THE ADVOCATE

SANTA CLARA UNIVERSITY SCHOOL OF LAW

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Dean Polden Announces Plans to Step Down

By Benjamin Broadmeadow
Editor-in-Chief

Yesterday, Dean Donald Polden announced that he will be stepping down as the Dean of the School of Law at the end of the 2012 - 2013 academic year.

Dean Polden has served as dean for the past ten years. During his tenure, the School of Law rose to as high as 78th in the rankings and saw almost 3000 students graduate. Its ranking as an IP law school rose from 9th best IP program to 6th best.

Dean Polden, from his announcement yesterday:

"As much as I have enjoyed serving as your dean, I look forward to having new opportunities to focus on my long-standing interests including leadership education, international teaching, and the topic of the regulation of legal education.

"After a long overdue leave, I will look forward to returning to work with many of you and with future Santa Clara Law students and law school graduates."

Prior to arriving at Santa Clara University, Dean Polden served as the Dean for University of Memphis School of Law. He replaced Dean Mack Player in 2003 at Santa Clara.

Santa Clara University Provost Dennis Jacobs will oversee the search for a new dean. Provost Jacobs will meet with the faculty mid-next week. A search committee will be initiated some time after that. The Provost's Office could not comment on a concrete timeline at this time.

Dean Jacqueline Wender, