Colbert and Stewart Rally in Washington D.C.

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Dont Ask, Dont Tell, A Marine's Perspective

THE ADVOCATE

SANTA CLARA UNIVERSITY SCHOOL OF LAW

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Judge Ware Promoted to Chief

Jessica Jackson

You might see him strolling through the student lounge on a Monday or Wednesday evening. Or maybe you had him as a professor and are familiar with his big smile and complex power point presentations. Maybe you've even been one of his externs. Judge Ware is an invaluable part of the Santa Clara Law community and we have recently learned that he has been promoted to Chief Judge of the Northern California District Court beginning next year. I was lucky to speak to Judge Ware and hear from him first hand about the promotion.

Q. We have all heard about you becoming Chief Judge when Judge Walker leaves the court, can you tell us how you were chosen for this position?

A. The position is open to the most senior active District Judge of each District. The Administrative Office of the U.S Courts has designated many operational tasks to the various District Courts and the Chief Judge oversees these operational functions. The Chief Judge is also a member of the governing authority for the Circuit, The Ninth Circuit Judicial Council. Thus, in addition to serving as Chair of meetings of the District Court, I will also serve as a member of the Ninth Circuit Judicial Council.

Courtesy of Nikki Corliss

Q. What additional duties will this job have?

A. The Chief Judge's official and unofficial responsibilities fall into several basic categories; strategic leadership, Court management oversight, and case management oversight. Regarding strategic leadership, I will be situated to lead the District Court in determining administrative policies and actions the Northern District should initiate, continue, or discontinue. The Chief Judge, primarily through oversight of the court executives, ensures that the Court operates effectively. This responsibility includes making sure that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out.

In terms of case management oversight, statutes and rules provide the Chief Judge with limited authority over the Court's assignment of cases. However, I will be responsible for monitoring caseloads and trends and trying to identify problems- either

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2010 Midterms: The More Things Change...

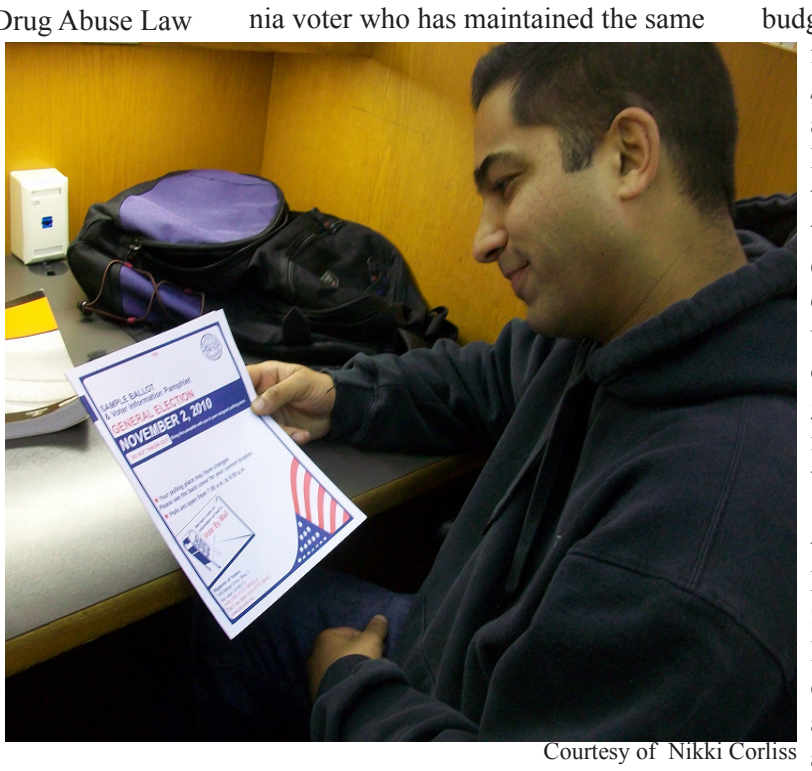
Marc Wiesner

The state known for liberal leanings has become a bit more blue. Having a Governor known as much for his movies as his politics had some perks. Brown's defeat of the well-funded Whitman wagon is a welcome relief to the 4,040,873 Californians voting to bring Brown back. After more than 30 years out of office, this will be Brown's third term as California's Governor. Mayor of San Francisco, and Santa Clara alumnus, Gavin Newsom will be joining Brown in Sacramento as Lieutenant Governor. To date, Brown's former position as Attorney General is still too close to call. Just a fraction of one-percent separates Democrat Kamala Harris from Republican Steve Cooley. Results may not be out until the official deadline for counting—November 30.

This election cycle saw the youth vote take a surprising downward turn. While voter turnout during midterm elections never reaches levels seen during presidential years, what Time magazine called the "Year of the Youth Vote" in 2008 seems accurately exclusive to the 2008 election. Though overall voter turnout increased slightly in 2010 over the last midterm vote in 2006, only 20 percent of registered voters under age 30 cast their ballot on November 2; down from almost 25 percent in 2006.

Forty-one-point-five percent of total eligible voters turned out November 2, up from 2006's 44 percent turnout.

One area where the youth vote was thought to be key was the passing of controversial Proposition 19. Prop. 19, which would have legalized the sale and tax of marijuana, failed by more than a half-million votes. According to Professor Uelmen, who teaches Criminal and Drug Abuse Law at Santa Clara Law, Prop. 19 lost a lot of support by prohibiting employers from discriminating against users without proof it actually impairs job performance.



Courtesy of Nikki Corliss

"That suggests the employer would have to wait for an accident to happen," explains Prof. Uelmen, who suggests a showing of "potential impact" would be sufficient. While its 1.4 billion dollars in estimated tax revenue was a contested number, research from the RAND Corporation estimated its passage would have lowered the street price of marijuana by up to 80 percent, at least temporarily decreasing the flow of illegal drugs into California.

The California Citizens Redistricting Commission that Prop. 11 created in 2008 has new responsibilities. With the passage of Proposition 20, and an almost 60 percent rejection of Proposition 27, which would have eliminated the Commission, the Commission will now be redrawing California's congressional district boundaries. This takes the traditional responsibility of drawing congressional districts out of legislative hands and gives it to a 14-person Commission. Any California voter who has maintained the same party affiliation for five years and has voted in two of the last three statewide general elections may be eligible.

As for the financial propositions, the passage of Proposition 25 ends a California tradition that's been carrying on for nearly three-quarters of a century: the budgetary super-majority. California now joins the 40-plus states allowing a budget to pass by a simple majority vote.

However, in the same breath, voters approved Proposition 26. Prop. 26 requires state and local fees to muster super-majority approval because, under Prop. 26's amendments, fees are now considered taxes. Why might voters have made it easier to pass a budget while more difficult to pass a fee? Members of the "No on 25 / Yes on 26" Coalition are probably wondering the same thing. Interestingly, the largest Coalition contributor was Chevron with 3.25 million dollars. While debate continues over whether the double-yes vote reflects a lack of understanding of the propositions or general dissatisfaction with government business, any result indicating money does not buy votes is laudable.

Proposition 22 passed as one of the most approved propositions. Prop. 22 stops the Legislature in Sacramento from borrowing from local government treasuries. So, even if it is more difficult to pass a fee, at least more taxes will be available to pay city expenses. Two other failing Propositions, Prop. 21 which would have levied an eighteen-dollar-per-year vehicle licensing surcharge earmarked for state parks, and Prop. 24, which would have prevented about one-point-three

SEE ELECTIONS, PAGE 2

The Advocate is the student news and literary publication of Santa Clara University School of Law, and has a circulation of 1,000. The Features, Opinion, & Entertainment sections of *The Advocate* are articles that reflect the viewpoint of the authors, and not the opinion of Santa Clara University, *The Advocate* or its editors. *The Advocate* is staffed by law students. Printing is contracted to Fricke-Parks Press of Union City, California.

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State, Nation and World Report

STATE & LOCAL

Happy Meal Toys Banned

The City of San Francisco recently banned the use of toy giveaways in children's meals with low nutritional value. Beginning in 2012, kids will no longer receive a free toy with their happy meal. Santa Clara County passed a similar ordinance in spring 2010.

"McDonald's use of toys undercuts parental authority and exploits young children's developmental immaturity — all this to induce children to prefer foods that may harm their health. It's a creepy and predatory practice that warrants an injunction," says the Center for Science in the Public Interest's litigation director Stephen Gardner. Mayor Gavin Newsom may veto the ban.

Santa Clara County Extends Smoking Ban

Santa Clara County approved an extensive smoking ban last week. The County supervisors approved the ban that would prohibit smoking in apartments, condominiums, townhouses, and outdoor restaurant areas.

This ban will take effect in 14 months. The supervisors are also expected to meet to discuss imposing further taxes on businesses that sell tobacco during their Nov. 23 meeting.

NATIONAL

Arizona Approves Medical Marijuana

Arizona became the 15th state in the nation to approve medical marijuana this November. Arizona's Prop 203 passed by a narrow margin, winning by fewer than 5,000 votes. The measure will allow those suffering from pre-determined "debilitating diseases" to grow a specified number of plants or purchase two and one half ounces of marijuana every two weeks. California was the first state to do so in 1996.

INTERNATIONAL

Scale Down of Troops in Afghanistan Announced

The Obama administration revealed its plan to wind down troop deployment in Afghanistan and begin transferring security duties in select areas. The plan consists of several phases, spanning a four-year period. The plan is supposedly modeled of the approach taken near the end of the Iraq War in 2007.

PURE ENTERTAINMENT

Gosselin Children Expelled

Two of Kate Gosselin's six-year-old children were expelled from school in Pennsylvania's Lancaster County for hitting another student without provocation. Gosselin of reality television show John & Kate Plus 8 says she plans to homeschool both children. Gosselin was reportedly "embarrassed" by the incident.

Sarah Palin Reality Show Premiers

Sarah Palin's new show, Sarah Palin's Alaska recently premiered on TLC. The docu-series attempts to portray the Palin family amid the beautiful wilderness and wildlife of Alaska. The pilot episode, "Mama Grizzly," reportedly portrayed the former Alaskan governor and family in a positive light. However, the episode did contain a subplot wherein Palin strongly criticized the media.

