



# SCU Law Celebrates 3rd Annual Pro Bono Week

By **Jacqueline Prisbylla**

*SBA Community Service Committee Vice-Chair*

Santa Clara Law celebrated its third annual Pro Bono Week in conjunction with the ABA's National Pro Bono Celebration this past week with a number of events throughout the week organized by the SBA and the Center for Social Justice and Public Service. We kicked off the celebrations Monday with cupcakes and a meet and greet with APALSA, BLSA, CSJPS, Christian Legal Society, SALDF, and Women & Law members who shared upcoming pro bono and volunteer opportunities with the group. On Tuesday, Cowell Health Center sponsored a blood drive.

On Wednesday, students learned more about how the California State Bar's Campaign for Justice is working to close the "justice gap" from a State Bar representative and a representative from the Pro Bono Project of Silicon Valley, a recipient of Campaign for Justice funding. The Pro Bono Project is always looking for volunteers and



Photo Source: *Jacqueline Prisbylla*

has many opportunities available for students and attorneys. On Thursday, Public Interest Law Career Services hosted a Public Interest Career Fair where students had an opportunity to network with local public interest and public sector attorneys and organizations

and find out more about externships and career possibilities.

Weeklong, the SBA held a food drive benefitting the Second Harvest Food Bank, the Christian Legal Society held a food, clothing, and toiletries drive for Loaves & Fishes which was so successful they extended the drive for another week (through Week 11), and Women & Law held a men's and women's professional clothing and

accessories drive. Thank you to everyone who donated! Coming up, SALDF will be holding a pet food, treats, and toy drive to coincide with Dog Therapy Day during Stress Relief Week (Week 12).

Pro Bono Week ended on a high

note with the SBA Community Service Committee's second biannual Community Service Day. Committee Chair Rebecca Slutzky and Lara Bahr spent countless hours organizing and planning this event and all of their hard work really paid off. This semester there were volunteer opportunities at five different sites including the Santa Clara County Animal Shelter, the American Cancer Society's Making Strides Against Breast Cancer fundraising walk, trail development at Three Creeks Trail with Save Our Trails, the Forge Garden on campus, and the ever popular Women & Law Bink-a-Thon.

The most popular site this year, and one sure to be repeated in the future, was at the Santa Clara County Animal Shelter. Here, students really made a difference by helping bathe some of the dogs waiting to be adopted and taking new pictures of them for the adoption website, greatly increasing their chances of finding forever homes. One lucky

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# Condoleezza Rice Speaks at SCU

By **Brent Tuttle**  
*For the Advocate*

On October 10th, former Secretary of State, Condoleezza, Rice made a special appearance on campus to participate in Santa Clara University's "President's Speaker Series." Her speech comes as the first of three scheduled events. The remaining two engagements will feature San Francisco 49ers CEO Jed York on January 15th, and renowned author/ President of the Interfaith Youth Core Eboo Patel on April 9th.

Rice, currently sitting as a Professor of Political Science at Stanford University, was the National Security Advisor from 2001-05 under President George W. Bush and later from 2005-09 served as the 66th Secretary of State, the first African American woman to hold the position.

Her sold out speech commanded the audience's attention from start to finish. Rice took the podium by bluntly stating that the outside world as portrayed through the 24 hours news cycle and other avenues of media, seems "chaotic" and "dangerous." She supported her straightforward opinion by recalling three major events from the past decade, which she referred to as "shocks" that have shifted the plate tectonics of the global community.

The first of these shocks brought to mind the tragic events which took place on September 11th, 2001. Rice said having personally served in the White House on September 11th, and for the remainder of George W. Bush's administration, that "every day after

9/11 seemed like September 12th." She invoked her own memories of not just remorse for the American public, but also fear that this new breed of guerilla terrorism would be an enormously difficult challenge for the entire world moving forward.

Rice illustrated clearly that a rogue group of stateless fundamentalists had brought the world to its knees with an operation that cost approximately \$300,000 dollars. The former Secretary of State acknowledged that today's wars, and the war's of the foreseeable future are different from conflicts of past generations. Whereas traditionally conflict in America has been between governed nations, in the modern world it is the ungoverned spaces found in countries such as Somalia, Yemen, Afghanistan and Pakistan that our military must focus on.

The second shock Rice referenced was the financial crisis of 2008-09. The ramifications of this meltdown were especially significant because it was a "systemic crisis that had an effect on individuals." Rice used the financial crisis talking point not only to criticize the dysfunctional and foul practices



*Dr. Rice addressing Santa Clara's sold out Mayer Theatre*  
Source: *Charles Barry, University Photographer, OMC*

of the United States' economic and political systems, but to also reflect on the systematic flaws that lie within the global community. She spoke briefly on the struggles of the European Union, specifically mentioning the incredible obstacles they will continue to face as an economic union that has no solidified fiscal policy or political integration. Rice also touched on China, Brazil, and India, stating that these rising countries all have unique and equally difficult demographic problems surfacing that will have to be addressed in the near future.

Lastly, she declared the Arab Spring, which has now dispersed itself as the "Arab Winter," as the third event which

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# Clinic Travels to Geneva to Advocate Against Human Trafficking in the United States

By Jessica Mawrence  
For *The Advocate*

The Santa Clara International Human Rights Clinic has an ongoing interest in researching and advocating anti-human trafficking efforts in the Bay Area and across the United States. In connection with this, several students and myself researched, co-authored, and submitted a shadow report to the United Nations Human Rights Committee (HRC) on human trafficking as it pertains to U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR).

Following this submission, the Clinic began preparing for a trip to Geneva, where the HRC meets with states that have ratified the ICCPR to review their implementation of the treaty. We planned to observe the U.S. review before the HRC, but due to the U.S. government shutdown, the U.S. postponed its hearing until March 2014. The Clinic nonetheless sent three students to advocate for and promote awareness on the issues in our shadow report.

