THE ADVOCATE

SANTA CLARA UNIVERSITY SCHOOL OF LAW

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FAREWELL AND WELCOME

The Santa Clara Law Community Bids A Temporary Farewell to Dean Donald Polden and Enthusiastically Welcomes Incoming Dean Lisa Kloppenberg.

In this Issue:

The Advocate eagerly welcomes our new dean, Lisa Kloppenberg, to Santa Clara University School of Law and looks forward to speaking with her upon her arrival. Kloppenberg is the former dean of the University of Dayton Law School. Her expertise is in mediation, Appropriate Dispute Resolution, and constitutional law. The University of Dayton describes her as a champion of curricular reform, an advocate for diversity, and a respected liason between faculty and students. We look forward to the ingenuity she will bring to SCU Law.

We also stop to thank Dean Polden for his immense dedication while serving as Dean for ten years. His accomplishments include expanding SCU Law's educational programs abroad, establishing the Jerry Kasner Estate Planning Symposium and the Institute of Sports Law and Ethics Symposium, and the completion of SCU Law's first comprehensive fundraising campaign, which raised more than $17 million in student scholarships, faculty support, and assistance for various programs. We wish him the best in his year with the Center for Creative Leadership and look forward to his return in 2014.

CONGRATULATIONS!

The Advocate would like the congralute the winners of this year's Writing Competition:

Paola Romero Valente de Aguiar: "Bio-Prospecting, Bio-Pirating Rising"

Ava Miller: "Is There Inherent Bias Toward Apple In CA?"

Susie Dent: "Looking Backwards: An Alternative Approach to the Gun Control Debate"

The Advocate would like to thank KAPLAN for donating the competition's prizes.

Tech Law Journal Ranks Among Top in the Nation

By Zeb Zankel
For The Advocate

Earlier this year, Google Scholar updated its rankings placing the Santa Clara Computer & High Technology Law Journal in the number two spot within the technology law category. This update follows a long line of favorable rankings for the Journal. The other law review ranking system, hosted by Washington and Lee University School of Law, places the Journal within the top ten for both the Intellectual Property and the Science, Technology, and Computing categories.

The primary difference between the two law review ranking systems is that Google Scholar focuses solely on academic journal citations, whereas Washington and Lee also considers court citations in its algorithm. The slightly higher ranking in Google Scholar indicates that while the Journal is respected in the judicial community, it carries an enormous reputation in the academic community.

The high rankings of the Journal have been no easy task, but rather have been the product of innovation and hard work. Gabriella Ziccarelli,

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Contact The Advocate at SCUAdvocate@gmail.com

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Article submissions to *The Advocate* are **encouraged and welcomed** from all law students, faculty, alumni, and administrators. Please contact the Editor-in-Chief about format requirements and submission dates. Letters to the Editor are encouraged. Letters should not exceed 350 words. All submissions are published at the sole discretion of *The Advocate* and may be edited for length, grammar and clarity.

We encourage response pieces or comments to any article. We will pass those comments onto the writer and possibly publish them.

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Santa Clara University
School of Law
500 El Camino Real
Santa Clara, CA 95053-0426

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So What is an "L.L.M." Anyway?

By Ava Miller
Staff Writer

This following is a familiar scenario faced by me and some of my peers:

Person 1: So, are you a 2L, 3L?

Person 2: No I'm an LLM.

Person 1: An alum? Huh, what's an LLM?

An LLM, from its Latin name of Legum Magister, is a post-graduate law degree. Essentially a Masters in law, this is a degree for one who already has a primary law degree. I have come to realize that in the US, where law is studied as a post-graduate degree, the notion of a Masters in law is somewhat of an unfamiliar concept. However as the study of law in countries such as the UK, France and China, law is at the undergraduate level, completing an LLM is quite common, though by no means mandatory.

An LLM usually involves specializing in a particular area of law, e.g. IP or Tax. This can be a way to distinguish oneself in a competitive job market or to re-orient oneself to enter a new area of law. Globalization means it is increasingly important for lawyers to be familiar with the laws of another country. The US education system is internationally recognized and very attractive to LLM candidates. Many law firms view completion of an LLM as evidence one is proficient in English, specialized and able to work within a multinational legal environment, as well as gaining new professional contacts. For foreign students hoping to practice in the US, an LLM may be a good way to acclimatize to the US legal environment.

> "Person 1: 'So, are you a 2L, 3L?' Person 2: 'No I'm an LLM.' Person 1: 'An alum? Huh, what's an LLM?'"

Santa Clara Law offers 3 different LLM degrees: an LLM in Intellectual Property, an LLM in International and Comparative Law and an LLM in United States Law. The LLM may be completed full or part time over a two year period. There are currently 46 LLM students enrolled at Santa Clara Law. 29 of these students have degrees in law from outside of the US. 17 of these are students holding US JDs, or who have practiced law within the US. Countries that are represented either by the individual's citizenship or by the location of the primary degree granting university include: Syria, Brazil, Russia, Israel, Iran, France, South Korea, India, Austria, Germany, Croatia, China, El Salvador, Spain, Belgium, Peru, Switzerland and Australia .

LLMs face the unique situation of officially being part of the law school and having classes alongside JDs, but at the same time not quite assimilated within law school life. International students in particular encompass a world of contradictions. We are newbies to the US and its legal system, but not quite 1Ls. In addition to adapting in a short space of time, many international LLM students face language and cultural difficulties.

The LLM class is a minority, disparate group with our views and concerns not always adequately represented or catered for. As LLM representative, a common gripe expressed to me is that LLMs are the "invisibles" in law school life. Although I believe that each LLM has to take personal responsibility; I also hope that the law school will do more to encourage the flourishing of and representation of the LLM class. As the range of nationalities above indicates, the LLM class is a group of diverse individuals who bring a different perspective and dynamic and can add very much to Santa Clara Law School.

Former 'Working Girl' More Than Qualified to Run For Mayor

By Michael Branson
Editor-In-Chief

The mayoral race in Vicksburg, Mississippi, a town with a population of around 20,000, has been attracting a significant amount of national attention. That is because Mayoral Candidate Linda Fondren admitted to local news WLBT-TV that she previously worked at a legal brothel in Nevada.

I first learned of this story on the Huffington Post, in the left column next to the stories about Gwyneth Paltrow wearing a shear dress and Reese Witherspoon drinking too much with her husband. Her story of poverty and desparation has been reduced to a headline designed to drive volume.