Refund, Please: Boston College Law Student Wants a Do-Over

Robyn Morris

Law student frustrations are coming to a head during a time of dismal job prospects and unnerving certainty about the future. With mounting debt and disheartening employment statistics, law students are grasping at straws and looking for someone, anyone, to blame for their current situations.

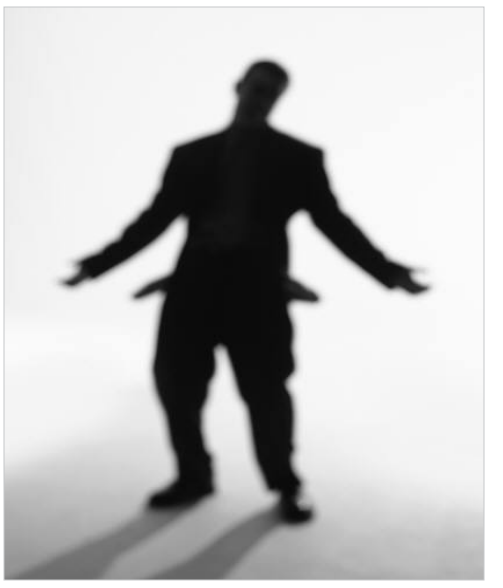
Recently, a 3L at Boston College Law School has made a creative, if not desperate, attempt to erase the last three years. In dire straits due to massive debt, a baby on the way, and no pending job offers, the student wrote a letter to Interim Dean George Brown with an interesting proposition. The student offered to leave Boston College without a J.D. in return for a full refund of his tuition. Citing "empty promises of a fulfilling and remunerative career" and a less than helpful career services department, the student argues his premature departure would actually benefit the school since his lack of legal employment will not be factored into the law school's ranking.

The Dean, perhaps unsurprisingly, was not amenable to the idea. Brown acknowledged the challenges faced by law students in one of the most difficult employment climates in 70 years, but noted that the institution never guaranteed a job after graduation. Instead, the school merely promised to provide the best education they could to assist the budding lawyers. Brown was sure to enumerate the steps taken by the school to aid students in their job search including individual counseling sessions, public interest interview programs, and expanding the career services office to accommodate growing demand.

Santa Clara 3L Cameron Cole can understand the student's fears but believes requesting a refund at this stage of school is not the solution:

"The BC student's letter simply underscores the plight and added stress law students are currently facing. However, I also believe that requesting your tuition back due to dismal job prospects is frankly absurd. In the simplest sense, it's analogous to eating 3/4 of a meal that you willfully ordered at a restaurant and then asking for a refund. Not because the food was inadequate, but rather you simply changed your mind."

This incident is one of many recent stories of law students lashing out at the legal education system that's often been dubbed a "scam." However, instead of pointing fingers, now is the time for the current generation of law students to prove their worth. Creativity, initiative, and persistence are indispensable for a successful career, perhaps now more than ever. And the path to accomplishing goals is rarely smooth. Cole agrees.



"Stuff happens. That's life."

Midterm Elections Review

Continued from Page 1

million dollars in business tax cuts seem to echo Prop. 22's message: Do more with less.

Overall, what do these budget measures look like? Is this California conservatism in tough economic times? Less excuses from Sacramento, less charging, less borrowing, more earning?

The largest rejection is certainly worth mentioning. Proposition 23 failed by more than 1.7 million votes. Prop. 23 would have suspended the Global Warming Solutions Act until unemployment stayed below 5.5 percent for four consecutive quarters. Supporters of Prop. 23 spent about eight million dollars telling people going Green(er) would stunt job growth.

In contrast, Californians heard a 35 million dollar message espousing growth in Green. Most funds supporting Prop. 23 came from Texas refineries while the opposition underdog found citizen contributions, which out-funded supporters almost eight-hundred-to-one.

Was there a biggest winner? Consultants and media groups may have been grinning slightly as confetti was swept and the last hand shaken. This year's slight increase in voter turnout was far from free. Midterm spending rose more than one-billion dollars over 2006, according to The Center for Responsive Politics, with total spending by candidates, parties, and interest groups reaching almost four-billion dollars. Holding the record was Meg Whitman. Harvard might want that MBA back.

Supreme Court To Decide Fate of Violent Videogames

Matt Dedon

On November 2, the Supreme Court heard oral arguments in *Schwarzenegger v. Entertainment Merchants*, a case that may affect the future of videogames in America. Entertainment Merchants concerns a series of California laws passed in 2005 that aim to regulate the sale of violent videogames to minors. These laws impose a rating system which requires a 2x2" sticker to be posted on the front of cases for videogames deemed excessively violent. Further, the law makes it criminal to sell such games to minors.

These laws were originally drafted in 2005 by Leland Yee, a California Senator and child psychologist, who was concerned about the effects that violent videogames have on minors. The laws were eventually codified in the California Civil Code sections 1746-1746.5.

In an industry where first-day profits of a game can top the total earnings of most motion pictures, this regulation was a huge concern. Less than a month after the law went into effect, the Entertainment Merchant's Association, then known as the Video Software Dealers Association, opposed the law, and an injunction was quickly granted. A permanent injunction was granted in 2007 based on free speech concerns. The State appealed to the federal court and was recently heard by the Ninth Circuit in 2009. The lower court's decision was affirmed.

Riley Russell, General Counsel for Sony, commented that the lower court's decision wasn't particularly surprising.

"This isn't the first time a case like this has appeared. Other states have tried to pass similar laws and every time it has been ruled unconstitutional as a free speech violation," says Russell.

Courtesy of Matt Dedon

Russell is correct. An unbroken line of State and Federal cases denying the State's ability to regulate the sale of violent videogames indicates that the trend will continue. But the mere fact that the Supreme Court has heard *Entertainment Merchants* has raised some eyebrows.

"We're all wondering why the Supreme Court took the case." Russell remarks.

The Supreme Court presented two issues to both parties:
Is the State barred from restricting the sale of violent videogames to minors by the First Amendment?
If the violent videogames are protected under the first amendment and the standard of review is strict scrutiny, is the state required to demonstrate a causal link between violent videogames and harm to minors before the state can prohibit the sale of violent games?

Professor Gulasekaram, a constitutional law instructor at SCU, explains that the key case the State has relied on is *Ginsburg v. State of N.Y.* There, the Court held that the State had a right to protect minors from obscenity, defined as sexual materials. In *Entertainment Merchants*, the State is attempting to regulate violence, which currently does fall under First Amendment protection. "Were the Supreme Court to hold for the State in this case, they would be creating a new category of unprotected speech," says Gulasekaram.

The Supreme Court has been loathe to narrowing the rights of free speech in the past. Perhaps the biggest hurdle that the 2005 regulation has to overcome is confining itself to the videogame medium. Should the law pass, what would stop the state from banning violence in other forms of media? Members of the Supreme Court expressed concern over this issue during oral arguments. Justice Scalia expressed his concern to the State: "Some of the Grimm's Fairy Tales are quite grim. Are they OK? Are you going to ban them too?"

The State has had a hard time proving any sort of causal relationship between violent videogames and harm to minors. Although studies have shown a correlation between videogames and aggressive behavior, the scope of the studies has not been large enough to show violent tendencies or harm among all minors that play videogames. The Merchants Association has put forth its own studies showing that videogames cause no such tendencies or harm among minors.

The Merchants Association also strongly argues that videogames already have competent regulation. The Entertainment Software Ratings Board (ESRB) is a self-regulatory organization that has existed since 1994. Similar to the regulatory body of the movie industry, the MPAA, the ESRB assigns age and content ratings to games. All videogames sold through a retail outlet are marked by the ESRB, denoting which age group the game is appropriate for. The issue of violence in videogames is one that the ESRB has long been aware of. "I'm very proud of the industry because they stepped up and flagged this issue."

See VIDEOGAMES, Page 4

Zoom in SCU's Zipcars

Hieu Tran

Reducing your carbon footprint in the Bay Area can be pretty easy when you have BART, Muni, AC Transit, and CalTrain. However, these earth friendly resources are just not as prevalent in the South Bay. Sure, there are VTA trains in downtown San Jose, and a decent bus system, but it simply does not measure up to the options further up the 101 and 880.

We may not be like UC Davis or UC Santa Cruz, but Santa Clara does have our fair share of bikers and skateboarders cruising to and from campus. The rest of us are devoted to our four-wheeled gas guzzlers because we cannot imagine getting groceries in the rain or learning to navigate the surrounding areas using the sparse public transportation available. Let's not forget the laptop, casebooks, and supplements we lug around all day. Living and working close to campus might solve these issues, yet Northern California offers so much within driving distance that a car can come in pretty handy to run errands or to relieve all that stress from the school week.

Courtesy of Nikki Corliss

Getting around without owning a car might not be as hard as you think. Through SCU, Zipcar brings convenient transportation right to Bannan Hall's doorstep--literally. After a $35 yearly membership fee, Santa Clara students can become a Zipcar member and access a Honda Insight, a Toyota Prius or Matrix. With your magnetic membership card, you can access the cars parked in the visitor parking lot next to the parking structure.

Aside from the membership fee, (which is applied as a credit toward reservations in your first month), the rental rates are $8 per hour or $66 per day (Monday - Friday) and $9 per hour or $72 per day (Saturday through Sunday.) Unlike traditional rental places where you need to be 25 years of age, you only have to be 20 to get a Zipcar. The best part of Zipcar is that the gas is INCLUDED. There is no deposit or commitment to use the cars with your membership, but the cars are there if you need them. Cars may be driven up to 180 miles per day (each additional mile is 45 cents). Day trips are completely feasible with the City only about 40 miles away, or Napa which is about 80 miles. With airline ticket prices on the rise, road trips might be the way to go...plus as the Bar Exam, debt repayment, and the real world looms closer for some of us, the opportunity for fun is dwindling by the day.

SUDOKU CHALLENGE

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Retraction From Last Issue

In the last issue a front page story was inaccurately titled "My Client's Last Minutes on Death Row." Clearly Ms. Jackson, as a student, cannot represent clients yet. The headline was a creation of The Advocate, and we apologize for misrepresenting Ms. Jackson, and her story in this manner.

