THE ADVOCATE

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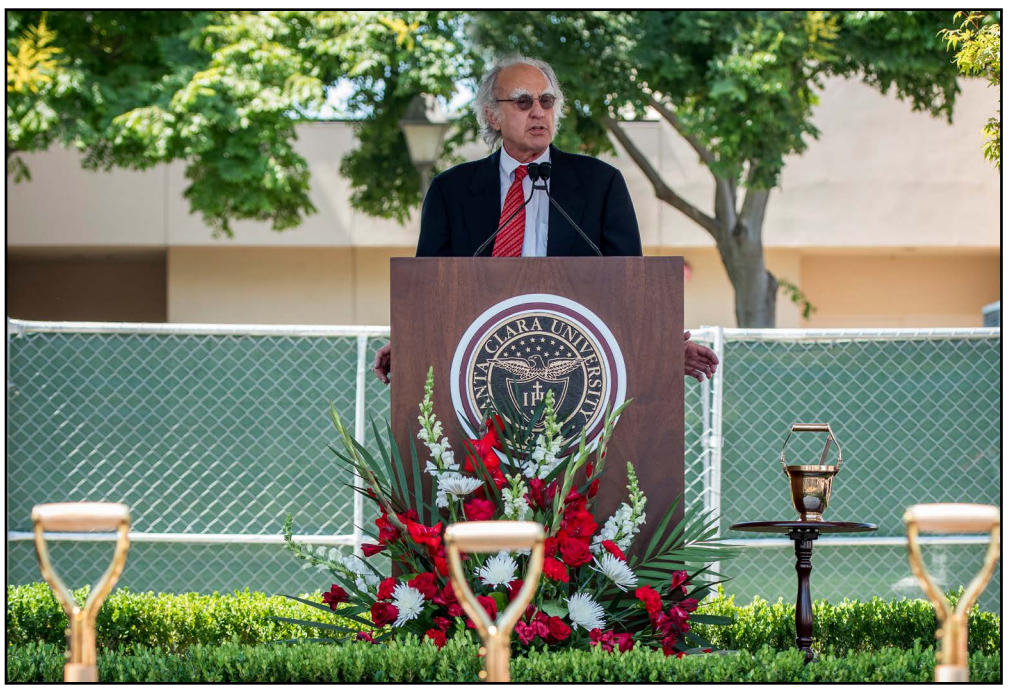
SCU Law Breaks Ground for Charney Hall

By Venetia Byars
Staff Writer

Our school has been educating Jesuit-trained lawyers to serve the local community and lead the global legal community since 1911. Bannan Hall has been home to Santa Clara School of Law since 1973, but that is changing. A new law school, funded by a generous $10 million donation by Howard and Alida S. Charney and designed by Solomon Cordwell Buenz, will open in early 2017. The school will be situated in the current Lucas Hall parking lot. The building will be 6900 square feet, and finished by the end of this year so that it will be ready for use in 2017.



Howard Charney speaking at the groundbreaking ceremony. Photo Credit: Joanne H. Lee

On August 17, Santa Clara University held a groundbreaking ceremony to celebrate the new law school and the beginning of its construction. The Mayor, chief of police, three previous deans, two members of the City Council, along with Howard and Alida Charney, joined in this celebration. The ceremony was packed; the seats reserved for community members were full, with the student body and faculty standing to watch. Directly in front of the podium were ten golden shovels in a sliver of open ground.

Miguel, a third year law student and SBA co-president, said that he "was sad that he will not get to enjoy the new building. Nevertheless [he is] excited to have a new law school building and will be definitely be coming back to see the end result." He thanked Dean Erwin for her hard work, as this project has been years in the making.

Justin Jimenez, a second year law student and the SBA community service chair, said that "the new building is great for the future of our law school. It represents a turning point, not only for our school but our profession."

The groundbreaking celebration started with a welcome speech from Father Goda, who had taught at Santa Clara for 40 years. He is happy that the new building will consolidate the three law school buildings into one. Father Engh, the 28th president of Santa Clara University, opened up the official ceremony by giving a prayer. He thanked Howard and Alida Charney for their $10 million donation and support. He explained how Santa Clara leads in the legal community at an intersection where intellectual creativity, technology and law come together. He explained that the new building represents a technologically advanced collaboration that was deliberately designed between the Business and Ethic buildings, to facilitate communication among the community.

James Lyons, the Vice-President of Santa Clara University, believes that this building memorializes the

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Another Season of Trademark Issues

By Taylor Krone
Staff Writer

The NFL season is once again upon us. This means that football fans can now look forward to another season filled with touchdowns, twenty-dollar hot dogs, trademark lawsuits, and painted Raider fans. Surprisingly, twenty-dollar hot dogs are not the most expensive item from that list. Perhaps that's because the Washington Redskins football team has been up to their shoulders in trademark lawsuits over their name and logo since 1992.