Linda grew up in Vicksburg with her thirteen brothers and sisters. Her father was a deacon at the Rose Hill Baptist Church. She struggled after her mom died of cancer when she was still a child. Then, at fourteen, she was pregnant. At seventeen, she moved to San Francisco with her daughter, earned a GED, went to technical school, and got a job at a bank.

But with the low-wage job, Fondren struggled to care for her daughter. She was drawn into the prostitution business after she met a woman who worked as a prostitute.

"I hated it. I hated it," Fondren told the Associated Press. But there were better financial opportunities in the legal prostitute business than what she could get with her technical degree. "Am I proud of what I did? No," Fondren told WLBT. "Do I have regrets? No."

Her life turned around when she met her husband, a client. They became business partners, initially running a brothel themselves, and Fondren found her way out of a terrible situation.

Do Fondren's experiences disqualify her for public office? If anything, it distinguishes her. Through her perseverance, Fondren has climbed out of poverty; she actually has been quite successful, as evidenced by a listing of her Mexican vacation home for more than $6 million dollars. She will understand the struggles of the poorest of her town, and has publicly stated she places a priority on creating mentoring programs and youth activities to "help give people better choices than what [she] had."

Her other priorities include fighting the obesity problem plaguing her city, located in the state with the highest obesity rate. She has previously been recognized for her work in fighting obesity in her state, being named a CNN Hero.

While there are many additional factors that will need to be weighed to decide whether Fondren is the best candidate for Mayor, her troubled past should be listed next to her business accumen in the qualifications column.

High Tech Journal Number Two In Its Category

"Journal"
From Front Page

have been the product of innovation and hard work. Gabriella Ziccarelli, outgoing editor-in-chief of the Journal commented, "Over the last few years, one of the Journal's top priorities has been to make our content more accessible to the legal community. Last year, we switched to electronic publishing through the Digital Commons platform, and our peers are noticing. Making technological strides in the delivery of our content has helped us grow into a more readable, citable, and notable journal. Achieving #2 status on Google Scholar is just the beginning of what's sure to include many more accolades as a result of our innovative approach to disseminating legal content in the high tech field."

Indeed many more accolades are likely to come as the Journal gears up for its thirtieth anniversary this coming fall. The incoming Journal editors have big plans to implement an online edition to compliment its print publication. The Journal is also setting up a series of in-house visits to firms and technology companies throughout the bay area, offering professional development opportunities for its editors and increasing the exposure of the Journal among practitioners.

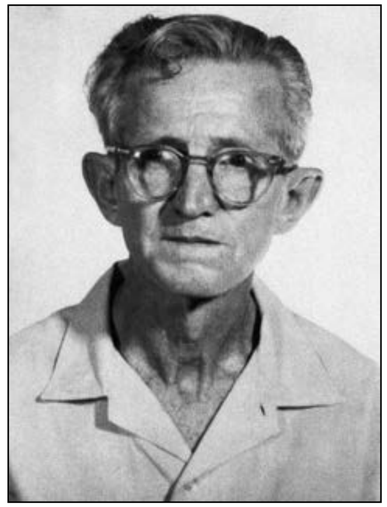
These future plans of the Journal rely 100% on the participation of a bright, incoming group of associates interested in joining the Journal to carry on the tradition of excellence. The Journal is accepting full-time/part-time 1Ls and part-time 2Ls to be part of the Journal. The case note and application process begins on May 31, and information can be accessed at chtlj.org.

Please contact Roujin with any questions at: roujin.mozaffarimerhr@chtlj.org. With a solid incoming class of associates, who knows, maybe next year's article will celebrate being number one.

Sounding Gideon's Trumpet

By Paria F. Amini
Associate Editor

This year marks the 50th anniversary of the 1963 landmark U.S. Supreme Court case Gideon v. Wainwright. I remember watching Gideon's Trumpet at the beginning of my 1L year, thinking about the significance of the right to counsel in a criminal trial. Most of us have likely never experienced firsthand the weight of the ruling in Gideon. Even so, I do not believe that it is a right any of us would like to see taken from any person, particularly an individual who is innocent—much like Gideon.



In reflecting upon the fifty years passed since the Gideon decision, many believe that this promise has gone unfulfilled. The verdict in Gideon established that a defendant faced with criminal charges had the right to counsel, regardless of the ability to afford it. However, this mandate has gone largely underfunded in state and local governments. Defense lawyers in many states are grossly underpaid and overworked. Not only are the defendants suffering at the foot of this broken system, but these attorneys and our society as a whole.

Having counsel is especially important for those who are wrongfully accused. Johnny Williams, a recent exoneree of the Northern California Innocence Project, has been released after spending 14 years in prison for a crime he did not commit. Mr. Williams was wrongly convicted for sexually assaulting a 9-year-old girl, based purely on eyewitness identification. It is because of those low resources afforded to the defense that Mr. Williams ended up in prison. The victim's shirt contained DNA of the perpetrator, of which only a couple small strips were originally tested. Furthermore, convicted felons such as Mr. Williams have no right to counsel post-conviction.

Remarking on the unfulfilled mandate of Gideon, Santa Clara Law Professor Margaret Russell commented that "NCIP is stepping in in a way that is life changing… lifesaving." NCIP operates through grant money and donations, without which freeing innocent men like Mr. Williams could not be possible. Absent that funding, Mr. Williams would never have had his name cleared, giving other blameless men and women hope that things could change. Although Mr. Williams is now a free man, not all in his situation may be that fortunate.

Think about the term "justice"—what does that term actually mean? Balance. Equality. Fairness. How can our judicial system function properly when the prosecution is well-maintained and well-funded, while the defense does not have this same privilege? The judicial system should reflect our convictions as a society—to treat everyone equal under the law and solemnly protect the constitutional rights of each and every individual. Our focus should not be on the financial cost to honor the decision in Gideon, but rather on the moral cost of neglecting it. Our goal should be to establish that balance between the two sides, because that is what is fair, what is just, what is right.

Inspire 2013, the Class Gift Campaign of the Class of 2013, is off to a great start in providing gifts of support to the Strategic Initiatives Fund.