Ochoa Gives First-Sale Crash Course

Rohit K. Pothukuchi

Q. Can you define the doctrines of first sale and exhaustion for us, and tell us a little bit about the history of these doctrines?

A."Essentially, if you purchase a patented article, a copy of a copyrighted work, or a good bearing a trademark, then you own that particular article, copy, or good. You can use it for your own purposes, and you can sell it without the permission of the owner of the intellectual property right. The owner of the intellectual property exhausts his or her right of distribution in a tangible object by selling you that object.

The doctrines are useful for two reasons: It defines the scope of the intellectual property right. It enables secondary markets in used articles, copies, or goods.

This is good for the buyer, because there is no restraint on the alienation of the property. The doctrine also helps regulate the cost of goods, because it forces new goods to compete with used ones.

The first copyright case where the first sale doctrine is seen is Bobbs-Merrill Co. v. Straus in 1908. In that case, Bobbs-Merrill, the publisher of a book, printed a condition on the back of the title page of a book that it could not be sold for less than $1. Straus, the defendant, was the owner of Macy's department store. Macy's sold the book for less than $1 and the U.S. Supreme Court held that the $1 minimum resale price condition could not be enforced by copyright law.

The history of doctrine of exhaustion in patent law goes back to Bloomer v. McQuewan in 1853 and Adams v. Burke in 1873. The leading case for trademarks is the Champion Spark Plugs case. In that case, the Supreme Court held that the word 'Champion could be left on the used spark plugs as long as the seller made it clear to the buyer that they had been repaired.'

Q. What are some of the difficulties faced when applying this doctrine?

Well, first the doctrine applies only when the trademark or copyright owner has sold you a good. So it doesn't apply if the good is rented or leased to you. It only applies if there has been a transfer of title.

In the case of software, which is generally accompanied by an End User License Agreement (or EULA), the courts have tried to regulate license agreements opposed to actually looking into the difference between a lease/rental and a sale.

The recent decision of the Ninth Circuit in Vernor v. Autodesk dealt with the issue of whether or not the first sale doctrine will apply to software sold under a 'shrinkwrap license'. The court held that the license agreement prevented title from being transferred, so the software could not be resold without the permission of the copyright owner. In my opinion, the court got it wrong. The doctrine applies to a 'copy' of the software, and the word 'copy' is defined as a material object in which the work is fixed. Thus, the question is whether there has been a "sale or other transfer of ownership" of the copy, or whether there has been a "rental, lease, or lending" of the copy. The court assumed that a license was similar to a rental, lease or lending, instead of looking at the economic reality of the transaction.

The same Ninth Circuit panel that decided Vernor has two additional first-sale cases pending. One is UMG v. Augusto, where the district court held that used CDs that bore a label For Promotional Use Only; Not for Resale" could be resold without permission, because the unsolicited distribution of an items is a gift, and therefore a transfer of ownership.

Yet another difficulty is 'cross border exhaustion.' Is the IP exhausted when the owner sells the goods outside of the US? Here, the three different doctrines have diverged.

The Federal Circuit has held that patent rights are exhausted only upon first sale in the US.

For trademarked goods, importation of goods bearing the trademark is permitted if they were sold by the U.S. trademark owner, or if the foreign trademark owner is under "common control" with the U.S. trademark owner, and the goods are not physically and materially different from the goods sold in the U.S. Even if the goods are physically and materially different, the Customs Service permits their importation if they are clearly labeled as different.

For copyrighted work, the U.S. Supreme Court granted certiorari in Costco v. Omega to address the issue of whether or not the first-sale doctrine applies when goods are manufactured and sold outside the US. The Court previously stated in dicta in the Quality King case that the statutory codification of the first-sale doctrine, which uses the words 'lawfully made under this title,' applies only to goods lawfully made in the United States, because title 17 is not extraterritorial. This is terrible policy, because it encourages copyright owners to manufacture copies outside of the United States. In the Omega case, the Court will decide whether that interpretation, which distinguished copies made inside the U.S. from copies made outside the U.S., is correct.

Q. What are some exceptions to the First-Sale Doctrine:

The doctrine is not absolute in the US. Commercial rental of computer programs and music is prohibited, because these items were being rented to people solely for the purpose of making copies at home. It could be a major threat to the copyright owner's business model if these items could be rented. Outside the US, some nations give copyright owners public lending rights. This allows for copyright owners to get paid every time when their works are checked out of a public library.

Yet another exception is the 'Droit de Suite' or artists resale royalty right. According to this exception, every time an original work of art is sold, the artist must be paid a certain percentage of the sales price. In California, an artists resale royalty right is present in Cal. Civil Code 986. However this statute is rarely enforced, and most artists aren't even aware of it.

Q. In your opinion is the First-Sale Doctrine a good thing? Does it require any changes?

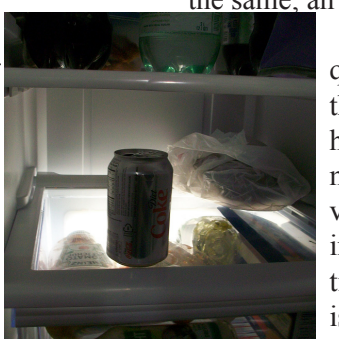
I am a big fan of the first-sale doctrine. I think it is good for consumers and good for society. However, at the conference we sponsored last Friday on the doctrines of exhaustion and first-sale, there was a vigorous academic debate concerning the first-sale doctrine. One of the economists presented data estimating the economic effect of the doctrine, and found that for books, the consumer welfare generated by the sale of used books vastly outweighed the harm to copyright owners; but for used CDs, there was much greater harm to the copyright owners. There was also vigorous debate between those who thought that End User License Agreements should be enforceable as copyright infringement, and those who think that the court should look at the economic realities of the transaction."

Lounge Larceny: Myth Busted

Matthew Clendenin

With the state of the economy, chances are you know a friend affected by office fridge theft. In fact, studies show that a growing percentage of employees are willing to pilfer your hard-earned edibles.

But does this epidemic of dishonesty affect our law school? With the recent addition of a communal fridge to the student lounge, Santa Clara has been put to the test. In fact, faculty already report infrequent but chronic thefts from the fridge in the Bergin Hall Faculty lounge. But what about Santa Clara students themselves?



To investigate further, yours truly undertook a highly scientific case study. Last Monday morning, a single, unmarked Pepsi was prominently placed in the fridge. While not going so far as to install electronic surveillance (I hear its inadmissible evidence anyway), I feverishly checked on the test subject several times a day. On Friday, I was enjoying the liquid benefits my test subject had preserved for the entire week – free of theft.

Before drawing any hasty conclusions, and to bolster research integrity, a second week-long experiment was conducted. This time, perhaps in violation of SCU's pack with the Pepsi devil, a single, unmarked, Diet Coke was placed in the lounge fridge. By the end of the week, the results were the same; an un-stolen, cold beverage.

While some may question the validity of the research in question, hopefully this will put many fears to rest. Your valuable goodies are safe in the fridge! (At least until Friday, when the fridge is cleaned and emptied.)

Violent Videogames Tried

Continued from Page 3

Russell says.

Retail outlets that focus on selling games take these ratings very seriously. GameStop, one such retailer, imposes very harsh penalties for employees caught selling games marked as "Mature" to minors. "I'd get fired," one employee remarks, "and my boss might get fired, and maybe his boss too." As it stands, the rate of violent videogames sold to minors from videogame retailers is very low.

One problem, however, is stores that do not sell only videogames. In stores such as Target and Wal-Mart, the rate of violent videogames being sold to minors is much higher. Perhaps the problem is that many employees in stores that do not specialize in videogames are just not aware of ratings, or the content of the games they are selling.

Should the California Legislation pass, it may herald a new trend in regulation across the country. "I wouldn't be surprised to see other states setting new regulations," Russell remarks. This would pose a large hurdle to the videogame industry, as there is no guarantee that there would be any standard to the new regulations, and keeping track of the variations, however slight, could prove to be a headache.

The problem may prove moot. The California law is geared towards regulating and marking the physical cases that games are stored in, yet, with the way industry advances, in a few years, physical cases may not be used anymore. "Everything's going to be digital in a few years," Russell says. As the law is written, it may have a hard time regulating games sold and delivered digitally.

The videogame industry is still a young one, but it has shown a tremendous amount of growth in the past twenty years, and is now a multi-billion dollar industry. As a result, issues such as the current one will inevitably arise. No matter which way the Supreme Court rules, it is likely that the industry will simply take it in stride.

"There's always going to be someone who pushes it to the extreme," Russell says, "but there will always be responsible people in the industry to take care of it."

Prof.'s Corner: Joondeph on ACA

Prof. Bradley Joondeph

The professor's corner is a new space in our paper to feature some of the pieces our professors are working on.

This feature is entitled: "Federalism and Health Care Reform: Understanding the States' Challenges to the Affordable Care Act"

On March 23, 2010, President Obama signed into law Public Law 111–148, better known as the Patient Protection and Affordable Care Act (or the ACA). Whatever its merits as a matter of policy, it was a historic legislative achievement. No prior administration had successfully pushed national health reform through Congress, despite several attempts, and Obama had largely staked his presidency on the legislation's passage. Understandably, the mood in the Rose Garden at the Act's signing ceremony was festive, even raucous.

Not all Americans were as excited as the President. Within hours, the attorney general of Virginia filed suit in federal court claiming the ACA is unconstitutional. The attorneys general of 12 other states (since joined by nine more) filed a similar action that same day, also contending that the ACA is unconstitutional. Both lawsuits are currently winding their way through the lower federal courts, and one or both seem destined to reach the Supreme Court. (Eighteen other lawsuits have been filed in various federal courts, raising claims nearly identical to those of the states. However those raising distinct claims, unrelated to constitutional structure, are beyond the scope of this analysis).