Many Native American tribes, organizations, and individuals believe the term to be offensive and "disparaging" to Native Americans. On the other side, many people (especially football fans) disagree, and believe the name was not meant to be interpreted in a negative way. The issue is currently being appealed to the Fourth Circuit Court of Appeals by the Redskins football team.

The Lanham Act of 1946 is of utmost importance to the registration of the Washington Redskins' six trademarks. This Act was enacted by Congress to provide protection and advantages for trademarks against infringement, confusion by consumers, and various other issues. The U.S. Patent and Trademark Office (PTO) allows trademarks to be registered and protected by the Lanham Act unless they fall under one of the Act's Section 2 exceptions. One of these exceptions prohibits "disparaging" trademarks, or trademarks that bring people, institutions, or symbols into contempt or disrepute.

The U.S. Patent and Trademark Office (PTO) does not have authority to actually cancel trademarks. The office only has the power to cancel statutory registrations of trademarks under Section 2 of the Lanham Act. The owner of a trademark can still use and profit from his or her trademark, but cannot stop other people from profiting as well.

There are two big questions which have developed from multiple petitions to the PTO and federal court decisions: whether the Washington Redskins team name and logo is disparaging to Native Americans, and whether the Section 2 "disparagement" exception of the Lanham Act violates the First Amendment. The First Amendment question may very well find its way up to the Supreme Court if the Washington Redskins' appeal to the Fourth Circuit is decided differently than a recent case decided by the Federal Circuit Court of Appeals.

Before we get into that, let's put together a little timeline to establish what exactly has happened from 1992 until now. In 1992, Susan Harjo and six other Native Americans petitioned the PTO to cancel the Redskins' trademark registrations on the grounds that they disparaged Native Americans under Section 2 of the Lanham Act. But the petition by Harjo was barred by "latches." This affirmative defense prohibits a party from waiting too long to file a claim, because it becomes unfair to the other party. The Harjo case bounced back and forth between the D.C. Circuit Court of Appeals and the D.C. district court to reassess the latches argument for one member of the Harjo group, and determine if he waited too long to file his claim.

Seven years after the Harjo petition was filed, a body within the PTO, the Trademark Trial and Appeal Board (TTAB), ruled that the Redskins trademarks disparaged Native Americans and ordered the trademark registrations to be canceled. This led to a D.C. district court's reversal of the TTAB's decision in Pro Football, Inc. v. Harjo (2003). There the court concluded there was not substantial evidence that the Redskin's name was disparaging when it was first registered in 1967.

In 2009, the D.C. Circuit affirmed that the latches defense prohibited Harjo's petition to cancel the Redskins' trademark registrations. The D.C. Circuit reached this decision without determining whether the six trademarks were disparaging to Native Americans, and the Supreme Court did not grant certiorari to hear Harjo's appeal.

While all of this was going on, a new group of five younger Native Americans filed their own petition to the Trademark Trial and Appeal Board (TTAB) in 2006. The matter was put on hold for a number of years while the original Harjo case was still pending. Then in 2014, in a 2-1 decision the TTAB once again canceled the Redskins' trademark registrations. The TTAB concluded that the new group had shown by a preponderance of the evidence that a "substantial composite" of Native Americans believed that the Redskin name was disparaging from 1967-1990.

Once again the disparagement question found itself at the doorsteps of a federal court. And due to the Leahy–Smith America Invents Act passed in 2011, the Eastern District of Virginia now had jurisdiction

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Breaking ground for Charney Hall

law school's commitment that "[we are]not just a good law school, not just a great law school but the best law school."

Dean Kloppenberg discussed the hard work that has gone into making the new building a reality. She thanked our building committee that "has worked rapidly and inclusively, gathering input from alumni, students, faculty, and staff members." She explained that the project "is a collaborative effort among so many good and willing people. And thus it is a great testament to our amazing Bronco community."

Howard Charney gave an inspirational speech that explained why he donated $10 million to create this building. His dream was for Santa Clara to have a 21st century law school in Silicon Valley. He explained that whether selling legal services or widgets, the options are the same, "get out of market, steady as she goes, [or] double down." He found the first two options unacceptable, as the problems we are facing are exponentially accelerating. Society as a whole requires someone to ferret their way through complexities to reach solutions,

and we cannot ignore this problem. Charney thinks our law school must choose to double down and investment in ourselves. "This building will be a new 21st century home for a law school in Silicon Valley, and to that extent we invest in it a soul."

Mr. Charney told us of his dream that competitors will think about our law school to their chagrin—a dream that students will flourish inside the new 21st century building and the university will receive accolades on its investment.

"It's a dream because it doesn't exist yet. It's something that we inspire too. But it's something that a lot of people that are here helped contribute to, [and] are working to make this a reality."

Father Michael E. Engh, S.J., delivers opening remarks. Photo Credit: Joanne H. Lee

Rumor Mill

By Susan Erwin
Senior Assistant Dean

Welcome to the new school year!