- Current Class Participation: 27% Goal: 50% of 161 Classmates
  Participation by 13 more classmates will surpass the 2012 participation
- Dean's Circle Associates: 69 Students Exceeded the goal of 50 by 19!
- Total Gifts: $2019.12

The Strategic Initiatives Fund provides:

- Scholarships and financial aid that enable the law school to continue to attract and retain exceptionally qualified students;
- Graduate Student Fellowships which provide employment and continuing education opportunities at the law school for outstanding graduates during their search for permanent employment;
- Instructional technology resources for the library as well as student learning opportunities such as the law review, moot court competitions and clinical experiential learning programs.

Please help Santa Clara Law with your support! Donate to the Strategic Initiatives Fund so that we can continue to fund resources necessary for students to make the most of their learning experiences and to meet the most urgent needs of the law school!

- Class Gift Committee of 2013

SCOTUS Hears Argument in Human DNA Case

By Samual Levine
Staff Writer

Last week, the Supreme Court heard oral arguments in the case of Association for Molecular Pathology (AMP) v. Myriad Genetics, Inc. At the heart of the case is the issue of whether isolated human DNA is patentable.

In 1994, Myriad, in conjunction with the University of Utah, discovered that mutations in two genes, BRCA1 and BRCA2, corresponded with a high risk for breast and ovarian cancer. Myriad was subsequently awarded various patent rights relating to this discovery, including patents relating to the methods for testing for cancer, the isolated DNA, and the complementary DNA (cDNA).

Since then, Myriad has use the sequenced genes for clinical diagnostic testing to determine whether patients are at a higher risk of cancer. Myriad aggressively enforces its patent rights and prevents other companies, including AMP, from performing comparable clinical diagnostic tests.

While Myriad charges approximately $3,000 for the test (which costs just $200 to perform), as noted by its CEO, Myriad "spent more than $500 million over 17 years" creating the diagnostic tests, and the costs are required to help recoup initial investments.

Section 101 of the Patent Act defines the scope of patentable subject-matter, and prevents patents from being awarded on products of nature. In nature, most genes contain both exon (coding regions of DNA) and intron (non-coding regions of DNA) sequences. However cDNA, which, as a result of how it is synthesized in the laboratory, contains only the coding exon sequences.

AMP argues that both isolated DNA and cDNA are not patent-eligible because they are products of nature. While noting Myriad's contribution for "unlocking" the gene's secrets, their attorney argues that "the genes themselves, where they start and stop, what they do, what they are made of, and what happens when they go wrong are all decisions that were made by nature, not by Myriad."

In addition, AMP argued that research in the field has been stifled due to Myriad's enforcement of its patent rights.

The Solicitor General, on behalf of the government, argued that cDNA alone should remain patent-eligible because cDNA, unlike DNA, is an "artificial creation in the laboratory that doesn't correspond to anything in your body."

The Court seemed to largely accept the argument that cDNA itself was patent-eligible and instead focused on whether isolated DNA could qualify as patentable subject-matter.

However, Myriad argued that both DNA and cDNA are patent-eligible

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N.Y. Yankees Block Clothing Manufacturer's "Baseball's Evil Empire" Trademark Registration

By Jake McGowan
Co-Managing Editor

With nagging injuries to several key starters, it looks like the New York Yankees are in for a long season. Off the field, however, it seems the marketing department has already chalked up a win.

Last month, the New York Yankees Partnership found itself in front of the Trademark Trial and Appeal Board, fighting to block a clothing company from registering the trademark "Baseball's Evil Empire." On February 8, the Board sided with the Yankees, sustaining the team's opposition for likelihood of confusion and false suggestion of a connection.

In 2002, sought-after Cuban pitcher Jose Contreras chose the Yankees over the Red Sox, prompting Red Sox president Larry Lucchino's now famous remark:

"The evil empire extends its tentacles even into Latin America."

The Board noted that since then, the team has "implicitly embraced" the nickname, even going so far as to "[play] ominous music from the soundtrack of the STAR WARS movies at baseball games."

On July 7, 2008, Evil Enterprises filed a trademark application for the mark "Baseball's Evil Empire" for various clothing.

The Yankees opposed the mark on three grounds: (1) likelihood of confusion; (2) false suggestion of a connection; and (3) disparagement.

Right off the bat (sorry), the Board reminded that the Yankees don't necessarily have to use the mark to oppose; it's enough that the public associates a mark with the goods or services of the opposing party.

The Yankees' counsel provided hundreds of such examples, including news articles, stories, and blog entries all using "Evil Empire" to describe the team, such as:

"We love it that baseball has an Evil Empire, a team to beat, the perpetual villain in the New York Yankees."

"the Red Sox finally defeated the Evil Empire (the Yankees) en route to their first World Series win in ages."

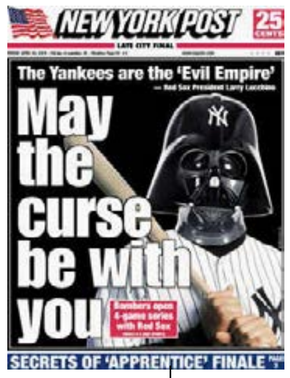
"Yankees 6 Red Sox 5! The Evil Empire lives!"

Even applicant Evil Enterprises admitted that the term had been used in connection with the Yankees. Instead, the company argued that that the Evil Empire nickname has been thrown around for other teams as well (Ask a Giants fan, and they'll give an example).

But the Board denied that the nickname had stuck for any other team:

"[A]pplicant's evidence shows only that these other teams aspire to be in the position of the Yankees, i.e., spending more on salaries and winning more championships. In short, the record shows that there is only one EVIL EMPIRE in baseball and it is the New York Yankees."

Based on the abundance of evidence, the Board decided that the Evil Empire mark was famous and thus afforded a broader scope of protection. It also noted that t-shirt shopping entails a low standard of purchasing care, which thereby increases the risk of confusion. Weighing these factors, the Board sided with the Yankees and sustained likelihood of confusion as a ground for blocking registration of the mark.



Board Viewed Evil Enterprises as Purposely Suggesting a Connection with the Yankees

Here's language taken from Evil Enterprises' own web page:

"The official home of Baseballs Evil Empire. The one source for all the latest tee-shirts and hats for all the Yankee Fans around the world. Be seen in our Yankee apparel and help us in our message that the Yankees are truly 'Baseballs Evil Empire' . . . 'Thank you, for being a YankeeFan'"

Reasoning that the whole purpose of the clothing line was to target Yankees fans, the Board had no trouble deciding that consumers would likely assume that the clothing line was connected with the baseball franchise.

