



# THE ADVOCATE

SANTA CLARA UNIVERSITY SCHOOL OF LAW

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## Caltrain Finds Unexpected Cash

*SCU students join to protest Caltrain closures*

By Nikki Corliss

In early February Caltrain officials proposed cutting nearly 16 stations to save the peninsula's ailing rail line from bankruptcy. On the chopping block was Santa Clara's own station. Yet, the outcry from SCU students and South Bay residents saved (or at least postponed) the station's closure.



Matt Izzi (1L) and regular Caltrain commuter joined the move-

ment to save the train. Having moved to San Jose without a car, Izzi relied on Caltrain's regular service to and from Santa Clara. He attended one of the town hall meetings to voice his opinion.

"After the City Hall meeting, I became more active with the letter writing campaign," says Izzi. "I didn't understand how cutting services would solve the debt—it seems counterintuitive."

Izzi encouraged a grassroots campaign among Santa Clara students. Through facebook posts and letters to the editor, students became engaged in the transportation debate. And, Cal-



Caltrain's budget crisis prompts fears along the peninsula about potential closures, affecting daily and recreational commuters.

PHOTO BY: MATT IZZI

train officials announced in early April that the Santa Clara station would remain open. The Hayward Park, Capitol and the Bayshore stations, however, would be closing.

Izzi attributes the train's budget problems to its financing scheme, which requires cooperation from the three different counties that encompass the Caltrain line.

"We need to convince the people in City Hall to get a general fund instead of forcing the three counties to pay," Izzi says. "They don't have a consolidation of resources and that's been their big problem."

As of last week, the Caltrain Board voted to close nearly three stations, slow several baby bullet trains and slash weekend

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## SCU Law Starts New Building Planning

*SCU Law architect to begin work on law library and other buildings*

By Jessica Jackson

Whether you have noticed it or not, Santa Clara University School of Law has undergone some very important changes during the last several years. I am happy to report that there are more to come.



Thinking back to my orientation, I remember my tour group hiking across the street to Loyola to show us where the LARAW teacher's offices were. I also remember sharing the classrooms on the second floor of Bannan with other graduate departments my first semester and hanging out in the old student lounge with my section-mates.

Since then, the law school has completely taken over Bannan; moving the LARAW offices to the second floor, remodeling the student lounge, and having exclusive use of the entire building.

While these improvements have made a huge difference in student lives, the administration recognizes that there are still several areas of the law school landscape

that could use improvement: Heafey Library and Bergin Hall.

In 2005 the law school hired an architectural firm to do a preliminary study to help quantify the space that the law school has available for use. Working together with the university planning department, law school administrators began to work towards building a new space for the law school where the entire student body could gather, to build a new library, and to build new faculty offices.

Although this new building is only in the initial stage of beginning the design process, school administrators are very happy to see the project get underway.

"The law school has been working on this and waiting for this years and it is tremendously exciting," said Senior Assistant Dean Jacqueline Wender, who also explained that similar to the student lounge remodel process, administrators will place a high value on student input when designing the new building.

The new library will feature more

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On Page 3

## Murder-For-Hire Trial Grips Quaint Los Gatos

*Fiction-novel worthy headlines have gripped the town since 2008*

By Amy Askin

Los Gatos restaurateur Mark Achilli was murdered outside his Los Gatos townhome on March 14, 2008. Achilli



was shot several times with a handgun as he was leaving for a lunch meeting. A break in the story came later in March when police announced they arrested Esequiel "Paul" Garcia and four other suspects in what allegedly was a professional murder-for-hire conspiracy. The prosecutor, Santa Clara County District Attorney, Jeff Rosen, alleged that Garcia contracted with the other suspects to kill Achilli for \$20,000. Garcia's Attorney, Harry Robertson vigorously denied his client's involvement.

Achilli, who owned the popular downtown Los Gatos bar Mountain Charley's Saloon and 180 Restaurant

with a partner, sold the establishments to Garcia in 2007. Amid rumors that Achilli and Garcia were involved in a love triangle with the same woman, Rosen alleged that Garcia orchestrated Achilli's death because the woman chose him over Garcia.

The trial, held in San Jose, began September 1, 2010. From the outset, Robertson, Santa Clara University School of Law Alumni ('78), maintained the defense that the case was about a drug debt gone bad and that one of the other suspects used Garcia as a scapegoat.

After a two month jury trial, Garcia, the shooter and the middleman were found guilty of first degree murder. Robertson said that he believed there were "good grounds" for an appeal, referring to the in-court feud with public defender Charlie Gillan, who represented the shooter. During the trial, Robertson tried to raise reasonable doubt that the killing was drug-related and his client was not involved. Gillan interfered multiple

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# State, Nation and World Report

## STATE & LOCAL

LOS ANGELES - The San Jose Sharks took a 2 games to 1 lead after a close win over the Los Angeles Kings. The Sharks overcame a 4-0 deficit to win 6-5 in overtime with Devin Setoguchi scoring the final goal.

BAY AREA - Peninsula and East Bay residents conserved more water this year than any year since the 1992 drought. However, the San Francisco Public Utilities Commission is still seeking to hike water rates by nearly 47 percent. The agency is looking to compensate for a \$65 million

budget gap.

## NATIONAL

WASHINGTON D.C. - The National Labor Relations Board filed a complaint to force Boeing to bring the 787 Dreamliner production line from South Carolina back to Washington State. Boeing moved the production line to South Carolina to retaliate against union workers for their past strikes in Washington and to discourage future strikes. NLRB's acting counsel Lafe Solomon, asserted it is illegal for companies to retaliate against workers for exercising the right to strike.

WASHINGTON D.C. - Senators John Kerry and John McCain introduced new legislation to protect consumer privacy online. It would ensure that companies collecting personal data implement security measures to protect the information. The law would also require companies to provide consumers with a notice about what data were being collected and allow them to opt-out if they chose.

