THE ADVOCATE

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Bryan Stevenson Speaks on Social Justice

By Nnennaya Amuchie
Social Justice Editor

On January 14, 2016, Bryan Stevenson graced our campus with words that left the audience feeling more purposeful and more intentional about their lives and career choices. As a New York University law professor, founder and director of the Equal Justice Initiative, and author of Just Mercy, Bryan Stevenson is not new to speaking candidly about racial injustice and the role in lawyers play social change and impact.

He came at a time when Santa Clara University School of Law, like many law schools around the country, is confronting the issues of racial diversity and inclusivity. Stevenson reminded us that in order for us to solve the problem, we must be willing to expose the truth. Stevenson used his profound and vivid storytelling to highlight the injustices that he witnessed throughout his legal career while working on behalf of wrongly convicted death-row inmates.

Bryan Stevenson speaks in Mayer Theatre. Photo: Joanne H. Lee

While he has a long list of accomplishments and heart-felt stories, he didn't stop there. He called the audience and the greater Santa Clara community to action.

He listed four steps we can all take to live in a more just and equitable world:

1. We have to be proximate to the problems we care about.

Stevenson explained how too many policymakers are trying to make decisions from afar. Proximity teaches us to understand the challenges that people face and the power we have to make a difference. Proximity allows us to directly impact someone's life no matter how small the impact and no matter how large the problem may seem.

2. We have to change the narrative that sustains injustice.

Although policies are part of the problem, policies are rooted in a mixture of politics, anger, and deep ignorance. Stevenson challenged us to discuss the myths that we learned throughout America's history. Specifically, we need to discuss the genocide of indigenous people in the United States and the establishment of slavery which followed. As lawyers, we have the resources to access information and unlearn the myths that

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SCU Law Kicks Off Inaugural In-House Counsel Institute

By Brent Tuttle
Editor-in-Chief

The weekend of January 23-24, 2016 marked the inaugural kickoff of what Santa Clara Law hopes will become a flagship program. The "In-House Counsel Institute" is a four-day in-depth training program taking place over the span of two weekends, the next of which will occur on February 20-21. The goal of the Institute is to prepare and train practicing lawyers to be effective in-house counsel.

The brainchild of SCU Law faculty and distinguished alumnus Ralph Pais, the In-House Counsel Institute aims to develop the skill set attorneys need to manage their many duties working in-house. As Dean Kloppenberg noted in her opening remarks, the current problems that Silicon Valley companies and law firms face are constantly evolving and require new approaches. With this training program, SCU Law hopes to build a bridge that many in-house lawyers cross when developing innovative solutions for their clients.

Attendees of the In-House Counsel Institute after a day of interactive learning. Photo: John J. Flood

Together with the help of Dean Sandee Magliozzi and Laura Norris of the Entrepreneurs' Law Clinic, In-House Counsel Institute Director Tom Lavelle has assembled an all-star roster of thought leaders, speakers, and interactive training exercises for those who attend.

Attendees of the inaugural weekend were attentive on Saturday morning, as they listened to a candid panel presented by Oracle's General Counsel Dorian Daley and Adobe's General Counsel Mike Dillon. Given their roles, both speakers were able to divulge what the view from the top looks like, but emphasized that a key ingredient to their success is good humanity. Dillon in particular mentioned that after Adobe suffered a data breach, he knew first hand the headaches and sleepless nights that could follow. After his own experience, he has made it a point to reach out to other general counsels suffering through similar incidents in order to offer them support and advice if needed.

Other key speakers from the weekend included: Suzan Miller, Corporate Vice President and Deputy General Counsel of Intel Corporation; Carole Coplan, General Manager of FLEX by Fenwick; Andy Hinton, Vice President and Chief Compliance Officer of Google Inc.; Jerry Roth, Partner at Munger, Tolles & Olson; Ed Medlin, Senior Vice President and General Counsel of Maxim Integrated; Larry Brown, Senior Manager; Andy Hoffman, Partner at Wilson Sonsini Goodrich & Rosati; Connie Chien, Director of Legal Acquisitions & Investments at Cisco Systems; Steve Jackman, Vice President & Deputy General Counsel, Flextronics; Ralph Pais, Partner at Fenwick & West; Katie Rice, Patent Litigation Counsel at Gilead Sciences; and Julie Mar-Spinola, Chief IP Officer and Vice President of Legal Operations at Finjan.

Topics covered by these speakers encompassed the management of a global compliance program, corporate strategy for intellectual property, commercial transactions, and operations support from the in-house perspective.

While the list of speakers was star-studded, the inaugural weekend also attracted young lawyers from some of the most highly regarded companies and firms in Silicon Valley. Attorneys from Google, Apple, Amazon, Oracle, Fenwick & West, Wilson Sonsini Goodrich & Rosati, and McDermott Will & Emery were all intrigued by the lecture series. In addition, all attendees were afforded the pleasure of working with each other during interactive training sessions.

With support from Fenwick & West, Wilson Sonsini Goodrich & Rosati, McDermott Will & Emery, Oracle, Google, Adobe, Cisco Systems and Maxim Integrated, the second installment of the In-House Counsel Institute has even more in store for attendees. Future sessions are slated to cover a wide range of topics including: ethical and employment issues in-house, open source, privacy and data security, managing litigation from an in-house perspective and the impact of data analytics on the practice of law. The In-House Counsel Institute is off to an exciting start that aims to mold world-class in-house counsel while furthering dialogue in the Bay Area and Silicon Valley.

Stevenson's Discussion at SCU

Bryan Stevenson answers questions with Professor Margaret Russel. Photo: Joanne H. Lee

we have been taught. He explained how the United States has made a narrative or ideology of White supremacy that legitimized slavery. Stevenson said when we commit ourselves to truth and reconciliation, we can be part of a more just and equitable society.

3. We must protect our hope.

Stevenson urged us to remain hopeful in the sight of injustice. He stated, "Hopelessness is the enemy of justice." On the other hand, hope is what gets us to stand up when others are sitting down. Hope fuels us and gives us courage to carry out the truth.