"Implicit Embrace" of Evil Empire Persona Undermines Yankees' Disparagement Argument

The Board noted that a growing number of Yankees fans have adopted the nickname as a "badge of honor," as it brings to mind the ire and jealousy of rival fans (and by extension, the team's 27 world championships).

Given this developing positive connotation, the Board declined to block the registration on grounds that the mark disparaged the baseball club:

[H]aving succumbed to the lure of the dark side, opposer will not now be heard to complain about the judgment of those who prefer the comfort of the light.

It's worth noting that the Yankees partnership was able to block this registration without creating the trademark or even using it at all. Instead, the baseball community created the "evil empire" nickname and the TTAB ultimately granted the Yankees private rights in the mark. In that regard, this situation is consistent with the Volkswagen "Bug" line of cases, where courts allowed Volkswagen to block others from using the "bug" mark because the public had come to associate the term with VW Beetles. In the end, the origins of such publicly-coined nicknames may not change the outcomes of these cases. But they still raise interesting questions about the theoretical bases for granting private rights in certain trademarks.

This is also a good example of a marketing department protecting each nuance of a brand, including those that might seem unwanted at first glance. When this story first broke, it gained national attention partly because it might have seemed strange to a casual observer that the team would want to associate with a "negative" nickname. But when a fan develops a positive association with a negative nickname, the name acquires value to the franchise and takes its place alongside any other in the team's lore.

Throughout sports and entertainment, embracing the "bad-guy" persona is nothing new (See: the Oakland Raiders, WWE wrestling, LeBron James circa 2011, Rap music, etc.). In this case, the Yankees fought to protect "Evil Empire" just like they would for "The Bronx Bombers" or "The Yanks."

Individual Ranking System Used in Law School is a Violation of Human Rights

By Matthew Toyama
Staff Writer

The individual ranking system used by American law schools to establish the merits of each dedicated, unique human constituent of their student bodies is a violation of each of those human constituent's human rights.

While the founders of the United States may not have agreed that men and women are created equally in nature, the spirit of our nation's unprecedented governing document evinces the idea that, at least, each man and woman should be treated equally before the law.

That every person within the jurisdiction of the United States of America is due some adequate process to have her own day in court, to be heard, to confront adverse witnesses against her person, to present evidence for the merits of her case, to have what the adversarial system intends, a fighting chance, before she is adjudicated.

These rights form the pillars which supports the house of justice in complex societies. This is the critical foundation for which students who desire to assist supporting this house move mountains in invisible library cubbies and pull pyramid stones under lashings of pages of budget-breaking books that it be laid again and improved and maintained.

As students vying for legal jobs, the notion of receiving adequate due process is but a fantasy. The system has converted us from full cases adjudicated based on our merits to merely numbers and percentages.

The United Nations' grandfather work, the Universal Declaration of Human Rights holds in its first article holds, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." But who among us can say they do not believe law school tears brothers and sisters apart?

Its third article states, "Everyone has the right to life, liberty and security of person."

But who can ever feel secure in her person when one's own person does not count, only the order in which one falls behind or in front of other persons? When the numerical ranking of one law student in relation to others on a linear scale works entirely to preclude the chance for consideration an individual's merits, a student's numerical value has become the exclusive, defining feature of her application for potential contribution to the legal community.

"No one shall be held in slavery or servitude; slavery shall be prohibited in all its forms." (Article 4)

Who can say they have not felt the effects of slavery in law school or witnessed its devastating, demoralizing, dehumanizing effects on others around them? Slaves to the energy drink, caffeinated, sugarcoated, nicotine poisons that fuel the dark acephalous corporate control over humanity. Accommodating altered, insufficient diets and lack of sleep, exercise, daylight, normal human interaction and conversation. Until we become the white faced vampires, creatures, robots, law-bots, the butts of all lawyer jokes actualized. Is this what we want--arguably-human law-regurgitating sequentially-numbered machines supporting and remodeling our houses of justice?

"Everyone has the right to recognition everywhere as a person before the law." (Article 6)

Everyone, everywhere, but who as a student of our law believes their person is receiving recognition by those who would employ them in order to practice and uphold the law? The U.S. Constitution ensures that persons have a "meaningful opportunity to be heard" in our houses of justice; we who sacrifice much to be the public servants of these houses do not receive such an opportunity while the individual ranking system exists.

The author requests that readers take the idea for what it's worth, rather than inquiring into the numerical designation of merit which he may have been assigned.

Failing Law Schools and Santa Clara: In the Era of Prideful Indulgence

By Patrick Wallen
For The Advocate

The most influential legal educator in the country, according to the National Jurist, is Brian Tamanaha, author of the book Failing Law Schools. The title isn't a misnomer. Bradley Joondeph, voted as this year's Best Law Professor, made Failing Law Schools required-reading for members of the Dean search committee. Since insights gleaned from this text guided our faculty and administration in selecting a new dean, it is rather compelling that Tamanaha insists that the economic model of law school is broken. He reveals the fraud that is law school finance, drawing into contempt widespread decision making that would not pass muster under the ABA's ethical rules of legal professionalism.

Of course, Santa Clara did not escape Tamanaha's scrutiny, and rightfully so. Among the many fruitful insights offered by Failing Law Schools, Santa Clara graduates scores among the highest in average indebtedness, the lowest in percentage landing JD-required jobs, and the lowest in percentage levels of reporting private full-time salaries. The inescapable truth is that legal education can no longer serve as a pathway to financial security, and for many of us, the lives we envisioned when we were induced to enroll by padded statistics is no longer attainable.

Miraculously, Tamanaha reports that 97 of the top 100 law schools claimed that more than 90 percent of their graduates were employed within nine months of graduation, and some schools advertised employment rates that exceeding their bar passage rates. In an effort to manipulate the numbers, schools left out graduates who were not seeking employment, fudged the lines of what was considered employment, offered unemployed graduates temporary jobs which expired after the nine month reporting period, and the ABA treated 25 percent of "unknowns" as employed. Responding, in part, to pressure from Senator Boxer, the ABA changed its standards and SCU subsequently revealed that 42 percent of graduates got jobs as lawyers, and 45 percent of those were part time. If what it means to be a leader is to remain steadfast when all others lose their way, there is seemingly some latent hypocrisy in our motto: "Lawyers who Lead."

