

EPA Administrator Visits Santa Clara University

Lisa Jackson answers questions on Climate Change, Hydraulic Fracturing, Environmental Justice, Serving as the Head of the EPA

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By Michael Branson
Managing Editor

On Friday, October 26th, Environmental Protection Agency Administrator Lisa Jackson gathered with Santa Clara University faculty and law students to discuss important issues before the Agency. During a quick trip through California, Ms. Jackson lunched with SCU President Michael Engh, SCU Law professors Ken Manaster and Tseming Yang, and several other prominent members of the university community, including the Dean of the School of Engineering Godfrey Mungal and the Director of the Office of Sustainability Lindsey Kalkbrenner.

Four law students also had the honor of attending the lunch and helped lead the discussion, posing several questions on critical issues facing the EPA, as well as inquiries about the Administrator's experience in the prestigious position



Second-year law students Hazella Bowmani and Charlie Lane pose with EPA Administrator Lisa Jackson during the Administrator's visit to Santa Clara University.

over the past four years. Ms. Jackson spoke openly and provided thoughtful answers to several pressing questions.

With Hurricane Sandy looming,

climate change was on the minds of many attending. Ms. Jackson shared the

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July 2012 Bar results came out on November 17. California had a 53% pass rate overall, but a 77% pass rate for first time test takers from ABA accredited schools. Individual university results will be posted in a few weeks.

Deferred Action:

One Student's Struggle to Pursue her Dream

Jaqueline Ramirez
For The Advocate

I recently had the pleasure of sitting down with someone directly affected by President Obama's recent Deferred Action Executive Order. In June 2012, President Obama announced the program which allows young, undocumented immigrants to obtain permission to work in the United States and provides possible relief from being removed from the country or from being entered into deportation proceedings. Since the program's start on August 15th, Immigration and Customs Enforcement (ICE) has received over

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Dean Polden, Senior Administrators Discuss State of Santa Clara Law

By Benjamin Broadmeadow
Editor-in-Chief

On October 18, Dean Polden, joined by several senior administrators, conducted a town hall meeting on the state of Santa Clara Law. The meeting addressed four major areas: U.S. News Rankings, Alumni Relations, Exam Rescheduling Policy, and Staff Appointments. *The Advocate* sat down with Dean Polden in a later interview for further explanation of the stated areas.

U.S. & World News Report Rankings

An ongoing discussion topic for students, faculty, and alumni, Santa Clara Law's ranking currently sits at ninety-sixth in the "U.S. and Worlds News Report" overall law school rankings. Additionally, the university ranks sixth in intellectual property law and forty-eighth for part-time programs.

SCU Law has a dedicated committee that addresses the rankings evaluation. The purpose of the committee is to analyze the areas that the ABA and the U.S. News Report consider. The committee reflects on what SCU Law's strengths are and which areas the school can become stronger.

Quality assessment by law school deans, judges, and lawyers constitute forty percent of the rankings'

determinations. Dean Polden suggests this method of peer review is "shocking," especially when considering the low number of people who respond to the survey. Because the quality assessment contributes to such a large part of the ranking, the administration recognizes the importance of SCU alumni holding judicial seats or trying high level case.

"But," Dean Polden says, "there is so

"If we change our way just for the report, that alone is insufficient. Our purpose should be to drive forward our goals and our mission."

- Dean Polden

much we can't really influence. If we change our way just for the report, that alone is insufficient. Our purpose should be to drive forward our goals and our mission."

Among those goals is a one hundred percent bar passage rate. Currently, SCU Law has a bar passage rate of 76.4% in 2011, well above the California average. Despite the importance of bar passage, the U.S. News Report only attributes bar passage rates to two percent of their

overall rankings' calculus.

Staff Appointments

Santa Clara follows procedures comparable to other law schools for hiring new professors. The administration first evaluates current areas of academic need or possible areas of growth. Once the position has been determined, the administration publishes the availability to the American Association of Law Schools, which then distributes the announcement nationwide. A university committee composed of faculty, administration, and staff evaluates candidates.

SCU Law's most recent hires reflect the school's desire to adapt the changing legal landscape. Recent hires such as Professor Yang and Professor B. Love demonstrate SCU Law's commitment to environmental law and high tech/patent law. Dean Polden believes that as green technologies and greater environmental regulation grow in prominence, Santa Clara will serve as a focal point for future generations of lawyers pursuing these fields.

Alumni Relations

At the town hall meeting, the Law Alumni Relations and Development (ARD) office and the current Alumni Board announced several initiatives that are coming out over the next year.

ARD has pushed for a greater presence by both students and

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

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OUR BAD

In the last issue, we misprinted Carl Frazier's name. We spelled Carl with a "K". Additionally, we cut off the last word ("choice") from Professor Kreitzberg's article. We aim to minimize errors in printing, and we apologize for the mistakes.

State, Nation, and World

ELECTION

Although Roseanne Barr only garnered 49,000 votes in the presidential election, she still seemed pretty pleased with the results. The day after the election, Ms. Barr tweeted, "President Obama-signed sealed delivered! The American Family rises together! #socialistsolutions" Issues on the former sitcom star's platform included marijuana legalization, environmental preservation, ending the wars overseas, and equal rights.

Washington D.C. - Several Americans were extremely unhappy with the results of

the November 6 election. On the White House website, petitioners from nearly every state have asked to peacefully secede from the nation. Several states, including Texas, Louisiana, and Florida have reached the 25,000 signature threshold at which the White House will assign the appropriate agency to respond. In unrelated news, Lincoln, starring Daniel Day-Lewis was released in theaters this past Friday. It is about how Lincoln kept this country together.

STATE

Cortland County, N.Y. - A district attorney in New York admitted in a press conference

