

KENNETH S. KLEIN
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**CURRENT
EMPLOYMENT**

California Western School of Law – San Diego, California, June 2008 – present.

Louis & Hermione Brown Professor of Law.
Associate Dean for Assessment, October 2019 -- present.

I currently teach Civil Procedure I and II, Evidence, an occasional section of the Clinical Internship Program, and an occasional seminar in the legal, policy, and regulatory landscape surrounding preparing for, responding to, and recovering from natural disasters. I twice have taught a seminar studying the comparative and normative aspects of lay involvement in civil and criminal adjudication. My administrative responsibilities currently include serving as the Associate Dean for Assessment.

I previously have served on a variety of major faculty committees, including as Chair of the Faculty Executive Committee, as Chair of the Appointments Committee, as Chair of the Curriculum Committee, as a member of the Administrative Advisory Committee, as a member of the Joint Committee on Curriculum Reform, as a member of the school's Committee developing Internal Assessments, as a member of the school's Committee drafting the report seeking WASC Accreditation, and as the Faculty Representative to the school's Board of Directors. I have been the faculty advisor to the Jewish Students Union, the student Chapter of the ACLU, and the student Military Veterans Legal Society. I am and have been the faculty advisor to dozens of students.

I have mentored two of the school's Adjunct Faculty. I have mentored several law students through the process of writing their law review articles. I was the law school's 2010-11 alternate delegate to the American Association of Law Schools (AALS) House of Representatives, and the 2011-12 and 2014-15 delegate. In 2010, I coached the CWSL interscholastic moot court team for the Entertainment Law Competition. I have lectured on multiple occasions in the school's Transition to Practice program. I served for five years as a member of the Executive Committee of the Litigation Section of the AALS. I served as an active member of the ABA Task Force (on the impact of two recent Supreme Court decisions changing pleadings standards) of the Pre-trial Practice and Discovery Sub-section of the Litigation Section of the American Bar Association.

PRIOR LEGAL

**TEACHING
EMPLOYMENT**

New England School of Law – Boston, Massachusetts

Assistant Professor, August 1994 – June 1996 (as well as a visiting professor teaching Evidence at University of San Diego School of Law in the Summer term in 1996)

At NESL, I taught Torts, Administrative Law, and Evidence. The focus of my academic research was civil juries. I was active in academic governance, serving on three faculty committees: Career Services, Admissions, and Moot Court. I served on three self-study committees for ABA and AALS reviews. I was the faculty advisor to two student associations. I served as Regional Administrator of the 1995 Philip Jessup International Law Moot Court Competition.

**PRIOR OTHER
LEGAL
EMPLOYMENT**

Foley & Lardner LLP – San Diego, California

Partner, February 2003 – May 2008; Senior Counsel, March 2001 – January 2003

I was a Partner in the General Commercial Litigation Group of Foley, with sub-focus within the Appellate Practice Group, the Consumer Finance Litigation Group, and the Intellectual Property Litigation Group. I also worked for public entities and handled eminent domain litigation. I was the Professional Responsibility Partner for my office and chaired my office's Pro Bono Committee. I was a member of the firm's national Pro Bono Committee. I also was a mentor for multiple associates. I served on the Office Managing Partner's committee for administering the office.

Hayes, Simpson, Greene – San Diego, California

Partner, May 1999 – March 2001

I joined the partnership of some of my former Gray, Cary associates in a small, primarily civil litigation firm of approximately 15 lawyers, where I handled trials and appeals.

Brobeck, Phleger & Harrison – San Diego, California

Of Counsel, February 1994 – July 1994, July 1996 – May 1999

With Brobeck, I was the second most senior civil trial lawyer in the San Diego office's Business Litigation group. I had additional responsibility for training junior litigation associates. I handled a wide variety of complex litigation, including intellectual property disputes, technology transfer disputes, unfair competition claims, suits against governmental entities, securities fraud matters, lender liability class actions, and antitrust litigation. Along with the senior partner in the San Diego office, I tried the *Mycogen v. Monsanto* matter, which resulted in the client's recovery of the largest contract damages verdict in the

history of California.

Gray, Cary, Ames & Frye (also known as Gray, Cary, Ware & Freidenrich, now DLA Piper) – San Diego, California
Litigation Associate, January 1987 – January 1994

My practice was in civil litigation, with an emphasis on civil writs and appeals. I tried or arbitrated a variety of cases. I handled approximately thirty appellate matters in both state and federal court. I also had extensive experience in all other phases in civil litigation. In addition, I spent four weeks prosecuting criminal matters in 1989 working for the “Rent-A-DA” program in the San Diego District Attorney’s Office.