The two lawsuits make a variety of constitutional claims. Some involve the structural principles of federalism: they argue that, by forcing the states to take certain actions—to provide a certain level of health coverage for their employees, to establish so-called health insurance "exchanges," and to substantially expand their Medicaid programs—the ACA unconstitutionally infringes on the independent sovereignty of the states. Other claims concern the Act's so-called "minimum coverage provision," which requires all persons legally residing in the United States (with some exceptions) to acquire minimally adequate health insurance by 2014. The states contend that this individual mandate violates the Due Process Clause of the Fifth Amendment and exceeds Congress's enumerated powers.

Several of these claims have little chance of success on the merits; unless the Supreme Court overrules some well-entrenched precedent, governing law poses too much of a barrier. But two of the states' claims pose a legitimate threat to the ACA. First, the states can plausibly argue that the Act's amendments to Medicaid—and specifically, its requirement that the states expand eligibility to all legal residents under age 65 earning up to 133 percent of the federal poverty level—effectively force them to implement a federal legislative program. The significance of federal Medicaid funding to the states' respective budgets means they have little practical choice but to implement the ACA's Medicaid directives. And the Constitution forbids Congress from requiring the states to govern their citizens according to the federal government's instructions. Hence, the Act's Medicaid provisions could constitute an impermissible "commandeering" of the states.

Second, current law might be understood as dictating that the minimum coverage provision, ACA ß1501(b), exceeds Congress's enumerated powers. The United States has defended ß1501(b) as a valid exercise of Congress's powers to tax and to regulate interstate commerce. With respect to Congress's taxing power, a court could well view the exaction imposed by the ACA on those failing to acquire qualifying coverage not as a bona fide "tax" (in a constitutional sense) but instead as a regulatory "penalty." And with respect to the commerce power, Congress's regulation of the failure to obtain health insurance—an omission that arguably constitutes no more than passive inaction—might exceed Congress's authority to regulate conduct substantially affecting interstate commerce, either because the conduct is not an "economic activity," or because, no matter the context, this sort of mandate can never be a "proper" means to regulating commerce.

To be clear, the point is not that these are necessarily the best readings of the Constitution or current doctrine. Rather, the point is that these understandings are sufficiently plausible to form the basis for a judicial decision declaring significant parts of the ACA unconstitutional—and perhaps even to invalidate the entire Act (if the unconstitutional provisions are deemed inseverable).

In the end, what really matters is whether five justices of the Supreme Court would find these arguments convincing. And several factors critical to that inquiry will remain unknowable until the case actually reaches the Court. Those include which party controls the House of Representatives and the Senate, who occupies the White House, the popularity of health care reform with the American public, how lower courts have ruled on the issue, and the degree to which the Act has already been implemented (which could create practical obstacles to effecting a judicial invalidation).

Still, the temptation to speculate is hard to resist, especially on a matter of this magnitude. So in the concluding section of this essay, I try my hand at prediction. In particular, I contend that, because vindicating the states' challenge to the ACA's Medicaid provisions would entail some significant and disruptive implications for constitutional law, it is unlikely the justices would invalidate the ACA on this ground. But because striking down the minimum coverage provision as exceeding Congress's enumerated powers would have only a minimal impact on constitutional doctrine—and because it would invalidate the aspect of the ACA Americans seem to find most objectionable, for roughly the same reasons they find it objectionable—there is a good chance the Court will declare ß1501(b) unconstitutional.

People on the Street

Law students are queried: What is your personal Thanksgiving tradition?

"A big dinner with the fam. Then we like to go rat hunting.
- John Allen

"My personal tradition is to crash other families' Thanksgiving dinners. Ever since college, I've only had Thanksgiving with my family once."
- Crystal Long

"We usually have Thanksgiving depending on whoever invites us over first. Last year we had two back-to-back Thanksgiving dinners.
- Marie Sobieski

" I usually cook the whole meal (turkey curry). The key is not to overcook the bird! Our whole family eats, and then we watch football. Then my mom yells at me to start studying."
- Neil Banerjee

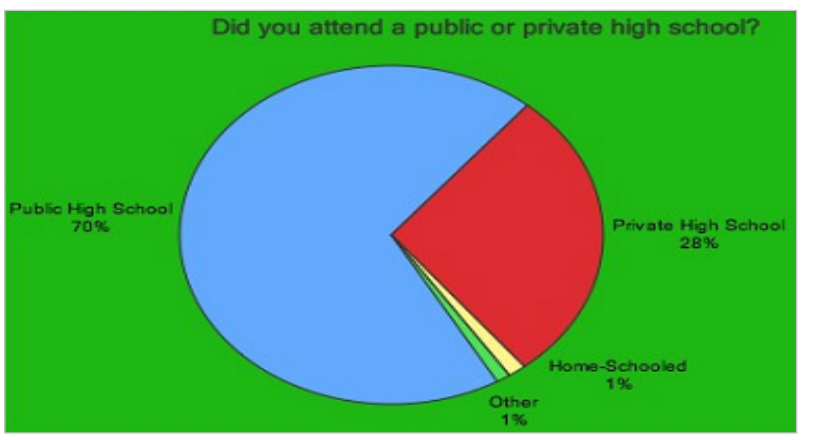
"This year I'll spend time with my family. All my siblings are coming home. Also, we always buy our gravy from KFC."
- James Ly

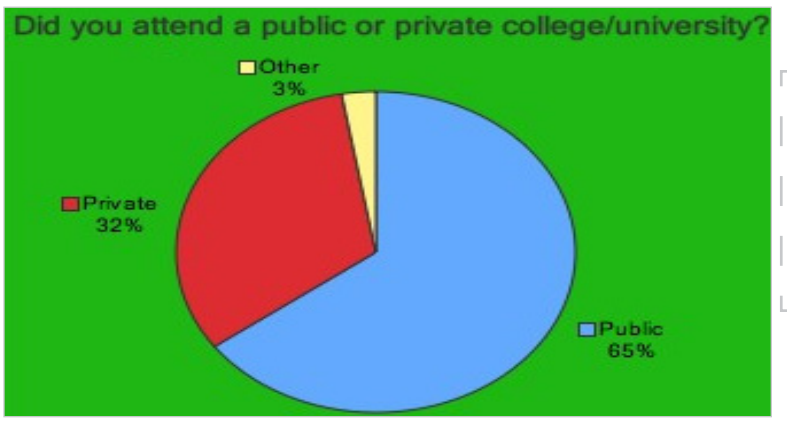
"We generally decorate the Christmas tree the day after Thanksgiving. Who wants to go out on Black Friday?
- Dan Keese

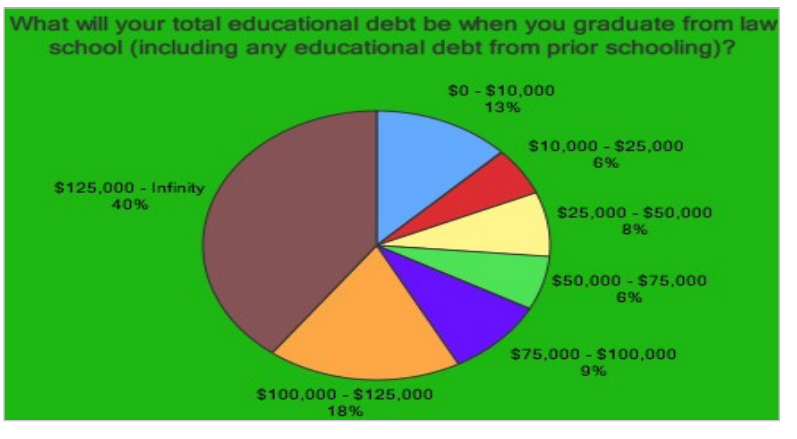
"The tradition is good friends and excessive red wine."
- Johnathan Opet

Photos Courtesy of Nikki Corliss

Student Polls







The Winners of the Starbucks Gift Cards for their Participation In our Survey are 1Ls
Devani Adams
and
Kiyomi Yamamoto

Bar Review Scen

Santa Clara Law Students dress up a
Bar Review, held at the Agenda Lou

All Photos Courtesy of Veepee De V

NE ON HALLOWEEN

nd let loose at the annual Halloween
nge in downtown San Jose this year.

ERA, SARAH WHITNEY, AND NIKKI CORLISS

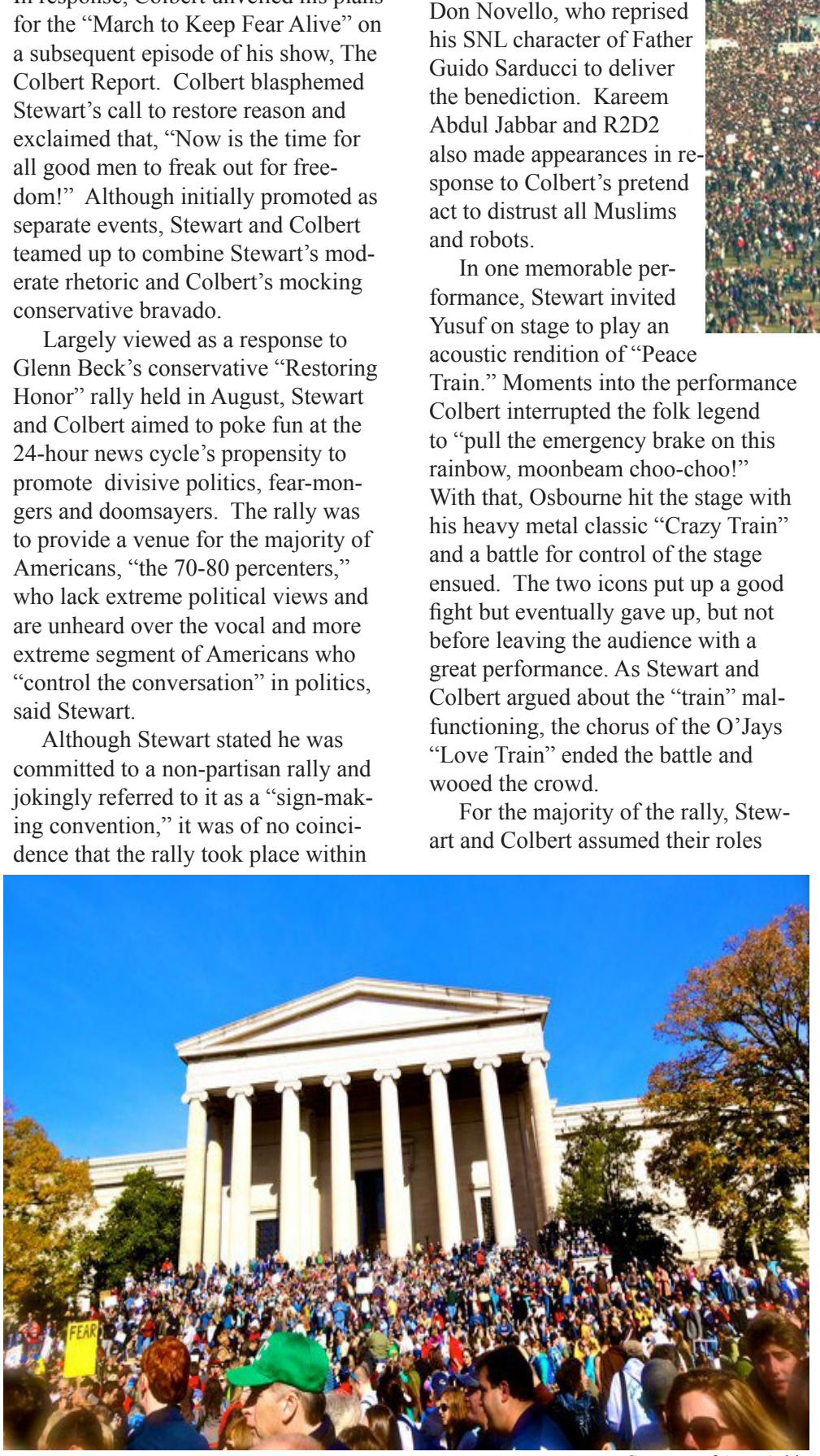
Stewart, Colbert: Rally to Restore Sanity and/or Fear in America