4. We have to be willing to do uncomfortable things.

Human beings are programmed to seek comfort. But change cannot come out of comfort. Stevenson urges us to position ourselves in uncomfortable places so that we can create solutions that transform the world we live in.

He ended with a striking question, "Why do we want to kill all the broken people?"

In all his vulnerability, he said,

"I do what I do because I am broken too. There is power in brokenness. I am not trying to save my broken clients; I am trying to save my broken self. It is the broken people that understand compassion and hope."

The truth is we are all broken. We have all been hurt. We have all felt helpless. We have all felt inadequate. No human being is perfect nor will ever be perfect. But in all our flaws, we still have the capacity to hope and change. As lawyers, we have the knowledge and the tools to effect change. Communities depend on our expertise to make the world a more just and equitable society. While this may be a difficult task or heavy burden, change begins the day we begin to do.

Rumor Mill

By Susan Erwin
Senior Assistant Dean

I have heard that the Law School may drop in the U.S. News rankings that will be published in March. Is this true?

I reached out to Dean Joondeph for this answer:

Yes, this is likely true, though we will not know for sure until the rankings are published in March. The U.S. News rankings depend, among other things, on the first-year median LSAT score (12.5% of the ranking score), median undergraduate GPA (10%), the application acceptance rate (2.5%), and the employment rate of the preceding year's graduates (18%). With respect to each of these metrics, Santa Clara dropped relative to other law schools nationally over the past year. Those categories pertaining to admissions are connected to our move to increase the size of the incoming class, a move necessitated by the school's finances. Candidly, we have fully anticipated since August 2014 a drop in our U.S. News ranking in March 2016. We saw it as an unavoidable consequence of the Law School's strategy to place itself in a position that is sustainable financially over the long term.

I saw somewhere that Commencement was on May 14, but now I've heard it is May 21st. When is it?

The date was changed from the 14th to the 21st last spring, due to space availability. Since then, we have been scouring web pages, announcements and other publications to make sure all of the information is consistent.

Dates for Commencement activities for 2016 will be:
Thursday May 19, 2016: Public Interest and Social Justice Law Celebration and Graduation Ceremony
Friday May 20, 2016: High Tech Law Institute Graduation Celebration
Friday, May 20, 2016: Law Commencement Liturgy
Saturday, May 21, 2016: Commencement Ceremony and Reception.

Check out the latest commencement news at law.scu.edu/commencement.

Who is Number Nine and why don't I want to be him or her?

Numbers 1 through 8 are the sad stories of former law students who went to barristers, drank too much, did stupid things, and are still paying the price. Many have accused of us of making up the stories and don't believe that these punishments were real. I promise that we did not make these up. All of these things happened. Admittedly, we switched around some of the details to protect identities. It took twenty years to get to Number 8. Our goal is to never make it to Number Nine. Don't be Number Nine.

When is the schedule for next year going to be posted and how do I find out who my faculty advisor is?

The summer schedule should be finished soon. Registration for summer will be the first week of April. The fall schedule and a laundry list of spring classes should be ready by May. Registration for fall will be in June.

In law school, you no longer have a faculty advisor. We assume that you can figure it out for yourself. To assist you with your planning, we will have a whole week of Academic Advising activities the week of March 14 – well before you have to register for summer or fall. Keep an eye out for more info soon!

Heard any rumors lately? If so, send me an email – serwin@scu.edu

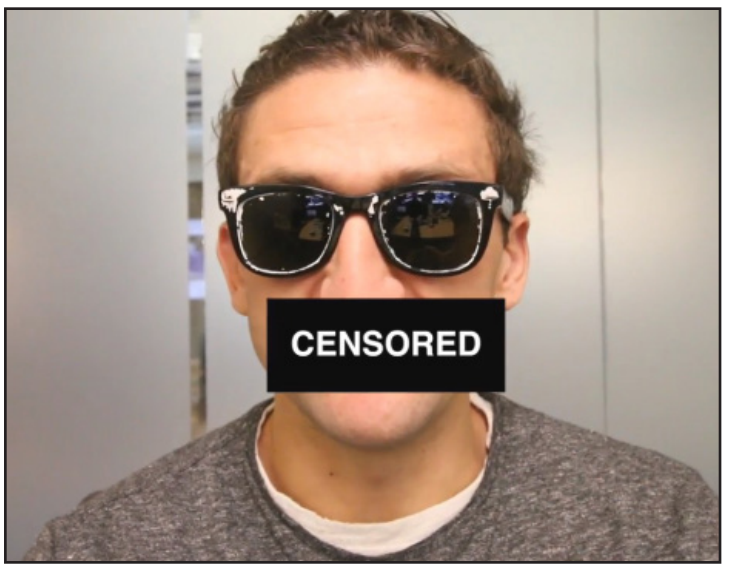
Censorship of the Net

By Stephanie Britt
Associate Managing Editor

"Have you read the YouTube comments lately? 'Man, that's gay' gets dropped on the daily." Macklemore's lyrics speak of the rising legal issue involving online harassment. Like any Internet savvy person worthy of the 21st century, I'm often appalled by the brutality of the negative comments circled on the web. Regardless, I wonder whether it should be legal to expect government and private entities to censor the social dialogue of the web based on the harassment that pervades comment sections.

Online harassment is a hot media topic due to a number of high-profile cases that received the attention of the United Nations where women spoke-out against the online bullying and trolling that they are subjected to in social media. The U.N. defines online violence against women as: the harassment, impersonation, surveillance (like recording keystrokes), hacking into their accounts for information, or fake profiles to lure them into dangerous situations, and sharing or threatening to share private media, such as nude photos on-line. However, the media portrays this as a gender issue but the truth is that women are not the only group targeted by online harassment. To paint women as the quintessential portraits of victimization in order to gain media attention represents a failure by society as a whole to understand that the extent of on-line harassment is not limited to gender, Male or Female, but categorically criticizes every social group, race, and stereotype that exists in modern consciousness.