Haynes & Boone – Dallas, Texas
Litigation Associate, October 1984 – December 1986

Haynes & Boone was, at the time I was with them, a 200+ attorney Dallas based firm with branch offices in most major Texas cities. My practice was as a business litigator and included trials (including my first “first-chair” jury trial) and appeals in state and federal courts. Each involved the full range of litigation responsibilities.

PUBLICATIONS

Book Chapters:

Kenneth S. Klein, “Is fire insurable? Insights from bushfires in Australia and wildfires in the United States”, in *Climate, Society and Elemental Insurance*, Kate Booth, Chloe Lucas and Shaun French, editors (Routledge 2021) (forthcoming).

Kenneth S. Klein, “The Male Lawyer Spouse as Smoke Damaged House,” in *Sharing the Pants: Essays About Work-Life Balance by Men Married to Lawyer*, Jacqueline Slotkin & Samantha Goodman, editors, (Vandeplaf 2009).

Scholarly Articles:

Kenneth S. Klein, *Untangling Underinsurance* (work in progress).

Kenneth S. Klein, *Ashes to Ashes: A Way Home for Climate Change Survivors* (forthcoming in *Arizona Law Review*).

Kenneth S. Klein, *Minding the Protection Gap: Resolving Pervasive, Profound, Unintended Homeowner Underinsurance*, 25 CONN. INS. L.J. 34 (2019).

Kenneth S. Klein. *Weighing Democracy and Judicial Legitimacy in Judicial Selection*, 23 TEX. REV. L. & POL. 269 (2018).

Kenneth Klein, *Truth and Legitimacy (in Courts)*, 48 LOY. U. CHI. L.J. 1 (2016).

Kenneth S. Klein, *Comparative Jury Procedures: What A Small Island Nation Teaches the United States About Jury Reform*, 76 LA. L. REV.

447 (2015).

Kenneth S. Klein, *The Enduring Quality of an Alluring Mistake: Why One Person's Intentions Cannot – And Never Could – Be Evidence of Another Person's Conduct*, 37 AM. J. TRIAL ADV. 339 (2013).

Kenneth S. Klein, *Why Federal Rule of Evidence 403 is Unconstitutional, and Why That Matters*, 47 U. RICH. L.R. 1077 (2013).

Kenneth S. Klein, *When Enough Is Not Enough: Correcting Market Inefficiencies in The Purchase And Sale Of Residential Property Insurance*, 18 VA. J. SOC. POL'Y & LAW 345 (2011).

Kenneth S. Klein, *Removing the Blindfold and Tipping the Scales: The Unintended Lesson of Ashcroft v. Iqbal is that Frivolous Lawsuits May be Important to Our Nation*, 41 RUTGERS L. J. 593 (2010).

Kenneth S. Klein, *Following the Money – the Chaotic Kerfuffle Over Residential Insurance Proceeds that Simultaneously are the Only Rebuild Funds and the Only Mortgage Collateral*, 46 CAL. W. L. REV. 305 (2010).

Kenneth S. Klein, *Is Ashcroft v. Iqbal the Death (Finally) of the "Historical Test" for Interpreting the Seventh Amendment?*, 88 NEBR. L. REV. 467 (2010).

Kenneth S. Klein, *Ashcroft v. Iqbal Crashes Rule 8 Pleading Standards on to Unconstitutional Shores*, 88 NEBR. L. REV. 261 (2009).

Kenneth S. Klein & Theodore Klastorin, *Do Diverse Juries Aid Or Impede Justice*, 1999 WISC. L. REV. 553 (1999).

Kenneth S. Klein, *Unpacking the Jury Box*, 47 HASTINGS L.J. 1325 (1996).

Kenneth S. Klein, *The Validity of Public Rights Doctrine in Light of the Historical Rational of the Seventh Amendment*, 21 HAST. CONST. L. Q. 1013 (1994).

Kenneth S. Klein, *The Myth of How to Interpret the Seventh Amendment Right to a Civil Jury Trial*, 53 OHIO ST. L.J. 1005 (1992).

Other Publications:

Kenneth S. Klein, *Another Lesson from Montecito—Even in Semi-Arid Southern California, We Need Flood Insurance*, L.A. TIMES (Jan. 15, 2018).

Kenneth S. Klein, *Sure as The Sun Rises, One Day Your California Town Will Be on Fire. Get Insurance—Lots of It*, L.A. TIMES (Oct. 20, 2017).

Kenneth S. Klein, *"Enough" Insurance is Often Not Enough*, THE BLOG

HUFF POST COLLEGE (2012), <http://www.huffingtonpost.com/kenneth-s-klein/>.

Kenneth S. Klein, *In Discretion: The consequences of Twombly and Iqbal*, 19 PRETRIAL PRAC. & DISCOVERY 1 (Fall 2010) (published by the Litigation Section of the ABA).

Kenneth S. Klein, *Reducing Frivolous Litigation Is Not Worth the Cost*, Daily Journal (Feb. 26, 2010).

Kenneth Klein, *The Supreme Court Just Changed Everything You Think You Know About How To Plead Or Attack A Civil Complaint*, available at <http://www.abanet.org/litigation/committees/trialpractice> (2010).

Kenneth S. Klein, *You Ought to Be in Pictures: Video Cameras Come to Court*, 12 CEB CIVIL LITIG. REPORTER 240 (September 1990).

PRESENTATIONS

Federal Housing Finance Agency, on “Underinsurance and the Protection Gap.”

National Association of Insurance Commissioners, Winter 2020 National Meeting, on “Insurability of Natural Disasters.”

National Association of Insurance Commissioners, Orlando National Meeting (2019), jointly presented with Amy Bach on “Pervasive underinsurance in the aftermath of disasters, and regulatory approaches to prevent it.”

Three presentations in 2019 to Hope Now, two on natural disasters and how mortgage bankers could impact market structures to address underinsurance and one on catastrophe loss and mortgage issues encountered by consumers.

Lecturer in UCSD Osher Continuing Education Series, 2017, 2018, 2020.

Presentation on Evidence and ESI to the California Offices of Gordon & Rees.

Panelist on Work-Life Balance to the Lawyers Club of San Diego (Fall 2015).

At the 2015 Annual Meeting of AALS, I was a panelist for the program -- Integrating Clinical Pedagogy Across the Curriculum: Making It Work – presented by the Section on Clinical Legal Education, Co-Sponsored by Section on Teaching Methods.

At the South American Studies Program run by CWSL, I lectured in Argentina concerning the Rule of Law in the United States.

At a 2012 meeting of fire survivors in Colorado Springs, CO, I presented on financial industry negotiations in recovering from fire loss.

At the 2010 Annual Southeastern Association of Law Schools (SEALS) Conference, I was a panelist on the Civil Procedure panel discussing the future of pleading after *Ashcroft v. Iqbal* and *Bell Atlantic v. Twombly*.

At the 2009 Annual SEALS Conference, I presented the paper, *If It Is Broke, Do Fix It: The Broken Market of Residential Casualty Insurance and a Proposal on How to Fix It*.

At the 2009 Annual Meeting of the National Bar Association, I was a panelist on the Judicial Education panel on Evidence.

In May of 2009, at the invitation of the California Insurance Commissioner, I gave a presentation on insurance and mortgage issues to a meeting of fire survivors of the Santa Barbara fires.

From 2008 to the present, I have given presentations on disaster recovery as part of the "Roadmap to Recovery" program of United Policyholders.

2010-12 Constitution Day speaker in San Diego Unified School District schools.

LEGAL EDUCATION

University of Texas School of Law, J.D. May 1984 (conferred with highest honors)
Approximate Class Standing: top two percent
Order of the Coif
Chancellors Award (awarded to top ten students based on grade averages)
Carrington, Coleman, Sloman & Blumenthal Academic Excellence Award
Member, *Texas Law Review* (1982 – 84)
Member, Board of Advocates (Moot Court Board) (1983 – 84)

PREVIOUS EDUCATION

Rice University, B.A. 1981 (conferred cum laude)
Arthur M. Cohn Honorarium for Academic Excellence
Athenian Award of Outstanding Contributions to Rice University and Richardson College
Honor Roll, Every Semester
Associate Justice of University Supreme Court

MEMBERSHIPS, COMMUNITY ACTIVITIES AND HONORS

Member of the Advisory Board of the UCSD School of Medicine Student-Run Free Clinic.

President and Member of the Advisory Board of the Community Law Project.

Member of the Advisory Board of Affordable Housing Advocates (2010-2019).

Former member of the Advisory Board of the Access to Law Initiative.

Mentor to “young scholar” writing for the SEALS Conference, 2013.

Trustee and Chief Financial Officer of the Law Library Justice Foundation, the foundation supporting the County Law Library (2004-2012).

Master, Member of the Executive Committee, and Program Chair for the Wallace Inn of Court, an entity dedicated to training young lawyers in skills and professionalism. Small Group leader 2008-2010.

Voluntary Clinical Instructor at the UCSD School of Medicine.

United Policyholders Volunteer, mentoring victims of wildfires, presenting on lender issues in “Roadmap to Recovery” meetings, and drafting analysis papers on possible insurance reform, interpretation of Insurance Code provisions, and parameters of appropriate government-supported group demolition programs. Senior Advisor within “Team UP.”

Selected Teacher of the Year (2015-16).

State Bar of California Pro Bono Attorney of the Year (for an attorney working in a mid-size law office).