## INTERNATIONAL

LIBYA - Conflict photographer and director of the Afghan war documentary

*Restrepo* was killed in the besieged city of Misrata on Wednesday, along with Chris Hondros of Getty Images. The two deceased along with two other injured photographers came under fire at the city's front lines.

CUPERTINO - Apple Inc. has been tracking their customers' locations on all Apple devices with GPS data. This information is stored in the "consolidated.db" file on the devices, and is already in use by police in criminal investigations. Unsurprisingly iPhone 5 details are leaking with the vigor of a one-night stand.

## Students Donate Time During Spring Break

### Law students work at local legal aid agencies

By Michelle Petlow

This year eight SCU law students participated in SBA's Alternative Spring Break. In the past, students have volunteered to work at legal aid agencies in New Orleans, Louisiana post-Hurricane Katrina. This year we decided to create Alternative Spring Break volunteer options to give back to our local community. We found that any issue we addressed when volunteering out of the state in previous years was an issue our local community members were dealing with as well. Moreover, localizing Alternative Spring Break allowed more students to participate in the program.



SBA's Alternative Spring Break is a way for students to give back to our local community through various legally oriented options for the week. This volunteer program allowed students to harness their legal education and



Legal Defense Aid office in Watsonville, CA.  
PHOTO BY: MICHELLE PETLOW

put it to work in a practical setting. In addition, this program allowed students to gain legal experience which is an important and priceless experience for students to get.

Two students, Kristen King (1L) and Christian Cornejo (2L), volunteered at the Watsonville Law Center in Watsonville, California. These students worked on legal issues in the area of consumer protection and worker's compensation.

After completing her second client intake interview, King and her supervising attorney got to work. "For the next hour, we poured over the client's file, spotting various legal and ethical issues. We examined and interpreted the client's contract, consulted California statutes and devised a strategy for the client. Then, I was able to relay the at-

torney's legal advice to the client who was extremely grateful and relieved. It was amazing to see all of things I have

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### Appeals likely to follow trial

LOS GATOS

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times by undermining Robertson, prompting Robertson to accuse him of acting like a "second prosecutor."

As a result of Gillan's antics, Robertson filed a motion for new trial. In an early sign of trouble for the success of the new case, a key witness for Garcia, who was supposed to present powerful evidence bolstering Robertson's claim that the murder centered on drugs, recanted his story. Less than a week later, citing an undisclosed conflict of interest, Robertson left the case. In a legal declaration filed in the court, Robertson claimed "I no longer believe any of the statements which the witness previously made are or were true." Garcia's case for a new trial was turned over to defense attorney Ed Sousa.

### Caltrain service chugs right along

CALTRAIN  
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services. Officials believed that these cuts, in addition, to fare hikes would prolong train service.

However, on Tuesday, Caltrain officials announced the discovery of an additional \$3.5 million in funding to avoid cuts altogether and maintain all 86 trains. According to Caltrain Chairman Sean Elsbernd,



Communities along the rail lines have held town hall style meetings, including Santa Clara University.

PHOTO BY: MATT IZZI

the additional funding would come from deferring maintenance and borrowing from the capital fund and the following fiscal year. Caltrain officials say the fare hike

and increased parking prices are still planned to take effect. In the meantime, Izzi fears that the Caltrain's solution may be short-lived. "It's not on the chopping block anymore," says Izzi, "but it's a short term plan."

# Provost Search Near Complete

By B.P. Broadmeadow

Santa Clara University's search for a new provost is nearing completion. The search commenced in September, and



through the nine months, the Provost Search Committee has incorporated Santa Clara's "Strategic Plan for the University" in the review and interview process for position of provost. The search committee offered its final recommendations to President Michael Engh, S.J. on April 7. Professor Allen Hammond serves as the Chair for the Provost Search Committee.

"The decision before us is something that is going to affect five to ten generations of students," Hammond says. "We are looking for the best person to help accomplish and facilitate these goals. The provost must understand who we are and what we are trying to accomplish."

As outlined the position's description the Provost serves as "the chief academic officer of the University and provides leadership and management of all aspects of academic and student life programs, information services, and athletics." (<http://www.academic-search.com/uploads/>

profiles/SCUProfile.pdf). The position requires an understanding of the university's overall mission and its core identity as a Jesuit institution.

Cross-university committees have crafted the 'Strategic Plan' in order to address Santa Clara's future. The Plan consists of main areas of development and growth: Excellence in Jesuit Education, Engagement in Silicon Valley, Global Understanding and Engagement, Justice and Sustainability, and Academic Community. The search committee has sought candidates that will best be able to implement these policies into the university's fundamental identity.

The university oversees six main academic institutions, including the School of Law. SCU has approximately 8600 students, with undergraduates comprising a population of 5000 and graduates students totaling near 3600 students. The new provost will bear the responsibility for integrating and developing a community across all levels of the universities institutions, as well as seeing that the individual needs for each of the graduate and undergraduate schools are met.

Because of the autonomy the law school exercises, the search may seem of little relevance to law school student. Yet the core values stressed in the Strategic Plan incorporates

the law school's growth and development. As of 2009, the law school initiated its own committee for development of a more specifically tailored plan to the law school's interests. But included in the law school's is the point "to integrate the law school with the greater University community." While the law school has a more secular grounding than the university's other institutions, Jesuit values are still at the heart of the law.

"If you talk with professors at the law, most of them will identify with the social justice aspect of the law school," comments Hammond. "It ties into the main points of the Strategic Plan."

"We have a footprint in one of the most innovative places in the world. The world is coming here, and we have an opportunity to meet that. Those who enter into our graduate will enter in professions where they'll have an impact."