In the absence of the U.S. delegation, we adjusted our goals for the trip: 1) to meet with Committee members to advocate around our shadow report; 2) to observe the review of other states to learn how the HRC operates; and 3) to meet with other UN agencies to consult on broader international anti-trafficking efforts.

During the HRC session, we were able to meet with several HRC members. We spoke briefly with each about the three main issues presented by our report on human trafficking in the U.S.: the under-identification and investigation of labor trafficking cases, the underexplored intersection between trafficking and the child welfare system, and the need for better local, state, and federal coordination of anti-trafficking efforts. The Committee members showed a strong interest in these issues and

gave positive feedback on our report's usefulness for the Committee.

We also gained insight on how the HRC operates by witnessing part of its reviews of Bolivia and Djibouti. During the Bolivia review, similar to how the review of the U.S. would have been, the HRC granted civil society organizations an opportunity to present their perspective on Bolivia's human rights record. This vital time allows for members of NGOs, nonprofit organizations, unions, etc.—regular citizens—to engage with the HRC and present information that their government may not acknowledge or address. We could see firsthand the importance of this additional voice to help the HRC understand what is happening in a country and better work with states to improve their human rights record. The Clinic's shadow report aimed to play a similar role in relation to the U.S. review, despite its postponement.

We also observed an additional Committee function – the drafting of a general comment on ICCPR Article 9, the right to personal liberty. The HRC issues general comments, or official interpretations of ICCPR provisions, to aid member states in complying with each of their specific human rights obligations. We observed the complexity of the drafting process and the HRC's emphasis on precise wording to avoid confusion about such important issues as pretrial detention and solitary confinement. We witnessed long debates between specific words such as “initiation” or “commencement,” and even the meaning of the term “arrest,” with Committee members chiming in with concerns about how meaning changes in translation to other official UN languages like Spanish or French. Although the difference may seem minor, the HRC must provide states with clear guidance on a serious matter – how to comply with international human rights law. Thus, every word in

the comment can impact how states uphold the basic rights enshrined in the ICCPR.

Finally, our third goal in traveling to Geneva on behalf of the Clinic was to engage with other UN agencies that address human trafficking. We sought to learn how UN agencies approach this serious problem and how we can support such work on the international level. We met with organizations including the Special Rapporteur on Trafficking in Persons, the Special Rapporteur on Contemporary Forms of Slavery, the International Labor Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR). We were also fortunate to be in Geneva during the lead-up to Switzerland's first annual Anti-Human Trafficking Week. As a kick-off to that week, the Swiss Federal Department of Foreign Affairs along with the ILO, UNHCR, the International Organization for Migration (IOM), and OHCHR hosted a conference, panel discussion, and exhibition on human trafficking. We attended the exhibition and heard from an international panel of experts on human trafficking issues.

Although the United States postponed its hearing before the HRC at this time, those of us who traveled to Geneva gained exceptional first-hand knowledge of how the Committee operates and its many roles and functions. As members of the Clinic, we brought these experiences and knowledge back to Santa Clara and hope to share the fruit of this opportunity with our peers to promote the projects and goals of the Clinic. Overall, the experience was truly a form of education that is impossible to gain within the confines of a classroom, and sheds light on just one example of how invaluable participating in a Clinic can be.

## State, Nation, and World

### STATE

*San Francisco* - Twitter set its preliminary price range between \$17 and \$20 per share in its Thursday filings. It also selected Friday, Nov. 15 as the tentative date to begin trading. Twitter has 545 million shares outstanding, and plans to sell about 70 million in the IPO. The stock will trade under the ticker symbol “TWTR.”

*San Jose* - Bake sales continue, but carwash fundraisers are indefinitely forbidden in San Jose. The San Jose Environmental Services Department showed up at a Lincoln High School cheerleader fundraiser and told the team to pack up because the fundraiser violated storm drain discharge laws. The Environmental Service Department Communications Manager clarified that the prohibition also applies to washing cars at home, and told citizens to report violators by calling the number stenciled on storm drains.

### NATION

*North Carolina* - Republican precinct official Don Yelton resigned after appearing on a segment of *The Daily Show*. The segment analyzed North Carolina's new voter ID laws that many accuse of targeting black voters. In one unfortunate soundbite, Yelton said that he didn't care if the law prevents “lazy black people that want the government to give them everything” from voting.

*Bayonne, New Jersey* - Police charged a man with two counts of aggravated assault with bodily fluids after he refused to leave the bathroom in a woman's apartment. When police arrived, Alvaro Grajales had locked himself in the bathroom, and threatened to kill anyone who entered. Officers forced their way in and arrested the man, who was naked in the bathtub. During the arrest, Grajales spat at officers.

### WORLD

*Vesterøy, Norway* - A man hunting for moose accidentally shot a man who was on the toilet at the time. The hunter's bullet missed the mark and continued through the wall of a cabin and into the abdomen of a seventy-year-old man. The injured man was airlifted to a nearby hospital, and the hunter was taken to a police station for questioning.

*New Westminster, British Columbia* - Vic Bryant spent nearly \$1,500 contest a \$100 parking ticket. Bryant was ticketed when his son parked in a spot too close to a driveway. After the original ticket fine increased when he missed a payment deadline, Bryant hired a lawyer to contest the six-day appearance notice that was less than the fourteen day provincial requirement. Bryant stated that it was not the amount on the ticket that mattered, but that he was trying to prove a point. Bryant won, but the judge dismissed his case for legal fees.