Ever the maxim for law school finance -number of students multiplied by tuition equals revenue- law schools force-fed students into a choking market whilst raising tuition and creating demand by padding the numbers. The disheartening truth, according to the US Bureau of Labor Statistics, is that from 2008-10, there was about one lawyer job opening for every two graduates. And law schools fueled the fire by churning out students at an unprecedented rate. Schools ultimately failed to slim as the market pushed back and the applicant pool dried up. Ironically, Santa Clara boasted that 2010's centennial class was the largest entering class in its history. Even as the number of applicants plummeted across the board between 2004-08, first year enrollment remained at a high of around forty-eight to forty-nine thousand students, and actually rose during the drop.

Particularly noteworthy is that Santa Clara, which did enjoy a US News and World Report ranking in the eighties, reported salaries from only 50 percent of graduates. If a school does not actively pursue and obtain a strong majority of its graduates' employment information, the numbers become skewed because the reports are not representative. Then, the figures that schools post on their websites tend to be misleadingly attractive because there are those who have a strong incentive to report their earnings, like those with impressive salaries, and there are those with a disincentive, like those who were embarrassed or resentful of lower salaries. Other schools that shared the exact same rank as SCU pursue and achieve a 99 percent reporting rate. With nearly 90 percent of law students borrowing to finance their education, and with skyrocketing tuition rates (far outpacing inflation), students are entering the worst market for legal employment in decades and are in the worst position to remain solvent. With yet another bump for next year's incoming class, tuition will increase about $1,500 to a breathtaking sum of $45,000. The average debt of a graduating law school student at SCU is about $150,000. Despite these staggering sums, legal educators continue to insist that law school is well worth the cost, while withholding the very information a prospective student would need in order to make a sound evaluation, says Tamanaha. Adding insult to injury, consider these debt amounts against an article I composed last year for the Advocate revealing that student's inflated food prices subsidize faculty lunches at the Adobe Lodge.

Tamanaha states that law professors are the true benefactors of accredited law. The ABA rule-making authority is staffed with members beholden to the interests of faculty and administrators. Of course, law professor salaries are paid for by student debt, but a combination of ABA accreditation standards and a myopic focus on rankings currently creates perverse incentives that encourage Enron like reporting and support spending rates. The game is rigged!

Tuition hikes, according to Tamanaha, are due in large part to the failure to provide restrictions on access to copious amounts of federal student loans. Schools absorbed this excess with more faculty, more administrators, and faculty scholarship bonuses, because that is the prevailing norm of what it means to be a legitimate law school. Never mind that law professors are already expected to produce scholarly work in the first instance, the majority of law professors teach an average of six hours a week for twenty-eight weeks a year. Yet, for every four professors who pick up an extra course, schools obtain the equivalent of another full time professor. Or, as former SBA Vice President Kyle Smith lamented, shouldn't law professors teach two of the same 1L courses, so as to eliminate preparation for an additional course?

Even a dean does not have true power to exact substantial changes because the ABA gives faculty the ability to deny a deanship. Any departure from the norm, though fair in its inception, may alienate faculty members, and might cause a slip in rankings that would certainly make any deanship short-lived.

Instead of trimming the fat by

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TheBestLinesByPresidentObamaatthe2013 White House Correspondents' Dinner

Look, I get it. These days I look in the mirror and I have to admit, I'm not the strapping young Muslim socialist that I used to be.

I go out on the basketball court, took twenty-two shots, made two of them. That's right, two hits, twenty misses. The executives at NBC asked, "What's your secret?"

But somethings are beyond my control. For example, this whole controversy about Jay-Z going to Cuba. It's unbelievable. I've got ninety-nine problems and now Jay-Z's one.

According to Obama, this was the actual, unaltered version of him skeet shooting at Camp David. "That was an awesome day," he said.

I know CNN has taken some knocks lately, but the fact is I admire their commitment to cover all sides of the story just in case one of them happens to be accurate.

The History Channel is not here. I guess they were embarassed about the whole "Obama is the devil" thing. Of course, that never kept FOX News from showing up. They actually thought the comparison was not fair . . . to satan.

The problem is that the media landscape is changing so rapidly. You can't keep up with it. I mean, I remember when Buzzfeed was just something I did in college around two a.m. It's true.

Sheldon [Adelson] would have been better off offering me $100 million to drop out of the race. I probably wouldn't have taken it, but I'd have thought about it.

I know Republicans are still sorting out what happened in 2012, but one thing they all agree on is that they need to do a better job of reaching out to minorities. And look, call me self-centered, but I can think of one minority they can start with. Hello? Think of me as a trial run. See how it goes.

Of course, even after I've done all this, some folks still don't think I spend enough time with Congress. "Why don't you get a drink with Mitch McConnell?" they ask. Really?! Why don't you get a drink with Mitch McConnell!?

Failing Law Schools and Santa Clara

"Failing Law Schools"
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reducing administrators and rebuffing privileged faculty members, schools acted irresponsibly by increasing tuition and admitting more students, even though most of us students at SCU will unfortunately qualify for IBR, or Income Based Repayment. Perhaps the most enlightening statistic cited by Tamanaha is that schools switched from a need-based to merit-based scholarship criteria in 1995, when almost 60 percent of scholarships were need-based. In 2010, schools provided $758 million in merit-based student scholarships and only $143 million for need-based, dropping to a startling 15 percent. Schools created what Tamanaha calls a reverse-Robin Hood scenario, where the students in line for the worst paying jobs provide the financial assistance to their classmates who will land the best paying jobs upon graduation, receiving $165,000 annually.

The unknown societal consequence of producing an army of indebted lawyers is that many of us will grow middle-aged with law school debt, negatively impacting many other choices we may make, including when to assume a mortgage, when to get married, when to start saving for our children's college, when to have children in the first instance, and whether it is prudent to pursue less profitable but more meaningful career paths. For perspective, consider that the total student debt assumed by law students in 2010 was $3.9 billion.

It is deliciously ironic, Tamanaha states, that in a recent antitrust suit against the ABA, the case settled out of court with the ABA complaining that it would otherwise endure an inordinate amount of legal fees. Despite widespread reporting of these frauds, many of us continued to enroll in law school, captured by what must be irrational exuberance. However, the hallmark of American culture is its capacity to instill ambition in its youth, and no doubt many of us chose law school long before we gained the tools to evaluate our decision. In assigning the blame for these apparent injustices, a torts professor might ask who is in a better position to bear the burden: students or schools? At the end of the day, the overall brilliance of the scheme is that in IBR, those whose loan balances are actually growing in size with compounding interest will nonetheless remain in "good standing," thereby concealing the full extent of underperforming loans and the awesome impact of this perfect storm. One wonders, how did law deans look at the numbers and not feel dirty. And I wonder, knowing what I do now, whether all those sleepless nights I spent for the last three years were worth the squeeze.

