



THE ADVOCATE



DAs Contest Constitutionality of CA's New Felony Murder Rule

BY: CASSANDRA WILKINS

"It was heaven on earth," said San Francisco Public Defender Jacque Wilson remembering his brother Neko's storied release in October 2018 under Senate Bill (SB) 1437's drastically narrowed felony-murder rule, which was signed into law September 30th, 2018 and went into effect on January 1st, 2019. "He went from initially facing the death penalty to walking out of Fresno County jail."

Under the old felony murder rule, anyone involved in a crime was responsible if a death occurred. Neko Wilson faced the death penalty for a robbery that led to the deaths of a couple in Fresno County, but no one accused him of killing anyone or even in being in the couple's home that evening. Prosecutors said that he helped plan the break-in, and that was enough for him to be charged with felony murder. Now, because of SB 1437, murder charges are now limited to people who actually killed, intended to kill or acted as a major player with "reckless indifference to human life."

There are now hundreds of resentencing petitions for relief from murder convictions, like the one used to free Neko Wilson, that are being filed under SB 1437, including 115 petitions in Santa Clara County alone. Apart from the additional effort required by revisiting old cases, some of which date back more than 30 years, California's prosecutors did not waste much time after the bill took effect in January to challenge the landmark legislation. Their main challenge: constitutionality. A September 2018 letter to then-Governor Jerry Brown from the California District Attorneys Association, signed by 41 counties, implored Governor Brown to veto SB 1437 on the grounds that the bill violates the state constitution. Their opposition delays verdicts on pending SB 1437 resentencing petitions. Most likely, the California Supreme Court will have to resolve the constitutional issue before delays are eased.

According to David Kaiser, a research fellow for the California Constitution Center at the University of Berkeley, the crux of the issue is two-fold: the alleged constitutional violation and policy behind that protection.

Article II, Section 10(c) declares that the legislature may amend a voter-enacted law by a ballot initiative unless the statute allows otherwise. Voters approved several murder-related initiatives, including Proposition (Prop) 7, which increased the penalties for felony-murder, and Prop 115, which expanded the list of felonies under the felony-murder scope. The felony-murder

doctrine allowed prosecutors to charge defendants with first-degree murder for a killing that occurred in the commission of a felony, even if the defendant didn't actually intend to kill. In the veto letter to Governor Brown, opposing prosecutors argued that SB 1437 changes the scope and definition of murder under Prop 7 without electoral approval.

On top of that, there is a separation of powers argument, said David Angel, Santa Clara County Assistant District Attorney. For Angel, like many other district attorneys, the underlying concern is that SB 1437 can greatly undermine California's robust initiative system, which he points out is stronger than most other states.

"If all that needs to happen for the initiative to be overturned is through a majority in the legislature, then you don't really have an initiative process anymore," he said. "Without that, you don't really end up with a functioning democracy."

But the courts are far from reaching a consensus. Orange, Yolo and Calaveras counties have ruled that SB 1437 is unconstitutional. Judges in San Diego, El Dorado and San Mateo concluded otherwise. Decisions are split, even among judges within the counties of San Luis Obispo, Fresno and Ventura.

Kaiser is not surprised.

"This is a complicated, messy issue," he said. "To prevail, [district attorneys] would have to show that there's something in SB 1437 that's directly impacting these ballot initiatives. But it's not clear that the way that SB 1437 has changed things necessarily changes [what Prop. 7 did]."

After working on his brother's case for eight years, Wilson joined forces with Re:Store Justice, a non-profit organization working towards criminal justice reform with Senator Nancy Skinner to author the final versions of SB 1437. Wilson insists that drafters of the bill carefully considered its language to avoid any conflicts with Props. 7 and 115, knowing that constitutionality may raise concerns from the opposition.

Instead, Wilson suspects that the fight on constitutionality may be rooted in the fact that SB 1437 restricts how district attorneys can use the . . .

Continued on page 4

IN THIS ISSUE

A.I. USED BY SF DA'S TO REDUCE IMPLICIT BIAS IN PROSECUTION Page 2

OAKLAND POLICE LOOK TO REPLICATE SUCCESSFUL OREGON MENTAL HEALTH PROGRAM Page 2

ENVIRONMENTAL IMPACTS OF NEW NUCLEAR WARHEAD RAISES CONCERNS Page 3

ACA 6: CALIFORNIA PAROLEES SOON MAY BE ABLE TO VOTE Page 3

CA LAWMAKERS SKEPTICAL OF POLICE USING FACIAL RECOGNITION Page 3

LOGIC GAMES TO BE REMOVED FROM LSAT Page 4

Q&A ON ENDING CASH BAIL W/ PROF. BALL Page 5

OPINION: THE FEDERAL JUDICIARY IS DROWNING Page 6

OPINION: STOP FOCUSING ON "LATINX" Page 8

#MeToo Comes to Big Law

BY: SIERRA SMITH

This year, two years after the #MeToo movement gained global popularity, thirteen female attorneys filed claims for gender discrimination and sexual harassment against two of the world's largest law firms — Morrison Foerster and Jones Day. Six women filed a class-action gender discrimination lawsuit against MoFo and seven filed a similar suit against Jones Day.

In late 2017, celebrities and millions of people posted the hashtag #MeToo to reveal the extent of sexual harassment and assault. Deborah Marcuse, a Managing Partner at Sanford Heisler Sharp LLP, the firm representing the plaintiffs in both the Morrison Foerster (MoFo) and Jones Day suits, said it is no coincidence these claims come after the #MeToo movement.

"I definitely feel that seeing other women coming forward publicly with their claims is a primary motivating

factor that helps new potential plaintiffs work up the courage to come forward," Marcuse said.

The class and collective action against MoFo, brought by six current and former female attorneys, alleges the global law firm practices systemic gender discrimination against female lawyers, particularly those who are pregnant or have children. MoFo has 17 offices worldwide. Of the six plaintiffs, four are currently employed in California offices, while two were formerly employed in Washington, D.C. and New York.

Jones Day has 41 offices worldwide. Of the seven plaintiffs in this case, four were employed in California offices, while the other three were in Georgia and New York. The complaint alleges the best work at the firm goes to the men, and the men are paid better and promoted more often.

MoFo and Jones Day respectfully declined to comment.

Continued on page 4



Photo by Adena Ishii

STAFF LIST

Editor-in-Chief

Ardalan 'Ardy' Raghian

Managing Editor

Joshua Srago

Senior Design Manager

Kristen Daly

Design Manager

Shivam Desai

Business Manager

Dustin Weber

Copy Editor

Jessie Smith

Photo/Art Manager

Cosette Cornwell

Staff Editors

Evan Gordon

Jenna Anderson

Emily Branan

Robby Sisco

Photographer/Graphic Artists

Benjamin Kim

Julia Okazaki

Lauryn Younge

Adena Ishii

Le Wee Yun



Staff Writers

Emily Ashley

Kirby Nguyen

Patricio Munoz-Hernandez

Taylor Deitrick

Brooke Barranti

Casey Yang

Erik Perez

Pedro Naveiras

Elaine Ke

Nathan Yeo

Emily Chen

Michael Cohen

Christine Coughlan

Denise de Villa

Adam Turton

David Cruz Quevedo

Sami Elamad

Nick Ross Bastovan

Maxwell Nelson

Shyam Rajan

Sierra Smith

Ekaterina Bulycheva

Sonya Chalaka

Tram Nguyen

Ashley Harunaga

Madeline Sullivan

Nicolas Garofono

Cassandra Wilkins

William Bliss

Hassan Said

EDITORS NOTE:

The Advocate wishes everyone a wonderful holiday season. Should you need help or assistance during the holiday season, please reach out to the resources in our community.

Second Harvest Food Bank of Santa Clara County:

Address: 4001 North First Street, San Jose, CA 95134.

Phone: 408-266-8866.

Web: <https://www.shfb.org/about-us/contact-us/>

Family Supportive Housing of San Jose:

Address: 692 N. King Road, San Jose, CA 95133.

Phone: (408) 926-8885.

Web: <http://familysupportivehousing.org/>

Santa Clara County Suicide & Crisis Hotline.

Phone: 1-855-278-4204. Available 24/7.

Email us at lawadvocate@scu.edu

attorneys to track what actions took place.”

After a blind review, a preliminary decision for charging will be made. At the end of the traditional charging window, a complete police report will be released, including the unredacted narrative, body camera footage and photos to assist in making the final charging decision. If a review of the full report shows that the prosecution has added or dropped charges, they must explain such changes. Then, using these changes, the SFDA will refine the tool. “The expectation, however, is that [a] change in decision was the result of having more evidence [and not implicit bias],” Chohlas-Wood said.