# Rumor Mill with Dean Erwin

By Susan Erwin  
Senior Assistant Dean

Hi All,

I asked the hard-working staff of this paper to let me know what kinds of things they were hearing in the hallways these days and here's the scoop:

*"Some people have been annoyed that journal units require 75 hours each, rather than 50, and they don't find the 'unsupervised' aspect convincing."*

The only folks who can get credit for journal work are the editors. They can get 1 – 4 units for their work as editors. In 1985, the faculty voted and approved the following: "It is the sense of the faculty that the quantitative and qualitative basis for academic credit for Law Review is seventy-five hours of work requiring legal skills for each unit of academic credit." Unless and until that rule is changed, that's the one we will follow and editors are going to have to do their 75 hours.

For those that remain unconvinced and for others of you that disagree with law school rules, you can always try to change the rules. First, you have to do your research: talk to the stakeholders and administrators and professors involved, check out the relevant rules (law school handbook,



aba accreditation rules, journal by-laws), research what other law school are doing, and talk to your professors. Then, state your case in writing and pass it on to one of us (your faculty advisor, me, an SBA officer, me, your class rep, me, Dean Joondeph or Professor Jean Love - the chair of the Student

Affairs Committee. Your petition will be reviewed and discussed and you will be given a response – maybe even a faculty vote to implement the rule change! You just have to do your homework and present a convincing case!

*"People are concerned about taking fewer than 12 units in their last semester. They don't want to take more units than necessary for graduation (\$\$\$) but also want to make sure they are informing whomever they need to inform, including anything that could affect financial aid (\$\$\$)."*

Once you finish first year, you can switch back and forth from full to part time whenever you wish. Just fill out the Division Transfer Form, under Forms on the Current Students webpage, and click submit. Law Student Services will take it from there. If Financial Aid is a concern, you should check with Law Financial Aid prior to changing divisions – the budget for a part time student is going to be less than the budget of a full time student. Full time is 12 – 17 units and part time is 8 – 11 units. As you

get closer to graduation, make sure that you are running your Degree Audit to make sure that you end up with the 86 units required to graduate. (85 units means you're coming back to see us next semester)

*"Supposedly some believe that the Bursar's office is purposely hanging on to student's federal funds for an extra week to collect interest and that this is the reason students now get funds in the second week of class rather than the first. Others heard that it was because the school was trying to coordinate the disbursements with the undergraduates. One student told me she only ate oatmeal for three days because of the delayed payment."*

No one should be broke waiting for financial aid! Please go see our financial aid folks or come see me if you need help. Watch the emails coming from Law Financial Aid – they tell you what to do to plan ahead until refunds are available and what to do if you need funds before then. You have to take responsibility for your finances and plan ahead but you can do it.

The university policy is to hold the refunds until add/drop is over (which they tell me is the policy of most schools). It prevents over-refunding, which leads to chasing you down to get the money back, which many times leads to collections, which isn't fun for anyone. In the past, the Bursar has made exceptions for the law school but could

not continue to do so - which is why the Law Financial Aid office stepped in to try to keep you informed and help you plan ahead . . . They are a great resource for you, be sure you are checking in with them if you have questions.

*"I've heard this a couple times before when I was a 1L and supposedly it is swirling among the 1Ls right now: Sections 1 and 2 are 'stacked' with students with scholarships and there is not an even distribution of the smarter students, which skews the curve across sections."*

My office does the dividing, so I am absolutely, 100% positive that sections are not stacked. We create a list of students by LSDAS Index Number (a combo of your undergrad GPA and LSAT score). We then go straight down the list and count you off – section 1, section 2, section 3 . . . Every section has a great mix of students and we hope you all do really well on your upcoming exams! :) )

Important Note to Upper Division Students: Keep watching your SCU email for wait list and registration information from us for the rest of the semester and over the break! We now begin the process of trying to make sure you all have schedules that work for you. :)

*Heard any good rumors lately?? Have any questions?? Let me know – serwin@scu.edu*

## Silicon Valley Capital Club Honors SCU Law Milestones Club Celebrates Rodriguez '92 as State Bar President, Kloppenberg as Dean

By E.J. Schloss  
Staff Writer

On October 10th, the Silicon Valley Capital Club played host to a reception honoring two Santa Clara Law milestones. Attendees celebrated the election of alumnus Luis Rodriguez as president of the California State Bar, and recognized the appointment of Dean Lisa Kloppenberg. Overlooking the skyline of downtown San Jose from the rooftop lounge, the venue and event offered a glimpse into the expanse of Santa Clara Law.

A graduate of both the Santa Clara University undergraduate ('89) and law program ('92), Luis Rodriguez was recently elected the president of the California State Bar. Rodriguez, the 89th president of the California Bar, will be both the first Latino and first public defender to hold the office.

Rodriguez, 46, was born in Los Angeles to Mexican immigrant parents. At three, Rodriguez and his family moved to Ciudad Juarez in Mexico, where he would spend the next seven years until returning and attending public school in Los Angeles. He attributes his

interest in public defense law to both his personal diversity and the discrimination he saw as a child. The first to attend college in his family, Rodriguez graduated with honors from Santa Clara and enrolled at the law school. While a student at Santa Clara Law, Rodriguez began working at the Santa Clara Public Defender's Office. The pursuit of public defense work led him back to L.A., where he has worked as a lawyer since 1994 in the L.A. County Public Defender's Office.

The election of a Latino as president of the California Bar reflects not only the faith in Rodriguez's ability, but also the ever-changing demographics of the state. Collected every five years, the 2011 survey of California State Bar Members noted that 4.2% of members self-identified as having a Latino/Hispanic ethnic or racial background. With the 2010 California Census showing Latinos accounting for 37.6% of California's population, a large divide exists between Latino bar membership and the Latino population in California. If legislation promoting proposed immigration reform becomes a reality, an estimated three million

undocumented persons could become eligible for citizenship or legal residency; the vast majority of whom will be Latino. Rodriguez's understanding and relationship to the Latino community could prove crucial within the transition.