Opening Sources to Build A Uniform Cultural World

By Paola Romero Valente de Aguiar
Staff Writer

A new concept of network telecommunication was born around 1968 when the U.S Government focused on empowering the military's computer technology. IBM laid out the basics to improve operating systems and certain programs created by sharing source codes on the internet. LINUX created a stronger model challenging other operating systems such as Windows.

LINUX enabled outsiders to easily write programs. Programers visualized a new technological age in Silicon Valley whereby an individual freedom of spirit arose while information became freely exchangeable. Playful hackers and programmers were trying to break down pieces of computer codes, eventually creating "The Free Software Movement" and GNU project revolutionizing the manner software was developed and owned henceforth.

Negotiations became unaffordable due to contracts, intellectual property rights and attorney's fees; each time new software hatched or a small piece of software was purchased, some intellectual property rights got relegated to a secondary priority. As a consequence, some pioneers of the proprietary software model at Microsoft discouraged the change of source codes practice.

Bill Gates criticized passing around computer software without giving any consideration to their owners. He said that proprietary software was not worth the extensive time spent in developing good quality software when it was being written by hobbyists and distributed to the consumer market.

Microsoft and other companies of proprietary operating systems restricted their codes, so hobbyists could not access them. It was highly rejected by hackers, programmers and developers who decided to work as a robust community developing projects from scratch including the GNU operating system, writing replacements programs located in the UNIX system.

The free software philosophy started to flow, but "free" did not mean without price. It meant freedom to modify, make improvements and publications, distribute, redistribute and share.

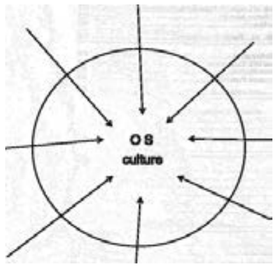
A free software developer can have copyright ownership and a license not in public domain, which turned into a proprietary software package. If the license is in public domain, then people can make only few changes but their freedom to cooperate and distribute will be limited.

On the other side, GNO created the philosophy of inalienable freedom, with a general public license, a document whereby the author can authorize others to distribute, makes changes, add and redistribute under certain terms. For instance, if Ana gives the copy to Bob, then Bob also has the freedom to distribute copies to his friends as a way of cooperating with the community. Many developers use the same GNO license to protect the community rather than corporation, although nowadays other licenses are available.

The wording "free software" is inaccurate and was interpreted as cheap, unsafe and poor quality, leading the developers to retitle it "open source."

Open Source (OS) has a minimal distinction from the free-software movement. According to Mr. Stallman, free-software goes beyond the advantages of exchanging and improving software; it creates a community of cooperation that is essential to building a good society and that it is more important than having reliable software developed.

Open source definition by LINUX creators referred to free redistribution: it means source coding, derived works, liberty, but not free of charge. The derived works were permitted without denigrating the integrity and moral of the author's source code. For instance, if you make changes you must maintain the name of the author, or if you change the whole name of the program, you must mark the changes clearly. The license must not be specific to a product and may not contaminate other software.



Later, Microsoft changed its position by releasing some codes as open sources. Linux and GNU went public in the stock market, reaching a high price in the 90s. Unfortunately their prices have dropped significantly since then. Nevertheless, LINUX and GNU are well-known as the corner-stones of the OS legacy.

Presently, OS extends from blogs and digital open sources to hardware and software models.

One of the most useful and easy open source softwares is the Street-View built by Google Map, which contains images captured by Google employees and third party contributors around the world. Its daily use characteristic became a privacy concern. For instance, a woman complained against Google because her cat and sofa were shown by zooming street view at Google maps. Her privacy was probably violated.

However, someone walking down her street is likely to see inside her house, viewing the same cat and sofa. Are we violating her privacy? Her house is private property located in a public street. When the exposure through zooming on street view becomes a permanent image, the information will be accessible not only to a few people walking down her street, but to people around the world who may, in good or bad faith, use it to initiate law suits, debt collections and other purposes.

Is it a violation to the First and Fourth Amendment? Is it an invasion of privacy or trespassing?

In Europe, the court fined Google because Google volunteers took pictures of private lands, driveways and houses, violating the privacy rights of property owners, taking pictures of their assets, and creating a potential security risk.

In the United States, in Boring v. Google Inc., the Third Circuit affirmed the district court's grant of Google's motion to dismiss the claim of invasion of privacy and others and reversed and remanded with respect to the trespass claim.

When privacy concerns are at stake, it is necessary to determine whether an intentional intrusion upon their private concerns existed that was substantially and highly offensive to a reasonable person, and whether there are sufficient facts to establish that the information disclosed would cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. The district court held that the complaint insufficiently supported a conclusion that the street view images would be highly offensive to a reasonable person.

In cases with similar circumstances, most courts have drawn the same conclusion.

In Pacitti v. Durr (2008), the U.S District Court held that no reasonable person would find the fact that the defendant entered into the plaintiff's condominium to speak to a third party highly offensive because the plaintiff was not in the condominium at the time.

In GTE Mobilnet of S.Texas Ltd. P'ship v. Pascouet (2001), Court of Appeals in Texas found that "the mere fact that maintenance workers looked over into the adjoining yard is legally insufficient evidence of highly offensive conduct."

In the Boring case, the Court found no sufficient facts to establish that the element of publicity would be highly offensive to a reasonable person.

In relation to the trespass claim in Boring, the Court reversed, stating that the district court decision to dismiss the claim was improper when qualified trespass was not the proximate cause of any compensatory damages sought. It is a problematic situation that the district court considered damages as an element of the claim because Boring did not seek nominal damages. The Pennsylvania Law defined trespass as unprivileged intentional intrusion upon land in possession of another. In Graham Oil Co. v. BP Oil Co (1994), the Court held that one who intentionally entered another's land is subject to liability to the possessor for trespass, although his presence on the land causes no harm to the land, its possessor, or to anything or person in whose security the possess has a legally protect interest. Corr. Med. Care Inc. v. Gray, Civ. A.(2008) held that a complaint alleging that defendants entered into plaintiff's home on specific dates was "sufficient to survive a motion to dismiss."