So what is online harassment? Google's anti-harassment policy defines it as: "offensive verbal comments related to gender, sexual orientation, disability, gender identity, age, race, religion, the use or display of sexual images in public spaces, deliberate intimidation, stalking, following, harassing photography or recording, sustained disruption of talks or other events, inappropriate physical contact, and unwelcome sexual attention. Participants asked to stop any harassing behavior



are expected to comply immediately." Google's policy attempts to tackle the variety of targets to online harassment with a broad definition of online harassment. However, it is so broad in its definition of what it is trying to address that it is rendered impractical.

Online harassment is terrible and many people have good reason to want it to end. However, if we break the definition down we can see that "deliberate intimidation, stalking, recording… inappropriate physical contact" are all acts that are already illegal and can be deferred to law enforcement. That only leaves the issue of offensive verbal comments that are proliferated via Internet. These comments are, without a doubt, written with the intent to be hurtful but on their own should not be considered to be online harassment. The individuals that write offensive commentary may be considered a subset for online harassment but their offensive comments are part of their individual rights to voice their opinions online. Due to the fact that their opinions are not those that are favored by society at large, they utilize the anonymity afforded to them by the web to voice their unwelcome opinions. That, my friends, is our beloved freedom of speech.

There is a definite grey area when it comes to the comments circulated online for what can be considered a person's first amendment rights and what can be considered online harassment. This lack of clarity is one of the reasons that interest groups are pushing towards censorship of the net in order to block any form of online harassment. However, any legitimate threats online are already considered illegal, therefore if they do occur, the individuals that are targeted by online harassment can accede to the police. This does not mean that online harassment is a separate or novel issue that justifies government efforts to censorship the Internet. While online censorship is a feasible solution to the problem of online harassment, it would risk the possibility that our freedom of speech on social media would no longer be available to users.

We are privileged to live in a time in history where technology makes communication both accessible and instantaneous to anyone with an Internet connection. In the blink of an eye, or longer with BroncoWiFi, we can now share information with anyone across the globe and distance and language are no longer barriers. The fact that it is in our human nature to also share rude commentary is undeniably a symptom of freedom of speech. If this symptom is too offensive for society, then perhaps North Korea and Cuba are justified in completely censoring the web.

Professor Matsushita Presents On Trans-Pacific Partnership

By Brit Benjamin
For The Advocate

Professor Matsushita poses with Professor Jimenez after his presentation.

On October 20th, Japan's most celebrated legal scholar, Professor Mitsuo Matsushita, visited Santa Clara Law and presented to a packed lecture hall on the Trans-Pacific Partnership (TPP), the world's largest mega-Free Trade Agreement. Professor Matsushita's influence is far-reaching. He has served on various councils of the Japanese government, including the Industrial Structure Council, the Customs and Tariffs Council, and the Telecommunications and Post Council. He is Professor Emeritus at Tokyo University, a founding member of the Appellate Body of the World Trade Organization, and an Advisor at Nagashima Ohno & Tsunematsu.

On October 5, 2015, the TPP was agreed upon by 12 countries. These member states share approximately 40% of global GDP. The United States and Japan are the members with the largest economies, and arguably have the greatest negotiating leverage of the TPP member states. The global economic and legal landscape will be significantly influenced by the terms of the TPP. The agreement addresses 21 areas of regulation which can be grouped into three realms of impact: market access, border measures, and regulatory coherence.

For TPP members, the agreement will facilitate market access via the elimination of tariffs, the liberalization of financial markets, easier travel for businesspeople, among other benefits. As to border measures, member states will agree to regulations regarding the origin of goods, methods for facilitating trade, and normalized trade remedies. The most complicated, yet most fascinating, area of TPP impact is in the realm of regulatory coherence. In order to sustain the economic collaboration of culturally and legally diverse member states, many of the TPP's measures will seek to harmonize regulations relating to competition, services, e-commerce, investment, labor legislation, and environmental protection.

By delving into specific topics such as rice tariffs, pharmaceutical patents, and the sales of automobiles, Matsushita illustrated some of the challenges of attempting to harmonize regulations where the historic standards of member states conflict. While that regulatory coherence creates substantial benefits for international trade, our honored guest took a moment to remind us about the risks of creating block economies that the proliferation of mega free trade agreements can enable.

Our students and faculty benefitted immensely from Professor Matsushita's insight and expertise regarding this topical issue in global law and economics. His lecture elevated our community to the leading-edge of knowledge on the Trans-Pacific Partnership. We are already looking forward to his next visit to our campus.

Office Hours Unwound

William J. Woodward, Jr.
Senior Fellow

Areas of Specialization:
Business-related contracts, Commercial Law, Bankruptcy courses, Litigation-based torts, Remedies, Private international law courses

Education:
-J.D., Rutgers-Camden School of Law
-B.A., University of Pennsylvania

1.When was the last time you left the country? Where did you go and why?

I went to Rome for about 6 weeks during the Summer of 2011 to teach International Business Law in Temple's Rome summer program. If I could recommend any city in which to spend time, Rome would be it.

2. What was the most valuable course you took in law school and why?

Federal Courts was a big one, important because there is nothing intuitive about it and, for a litigator (as I was), it describes a complicated system that you confront every day. Close seconds were Federal Income Tax (a required first year course at Rutgers where I attended) and courses in commercial law (Sales, Secured Credit, and Bankruptcy) which formed the foundation for my teaching.

3. Who is your favorite character from literature and/or film?

Gotta say Tony Soprano. He talked like people I grew up with in New Jersey and probably had many of the same values.

4. What is your top source (news / journal / legal blog / other) for keeping current with the law?

Scotus Blog.

5. What was your favorite job you had while in law school?

During my third year I was a teaching assistant for a Constitutional Law professor requiring me to run extra classes for his class once a week. It gave me the bug.