Amy Askin

On October 30, 2010, Jon Stewart and Stephen Colbert drew a crowd of about 215,000 to their "Rally to Restore Sanity and/or Fear" in Washington, D.C. Attendees represented a colorful mix of goofballs and the politically disenchanted; some dressed up as Big Bird, robots, bears, and bananas. In mid-September, Stewart announced the rally on his nightly satirical "fake news" program, The Daily Show, suggested a mock motto for the rally: "Take it down a notch for America," and proposed a protest sign with the message "I disagree with you, but I'm pretty sure you're not Hitler." In response, Colbert unveiled his plans for the "March to Keep Fear Alive" on a subsequent episode of his show, The Colbert Report. Colbert blasphemed Stewart's call to restore reason and exclaimed that, "Now is the time for all good men to freak out for freedom!" Although initially promoted as separate events, Stewart and Colbert teamed up to combine Stewart's moderate rhetoric and Colbert's mocking conservative bravado.

Largely viewed as a response to Glenn Beck's conservative "Restoring Honor" rally held in August, Stewart and Colbert aimed to poke fun at the 24-hour news cycle's propensity to promote divisive politics, fear-mongers and doomsayers. The rally was to provide a venue for the majority of Americans, "the 70-80 percenters," who lack extreme political views and are unheard over the vocal and more extreme segment of Americans who "control the conversation" in politics, said Stewart.

Although Stewart stated he was committed to a non-partisan rally and jokingly referred to it as a "sign-making convention," it was of no coincidence that the rally took place within



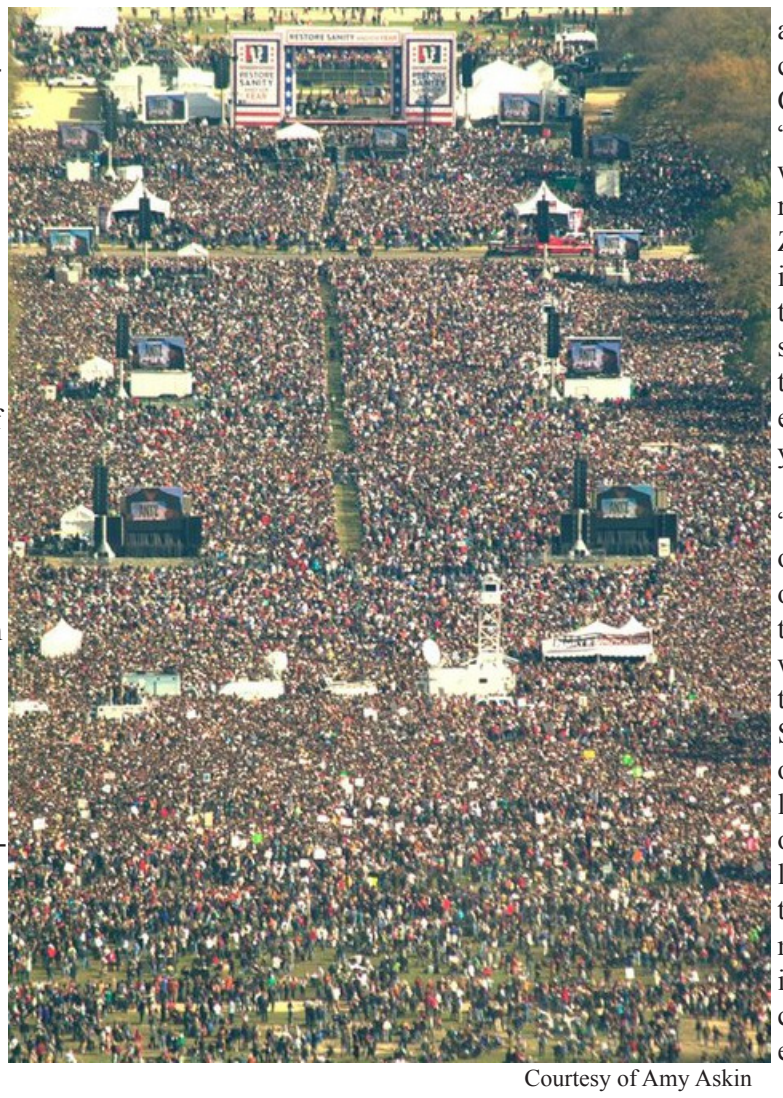
Courtesy of Amy Askin

days of the mid-term elections on November 2. Earlier that week, President Obama became the first sitting president to appear on The Daily Show to make what appeared to be a frank appeal to midterm voters. According to the New York Times, approximately 2.8 million viewers tuned in to watch Obama's interview, almost 1.7 million were between the ages of 18 and 49 – the age group that gives the Democratic Party the majority of their votes.

The rally was part comedy show, part music festival and part pep rally, which included performances by Yusuf Islam (formerly known as Cat Stevens), Ozzy Osbourne, John Legend and the Roots, Kid Rock, Sheryl Crow, Jeff Tweedy, Mavis Staples, and Tony Bennett. There were appearances by actor Sam Waterson, who read a poem written by Colbert extolling fear, and comedian Don Novello, who reprised his SNL character of Father Guido Sarducci to deliver the benediction. Kareem Abdul Jabbar and R2D2 also made appearances in response to Colbert's pretend act to distrust all Muslims and robots.

In one memorable performance, Stewart invited Yusuf on stage to play an acoustic rendition of "Peace Train." Moments into the performance Colbert interrupted the folk legend to "pull the emergency brake on this rainbow, moonbeam choo-choo!" With that, Osbourne hit the stage with his heavy metal classic "Crazy Train" and a battle for control of the stage ensued. The two icons put up a good fight but eventually gave up, but not before leaving the audience with a great performance. As Stewart and Colbert argued about the "train" malfunctioning, the chorus of the O'Jays "Love Train" ended the battle and wooed the crowd.

For the majority of the rally, Stewart and Colbert assumed their roles on their respective Comedy Central shows: Stewart protected reason from the school yard bullies while Colbert pimped out fear. Stewart honored individuals who exercised reason in unreasonable circumstances. The notable recipient was Armando Galarraga, pitcher for the Detroit Tigers, who did not commit an intentional tort against the umpire whose bad call cost him a perfect game. Colbert responded with the "Stephen Colbert Fear Award," which depicted a naked man running with scissors. Mark Zuckerberg received the award, in absentia, because according to Colbert, "people no longer say you're crazy when you think someone is tracking your every move. They just say 'Oh, you're on Facebook.'"



Courtesy of Amy Askin

Amidst all the hilarity, the "Rally to Restore Sanity and/or Fear" carried a more virtuous message about Americans turning their backs on hate and working together towards unity. Towards the end of the rally, Stewart conveyed a more serious tone and through a monologue, reflected on the theme of "sanity." He admitted, "We live now in hard times, not end times" and then praised the majority of American's ability to work together and make compromises, despite differences of opinion.

ABA Fall Leadership Summit

John-Paul Deol

At this year's ABA Fall Leadership Summit law student representatives from the western portion of the United States came together in Los Angeles to discuss issues of importance to law students as well as to take part in a day of professional development.

One of the highlights of the conference was a speech by Los Angeles County Superior Court Judge Ramona G. See. As a ranking member of the American Bar Association's National Conference of State Trial Judges, Judge See encourages all law students to pursue judicial clerkships and externships. "You will learn more in one or two years working for a judge than you will in five years of practice," said Judge See. As she explained to us, not only does having a clerkship or externship under your belt attract employers but it will make you the go-to person when your co-workers need to file a motion or appear in court. You will be able to tell them how to navigate what could potentially be a young lawyer's nightmare. Furthermore, you will gain familiarity with various areas of the law and become extremely confident in your skills of writing and analysis.

Regarding the application and interview process, Judge See had several important suggestions that often get overlooked. First and foremost, know everything you can about the judge to whom you are applying. It is especially important to know your judge's political philosophy so that any potential clashes can be avoided. Second, sit in on a trial or hearing with the judge to observe how they think and work. Third, do not submit a whole brief as a writing sample. If you choose to submit part of a brief, make sure you only submit the most relevant and helpful part. For the interview, bring along the entire brief in case your judge is interested in reading the whole thing.