“Even though there is a whole lot of grey area with actuarial tools, you can audit them, [whereas] you can’t audit a judge’s gut,” said David Ball, Professor of Criminal Law at Santa Clara University School of Law. “My hope is that people will acknowledge the fact that such actuarial tools are reflecting the structural racism that we have in our society, instead of sometimes blaming [them] for it. Even if we take away the actuarial tools, we’ll still have a society where a middle-aged white male is less likely to be arrested than a poor person or a person of color. Actuarial tools just tell us that, they don’t create that. If you start with the system where endogenous decisions made about policing and sentencing, and where poverty and race are correlated, they will reflect back the racism we have in society. These tools, themselves, and it’s unfair to blame them, are just holding a mirror to the society.”

Notably, there has been some criticism of the implementation of artificial intelligence by other prosecutors, who say that city crime maps cannot be ignored and racial information should be readily available. Professor Ball agreed that there is valuable information in knowing the location of the incident, saying “it’s more of a question of what’s the trade-off between racial disparity and accuracy.” Chohlas-Wood, however, noted that “the tool won’t replace the decision process itself, and all collected evidence will be available for review upon making final charging decisions.”

The bias-mitigation tool was fully implemented in the general felony intake unit by the San Francisco District Attorney’s Office in July. Yet, “the use can certainly be expanded to other case types in the future,” said Chohlas-Wood.

Santa Clara County will not be implementing Stanford’s bias mitigation tool, said Santa Clara District Attorney Jeff Rosen. While he acknowledged that explicit and implicit biases exist, he said that ultimately “artificial intelligence tools will not be the solution that is being searched for.”

Rosen does not want his office using blind tools in the decision-making process, but would rather have his District Attorneys review all the data when making charging decisions, he said.

However, Yolo County is interested in the “blind justice” tool, Chohlas-Wood said. While the tool was initially created for San Francisco County, as its use spreads, the tool can be easily tweaked to be more universal, which will also make it easier for other prosecutors in California and beyond to adapt.

Oakland Police Look to Replicate Successful Oregon Mental Health Program

BY: Sonya Chalaka

The percentage of California prisoners with a mental illness has increased by 77 percent over the past decade, according to the Stanford Justice Advocacy Project. Since 2000, there has been a 150 percent increase in the number of California prisoners currently being treated for serious mental disorders, such as schizophrenia, psychotic disorder and bipolar disorder.

Oakland, along with six other U.S. cities, is planning to replicate a mental health emergency program in Oregon, called CAHOOTS. This program seeks to address the medical and mental health needs of the community by adding mental health experts to police and fire teams responding to emergency calls.

With its emphasis on proactive diversion from incarceration to care, Crisis Assistance Helping Out On The Streets (CAHOOTS) offers a myriad of services, including crisis de-escalation, transportation to care facilities and housing, dispute resolution services and substance abuse intervention. CAHOOTS teams consist of medics and mental health crisis specialists, who respond to calls, unarmed and without police backup.

Last year alone, “we responded to 23,000 total calls in Eugene and [the neighboring city of] Springfield,” said Tim Black, CAHOOTS’ program manager. Those calls absorbed nearly 20 percent of the public safety call volume.

Reducing calls for officers is one of the main reasons Oakland is looking to CAHOOTS, said Oakland Police Sergeant Doria Neff.

“We are always open to any solution to reducing calls for officers so we can focus on what is most appropriate for officers to respond to, and if we can work in collaboration with other agencies or other professions that can do a more effective job, especially with this community [people who have a mental illness], then we are open to that,” said Neff, who has attended several CAHOOTS presentations and is in the process of scheduling a site visit for the Oakland Police Department.

Oakland, Alameda County’s largest city, sends the largest percentage of inmates with mental illness to state prison — 42 percent. In 2011, Neff explained, the Oakland police “... started the ball rolling as to all things mental health related” by creating a “mental health on the scene coordinator” position and introducing crisis intervention training to its officers.

Yet, as Alameda County Assistant District Attorney L.D. Louis said, there are several other underlying issues affecting people with mental illnesses that must also be addressed, such as insufficient housing, food insecurity and limited social support.

“This model is a piece in the puzzle. There are a lot of pieces that are already connected but a lot of those pieces need to be doubled, tripled, or quadrupled,” Louis said.

While the CAHOOTS model targets the moment of crisis, crisis aversion involves more than just diversion, explained Louis. In Alameda County, low-income neighborhoods and communities of color bear a disproportionate burden of mental illness and incarceration rates, according to the Alameda County Community Health Assessment.

Continued on page 8

SF DAs Office Using A.I. to Reduce Implicit Bias from Prosecution

BY: Kate Bulycheva

In June, the San Francisco District Attorney’s Office partnered with Stanford’s Computational Policy Lab to reduce implicit bias from prosecution using artificial intelligence. The artificial intelligence bias-mitigation tool redacts instances of race from police reports to make charging decisions more transparent and equitable.

In 2016, 41 percent of those arrested in California were Latino, 36 percent were white and 16 percent were African-American. African-Americans and Latinos represented only six percent and 39 percent of the state population, respectively, according to a study conducted by the Public Policy Institute of California.

The same racial disparities can be found in San Francisco. African-Americans accounted for 41 percent of people arrested between 2008 and 2014, while making up only six percent of the city’s population, according to a recent study by UC Berkeley and the University of Pennsylvania.

“The tool is set to look for racial information, a suspect’s race and name, in addition to data that might also serve as a proxy — physical description, like skin, hair and eye color, neighborhood data, names of witnesses and victims to avoid any inference of one’s race,” said Alex Chohlas-Wood, the Deputy Director of the Stanford Computational Policy Lab.

“In addition, police officers’ names will be redacted, as an inference can be drawn based on where they are stationed or what area they patrol. To locate data, [the] bias-mitigation tool uses a combination of computer and statistical techniques, including Natural Language Processing techniques,” said Chohlas-Wood. “After removing the racial information, the tool will instead add a generic token to the description of the incident, so not ‘Alex Chohlas-Wood,’ but ‘Person 1,’ making it easier for intake

SFPD INCIDENT REPORT

CITED 1	CODE 1	NAME [REDACTED]	ALIAS [REDACTED]		
	PHONE (415) 555-5000	ADDRESS [REDACTED]	CITY SAN FRANCISCO	STATE CA	ZIP CODE [REDACTED]
	AGE 22	RACE [REDACTED]	SEX MALE	DOB 12/28/1994	
	HEIGHT 5'10"	WEIGHT 210	HAIR COLOR [REDACTED]	EYE COLOR [REDACTED]	
	[REDACTED]				

Environmental Impacts of New Nuclear Warhead Raises Concerns

BY: Nick Bastovan

A local nuclear watchdog group, Tri-Valley Communities Against a Radioactive Environment (CAREs), is considering filing a lawsuit over the environmental impacts of newly-produced nuclear weapons designed in the Bay Area.

The lawsuit is expected to challenge the National Nuclear Security Administration's (NNSA) failure to comply with the National Environmental Policy Act (NEPA), which requires federal agencies to assess the environmental impacts of their proposed actions before making final decisions.

In the 2017 Department of Defense Nuclear Posture Review, the Trump Administration called for at least 80 new plutonium pits to be produced per year by 2030. A plutonium pit is the core of a nuclear warhead and contains the fissile material necessary for a nuclear detonation. The newly-produced pits will be used for a new nuclear warhead dubbed the W87-1, which is being designed at Lawrence Livermore National Laboratory in Livermore, California.

The NNSA is planning to accomplish this goal by splitting pit production between two facilities, with 50 being produced in the Savannah River Site in South Carolina and 30 in the Los Alamos National Laboratory in New Mexico.

In a statement released by the NNSA, Lisa E. Gordon-Hagerty, the Department of Energy's Under Secretary for Nuclear Security and NNSA Administrator said, "We're fully committed to meeting military requirements, and our two-pronged approach at Los Alamos National Laboratory and the Savannah River Site represents the best way to manage the cost, schedule and risk of producing no fewer than 80 pits per year."

“To allow NNSA to make a decision regarding expanding nuclear pit production without looking at all the impacts and implications is just bad decision making.

- Marylia Kelly, Executive Director of Tri-Valley CAREs

Continued on page 5

ACA 6: California Parolees Soon May Be Able to Vote

BY: Tram Nguyen

Unlike Utah, Montana, and fourteen other states, in California, people on parole do not have the ability to vote. That might change, however, if the Assembly passes Constitutional Amendment 6 (ACA 6). The amendment wouldn't automatically allow people on parole to vote, but would instead establish a constitutional amendment that enables California voters to decide.