6. To date, what has been your favorite or most memorable concert experience?

The brother in law of my brother in law is the sound engineer for many big acts. He got us VIP sound booth tickets to a Bob Dylan concert in Philadelphia in about 2009. Amazing seats and they got us behind the scenes to the food but no audience with Bob. Our benefactor told us "Dylan doesn't talk to anybody."

7. What is your favorite show on Netflix, HBOGO, etc.?

Breaking Bad, Sopranos, and Six Feet Under in that order.

8. What is your favorite sports team? If no team, then do you admire a particular athlete and why?

In typical New Jersey fashion, my father bet on practically any sports contest, from NFL games to local kids' little league games and swimming races. That cured me forever of spectator sports. If I had to pick someone, it would probably be Yogi Berra—great athlete but even better talker.

9. What do you consider to be the most important development in your field over the last 5 years?

I would nominate the rise of forced consumer arbitration connected with practically any good or service (from cell phones and bank accounts to surgery) a consumer might want, thanks to a series of cases from the Supreme Court. This may not qualify for "my field" (contracts) as the purported agreements that form the rationale for forcing this system on consumers are unrelated (except nominally) to anything resembling the "assent" that is at the foundation of consensual liability. This is a second-class justice system reserved mostly for consumers: the Consumer Financial Protection Agency studied thousands of cases. Of 341 cases consumers filed against companies in arbitration over a two year period, they prevailed in 32 and recovered money and debt forbearance totaling about $400,000. When companies were claimants in 244 cases during the same period, they obtained relief in 227 disputes totaling about $2.8 million. Go figure.

10. How do you unwind?

Hiking, piano, furniture making, and being with my 3 ½ year old granddaughter.

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1. When was the last time you left the country? Where did you go and why?

I was fortunate enough to travel to Spain last October for three weeks. My husband and I traveled around Andalucia Spain, and popped over to Tangier, Morrocco for a day. We took the trip to celebrate our 35th anniversary. Some of the places we visited included Cordoba (the Mezquita was amazing), Sevilla, (the Alcázar was the highlight there) and Granada (all about the Alhambra). Essentially we went for the history, Moorish architecture, the music, and the food. I highly recommend it as an enjoyable destination.

2. What was the most valuable course you took in law school and why?

Probably Copyright. Being a librarian, copyright is very important to our work. That Copyright course has helped me when I served on the Copyright Committee of the American Association of Law Libraries, advised both campus libraries on Copyright issues, and when teaching Advanced Legal Research for Intellectual Property.

3. Who is your favorite character from literature and/or film?

Are people really able to answer this? I think Dagny Taggart, from Atlas Shrugged by Ayn Rand, is one of my favorite characters. She is arguably one of the strongest female protagonists in Western Literature, and was one of the first powerful female characters that I encountered.

4. What is your top source (news / journal / legal blog / other) for keeping current with the law?

Okay, this is really embarrassing. I would have to say Facebook. But, only because I have so many law librarians and law school faculty on my friends list, that I usually see things there first. I am also blessed to be surrounded by librarians at work who constantly share articles and information with me.

5. What was your favorite job you had while in law school?

I am really happy to say that I am still doing it. I was a librarian at Heafey when I started law school, and I still am. My roles have changed over the years, but I remain a librarian.

6. To date, what has been your favorite or most memorable concert experience?

This is hard. I think the most memorable concert was seeing James Taylor play in the Dean Dome when it first opened. Hearing JT sing "Carolina in My Mind" in Chapel Hill was a very special moment. There was not a dry eye in the house.

I have to add another experience that was very different, but equally memorable. After living on the Big Island of Hawaii for a year, where the only musical entertainment is ukulele music or piano bars, the David Brubeck Quartet came to play on the Kona coast. It was an intimate setting with 50-70 people in attendance. It was so incredible to sit a just a few feet from some world class jazz musicians.

7. What is your favorite show on Netflix, HBOGO, etc.?

My favorite is probably Orange is the New Black, but House of Cards is right up there. (Notice I have given up on the idea of coming up with one favorite.)

8. What is your favorite sports team? If no team, then do you admire a particular athlete and why?

My favorite is the Duke Blue Devils men's basketball team. I don't think you are allowed to go to Duke and not be a Blue Devils fan. I was at Duke at the start of the basketball team's rise to national prominence; it was very exciting to have the whole country turn its attention to us when we were considered a Cinderella team. But in general, the ACC was a very exciting conference to follow.

9. What do you consider to be the most important development in your field over the last 5 years?

The recent changes in the ABA standards now permit law libraries to discard their print collections. Until this change, law libraries were assessed by the volume count of their collections. The standard now requires "reliable access" to the information. This has allowed academic law libraries across the country, including ours, to empty their shelves of books that are no longer used. This is a brave new world for all of us, and gives the entire law library profession the opportunity to rethink how we provide information.

10. How do you unwind?

I have two dogs: Tala, a golden retriever and Teagan, an Irish setter. Taking them on walks and playing with them is my main way to unwind. Tala is a big water dog. The drought has really cut into her ability to swim. Teagan's favorite thing is to run like the wind. Glass of good red wine also doesn't hurt.

Prano Amjadi
Librarian and Co-Director of Law Library

Areas of Specialization:
Copyright in libraries, legal research, and social responsibility

Education:
-J.D., Santa Clara University School of Law
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SCU Alum Senator Wieckowski Urges Bankruptcy Reform

By Norma Hammes
For The Advocate

Q&A with State Senator Bob Wieckowski:

1. You have introduced Senate Bill 308 to reform parts of California's bankruptcy laws. This is a subject you are familiar with from your private practice right?

That's right. I graduated from Santa Clara University Law School in 1985. I later opened my own private practice and have worked with hundreds of clients, guiding them through the bankruptcy process.

2. SB 308 focuses on modernizing the homestead exemptions in bankruptcy. Why is it important to update the exemptions?

California's home prices have climbed over the past 40 years, but the homestead exemptions in our bankruptcy laws have remained flat, making it more difficult for people emerging out of bankruptcy to rebound financially and avoid future debt problems. For Californians who own a home but are going through a bankruptcy, the danger of losing their house increases with each passing year.

