victims of Domestic Violence  
Family Outreach Center  
320 w. Elm Ave, Fullerton  
714-992-1939  
  
1<sup>st</sup>. Wednesday of each month  
5 to 7 p.m.  
Sept. 3. Oct. 1. Nov. 5. Dec.3. Jan. 7  
  
Human Options  
1500 Adams #206  
Costa Mesa  
714-435-9992  
  
2<sup>nd</sup> Wednesday of each month,  
5:30 to 7 p.m.  
Aug. 13. Sept. 10. Oct. 8.  
Nov. 12. Dec. 10. Jan 14.  
  
Laura's House Resource Center  
999 Corporate Dr.  
Ladera Ranch.  
949-240-0363  
  
4<sup>th</sup>. Tuesday of each month, 6-7:30 p.m.  
Aug. 26. Sept. 23. Oct. 28.  
Nov. 25. Dec. 9. Jan. 27 

## Legal Research Guides Available

Did you know we have some very useful legal research guides on the OCPLL website? Go to <http://www.oc.ca.gov/lawlib/Guides.htm> for internet legal research guides to help find specific legal Web links on the following topics.

- ◇ [California Law Research on the Internet](#)
- ◇ [California Legislative History](#)
- ◇ [Criminal Law Research on the Internet](#)
- ◇ [Electronic Journals - Access to Legal Journals Online](#)
- ◇ [Expert Witness Sources](#)
- ◇ [Federal Law Research on the Internet](#)
- ◇ [Free Sources for Cases on the Internet - California Courts](#)
- ◇ [Free Sources for Codes and Regulations on the Internet](#)
- ◇ [Legal Careers](#)
- ◇ [Local Research on the Internet](#)

## It's National Inventors' Month by Kelsey Chrisley

**A**ugust is National Inventors' Month — a time set aside to celebrate those who are creative and inventive! Let us celebrate some of the inventors of well-known items of the 20<sup>th</sup> Century:

- Erna Schneider Hoover who invented the basic logic architecture for the Electronic Switching System (ESS) which automatically connects our telephone calls instead of using an operator.
- Stephanie Kwolek who invented Kevlar.
- Percy Spencer for inventing the microwave oven.
- Arthur Jones for inventing the Nautilus exercise equipment.
- Clarence Birdseye for frozen food.
- Madame C.J. Walker for hair straightener sold door-to-door by women (way before Avon). She was the first woman millionaire in the United States.

Do you have an idea for the greatest invention of the 21st century, but not sure where to start? At the Orange County Public Law Library we can get you started in the right direction! Use our online catalog at [www.ocpll.org](http://www.ocpll.org) to see a list of all the publications available. You may want to start with some of Nolo Press' publications:

- *Patent, Copyright & Trademark* (REF, GEN4: KF2980 .E44 2007)
- *Nolo's Patents For Beginners* (REF, GEN4: KF3114.6 .P738 2002)
- *Patent Searching Made Easy* (GEN A: T210 .H58 1999b)

- *Patent Pending in 24 hours* (REF, GEN4: KF3120 .Z9S75 2002)
- *The Inventor's Notebook* (REF, GEN4: KF3120.Z9 G75 2005)
- *How to Make Patent Drawings Yourself* (REF, GEN5: T223 .U3L6 2001)
- *License Your Invention* (REF, GEN4: KF3145 .Z9S75 2002)

More in-depth, specialized information published by West, CEB, and CCH concerning patents and trademarks is available. As a selective Federal depository, we also house items from the United States Patent and Trademark Office such as the *Official Gazette of the United States Patent Office* (REF, GEN A: T223 .A). Our reference librarians are ready to assist in locating the information you are seeking.

### Other resources:


The United States Patent and Trademark Office's resource page for inventors is located at <http://www.uspto.gov/web/offices/com/iip/index.htm>.

California has six Patent and Trademark Depositories and information about them may be viewed at <http://www.uspto.gov/go/ptdl/ptdlib 1.html>.

A fun website chock full of information for inventors and about invention is <http://inventors.about.com>.

At Inventors Digest, [www.inventorsdigest.com/askTheCommish.aspx](http://www.inventorsdigest.com/askTheCommish.aspx), read *Ask the Commish*, a column where U.S. Patent and Trademark Office commissioners field questions.

Book resources for this article:

- Brown, D. E. (2002). *Inventing modern America*. Cambridge, MA.: The MIT Press.
- Lindsay, D. (2000). *House of invention: The secret life of everyday products*. New York, NY: The Lyons Press 



## TECHNOLOGY AT THE ORANGE COUNTY PUBLIC LAW LIBRARY

### INTERNET ACCESS & DATABASES

LegalTrac – Legal Periodical  
Citations

HeinOnLine - Federal Register  
U.S.Reports  
Law Reviews  
Treaties

CEB OnLaw

LLMC Digital- Federal Documents  
State Materials

Westlaw® - All States & Federal  
Keycite  
Rutter Group  
Witkin titles

### LEGAL RESEARCH PROGRAMS

Authority - Matthew Bender titles

OCPLL will be closed for the following Court Hollidays

September 1—Labor Day  
November 11—Veterans Day  
November 27,28—Thanksgiving Holiday

We're on the web  
[www.oc.ca.gov/lawlib/](http://www.oc.ca.gov/lawlib/)  
Or  
[www.ocpll.org](http://www.ocpll.org)

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#### Regular Library Hours

**Monday –Thursday** 8 am-8 pm  
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**Saturday** 9 am-5pm

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