Judge See provided each attendee with a packet containing information and links about judicial clerkships. Anyone interested should feel free to contact me (jdeol@scu.edu) and I will be happy to provide a copy.

4th Annual Student Health Law Conference

Sarah Mercer

I recently attended a conference on careers in Health Law sponsored by Seton Hall University. While I have had strong interest and passion for health law and policy for years, I admit that I was at a loss for understanding what a "legal career" in health law would entail. Thus, I was greatly looking forward to hearing from practitioners about how their career trajectories brought them to this field as well as developing a greater understanding of careers in health law.

National healthcare reform has established a number of opportunities in the regulation of fraud, compliance, and physician reimbursements for government programs like Medicaid and Medicare. Additionally, "Elder Law" is a burgeoning field that will become increasingly important as the Baby Boomer population ages. The Public Policy Institute of California estimates that by 2030 the senior population will double and one in five persons in California will be over the age of 65. According to panelists at the conference, this population will need legal services that include Medicare assistance and advocacy, estate planning, long term care and home health assistance, elder abuse, and family law. Health law and elder law are significantly intertwined and population trends indicate a growing need for specialists in this area.

Hospitals also provide tremendous opportunities for legal careers. Hospitals are a business entity with employees, corporations or non-profits, all while providing health-related services to patients. Panelists spoke about the role of in-house counsel at hospitals and health insurance agencies. The panelists explained that they not only handle many of the investigations and lawsuits with hospital patients, but also provide legal expertise in all areas of human resources such as compensation and benefits, employee relations and wage and hour laws; the financial management and succession planning of the business; and various other legal concerns that impact the hospital as a business entity, such as formulating and implementing organization goals. Therefore, there is a role in health law for individuals interested in becoming in-house counsel as well.

In addition to establishing policy, government agencies play an important role in health law. A speaker with the Food and Drug Administration spoke about the agency's role in promoting and enforcing food safety, prescription drugs, medical devices, and cosmetics. She explained that working for the government after law school immediately steeped her into the legal practice, providing her with opportunities to manage and participate in cases. Thus, the regulatory and compliance role in medical supplies, food, and other consumer products is an area where a law degree is beneficial. An attorney with the Office of Legal and Regulatory Affairs for New Jersey's Department of Health and Senior Services discussed how her former career as a nurse was a driving force in her current work. She is responsible for monitoring health insurers and providers' compliance with state regulations.

In the private practice of health law, panelists spoke about the various business-related transactions they are involved in, such as hospital mergers and acquisitions, negotiating managed care contracts and contracts between health-maintenance organizations and physicians, hospital licensure, and the defense of fraud investigations. These are all areas that either large law firms offer to their clients or where small boutique firms have developed to address the specialized needs of the health care system.

One speaker predicted the following list of areas: fraud and abuse of the reimbursement systems, intellectual property as it pertains to the life sciences, as well as life sciences regulations through the Food and Drug Administration, health information technology, hospital accreditation, and joint ventures between hospitals and physicians as "hot" emerging areas.

The practitioners that attended had great advice for law students in getting the most out of law school. First, most of the speakers emphasized volunteer work or internships because this gives students the ability to participate in the legal process as well as opportunities to shadow attorneys. Many speakers encouraged students to ask to attend meetings, depositions, mediations, and any other activities that can provide important learning opportunities. Additionally, speakers touched upon law school classes, encouraging students to take courses related to areas in which they want to practice, such as health law or elder law. For individuals interested in in-house counsel positions, the speakers emphasized business related courses as well as traditional law school classes. The government attorneys suggested Administrative Law as an important tool to regulatory legal practices.

Lastly, the attorneys suggested that finding that perfect practice requires a balance of security and excitement, and when you find that job that you really want, be authentic in how you promote yourself with a future attorney. Speakers suggested attending networking events, setting up informational interviews, joining the American Health Lawyers Association or other interest-based legal associations to meet local attorneys, and be tuned into industry related information and employment opportunities.

When Grandparents Ask About PPACA

Amanda Gordon

Ever been at that awkward family dinner, where your grandma leans over and asks you some arbitrary question about the law, on the assumption: "hey, my granddaughter is in law school, she will know the answer?" But then you're stumped. Because if you are a 1L you've spent the last 3 months cramming information about Learned Hand and some weird sinking cargo boat. Or you're a 2L/3L and the only law you know by heart is rule 10.2 for bluebook. (*I will NOT bluebook for food).

Regardless of who you are, here is a cheat sheet to answer any picky questions from your relatives about Health Care Reform (Patient Protection and Affordable Care Act Pub. L. No. 111-148).

It is true that after reading this article you may be thinking that these health care reforms only relate to entitlement benefits so why should I care. Here is my pitch, those eligible for Medicare (your parents/grandparents) often buy presents to support the age old tradition of giving and maybe this info will earn you that coveted iPad this winter break. Probably not though.

Context: Thanksgiving/Hanukkah/Christmas Dinner

Grandparent: What's up with Obamacare?

Lily Law Student: PPACA is one complicated law. Let me try to break down some of the basics for you, Grandparent. The new legislation was designed to keep entitlement benefits from doubling in the next decade. Medicare spending has grown over eight percent annually over the last twenty years, and this law was created to slow down this annual increase in spending. PPACA attempted to cut down on future increases and so hopefully the services you need will not be cut. In fact, the new legislation guarantees basic benefits for everyone enrolled in Medicare and starting in 2011 you are guaranteed an annual physical and preventative services.

Grandparent: Have I lost all my Medicare Advantage benefits that allow me to get extras like free eyeglasses?

Lily: Well, it depends. Congress plans to create $136 billion in savings from reducing the subsidies paid to Medicare Advantage plans (about 1 in 4 people in Medicare are on a Medicare Advantage plan). Currently, those enrolled in Medicare Advantage receive about 14 percent more in reimbursements.

In 2012, the government is going to stop overpaying the Medicare Advantage plans and the providers may cut your benefits. However, the new law does guarantee basic Medicare benefits. So, short law school answer is of course, it depends.

Grandparent: If Congress plans on saving $390 billion how can they do that without cutting in to Medicare reimbursement?

Lily: PPACA created something called the Medicare Warranty in Section 3601(a). This provision says that nothing in the Act can cut current Medicare benefits.

Grandparent: Will the recent changes in the political makeup of Congress repeal PPACA?

Lily: Likely not. The only real option available would be to defund discretionary spending. Congress cannot change the entitlement sections of the legislation without changing the law and any entitlement benefits are going to be fairly immune from defunding.

Grandparent: Thanks grandchild! This was a very informative and useful conversation. Lets' go buy you that Pony/iPad/Business Suit now.

Judge Ware Promotion

Continued from Page 1

systemic or ones affecting the individual judges. Fortunately the Northern District is well run and I look forward to continuing many of the practices established under my predecessors.

Q. How long will you be the Chief judge?

A. I am eligible to serve for seven years, however, the actual length of service might vary.

Q. Will you change chambers to San Francisco?

A. There is a Chief Judge's Chambers at the Courthouse in San Francisco. I will consider moving my Chambers after a District Judge is appointed to take my Chambers in San Jose.

Q. What advice can you give 2L's who are considering applying for clerkships?

A. In my view, the students who have demonstrated skills in research and writing are better positioned to compete for a position as a law clerk. Not every student will have such an interest. The best demonstration of course, is a law review article or a highly regarded moot court brief. Faculty recommendations are extremely important, particularly from faculty who has had an opportunity to work with students on a one on one basis. Consequently, students should look for those opportunities as well as for externship opportunities.

Courtesy of Jason Doiy

Q. Will you be able to continue teaching at Santa Clara?

A. One of the benefits of being a District Judge is the freedom to lecture at local law schools. I will continue to look for such opportunities, particularly at Santa Clara University School of Law.

Following "Don't Ask, Don't Tell"

B.P. Broadmeadow

I am 2nd Lieutenant in the United States Marine Corps. I should qualify that this article is not a reflection of any official Marine Corps or military policy regarding 10 USC Section 654, more commonly known as "Don't Ask, Don't Tell" (DADT). Rather, I want to present an academic discussion of DADT considering the nature of the military and federal law.

This opinion piece was prompted sometime ago by an email the SCU Law Community received from the Law Career Services informing the student body of a United States Navy Judge Advocate General (JAG) information session. The email stated "[t]he Law School does not support the military's policy against the gay and lesbian community and is only providing this forum because it is obligated to do so under the Solomon Amendment."

There are those in the military who believe that gays and lesbians should be allowed to serve openly, and there are those who do not. However, just as Career Services was obligated to host the JAG information session by federal law, my fellow servicemen and women are obligated to follow DADT, regardless of our personal beliefs.

When servicemen or women join their military branch, they swear that they "will obey the orders of the President of the United States and the orders of all officers appointed over them" and, that they "will support and defend the Constitution of the United States." Upon entering into the Marines, my personal beliefs became secondary to my duty and commitment to the Constitution. That duty entails following any law passed by the President and Congress.

DADT is a law. Military policy must support the law. When the Clinton Administration implemented DADT, it was viewed as a progressive step forward. Since 1916, homosexuals were banned from serving in the military based upon an anti-sodomy clause in the Articles of War. Since the early 1990s, DADT has allowed homosexuals to serve in the military, albeit under a cloak of anonymity as to their sexual orientation.

Today, President Obama, like President Clinton, campaigned to repeal DADT, but has not yet done so. Congress has stalled, waiting upon reports and studies before voting upon DADT in the coming months. In the absence of action, lower federal courts attempted to address the issue.

In the recent case *Log Cabin Republicans v. United States*, the Ninth Circuit Court of Appeals found DADT to be unconstitutional and issued a nationwide injunction of the Act. However, the Obama administration has asked for and has been granted a stay against the injunction. In deference to the President's desire to see DADT repealed through an act of Congress, the Supreme Court denied review of the case. This places the responsibility squarely in the hands of the Executive Branch and Congress.

To my point, it is not the military that continues to discriminate against gays and lesbians openly serving. It is federal law, enacted by legislators and elected officials, which so discriminates. The current administration has the opportunity to pursue a strategy of repealing DADT through the courts or in conjunction with Congress. The military is not a place of politics. While the military does inform legislators concerning the debate of DADT, it does not conclude the debate.