These homestead exemptions were put in place to make sure a person still retained a house to go home to despite a bankruptcy. If there was a forced sale of the home in bankruptcy, the consumer would still have some critical home equity money.

3. And the exemptions are currently set at $75,000 for single residents, $100,000 for couples and $175,000 for seniors, the blind, and the disabled?

That's right, but the median price of a California single-family detached home is more than $450,000 dollars. In the Bay Area, that price is much higher. So, we have this gap between the homestead exemptions and the cost of housing and it has widened considerably since 1975.

4. Another major component of your bill is the elimination of the reinvestment requirement. How does this requirement affect a homeowner?

The reinvestment requirement makes an already extremely difficult financial situation much worse for the consumer. Under a 2012 court ruling, *In re Jacobson*, if unsecured creditors force the sale of a bankruptcy debtor's residence, the homeowner is required to reinvest all homestead exemption proceeds into purchasing another home within six months.

That means the debtor, who just went through a bankruptcy and who has a credit report in shambles, is now required to reinvest the proceeds into another home in just six months or else the bankruptcy trustee can seize that money, too.

This court ruling changed longstanding precedent in California that went all the way back to the 19th Century. It stripped away any flexibility the debtor had to spend the exemption money on his or her most pressing needs, such as medical bills or other essential living expenses. SB 308 restores common sense to our bankruptcy laws. It eliminates the homestead reinvestment requirement put in place by the court ruling, and it modernizes our badly outdated homestead exemptions.

5. Under SB 308, the exemptions would be $100,000 dollars for single residents, $150,000 for married people and $300,000 for seniors and the disabled. These seem like modest increases given the cost of housing. Why aren't you proposing larger increases?

The updates I'm proposing are based on discussions I've had with legislative colleagues and offer a reasonable approach to assisting struggling homeowners. This bill recognizes that seniors are the most likely to have home equity to protect and they are the least able to re-enter the job market if they fall on hard times.

In fact, many seniors have spent years paying down their mortgage and investing in their homes with the belief that their equity can serve as a cushion in retirement. But a sudden accident, failing health, or some other emergency can lead to a rapid decline in their finances.

The goal of SB 308 is to ensure that the consumer is not left with so little that she cannot pick herself up and recover from a bankruptcy.

If we don't provide this option, more people would be endlessly mired in debt and more dependent on the public for day-to-day assistance. Our homestead exemptions should provide a path to self-sufficiency.

6. Beyond the homestead exemption, SB 308 proposes changes to other exemptions. Is this also because other exemptions have lagged behind current costs?

Exactly. The bill includes a modest boost to the exemption for motor vehicles from $2,900 to $6,000. For people in financial distress, a reliable vehicle is often a must to get to and from work. A $6,000 vehicle should be much more dependable than a car that's worth less than $3,000.

SB 308 also creates a modest exemption to help small business owners to keep a minimal amount of inventory or proceeds to keep their business afloat. This is an important change to current law because many underemployed workers attempt to start home-based businesses as another source of funding to help them cover living expenses.

7. The bill has passed the state Senate and is now on the Assembly floor. What are its chances in the Assembly?

I am optimistic. It has a broad coalition of support from AARP, the Attorney General, the State Treasurer, leaders of the Senate and Assembly, and more organizations are coming on board.

About Senator Bob Wieckowski:

California State Senator Bob Wieckowski (D-Fremont) represents the 10th District. He is a member of the Senate Judiciary Committee and received his J.D. from Santa Clara University in 1985.

German Court Rules Amazon E-mail Share Function Illegal

By Lisa Nordbakk
Privacy Editor

Who would have thought that a dispute concerning parasols would lead to a law-shaping holding? The court dictated a whole new level of stringency concerning the use of personal data that retail-giants such as Amazon will have to adhere to. The ruling of the German higher regional court Hamm, declared that the use of the "Share" function violates § 7 of the UWG (laws against anticompetitive practices), prohibiting E-shoppers to share their purchases with their friends via e-mail, Twitter, Facebook or Pinterest.

The case places a disgruntled purchaser of a parasol on one side, and its vendor, using Amazon as his retail platform, on the opposing side. The purchaser initiated the lawsuit in 2012 in the regional court of Arnsberg, seeking injunctive relief, prohibiting the vendor from advertising the aforementioned parasol with an image that pictures the parasol propped on a base, even though, when delivered the parasol is without such base (- how dare they?). The higher regional court affirmed the lower court's holding, allowing the injunctive relief, and furthermore declared Amazon's offering the use of the "Share" function as an anticompetitive practice, not in compliance with the strict German regulations against unfair competition codified in the UWG – the so called "unlauterer Wettbewerbsgesetz."

Notwithstanding the fact that these e-mails are indeed not sent by the vendor, nor by Amazon, but by the purchaser himself, the court found that these e-mails constituted advertisement. *See, BGH GRUR 2013, 1259, 1260 - Empfehlungs-E-Mail*. The court conceded that, yes, the e-mails do not conform to direct advertisement pursuant to EU-Guideline 2002/58 EG. However, the existence of the "Share" function is enough to justify such categorization. Therefore, the e-mails sent via the "Share" function fall under the rigid regulations of the UWG. The court justifies its conclusion by pointing out that the only purpose that such a "Share" function could serve is to make third parties aware of the e-presence of the retailer's products. The decisive point in the analysis is that this is done without the receivers' consent. As the language of § 7 describes pointedly, the "Share" function allows for "unconscionable pestering" of the friends, family, and followers of the initial purchasers.

The "Share" function is still running smoothly on the provider's German site, and Amazon has not yet expressed any intent to disable it anytime soon. However, this ruling still finds its weighty effect in its indicative significance. It illustrates a legal system that does not handle free distribution of personal data lightly.