Known as the "Free the Vote Act," ACA 6 is sponsored by several organizations, including the American Civil Liberties Union of Northern California and the League of Women Voters. California Secretary of State Alex Padilla even sponsored it. The State Assembly voted 54 to 19 to approve the amendment in September. On the same day, the Senate read it for the first time and referred it to the Rules Committee for revisions.

"Voting is a fundamental cornerstone of our democracy and it's one of the most foundational parts of citizenship," said Brittany Stonesifer, Voting Rights Attorney with the ACLU of Northern California. "When we deny American citizens living in California the right to vote because they're on parole, we're undermining our collective values [as] Americans. We absolutely see their right to vote as a right, and people on parole deserve to exercise and participate."

Bradley Joondeph, Professor of Constitutional Law at Santa Clara University School of Law, said there is nothing in the federal constitution that requires the disenfranchisement of people

who have been convicted. "From a constitutional perspective, there would be no problem in the legislature allowing people on parole to vote," Joondeph said.

Still, opponents of ACA 6, like the Election Integrity Project California (EIPC), have argued that people on parole should not be able to vote because they have not paid their full debt to society. The EIPC provided an argument to the state legislature, saying that "an individual on parole has not regained the full trust of the society at large, nor the privilege to participate as a full member of that society."

Alternatively, advocacy organizations like the Sentencing Project argue that voting is a fundamental right of citizenship.

"I think the entire history of the United States has been predicated on marginalizing certain communities from voting," Nicole Porter, Director

of Advocacy for the Sentencing Project, said. "And so this work and this conversation with the ACA 6 in particular, are a continuation of an effort to fully make American democracy inclusive."

Stonesifer agreed, saying it is unfair to deny people on parole the right to a voice when it comes to policies that impact their daily lives.

"Felons on parole are living in our community. They are raising families, paying taxes, going to school, driving on roads and participating in all parts of daily life that require representation at both the state and local level," Stonesifer said.

The future of ACA 6 looks promising for supporters. Stonesifer said the ACLU-NC is confident in securing the two-thirds vote needed in the Senate. Afterward, they are hopeful that Californians will vote to implement it.



California Lawmakers Skeptical of Police Use of Facial Recognition Software

By: David Cruz Quevedo

In May, after San Francisco became the first city and county to ban the use of facial recognition software by law enforcement, Oakland, Berkeley and Somerville, Massachusetts followed suit. In October, California Governor Gavin Newsom approved a ban on police use of facial recognition software for body cameras.

The American Civil Liberties Union of Northern California (ACLU-NC) led the campaign that resulted in the San Francisco ban, having stated that this technology reinforces biases against people of color. Matt Cagle, a technology and civil liberties attorney with ACLU-NC, said law enforcement's use of this technology is concerning.

"Many prominent facial recognition systems suffer from accuracy issues and bias issues because they are able to recognize White faces generally better than they can recognize Black and Brown faces," Cagle said.

For example, he explained, earlier this year the ACLU conducted a test with Amazon's facial surveillance technology, called "Rekognition," and found that it incorrectly matched 28 members of Congress with mugshots of other people who had been arrested for a crime. These false matches were disproportionately people of color, including the civil rights icon, Rep. John Lewis, D-G.A., and five other members of the Congressional Black Caucus.

Cagle compared the use of facial recognition technology with the Supreme Court's 2018 ruling in *Carpenter v. U.S.* Cagle summarized the Court's opinion in *Carpenter* saying, "the government needs to get a warrant to obtain long-term historical locations from the cell phone carrier." The Court rejected the idea that "simply because you go into society, you somehow give up your rights to privacy," Cagle said. "We think facial recognition technology is significantly more dangerous than cell phone location searches because if the government implements facial recognition network, they don't need to go to the cell phone carrier."

The use of facial recognition technology is dependent on a number of factors. First, a camera must capture a useable picture. Then, the image is run through software that detects unique physical features like distance between the eyes and nose length. Once those key facial features have been determined, the software compares the image against a large database of photos in hopes of getting a match. From there, the algorithms generate potential matches. Then, a human operator scans through the suggestions to make a final determination.

Supporters of facial recognition technology look to the potential benefits that this new innovation can have on public safety. James Leonard, Deputy District Attorney for Santa Clara County, suggested that police departments will use "facial recognition [as] a lead [to point] an investigator in the direction to go."

Leonard offered an example of a New York police department that was able to arrest a man in 24 hours who had nearly raped a woman at knife-point due to the use of facial recognition technology.

With facial recognition technology, "we have a situation where someone can be misidentified, but if we are going to throw it out just because someone can be misidentified then we would have to throw out eyewitness identification too because people misidentify people too," Leonard said.

Leonard also said he has not found a single case that has been convicted using facial recognition identification alone.

According to a research report by MarketsandMarkets, a global market research and consulting firm, law enforcement use of facial recognition is expected to help the industry grow from \$3.2 billion in 2019 to \$7 billion in 2024.

As the industry is expected to grow, most Americans don't seem too concerned with the implications. A Pew Research study from September found 56 percent of Americans trust law enforcement to use facial recognition technology responsibly. However, in a March study conducted in California by the ACLU-NC, 82 percent of respondents said they would be opposed to the government using facial recognition technology.



#MeToo Comes to Big Law

... continued from page 1

“People have been getting harassed in the workplace for decades; we just weren’t talking about it because we were scared of getting fired or experiencing worse discrimination and harassment because of it,” Francesca Bitton, Policy and Communications Coordinator at Equal Rights Advocates, said.

Ruth Silver-Taube, a founding member of the Bay Area Equal Pay Collective and employment and labor law professor at Santa Clara University School of Law, said in a post-#MeToo era, women feel more comfortable coming forward about sex discrimination and harassment in the workplace.

“Even though [#MeToo] was directed towards sexual harassment, women are more willing to come forward, and because of that, law firms are paying attention,” Silver-Taube said.

The #MeToo movement has also given rise to an increase in the amount of legislation seeking to protect women in the workplace. Around 150 sexual harassment bills have been introduced in the past two

years in state legislatures across the nation. The legislation covers rehire clauses, arbitration, nondisclosure agreements and more.

According to some experts, one reason Jones Day was able to cover up its sex discrimination was the firm discouraged employees from discussing their salaries.

“That kind of lack of transparency, and in fact, overt secrecy that they try to foster there really is an environment that is ripe for all sorts of biases to come out in decision-making,” Kathryn Rubino, senior editor for Above the Law, said on Lawyer 2 Lawyer, a Legal Talk Network podcast.

Although some firms may discourage employees from discussing their salaries, employees are legally permitted to discuss their pay under both California’s Fair Pay Act and the National Labor Relations Act.

“If people did speak out and felt comfortable speaking out, it would go a long way to discouraging employers from paying women and men unequally,” Silver-Taube said. If you don’t know what someone else is earning, you won’t know that there is a

discrepancy and that the law is being violated.”

The MoFo complaint alleges the plaintiffs and other similarly situated female employees are subjected to lower pay, delayed advancement, lack of developmental opportunities, higher standards and limited access to meaningful work. MoFo’s response to the \$100 million lawsuit includes denying the veracity of the allegations and stating the allegations are inconsistent with the firm’s values, policies and practices. To support its denial, MoFo cites its status as one of the top family-friendly and women-friendly firms named by Yale Law Women and as a “Ceiling Crasher,” as named by Law360.

In the Jones Day suit, one plaintiff claims she left the firm after she was sexually harassed, subjected to verbal abuse and denied mentorship opportunities. The plaintiffs claim women are subjected to “sexist, sexualized comments and conduct” regarding their appearance. Female employees with children are either fired or regarded as being less committed to their work.

The complaint characterized the firm’s social events as opportunities to “harass and humiliate female attorneys.” At a dinner, a male partner allegedly told three female summer associates to sing and dance to a Care Bears song. At a firm event hosted at a partner’s home, there was allegedly applause when a male summer associate pushed a female colleague into the swimming pool.

Currently, District of Columbia U.S. District Court Judge Randolph Moss has yet to rule on a motion to dismiss filed by Jones Day. In the MoFo lawsuit, Magistrate Judge Jacqueline Scott Corley granted a stipulation to extend discovery and continue case management statements until November 27th, 2019.

Ines Sosa, President of Santa Clara University School of Law’s chapter of the Women and Law Association, said it is important for the legal community to support those who come forward to report discrimination.

“It’s only by speaking out that we’re going to change the culture,” said Sosa.