I hope everyone had a great summer! The staff and administration have been busy all summer keeping the trains running. Now that we are back in full swing, let's pick up where we left off in the last Rumor Mill (April, 2016). I talked about the process we were going through regarding the budget and promised a Town hall meeting to bring our students up to date in fall, when we had a clearer idea of what we were going to do. The meeting will be September 14th at noon and at 5 pm in 127.

I also mentioned in the last Rumor Mill that your opinions matter to us and that we listen to what you have to say. Since then, we've received the results of a few surveys.

GRADUATING STUDENT SURVEY: We survey the graduating class every year and ask them about their experiences and their advice. We compared the results from the last three years:

- The scores for Quality of the Full time and Adjunct Faculty increased each year to a current satisfaction level of 87%
- The scores for the Variety of Electives and Availability of Advanced Courses declined (as did the actual number of electives and advanced courses).
- The scores for student Satisfaction with Services either stayed the same or increased for almost all of the administrative offices.
- The primary source of funds for students remains federal loans but that number decreased from 86% to 77% in 2016. Most students continued to graduate with debt of $120,000 or more but that number decreased from 52% in 2014 down to 43% in 2016. The number of students with no debt increased from 21% to 29%.
- Satisfaction with facilities increased across the board, with the exception of Lockers and the Lounge from folks who were neutral about both.
- The grads also gave higher marks to the flow of information to them and the methods used.
- The most common themes in the comments were that overall law school was a good experience (26 mentions), the staff was great (15), classes weren't offered or conflicted (14), OCM services could be improved (13), clinics are awesome (12), and we need to do a better job teaching the bar subjects (10).

POST BAR SURVEY: Every year we survey the graduates after they take the bar to get their advice. This survey, along with past Post-Bar surveys, is posted on the Grad 101 page on Emery. Some results from this year:

- 65 folks said they passed the MPRE the first time, 5 said they didn't. Most said that they prepared by taking Legal Pro and using commercial bar materials.
- 96% of those who took ALW:Bar Exam said it was helpful on the bar. (5 of those saying it was "marginally helpful")
- 84% of those who participated in BRICS said it was helpful on the bar.
- 36% said that if they had it to do over again, they would have done more practice exams while in law school.

LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT (LSSSE): This survey, administered by the Indiana University Center for Postsecondary Research, compares SCU Law student scores to those of other California law schools, with law schools about our same size, with other private religious law schools and to schools across the country. You can find the responses from this year and past years on Emery. The results for the 2016 report are from the survey administered last spring.

- Our students reported roughly the same amount of interactions with their professors.
- You reported slightly less satisfaction with student advising than other California law schools but about the same as the national averages.
- Relative to other CA schools, we were higher in the number of students participating in law journals, moot courts, exercising and studying abroad. First years reported that they wrote more frequent short papers, second years reported that they came to class unprepared more often than the CA average and last year's third years spent more time working for pay in law-related jobs.
- In the comments sections, the major themes were that you want more positive messaging and support and encouragement and less negative messages (25 comments), you were unhappy with some faculty or some teaching methods (22), you loved the faculty (14), and you think we are too focused on budget issues right now (10).

We compared the Mean Comparison Reports from the last 3 administrations 2016, 2013 and 2012 to look for any trends.

- Group work in class has been increasing each year.
- Memorizing facts, ideas, or methods so you can repeat them in the same form went up each year.
- Students have been participating slightly less in "enriching educational experiences" (clinics, externships, pro bono work, committee work, and LSO's).
- On a good note, your reported numbers for exercising went up while the numbers for partying went down!
- Probably the most disturbing reporting trends were in the diversity and inclusion areas. Over the last three years we have declined by a few points in the areas of including diverse perspectives in discussions or writings. You also reported having fewer serious conversations with students of a different race, ethnicity, religious belief, political opinion or personal values than your own.

This is an interesting and challenging time to be a part of our community. The Dean continues her around-the-clock and around-the-country efforts to raise money and to raise our profile. The faculty are taking on more administrative duties, teaching more classes, continuing their scholarship and keeping the Santa Clara name out there. The staff is learning how to do more with less. The SBA and the student organizations are getting creative, working harder in their volunteer roles and also doing more with less. We continue in our preparations to start teaching classes in the new building in Spring 2018. Our faculty committees are actively meeting – working on issues related to experiential learning, our law school diversity plan and bringing our LSSSE diversity scores back up, assessment and learning outcomes and student wellness. And, there is more to do in our annual analysis of your survey responses and our responses to them! Luckily, we have a community of enthusiastic, smart, hard-working people who are up to the challenge!