Prior to his current position, Rodriguez served as president of the Mexican American Bar Association of Los Angeles County and also the California La Raza Lawyers Association. Rodriguez has outlined his agenda as including trial court funding, oversight of state services in light of federal immigration reform, and the burgeoning issue of student debt.

Similar to his predecessors, Rodriguez will balance his new responsibilities with his current job. Rodriguez is married and the father of two daughters.

Numerous Santa Clara Law



*Rodriguez is the first SCU Law alumnus, first Latino, and first public defender to serve as president of the State Bar of California. Photo Courtesy: E.J. Schloss*

alumni from throughout the Bay Area attended the event, as well as a few current students. The event featured drinks, light food, engaging conversation, and a stunning view from the top floor of the Knight Ridder Building in downtown San Jose. Both Dean Kloppenberg and Luis Rodriguez spoke briefly at the event.

# SCU LAW STUDENTS AND FACULTY SPEAK OUT AGAINST CHANGES TO UNIVERSITY REPRODUCTIVE HEALTHCARE COVERAGE

On October 3rd, Santa Clara University President Michael Engh sent a letter to university employees announcing that employees' health insurance plans would exclude elective abortion coverage. In the letter, Father Engh said that Santa Clara's "core commitments as a Catholic university are incompatible with the inclusion of elective abortion coverage." The decision has resulted in substantial backlash, including public demonstration by undergraduate professors and a petition on Change.org, which has over 630 signatures. The petition can be found and signed at [www.change.org/petitions/scu-reduction-of-reproductive-health-coverage](http://www.change.org/petitions/scu-reduction-of-reproductive-health-coverage), or by searching "change.org scu reproductive" on Google.

## Original Petition Reproduced Here from Change.org

“ We, the undersigned members of the Santa Clara University community, request a prompt and meaningful opportunity to appeal the University's decision to reduce essential reproductive health care coverage provided by its health insurance plans. This decision, announced in a letter from President Engh dated October 3, 2013, curtails the University's current and long-standing coverage of abortion. We object to the unilateral nature of this decision as inconsistent with our established collaborative governance process. As community members committed to difficult dialogues about how best to achieve a fair, diverse, and inclusive environment, we are gravely concerned that such an important health care decision was made without consulting representatives of the people who will be adversely affected by this precipitous change.”

## Student and Faculty Responses, Reproduced Here from Change.org

“ It is a medical decision between a woman and her doctor, and your nose doesn't get to wedge in between. It is even more insulting that this was made as a unilateral decision without respect for the many voices that make up the SCU community.”

**Jordan Barbeau**  
SCU Law Student

“ I have process concerns (one man making decisions for hundreds of women and their male friends, partners, and loved ones without consultation) and substantive concerns (the decision undermines the autonomy and dignity of SCU's women and is an insult to us as colleagues, students, and alumna). Given that contraception is covered, this policy clearly does not reflect church dogma; as such, the decision is arbitrary and enables one man's values to be imposed on the rest of us. Abortion involves a medical decision between a woman and her doctor, and an ethical dilemma for the woman and whomever else she decides to consult. SCU has no role in this decision-making. Respect us and trust us to make the right decisions for our own lives.”

**Beth Van Schaack**  
SCU Law Professor

“ I'm disappointed but not surprised, rich men have been telling women how to run their lives for a very long time. To have made the decision before the discussion makes the whole notion of shared governance ring hollow.”

**Ellen Platt**  
SCU Law Librarian

“ Because I believe in due process (both in the tenure process and in a woman's right to make a very difficult medical decision in consultation with her doctor). Please see Beth's V's e-mail for more details as to what I think.”

**Jean Love**  
SCU Law Professor

“ Lack of due process especially when affecting constitutional rights is unfortunate and not what I know to be true of SCU as an institution. As an alum, I am sorely disappointed.”

**Supriya Bhat**  
SCU Law Alumna

“ I would simply ask that President Engh and all those responsible for this decision to reconsider the far reaching effects of this decision, focussing first on the women who will be directly affected. Then think about their families. Then broaden your view, and think about the University community--staff, students, faculty, alumni. You comment on the progress being made by Pope Francis. My immediate reaction to this news: the University is seizing an opportunity to take a step backward. An unnecessary step. And one that will do irreparable damage on so many fronts.”

**Bryan Hinkle**  
Assistant Dean, Law Enrollment Services

“ For me, this is a civil rights issue. Women should have access to the full range of reproductive health options, and be able to choose for themselves what is best for their own lives. Also, my personal opinions about abortion rights aside, I am concerned by the unilateral nature of this decision disregarding the commitment to shared governance at SCU. Framing this decision in the context of the inspiration that is going through the catholic church by Pope Francis's leadership is particularly cynical.”

**Claudia Josi**  
SCU Law Student

“ This unilateral decision saddens me in so many ways. As a university that prides itself on having difficult dialogues, why will this conversation happen after the fact...”

**Prano Amjadi**  
SCU Law Librarian

“ I respect the faith-based concerns of the University, and I appreciate the tone of the President's letter. Still, issues of health care should be discussed before a decision gets made, rather than afterward.”

**Ray Bernstein**  
SCU Law Professor

## President Michal Engh's Response



#### MESSAGE TO SCU FACULTY AND STAFF

25 October 2013

Dear Colleagues,

Let me begin by thanking each of you who have expressed your views on my decision regarding the health care coverage offered by the University. I have received your emails and letters, the summaries of statements in the two fora, and the on-line petition, and I have listened, in individual conversations and at meetings of the Faculty Senate Council and the Staff Senate. I am grateful for all that has been expressed, and I wish to acknowledge all that I have heard. Before I continue, let me recognize the assistance provided by Laura Ellingson, Kirk Hanson, and Mick McCarthy, S.J., assistance to the university and to me personally. We are in their debt for engaging in the first steps of a wider dialogue about issues of deep significance to all of us. More on next steps will follow below, but let me review briefly what I have read and heard.