Google entered upon Boring's property without permission and that is trespassing. Yet the Court concluded that district court improperly dismissed the trespass claim.

In Massachusetts, in March 2013 as a result of a multi-state settlement claim, Google agreed to pay over 7 million dollars for data collected from street view without permission, also the agreement includes consumer education about how to secure their personal information while using wireless networks.

Google Maps Street View has announced privacy and security

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See "Open Source"

Moral Character: The Other Bar Exam

By Mary Grace Guzmán
Class of 2008
and
By Lindsay K. Slatter
Contributor

Becoming a lawyer is a two-step process: passing the bar exam and proving good moral character. A bar applicant has multiple opportunities to pass the bar, and each exam begins with a clean slate. You have only one opportunity every two years to apply for a moral character determination; if you are denied, your past application will be one more problem to deal with next time. You spend an entire summer preparing for the Bar Exam. You should spend a few hours on your Moral Character Application and even run a couple drafts before you submit it.

What is a Good Moral Character Determination?

Essentially, it is a finding that you are morally fit to become an attorney. The comprehensive background investigation begins with information you provide to the Committee of Bar Examiners ("CBX") in your Moral Character Application ("MCA").

Mundane historical information constitutes a large part of the MCA, such as every residence address you have had in the past eight years, every law-related employer, and every other employer of over 6 month duration, jobs since age 18. You must also explain your activities during time periods when you were neither employed nor a full-time student. Gaps or discrepancies will delay your application.

We recommend that you spend careful time filling out the MCA. You can review it online at http://www.calbar.ca.gov.

Common Pitfalls

Many qualified applicants are delayed because they have glossed over the details. Common examples are: inadequate detail in previous addresses, no current information for prior employers, gaps in accounting for time. In such cases, you are lucky if the moral character analyst calls you to ask about minor details. More often, you will receive a written request for additional information, an avoidable process that extends the time to complete the investigation.

Character References: Every applicant must include five character references. Common pitfalls are picking a prestigious individual who barely knows you, or someone who knows you well but feels compelled to discuss your every flaw.

Listing somebody who barely knows you is a red flag for CBX to delve into. The neighbor, who has known you since you were five years old, may mention rumors or half-truths from years back. Both of these examples may very well lead to a prolonged investigation. So choose your references well. Explain to them, the importance of a prompt answer, and remind them to answer honestly, but never to answer beyond the call of the question.

Major Areas of Concern

Just as there are minor pitfalls in the simple historical details, there are major areas of concern, which require not only full disclosure, but also a well-written presentation. Criminal convictions or honor code violations imply bad moral character that must be overcome. Lawsuits or false accusations can usually be explained, but a cavalier attitude or accusatory tone can turn a simple explanation into a major problem.

The good news is, even a serious felony conviction may be overcome by overwhelming evidence of rehabilitation. On the other hand, many applicants overlook things like academic discipline; misdemeanor or juvenile convictions, expunged convictions that must be identified according to expungement statute, etc.

Having forgotten a traumatic incident is understandable in many circumstances, but not on the MCA. There, it becomes a material omission of fact, which is as bad or worse than the misconduct itself.

CBX recognizes that many applicants have "a past." Very few issues are automatic disqualifiers. The primary focus is how you confront your past, recognize your own culpability, and show how you have changed since then. If you are an applicant with a problem in your past, you can probably pass your moral character determination if you deal with the problem appropriately. Or a small problem can be turned into a debacle if you don't deal with it correctly.

The decision to volunteer past problems or wait for further questions depends on an evaluation of the problem in the context of your application. An unnecessary revelation, or a wrong-headed concealment can add months to the process. Thus an applicant with one or more serious issues should consult with an attorney who has experience in dealing with CBX. Our professional organization's roster is on the website at http://www.disciplinedefensecounsel.org/.

And if you get called in for a personal interview, definitely employ counsel. You do this once or twice in a lifetime; they interview a few hundred applicants every year.

Biography of writers:

Mary Grace Guzmán, Santa Clara Law 2008, is an associate at Fishkin & Slatter, LLP, a Walnut Creek firm specializing in Attorney Conduct, State Bar Defense and Admissions matters. Lindsay K. Slatter is a partner in the firm. CA Appellate and Supreme Court case law re: attorney conduct and admissions is updated monthly at FishkinLaw.Com.

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measures where anybody can request to eliminate specific houses or vehicles' images or people's photographs by blurring. Also, Google has compromised to disable or remove their vehicles and agreed not to collect any additional information without prior consumer notice and consent. Finally, to run a training program for their employees about privacy and confidentiality to change corporate culture.

I consider that privacy may improve through community proposals, where technology companies engage with the society to conceive a new consumer perspective. A Freedom of open sources to live in harmony, where younger generation will acknowledge that innovation and technology is an open philosophy of life. For instance, If a consumer's mind is trapped in an old paradigm, a innovation would not be satisfied.

A better world is achievable by focusing to educate the next American baby boomer generation to contribute in the formation of this new culture. A freedom of sharing and implementing simple private policies and fair licenses.

Once the world is culturally uniform, legal issues and preventive measures will be mitigated. It seems unrealistic and futurist. Nonetheless, it is likely an ultimate society goal: an open source connected to a uni-cultural world.

2013 Commencement Speaker

David C. Drummond

Senior Vice President and Chief Legal Officer of Google

Congratulations to the 2013 Graduates! The 2013 Santa Clara Law Commencement will be held on May 25, 2013 at 9:30 a.m. in the Mission Gardens.

The Commencement speaker, David Drummond, is currently the Chielf Legal Officer of Google. Drummond leads Google's global teams for legal, government relations, corporate development, and new business development.

Recognizing Drummond's ungraduate roots to Santa Clara University, Dean Polden said in a public statement, "We are honored to welcome David Drummond back to Santa Clara to serve as this year's law commencement speaker. His proven abilitiy to balance legal and ethical considerations at one of the world's most innovative companies will inspire our students to become competent and conscientious lawyers as they embark on their own careers as lawyers who lead."

Before joining Google, Drummond was a partner in the corporate transactions group at Wilson Sonsini. His work there helped to build his initial relationship with Google.