Logic Games to be Removed from LSAT

By: Ashley Harunaga

sure there’s another generation of civil rights lawyers who are blind. Making sure that Richard Bernstein isn’t our last state Supreme Court Justice. So it was back to the drawing board.”

In 2017, Binno filed a new case in federal court in Detroit against the LSAC. Shelesha Taylor was similarly situated as a significantly near-point visually-impaired person and moved to intervene as an additional plaintiff in the lawsuit. Rather than continuing to litigate, on October 7, 2019, LSAC and Binno were able to settle in a “very profound way that is going to result in change nationwide for everybody,” said Turkish. “I’m really proud of [Binno] sticking with it all these years.” At that point, Binno had been in court for nearly six years.

This case differed from a handful of other cases against the ABA because Binno and Taylor’s lawsuit actually challenged the “existence of the test as a discriminatory examination,” said Turkish. This was not saying the LSAC failed to provide a reasonable accommodation. Rather, it was saying that this test simply cannot be accommodated for visually-impaired test-takers. Therefore, the only thing that could be done is “eliminate it to fairly accommodate someone who is blind,” said Turkish. “It simply on its face is discriminatory.”

Given the sensitive nature of the settlement, LSAC declined a request to be interviewed, but released a statement. The parties in the lawsuit

have agreed to “research and develop alternative ways to assess analytical reasoning skills ... to determine how the fundamental skills for success in law school can be reliably assessed in ways that offer improved accessibility for all test takers.” They promise to “complete this work within the next four years,” since analytical reasoning is an important skill that they want to continue testing in some way. They are “simply redesigning the way in which that skill is assessed.”

Bryan Hinkle, Assistant Dean of Law Admissions and Financial Aid at Santa Clara University School of Law, said “we probably won’t get any sort of update [soon].” “We don’t know if or how this will change the scoring of the test.”

However, Turkish remains hopeful for the future. Turkish said, “for folks who can’t see, the LSAT could really shut the door completely on them. I really think the number of blind law school applicants will shoot up which is a really fantastic thing.”

“When you shut out people like Angelo from the process, you’re not just shutting them out from law school. You’re shutting them out from being champions and leaders for civil rights calls on behalf of the next generation,” explained Turkish. Victory here in this settlement is not only for Angelo, but disabled future leaders in society, he said. Turkish added, “this is one of the biggest changes to the LSAC in almost 30 years.”

DAs Contest Constitutionality of CA’s New Felony Murder Rule

... continued from page 1

felony-murder rule to obtain first-degree murder convictions. He suggested supporters of SB 1437 are hopeful that the tide will remain in their favor, especially now that Xavier Becerra, California’s Attorney General, has joined the fray.

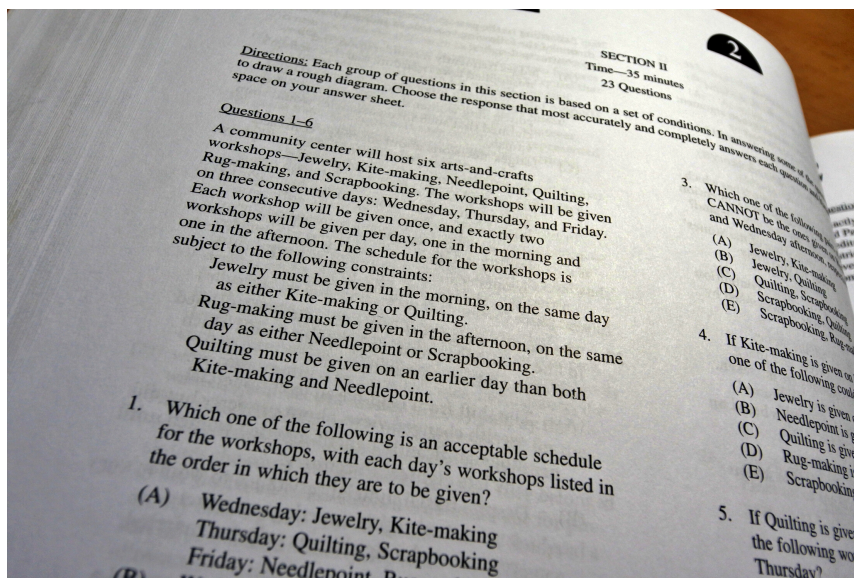
“The highest D.A. in the state is the Attorney General,” Wilson said. “Granted 40 of the 58 counties have set their position as unconstitutional, [but] the D.A. who is their boss says it is constitutional.”

Becerra’s office, which was not available for comment, has already filed amicus briefs in multiple cases supporting SB 1437’s constitutionality. In the briefs, Becerra argued that Props 7 and 115, and SB 1437, touch on entirely separate aspects of felony-murder.

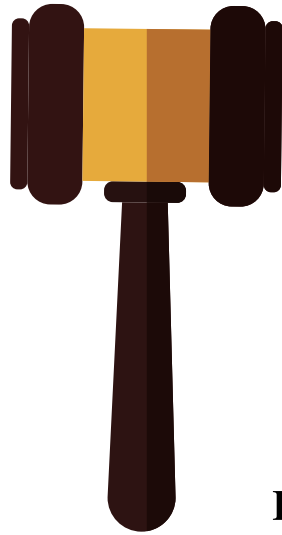
Prop 7 centers on the punishments for a murder conviction. SB 1437 deals with the elements of the crime. In the same vein, Prop 115 “added ... to list of predicate felonies for murder in [Penal Code] section 189. It did not restrict the Legislature’s authority to change the culpability requirement to convict for murder.”

The Attorney General is scheduled to present an oral argument at the Fourth District Court of Appeal this month and Kaiser is looking to those decisions to indicate whether SB 1437 will eventually find its way to the California Supreme Court.

“If you have conflicting opinions in the different appellate districts, that ensures that the California Supreme Court is going to step in,” he said. “There have been some relatively high profile cases that the court ended up declining. [But] I would be surprised if this didn’t make its way up.”



The Judge's Corner



The Honorable Eugene Hyman is a retired Judge of the Superior Court of California for the County of Santa Clara, where for more than 20 years he presided over cases in the criminal, civil, probate, family, and delinquency divisions of the court. He spearheaded the creation of the Juvenile Delinquency Domestic and Family Violence Court in 1999, the first in the country dedicated exclusively to this social issue, and was awarded the United Nations Public Service Award for its success. Judge Hyman is a SCU Law alumnus, and he currently teaches a Domestic Violence Minicourse at the law school.

Focusing on a Career in Law By: Judge Hyman

Many students are looking for a job instead of a career, and this is a big mistake.

The law profession is much more competitive today than it was for me or your parents or grandparents. Today's reality is that many qualified graduates vie for the same scarce opportunities in law, and practice areas are becoming increasingly specialized.

To meet these challenges, you'll need to be informed, focused, and strategic. You'll need to stand out from the crowd. Your quest should start on the first day of law school of your first year.

It is perfectly permissible not to know your intended practice area on day one of law school. So exactly how are you to figure this important exercise out?

Judges make decisions based upon the facts, evidence and the law. Likewise, every day of law school is an opportunity to obtain evidence for career decision made through attending classes, guest lectures, and Career Services events, and speaking with faculty, alumni, and classmates. All have perspectives that are helpful.

It helps to develop an idea of a practice area interest in order to chart a course of action. You need to define who you are and what you want to do, and only then can you familiarize yourself with the steps necessary to get there.

Consider and explore what might be considered a nontraditional practice of law. An example might be working for a member of local, county, state, or federal government either in policy or drafting legislation. Working in the corporate world and academia are other possibilities.

One of the first things you should do is to print 500 business cards containing your name, email address, and your intended date of graduation and degree. Phone number is optional. One of your goals should be to hand out these 500 cards to connections — usually attorneys who may be the source of direction toward employment or just really good advice.

It is also helpful to have a resume or a curriculum vitae. You never know when you might be asked to supply a resume and it is helpful if you can email it to a prospective employer right away. This document is of course a work in progress; people at Career Services can advise you how to put your best foot forward when you are just beginning to explore options.

Your professional reputation begins with law school. Safeguard your reputation. Set for yourself a high standard of ethical behavior — not just to protect your employment prospects but also because you never know where this journey takes you in life. A lapse in judgment may come back to haunt you. Exercise caution and discretion with what you post online. Don't be caught in a "Michael Phelps" moment on social media. The public domain is just that, and permanently so.

Being arrested for driving while impaired, drunk in public, or simple drug possession will delay your opportunity to sit for the Bar and will make your potential employment pool a great deal smaller. It has happened here and at other law schools.