Recipient of State Bar of California’s Wiley W. Manuel Award for Pro Bono Legal Services (2008, 2007, 1992).

Recipient of California Western School of Law Volunteer Recognition Award (2006).

Peer-selected as a San Diego “Super Lawyer” in 2007, 2008, & 2009 in the category of Business Litigation, and in 2017 in the category of Evidence.

Martindale-Hubbell AV Peer-Rating for over two decades (the highest possible rating for excellence and ethics).

Peer-selected in 2013, 2015, 2016, and 2017 “Top Lawyer in San Diego” (San Diego Magazine).

Lobbyist for the victims of the Cedar Fire.

Sabbath administrator for Chavurah Kol Henesshamah.

Common Cause of California, San Diego Chapter, Chaired effort to initiate periodic performance review of judges (1998).

Common Cause of Rhode Island: Board of Directors, Member, Poll Watcher, and Chair of Judicial Reform Committee (including testifying at the Rhode Island State House) (1995-96).

Coach of the National Moot Court Team for California Western School of Law (1993 – 94).

Co-coach of the Jessup International Moot Court Team at California Western School of Law (1992 – 94).

San Diego Chapter of the Democratic Leadership Council: Secretary, member of the Board of Directors, and charter member; Chair and Organizer of its Educational Voucher Forum (1993 – 94).

San Diego Campfire Council: Member of the Nomination Committee (1993).

Council for the United States and Italy: 1991 and 1992 delegate to Young Leaders Conference, and 1992 Western United States Representative of the Advisory Council.

Co-Chair of Program Committee Organizing Federal Bar Association Sponsored Seminar on Ninth Circuit Appellate Practice (1992).

Pro Tem Judge in San Diego County Small Claims Court (1992 – 1994).

Barclays Law Publishers: Advisory Editorial Board (1992 – 94).

San Diego Superior Court List of Approved Arbitrators for Civil Business Disputes: Approved Arbitrator (I was selected as an arbitrator in ten matters) (1992 – 94).

San Diego Citizens Diplomacy Council: Member (1988 – present).

San Diego County Bar Association: Litigation Committee Member; Appellate Committee Member (Chair of Civil Rules Subcommittee for 1992).

Volunteer Attorney Judge for Moot Court Competitions at California Western School of Law and University of San Diego School of Law (1992 – 94).

PRO BONO ACTIVITIES

In response to the 2007 San Diego wildfires: coordinated mentoring and information desk at the Disaster Relief Center, drafted white papers on governmental response, lobbied for code reform and response, trained and supported legal assistance hotlines by both the ABA and the

SDVLP.

Legal advisor to hundreds of fire and hurricane survivors (2007-present).

Fee Arbitrator for the San Diego County Bar Association's Fee Arbitration Program.

Office coordinator for the San Diego Volunteer Lawyers Program (2004-2008).

Office coordinator and volunteer attorney with CWSL Community Law Project (2004-2008).

Pro bono attorney representing victims of Hurricane Katrina.

"Election Watch" volunteer attorney (1994-2009).

ACLU of Rhode Island Volunteer Attorney: Responsible attorney for enforcing compliance with the National Voter Registration Act, drafted two amicus briefs on behalf of local chapter (1995-96).

Common Cause of Rhode Island: Four appearances testifying to House and Senate committees in support of judicial merit selection and separation of powers (1995-96).

AIDS foundation San Diego: Volunteer attorney representing the Foundation and its Executive Director in litigation threatening the Foundation's funding (1992).

Standown, an assistance program for homeless Vietnam veterans: Volunteer attorney (1991- 94).

San Diego Volunteer Attorney Program: Representation of indigent gentlemen in appeal challenging denial of SSI benefits (1993).

ACLU of San Diego volunteer attorney: Primary attorney pursuing litigation defending the rights of the homeless (1988-89); Primary attorney challenging HIV testing of newborns without notice of hearing (1991); Assisting attorney challenging search and seizure procedures at San Clemente Checkpoint (1991).

San Diego Volunteer Lawyers Program: Volunteer attorney investigating "shelving" practices of the Department of Social Services (1991).

Legal Aid Society of San Diego, Inc.: volunteer attorney defending custody rights of mother post-dissolution (1991).

**ASSOCIATIONS AND
CERTIFICATIONS**

Admitted to Practice by State Bar of California (June 1987) (current status – active).

Admitted to Practice by State Bar of Texas (November 1984).

Admitted to Practice before Supreme Court of the United States of America (1991).

Admitted to Practice before United States District Courts for the Northern District of Texas, the Southern and Central Districts of California, and the United States Court of Appeals for the Fifth Circuit and Ninth Circuit.

Member of the San Diego County Bar Association (1987-present).

Member of the American Bar Association (1987-present).