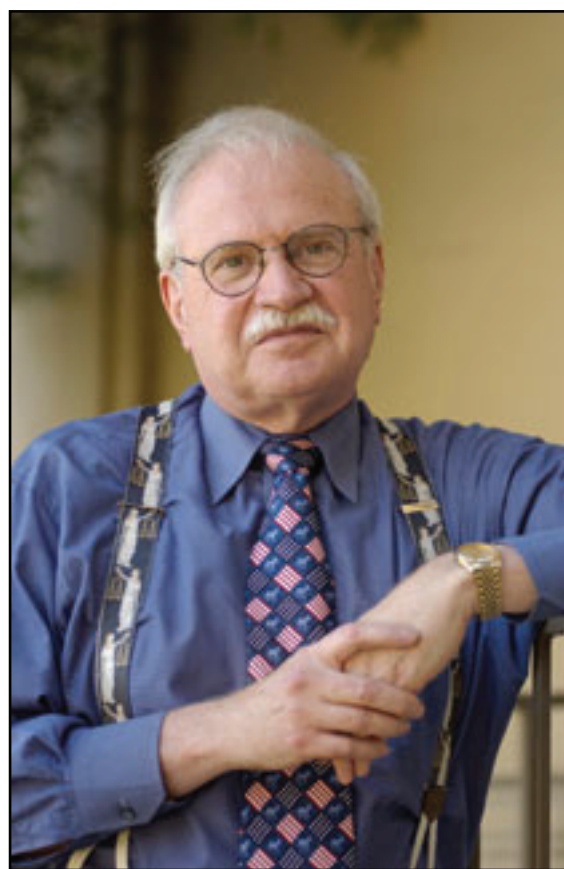
that he had previously acted in several porn films in the 1970s. Moreover, Mark Suben had lied about not being in the films during his reelection campaign. Suben had used the pseudonym "Gus Thomas" in the films "Lecher" and "The Love Witch" to keep the story under wraps, but suspicion arose when Suben refused to shave his moustache.

San Jose, CA - Residents in San Jose passed Measure D, raising minimum wage to \$10.00, with fifty-nine percent approval. The passage makes San Jose one of the largest cities to have a higher minimum wage than required

by state or federal law. The rate will take effect in March and will include automatic inflation adjustments.

Orem, Utah - The ACLU settled a case in Utah involving a man who was pulled over by police after flipping off the officer. The city of Orem has agreed to pay the man \$2,500 as well as \$2,500 in attorney's fees to the ACLU. John Meija, Legal Director of the ACLU of Utah said, "Various courts have concluded that using your middle finger to express discontent or frustration is expressive conduct protected by the First Amendment."

Thanking Professor Uelman by Way of Roast Former Dean to Enjoy Phased Retirement



This past Friday, November 17, Criminal Law Society and the ACLU chapter of Santa Clara Law hosted the "Roast of the Cobra," honoring Professor Jerry Uelman's long and decorated career as an attorney and a member of the SCU Law community. Among the evening's roasters were Professor Peterson, Professor Kreitzberg, and Professor Graham.

Professor Uelman garnered the nickname "The Cobra" while working in the U.S. Attorney's Office in Los Angeles prosecuting organized crime. He served as the Dean of Santa Clara Law from 1986-1994.

During the early 1990's, Professor Uelman served as a member of the defense team for the People v. O.J. Simpson trial. He later released "Lessons from the Trial," which detailed his account of and approach to the trial.

Professor Uelman will be travelling to Nepal next semester.

DREAM ACT: Immigration Status Causes Students' Struggles

"DREAM"

From Front Page

72,000 applications. What follows is the heartfelt story of one of those persons, as well as my thoughts about her journey.

The story of these undocumented immigrants is important to me because I am also an immigrant who was brought to this country as a very young person. But I am lucky enough to be documented. Neither I nor these undocumented persons had any personal control on our documentation status, but our experiences in this country have been extraordinarily different. For the sake of privacy, the names and places in the story have been changed.

Maria came to the United States from Mexico at the age of six. Her memories of Mexico are limited to always being hungry. Her mother, unable to find work let alone food, would tell her and her siblings to go to sleep so that the hunger would pass.

After years of not finding work, Maria's uncles Herman and Carlos decided to leave for the United States, taking Maria's grandmother with them. When Herman and Carlos returned to Mexico to visit Maria's mother, they tried and tried to convince their sister to come back with them. While Herman and Carlos struggled to convince her, she agreed to allow them to take Maria back, to provide her with a better opportunity.

Worried that their sister might change her mind, Herman and Carlos flew back with Maria the very next day. At the airport, Maria and her uncles were stopped by an official and questioned. At the time, Immigration and Naturalization Services (INS) had a policy of "catch and release." Immigration authorities who came across people attempting to

enter the United States without proper documentation would stop them and release them back to their "home" countries. Today, the renamed Immigration and Citizenship Enforcement (ICE) policy is one of "catch and detain."

After being returned to Mexico, Maria and her uncles went to a motel. Herman tried to convince Carlos that they should return Maria back to her parents because it was too scary for a little child of only six. Carlos insisted, "No, if we take her back we won't get another chance."

Maria's uncles decided to contract a coyote, a person hired to assist in crossing the U.S. border. Maria only recalls that once at the border, their group separated and she and her uncles separated from the coyote and waited for a chance to run across the border. The point of crossing was filled with tumbleweeds and thorns. Maria and her uncles waited until night to cross the road patrolled by immigration. "Now, now, now!" her uncles yelled, and they ran toward a better life, her two uncles hoisting her up by the arms and dangling her little body between them.

Maria says it is true what they say about the desert: "the nights are so cold, and the days are so hot." Maria and her uncles struggled for two weeks walking through the desert until they finally reached a town. After spending a couple of days at a motel, a woman picked them up to drive to Nevada. Maria rode in the trunk the entire way. Carlos attempted to get in the trunk with her so she would not be scared, but there was not enough room. Carlos spoke to Maria the entire way through the back seat so she would stay calm.

Maria's grandmother was eagerly waiting for their arrival in Nevada,

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EDITORIAL:

FOR THIS ISSUE'S EDITORIAL, WE HAVE TURNED TO OUR ARCHIVES. BELOW IS A GUEST EDITORIAL BY RALPH NADER FROM 1970. THE IDEA OF STUDENT-TAUGHT COURSE IS AN INTRIGUING ONE. IT PROVIDES THE OPPORTUNITIES FOR STUDENTS TO LEARN THEIR RESPECTIVE COURSE MATERIAL THROUGH TEACHING AND FOR THE ADMINISTRATION TO RECEIVE VALUABLE FEEDBACK IN EDUCATIONAL REFORM.

"One Proposal for Law School Reform" - by Ralph Nader

"In all the discussion recently at law schools about grading and curricular reform and student participation faculty and administration decision, it appears that one highly significant proposal could be adopted forthwith. I refer to the establishment of a year-long course given by students for the benefit of the faculty.

The case for such a course is compelling and the mechanics of conducting it fairly simple. Students have a great deal to convey to the faculty- their legal experience in clinical work, a greater sense of the urgencies of the time that are straining the legal system, their frequently greater familiarity with new techniques or bodies of knowledge of relevance to developing legal systems and teaching pattern. There is substantial evidence that many professors are developing a keen appreciation that law school students have much to teach as well as to learn. This recognition is bound to increase as law students, organized in investigating teams, begin producing first-rate empirical studies of legal institutions. But even for those members of the faculty who resist the obvious, a student course for the faculty can be justified as a steady feedback process that is bound to enrich the professor's response to his classes.