There are issues of "housekeeping" that must be addressed before moving forward. Ignore them and you may be inviting difficulty later which may delay your success.

Many of us come to law school with significant baggage. It might be because of physical or mental harm, or perhaps, we've had serious mental and physical challenges. In order to do well in school, as well as life, it is important that this baggage be dealt with. For some of us this will mean taking advantage of school counseling opportunities. For some of us, just acknowledging the challenge will be enough to set it aside and it will no longer be an obstacle affecting our success.

Being positive is crucial. Being negative will affect everything from grades to jobs and friendships. It is therefore important that you limit your contact with negative people who might bring you down and negatively affect your game.

You should also limit your exposure to country-western music. There is a limit to how many pickup trucks one can lose, dogs running away, or cheating hearts. Talk about depressing!

It is helpful to have professional goals and to update them frequently. Brian Tracy has done excellent work in this area and I recommend him for this. Review your goals several times a week. Science has shown that the subconscious mind works on problem-solving, especially while we sleep.

I also recommend Dale Carnegie's books, first and foremost "How to Win Friends and Influence People." He has also written a number of books about public speaking that are quite good.



Environmental Impacts of New Nuclear Warhead Raises Concerns

... continued from page 3

In 2008, in anticipation of this mission, the NNSA prepared a Programmatic Environmental Impact Statement (PEIS), which evaluated the alternatives for producing 10-200 plutonium pits per year at various sites across the United States.

The study was updated when the Los Alamos and Savannah River sites were selected as the pit production facilities. A Supplemental Analysis was prepared for Los Alamos in 2018. On May 17, 2019, the NNSA announced that they would prepare a site-specific Environmental Impact Statement (EIS) for their proposal to produce pits at the Savannah River Site.

However, Tri-Valley CAREs contends these studies do not go far enough. Marylia Kelly, Executive Director of Tri-Valley CAREs, said the NNSA is improperly segmenting the studies into separate smaller studies.

Kelly said the NNSA is improperly studies to avoid a new, more extensive comprehensive study or to avoid supplementing the existing 2008 Programmatic Environmental Impact Statement. She asserted there have been significant environmental changes since 2008, which require supplemental studies under the NEPA.

"To allow them [NNSA] to make a decision regarding expanding nuclear pit production without looking at all the impacts and implications is just bad decision making," Kelly said.

Kelly said the NNSA needs to perform a new or Supplemental PEIS that considers the cumulative impact of producing pits at two separate locations.

"There is a lot of connective tissue that doesn't get analyzed at all if you just do those two micro analyses each in isolation," said Kelly.

When asked about the necessity of a Programmatic Environmental Impact Statement, NNSA Public Affairs Officer John Daniels said, "There is already an extensive Complex Transformation PEIS on this subject, so the best step now is for NNSA to do a Supplement Analysis to evaluate whether the existing PEIS needs to be supplemented or a new EIS prepared."

Scott Yundt, an environmental attorney with Tri-Valley CAREs, pointed to the September 2019 decision in Oak Ridge Env't'l. Peace All. v. Perry as evidence that previous NEPA reviews need to be updated.

The case, decided by a federal court in Tennessee, involved Oak Ridge National Laboratory and the building of the Uranium Processing Facility for uranium manufacturing. The NNSA conducted an environmental impact study in 2011, but in the time since that study was completed, design issues were identified and new seismic studies have been conducted.

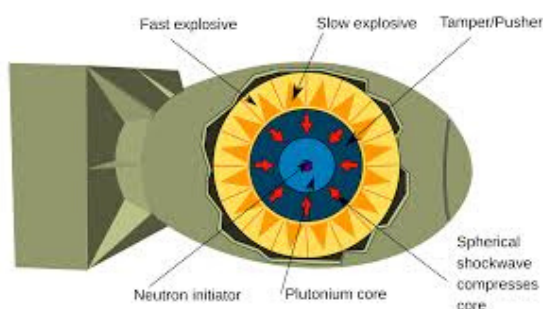
The Oak Ridge court granted summary judgment to the NNSA for segmentation of the project. However, the court determined that the newly revealed information requires further NEPA analysis.

"The court determined that relying on old NEPA reviews was not sufficient. We think a lot of this case applies to the plutonium pit situation," Yundt said.

However, the court in Oak Ridge ruled in favor of the NNSA on the question of improper segmentation, finding that as long as the NEPA studies are "properly tiered," it cannot be considered unlawfully segmented. "Tiering" means avoiding duplicative environmental reviews that have already been conducted.

In a comment to the Draft EIS for plutonium pit production at the Savannah River Site, the Alliance for Nuclear Accountability stated, "The NNSA plan involves unexamined health, safety and environmental risks as well as financial costs."

The NNSA's program to produce 80 pits each year is still in the early stages, but it already appears there may be significant disagreement on how the environmental impacts of the project should be assessed under the NEPA.



Q&A: Behind the Scenes on SB 10 and The Future of Eliminating Money Bail with Prof. David Ball

By: Dustin Weber

Professor W. David Ball focuses mostly in the criminal justice field, publishing and teaching in the areas of criminal law, criminal procedure, sentencing and corrections. He is currently Co-Chair of the Corrections Committee of the American Bar Association's Criminal Justice Section. Additionally, he served as Chair of the Research Committee for the Bail and Pretrial Working Group.

What is SB 10?

BALL: SB 10 does something to reform bail in California or pretrial in California but it's not as comprehensive as maybe I would like. So, what SB 10 does is eliminates money bail. I mean it's on hold, but the legislation eliminates money bail and then there are pretrial risk assessments that are used — a validated risk assessment instrument, which was similar to the way it was developed but lacking certain safeguards we really wanted.

So, the general idea is that it would replace cash bail with something else, some form of risk assessment and you would have pretrial detention.

What's the History of SB10?

So, the history, at least my involvement with the history of this is that when we started talking about what's the deal with replacing cash bail with something else, I think a lot of us realized that there was some scope for pretrial detention. Even though I am not a fan of the *Salerno* decision and I think you should be able to do that in only extremely limited circumstances.

There are times, nevertheless, when I don't think people should be able to bail out. Namely, with some form of domestic violence.

Now, maybe the problem is further upstream and that we shouldn't have misdemeanor domestic violence or some other way of ensuring that when people are in a sort of hot phase of domestic violence where if they get released, they are going to escalate, that they shouldn't be allowed to go. So, you know, this could be a problem with domestic violence that then infected the rest of the bail process when we should have just directed it head on by saying let's do a better job of regulating and mitigating the harms of domestic violence.

But, be that as it may, there were at least some circumstances where we thought, yeah, you need to be able to have some form of pretrial detention. Having said that, those were always seen to be extremely limited and the people with whom I was in conversation about that said, yeah, if you do have pretrial detention it needs to be extremely limited and the overwhelming majority of people need to be released.

It can't just be a default where just in case someone does something bad you keep them in, that would be worse. So, in the context of the entire reform pretrial detention was, actually detaining people was seen to be a small piece that was going to be small because of some other things we wanted to put in the bill.

Namely, that you get the full complement of, you know, you get a lawyer, you get confrontation rights, the prosecution has to bear the burden to prove that you're dangerous, there's all sorts of other rationing that goes on there. It wasn't just business as usual and you get to do pretrial detention.

So, maybe that was a mistake to start, with that being on the table rather than to hold off on that and say alright, well, we'll get behind it if there's these other concessions that get made. But, live and learn. I think one of the other problems that I've talked to people about in other states was our goal was to get rid of cash bail and we did that, but maybe our goal should have been stated a little differently because that's almost all we got. So, I think there is something to be said for getting rid of cash bail, but if we had said we want to reduce pretrial populations then that framing may have worked a bit better and that's the criticism that I've seen as I've talked to other folks around the country.

They've said, yeah, California is a cautionary tale because you framed it the wrong way and you got what you said you wanted, which was the elimination of cash bail, and it may have replaced it with something that's at least not better, and in some people's minds might be worse.

It's the Judicial Council that's going to be in charge of setting forth these regulations. So, the judges are likely to give judge's power.

“Unless you think rich people are safer than poor people, cash bail is the dumbest thing in the world.”

So, it's going to be some weird amalgamation of you get to use these actuarial tools, which are at least supposed to contextualize judicial decisions, if not guide them by saying, yea the chances are this person is not going to be very dangerous so you should let them out. But it allows that plus judicial override. So, if I agree with the risk assessment tool, I'm going to let the guy out, or I'm going to keep the guy in and if I disagree with it, I'm going to do what I was going to do, anyway, because this is exceptional and I have experience, which is not the way it works.

What was SB 10 supposed to do?