The new provost will bear the responsibility for ensuring the formation of those Santa Clara's students and individuals and must appreciate those opportunities laid out before them and the impact that Santa Clara's legacy will have.

# School discusses renovation plans

RENOVATIONS

From Page 1

conference rooms and updated technology and will be designed with the goal of flexibility so that it can adapt with changing student needs during the next fifty years. Despite the fact that none of the current students will enjoy the new facility as students, the new project has already begun to create a buzz throughout campus.

"I'm excited for this new building, I think it is important for a student body to have a place where they can come together as a community" said John Engers (3L). The students are not the only ones excited about this project.

"We have been planning for additional space and modern facilities for several years and I am pleased that we can now work with architects on the design and lay out of new library and student study space, learning areas and classrooms and courtrooms," commented Dean Polden.

He went on to state "Our students, faculty and staff deserve state-of-the-art facilities to advance our educational agenda and plans for the future. We will design our new space to serve as a legal community center for our students and alumni to enjoy for years to come."

As a graduating student I too would like to express my excitement for this new project and its affect on the classes to come. Although I have no doubt that most of the time students will continue to be buried under heavy books and busily typing outlines and memos, the new building brings with it a promise of an enriched sense of pride in our law school community. It will be a place to gather as a school and discuss our needs, to host debates and speakers, and perhaps it will even make studying a little more comfortable.

# Supreme Court Reinstates Death Sentence

Recent high court decision rules on state habeas petitions

By Lyndsey K. Eadler

On April 4, the United States Supreme Court reinstated a California prisoner's death sentence despite evidence that his trial counsel failed to introduce evidence of psychological problems.



The Court decided Cullen v. Pinholster, a habeas petition filed by Scott Lynn Pinholster. The court held that a federal court reviewing a state prisoner's writ of habeas corpus is limited by statute to examine only the record that was before the state court that decided the case on the merits.

Pinholster was convicted of two counts of first degree murder by a California jury for killing two men during a drug deal that went bad. During the penalty phase of Pinholster's trial, his lawyers did not call a psychiatrist to testify regarding his diagnosis of antisocial personality disorder.

Pinholster was sentenced to death for the Los Angeles double homicide.

In his lengthy appeals process, Pinholster sought state habeas relief, arguing that his trial counsel had failed to

adequately investigate and present mitigating evidence at the penalty phase.

Although his trial lawyers had consulted with one psychiatrist, Pinholster's new lawyers said that presenting no mitigating psychological evidence was error. His new lawyers presented school, medical, and legal records, as well as declarations from additional psychiatrists diagnosing Pinholster of bipolar and seizure disorders, to support their claim.

These claims were twice rejected by the California Supreme Court. A federal district court later held an evidentiary hearing, and granted Pinholster's habeas petition. The Ninth Circuit affirmed, considering the new evidence.

The U.S. Supreme Court recently reversed the Ninth Circuit's en banc decision, and reinstated Pinholster's death sentence. In a lengthy opinion, the Court based its reversal on the Antiterrorism and Effective Death Penalty Act (AEDPA) which, according to the Court's interpretation, limits review to the record that was before the state court that decided the merits of the claim.

The Court said new evidence not presented to the state court cannot be considered. Going back to that record, Justice Thomas, delivering the Court's opinion, concluded that Pinholster's trial counsel had made reasonable tactical decisions under the circumstances.

In his concurrence, Jus-

tice Alito said that federal courts should be able to hold new evidentiary hearings in rare cases.

Justice Sotomayor broke from Thomas's opinion, finding it a "novel interpretation" of the federal statute.

# Crossword Solution

Y	A	N		E	S	S		E	R	L	O	R	
P	R	E	P	A	R	C		R	E	R	A	L	T
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# For Advocates, Some Resistance Expected

By John Opet

Defending the guilty can be surprisingly guiltless. One reason: a rebellious spirit. Defending a client against criminal charges is by definition a fight against the government's power.



Defense attorneys are often on the losing side. "You'll find more rebels in the defense bar," Professor Uelmen said recently during an interview at his office.

One "rebel" is Harry Robertson. Robertson has represented clients in some of the bay area's most publicized criminal trials. Recently, Robertson (SCU Law class of '78) represented Paul Garcia, who was accused of hiring a hit man to gun down a supposed rival to his love interest.

The Mercury News dubbed the trial, the "Los Gatos Love Triangle, Murder-for-Hire" case. The bizarre storyline garnered wide-spread media attention. A Mercury News reporter even blogged continuously during the trial. The government undoubtedly flexes its muscle when it's in the spotlight—and expected to win.

"You'll get crushed if you don't know how to deal with power," Robertson, said. "You need a strong ego."

The trial was called, "one of the most sensational local murder cases in recent memory." Part of the attention surely was because of Robertson's adversary: then-District Attorney-elect Jeff Rosen.

Rosen was the man just elected by the county's voters. Robertson was the voice of an accused murderer. Defense attorneys "recognize they won't be embraced as heroes," Professor Uelmen says. "Most criminal defense attorneys expect hostility – it comes with the territory."

Robertson became comfortable challenging the government after being part of it. From 1969 to 1975, Robertson was a sergeant in the San Jose Police Department. His law office on South First Street is decorated with law enforcement memorabilia. On his bookshelf is a framed black-and-white photograph of him-



Robertson at his office describing the cases that impacted him.

PHOTO BY: LANNIE NGUYEN

self as a young officer in uniform.

A near-fatal car crash while in hot-pursuit of a driver severely injured Robertson. He decided to change professions. Robertson said, "when you can't jump over low buildings or outrun slow bullets, it's time to look for

criminal defense I began to see a side of humanity," he said. "I was working to help people turn their lives around."

Robertson said his clients learn from their transgressions. He also does not hide his disagreements with the California penal code. He

something else to do."

As a police officer Robertson remembers some officers who lied during investigations. "I hated seeing that."