Once the principle of a student course is accepted, the mechanics could be worked out to maximize participation and efficiency. Law schools have always been good at mechanics. By way of suggestion, a steering committee of students, chosen by their peers, could organize the course content, decide whether to inflict an "eye for an eye" and adopt the Socratic method or develop another less time-consuming procedure, determine the kinds of demonstrative evidence to be utilized, the field trips to be taken and the spinoff benefits to be conveyed to other law schools and in journals of legal education. I am sure exciting innovations and benefits can be derived once such a course is adopted.

...

Some ground rules for such a course would obtain near unanimous support. There should be no grading and no compulsory attendance. I expect the newspaper would welcome reactions and suggestions relating to such a proposal. Let us hear them."

Rumor Mill with Dean Erwin

By Susan Erwin
Senior Assistant Dean



Q: I don't understand the email that we got from the Bursars Office. Why can't we get our refunds? Why do we have to wait? How do we pay rent?

Backstory: A number of years ago the university changed their policies regarding refunds, holding all refunds until after the add/drop period was over. This policy brought SCU in line with most other schools. (Prior to the implementation of this rule many students were over-awarded refunds, withdrew, ran away, never returned the money, and then SCU had to go after them in collections and had to repay the feds on the student's behalf. Waiting until after add/drop ensures that refunds are awarded accurately and cuts down tremendously on collections actions.) In an effort to be helpful, our Bursars Office has made exceptions to this rule for law students for the last few years. They recognized that you all were self-supporting, full-time students who needed the funds right away.

Current Issue:

Fact One: You all come back on the 14th of January.

Fact Two: The rest of the university comes back on the 7th.

Fact Three: The PeopleSoft process that the Bursar has to run to award refunds can either be turned on for the whole university or turned off for the whole university.

If the Bursars Office were to turn on the refund process for you during the week of the 7th, it would allow the 9,000 other people on campus to also request refunds earlier than they are allowed to. The process cannot be run manually because of the increased opportunity for errors and the fact that the 9,000 other people are all starting school and the Bursars Office will be swamped.

Solution: Recognizing that this would be a problem for some of you, the Bursar and Financial Aid Offices proposed the following solutions:

1. Let you all know what is going on as soon as possible, so that you can make a plan NOW if waiting until the second week of school to get your refund is going to be a problem.
2. Inform you of the different options for getting funds early. These options are:
 - a. Work with Law Financial Aid to increase your fall financial aid if you didn't already use your entire budgeted amount. NOTE: not

really the best solution, because we would like you to avoid increasing your debt load.

b. Work with the Bursars Office in spring to apply for an Emergency Loan. In some cases, they might even be willing to waive the \$50 processing fee. NOTE: for an emergency loan, you will need to show them that you need the money right away – like an overdue rent bill.

c. Work with the ACCESS Card Office to put \$1,000 on your ACCESS card. NOTE: this is, in effect, a \$1,000 advance on your spring aid.

d. Possible Plan D - It might be possible to move some money from spring aid to fall, but they were still checking with the feds at press time. Law Financial Aid will have more info on that later. NOTE: they caution that to be a helpful solution, you would need to budget these funds to pay for early January expenses.

Please note that this situation is not a case of anyone refusing you service or trying to take anything away from you. This is what it is and hopefully all of this information will allow you to make a plan that will get you through the first few weeks in January.

If it all seems too confusing, please talk to the helpful folks at Law Financial Aid. If it all seems too unreasonable, please come talk to me.

Q: My first law exams ever are coming up soon! What if I wake up with a migraine on exam morning? Do I call the professor?

If you are too sick to take your test or some other calamity befalls you, do NOT contact your professor. This would compromise your anonymity. (They would know which of their students didn't show up on test day and finished the exam later.) Please DO contact my office – lawstudentservices@scu.edu or (408) 554 – 4766. If you are sick, you will need to go to the doctor and get a note saying that you were too ill to take the exam. Then please let us know. We will ask you to bring us the doctor's note when you return to campus. In case of other situations beyond your control, please let us know right away. Depending on the nature of the emergency, we will let you know if it is possible to reschedule your exam and let you know what type of documentation we need when you return to campus.

Do NOT walk into an exam room if you are feeling sick. Once you see the exam, we can no longer reschedule it for you no matter how sick you get. Instead, walk straight over to Cowell Health Center or up to the Student Services Office.

Have a great Holiday Break and Good luck on Finals and if you have heard any rumors lately, let me know – serwin@scu.edu

Town Hall provides insight to areas of SCU Law

"TOWN HALL"
From Front Page

alumni on the SCU Law Alumni LinkedIn page. The ARD hosted a LinkedIn Alumni Event in conjunction with the announcement of the Class of 2013's Class Gift Campaign.

As more students and graduates join LinkedIn, ARD intends to have the SCU Law Alumni LinkedIn page serve as a central source for networking and corresponding between alumni and students.

Current Alumni Board President Roy Stanley announced the plans for a Mentor Directory and Program. The Mentor Program will match SCU Law students with alums practicing in fields of interest.

Exam Scheduling Policy

A sub-committee of the SBA's Student Action Committee was charged with investigating the

SCU Law's exam rescheduling policy compared to other law schools within the region. The committee found that Santa Clara has the most liberal exam-taking and rescheduling policies in the area. Most notably, the school allows the greatest flexibility in determining what exams are "close in time."

However, changes to the policies are still being considered. Given SCU Law students' adherence to the honor code, the administration is looking into additional options, such as allowing the exams to be taken within a set period of days or at home.

New Library

Students also inquired into the status of the new Heafey Library. The administration does not expect to break ground for the new library within the oncoming year, but is encouraging the

student population to provide feedback.

The library blue-prints indicate that the new building will serve as a student center in addition to a library. The proposed plans show the addition of two new moot court rooms and an amphitheater for presentations.

Additionally, Bannan Hall will undergo renovations in the next few years. Its proposed design will have a more uniform look with the business school and new admissions building.

The Advocate would like to thank Dean Polden for the time he took to interview.

In our next issue, we will publish the rest of our interview with him, including what he intends to do following this year and what was most memorable for him during his tenure as Santa Clara Law's dean.

FEATURE: “THE WORK THERE IS TO DO”

After the votes were tallied, President Obama was re-elected, Republicans maintained control of the House, and Democrats maintained the majority in the Senate. Not everything, however, remained status quo.



Progress was made in this past election, but is it enough? This issue's feature addresses the ground-breaking measures passed, winners and losers, and “the work there is to do” for our law-makers.