I realize that concepts about shared governance are not sufficiently in alignment among administrators, faculty, and staff. This situation causes confusion and requires greater clarity and definition to promote greater trust. My decision and the steps by which I reached my conclusion have alarmed many. As Juliana Chang, president of the Faculty Senate, reported to the board of trustees, "I am hearing as well about a loss of faith in a governance process that is assumed to be consultative and collaborative" (17 October 2013). Another person wrote via the Online Comment Form, "It is not just sad, but also deeply painful, that this decision has been made unilaterally and has been wielded like a blunt instrument from above." Others have repeated similar sentiments about the abbreviated process of consultation, which I acknowledge, and for this pain I am deeply sorry.

From the fora, the notes record that one person called for the acknowledgement that the president's decision would "impact women unequally." Numerous individuals elaborated on the unequal consequences of the health care decision for women. "I believe that women, women's feelings, ideas, integrity [and] autonomy are collateral damage in this war." Another wrote on-line, "I must stand with those who are rendered voiceless and especially with women who are marginalized by this decision." From the petition: "This is a discriminatory act against women – it's sexist." In comment after comment and in many conversations, I have heard the pain that many women feel not only in this decision, but in other decisions that are largely enacted by men and that control women's bodies. The anger, sorrow, and mistrust voiced again and again conveyed to me the depth of feeling about abortion, a decision that ultimately is always difficult, intensely personal, and painful for women. Evermore clearly I see and hear the regrettable pain the decision has had for many.

I also recognize that this change in health care coverage scares many and arouses fear of how it impacts Santa Clara's openness to diversity. As I heard on 17 October at the Staff Senate, "Many are wondering about where the LGBT community will fit into the Catholic mission [of the university]." A faculty member has also wondered, "Who knows what could be next?" This fear of further possible decisions from my office is an unintended but deleterious consequence of my decision that I have heard from you.

I reaffirm my commitment to the shared values we cherish at Santa Clara, the values of shared governance, the equality of women, and of inclusivity. I do not see or intend my decision as signifying a trend toward limiting the rights and roles of any members of our inclusive community. It has become clear to me that significant work will be required on the part of my administration to reestablish trust and promote reconciliation in our community.

What has impressed me in the weeks since 3 October is the level of civil discourse, the exchange of ideas and concerns, and the ability of the community to address respectfully the difficult issues at hand. Again and again I have been impressed with and proud of the commitment of so many to the culture and values of Santa Clara. Your responses have given me hope and encouragement that we can wrestle with the challenges of what it means to be a Jesuit Catholic university in times of change.

Let me also look to how we build for the future.

On Tuesday, 29 October I shall speak at the UCC Orientation meeting to reaffirm my commitment to our shared governance processes.

On Monday, 4 November, at noon, in the Recital Hall, I shall hold a meeting with faculty and staff to present several steps to engage a broader conversation on how Santa Clara's Jesuit identity functions in our campus community. I shall invite your comments so that I can hear your thoughts and reactions for what I would hope would be constructive dialogue in the months ahead.

I am in discussion about a November meeting with the Benefits Committee.

I shall continue my meetings with individual members of the faculty and staff, as well as with the Faculty Senate Council and Staff Senate.

Thank you again for your dedication to the ideals of the university and your demonstration of deep care for the respect of all. I look forward to talking with you and to seeing you at the faculty-staff meeting on 4 November.

Sincerely,  
Michael E. Engh, S.J.  
President

# Furloughs in the Intelligence Community: Why the Human Factor Matters

By John Fox  
For The Advocate

We all know the basics: the federal government's inability to set a budget and stick to it is causing harm to the United States. This harm rears its ugly head in many ways. It resulted in hundreds of thousands of federal employees being furloughed. It resulted in the closure of our national parks and it has put environmental concerns in the back seat. It even put a hold on the National Zoo's Giant Panda Cam and led to CNN flooding the Internet with dozens of articles titled "What the Government Shutdown Means to You!"

However, these harms can be fixed. Furloughed employees can be retroactively paid, parks can be reopened, Panda Cams can be turned back on, and CNN will eventually come up with an original article. The most damaging facet of the harm from shutting down the federal government is the damage to human factor.

Federal employees were put on unpaid leave for the second time in as many months. Simply providing retroactive pay or any other short-term solution does not necessarily repair this devastation. Morale among employees throughout the federal government has been devastated.

So what does this mean?

It means the nation is at risk. Not theoretical, abstract, or temporary risk, but very practical, immediate, and long-term risk. This risk is most evident by the effects furloughs are having on the intelligence community.

The intelligence community is a collection of twelve federal agencies that operate under the Director of National Intelligence. These agencies collect and analyze information so that our nation's policy makers can make sound decisions. Without quality intelligence there can be no quality policy-making.

Pause and let that sink in for a moment.

As a result of partisan gridlock, nearly 70% of the intelligence community was furloughed for some period of time over the last two months. Let me rephrase that: Seven out of ten people providing our government with the intelligence necessary to make informed decisions have spent considerable time at home sitting on the couch, probably reading the last edition of *The Advocate*.

So let's ask this question again. So what?

Devastating morale in the intelligence community is dangerous for several reasons – and I'm not talking about hurt feelings or damaged pride.

First, the federal government is well aware of its own ineptitude. Agencies throughout the government spent months preparing for a possible government shutdown.

These preparations take a considerable amount of an employee's time that could otherwise be spent, you know, actually performing their statutorily defined duties. Nevertheless, agencies are less efficient as they prepare for furloughs.