And me? I am always happy to listen to the latest rumors – serwin@scu.edu

Social Justice Coalition hosts community retreat

By Kerry Duncan
Associate Editor

On the afternoon of Saturday, August 27th, students, staff, faculty, and alumni joined together at the Community Building Retreat hosted by the Social Justice Coalition. Sounds of students singing "C – O – C – O – N – U – T" in an icebreaker could be heard on the grassy lawn outside of Benson under the shade of trees, as the afternoon started with an icebreaker that introduced the 75 participants - an even mix of half 1Ls and half upperclassman. True to the theme of the event, the ice breaker brought the students together to open up and build a community as one student body.

After getting to know each other, students explored seven different breakout sessions hosted by sixteen other law student organizations (LSOs). LSOs came out and hosted breakout sessions to discuss matters important to them. The topics ranged from "Women in the Workplace: Ambitions and Expectations," "Common Elements of Oppression & Transforming Silence into Action," to "Faith and the Law." Not only did these breakout sessions highlight the different interests and passions of groups on campus, but it also highlighted the solidarity between the different organizations. Many of the breakout sessions were co-hosted including "Juvenile Justice in Santa Clara County and Beyond" by La Raza and the American Constitution Society and "I'm Thirsty: Water as a Human Right" was co-hosted by the Environmental Law Society, Biotechnology Law Group and Health Law Society. Some LSOs even helped put together multiple breakout sessions, like Asian Pacific American Law Student Association, who worked with Black Law Students Association for the "Intersection of Black Lives Matter and Other Minorities" but also "Asians in the workplace and Leadership" with Vietnamese American Law Students.

The retreat gave students a chance to think about the injustices that drive them and an opportunity to define their values. Campus Ministry sponsored a defining values workshop led by Shelby Rogers, one of the Social Justice Coalition's Servant Leaders. Students wrote a letter to themselves that would be given back to them at the end of the semester with the hope that the letter serves as a reminder of their ideals as they continue on their legal journey.

Self-reflection was followed by motivation. The American Constitution Society hosted a progressive professionals panel before the attendees enjoyed the barbecue paid for by the American Association Society National. Seven lawyers inspired students with their experience of being progressive attorneys. While their fields varied wildly from working on cases for prisoners, to an environmental law professor at Santa Clara University, to advising corporate clients, they shared a defining message: to remember that when we graduate law school, we are considered by society to be the "elite" and with that privilege, we can choose to fight and make a difference in the things that we believe in. It was an inspiring note to the end of the afternoon that was filled with cooperation, collaboration, and community.

Five Summer 1L Tips

By Chriatina Faliero
Staff Writer

My brain was excited about chemical compounds in college, I was on sports teams instead of mock trial teams, and my right brain takes over far more than my left. Not all law students are created equal and there are more ways to prepare to be a successful attorney than the expected. I wish that there could be less instillation of nervousness in law school and more motivation to emphasize the unique learning opportunities that cannot be found in any other educational capacity.

This past summer, I studied abroad in Oxford, England through Santa Clara's Center for Global Law and Policy. It is important to realize that there are summer alternatives to finding 1L legal internships that should be emphasized for those students who may not know exactly where to start their search; these shouldn't be seen as merely "back-up plans."

Travel, the arts, and international exposure prepare us for life beyond law school as much as typical job opportunities. The paybacks feel endless, but I've rationalized some of them into five different categories.

1. Expanding your network: While working in an office gives you an ample setting to interact with attorneys, so does traveling. I was able to spend time with Oxford professors at sponsored events, had one-on-one tutorial sessions each week with an expert in her field, and met practicing attorneys from various levels of the English legal system who were ecstatic to meet international students. Networking is not limited to an area of practice or geography, but can be found anywhere you make a connection with someone you can learn from and is interesting to you.

2. Feeding your outlet and passion. Finding an outlet is the single most important factor in maintaining composure when law school feels overwhelming. It is so important to remember the things you are passionate about so that you are able to keep a healthy perspective. Studying abroad, or finding a summer job that might not necessarily be legally related, can feed into your outlets and stimulate your inspiration for being in law school in the first place. I love to travel, so what an opportunity it was to use this passion for a purpose and fill my brain with legal knowledge from a different perspective.

3. Avoiding burning out. The last thing I wanted to do after two weeks of finals was to sit in a sedentary office doing legal research. There is not a requirement that says 1Ls should find a job as a law clerk, but it seemed like that is what most of us were searching for. I filled out a few applications, then took a step back, and asked myself, "Why am I doing this?" I knew that I would burnout before coming back for the fall semester. Studying abroad, working abroad, working in a business capacity, writing for a company, teaching, photographing, or practicing any other form of interest that is still productive will prevent you from burning out, give you some type of working experience, and refresh you for the busy year ahead.

4. Exposure to diverse learning opportunities. In the Oxford program, I was enrolled in an Oxford Tutorial style course. Unlike simply listening to a lecture, I was required to write a paper each week extracting abstract concepts from legal readings. During sessions, I read my paper aloud and responded to questions and criticisms about my arguments, while my professor elaborated on the informative points. These five weeks taught me more about analyzing legal writing, critical thinking, and practicing oral arguments than I could have imagined, and equipped me with tools for 2L that I could not have gained through any other educational experience.