He also remembers "instances of brutality" by officers.

After Robertson graduated from Santa Clara Law, he went to work for a private firm. Interestingly, his colleague at the firm was Eugene Hyman (class of '77), who would go on to be a Santa Clara County Superior Court Judge. "When I started practicing

*"Defense attorneys recognize they won't be treated as heroes. Most criminal defense attorneys expect hostility"*

readily points out areas of criminal law that are, in his opinion, unfair.

"If [the government] is unchecked by defense attorneys we would not live in the

world we live in today," he said.

It's that rebellious attitude that has carried Robertson through a successful—yet tolling—career as a criminal defense attorney. He said, "It can become brutal."

A feeling of shame led one of Robertson's clients to commit suicide. He remembers watching the unmarked coffin lowered into an open grave. This is the underbelly of life, Robertson said. "I represent people upon whom society looks down."



Robertson is vocal about his disagreements with the California Penal Code.

PHOTO BY: LANNIE NGUYEN

## Alternative spring break

FROM SPRING BREAK

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been studying this year put into practice. But it was most amazing to be able to tell a client who had been subjected to an awful situation that someone was going to advocate for them."

Three students, Akiko Miyoshi (1L), Alison Gilmore (1L), and Chris Creech (1L), worked at the National Center for Lesbian Rights in San Francisco where they responded to letters from LGBT prison inmates. Miyoshi reflects on her experience: "Reading those handwritten letters from the inmates describing their experiences reminded me that the law does affect people, which I tended to forget in the busy law school routine."

Three students, Keith Bayley (1L), Luke Oakley (1L), and Wei Lu (1L),

worked at the Community Legal Services of East Palo Alto and spent the week working on Unlawful Detainers while spending time in the office and observing court.

Bayley reflects on his ability to advocate on behalf of a client. "On Friday, I was able to negotiate with a landlord about the living conditions of one of their tenants. The apartment they were living in violated health and safety codes, and I was able to negotiate to get their security deposit back even though they breached their one year lease by moving out six months into their lease. Without my help, they may not have received anything, even though they were entitled to a lot more."

These students exemplify the law school's outstanding commitment to public interest and social justice



Christian Cornejo (2L), reads over documents over spring break.

PHOTO BY: MICHELLE PETLOW

projects in our local community.

# Oracle's Daley Parts with Convention

By Rohit K. Pothukuchi

*Can you tell us a bit about your journey to becoming general counsel? What do you think distinguished you from others and lead you to this role?*



I've been at Oracle for 19 years, performing in a consistent manner, taking on large and difficult projects. I've always kind of liked big messy complicated problems and working well with executive management and people all the way down the ranks. I got to know a lot of different people and they got to know me, personally as well as my capabilities. When my predecessor decided that he was going to move to a different company, my bosses told me I was the logical choice for general counsel. But my journey here was by no means a planned one, and it was a surprise to me, but a welcome surprise.

*What do you think are the most important lessons you've learned as general counsel?*

I'm not so sure I've learned lessons being general counsel. There have been some things that have been confirmed for me, things I have been taught most of my life, like the value of building relationships, the value of embracing change and the value of lifelong learning.

All those things are important tools to be successful and achieve progress. At Oracle, two things stand out to me. One is to aggres-

sively question the concept of conventional wisdom. Convention is not really something that works well in our history or our company, and we question it. Sometimes we are described as an aggressive organization.

I see the positives in that, as it al-

I don't think there have been tremendous troubles I've had to overcome. I've faced the same kinds of difficulties every working parent has had to face, trying to balance excellence at work and being a good partner and parent.

lots of law firms involved trying to move that along in an organized way. The media kept saying they are not going to get there. That was a big challenge I had to face. We have a lot of moving parts, lots of personalities to deal with, so you have to be

really clear about what the goal is and keep people moving forward. That is a difficulty I face as general counsel.

*Can you tell us a little about the record \$1.3 billion award you received?*

I don't think there is any previous case where the scope of the theft was as massive as it was in this particular case; at least we have not been able to find a case where the theft was as massive. From that perspective, the award was very reasonable.

I was very confident about the outcome. In fact, before the jury came out, I was sitting in the court room and started an email to Larry Ellison. I had put a dollar sign and a blank with a B after. When the



Daley, center, General Counsel for Oracle, was honored as a recent recipient of this year's Santa Clara Law Social Justice and Human Rights Award. She took time to be interviewed for *The Advocate* recently.

CREDIT: SCU.EDU

allows us to try different things. Allows us to not be afraid of change, to actually pursue change, and not be intimidated by messy problems and move forward. We've achieved things we have wanted to achieve.

*What are the greatest difficulties you've had to face?*

I think there are millions of people who face that challenge every day, and it's always a challenge to get some balance. At Oracle some of the biggest challenges have been the balancing acts I've had to do here. The PeopleSoft litigations are a good example.

We had 3 pieces of litigation, with

SEE ORACLE  
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## Chief Judge Rader of Federal Circuit Visits SCU School of Law

*Rader commends Ninth Circuit Judge Whyte on patent rules and cases*

By Colin Glassey

A Federal Judge came to Santa Clara in mid-March to answer questions from a panel of lawyers and professors. Judge Randall Rader is the head of the Court of Appeals for the Federal Circuit. His position is analogous to that of Chief Judge Kozinski (head of our own 9th Circuit). If you have not heard of the Federal Circuit perhaps you are not interested in patent law? In fairness, the Federal Circuit is fairly new, created just about 30 years ago (1982) as a result of a merger between two older courts.

The Federal Circuit, unlike the other courts of appeal has a jurisdiction based on subject matter, hear appeals from all over the country based on whether the case falls under their purview. Here in Silicon Valley the Federal Circuit is well known because it hears patent law appeals as well as appeals from decisions made by the increasingly important International Trade Commission (USITC). Al-

though decisions by the Federal Circuit can be appealed to the U.S. Supreme Court, such appeals are rarely granted certiorari. Judge Rader is one of the eleven current judges sitting

on the Federal Circuit. One position is currently unfilled.