The way furloughs work is that each employee unofficially gets one of two designations: essential or nonessential. Essential employees don't get furloughed



The recent government shutdown and sequestration has led to a lack of job security within the intelligence community. Photo Source: [www.defense.gov](http://www.defense.gov).

and nonessential employees have to start planning their time off – and how to pay their bills. Employees are notified months in advance which category he or she falls into. Consequently, employees often work for months with a little note on their desks reminding them that they are not really that important. Chances are that employee won't work at 100% efficiency if he doesn't think his work is

essential. Even if the government doesn't shutdown, or the shutdown is only brief, the psychological damage is already done.

Second, furloughed employees in the intelligence community are prime targets for foreign intelligence agencies. The screening process in the intelligence community is so intensive because potential

employees with vulnerabilities must be screened out. Foreign agencies are constantly probing employees in the American intelligence community for weaknesses to exploit.

Take someone with a gambling addiction, for example. An individual with a gambling addiction can be

exploited because of the high probability that this individual will develop a crippling amount of debt. A foreign intelligence agent can approach this individual and offer to pay off their debt in exchange for information and access. Hoping to keep the debt private, this individual might accept the foreign agent's offer. This is Recruitment 101.

In the present case, furloughing employees places individuals in terrible financial situations. If Uncle Sam can't pay an employee's bills, there's a good chance that someone else will, say the MSS (China) or the ISI (Pakistan), for example. And remember, these employees are not people living in a vacuum – they have families and children. Further, a quick fix on the Hill does not alleviate this risk. The fear of not being paid while employed within the federal government has become constant. The effect of the sequestration cuts last summer, and the resulting furloughs, continue to linger.

Third, fiscal uncertainty is causing crippling long-term effects in the federal government's talent pool. We want the very best and brightest to be protecting us and providing our policy makers with quality intelligence. However, if the intelligence community can't afford to pay its employees, those employees are more likely to work in the private sector where an employer will gladly hang an "Essential" sign outside the employee's cubicle. Federal employees with Ph D's and JD's, who are already earning less than half of what their private sector colleagues earn, simply won't continue working in the government if they are facing even more cuts. Further, hiring throughout the federal government has already been at a virtual freeze over the last five years. Quality applicants are looking elsewhere because the federal government is no longer capable of paying its employees. After all, why should a recent graduate work for an employer that offers half the compensation and a high probability that he will be temporarily put on unpaid leave?

Looking forward raises perhaps the most troubling notion: Any solution will probably be a temporary one. The federal government has been facing this crisis since 2009. Every agreement since then has been temporary. Its patchwork meant to put the problem off while politicians continue to use federal employees as pawns in their perpetual posturing for power. Consequently, federal civilian employees in the intelligence community continue to suffer harm as a result of Congress' ineptitude. In other words, the damage has been done.

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## Students Participate in Pro Bono Week

"PRO BONO"  
From Front Page

student even found herself a new friend and adopted one of the cats from the shelter. Special thanks to the SALDF for organizing this site!

Volunteers also went to the American Cancer Society's Making Strides Against Breast Cancer fundraising walk, where they bumped into a group of Santa Clara alumni walking as a group! The volunteers were there to cheer walkers on, to keep them on course, and to clean up after the walkers passed. Many walkers wore t-shirts with pictures of loved ones on them or identifying themselves as survivors. It was a very moving morning for these volunteers.

Students also volunteered with Save Our Trails to help develop the Three Creeks Trail in Santa Clara, a very

important trail because it connects with at least three other trails across town, by mulching the trail. Hard word, but



Photo Source: Jacqueline Prisbylla

definitely worth it!

At the half-acre Forge Garden on campus, which got its name because it used to be the site of SCU's blacksmith forge many years ago, volunteers, including Deans Lisa Kloppenberg and Susan Erwin and Professor Kandis

Scott helped pull weeds and spread out mulch for much of the morning to get the garden ready for the winter. Students also helped assemble benches that convert into patio tables to be used for classes and gatherings at the garden and were able to plant some winter vegetables.

Finally, many students stayed on campus and helped Women & Law make no-sew fleece blankets for Project Linus, which provides blankets to children in need. First year students also helped after their practice exam. Volunteers were having so much fun they whipped through the blankets in no time!

The Community Service Committee will be organizing our third biannual Community Service Day this spring, so if you didn't make it out this weekend, you can come out in the spring and bring your friends!

Again, thank you to everyone who participated for all of your hard work!

# In BART Deal, Unions and BART Nab Victories

## Workers Win on Wages, BART Wins on New Work Rules, Pension

By Michael Branson  
Editor-In-Chief

The BART strike may have ended last Monday, Oct. 21, but many questions remain about which side is to blame for the drawn-out negotiations. The detailed terms of the new four-year tentative agreement have not yet been made public, and probably will not be released until after members of the two largest labor unions vote to approve the agreement, though many papers have reported on terms based on unofficial sources.

Throughout the strike, many Bay Area commuters have not been particularly sympathetic to BART employees. In the previous labor contract, BART union workers made an average gross pay of \$76,500—among the best public transit wages in California, if not the nation. Further, employees made no payments toward pensions and paid only \$92 per month for health care coverage.

According to a message from the BART general manager before the strike, the main sticking point for BART was not only the lack of agreement on wages, but also “critical work rules that drive scheduling, work assignments, use of technology and the ability of BART to

adopt industry best practices.” According to BART, during the negotiations in which labor unions declared a strike, mediators had offered an agreement model that included an “economic package” along with work rules, to which BART agreed. The unions refused to agree to the work rule changes, and the second strike of the summer began.

Throughout the negotiations, BART’s goal has been to agree to a contract that would allow BART to make the necessary investments for the future. This necessitates keeping wages down to allow further investment into the new fleet, a new train control system that allows more trains to run during rush hour, expanded maintenance facilities, and new services to Santa Clara and Contra Costa County. These capital projects are estimated in the billions of dollars. BART could raise the necessary capital through future tax increases, but BART, according to the Contra Costa Times, BART must show “financial restraint” in the tentative agreement to win over voters. Additionally, BART wanted to ensure removing any red

tape, or line item approval by unions, regarding upgrades to technology, energy efficiency, and safety.