Election 2012 Box Score: Winners, Losers, and The In Between

By Tom Skinner
Staff Writer

LOSERS

Karl Rove

Karl Rove blew it for Republicans. His Super-PAC had a 1% success ratio- 1%!! – on \$103 million in attack ads. Rove also embarrassed himself on Fox News on election night by questioning whether the station should have called Ohio for Obama.

Linda McMahon

The second time around running for the Senate in Connecticut, the former “professional” wrestling executive cumulatively spent around \$90 million of her own money. She lost again. How sad.

The Republican Party

Romney could barely break over 30% in primary after primary while running with colorful characters like Rick Perry and Michele Bachmann. Some think demographic decline will slowly extinguish the party, although they do have a host of strong candidates for 2016 and beyond.

The GOP is a party at once too large and too small. It is too large because social conservatives and libertarians call it home. They can't coexist together. Rick Santorum and Ron Paul have nothing in common: the former is enthusiastic about using government to impose social norms (he indicated he wants government to regulate contraception) while the latter just wants to eliminate government altogether. It is too small in that it doesn't appeal to growing communities, like Latinos. Many of the wiser party bosses have warned that the GOP only markets itself to old white voters, a declining demographic group.

In 2012, Senate hopefuls Todd Akin and Richard Mourdock captured headlines with unsavory comments about rape. It's not that they hate women: it's that they're incompetent. There was no “war on women” in the 2010 midterm election.

Then, female GOP politicians showed similar incompetence. Christine “I'm not a witch” O'Donnell and Sharon Angle, who warned that Americans might resort to “second amendment remedies,” lost Senate seats in Delaware and Nevada that they should have won. The same goes for Missouri and Indiana: those seats were Akin's and Mourdock's to lose.

Where does the GOP find these people?

Newt Gingrich, alternative history novel author, epitomizes the party: trapped in an alternative universe where “the secular socialist machine is as great a threat to America as Nazi Germany or the Soviet Union.”

Mitt Romney

Romney deserves a proper eulogy because he led the most competent Republican presidential ticket since Jack Kemp was Bob Dole's VP candidate. Last time, the Presidential candidate nominated a notoriously inept VP. Before that, the party twice nominated a marginally competent candidate for president. At least Romney and Ryan stand in contrast to the hobbits.

Romney has always shown results. In business, he made piles of money. As governor of Massachusetts, he was moderate and effective.

Issues and ideology don't interest him. He's a numbers guy. He ran for president to reform the tax code and cut entitlements in order to balance the numbers. On the way, he made promises that didn't add up in order to appease a base that barely supported them. The primary went much longer than he anticipated, causing him to stay in and drift ever more to the right, farther and farther away from the numbers.



WINNERS

Nate Silver (above)

It's all about the numbers. From 2004 to 2008, he correctly predicted 99 out of 100 states and 99 of 104 Senators. His book sales skyrocketed 850% a day after the election.

Fox News

Fear sells. Now Fox has material for four more years. The Fox community gushes a bitterness about Obama with more intensity than they could ever muster in adulating a President Romney. Anti-Obama viewers, sizzling in daily disgust, will tune in longer to yell at their screen while Bill O'Reilly yells at his guests who return the yelling until commercial break. Anger boosts ratings. Already the cantankerous O'Reilly groaned that Obama was elected by a constituency that wants “stuff.” His mostly blue-haired audience, the recipient of a large portion of said “stuff,” will use their Social Security checks to purchase his books.

Even better, Fox's success will maintain a pedestal for the former Republican candidates. Or a toadstool. Newt Gingrich has a forum to croak about the “food stamp president.” On election eve, he perspicaciously predicted that Cleveland Hungarians, the second largest Hungarian community outside of Budapest, Hungary, would carry Romney to victory in Ohio.

Barack Obama

Obama published his first autobiography at age 33. Now he has material for a dozen more. Obama has built the most information intensive political machine ever known. His campaign was able to target voters with such precision and efficiency that he managed to convince more black Ohioans to vote in 2012 than in 2008.

THE IN BETWEEN

John Boehner

Boehner will be stretched thin between Obama and the House Republicans. During the 2011 debt negotiations, there were enough votes in the Senate to increase tax revenue but the House was less willing to negotiate. Or listen, or think. Even the conservative Wall Street Journal has referred to the House Republicans as “tea party Hobbits” for their oversimplified understanding of government. Can Boehner tame them?

THE YEAR OF THE WOMAN?

By Amy Askin
Co-Editor-in-Chief

The 2012 elections have brought steady and sweeping gains for women. In New Hampshire.

The “Live Free or Die” state has become the first state to elect an all-female representation in the Senate, House and Governor’s mansion. Big wins for ladies didn’t stop there. On the national stage, a record number of women ran in the election and a record amount won, producing the largest new group of females to hold seats in Congress. These victories turned out a notable amount of “firsts” for American politics. Democrat Tammy Baldwin of Wisconsin will serve as the first openly gay member of the Senate. In the House, Mazie Hirono from Hawaii is the first Asian-American women to be elected and Tulsi Gabbard will be the first Hindu in Congress. Champion of consumer rights and author of a surprisingly humorous bankruptcy textbook, Elizabeth Warren reclaimed the Ted Kennedy’s former Senate seat for the Democratic Party.

Some commentators call it the “year of the woman”. However, in a binder full of Senators, only twenty will be women. In spite of the slow but steady progress

of electing women to the Senate, the United States has failed to nominate, no less elect, a woman as Commander in Chief. Meanwhile, the most powerful politician across the Atlantic in Europe is Chancellor of Germany, Angela Merkel. Moving to warmer climates in the Southern Hemisphere, Dilma Rousseff, President of Brazil, presides over Latin America’s largest economy and Julia Gillard reigns down under as Prime Minister in Australia.

Women have served as heads of government during tumultuous times: Indira Gandhi, Prime Minister of India for eleven years; Golda Meir, Prime Minister of Israel for five years; Margaret Thatcher, Prime Minister of the United Kingdom for eleven years and Violeta Chamorro, President of Nicaragua for six years.

Even in Pakistan, where the Pakistani Taliban recently attempted to kill a fourteen year-old schoolgirl who spoke out in support of education for girls, elected Benazir Bhutto as Prime Minister in 1988, and for a second term in 1993.

With regard to gender equality, the U.S. was a late bloomer. In 2016, a step in the right direction will be to elect a woman to live at 1600 Pennsylvania Avenue.

Pictures Below From Left to Right:

Tammy Baldwin became the first openly gay Senator. She ran against Tommy Thompson, a former Wisconsin governor to win retiring Sen. Herb Kohl’s seat.