Even though, this ruling does not explicitly discuss the underlying issue of protection of personal data, it does suspiciously resonate with various other legal moves punishing ungoverned use of personal data and judiciary intolerance towards those perpetrators. Just last month, Germany's supreme court ruled that Facebook's Friend Finder function, which allows users to encourage their friends to sign up, also constitutes harassment and unfair trading practices. Moreover, the German senate passed a new law that will allow consumer associations to launch data protection suits on their own initiative – without having to wait for complaints from alleged victims. As if that were not enough, the senate also officially declared that putting people on marketing lists without their consent could be framed as a data protection offense.

These developments beg the question if the time has come to reconsider one's domestic attitude towards the liberal treatment of the masses of personal data found online. Should the maximization of the economic use of one's personal data really outweigh the luxury of privacy – even if just to the extent of allowing one to be free from solicitation of the ever profit-seeking online service providers?

Kimberly Papillon Cautions Against Implicit Bias

By Kerry Duncan
Associate Editor

On Friday, January 22, the Santa Clara Law School was graced with the presence of Kimberly Papillon. A world renowned speaker on the decision making process in the legal and judicial field, her visit was co-sponsored by the Diversity and Inclusion Committee, Black Law Student Association, and Women and Law. A professor to judges, she is a regular faculty member at the National Judicial College. After years of trying to get her to campus, she spent the entire day talking to not only staff and faculty but also students. While the topic of lecture remained mysterious up until the days of her talk, with a "legal decision making" label, the lecture was anything but vague.

Often, the use of hands in lecture is limited to furiously typing or writing notes. However, a chorus of claps could be heard coming from B127, led by Ms. Papillon. Wrapped up in what seemed to be a recognition game of connecting pictures with words and categories, there was a wake up call. The unconscious "rules" that we have learned both directly and indirectly have a much larger effect on our daily lives. With our unconscious brain processing 1.2 million frames of thought, our unconscious minds use these "rules" in day to day decision making, in the smallest of tasks. We can start learning these "rules" as early as 9 months. From family interactions to TV shows and movies, we start to learn to connect groups with meanings. These "rules" can range from race to gender to sexual orientation and how we see them. For instance, a common "rule" found in both men and women, was that our brain could connect men with career, and women to family much easier and quicker, despite what we consciously think and believe.

Hearing that we start building up unconscious bias as early as 9 months old, despite our conscious intent to be unbiased, is disheartening. However, we can work to eliminate these biases. One of these steps is to admit that there is a problem and to discover the "rules" we are programmed with. Kimberly Papillon encourages everyone to take part in Project Implicit, an international collaboration that delves into implicit bias and how that interacts with perception, action, and judgment. Once learning the "rules" you have in place, you can start taking action. From there you can practice eliminating them by activating the basal ganglia within the brain. There are simple ways to start this process, even at home. Kimberly Papillon suggests playing NBA 2K16 with hand picked teammates being those you have unconscious bias with or even selectively choosing your Wii Double tennis partner. Studies have shown that when you work with someone that there is a bias against in place, it helps start to deactivate the rules that you have in place. Another small thing is changing your computer desktop and screensaver to help match the pairs that you have difficulty with like men and family.

Unconscious bias can not only negatively affect our personal lives, but also our professional lives. Our unconscious bias can affect how we treat others in the workplace and even the hiring process. The "rules" that we have in place can affect our body language that can negatively affect how we can connect with others. Our unconscious body language can be picked up and make it difficult to make the connections that are needed.

The simplest things like saying hello to someone or taking them to lunch can be hugely impactful. In a study, where a group was told to pass a basketball between ten people but exclude one person. The person that was excluded started off working harder to try and be a part of the team but eventually led to very negative results. Their brain activation after this treatment was the same as if you were smelling rotten garbage. Those that were continually excluded walked around feeling like they had been punched in the gut for the rest of the day.

Knowing the impact that unconscious bias can have on our professional and personal lives, we should all be motivated to learn more about ourselves and how to change our biases. After the three hours, Kimberly Papillon was right. It is time for us to "change the rules."

In Pursuit of Business: Why Some Lawyers Choose Law School

By Flora Kontilis
Associate Editor

"You go to law school because you want to be a lawyer." My college friend said this to me when I admitted wanting to take the leap we call "going to law school." True, the end-goal is uncontested: become a legal professional acting with fairness and civility, serving the rules and roles of justice, upholding and enforcing the law while providing aid to the community. I don't disagree with pursuing the values and principles; however, I want to point to the fact there's both a traditional and modern means of achieving the end. With that said, consider what "be a lawyer" means, stretch and maybe even remove the limits of earning such the title.

Let me back this up for context. Like other students, I worked between getting my undergraduate degree and coming to law school. I dabbled in Marketing and Project Management, as well as Sales Operations and Processing. Yes, my work experience lacks anything "legal" on its face. Yet it's from both fields where I decided law school was the way to go. The decision came down to a passion for understanding business development, a concept with roots applying legal principles and legal analysis. So with a resume that boasts a similar background, "legal experience" can be found between the lines.

Suffice to say you don't need reminding that law and business are easily connected. With that said, look at the recent trend of young lawyers and current law students eager to practice business or corporate law. What's more, a growing number of us are even jumping into in-house work before joining a law firm or litigating in court. What gives? Admittedly, for me it starts with the fact I'm a terribly shy introvert who feels sick at the thought of litigation and public speaking. However, solving business-related issues truly excites me. But are business-law lovers like me strapped to taking a traditional path from law school to law firm to in-house? What does it mean for your career to skip firm life? In the short time I've been in law school I've already met countless in-house attorneys that strongly emphasize working for a firm before going in-house is crucial to surviving and succeeding as in-house counsel. This is especially true with respect to litigation, as Laura Norris, Director of Santa Clara's Entrepreneurs' Law Clinic, points out. Norris notes how firms are better built and have the teams to take on litigation. In contrast, in-house counsel exercise a unique "mindset" from other legal practitioners, Norris adds. She explains that in business, professionals need a lawyer who "looks at legal issues not as road blocks." To put it simply, business owners, CEOs, etc., want someone who will aid moving the business forward. At this point, do such lawyers cross too far into business management as opposed to legal aid?