Judge Rader has often taught classes on patent law, mostly in and around Washington D.C. which is where the Federal Circuit is located. His ease in a classroom setting was apparent during his session at SCU Law. He is also the co-author of the most widely used patent

law case book. Somewhat unusually for a Federal Judge, he spends a significant amount of time talking with judges in other countries such as Germany and China. The Federal

Circuit itself travels from time to time, hearing cases outside of Washington D.C. Two years ago they heard cases here at Santa Clara Law School.

In the question and answer session,

increase costs and discourage parties from filing suits. He said he was working on model rules for limiting discovery. When asked about the ITC he said that he was pleased with

its performance, praising its speed and commenting that he knew of at least two Taiwanese companies who were using the ITC to settle legal disputes they had.

One of the special guests at Judge Rader's talk was Senior Judge Ronald Whyte, an eminent jurist from the U.S. District Court, Northern District of California. Judge Whyte is the author of



A look inside one of the courtrooms of the Federal Circuit in Washington, D.C.

COURTESY OF: THE FEDERAL CIRCUIT

Judge Rader talked about some issues in which he thought the U.S. could do better. For example, he was critical of the way the discovery process is now a weapon used in patent litigation to

patent cases which are heard in this jurisdiction. Judge Rader singled out Judge Whyte during the talk, praising him for the quality of his opinions.

# Dean Erwin's Rumor Mill

Dean answers tough questions by students

By Dean Erwin

Dear Rumor Mill, Why does LCS take so long to update job postings from when they are submitted to when they



go live on the accounts? This puts us at a disadvantage as opposed to other people who find the listings first.

I forwarded this question to Jennifer Babcock, the Assistant Director for Law Graduate Employment. She explained that LCS officially posts each job announcement as soon as possible. They don't blindly post announcements that are sent to them; instead, they conduct some diligence to ensure that each announcement is a bona fide opportunity, contains appropriate terms, and is related to the legal field.

All law schools do this, so Santa Clara students should not be at a disadvantage.

Dear Rumor Mill, Why did they hide our tuition being raised to a part of the web-

site that most are likely not to see?

Normally, new rates are included in the academic planner and bulletin each year and we usually just point students to those sources if they have questions. This year, given the amount of the change, the deans decided to immediately post some information about the change and the use of the additional tuition dollars to "reinvest" in important law school needs. The statement was posted on the web page, with an announcement and a link on the main page of our website. It's been on the main page for about two months now. To see the statement, go to <http://law.scu.edu/blog/deannotes/spring-2011-update.cfm>

Dear Rumor Mill, How are students supposed to feel after reading Polden talk about how law schools have manipulated employment numbers?

How should you feel? I, personally, feel kind of proud that our Dean is a nationally-recognized expert in the field of legal education and is currently the chair of the ABA Standards Review Committee for law schools. Please re-read the article and note

that neither the Dean nor the author of the article ever suggested that Santa Clara was providing misleading information about employment data. The Dean's quotes were about measures that the American Bar Association committee is recommending to improve the clarity of employment data provided by schools. Santa Clara has already taken those steps.

Jennifer Babcock would also like you to know that at the earliest possible point following the collection of the most recent class' employment data, Santa Clara published on the school website the direct data that graduates reported to us. There is no manipulation of this data. She notes that for a student who is looking for a job right now, it doesn't really matter what the most recent graduating class' employment rate is - all that matters is what exactly that student is doing on an individual basis to find a job.

Questions or comments? Just send me a note [serwin@scu.edu](mailto:serwin@scu.edu).

Good luck on finals, have a great summer, and Congratulations to our Graduates!!

## Oracle's GC Takes a Break for an Interview

ORACLE

From Page 5

judge said 1.3, I just typed that in!

Were you surprised at the level of theft, and what was the game plan?

We were definitely surprised that a major software company was engaged in that kind of behavior, because they treat their IP the way we do. One of the first things we did was initiate a very detailed and careful investigation, so we could tell our management and our board of directors what has happened.

It has been a matter of tireless work throughout and dedication of many, many individuals at Oracle as well as outside teams. Before trial we had already won on liability.

At trial, some of the SAP executives testified in a way that was inconsistent with the stipulations. The judge said, 'Look, this is a problem. I'm going to give a curative instruction, so the jury knows the inconsistency with the stipulations.'

You seem to have made a major switch in your career from litigation to corporate, was that a difficult switch?

I've never made the switch. I was trained as a litigator. I currently practice litigation. When I came to Oracle, I became head of the litigation group. As general counsel, however, I have had to take on additional responsibilities. One of the beauties of litigation, though, is that you get visibility to a lot of things. You already have a broad base to fit into the role of general counsel.

How do you feel the legal profession has changed in your years in the field?

Some of the issues have changed, as well as the scale. You see judgments that are bigger than they were in the past. You see a lot more patent litigation. When I was first practicing at Oracle, we weren't even patenting software at that time. But I don't see so much change in the practice of law. There are many practitioners who are still very courteous and respectful of one another, and there are some practitioners who are the opposite of that. I don't think I can say that the practice has really changed; I think it's really based on the individual.

The advice I would have for law students who are coming into an uncertain market is to stay calm. I would give that advice to anybody in any situation.

Whether it's the economic situation or the threat of a law suit, stay calm and try to get whatever experience you can in the field that you're interested in. So if that plum job at a tier 1 firm isn't there, get whatever experience you can and try to help as many people as you can.

It's not really a matter of putting things on your resume; it's about building your skill set. There are many of us in good positions now that didn't take the highest paying job. We decided to do something a little different.