Tulsi Gabbard won the 2nd Congressional District of Hawai’i. She is the first Hindu member of Congress. Gabbard also served in the Hawai’i Army National Guard.

Elizabeth Warren defeated Sen. Scott Brown for Ted Kennedy’s senatorial seat in Massachusetts. She once served as an Assistant to the President for President Obama. She earned her J.D. from Rutgers School of Law and has taught at Harvard.

Mazie Hirono will be the first Asian-American to serve in the U.S. Senate. She holds currently the 2nd Congressional District of Hawai’i, that same seat Tulsi Gabbard took over.



ELECTION BY THE NUMBERS

1% **Increase in the “Youth” vote:** Despite predictions, more youths voted in the 2012 election. Obama captured 60% of the youth this election, while Romney took in 33%.

Number of Incumbents that lost: There were twenty-five new congressmen and congresswomen elected over incumbents. Californians voted in seven new congressmen over incumbents.

25

6% **Proposition 34**, which would have ended the death penalty in California, did not pass by a margin of six percent. Seventeen other states have banned the death penalty. California still has some work to do.

Percent of States to have Legalized Gay Marriage: Maine and Maryland voted to legalize gay marriage. They joined Connecticut, Iowa, Massachusetts, New Hampshire, New York, and Washington.

18%

126 **Number of Electoral Votes** by which President Obama won. After the votes had been tallied, the Electoral College cast 332 votes for Obama and 206 for Romney.

Percent of Difference in the Popular Vote: Despite the large disparity in the Electoral College vote, President Obama won with only 50.6% of the popular vote. Romney had 47.8% of the popular vote.

2.8%

200 **The Number of Years Since We Last Elected Three Two Term Presidents:** America’s current run of two term presidents (Clinton, Bush, Obama) has not happened since Jefferson, Madison, and Monroe.

The Number of Elections that Have Used the Term ‘Red State/Blue State:’ Before 2000, the media did not use Red/Blue to designate Republican and Democratic states. In fact, during the 1970’s, the color red was used for President Carter, while the color blue was used for President Reagan.

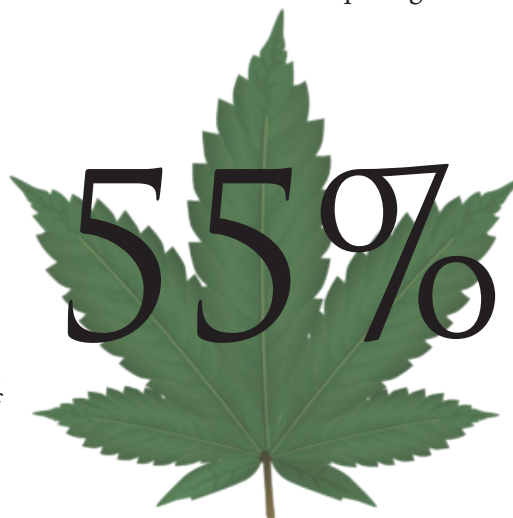
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LEGALIZING IT: COLORADO, WASHINGTON, AND MARY JANE



By Rachael Lohrey
For The Advocate

On November Sixth, Colorado and Washington became the first two states to legalize recreational use of



marijuana, while voters shut down a similar measure in Oregon. Although Washington’s plan is more restrictive, both will extend legalization beyond medicinal use, which is legal in both states for adults 21 years and older, for up to one ounce of marijuana.

In Colorado, 54.83% of voters approved Amendment 64, legalizing the consumption and possession of marijuana. The Colorado Department of Revenue will regulate manufacturing facilities and retail stores. In Washington, 55.34% voted to pass Initiative 502, legalizing possession and consumption, while implementing a new DUI standard for marijuana. While Colorado will now allow home cultivation, Washington still restricts the right to medicinal use. Under the new law, recreational marijuana may only be grown by specially licensed farmers and sold in private standalone marijuana stores

licensed and regulated by the state liquor control board.

Proceeds from the sale of marijuana will benefit the states in different ways. In Colorado, the local government will enact an excise tax on wholesale sales, including requiring the first \$40 million in revenue raised annually by the tax to go towards the public school capital construction assistance fund.

Washington will create a “dedicated marijuana fund,” and any surplus from the new revenue will be earmarked for health care (including drug abuse treatment). The remainder will go to the state general fund. The estimated amount of revenue generated from these measures varies, with Colorado estimating \$60 million initially.

The people of Colorado and Washington have spoken, but the Federal government remains starkly opposed. Until the Controlled Substances Act is repealed, backlash from the conflicting state and federal laws may lead to raids and forced forfeiture by the DEA, with litigation looming in the horizon. It sure looks like a potential “Constitutional showdown” is about to hit the Wild West.



EPA Administrator Meets with SCU Faculty, Students

“EPA”

From Front Page

disappointment of faculty and students that climate change was not raised during the Presidential debates. Ms. Jackson herself has played a pivotal role in U.S. policy on climate change. Within a year of her nomination, she announced an endangerment finding on greenhouse gases in the wake of *Massachusetts v. EPA*. This finding began a series of EPA actions to reduce greenhouse gases, including new fuel efficiency standards for automobile and the highly-litigated tailoring rule for stationary sources. Greenhouse gas reduction continues to be a priority for the Agency and Ms. Jackson, who took pride in the Obama administration’s movement toward alternative energies and new carbon pollution standards for future power plants which essentially puts a halt on coal power plants lacking sequestration technologies.

Along with acting on climate change, fighting for environmental justice is included on Administrator Jackson’s list of EPA priorities. Second-year Hazella Bowmani asked Ms. Jackson to further explain the role environmental justice should play at the EPA. Ms. Jackson responded forcefully: “Environmental

justice needs to be part of the fabric of the organization.” The Administrator pointed to the implementation of Plan EJ 2014, which seeks to integrate environmental justice into all of the Agency’s programs and policies. Ms. Jackson also preached that the push for environmental justice must start with the states, and pointed to California as paradigmatic. “We should be supporting environmental justice through federal grant money, which we are working on right now.”

On a nearly daily basis, Ms. Jackson responds to questions about hydraulic fracturing, or “fracking,” and second-year law student Michael Branson ensured the Santa Clara lunch would not be an exception. Ms. Jackson responded that any extraction of natural resources has to be done safely and responsibly; natural gas extraction would not be an exception. “Right now, the EPA is in the middle of a two-year study to get real scientific data about fracking. It is important to take action, but this action



Law Student Shana Inspektor and Professor Tseming Yang share a laugh with Administrator Jackson

must be based on credible, scientific data.”