SCOTUS Hears Argument in Human DNA Case

"Myriad"
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However, Myriad argued that both DNA and cDNA are patent-eligible because isolating both was "a product of human ingenuity" and that they have "substantial new uses." In addition, Myriad argued that because isolated DNA genes have been patented for over three decades, there is a presumption in the industry that they will continue to be patentable subject-matter and the Court should not disrupt that presumption.

Several of the Justices were skeptical of Myriad's argument that isolated DNA should be patentable. Amongst their skepticism, Justice Sotomayor noted that it is difficult to "conceive how you can patent a sequential numbering system by nature," and Chief Justice Roberts likened the isolation process to merely "snip[ping] off the top and… bottom" of the DNA strand.

However, the Justices seemed to be aware of the need to preserve the profit-motives behind research and questioned whether preserving cDNA patentability alone would be sufficient protection to encourage innovation.

With over 4,000 patents awarded on human genes and upwards of 40 percent of the human genome covered by patents, there is a lot at stake in this case and the entire biotech industry will be watching the Court's decision closely.

A Farewell: Outoing Editors-In-Chief Give Their Final Thoughts

By Benjamin Broadmeadow
Outgoing Editor-In-Chief

Given that Dean Polden instituted the "Lawyers who Lead" mantra for our law school and that his service to our school as dean will come to close this June, it seems appropriate to reflect on our tagline.

By our profession's nature, we are not leaders. Our aim as lawyers is the client's aim. We are their agents, their representatives. We serve the client, whether it is a pro bono claim, a charged suspect, the state, or even big oil. We do not set the agenda. We see it to task. Our services, whether bought or offered freely, are just that.

Leaders? Not quite. We are servants. Sometimes lucratively-paid, fine suit wearing servants, but we are servants nonetheless. Our stock and trade is putting the needs of others first.

Replacing "lawyers" with "servants," our mantra becomes "servants who lead." As oxy-moronic as perhaps this sounds, the concept of servant-leadership reconciles easily in the legal profession. Characteristics of the servant-leader include listening, empathy, persuasion, conceptualization, foresight, and stewardship. These are the same characteristics a public defender or a family attorney or any another attorney might possess.

For the first issue's editorial, The Advocate board stated a belief that the school should incorporate a community service/pro bono requirement as a component for graduation. St. Ignatious preached to Jesuits to go set the world a flame and be a man or woman for others. A community service requirement would be a modern day manifestation of that charge.

But setting such a requirement aside, the law school's actions speak louder than any mantra. After three years of a Santa Clara Law education, I am heartened to see our community, professors, and members of my graduating class take the servant-leadership concept to heart. I struggle to identify a 2L or 3L who has not done pro bono, clinic work, or community service. I have yet to meet a professor lacking passion for clients in their field.

I chose Santa Clara for its Jesuit heritage, and maybe for its West Coast location. "Lawyers who Lead" caught my attention on the website, and I wondered if it was only a slogan. Three years later, and Santa Clara Law did not disappoint. The administration, the faculty, and even my peers, have cultivated that mission from beginning to end. I proud to say that I am lawyer in the Santa Clara tradition.

L.L.M. student Licenciada Claudia Mzodiz Dwinell provided a real-world dose of the perspective that escapes us in our pursuit of a J.D. and employment. Lic. Dwinell spoke about her experience as a criminal attorney and judge in a federal criminal court in Mexico. Legally, Mexican criminal law is distinct from U.S. criminal law in that, in Mexico, one is deemed guilty until proven innocent. Practically, Mexican criminal law differs from the U.S. tremendously, as legal professionals are faced with rampant corruption that is systemic in the Mexican legal profession. Even as a government criminal attorney, Lic. Dwinell's only opportunity to advance further in the workplace would be to accept and perpetuate the corruption. Professional advancement for Lic. Dwinell and others in Mexico would likely require unethical and illegal behaviors, ranging from accepting criminals' bribes to circumvent the legal system, to performing sexual favors on request for senior attorneys.

For judges in a federal criminal court, the perils accompanying that position go far beyond the moral and ethical complications accompanying bribes from criminals. The judicial branch is especially vulnerable to the brutality of organized crime in Mexico, as Judges presiding over cases against members of gangs and drug cartels are routinely targeted for abduction and murder. As a judge, Lic. Dwinell was shot at, stabbed, and abducted by drug cartels. These crimes have become commonplace. To date, members of criminal organizations are responsible for the murders of nearly 80% of Lic. Dwinell's graduating law school class.

Despite the extreme dangers present for attorneys and members of the judiciary, the study of law in Mexico forges on. Presented with this information – which is only a single example of the dire complications people in the legal profession face every day – law students and professionals in Santa Clara and elsewhere, if they do not do so already, should attempt to maintain a broader perspective when considering the trials and tribulations of their day.

The choice to acknowledge a broader perspective, and the life or death consequences facing law students and legal professionals beyond our borders is entirely personal, no fault is to be found either way. But for the sake of your classmates, families, friends and most of all yourself, please try and remember to poke your head outside the bubble every once in a while. The sanity that a little bit of perspective can bring will be a benefit to you all.

By Amy Askin
Outgoing Editor-In-Chief

"Have you ever agreed to a mediation and then discovered that the other side only requested it so a process server could trap your client in the bathroom of a Wendy's?"

It is hard to judge anyone who is disgruntled with the current state of the legal profession. Who can say they have not watched the above-quoted October 2010 animated YouTube video, So You Want to Go to Law School (1,629,757 views and counting), without laughing?

When considering summer positions or post-bar jobs, it's fair to say that the majority of students feel as though there is little light at the end of the tunnel. So You Want to Go to Law School may only be a lampoon of law school and the legal profession, but for most of us, the laughter it causes is accompanied with a solemn nod of agreement. Attempts to dissuade those who begrudgingly attest to this view are akin to convincing someone that a trip to the DMV will be a pleasant experience. In a word: futile.

Yet, while the epic downturn and slow recovery of the legal market is undeniable, many jaded law school students are in sore need of some perspective about their chosen profession. Gaining perspective about the future is not easy, especially when surrounded by constant negativity. However, the core element of perspective is the ability to judge the importance of a situation relative to others. Perspective is based on the facts you know and the experiences you've had, but we often struggle to access that perspective from inside the law school bubble.

A recent classroom presentation by current

I thas been a pleasure serving as your editors-in-chief. Good luck on finals!

- Ben and Amy