5. Open availability for internships during the year. Though summers provide freedom, it is still important to gain experiences in the settings in which most of us will be working. So, while I needed a break, I planned to work in the fall and spring semesters instead. There are fewer applicants seeking externships during the school year and there seemed to be more positions available. I cold-called and cold-emailed several government agencies that resulted in multiple job acceptances. I am gaining invaluable experience working in the field, yet was able to find a balance over the summer for the things I find most enjoyable and gave my brain a rest.

Law school is all about balance. There is not a precise method or schedule in which we should prepare for our futures; and I think the most important notion is to remember who we are and have the confidence to explore our curiosities. Most of the best things we learn come from the unexpected.

Office Hours Unwound

Professor Scott R. Shipman
General Counsel & CPO
Sensity Systems

Scott earned his JD with an emphasis in High Tech Law from Santa Clara University School of Law and a BA in Environmental Conservation from University of Colorado at Boulder. Bringing his expertise and career experience to teaching, Scott is a professor at Santa Clara University School of Law, teaching Comparative Privacy Law.

1.What was the highlight of your summer?
Relaxing with my fiancé on Lake Tahoe, jumping in the lake, and taking the dogs for hikes.

2. What was your favorite course from law school and why?
Civil Procedure taught by Prof. Jimenez. I love his style and he introduced me to the international program in Japan, which put me on my path to in-house work at eBay – so what's not to love about that!

3. Which character(s) from literature and/or film do you most identify with?
Pete's Dragon. Always loved that big green goof of a dragon and I'm psyched that the movie is coming back.

4. What is your favorite source, (news / journal / legal blog / other) for keeping current with the law?[
Anyone that has taken my Comparative Privacy Law class knows that I randomly search the internet for everything. No one source

5. What was an experience you had during law school or your legal career that made an impact on your life?
See answer 2. International law program in Japan. I was able to intern for Honda at the HQ in Tokyo. That was amazing.

6. Which restaurant(s) in the Bay Area do you highly recommend?
Siena Bistro in Willow Glen. Small little Mediterranean restaurant that has great food, affordable prices and the Chef/ owner will visit your table and say hi..

7. What is your favorite music album of all time?[
Well, currently I'm listening to the Tragically Hip. They are a Canadian band that I grew up with (living in NY but on the border) and their lead singer just finished a his last tour ever because he is dying of brain cancer. Sad story, great band.

8. If you could sit down for dinner with any Supreme Court Justice, dead or alive, who would it be and why?
Scalia. Just because he's so passionate and has so much to say.

9. What do you consider to be the most important development in your field over the last 5 years?
Technological advances in encryption, information security, and data storage. As technology continues to advance, it will impact privacy and data protection more than the law ever could.

10. How do you unwind?
Lake Tahoe. Whether skiing or boating, just getting up there makes everything gud.

After 1L: a poem

By Moulshri Gupta
Staff Writier

I didn't know who was 1 1L,
I didn't know what was a tort.
Now I know all these things,
I know law school's long and short.

I sometimes wonder if I belong,
as I walk to class with my 6-pound Con Law text,
To the classes, to the profession,
to the places I will walk to next.

The wonderful does happen sometimes,
when I feel like I have found my place.
Under a tree on campus, at the library,
or just the sight of a friendly face.

Yet some days are just blue,
When I question everything and I repent.
I cry over grades, I cry over outlines,
I cry over Scalia dissents.

Why are there as many bluebook rules,
as there are stars in the sky.
I don't care who owns Black Acre,
I know the "happy-guide" is a lie.

The law school road is lonely, dark and deep,
and I have many more tears to weep.
But my heart forever has its song,
Stumbling, falling, rising, I will trudge along.

Regulation of Daily Fantasy Sports: A Follow-Up

ByBenjamin Schwartz
Senior Editor

Last year I wrote an article that raised concerns about the then current state of daily fantasy sports (DFS) and its presence in a largely unregulated market. Since the New York Times broke allegations of insider trading taking place within DFS' main players (FanDuel and Draft Kings) last October, many discussions have taken place within state legislatures about the regulation of the DFS industry.

As the NFL season is set to begin, DFS companies are doing business across the United States with the exception of 5 states that expressly ban DFS operation. The decision to either allow or prohibit DFS is determined on a state-by-state basis, and there are presently 16 states that have pending litigation which would allow for the existence and operation of a more regulated DFS market. In one such state, Governor Cuomo recently signed a bill (Senate Bill S8153) in New York that allows DFS and issued licenses to operate under the guidance of the New York State Gaming Commission. Meanwhile across th vce country, as early as October 2015 the state of Nevada shut down DFS companies and deemed its activities to constitute illegal gambling.