Fracking involves injection into the earth of many hazardous chemicals, with massive amounts of water. Ms. Jackson emphasized, “It is always true that dilution is not the solution, but thus far, we have not seen these toxics show up in the water supply.” She assured the EPA would act if findings showed otherwise. The Administrator also expressed optimism in industry acting on some environmental issues surrounding fracking. She pointed to industries that have started recycling water, reducing the amount of water needing proper disposal.

Ms. Jackson also shared how her career as a scientist, rather than a lawyer or a politician, has shaped her decision-making. Ms. Jackson received her B.S. from Tulane and M.S. from Princeton, both in chemical engineering, making her the second scientist to hold the Administrator title. The fundamental lesson Ms. Jackson took from engineering was the ability to solve a problem, and how to properly frame the question.

But while that engineering mindset has been helpful, Jackson said the larger asset has been her many years at the EPA prior to her nomination. Ms. Jackson began working as a staff-scientist for the EPA for fifteen years before joining the New Jersey Department of Environmental Protection in 2002. In 2006, she began serving as commissioner of the New Jersey DEP.

With this background, Ms. Jackson described her role as “breaking the tie” between the lawyers and scientists in the EPA: “If the room was full of only lawyers, the conversation would be too focused on legal questions and no one would ask the simple questions.” She emphasized that the EPA, which has more scientists than any agency other than NASA, has phenomenal lawyers working “hand in glove” with these

technical experts. In fact, one of her goals has been to ensure the agency follows best science, rather than political persuasions, in making decisions and setting priorities while adhering to the rule of law and maintaining transparency.

On priorities, third-year Shana Inspektor asked Administrator Jackson how the EPA balances allocating resources between several environmental concerns. Ms. Jackson responded that there is always more work to do than the EPA can do or afford. Several standard schedules need to be determined, but decisions must be made as to which standards to prioritize. Anecdotally, Ms. Jackson pointed to establishing the Clean Air Interstate Rule on mercury and establishing greenhouse gas standards as high initial priorities.

Ms. Jackson also expressed the need for an overhaul of the U.S. Toxics Act as a high priority. While the number one environmental issue for Americans remains water, Ms. Jackson said toxics also resonates with average Americans. “I believe, regardless of administration, that we will have a new toxics law in the United States within the next few years.” Programs in California and Europe have recently pressured the federal government to act.

Ms. Jackson closed by taking pride in the work of the agency and the respect it has globally garnered. She said that developing nations look to the EPA as an example of government as its best, with real enforcement and transparency. “For the first three decades of its existence, the EPA was the Gold Standard of environmental protection. But our position on climate denial hurt our standing with developed countries, and limited our leadership role.” Here is to hoping that Administrator Jackson and the EPA’s recent action on climate change have helped return to the EPA its proud legacy. We thank her for her visit to the Santa Clara community.

What’s with the Stache, bro?

By Christian G. Cornejo
SBA President Emeritus

As the calendar hit November, you may have noticed a hairy presence here at Santa Clara Law. You know what I am talking about. That’s right; I am talking about the sudden sprouting of mustaches across the face of many of the gentlemen at SCU Law.

Whether you first noticed it on that previously clean shaved guy that sits two rows down from you in class or that guy your law school BFF went on a date with

after Halloween Bar Review, it seems like everywhere you turn these days someone is mysteriously sporting (or let’s face it in the case of some individuals “attempting to sport”) a mustache. So what is going on? Is the mustache the latest trend in men’s fashion?

I want to assure the concerned public that these luxuriously fine mustaches are not some flash in the pan fashion trend. No, these Mustaches are part of something larger than any one individual mustache; they are Movember mustaches.

Movember? What is that, you say. Movember is a movement in which selfless men (Mo Bros) across the world start growing and grooming a mustache to raise vital awareness and funds for men’s health issues, in particular prostate and testicular cancer. Movember aims to increase early cancer detection, diagnosis and effective treatments, and ultimately reduce the number of preventable deaths.

The importance of this movement is highlighted by the fact that one out of six men will be diagnosed with prostate cancer in their lifetime, that there will be

242,000 new cases of prostate cancer this year, and that the 8,290 men who will be diagnosed with testicular cancer. So while growing mustache maybe silly, the movement’s aims are anything but.

So how exactly are Mo Bros using their silly mustaches to raise awareness and funds to fight prostate and testicular cancer? First, Mo Bros use their mustaches to prompt both private and public conversation to raise awareness of the issue. Through these conversations they encourage men everywhere to get their annual check-ups, adopt a healthier lifestyle, and become aware of any family

history of cancer. Then with the support of the women in his life, AKA Mo Sistas, and fellow men, Mo Bros get their mustache growing efforts sponsored. These funds are then donated to various prostate and testicular cancer initiatives through the Movember Foundation.

The Movember Foundation likes to say that the mustache is the mark of a man. While reasonable minds can differ as to the truth behind that statement, today the mustache is a man’s ribbon. It is a symbol, one to spark conversation and hopefully help change the face of men’s health.



Interlibrary Loan Gets Faster

By Ellen Platt
Senior Reference Librarian

Beginning the first week of January, both Santa Clara University libraries (undergraduate and law) will switch to a new, faster interlibrary loan system to obtain articles, books, and other information resources not available at SCU libraries or through LINK+. Some law students and faculty may have used the new system, known as ILLiad, before at other libraries.

It will improve upon the current interlibrary loan system in many ways. Here are the biggest changes:

- It will enable people to track the status of their requests via the Web, at any time and from any location.

- The first time people use the new system, they will create their own personal account, a process that takes just a few moments.

- The account is created by entering the library barcode number (from the back side of one's SCU Access card) and a password of one's own choosing.

- Electronic copies of articles will be delivered directly to this account and should arrive even faster than they do now.

LINK+ is not changing at all. The new system will be used to borrow articles, books, and other publications not available from the SCU libraries or a LINK+ library.

Unlike the previous interlibrary loan system, requests will not be viewable in 'My Library

Account' on OSCAR. People must separately log into ILLiad to view their interlibrary loan requests, since ILLiad and OSCAR are separate systems and require separate login information.

Many libraries ship photocopies of articles in electronic format. In the past the Law Library emailed these documents or printed them before making them available for pickup. ILLiad will offer the option of electronic delivery of most articles in PDF format.

The library recommends following good security practices by choosing an ILLiad password that is different from those used to access other University systems. Passwords will be stored in an encrypted file and no one but the person who created it will know the password. A "Forgot Password?" function on the login page can be used to reset a password.

The library recommends accessing the interlibrary loan account from a personal computer to minimize security risks. When using a public workstation, people should remember to exit the web browser, logoff or restart the workstation before leaving. This prevents subsequent users from entering the system under the previous user's name by using the browser's history to recall a page from the cache.