In the period between the first strike in July and this most recent, the major unions demanded salary increases of over 20%. Before the strike, BART offered a wage increase of 3% each year, which, when compounded, amounts to a 12.5% increase. Additionally, BART



Photo Source: [www.bart.gov](http://www.bart.gov)

included a conditional wage proposal that would give employees up to \$1000 each year based on ridership exceeding forecasted levels. Although the number has not been publicly disclosed, several Bay Area papers have reported the wage increase in the tentative agreement increasing 15.4% over the four year contract, or 16.3% when compounded.

Despite the fights over wages, BART and the labor unions largely came to agreement on terms related to health care and pension payments. In an

important victory for BART, employees will contribute to their pension plans, albeit modestly, for the first time. In the first year, employees will contribute 1% of their salary to pensions. The contributions increase by one percent each year to end at 4%. This is lower than BART’s original hopes for a 2% contribution in the first year and a 5% contribution by year four, but still an important precedent for future contracts. Additionally, health care payments will also increase. Under the previous contract, medical insurance premium payments were \$92 per month. According to the San Francisco Chronicle, this figure is about \$129 per month under the tentative agreement, down from a first-year starting payment of \$132 (increasing to \$144) in the pre-strike BART offer.

Although many have strong opinions about which side “won” the negotiations, we can all agree that we are happy to (hopefully) avoid BART strikes for the next four years. The two major labor unions are set to vote on the tentative agreement this week. International Union Local 1021, which represents 1,430 mechanics, custodians, and clerical workers, will vote from 10 a.m. to 10 p.m. at the Oakland Marriott City Center Hotel. Amalgamated Transit Union Local 1555, representing 945 station agents, train operators, and foreworkers, also votes this Friday.

## Entrepreneur Law Clinic Visits Keiretsu Forum

By Amanda Demetrus  
Senior Editor

The Entrepreneur Law Clinic, the newest of the Santa Clara Law clinics, has made great strides in bridging the gap between the academia and the practical knowledge needed as an attorney. I can tell anyone, from my own experiences, that this gap can be more like a chasm at times. Between classes in the business school and law school classes, I’ve heard quite a lot about investors: Taking venture capital money is isn’t worth it because they will force your out of your own company. Angel investors are filthy rich and invest in wineries and yachts. Okay, so some times people like to exaggerate when they haven’t exactly hit a home run when pitching their ideas to investors. Nonetheless, my perception has been skewed. This is why the Entrepreneur Law Clinic’s visit to the Keiretsu Forum was an invaluable experience and a great stride for the students of Santa Clara Law. Keiretsu is a collection of Angel investors, or individuals who meet certain criteria including a minimal personal net worth, who provide entrepreneurs the opportunity to present their ideas to the group in hopes of receiving funding.

It works like this. Entrepreneurs submit their business plans to the group. After two rounds of presentations to a panel, the companies are whittled down to about six of the strongest proposals. These companies are then vetted to present their ideas to the forum, this past meeting happened to be held at Wilson

Sonsini’s offices in Palo Alto. They get fifteen minutes to impress a group of seasoned business people with a skeptical eye for embellished financial projections and over enthusiastic target-market analysis. After each company has presented, the entrepreneurs are excused and the group has a “mind-share” session where investors discuss the pros and cons of each proposal. The group will then do “due diligence” reviews of the companies to verify the validity of their facts and figures as well as look for hidden issues. After this, the Angels may invest as they see fit. Think of it as a less dramatic version of Shark Tank where the investors are not anywhere near as annoying as Mark Cuban. Needless to say, the whole experience was wildly entertaining.

Keiretsu forum is one of the world’s largest angel investor networks with over 1,000 members on three continents throughout 27 chapters. Investors in the group hear pitches from companies with products ranging from computer software to medical devices to retail consumer items. One of their most recent companies to produce a return was Clarisonic, which was sold to L’Oreal for a 13X return. Keiretsu



Photo Source: [www.keiretsuforum.com](http://www.keiretsuforum.com)

started in the East Bay in 2000 by Randy Williams who Mr. was co-founder and Director of Diablo Valley Bank and President of various other financial institutions before founding Keiretsu. In Northern California, the group has 29 direct investments and 75 members.

We had the opportunity to meet investors from across the globe and saw some incredible new companies. The investors came from a multitude of backgrounds but they all had a clear business acumen that will serve themselves and the companies they invest in, a great benefit. The group’s willingness to pledge assistance in ways other than monetary contributions to companies regardless of a member’s investment was unexpected. Those present could offer to make introductions or even become a customer. The experience overall was enlightening. It turns out Angels do invest in more than just wineries and yachts and are actually an integral part of the Silicon Valley entrepreneur community.

## Dr. Rice discusses three shocks of 21st Century

“RICE”  
From Front Page

has brought about a significant shift in global governance structures. Rice used examples from the streets of the Middle East to emphasize that the world is clearly rejecting Authoritarianism as an unstable form of government. She compared the protesters in Tahir Square to the authors of the Declaration of Independence, and urged the entire global community not to lose hope for democracy in the Middle East.

In her closing remarks to the packed Mayer Theatre, Rice injected optimism and reassurance about the future of the United States at home and abroad as well. But the former Secretary of State was also quick to note that it is, however, a mistake to think that democracy is just what their government does. She emphasized that for democracy to be successful, citizens must care about their rights and responsibilities. With these values in mind, she reminded the crowd that the United States is “a country that has so many times made the impossible become the inevitable,” and that she believed history would yet again repeat itself.

For more information on Santa Clara University’s “President Speaker’s Series” or on this event, please visit [www.scu.edu/speakerseries](http://www.scu.edu/speakerseries).