There are a number of states with pending DFS legislation, including California, that view its unregulated activity as a form of illegal gambling. In February, California Assemblyman Marc Levine expressed his view that "fantasy sports should be treated like any other form of gambling expansion in California rather than bypassing gambling laws." California's DFS legislation was recently amended in June, but the Senate has not addressed the bill at a committee hearing in about 2 months. The biggest issue stalling the bill in California is tribal opposition from San Manuel and Morongo bands of Mission Indians. The Tribes argue that DFS operators are violating the state penal code on gambling.

Though the question of DFS legality remains uncertain in states like California, companies such as DraftKings and FanDuel are reluctant to pull out of various markets due to the large presence of its users in certain states. While DFS legislation remains pending, there are limitations that exist in DFS that were not present just one year ago. One example is the inability to enter contests for college sports such as basketball or football due to pushback from the NCAA. Another example is the imposition of an age limit to enter contests, which varies from ages 18 to 21 depending on the state. At any rate, it is only a matter of time until issues revolving around DFS are resolved via legislature. However, the question remains just how strict DFS regulation will be in comparison to other forms of gambling.

Not standing for Injustice

By Christian Girgis
Staff Writer

The Black Lives Matter Movement has inspired many to take to the streets in a fashion that harkens back to the Civil Rights movement of the 1960s. The deaths of several young African-Americans from a plethora of states created a visceral backlash against police and their excessive use of force. What began as a hashtag, became communities voicing their concerns. #BlackLivesMatter organizations across the nation organized protests in a manner similar to the way social media was used for activism in the Arab Spring. The movement has garnered a substantial amount of national attention, attracting support from celebrities like San Francisco 49ers quarterback, Colin Kaepernick.

Kaepernick refused to stand during the National Anthem before a preseason game this year. He explained to media sources that he refuses to "show pride in a flag for a country that oppresses Black people and people of color" and announced that he would not stand until he sees substantial change. The 49ers quarterback inspired other NFL players to join in his symbolic protest. Megan Rapinoe, a member of the United States Women's National Soccer Team also made the gesture until her club team, ironically named the Washington Spirit, decided to play the Anthem while players were off the field in hopes of avoiding controversy. Kaepernick's protest have caused backlash because the playing of the National Anthem is considered a celebratory moment by many.

Criticism has come pouring in on both sides. Some have suggested that Kaepernick has benefitted from privilege and therefore is not oppressed himself, invalidating any criticism he has because he lacks the authority to speak on such issues. (If you have five minutes to waste, I recommend viewing Tomi Lahren's Youtube video commenting on Kaepernick's decision.) Pro-Bowl quarterback Drew Brees even stated that while Kaepernick's motivations are well-intended, the 49ers quarterback's choice of method in voicing his support is inappropriate. Some on the left criticize Kaepernick for not being vocal enough, failing to protest black on black violence. Ultimately the criticism focuses on the inability to actually create change.

There is this notion that his stance has no end game. A common argument used to criticize the gesture and the Black Lives Matter movement as a whole is that these actions do not meaningfully contribute to progress. This assertion is perhaps the least factually accurate criticism.

The notion that the Black Lives Matter movement exists without a clear and organized path forward

is simply a factually incorrect assertion. In August, the Black Lives Matter movement put forth a policy platform to "move towards a world in which the full humanity and dignity of all people is recognized." The policy platform puts forth six demands in expansive detail. Economic Justice, Community Control, Political Power, End the War on Black People, Reparations, and Invest-Divest are the demands of the movement. Each initiative identifies specific motivations, proposed solutions, the rationale for these changes, and specific legislature at the Federal and State level that are targeted for change.

The movement is powerful in its ambition and its undeterred might. Some of Black Lives Matter's platform mirrors that of other social movements. The demand for economic justice reflects ideas that were central to the Occupy Wall Street movement. There is also an emphasis on rights for the LGBT community and the necessity for criminal justice reform in the demand to End the War on Black People. The famous words, "[i]njustice anywhere is a threat to justice everywhere" still ring true. The platform reflects Dr. King's words those many years ago, stating "[t]here can be no liberation for all Black people if we do not center and fight for those who have been marginalized."

This policy initiative and the extensive attention Kaepernick has received shows that the Black Lives Matter movement will remain at the forefront of the American consciousness. There is a wave of social activism that has increased in our time. And this activism is not shouting into oblivion as critics posit, but rather, shaping policy to reflect the needs of the people. The continued dialogue on race and the focus on activist policy change displays the continued development of the United States of America in this project that is our democracy and continue the march toward true equality.

Redskins Trademark Issues cont.

This article has been continued from Page 1.

in the case of Pro Football, Inc. v. Blackhorse (2015). In that case, the disparagement question also came with a bunk-bed question of whether the Section 2 of the Lanham Act implicates the First Amendment's protection of free speech. The "latches" question that determined the fate of the Harjo group became a minor issue (no pun intended) because the Blackhorse group was younger than the Harjo group.