The Law Library is excited to move to this new system which will make it possible to meet the borrowing needs of law students and faculty more quickly.

Student Dreams Deferred

"DREAM"
From Page 2

mother was disabled, but could not receive any government benefits.. Maria realized she would need to go to work to provide for her family. It was not until this moment that Maria realized her life would not be like her classmates. Maria would continue to face barriers so long as she remained undocumented. Maria found work in a sweat shop, cutting the extra thread off shirts and sweaters. In high school, Maria found out she would have to work extraordinarily hard to go to college. Because her parents could not afford tuition and her immigration status would disqualify her from financial aid, she would need a scholarship. So she worked hard. And she was extraordinary. Maria was valedictorian of her high school and received a full ride from a private university—all while working full-time. After finishing her undergraduate degree, Maria went on to win a full-tuition scholarship to the private law school where she is

now.

All the time, knowing that her immigration status was a barrier to achieving her goals, Maria always told herself, "If you're good enough, they might make an exception." Maria cried the day the Dream Act failed to pass, then again the day President Obama announced the deferred action, and again about two weeks ago when she received notice that she would be receiving her worker's permit.

I could write an entire book about Mary's life, but I only have so much space in a news article. I did not write this article in hopes of convincing anyone of anything. This article is only to share one person's story about one young person whose life has been changed by the deferred action. Now, every time I complain about how hard law school or work is, I remind myself that I have been so privileged to have the opportunities I have without having to worry about an exception being made for me despite how hard I work.

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MIRROR MIRROR: AT THE HEART OF BEAUTY AND DISCRIMINATION

By Madhavi Chopra
For The Advocate

A recent video clipping, involving a viewer bullying a popular news anchor for her weight and appearance on a live American news channel, touched a chord and spurred me to write this piece.

We may conscientiously deny it, but 'one must not judge a book by its cover' is a trusted adage which we conveniently forget or willfully forgo whilst forming an opinion about our peers. The physical and tangible aspects of human appearance - height, weight, complexion, facial features, body language, dressing sense, etc. - invariably strike first on our minds and play a key role in our immediate as well as long-term assessment of others.

The Injustice of Appearance

While our perception and choice of what appears beautiful may be highly individualized and subjective, as a society we stand on a common ground in our cultural pre-occupation and deep-seated obsession for beauty. However, what adds insult to injury is our refusal to accept the existence of appearance-based discrimination in society. So consumed are we in our obsession for the 'lovely-and-svelte' and the 'tall-and-handsome' that any mention of appearance-based discrimination is brushed aside as inconsequential, unobjectionable and irrelevant.

Our trivialization of appearance-based discrimination, however, is seriously belied by a spate of studies that indubitably conclude that unattractive people are less likely to be hired and promoted, and they earn lower salaries, even in fields in which looks have no obvious relationship to professional duties.

For instance, a 1998 study conducted by Jeff Biddle and Daniel Hamermesh on

young law graduates in the United States revealed that "better-looking mid-career attorneys were billing at higher rates, not just billing more hours" thereby alluding that appearance is not "merely correlated with [income] but actually causes differences in earnings."

The Ugly Truth of Being Beautiful

The costs of excessive emphasis on physical appearance are exorbitant. Leveraging on our preference for picture-perfect looks, a spate of beauty clinics that promise 'magical makeovers' but charge a king's ransom for their services have mushroomed in every nook and cranny of the country. It is commonplace to see the average consumer being spoiled for choice with an influx of cosmetic products and weight-loss gadgets which carry with them undisclosed medical risks. Concerns about appearance and disorders such as anorexia are often linked to depression, anxiety, or low self-esteem.

It is a cause of concern to observe the young impressionable adolescents blindly trying to ape models for their 'size-zero' bodies and airbrushed complexions, without realizing the fatal consequences these have in store for them. In fact, humans are not the only victims of toxic cosmetics; there is a cottage industry of scientific studies [see, for example, Frank J. Erbguth (2004)] that corroborates beauty-enhancing and age-defying techniques such as Botox to be a "sausage poison" or a "fatty poison" when tested on animals.

Appearance-Based Discrimination and the Law

Over the past half-century, the United States has expanded protections against discrimination to include race, religion, sex, age, disability and, in a growing number of jurisdictions, sexual orientation. This notwithstanding, bias based on appearance seems to remain

acceptable everywhere, except in Michigan and six local jurisdictions - the District of Columbia, Howard County, Md.; San Francisco and Santa Cruz, CA Madison, WN.; and Urbana, Ill. - which have adopted laws banning such discrimination.

The strongest argument for a law prohibiting appearance-based discrimination is that it offends the tenets of equal opportunity and individual dignity. On the other hand, employers often argue that attractiveness is job-related, and that their workers' appearance can affect the company's image and its profitability.

Although courts generally have been deferential to employers' conduct to regulate employees' appearance for presenting a professional-looking workforce to its customers (see, *Cloutier v. Costco*, 2004), the prevailing judicial dicta clarifies that customer preferences should not be a defense for prejudice.

For instance, in *Frank v. United Airlines* (2000), the Ninth Circuit held that flight attendant weight restrictions limiting women to a stricter standard than men ("medium" v. "large" build) were impermissible inasmuch as they created an unequal burden on men and women. Similarly, in *Yanowitz v. L'Oreal* (2005), the California Supreme Court upheld the plaintiff's right to bring a retaliation claim against her employer for disciplining her after she refused to follow a superior's order to fire a dark-skinned female salesperson and "get me somebody hot" (referring to a light-skinned blond).

Must Not We Stand Up Against Appearance-Based Discrimination?

Does true beauty have any benchmarks, for is it not conventionally



said to lie in the eyes of the beholder? Appearance-based discrimination of individuals, typically based on factors often beyond their control, reinforces cultural prejudices, promotes gender stereotypes, erodes self-esteem, diminishes job aspirations, and is detrimental to merit and ability principles.

This aside, appearance-based discrimination spawns gender stereotyping and festers a culture of inequality and indignity, which consequentially becomes an affront to the existence of a diverse-yet-equal society. It is about time that employers adopt and enforce a uniform and standardized code on anti-bullying and redress policies to deal more tolerantly with appearance-based discrimination at the workplace.

GIANTS DID NOT STOP BELIEVING

By Michael Bedolla
Staff Writer

The unofficial anthem of the San Francisco Giants' improbable 2010 World Series run was "Don't Stop Believing" by Journey. Back in 2010, the Giants were an underdog, having snuck into the playoffs on the final day of the season. Facing ever-more intimidating opponents once they got there, it seemed the only people who believed the Giants could win it all were located within a hundred-mile radius of AT&T Park. In 2012, "Don't Stop Believing" certainly got plenty of airtime.