## Professor Graham Tackles Three New Articles

Graham profiles his article on the Fair Sentencing Act, as well as his article tracking technology and torts

By Martin Behn

Outside teaching and mentoring, Assistant Professor Kyle Graham does have a life. Writing law review articles. Currently, Professor Graham will be publishing two articles, and another will be available on SSRN. Two are related to criminal law and procedure; the third explores the nexus of torts, technology, and the courts.



His first piece "Facilitating Crimes" explores the nuanced nature of some offenses: detention, charging, and pleading crimes. Graham calls these facilitating crimes, because they "might not necessarily implicate the entire criminal justice system."

An example of pleading crimes involves a common plea bargain of coasting, a lesser sentence than speeding. Truckers would plea out of speeding or other violations, which involve points against a driver's license, in exchange for accepting the penalties of these lesser crimes. These pleading crimes are not wide-

ly charged by law enforcement, but later become offenses when the original charged crimes are dropped in the course of plea bargains.

Graham then "looks into the challenges of this system." He notes there may be constitutionality questions implicated by some of these crimes and the way they are handled.

Graham's second article on SSRN is "Sorry Seems to Be the Hardest Word: the Fair Sentencing Act of 2010, Crack, and Methamphetamine." The forthcoming article for University of Richmond Law Review highlights Congress' recent passage of the Fair Sentencing Act.

Graham analyzes the act, which increased the crack-cocaine minimum for certain penalties. The Act changes the previous minimum of five years sentencing for possession of five grams of crack, and 100 grams of cocaine. The threshold limits for a minimum five-year sentence have been raised, and are no longer as disparate as between crack and powder-cocaine.

One of the asserted reasons for changing the sentencing guidelines, among a host of other factors is "because of the disproportionate effect of convictions from crack-cocaine on African-Americans," says Graham. Indeed, bills have been introduced nearly yearly since the early 1990s to address the inequities in convictions and sentences as between crack and powder-cocaine.

Congress' willingness to address

the issue because of the disparate impact it has on African-Americans also raises questions. Graham suggests that if Congress is willing to rethink sentencing for this reason, there might be less of an impetus to rethink the death penalty, which has a similar disproportionate impact.

Further logical implications are that judges might have an ability to rethink sentencing in cases involving methamphetamine, which he calls the "political drug" de jour.

The third article professor Graham is writing discusses how courts deal with new and emerging technologies in tort law. Graham said his goal was to see "whether tort law is really hostile to new technology."

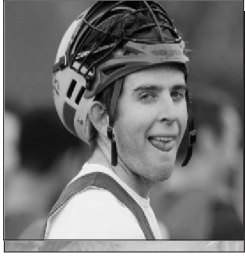
Cars, radio and television all receive attention in his paper. He notes that when TV and Radio emerged, courts struggled between whether to import established libel or slander legal standards. Libel courts risked over-deterrence because of the broader net that the standard casts, says Graham. But with slander courts may have risked being under deterring.

Looking at the trends, his research concluded that tort law, "really is more ad hoc, and idiosyncratic to the technology." Graham noted "how tort law will treat emerging technology is probably more accurately relayed in the prevailing sentiments about the technology at the time."

# Trump Candidacy Mocks Political Process

By Dominic Dutra

A CNN Opinion Poll taken April 9-10, based on 385 Republicans, found that when asked which person



from a list of potential candidates they would be most likely to support for the Republican Nomination in 2012, there was a deadlock at the top. One potential nominee, Mike Huckabee, is familiar to voters from the 2008 election. The other potential nominee, Donald "The Donald" Trump, is familiar to voters from "The Apprentice" and stamping his name on every building money can buy, like a four year-old. Granted, Huckabee and Trump got only 19% (respectively), and the poll is definitely flawed in design (margin of error for choosing 'recognizable' names). Never the less, both were the lead vote getters in this Poll. The Donald, it seems, has

drawn some legitimate (?) supporters from the confused ranks of the right.

Before we dive into the lunacy accompanying Donald Trump's unofficial media/publicity-stunt candidacy for the Republican nomination, I want to draw attention to the fact that 19% or 73 out of the 385 republicans polled, would choose to have Trump as their presidential candidate. Asinine 'birther' theories aside, it is clear that an unfortunately large portion of our population feels like voting for 'the rich guy with funny hair' is an acceptable method for choosing our nation's president.

Despite the fact that our economy is mired in the worst recession in decades, there are astoundingly large number of voters who want to put their struggling economy into the hands of a man who has declared bankruptcy several times on failing business ventures; at one point in time had \$3.8 billion in accumulated debt, including \$900 million in per-

sonal debt. Trumps debts blew up because he continually took out loans to further investments and then needed more loans to pay the interest on other loans. The supposed fiscal conservatives supporting Trump, are support-



Trump is known for his antics, as much as he is for his wealth. COURTESY OF: FACEBOOK.COM

ing a man who has historically spent money lavishly without accounting for whether those expenditures were

sound investments. One of his former top aides said about Trump: "He overpaid for almost everything." How is he pulling 20% of the vote in any polls?

The sad and pathetic truth here, is that Trump is not even the sad part of this story. The sad part of the story is that Trump can use our presidential election as a publicity stunt to drive up interest in his name, his brand, and to market himself to an even greater class of people. The sad part is that there are living, breathing, voting Americans in this country who would rather have Trump as president than any other legitimate politician other than Huckabee. The pathetic part, is that this is what politics in our country has been reduced to. A rich man and his funny hair.

Trump will announce his candidacy, or lack thereof, on the season finale of The Apprentice.

# Baseball Preview: Spills And Thrills

Greg previews the best offerings of California baseball for 2011

By Gregory Williams

The 2011 Major League Baseball season has begun and The Advocate wishes to give you an early season preview of the



baseball teams that you can watch play in California. Editors Note: This preview reflects the uncensored views of Greg Williams and do not necessarily reflect the views of The Advocate.