Matt Ladin finds himself in this position. While he started his legal career 12 years ago as in-house counsel for a medical device corporation attending to solely legal matters, his current role only requires about 15% of his time on legal matters. Ladin says he was always fascinated by the business matters of the companies that he worked with and gradually squeezed his way into more and more business projects.

In addition to handling legal responsibilities for companies that range in size, from early stage to an international corporation earning up to $400 million per year, he is involved in a breadth of management responsibilities. For example, operations, human resources, business development, fund raising, e-commerce website builds, to name a few. The companies that he has been involved in include, but are not limited to, apparel lines, biofuel for aviation, social spending platform, private equity, and non-profits.

"The ability to look at the whole business and have some degree of understanding of each area is critical. As an attorney who is only handles legal matters, there is a limit to that type of exposure," Ladin says. Today he enjoys working on "all aspects of a business," as Ladin puts it. This means more time thinking about marketing, culture, customer service, analytics and asking "what are we not doing, that we should be?" to move the business forward, Ladin adds. Taken cumulatively, Ladin's approaches now put him in the position of running a variety of businesses due to his broad experience. While his current role appears to be solely business-management on its face, his legal experience arguably lends to his current success. Turning to his initial in-house counsel role, Ladin points out how such experience uniquely exposes you to a diverse work-culture, forcing you to interact with other departments and teams within a corporation to help the business grow. Summing it up, Ladin is but one example of how a lawyer couples legal analysis and problem solving with business development skills. Given this approach, is it safe to continue labeling professionals like Ladin as lawyers? If the common denominators are the same, then why not?

I personally share Ladin's motives for my long-term professional goals. Does that mean I miss the chance to earn my stripes, to be labeled a lawyer? Consider choosing to go to law school not because you want to be a lawyer, but rather because you want to think like a lawyer.

Santa Clara Inn Hopes To Give Sanctuary To The Homeless

By Elena Applebaum
Staff Writer

In December last year, the City of San Jose agreed to loan a nonprofit up to $8,650,000 to purchase the nearby Santa Clara Inn, and offer affordable housing to the homeless for up to 10 years. The takeover will lead to 27 permanent homes for those with rent vouchers, and 29 temporary units for those with motel vouchers.

Referred to as the "Master Lease Program," a 2014 amendment to Title 22 of the San Jose Municipal Code gave motel owners the ability to provide transitional rooms and services to homeless tenants. Senior Development Officer at the Housing Department, Patrick Heisinger, says the initiative is in response to the "overwhelming" need to house homeless individuals, and that "using already built units can truncate the timeline to house those folks." Heisinger may have a point, because according to the 2015 Homeless Census, 71% of the 6,556 homeless people in Santa Clara County lived without shelter last year.

Noticing the opportunity presented by the program, a bay area nonprofit with a mission to end homelessness—Adobe Services—partnered up with the City. Adobe then began to inquire with owners about procuring a motel to operate under the Master Lease Program, and located the Santa Clara Inn. The Inn seems to be the ideal place to quickly start providing people with long term living facilities, as well as more temporary solutions.

The motel currently has 59 units, with half of them set up as typical motel rooms, and the other half designed as apartments with living areas, kitchens, and bathrooms.

Adobe now plans to buy the Santa Clara Inn and manage it as a motel, while using up to 49% of its units for permanent supportive housing. Jon White, Director of Properties and Assets at Adobe, explained that "the services offered to the residents will be focused on maintaining stable housing and improving their life through things like job training, financial literacy, life skills, conflict resolution." The remaining temporary motel rooms will be reserved for homeless patrons who have referrals from the City, County, Veterans Administration, or other nonprofits. Individuals will be allowed to stay in these rooms for up to 28 days, and will be provided services to help them secure permanent offsite housing, and connect with available community resources. Adobe has been successful with endeavors like this in the past, and claims to have found permanent homes for 4,500 individuals in their programs since 2010.

Advocates have been supportive, but feedback has still been mixed on the project. The Housing Department expects that once the goals and objectives are explained to the community, more people will support it. Coming up on February 22, 2016, a community meeting is set to do just that. Then in March, Adobe will close on the Santa Clara Inn and apply for the required conditional use permit. The goal is to begin housing individuals within the next six months, and then to help them live independently.

The True-Crime Subgenre is Pushing Moral Boundaries

By Benjamin Schwartz
Senior Editor

It seems that the buzz surrounding Netflix's controversial documentary "Making a Murderer" has finally ceased. Perhaps now is as good a time as any to take a step back from all of the conspiracy theories, remove our tin-foil hats for a moment, and take an objective look at the documentary.

First and foremost, the audience of this documentary needs to understand that the creators of "Making a Murderer" had an agenda to create entertaining media. Whether you choose to believe that Steven Avery is in fact innocent, or was rightly convicted, you should have no doubt that the creators' purpose of producing the documentary was, almost entirely, for purposes of entertainment.

On its face, "Making a Murderer" provides its audience with an intriguing story following a murder mystery. However, viewers need to understand that the people they are watching on screen are not paid actors. They are real people who lived through real tragedy. Not only was their tragedy prolonged by the judicial system, it has now been extended even further as a result of the release and widespread popularity of this documentary. People cannot lose sight of the fact that their entertainment is derived directly from the pain and suffering of others.

Imagine that a loved one of yours suffered as great a tragedy as great as the murder victim in this case - Teresa Halbach. The fact that she had her life taken is terrible enough on its own, but there isn't even any substantial resolution that exists due to clouds of uncertainty highlighted by this 10-hour saga and deficiencies in the criminal justice system. Playing devil's advocate, imagine that you are Steven Avery's mother or father. These people have essentially spent the better part of their lives in a courtroom seeking justice for someone they love.