Law Career Services was wrong to assume that it is military policy that drives discrimination of homosexuals openly serving. Instead, the school should have spoken out to Congress and the President, rather than stating that the military "chooses to discriminate" against gays and lesbians. The military will follow the law, whether derived from the Articles of War that banned homosexuals from outright service or the current law that permits gays and lesbians to serve so long as their sexual orientation remains anonymous. The military will follow the law if and when public officials allow homosexuals to openly serve. Discriminating against the military based upon their observance of federal law does not address the true root of the issue. If the university does not support DADT, it is more appropriate to turn down federal funding than limit military recruitment access.

In light of DADT, the military still wishes to recruit at our campus. If the military chooses to recruit upon our campus, why should we deny them an opportunity with our diverse student body?

Letter to the Editor: Rankings Ridicule

I am writing in response to the "SCU Law Falls in 'Best' Rankings" column written by Hieu Tran in the Wednesday, October 6, 2010 edition of The Advocate.

At first when I read this column I didn't think much of it, but the more I thought about it, the more it bothered me to the point where I felt compelled to respond.

There are a few things I found disturbing. First, I really question the judgment of The Advocate's editorial staff for putting this story on the front cover of the newspaper and then plastering the paper all over the campus. Nothing says, "come join the SCU Law community" to prospective law students touring the campus like a headline in your law newspaper saying "SCU Law Falls in Rankings." If your goal is to scare off prospective students this is a sure way to do it.

Putting aside this first observation and concern, I found the entire premise of the article and the school administration's comments to be highly disturbing. The column, in a roundabout way, says that one of our school's top concerns and focuses should be on raising our US News & World Report law school ranking. What's even worse is the response from our dean that "the law school takes this ranking seriously," and that it is compiling a committee (basically, to find ways of gaming the rankings) in the hopes that it can find ways to have us move up the rankings.

In my view, the school's administration is going about this the completely wrong way. First and foremost, the school's focus should not be on compiling groups of people to try to manipulate nonsensical rankings, made for elites by elites, in hopes that it will move up. Rather the school should be focused on providing its students with the best practical skills and theoretical knowledge in order to make them the most marketable students to legal employers. Moreover, the school should be focused on giving its students the skills to hit the ground running in a highly competitive job market. What would be even more concerning is if the school's administration is actually paying whatever group it is compiling. I couldn't see a bigger waste of student's tuition and/or endowment money (money that could go toward scholarships, hiring faculty, or establishing clinics). Going out and chasing rankings indicates, at least to me, that the administration is wholly lost and doesn't know what it's doing.

Our school's ranking is more reflective of the oversights in the rankings themselves than anything else. For example, the rankings take into account things like employment statistics without regard to factors such as competition or legal market.

Since job placements are an important factor of these rankings, small deviations in employment statistics will go a long way in determining a school's rank. We have to take a step back and just look at the reality of our situation. Our geographic location is probably our best asset but our worst enemy. We are in one of the most highly coveted areas to live in and one of the most vibrant legal markets in the country. This provides us with a lot of opportunity but also a lot of competition. Aside from the hordes of newly minted law graduates coming from outside of the Bay Area, trying to crack the Bay Area legal job market, we are competing for jobs with students from 5 highly regarded institutions in our own backyard (Stanford, Berkeley, Davis, Hastings, and USF). Taking out students from out of the area vying for legal jobs, these 5 schools probably put out close to over 1000 law graduates every year. Assuming that each of these students wants one of the coveted "mid to big-law" firm jobs and assuming that there are about 100 of these firms in the Bay Area and these firms only hire on average 3-4 first year associates every year (in a good legal market mind you), out of over 1000 home grown students, only 300-400 will even be in a position to get these jobs, thus leaving 600-700 looking for other opportunities. Now add the students from outside the area that come here from Harvard, Yale, Chicago, etc., and you will see that the job picture looks more bleak for many students and the fact that firms only look for the best and brightest and those that have something unique to offer their practices and you will see that the job picture looks more bleak for many students, especially in light of the fact that most students at SCU wish to stay local. Now, if we take this exact school and move it to a place like Utah or Iowa, where there are only a few schools and almost no competition for jobs, we would most likely have higher employment rankings, and thus a higher ranking score. That is partly why you see schools like Utah and Iowa consistently above us in the rankings.

Basically the point I'm trying to make is that we are in a highly competitive job market and without proper training and skills to make our students stand out from the crowd, we can spend all the money we want in trying to game a rankings system, but it will inevitably have some limitations due to the flawed nature of how these rankings are calculated.

What this school's administration needs to actually do is take the time, effort, and money it is wasting in chasing rankings and invest it in programs that will help us stand out from the crowd and make us competitive for jobs employers are looking to fill. A look at what some other schools are doing provides good guidance. For example, Stanford Law School has a Supreme Court Litigation Clinic, which gives students an opportunity to work on real Supreme Court cases by representing parties and amici curiae, having students actually write the briefs petitioning for certiorari, and work on briefs for cases that have actually been taken up by the Supreme Court. American University Washington College of Law has its Intellectual Property Law Clinic, which allows its

See LETTER, Page 11

Rumor Mill... Exam Season Arrives

Dean Erwin

It's beginning to look a lot like . . . Exam Season!! That annual rite of passage for law students that includes exciting events like the "Heafey Law Library Germ Fest," the "My-Paper-is-Due-by-5-pm Demolition Derby," and the ever popular "What-Do-You-Mean-the-Exam-was-this-Morning Freak Out." This month's edition of the Rumor Mill will be dedicated to all things exam related.

Rumor Topic Number One: **Examsoft**. *We've heard that Examsoft doesn't work on Macs/PCs/Vaios/Leapfrogs/etc; that Tech Support is/is not available during exams; that the new Mac version is guaranteed to work/won't work; that we are very helpful/not helpful at all; and that you can download everything you need 10 minutes before the exam begins!*

SCU was one of the beta schools for Examsoft. We wrote some of the original procedure manuals used by many schools and helped improve the software. Our tech guys were the O.G.'s (Original Gurus) and were the official tech guys when the California Bar first started using the system. We know the system pretty well. That said, Examsoft has changed hands, has upgraded almost every year and is now ready for Macs. Our tech support and faculty support offices worked hard to stay informed, trained and ready to help.

You all need to do your part to make sure the process works! Read the emails from Lisa Willett and Allan Chen. (If you missed the most recent installments, go to the Official Announcements Blog - http://law.scu.edu/blog/officialannouncements/index.cfm - and read them! Allan sent one about getting your computer ready and Lisa sent one with a To Do List to prepare for exams.) If you get emails telling you to download software or exam templates – download them immediately! If you are having problems with your computer – get it checked out now! Write "Don't Forget to Bring Power Cord and Battery" on your windshield or forehead or study partner . . . whatever it takes to make sure you remember them! And, if you forget to do one of these things or if your computer decides to implode during hour two of the exam, be prepared to hand write!

Rumor Topic Number Two: **Exam Reschedules/Illness/Emergency**. *We refined the exam reschedule request procedures this year, which has lead to some confusion. We have heard that the deadline has passed for ALL reschedule requests, that the administration won't let you reschedule so you have to ask your professor now, and if you are sick and bomb your exam you can just ask for a do-over.*

The deadline to apply for an Administrative Conflict (reschedules due to exams in conflict with each other) has passed. If you find yourself needing a reschedule due to a Personal Conflict (reschedules due to illness or emergency), you just need to talk to us before your exam begins. Contact the Law Student Services Office at (408) 554 – 4766 or lawstudentservices@scu.edu. If you are ill at the time of your exam, you should consult the head proctor or Law Student Services BEFORE opening your exam packet! Once you look at your exam, you can not reschedule and we don't allow do-overs.

Note: Students who are too sick or injured to take their exams will need to provide a doctor's note. Do NOT talk to your professor as you may be compromising your anonymity and they won't be happy to hear from you. Do NOT no-show for an exam, as you will most likely get an F.

A*nd, lastly, my annual advice all of you as you head into finals*:

Double check your exam days and times; you don't want to actually live through the nightmare of missing a final! At least one of you does it every year!

Be aware that a ton of you get sick this time of year and then infect everyone else. Don't cough on people, wash your hands, eat right and sleep!

Please remember that we are here for you. If you start feeling overwhelmed, please come see me.

If you have an emergency, come see me. If you get sick, come see me.

Be nice to each other, everyone is just as tired, stressed, and over-caffeinated as you are.

Have a question you'd like us to ask Dean Erwin? Email us at scuadvocate@gmail.com

Registration Frustration Stunts Our Education

Martin Behn

Registering for classes is almost identical to drafting a fantasy football team. We have plans for what players we want, and contingencies for when those other guys in our league swipe our third round pick. But now that registration is over, and our ECAMPUS accounts are reflecting balances for next semester, all we have left are waiver pickups (waitlists).

Those of us on waitlists probably are not seeing much movement right now. We all know the pecking order: seniority rules. While there is nothing wrong with that on its face, there is a problem with the now well-known backdoor: the ability to waitlist 100 hours.

Those with an early registration appointment are able to waitlist as many full classes they want. For underclassman being thirtieth or higher on a waitlist during their first round of registration is frustrating. Without definite picks, it is hard to plan around jobs, extracurricular activities or life in general.

In defense of the long waitlists, the league-commissioner Dean Erwin has said that students generally find their way into the classes they want by the start of the semester. The Dean also forwarded some helpful statistics about waitlists that hover around 15-30 dwindling down to zero by the start of classes.

Only a few of the core classes, Constitutional Law II and Advocacy still had waitlists by the start of this semester. Of the elective courses, only seven kept waitlists up by the beginning of the semester with 13 classes increasing their cap due to high waitlists. Those are some pretty solid stats for the waitlist.

Dean Erwin, like any good fantasy football commissioner, maintains the waivers, shuffles people around, and makes sure they keep moving. She explained the rationale as taking the burden off of the professors to micro-manage administrative details, so they can focus on teaching class on the first day. It seems like this could also help prevent any form of collusion as to who gets into the class. She also informs me that the law department is the only school at the university still maintaining a waitlist.