**The Giants** - I know a lot of you are Giants fans, so you are probably not going to like this: There is no way that the Giants repeat. Why is this? First of all, the Giants were an old team that somehow managed to get older. A look at the roster features a list of spare part players that all seemed to have one thing in common: fluke post season performances. Do Giants fans seriously think that Cody Ross, Pat Burrell and o'Miggy Tejada will actually be threats this year? Combined with a pitching staff that looks shaky past the whirling #1 starter and the lineup of an old timers game manning the outfield and short, the Giants look good to disintegrate after the All-Star break. Also, the beard thing is getting tired.

**The Padres** - Full disclosure forces me to tell you that I am a Padre fan. I love this team. I also am ashamed to wear any of my Friar gear around because they are absolutely horrifying to watch this year. Seriously. I have seen little league teams that can hit better than them. The Padres pitching appears poised for another stellar year



Giants fans are known for their catchy slogans, "fear the beard" - referring to Brian Wilson; as well as the 1989 "Will the Thrill" - referring to Will Clark, Jr. COURTESY OF: STEVE RHODES

on the mound. Unfortunately, the offense anchored by a motley crew of role players whose baseball cards would be fortunate to see duty in the spokes of a child's bicycle. Friar fans, be ready for a long season of extra inning losses. By midseason, be ready for a squad without Heath Bell and...well, can you actually imagine another team trading for anyone else on the roster?

**The Dodgers** - As a threshold matter, if you like the Dodgers, you are not a baseball fan. I would prefer my hometown Padre fans never coming to a game because they are at a beach, or a Giants fan ambling in late because they were getting high with Timmy, than a fan base who arrives by the fourth and leaves by the seventh. Also, your fellow fans are violent, closing in on an opening day violence record that would only see improvement from a ten-cent beer night. For the team, what can I say? Matt Kemp looks like he will have a breakout year. He is hitting, stealing

bases and generally showboating is annoying (but successful way in CF). Other than that, I cannot say that the rest of the team is inspired. You managed to give a job to Jamey Carroll though, who knew that guy still played ball?

**The Athletics** - I will be honest, I know virtually nothing about the A's. I know that they have an injured closer and that Coco Crisp is leading the team in arrests (for libel purposes, I am actually not sure that

is true). I never understood why Billy Bean got so much credit for trading away players and NEVER WINNING ANYTHING. I guess the A's will have another season where they are not first, but not worst. Thank God for Seattle, right? Author's note: just thought of another A's player - CAHILL!

**The Angels** - Has anyone ever met an Angels fan? I mean, we were all temporary fans after the movie "Angels in the Outfield" but now the franchise has become a place for major leaguers that everyone thinks have long since retired. Yet, the Angels have one of the Big's best managers in Mike Soscia, they will always be in contention. Look for Jared Weaver to have an All-Star caliber season and at some point. The Halo's will continue their league lead in players named after fish - after a Trout is called up to fill the shoes of a Salmon.

## Sudoku Challenge

			7		4	8	5
8	4			3			
	7				1		
		5			4	3	8
	6						5
3		4	9		6		
		8					4
				2			1 3
6	9	1			5		

# Goldstone Papers and Transparency

*Justice Goldstone's presence on campus attracts large crowds*

By Gregory Williams

On April 11th, Justice Richard Goldstone visited campus to speak to law students interested in international criminal justice. His talk, sponsored by the Santa Clara Center for Global Law and policy was one of the more attended of the year, with students sitting on stairs and lining the walls for a chance to hear the former ICTY and ICTR Prosecutor's talk. This was no coincidence.

In addition to Goldstone's work as a Justice of the Constitutional Court of South Africa and his work as a prosecutor in two international criminal tribunals, Goldstone was also the author of the now infamous report prepared on behalf of the UN Human Rights Council that bears his name. The report, which investigated international human rights and humani-



tarian law violations related to the Gaza war, was met with a firestorm of controversy when it came out.

The reason for this was because the report was highly critical of both sides and opined that both sides had committed war crimes, some bordering on crimes against humanity. While a report finding Hamas guilty of such crimes would hardly even be noticed in the western world, the fact that Israel was also implicated was shocking.

Israel had done its best to squelch the report. As it viewed the body that had ordered the report to be biased, Israel chose to not participate in the fact-finding mission. While this could be seen as a strategic move to keep the report from gaining momentum, it proved a costly error in that it prevented exculpatory evidence from the Israeli side from being presented.

Before his talk at SCU, Goldstone published a mea culpa of sorts in the Washington Post where he stood behind many of his findings, but wished that the Israeli's had participated and provided their own side of the story.

While students were asked to re-

frain from asking questions about the report, it is fairly clear that many came with the report in mind. After all, Goldstone himself had weathered



COURTESY OF: BLATANTNEWS.COM

many assaults not only on the report but on himself. He was labeled a traitor to his religion and even was threatened with being forced to miss his own grandson's Bar Mitzvah because of protests. There was even talk of him facing suits for "blood libel."

Seeing all of this, it is hard to see past the rancor and politicking and see the world not as it is but as Goldstone hoped it could be: a world where fact-finding missions are seen as exactly what they are called. Goldstone was quoted as saying the entire matter would have been over for Israel if they would simply conduct a credible investigation into their own conduct. It

seems pure lunacy to think that a man could be so besmirched for asking that a nation simply do the right thing.

To me, talk that puts nationalism over the prospect of fairness and, with luck, peace, is counterproductive. As a Jew, I am mindful of the fact that Israel is a small nation in a sea of many that would see them destroyed. However, there is a self-induced ignorance of reality on all sides that thinks that a siege mentality can last forever. It can't. A real, lasting peace can only be obtained when parties are on the level ground of not being above the law.