The way I had envisioned it, and I was the Chair of the Research Committee, so I am not going to speak for everybody but I am going to tell you what I thought we should have done is to use risk assessment tools to say, great, you get out immediately, because one of the things that people liked about money bail is that it didn't take that much time for them to get out.

And you know if there's a long process before you get out then that's actually a net loss for most people because they actually want to get on with their lives. They need to go back to work or they're going to get fired, you know, they need somebody to take care of their kids, whatever it might be, and so using risk assessment tools to be like, great, if you score under x, you're out with no money paid, that's a win.

Then, the question is if you don't then, can you use the risk assessment tool for anything? The answer is no. If you don't get out immediately, or get out automatically, then you go through this full process where the prosecution has to do something to prove to keep you in and then you get a full complement of criminal procedural protections, and the judge has to make a finding, in writing, you know the judge cannot just check a box. That's the bottom line with that.

What happened at the 11th hour is the judiciary said, hey, we want to weigh in on this and what they said is we would like judges to be in charge of this and judges can decide what actuarial tools they use and judges can take all the “thanks for all the discretion you're giving us to detain people pretrial” with none of the safeguards in it and that's why most of the people who were driving the SB 10 reforms abandoned ship.

Now, if you ask me, is it a step in the right direction? I mean, yes, it's better than nothing because if we get rid of money bail then this industry that is making tons and tons and tons of money will be gone.

So, bail bonds do nothing. And they are basically like, they are almost worse than payday lenders in my view. I mean they are just parasites. So, I have zero sympathy for them. It was a good run while it lasted and if we get rid of them then maybe we can actually start to have real pretrial reform. I think we probably could have gotten the reform that we wanted without the Judicial Council coming in and that would have been better than what we have.

Continued on page 7

OPINION: Deprivation of Powers: The Federal Judiciary is Drowning

BY: Dustin Weber



Justice delayed is justice denied. This aspirational maxim has been an essential element of American jurisprudence from our founding. Unfortunately, even the Framers could not anticipate the contemporary hyper-politicization of the federal judiciary. Simply filling a judicial vacancy has become extremely burdensome due to partisan acrimony, but an additional problem plagues the federal judiciary — crushing and unmanageable caseloads. Pursuant to the powers afforded Congress in Articles I and III of the U.S. Constitution, the legislature should swiftly authorize new judgeships. A Federal Judgeship Act, a bill that would create more federal judges, should be passed immediately to prevent the suspension of civil cases.

The nation's ability to dispense justice efficiently has been compromised. In the Eastern District of California, Chief Judge Lawrence O'Neill recently stated that the enormous caseload was putting his court on “the verge of an impending, acute, and judicial catastrophe.” In the Eastern District, the number of cases per judge exceeds 900. Nationally, the average caseload is 425.

Despite an increase in population from 2.5 million to roughly 8 million in the past 40 years, the Eastern District has not received a new judgeship since 1978. Chief Judge O'Neill stated that civil cases in the Eastern District, where the time from filing to trial is already approximately four years, would risk effectively interminable if the District does not get new judges.

Cara Bayles, a reporter for Law360 and Professor at San Jose State University, found numerous troubling issues in federal districts across the country. She noted that civil cases would be most impacted by an understaffed judiciary.

Again, in the Eastern District, Bayles spoke with an attorney who filed a civil case in 2016 whose case has yet to receive a trial date. This same attorney, despite preferring the operation of federal court, indicated that he now tries to avoid federal court altogether. Some districts are sending cases to other districts, which has frustrated and inconvenienced parties to those lawsuits. Bayles spoke to lawmakers on both sides of the aisle who agreed that partisan politics is a significant reason for new judgeships not being created.

Clearly, the judicial selection process has become poisoned by contemporary partisan politics. For decades, federal judges were appointed with significant bipartisan support. In both 1984 and 1990, Congress passed Federal Judgeship Acts that expanded the size of the federal judiciary. The Brennan Center for Justice, a nonpartisan public policy institute affiliated with New York University, noted that from 1961 through 1990, Congress approved an expansion of the federal judiciary about every six years. Since 1991, however, there has been minimal expansion of the federal judiciary despite massive increases in caseloads.

“The 21st century has seen a particularly egregious amount of politicking with the judiciary.”

Simply put, there are too many cases for too few judges. Per the Brennan Center for Justice, between 1961-1990, 429 new federal judgeships were created. From 1991-2019, only 38 new judgeships have been created. Furthermore, the number of pending cases increased by 40 percent from 1992-2013, leading to a 35 percent increase in pending cases per authorized judgeship. Unsurprisingly, nationally, the median time from filing to trial for civil cases has increased from 15 months to nearly 26 months.

Continued on page 8

Community Spotlight: The International Human Rights Clinic

More than a dozen Santa Clara Law students work with the International Human Right Clinic each year to combat human rights violations in the United States and abroad. Tucked away on the first floor of Charney Hall, the IHRC office's work affects communities from Costa Rica and the Dominican Republic to Senegal and Ukraine, and even Santa Clara County and California, generally.

Francisco Rivera is the founder and Director of the IHRC. He has worked on a number of high-profile cases involving grave human rights violations, particularly throughout Latin America, and is now using his experiences as an attorney and educator to train law students by working with them on life-changing projects.

What is the goal of the International Human Rights Clinic?

RIVERA: The International Human Rights Clinic (IHRC) provides a unique opportunity for law students to gain first-hand experience working on international human rights litigation, advocacy and policy projects. The IHRC combines classroom education with supervised case and project management, providing students with practical training in essential lawyering skills while serving our community and promoting social justice.

An essential component of our clinical experience is the development of creative problem-solving skills. Our cases and projects are not based on carefully crafted hypotheticals. Instead, students and faculty jointly identify organic problems the IHRC will address, evaluate how to address the problem, develop a plan to achieve our desired outcomes, and then implement that plan. This is the essence of clinical education at the IHRC.

As IHRC students work on human rights cases and projects, they not only advance their own social justice goals, they also develop all these transferable skills that are necessary to enter any practice area.



What are some of the IHRC's most notable successes?

There is a rural community in Costa Rica whose water has been heavily contaminated by the runoff from toxic pesticides used in a nearby pineapple plantation. Thousands of community members could no longer use their tap water to cook, shower, or clean. Many children developed allergic skin reactions to the water. Animals were born with severe deformities. Community members showed unusually high cases of gastrointestinal problems. Students in the IHRC decided to take this case before the Inter-American Commission on Human Rights – an international monitoring body of the Organization of American States. Students worked with community members and activists to prepare witness testimonies, drafted legal arguments about the human rights violations involved, participated in a press conference with high-ranking Costa Rican officials, and ultimately went to Washington, D.C. — where the Inter-American Commission is based — to participate in a public hearing and denounce these violations. Three days after the hearing, the Costa Rican government agreed to invest millions of dollars and construct a new aqueduct to provide clean water for the clinic's clients.

The IHRC has also been successful in obtaining "precautionary measures" – an international order of protection – on behalf of human rights defenders in the Dominican Republic who are literally receiving death threats for their human rights work on behalf of Dominicans of Haitian descent.

Students have also partnered with the ACLU, Robert F. Kennedy Human Rights, and others to denounce human rights violations stemming from the lack of accountability for police killings in the United States. Students coordinated a range of tactics, including providing assistance in all aspects of a public hearing, meeting with the District Attorney of San Francisco to urge him to press charges against police officers who unlawfully shot and killed one of our clients, supporting legislative efforts to apply international human rights standards on the use of lethal force by police officers, as well as providing written statements and creating social media videos to create awareness about this issue. Ultimately, California adopted a law that limits the ability of police officers to use deadly force unless absolutely necessary to prevent death or serious bodily harm. The clinic has also partnered with several local governments to adopt and apply international human rights standards at the local level. For example, students partnered with the County of Santa Clara to draft and adopt an ordinance that aims to implement locally the principles of the U.N. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). This ordinance led to the creation of a Task Force that aims to strengthen the county's ability to respond to women's needs, particularly homeless women and victims of violence. To that end, the clinic partnered with the county to publish a study of homelessness with a gender and human rights perspective. The report allowed the county to determine the main causes of homelessness for women and to evaluate how the county can better address the particular needs of this population.

Additionally, clinic students provided technical assistance and legal expertise to the City Council of Mountain View to draft and adopt a resolution declaring Mountain View as a Human Rights City, as well as adopting a pilot program to conduct a human rights impact assessment of city projects.

What is the IHRC working on today, and what can we expect from the IHRC in 2020?