Quoting legal scholar and NBA Hall of Famer Allen Iverson, Judge Lee's opinion in Blackhorse upheld the TTAB's cancelation of the Washington Redskins' trademark registrations. Judge Lee ruled that Section 2 of the Lanham Act does not implicate the First Amendment because the cancelations "do not burden, restrict, or prohibit" the Washington Redskins' ability to use their trademarks. Further, Judge Lee ruled that the "federal trademark registration program is government speech and is thus exempt from First Amendment Scrutiny."

Judge Lee also answered a question that many Native Americans had been patiently awaiting a federal court to answer: whether the Redskins' name and logo has been disparaging to Native Americans since 1967. He ruled that the name and logo disparaged a substantial composite of Native Americans from 1967-1990, based on dictionary evidence, literary, scholarly, and media references, statements of individuals and groups.

The matter finally seemed to be put to rest. But Washington Redskins Owner Daniel Snyder is not one to roll over and let people rub his belly. He immediately announced his intention to appeal to the Fourth Circuit Court of Appeals.

Now let's take a quick break. In fact, this may be a nice learning experience for any 1Ls reading this

article. Go into your Westlaw account and type "Pro Football, Inc. v. Blackhorse" into the search engine and click on the July 8, 2015, decision. You will notice a big red flag next to the case name. This means there is another case out there that negatively impacts the decision by the Virginia district court in Blackhorse.

A case decided by the Federal Circuit Court of Appeals in December 2015 came out differently than Blackhorse,. In In re Tam, an Asian-American rock band was not allowed to register their band name "The Slants" with the United States Patent and Trademark Office (PTO) because it was considered disparaging to persons of Asian descent under Section 2 of the Lanham Act. But the Federal Circuit ruled that Section 2 of the Act is unconstitutional, and that the "First Amendment forbids government regulators to deny registration because they find the speech likely to offend others."

In re Tam deals was decided by the Federal Circuit, which is considered the Jedi Master court for intellectual property. This may not be a very good sign for those who want the Redskins trademark registration cancelations to be upheld. Even so, the Fourth Circuit Court of Appeals is not obligated to follow the decisions of the Federal Circuit Court. Should the Fourth Circuit rule that Section 2 of the Lanham Act does not implicate the First Amendment, the Supreme Court may need to resolve the issue.

No matter what happens in this case, the Washington Redskins will likely break even in their attorney expenses due to all the twenty-dollar hot dogs they will sell this year....

Keeping Up with Kimye...And Wiretapping Laws

By Flora Kontilis
Senior Editor

I remember it well. Hearing the headlining news that Kanye West blasted Taylor Swift for, what he argued, consenting to West's song lyrics in which he implicitly calls out Swift's climb to fame. (I'll assume you know the words without my using them here.) My summer co-worker opened and stood in our office doorway: "Did you hear about Kanye and Taylor Swift?!" she blurts out. Not one for E-News or TMZ, I was stunned and caught off guard. She quickly fills me in, emphasizing the Swift-is-a-hypocrite tone in the story: Swift plays the victim, calling out the villain, but is caught in the act of giving Kanye permission to use such derogatory language. "[Kanye and Kim] recorded a phone call of Taylor agreeing to use [that line] in the song Famous," my coworker continues. Bingo! Swift, it looks as though the joke's on you. Or is it? Maybe it was the 1L skepticism still in me, spotting trips, hazards, and liability under every stone and Kimye scandal. Nevertheless, I assume and hope you're with me in seeing a problem. Is this a case of illegal wiretapping? For summer drama, things just got heated.

The law on point varies state to state, and state to federal. International regulations can complicate things more when dealing with conversations across national borders -- that's a topic for another time. Here, the key ingredient is consent. Federal law governs wiretapping under the Electronic Communications Privacy Act (ECPA). ECPA explicitly prohibits "intentionally [intercepting] (use any electronic, mechanical or other device to acquire the contents of) wire, oral and electronic communications while in transit; or use or disclose the contents of any communication obtained in violation of the statute." 18 U.S.C. §§ 2510-2522. Additionally, ECPA applies one-party consent standards, an exception to the previous prohibitions. This means that one person to a conversation can authorize consent to call recording. See 18 U.S.C. § 2511(2)(d).

While federal one-party consent laws are appealing, State laws don't consistently follow the same generous standard. In fact, California applies stricter wiretapping laws that require "consent of all parties." See Cal. Penal Code § 632. The California Invasion of Privacy Act (CIPA) is the governing law, which restricts recording or listening to private electronic communications. See Cal. Penal Code §§ 630-638. Furthermore, "'confidential communication' includes any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties." Cal. Penal Code § 632(c). However, this "excludes communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded." Id. Other States that use two or all-party consent standard are Connecticut, Florida, Illinois, Maryland, Massachusetts, Montana, New Hampshire, Pennsylvania, and Washington.