While I recognize that the drafters of the Geneva conventions did not have the world of asymmetrical warfare and terror groups in the front of the minds, it has to be conceded that something has to change the idea that lack of transparency and duress excuses to not adhering to the laws of armed conflict will somehow end up in a lasting peace. A report that urges parties to look within must not be seen as an obstacle but as a blessing. As Faber told Guy Montag in "Fahrenheit 451": "If you hide your ignorance, no one will hit you and you'll never learn."

## POTS: People on the Street

*If you had the Hot Tub Time Machine, what would you tell yourself before coming to law school?*



"I would have told myself: Cleanse your chakras--that way I could have come to law school a little more zen."  
- Catie Barr (1L)

"Don't go to law school. Stay in the hot tub time machine."  
-Andrew Freyer (2L)



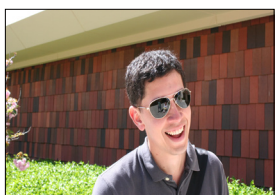
"Memorize the black letter law."  
- Mike Fedalen (1L).



"Get involved more with everything. Be like Carlos Rosario. Also, don't gamble."  
-Aaron Hirsch (3L)



"Don't Go, Marcus."  
-Marcus Godfrey (3L)



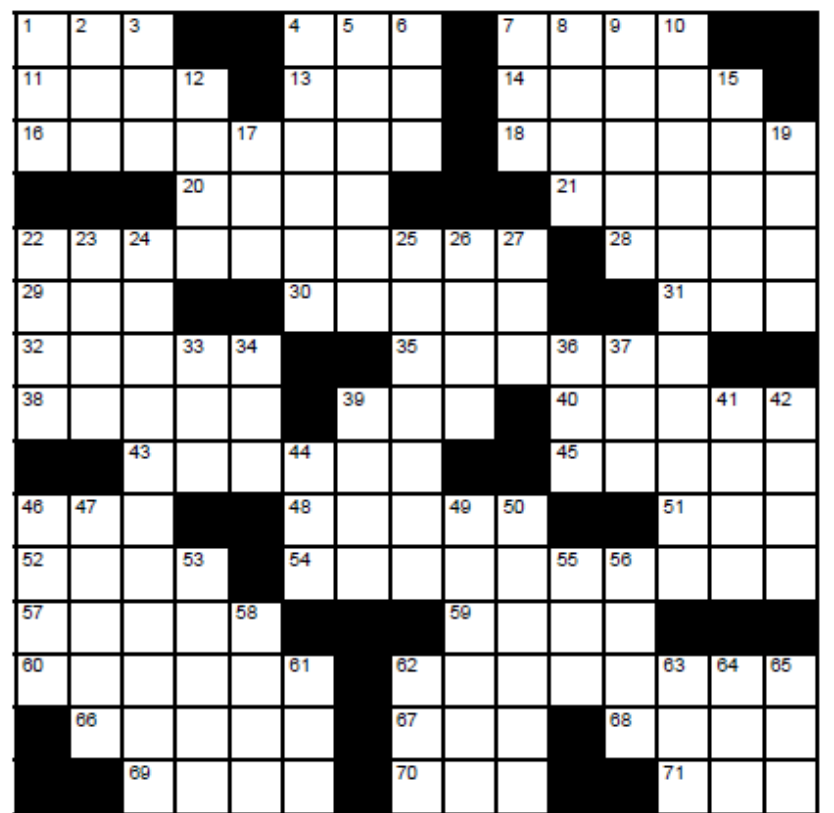
"Take more practice exams, for the love of God!"  
-Angelo Alcid (1L)



## Crossword Puzzle

### Across

- 1 Motorcoach
- 4 Numbers man (Abbr.)
- 7 Young salmon
- 11 At the apex
- 13 Gehrig, for one
- 14 Spoken
- 16 Losing weight
- 18 Healthy steam baths
- 20 Call off (Abbr.)
- 21 Styptic weed
- 22 Limbering up
- 28 Ailing
- 29 Meadowland
- 30 Chinese silk fabric
- 31 Maiden name
- 32 Cravat
- 35 Eggesting
- 38 Mex. indian
- 39 Fed. agency
- 40 Tibetan priests
- 43 Actress Address
- 45 Rascal
- 46 Enemy
- 48 Scruffs
- 51 Asian holiday
- 52 Adherents (Suffix)
- 54 Stationary bikes
- 57 Tower of \_\_\_\_
- 59 Rave
- 60 Stays fit on ice
- 62 Aerobics
- 66 Change
- 67 Bend
- 68 School type
- 69 Old wives' tale



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- 70 Compass pt.
- 71 Negative

### Down

- 1 Soap measure
- 2 Shoshonean
- 3 Turf
- 4 Secure, as a win
- 5 Cloak
- 6 Month (Abbr.)
- 7 Ballet step
- 8 Word of regret
- 9 Libertines
- 10 Jogging buddy (2 wds.)
- 12 Purplish brown
- 15 Stay fit socially

- 17 Cheetah
- 19 Japanese beverage
- 22 Execute
- 23 Indian buzzard
- 24 Indoor fitness activity
- 25 Fitness aim, to stay \_\_\_\_
- 26 Wine country
- 27 Wildebeest
- 33 \_\_\_\_ Miss Brooks
- 34 Poetic contraction
- 36 Variety
- 37 Fabray, informally
- 39 Plant fiber
- 41 Swear
- 42 Tennis units
- 44 One (Fr.)
- 46 Lies
- 47 Honshu port city
- 49 Mistakes
- 50 Rare
- 53 Fight
- 55 Pen need
- 56 Discontinue
- 58 Suggestive look
- 61 Sp. girl (Abbr.)
- 62 Existed
- 63 Vase
- 64 Beverage
- 65 Double agent