# Are You Not Entertained?

## *When Athletes Celebrate, How Much is Too Much?*

By Michael Bedolla  
Sports Editor

In Game 3 of the National League Championship Series, LA Dodger Yasiel Puig crushed a line drive into deep right field, admiring his shot with a bat flip as if he had hit a home run. He then raised both arms in the air, reaching third base with a stand-up triple. His celebration drew the ire of the St. Louis Cardinals after the game, who felt that Puig's antics were sophomoric and disrespected both them and the game of baseball. Dodger nation, meanwhile, immediately mobilized to defend Puig's conduct as the natural response of a dedicated and passionate player celebrating a crucial hit in a pivotal game of a playoff series.

For even the most hardcore sports fan, the boundaries of what constitutes an appropriate in-game player celebration are murky at best. Like most things in sports, the argument begins with whether or not the player is on your team or celebrating at your team's expense. We tolerate a certain degree of celebration for significant in-game accomplishments like goals, touchdowns, and home runs, but our threshold is lower for less impressive ones like routine strikeouts or tackles. Victory celebrations usually require some overly-dramatic element such as a walk-off hit to qualify, unless the victory is one to qualify or advance in the playoffs. The list of circumstances to be weighed is almost endless.

Adding to the confusion is that most sports seem to operate with an unwritten, yet nonetheless sacred Code - a combination of mutual professional respect, game traditions, and internal policing that each player implicitly accepts upon being called up to the big leagues. A big hit in the NFL entitles the tackling player to do a brief dance for the

The NFL has regulated these boundaries repeatedly, replacing the Football Code written rules enforced by on-field officials determining what is permitted in player celebrations. Anyone aware of the name "Terrell Owens" is familiar with the NFL's desire to curtail his polarizing celebrations, which had evolved from the spontaneous to the

entertainment, but a demonstration of competition and athletic ability under the banner of mutual respect and sportsmanship. Athletes may still take joy in their success, but must celebrate in a manner that is both commensurate to their accomplishments and respectful of their adversaries. This is arguably the first lesson that young athletes learn: to be

gracious in victory as well as in defeat, and to salute the efforts of all participants, regardless of outcome.

When judging the actions of an athlete, we should remember that they are *professional* athletes, and hold them accountable to that standard. Every professional athlete's career is littered with spectacular plays, and an athlete's celebration should be mindful that he or she has likely accomplished the same or similar feat dozens of times before. Because one athlete's triumph is another athlete's failure, celebrations should strive to preserve this professional camaraderie.

What separates the exceptional sports moment from the asinine is that none of the truly great celebrations were preconceived or disrespected the

opposition. Many of the most iconic images in sports have been athletes celebrating: Brandi Chastain revealing her sports bra to the world, Bobby Orr flying through the air, or Michael Jordan's leap. In this, athletes everywhere can learn a valuable lesson: history honors those that celebrate with class, while the juvenile antics of showboaters like Yasiel Puig are quickly forgotten.



One of these things is not like the others - Sources (clockwise from top left): Brandi Chastain, AP; Bobby Orr, AP; Yasiel Puig, AP; Michael Jordan, Chicago Tribune

fans; the same action in an NHL game would effectively be placing a bounty on one's own head. A player in baseball can admire his homerun as it sails toward the bleachers, but can only do so for a limited time, and should not take an excessive amount of time to round the bases during his "victory lap." The Code is effectively an unwritten constitution: existing in principle, if not in a tangible medium.

meticulously choreographed. Excessive celebrations, taunting, and use of props now all carry 15-yard penalties on the offending team. While players are still free to celebrate big plays, their freedom of expression has been limited to protect the integrity of the game.

The integrity of the game requires both fans and players alike to remember that sports are not just a spectacle of

## Professor Eric Goldman's Tech Law Blog Gets Fresh Redesign

By Jake McGowan  
Managing Editor

On behalf of everyone working on Professor Eric Goldman's *Technology & Marketing Law Blog*, I am excited to say that last Friday we launched a complete redesign of the website.

The blog was built by one of Professor Goldman's Internet Law students back in the fall of 2004 and used the Movable Type 3.2 blogging platform. Over the past nine years, the blog has grown and garnered numerous accolades from the online legal community. Despite this sturdy growth, it was time to make a

change and refresh the design.

The site now uses the current version of the popular WordPress platform and features a cleaner user interface. It also now features comments and a better navigation system.

As with any website redesign, however, this transition did not come without difficult technical issues. Some of the biggest challenges were (1) making sure the thousands of embedded links did not break, and (2) preserving RSS subscribers.

To those who read the blog: thank you! We would appreciate your feedback and welcome any suggestions

you may have as we are settling in to Wordpress. To those who do not read yet, we welcome you to join us at [blog.ericgoldman.org](http://blog.ericgoldman.org). The blog covers a wide variety of interesting issues related to intellectual property, Internet law, privacy, social media law, and much more. If you are too busy to remember while browsing, you can subscribe to receive posts via email or RSS.

I want to thank IL Addam Kaufman for all his hard work on the redesign process. When we hit a technical wall, Addam came in and really took this project over and to completion (if there is such a thing). He calmly walked

us through everything we wanted to fix and anticipated issues we did not recognize at first. Thank you Addam, we could not have done this without you! And of course, a big thank you to Professor Goldman for including me on this project and being patient while we tackled the various difficult technical problems.

You can find the Technology & Marketing Law Blog at [blog.ericgoldman.org](http://blog.ericgoldman.org). Professor Goldman also blogs for Forbes at [forbes.com/sites/ericgoldman/](http://forbes.com/sites/ericgoldman/) and has a personal blog at [blog.ericgoldman.org/personal](http://blog.ericgoldman.org/personal) (also redesigned).