The public outcry that has resulted from "Making a Murderer" has come in many forms, but one in particular is a petition with millions of signatures requesting that President Obama issue Steven Avery a pardon. It is abundantly clear that these millions of people represented by the signatures on the petition are completely misdirecting their efforts from the true issue exposed by this documentary. Steven Avery has not been proven innocent. Even the strongest supporters of Avery must acknowledge that the evidence presented in "Making a Murderer" does not exonerate him. It only leads us to believe that there may be a reasonable doubt that he did not commit the murder of Teresa Halbach.

The true issue at that is depicted by "Making a Murderer" is the commonality of systematic weaknesses in the criminal justice system. Steven Avery is merely a "poster child" of the shortcomings of the criminal justice system. If Avery were pardoned, there would not be any progress made in ensuring he would benefit from a fair trial, even years later. Evidence has been tainted. Confessions have been falsified. There likely isn't a group of 12 individuals in the country who are unaware of this man's story. A pardon would simply lead to repetition of the same problem. Just as the criminal justice system failed Avery before, it would fail him again. There are likely thousands of individuals sitting in prison right now for a crime they may or may not have committed, but will never receive a fair trial due to these shortcomings. Steven Avery does not need to be innocent to receive a fair trial, and in a broader sense, solve the problems inherent in the criminal justice system.

There is no doubt that the creators of this documentary succeeded in constructing an entertaining story to tell. I myself watched the final six hour-long episodes of the series in a single sitting. However, there is also no doubt that the creators of "Making a Murderer" derived the appeal of the documentary directly from spinning people's private tragedies into public entertainment. Society needs to acknowledge that we, as an audience, are abandoning empathy for entertainment in light of the emergence of the true-crime subgenre. A society that abandons empathy for entertainment is one that will ultimately collapse.

Google Fiber, The Next Step For the Empire

By Jason Peterson
Senior Editor

In 2012, Google announced Google Fiber. Its goal: to provide people with internet access on a connection that is one hundred times faster than the average home connection. Google would charge much less than current internet-service providers, Google Fiber would integrate with all your Google services, and its customer service would be superior to companies like Comcast who won the award for the worst brand in America in 2010 and 2014. It sounds like the perfect mix of technology and entrepreneurship kicking out the stale business models of yesterday. In reality, it will be one of the worst things to happen to internet privacy and data security.

During the late 1990's telecommunication companies were spending huge amounts of money installing underground fiber optic cable planning to corner the market on electronic commutations. They saw the expanding use of the internet and wanted to be the owner of the cables that would transmit all of that data. Unfortunately for them, advances in light signal technology (known as wave-division multiplexing) increased the amount of data a single fiber cable could hold by a factor of up to 100. The wholesale price of fiber subsequently plummeted and many of these companies went bankrupt. This created dark fiber, surplus fiber lines that literally lay dormant underground waiting to be purchased and used. Some companies had capital to buy and lease these lines for special uses, but thousands of miles of dark fiber remained available and few organizations could overcome the prohibitive cost in making them operational. Along came Google.

Over the last ten years Google has been buying up all the fiber lines it can get its hands on. A job posting from 2005 read, "Google is looking for Strategic Negotiator candidates with experience in...[i]dentification, selection, and negotiation of dark fiber contracts both in metropolitan areas and over long distances as part of development of a global backbone network." Google has two potential uses for dark fiber. First, dark fiber is privately owned and generally separate from the internet we normally use. Google can route traffic between its internal services using dark fiber and greatly speed up processing for searches and data transmitted between Google resources. The second and much more ominous reason is to create its own network that is so large it will transmit all internet traffic coming in from Google Fiber customers, and eventually will be so efficient it will need to be leased by other traditional internet service providers.

What is the big deal? Google wants to become an internet service provider starting with major metropolitan areas, providing extremely cheap internet access and with the lowest tier plan it would be free (no monthly charges after a one-time $300 installation fee). I hate to break it to all those Bernie Sanders supporters waiting in line for the free stuff, but there is no such thing as a free lunch. You are not the customer; you are the product.

Google is in the data collection business. The more information they can collect, the more valuable their databases and profiles about you become. Only so much can be gleaned from Google searches and website cookies. Google had to make the next logical step, becoming an internet service provider. Your internet service provider knows every website you visit, every internet-enabled device you use, and every app that requests information over Wi-Fi. Google Fiber proponents will argue that existing internet service providers can already see your internet activity and adding Google into the mix doesn't change anything. The first part of their assertion is correct, but current providers don't really care and more importantly don't have the infrastructure to mine data packets for personal information and compile that information into useable profiles. With Google Fiber, the same company will log every single bit of your internet activity.

You might say so what? If people want to share their personal information with Google or whoever, they have the right to do that. The crux of the question is do people actually know what they are sharing? The late Steve Jobs spoke at a technology conference in 2010 and said, "privacy means people know what they are signing up for, in plain English and repeatedly.... I'm an optimist, I believe people are smart and some people want to share more data than other people. Ask them. Ask them every time. Make them tell you to stop asking them if they get tired of being asked. Let them know precisely what you will do with their data." Does Google take this approach? Spend an afternoon reading the Google Fiber privacy policy.

While Google makes claims in its general policy not to share any personal information, all of these provisions have exceptions that personal information can be shared with your consent. Consent you give when signing up for any of its services. There is some good news. Google does require express opt-in consent for any "sensitive personal information" which is defined only as: confidential medical facts, racial or ethnic origins, political or religious beliefs or sexuality. A limited opt-out function stops you from seeing ads based on your interests, but it is unclear if this actually stops the data collection or just stops showing you advertisements based on that data. Everything else is fair game.

Besides joining the Rebel Alliance, there are some things you can do to protect your data from the Empire. The first step is shielding your personal communications between friends and eventually clients. The Electronic Frontier Foundation has a chart that compares the security and privacy of messaging applications. Signal is my favorite and has been recommended by both Edward Snowden and the legal team at the American Civil Liberties Union.

Will people eventually trust Google enough to route all of their internet traffic? Will they have a choice? Google already scans every single Gmail you get and will report certain crimes to the government. At what point will we say that enough is enough?