The Giants somehow managed to run away with the NL West and walk into the playoffs. But on October 7th, they found themselves down two games to none in a best-of-five series against the Cincinnati Reds. With the next three games to be held at the Reds' Great American Ballpark, the home field advantage seemed insurmountable. The Giants had been lackluster in both of their home losses at AT&T Park, and now had to sweep all three games to survive against a Reds team that hadn't lost three straight games at home all season. All seemed lost.

On October 18th, the Giants faced elimination once again, this time against the St. Louis Cardinals. Up 3 games to 1 in the best-of-seven National League Championship Series, the reigning World Series Champion Cardinals seemed poised to make it back to the fall classic, with their own never-say-die persona. The Giants were forced to entrust their survival to the perennially disappointing Barry Zito in Game 5--just to return the series to San Francisco. All seemed lost.

Even on the eve of the World Series, the Giants were set to face the vaunted Tigers of the American League, who were rested and ready to make quick work of the Giants. The Tigers boasted former MVP and Cy Young winner Justin Verlander, considered by many to be the best pitcher in baseball. He stood ready to pitch at least two games of the World Series, including game one. The Tigers also had a fearsome lineup that included home run slugger Prince Fielder and Miguel Cabrera, the first Triple Crown winner in over



thirty years. Meanwhile, the Giants had just finished an exhausting pair of series against the Reds and Cardinals, with their pitchers fatigued and their lineup featuring small-ball hitters that couldn't match Detroit's on paper. All seemed lost.

But in spite of the odds stacked against them, the Giants prevailed every time, defying the experts and naysayers who felt this scrappy team had finally run out of luck. You'd be forgiven for believing the Giants weren't World Series caliber material. Though their pitching staff was above average, it wasn't the dominant force it was when the Giants won it all in 2010. The Giants' hitters didn't put up the flashy numbers other teams did.

But behind their unimpressive demeanor hid a champion. Their pitching staff, which struggled during the early regular season, hit its stride just as the playoffs were starting. Bolstered by two-time Cy Young winner Tim Lincecum, the Giants' bullpen became the most fearsome in baseball. Their hitters weren't the home run heroes glorified on SportsCenter, but produced by getting on base often and wearing down opposing pitchers. Most importantly, the Giants defense - easily overlooked - stole hits from opposing hitters.

When the Giants won this year's World Series on October 28th in dominant fashion--sweeping the Detroit Tigers--Giants fans released a cheer that both celebrated their return to baseball supremacy for the second time in three years, and called out all those that had lost their faith in their team. For those of us clad in orange and black, it wasn't just a celebration of a victory; it was a celebration of faith. We didn't stop believing, and our Giants didn't let us down.

Not Yet Over: College Football Landscape Experiences Shake Up as Numbers One, Two Topple

By Amanda Demetrus
Associate Editor

College football is different from the NFL in two ways. First, the potential for upsets tend to be greater and more remarkable than in the NFL and second, the rivalries are more deeply entrenched in collegial history. Both of these differences have been greatly apparent this season as fans are left wondering what could possibly happen next. Here are some highlights from this year's college football season, and what you need to know about the PAC-12 as the determination of which teams proceed to a bowl games grows nearer.

1. Prior to this Saturday, three teams were undefeated and had a three-way struggle

for the number one ranking. While the Oregon Ducks and Notre Dame might be expected to hold that position, Kansas State enjoyed their first showing

at number one in the BCS rankings in school history. Unfortunately for Kansas State, Baylor manhandled them during their match up on Saturday, 52-24. Oregon also met their demise at the hands of Stanford, losing in overtime 17-14. This leaves Notre Dame as the last team standing, much to the dismay of many college football fans.



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VS.



2. Several fans were excited last week as Alabama's strong hold on the number one position came crashing down after an unforeseen loss to Texas A&M, 29-24. This is the first time since 2005 it was questionable whether we would see the Crimson Tide appear in the national title game, but with the losses of both Oregon and Kansas State, it is still possible to see a Notre Dame, Alabama BCS Championship. A win for Alabama would mean the SEC's six straight BCS title. Georgia and Florida follow close behind and still hold a shot at the title. If Notre Dame can beat their rivals USC next weekend, they are nearly guaranteed a slot in the national title game.

3. As for the PAC-12, a strong win for UCLA over long time rivals USC cements the Bruins' slot in the PAC-12 Championship game. Oregon's loss to Stanford results in a tie for the North Title and a Cardinal win in the game against UCLA next week would clinch the North title for Stanford. Oregon will play rivals Oregon State who have been consistently present in the rankings this season. Oregon is still in the hunt for the BCS title if they win against Oregon State. A Stanford loss to UCLA and a Notre Dame loss to USC would seriously help the Duck's case. All in all, the PAC-12 has made a serious showing in the rankings this year, and we can expect a strong presence in the upcoming bowl games.

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NHL Commissioner, Lockout Putting NHL Teams, Fans on Ice

By Michael Bedolla
Staff Writer

Both NHL Commissioner Gary Bettman and NHL Players Association (NHLPA) head Donald Fehr have gone to law school, but clearly they are in need of some remedial courses. Both Bettman and Fehr seem to have a "how to fail" checklist that they are following with unbridled enthusiasm.

- Present an opening offer even neutral observers consider insulting and absurd - Check.

- Procrastinate in (largely-transparent) effort to put time pressure on opposing side - Check.

- Work to undermine trust by refusing offers made in good faith - Check.

- Continue to tell everyone that your side is willing to see no hockey season at all rather than play with anything less than (your side's) ideal CBA - Double Check.

No one is exactly sure how close or apart the two sides are. Three days of fervent negotiations are seen as signs of

hope, but then the cold slap of despair strikes when the two sides bitterly break off talks the next day after only an hour. One day, both the league and NHLPA are saying there's a deal to be done, and the next, they're crying about how far apart the sides are.

If there's a silver lining in all this it's that the two sides are talking. Many NHL observers feel that true negotiations only began in early November; everything that preceded this recent roller-coaster ride was political positioning and media posturing. Ultimately, the NHL and the

NHLPA need to hammer out a deal, and do it fast. Assuming a deal is reached immediately after this article goes to print, the soonest NHL hockey could be played is December 1st, and teams would play only 66 games this season (as opposed to the usual 82 game season). We are fast approaching the point of no return, where yet another NHL season will be scuttled. If that happens, hockey will be deservedly banished to a circle of Sports Hell reserved for the Professional Lacrosse and the WNBA.

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