Unsurprisingly, issues arise where the parties and calls cross state lines. Which law applies? And who must consent to call recording? Where State laws conflict regarding consent standards, Courts historically look to individual State interest to determine which law applies. Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 107-108 (2006). Using a three-part test, California Supreme Court's analysis includes "the nature and strength" of respective jurisdictions' governmental interest. Id. After identifying each state's interest, the Court asks "which state's interest would be more impaired if its policy were subordinated to other state's, and then applies [the] law of the state whose interest would be more impaired." Id. Finally, as a federal law, the ECPA does not preempt California's applying more protective laws regarding privacy and wiretapping. Id. at 105.

While Kearney provides a clean approach at identifying state interest and choice of law, what about residency, or even physical location, of the injured party? As a general policy matter, States applying stricter privacy laws do so to protect their residents. Assuming the opposing party is a resident of a state applying stricter consent laws, what if the injured party is a resident of a one-party consent state and seeks the protection given by the two or all-party state? Where's that state's interest in protecting an injured nonresident? This may be what the Swift-Kanye case is about. Geographic location can make a difference.

We can make an exhausted list of scenarios tracing calls in and out of strict or less strict state lines. For instance, in Kearney, the California Supreme Court dealt with a Georgia-based company making and recording calls to California residents. The Court held, the "California statute prohibiting recording of telephone conversation without consent of all parties applied to conversation[s] in which only one party was in California." Id. at 119. Here, Kearney sought California legislative intent in the protective purpose of its privacy statute. To that end, the Court found that the statute's purpose to protect its people, and consequently all-party consent standard, extends in the circumstances where someone beyond California state lines calls in and records a call with a California resident. Id. Ultimately, Kearney applied the California statute to a "multi-state event," emphasizing valid privacy concerns where a person's privacy is violated from someone outside. Thus, even where the recording took place outside California, it has an effective impact within its state lines. Id.

Use your imagination to determine what kind of outcome the Swift-Kanye case would have. We need to know if Kanye was in California when the call took place. Moreover, was Swift in California as well? That would be an easy argument invoking all-party consent law. If Swift wasn't on the Gold Coast but Kanye was, then is it a per se violation to California law regardless of the fact that the injured party wasn't within its borders? What's more, consider whether Swift is taxed with extending California's state interest and protection in the instance she wasn't in California when the act occurred. Clearly, there's plenty of determinative facts needed to better understand the story within the law on point. I guess we'll have to check out Twitter and Instagram feeds for Kim's next update on the matter.

Santa Clara Clerks go on strike

By Elena Applebaum
Senior Editor

As law students were enjoying their last days of summer before hitting the books, the clerks of Santa Clara County baked in the sun outside the Downtown Superior Court for eight days. You may have seen headlines, or stumbled into trouble with legal filings during the first two weeks of August and wondered, "What's the hype?" They were on strike, gaining the attention of many in the Bay Area's legal community.

The clerks had not been given a raise in eight years, and were recently deprived of paid holidays and half days before Thanksgiving and Christmas. Many employees underwent pay cuts and unpaid furloughs. Since 2008, the courthouse has lost about one-third of its staff, and due to budget cuts it has not replaced or re-hired them. As a result, clerks struggled with inadequate pay while their workload continued to increase. Even the most skilled senior level clerks with years of experience found their salaries capped at a $65,000. This is significantly lower than the roughly $80,000 salaries of their counterparts in other counties. These stressful conditions incentivized the clerks to take collective action toward change.

In December 2015, the Superior Court Professional Employees Association (SCPEA) was founded. Its goal is to represent the interests of clerks and other workers in Santa Clara, who have had to endure the lowest pay in the Bay Area's court system. Considering that Expatistan's Cost of Living Index ranks San Jose as the fifth most expensive city in North America, Santa Clara Court employees have struggled with living expenses. In fact, SCPEA says that some clerks are leasing out portions of their homes to pay the bills, while others are homeless, relying on friends and family. Inadequate pay had rendered the fulfillment of their basic human needs a difficulty.

From January to August, the SCPEA spent all of 2015 in contract negotiations with the court. Unfortunately, these negotiations never gave rise to any agreement and were continuously delayed. In order to be taken seriously, the clerks went on strike, demanding a pay raise before returning to work. By the end of the strike, the clerks negotiated a nine-and-one-half percent increase in their salaries, to be re-negotiated in 18 months. Although workers are still enduring a stressful work environment, especially after an eight-day backlog, they are satisfied with the result and are looking forward to making ends meet.

The SCPEA still doesn't have an official office, but clerks can turn to the association for help at the Downtown Superior Court, where they are currently based. Ingrid Stewart, President of the SCPEA says they are currently handling discipline, labor management issues, and the improvement of working conditions. Together with court specialist Shelly Carey, the SCPEA has started the "Help the SCPEA Clerks Fund" where members of the community can donate to their cause at www.gofundme.com. The strike elevated moral and reinstated a sense of togetherness and family among the clerks. Still, there is more work to be done. For this reason, the SCPEA has evolved into supportive avenue for resolving work-related issues.