Students are also working on several reports to various international human rights bodies regarding US compliance with its international human rights obligations. These reports address a broad range of issue including the use of private

for-profit immigrant detention centers in California, and the lack of access to public transportation, healthcare, and education on the islands of Culebra and Vieques in Puerto Rico. Students will also continue to work on several amicus curiae (friends of the court) briefs in cases involving reparations owed to torture victims in the context of the CIA's extraordinary rendition program, as well as the rights of transsexual individuals in Honduras. The clinic will also continue its local human rights work within the County of Santa Clara. For example, students are currently working with the county to adopt a resolution supporting asylum seekers who are victims of domestic violence in Central America. We will probably also continue working on environmental issues, immigration issues, and on holding corporations accountable for human rights violations.

Students in the IHRC are heavily involved in trying to get the United Nations to adopt a new treaty on violence against women. In partnership with a coalition of thousands worldwide, the IHRC is playing a leadership role in this effort. Students have provided assistance in the drafting process of this treaty, participated in media campaigns and public presentations, and developed and coordinated strategies to get U.N. diplomats to support this initiative.

What are some human rights issues that you wish more people in Santa Clara County knew about?

Homelessness and violence against women are probably the two human rights issues that affect the most people in our county. More broadly, I wish more people knew what international human rights law even means. Knowledge is power. There are only a handful of international treaties, and it would be great if more people took the time to read them and get to know the terminology of human rights. People would see that these international instruments all address the same issues that local laws and constitutions address — civil and political rights like freedom of expression, due process, and the right to vote, but also economic, social, cultural, and environmental rights. That is one of the reasons I love teaching in the IHRC - students get to learn about all of those rights and about how to use local and international mechanisms to address violations of those rights.



Prof. Francisco Rivera with IHRC students (from left to right) Monique Israel, Vanessa Sibrian, Bianca Bonjean, Nura Heydari, Melinda Moss-Vazquez, Carsyn Henry, and Caterin Miranda.

Q&A with Prof. Ball

... continued from page 7

With the referendum coming up, what's the best path forward? What do we do?

You basically act as good law students every time the bail bond company says something. Everything they say, there is no justification for the money bail system we have. It's just us and the Philippines that have it. You know even if you believe in money bail, just understand that commercial surety bail doesn't do anything.

So, if you are trying to bail out, you have to provide the cash. The bail bond company, if you buy a bond from them, you pay them immediately. They just deposit a promissory note with the court. They don't pay any cash.

Also, if you pay 10 percent of the bail amount to get out of jail like then you owe the 10-grand. You owe the whole 10-grand. That 1000 dollars isn't a deposit. It's not refundable. It's just what you pay to get out and they bank that whether you show up or not. If you still owe the 10-grand, you owe the 10-grand to the court.

It's ridiculous. People do not understand how the 1000 dollars you're paying is just lining the pockets of the bail bond company. They have zero exposure personally because they have reinsurance, anyway. But they have zero exposure. It's a great, great business for them but it serves no public safety benefit and if somebody gets arrested while they are out on bond, you don't forfeit the bond. And then they're guaranteed you're going to show up for court. Where is the public safety in that? None of their claims hold up. Not a single one.

So, anyway, that's what you should do. You should talk back to whatever they're saying and investigate it. It's all crepe paper in the rain. It has zero . . . it does not hold together at all.

So, politically, is defeating the referendum the best approach?

Then, amending it in the legislature?

Oh yes, absolutely. 100%. Don't vote for it! Even if you have conservative friends who hate criminals, or whatever, who don't want to be soft on crime, this is the biggest giveaway to an undeserving industry there is. There isn't a public safety reason to do it.

There are obvious reasons not to support it because people who stay in jail because they are poor are not necessarily public safety risks and you know rich people who are public safety risks can get out. So, unless you think rich people are safer than poor people, cash bail is the dumbest thing in the world, and I don't think there's any evidence to suggest that rich people are safer than poor people, but you know, what do I know?

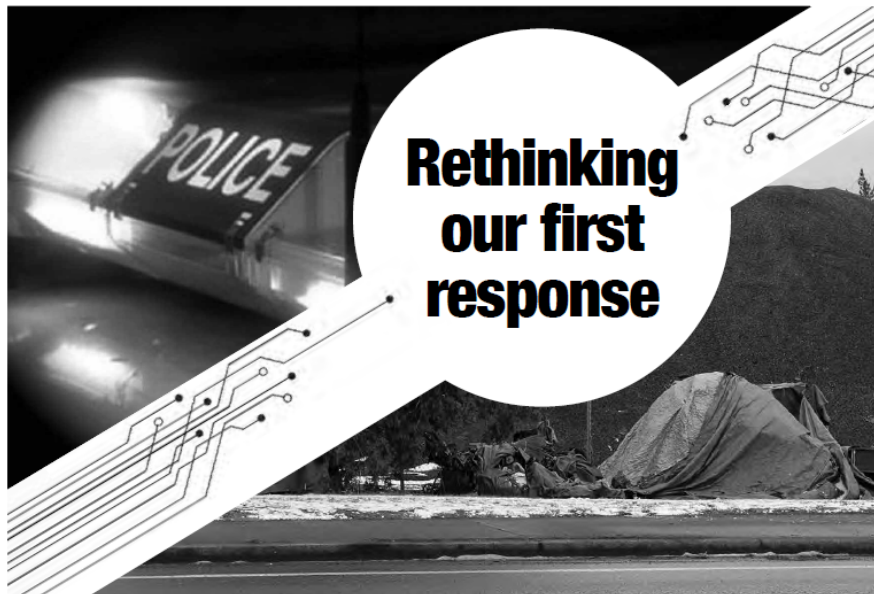
Oakland Seeks to Replicate Successful Oregon Mental Health Program

... continued from page 3

“The main destabilizing factor is a lack of housing,” Louis said. Housing insufficiency, mental illness and incarceration tend to perpetuate one another, and understanding this relationship is critical to meaningful problem solving, Louis explained.

“The big barrier is that we’re not [providing] food, clothing and shelter. You have to take care of peoples’ basic needs before we can then focus on the state of mind,” Louis said.

In the Bay Area, housing insufficiency has escalated into a public health crisis, with tens of thousands falling into homelessness annually, according to the San Francisco Chronicle. Although the state legislature has responded



with promising housing development initiatives, the Chronicle noted that meeting the actual needs of the Bay Area would require some 190,000 housing units costing \$94 billion.

While these numbers are staggering, the focus is on proactive progress. Black advised that while CAHOOTS has demonstrated success in Eugene and Springfield, the program has to be tailored to fit the needs of the new cities that are implementing it.

At the local level, Louis and Neff contended, this means implementing a CAHOOTS-like program in tandem with creative, sustainable housing solutions, as well as bridging communication across agencies and communities.

With new housing projects underway and the CAHOOTS program nearing implementation in the Oakland Police Department, the pieces are coming together. Meanwhile, the District Attorney’s office is expanding a mental health diversion program for low-level offenders with mental illness, in collaboration with the Alameda County Public Health Department, adding dimension to the solution.

OPINION: Deprivation of Powers: The Federal Judiciary is Drowning

... continued from page 6

The politicization of the judiciary explains this development. The 21st century has seen a particularly egregious amount of politicking with the judiciary. According to a Brookings Institute study, a nonpartisan think tank, through 2012 the two worst postwar periods for slowing down judicial nominations occurred during the 1999-2000 and 2001-02 Congresses.

The 2015-16 Congress set a record for failed confirmations. According to the Congressional Research Service, of the 79 district and appellate nominations sent to the Senate by President Obama, only 22 were confirmed. This approximately 29 percent confirmation rate is the worst, by far, of any Congress in the postwar period.

Congress must overcome its partisan gridlock and authorize dozens of new judgeships. The Federal Judgeship Act of 2013 would have created 65 new judgeships and 20 temporary district court judgeships. Predictably, this legislation went nowhere. As explained by Senator Mike Lee, R-Utah., in Ms. Bayles’ report, there is a lack of trust in Congress and one party does not want to create new judgeships for the other party to fill. In 2019, the Judicial Conference of the United States, the national policy-making body for the administration of federal courts, recommended the creation of 73 new judgeships. The 2013 Act should be amended to create 73 new permanent judgeships and 20 temporary judgeships, then passed expeditiously.

A new Federal Judgeship Act should spread new judgeships over a period of 10 years, while frontloading and backloading the creation of new judgeships. The most overburdened courts should get new authorized judgeships first. Spreading the authorizations over 10 years and backloading the last block of judgeships ideally would help secure bipartisan support since both parties likely would get the opportunity to appoint a significant number of the new judges.