It seems petty to whine about the waitlist after all this information. But after learning about how the system works, it does not change the initial problem: students are indiscriminate about their use of the waitlist initially. And there are no trade offers like in fantasy football.

If the initial registration period only included the first couple of units, sans waitlist, students would be more discriminate about the classes they chose, and more students could plan up-front what type of classes they want to take.

Others who were looking to get into a class, or jump on the waitlist, will be less discouraged about adding their name later on, or at their chances of getting into class.

Just like the beginning of fantasy football season, registration can be painful. No matter how adequately we plan for it, chances are the class that we really want is going to be stocked full before we get an initial crack. Reducing the first-round 'waitlist' pick can save us from making potentially huge changes in our academic plans. Trust me, as somebody going 8-2 in my fantasy football league, I should know.

Letter to the Editor

Continued from Page 10

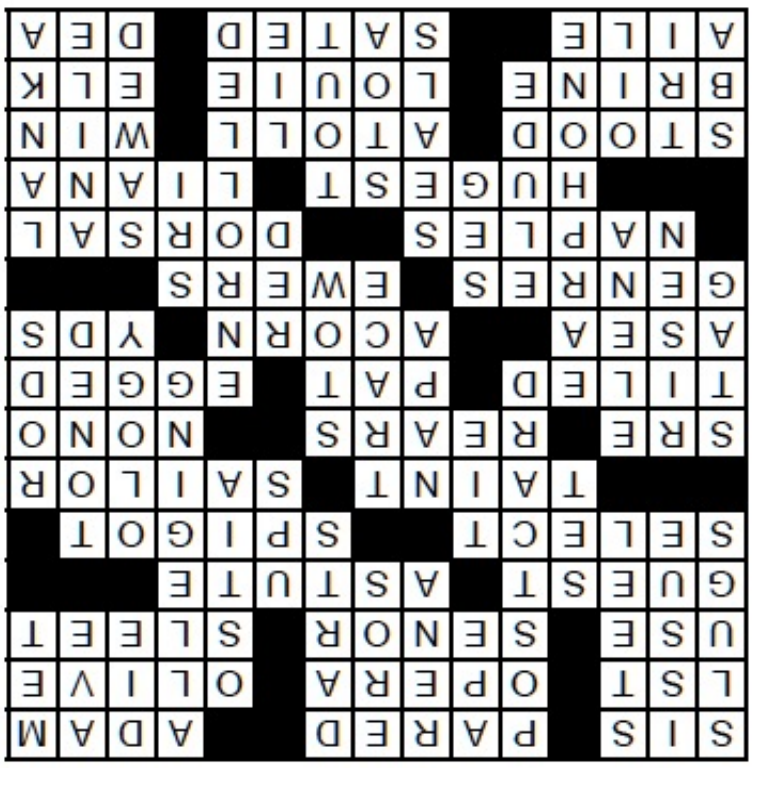
students to work on projects similar to what the Stanford Supreme Court Clinic, except in the intellectual property context.

What these schools have done by implementing these innovative programs is to give their students a competitive advantage by providing them unique experiences that help them stand out in the highly competitive job market. Implementing similar programs at SCU should be the focus of the administration, not compiling groups to improve rankings.

***Roozbeh Gorgin** 4LE,*
Big Law Secure

If you would like to respond to any articles or opinions presented in this issue, please write us a Letter to the Editor, and we would be happy to publish your response. No anonymous letters will be published, and please limit them to 250 words or less.

CROSSWORD SOLUTION



Giants Bring Gusto Back to the Bay

Dominic Dutra

After 56 years of torture and disappointment, the San Francisco Giants finally won the World Series, and in doing so brought back the feeling of magic that Bay Area sports fans have not experienced in over 15 years, when the 49ers won the Super Bowl in ’95. Yet, this victory was bigger than perhaps any championship since the 49ers first super bowl victory in 1981, when “The Catch” was forever memorialized in Bay Area sports lore.

We have seen glimpses of this kind of energy over the past decade, perhaps never more viscerally than 2007 when the Warriors, flying on the wings of “We Believe” mania pulled off the biggest upset in NBA playoff history, dispatching the Dallas Mavs in 6 games in the first round. The excitement and frantic support from the entire Bay Area was a glimpse into the true character of fans that had never received the kind of recognition that fan-bases in cities like New York, Chicago, Philadelphia and Boston have. However, the Bay Area faithful were not fully vindicated until Brian ‘The Beard’ Wilson struck out Nelson Cruz swinging on a blistering high fastball for the final out of the 2010 World Series.

The monumental surge through the post-season finally brought national attention to a legion of fanatical Giants fans, waking the east-coast media from their biased slumbers. Bill Simmons, a best-selling sports journalist and member of the lifelong Red Sox faithful, described AT&T Park as one of three parks in baseball that “give me chills in person,” and lauded the Giants fan-base, observing that even the nearly comatose Fox TV announcer Joe Buck, “actually sounded excited to be there… Now that’s saying something.” Having attended Game 1 of the Division Series as well as Game 1 of the World Series, I can confirm Simmons’ observations. They were quite literally the two most exciting events – of any kind – I have ever witnessed and the ballpark could not be described as anything less than electrifying.

Henry Schober, a lifelong Phillies fan, was so inspired by the Giants’ postseason magic that he hopped on their bandwagon. “The Giants were simply superior to the Phils in every facet. I could no longer lie to myself about my love and admiration for the best team in baseball.” Said Schober.

At the root of this exhilarating run and jubilant exertion of support from long-suffering fans, was a team scripted like a Hollywood screenplay. Universally described as a cast of castoffs and misfits, the chemistry and ‘likeability’ factor of this squad fueled the fans in a way that no Bonds-era team ever would. League Championship Series MVP, Cody Ross, and World Series MVP Edgar Rentaria epitomized the club’s synergy, two players who were not regular starters during the season, stepping up on baseball’s biggest stage and playing their part. Every day there was a new hero, a testament to an anti-Yankee, anti-Superstar formula that worked to perfection through the end of the year

It was a true underdog story all season long, and in the end, these underdogs put the bite back into Bay Area sports.

College Playoffs? No, We’re Talking About the BCS

Veepee De Vera

BCS = Bowl Championships Suck. Or Bowl Championships are Stupid. Either way you look at it, the BCS acronym fits and the BCS must go.

You may think that I, a proud San Diego State alumnus, am just upset because the mighty Aztec football team still was not ranked after going 7-2 and now will not have any shot of getting ranked after losing to #3 Texas Christian (that game was filled with B.S. calls against San Diego State, but I digress).

First, let me attempt to explain to you the BCS. The BCS standings are composed of 3 main components, each weighted equally (33.33 percent). Those components are 1) the Harris Poll, 2) the Coaches Poll, and 3) the computer rankings. Let’s go in some detail to each component.

The Harris Poll is comprised of 114 voters. Who they are I do not know. Each voter, in their own opinion, ranks the top 25 teams in the nation. Teams that receive a #1 ranking get 25 points, the #2 team gets 24 points, and so on. The teams’ total points are then divided by 2,850, which is the number of points a team would get if they were ranked #1 by all the voters.

The USA Today Poll is calculated the same way as the Harris Poll except there are 58 voters and the team’s total points are divided by 1525.

The Computer Rankings are stupid. There are six computer ranking systems: 1) Anderson & Hester, 2) Richard Billingsley, 3) Colley Matrix, 4) Kenneth Massey, 5) Jeff Sagarin, and 6) Peter Wolfe. Each computer ranking system calculates the top 25 teams in their own way, but still gives 25 points to the #1 team, 24 points to the #2 team, and so on. The best and worst rankings are thrown out, leaving the middle 4 computers scores to be added and divided by 100, which is the maximum amount of points a team could get.

Why do I care? Because this BCS and rankings system is, for lack of a better word, stupid. Schools such as Utah in 2008 and Boise State in 2007 and 2010 went undefeated during the regular season yet still were not given a chance to play for the national championship. Even though Boise State’s incredible win in 2007 against Oklahoma was one of the best bowl games I’ve ever seen (2005 Texas vs. USC was the greatest ever), I would have loved to see Boise State continue on to be a Cinderella team like in College Basketball’s March Madness. Basically, the BCS takes away from the fun and thrill of watching your team have a shot and progress through the playoffs, then winning the championship. Would the San Francisco Giants have won the World Series if the MLB employed a BCS system? I think not.

The BCS must go and be replaced with a playoff system. Even Obama wants a playoff system. Enough said.

CROSSWORD PUZZLE

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Across

1 Sibling
4 Peeled
9 Garden man
13 Landing craft (Abbr.)
14 Classical music
15 Martini additive
16 Employ
17 Mr. (Sp.)
18 Precipitation
19 Overnighter
21 Shrewd
23 Pick out
25 Tap
28 Cloud
31 Navy man
33 Girl (Sp.)
36 Brings up
38 Banned
39 Like some floors
41 Dab
42 Pelted, sloppily
43 On the ocean
44 Oak fruit
46 Distances (Abbr.)
47 Writing styles
50 Pitchers
52 It. city
54 Fin type
58 Most immense
61 Climbing vine
62 Remained upright
65 Coral reef
67 Succeed
68 Saltwater
69 Comedian Anderson
70 Cervid
71 Wing (Fr.)
72 Filled
73 Law enforcement group (Abbr.)

Down

1 Univalves
2 Supply
3 Alloy
4 Greeting
5 Copy
6 Rockfish
7 God of love
8 Projectiles
9 Asserting
10 Expire
11 Prayer bead
12 Connected
15 Anc. Italian city
20 Congeal
22 Increases
24 Bind
26 Branch of knowledge (Suffix)
27 Strengthened
29 Cal. wine country
30 Follow
32 Fishing gear
33 Hart
34 Lifted up
35 Actress Verdugo
37 Pack
40 Listening device
42 Entered
45 Bolshevik
48 Circumvent
49 Part (Abbr.)
51 With 57 Down, island republic
53 Marine mammals
55 Cut
56 Feeble
57 See 51 Down
59 Portico
60 Tipster
62 Biz mkts.
63 Angle type
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