While trust in particular branches of government waxes and wanes depending on which party is in power, pollsters from Gallup to Fox News consistently have found the judiciary to be the most trusted branch of government over the past decade. It is imperative for the other two branches to pass a judgeship bill that will functionally restore the judiciary and prevent any further inefficient allocation of justice.

OPINION: Let’s Stop Focusing on "Latinx"

BY: Pedro Naveiras

Latino identity is complex. Certainly, people should be free to determine how they want to be identified. Rather than expending outsized resources on inclusion in the Spanish language though, we should focus those resources on the problems that truly matter. Understandably, retorts will be made that we can and do have the intellectual bandwidth to simultaneously advocate for multiple social and cultural remedies. Yet, in practice, something about that refrain has proven inaccurate.

When something like making Spanish gender-neutral produces a term like "Latinx", bad-faith conservatives insist that woke liberals are ruining the country. Then, the left responds, and without fail, the media turns this “conflict” into a multi-day sideshow that sucks the oxygen out of every room. Meaningful conversations on meaningful issues then naturally get lost in the circus.

Recently, USA Today published an op-ed, written by The Blaze’s Giancarlo Sopo, that outlined his case against the term Latinx. Calling it an “absurd Anglicization of a language that generations struggled to conserve,” the author argued that “The last thing [Hispanic Americans] need are progressives ‘wokesplaining’ how to speak Spanish.”

He’s a little confused, but he’s got the spirit.

Sopo’s piece is one of a number of articles and op-eds that have been part of a conservative effort to sow division in the Hispanic community by criticizing people for using Latinx. The movement to call Latinos “Latinx” comes from a good place. However, every week that gets lost to these comparatively small issues becomes another week where the public discussion gets irreversibly diverted from the ongoing, abject moral failure of our country caging children at the border. It’s not that Latinx isn’t important. It’s that I would prefer every possible minute dedicated to freeing these helpless, powerless, and blameless children so they can be reunited with their families.

Latinx has critics from all sides. Some are critical because they view it as an attempt to erase Spanish culture and language by replacing

Latinx with an anglicized version. In Spanish, the letter x can be pronounced differently depending on the context, making the term Latinx difficult to grasp for native Spanish speakers. Others view the term as elitist and a poor attempt to critique machismo culture — the patriarchal structure and gender preference in Spanish that favors the masculine over the feminine.

The terms Latino and Latina refer to individuals of Latin American descent by either the masculine or feminine pronoun, respectively. The masculine version, Latino(s), is the default term because it can also encompass the feminine. Latinx, however, is increasingly being used by younger Spanish speakers, in left-leaning articles, and by Latino LGBTQ people and their allies in an attempt to be more inclusive. Even Democratic Presidential candidates Mayor Pete Buttigieg and Senator Elizabeth Warren have used the term in addressing Latino and Hispanic voters.

Latinx can be a part of the greater conversation in the community about machismo and gender inclusiveness, but it has dominated some of the political discourse at the expense of more important issues. ThinkNow, a multicultural market research agency out of Burbank, CA, released a poll that found that “98% of Latinos prefer other terms to describe their ethnicity. Only 2% of our respondents said the label accurately describes them, making it the least popular ethnic label among Latinos.”

Simply typing in “latinx” and doing a Google search on the news tab returns over 250 results ... in November of 2019. Doing the same search, in the same timeframe, and combining the total searches from “children in cages” and “kids in cages” yields roughly the same number of results. Again, the Latinx discussion does carry importance, but like most concepts, importance is relative.

If someone wants to use the term "Latinx" in their daily life, as a self-identifier, or as a more inclusive way of referring to a group of Latinos, we should welcome that. But we should focus much less on the term and turn our attention to

more pressing issues. Some issues worth more consistently intense and focused advocacy include, but certainly are not limited to: the separation of families at the U.S.-Mexico border, lower educational attainment rates for Latinos, the daily fear undocumented families have of deportation, and a President that relentlessly denigrates and dehumanizes our ethnicity. These are human rights and deeply troubling societal issues that should be the main focus of our advocacy. Because our collective attention span can only handle so much, we should endeavor to be better and more consistent advocates on these issues.

“Progressives, Hispanic or otherwise, are not the problem for attempting to be more inclusive.

When more imminent and pressing concerns exist, it feels like a disservice to the genuinely life and death issues facing our community to allow ourselves to get sidetracked, even if only briefly. Issues along the continuum of relative importance are all important, but dealing with human rights abuses is a moral imperative, while using the term "Latinx" is a linguistic and oratorical choice.

Progressives, Hispanic or otherwise, are not the problem for attempting to be more inclusive. As progressives and liberals, it does us no good to quibble over the term "Latinx" when, among many other things, children are still in cages, our opportunities for educational and career advancement are disproportionately low, and our health outcomes are poorer. This is not the hill we need to die on.

Cuidense.

RUMOR MILL

BY: SUSAN ERWIN – Senior Assistant Dean for Student Services

DEAR RUMOR MILL:

“I asked if it would be possible to change the date [of the exam]. I was told only if I wanted to take it sooner. Others have been able to push back their finals if they have a doctor’s note, or if two exams are literally on the same day. Even in the latter case, sometimes there is less than a full day between each of those exams. My point is, what is the official policy? Why are there some exceptions and some not? Why wasn’t this made more clear, and what is the rationale to the general policy as well as the exceptions? I think everyone would benefit from clarity upfront about and consistency with these policies.”

DEAN ERWIN:

All of our policies are listed in the Bulletin. The Exam Reschedule Policy can be found there. We also provide a link on the Current Students page and in the reminder emails sent out by our Director of Assessment before each exam period. These policies are set by our faculty, who are our governing body. The administration of these policies falls to the exam team. Exams are always rescheduled for a date after the regularly scheduled exam and never before the exam. Rescheduled exams are placed in the next available exam slot that does not create a conflict. The variation in exam times, formats and schedules will cause variations in rescheduling. We work hard to be sure to stay as consistent as we can, in order to be as fair as possible to all of the students concerned.

DEAR RUMOR MILL:

“I know the alcohol policy has been a big change affecting many [law student] orgs and while I guess I sort of understand the rationale behind it, it does come across as a sort of belittling judgment on what adults can and cannot do. I don’t *really* care, because I do think alcohol is abused, but I don’t think this is a law school problem.”

DEAN ERWIN:

Looking at this from an outside perspective, it does seem logical to assume that the law school should not try to regulate how many drinks an adult can have or that the law school has no business at all getting involved in social interactions outside of the classroom. But that assumption would be wrong. We actually do have a responsibility. The American Bar Association requires us, in the Standards and Rules of Procedure for Approval of Law Schools, to do what we can to make sure that you all pass the Moral Character review AND we actually do have decades of real experiences that tell us that the path to denial of moral character certification almost always involves alcohol. We also signed the ABA Wellness Pledge along with many legal employers, which says in part:

Recognizing that substance use and mental health problems represent a significant challenge for the legal profession, and acknowledging that more can and should be done to improve the health and well-being of lawyers, we the attorneys of Santa Clara University School of Law hereby pledge our support for this innovative campaign and will work to adopt and prioritize its seven-point framework for building a better future. . . We have disrupted the status quo of drinking-based events . . . We have actively and consistently promoted and encouraged help-seeking and self-care as core values of our organizations.

And the last and most important reason, believe it or not, is that we care about our students.

DEAR RUMOR MILL:

“Really too much. We 3Ls have a habit of deleting without reading most emails since we get inundated with junk.” “A lot of emails can be overwhelming and I know a lot of students just stopped checking. I’m not sure how else to get the info to us, though.”

DEAN ERWIN:

We hear you. We are inundated as well. We have zero control over the emails coming from the university and have tried to exempt you all from whatever lists we can. We have instituted new distro lists geared specifically to 1Ls, 2Ls, and 3Ls and various other groupings. We have sent emails to faculty and staff with instructions on how to use the lists effectively and have explained that our students are complaining. You actually can unsubscribe to a number of the lists. AND . . . if professors or administrators send a message to your SCU Gmail, we consider that official notification and you are responsible for reading it. You all actually signed an MOU at Orientation stating that you understand that you are responsible for notices sent to your official email address. AND . . . as I have talked to various folks about ideas to improve email communications, what I hear pretty consistently is that it will be worse in the law firm and if our students don’t learn how to manage their email boxes now, they are going to have big problems later. To that end, please check out the tips for managing your email here. A good one to use is the filter feature, it allows you to send messages directly to a folder and keep them out of your inbox!

I hope you all have a great holiday. Please celebrate responsibly. Good luck on finals!
 Heard any rumors lately? Tell me about it – serwin@scu.edu.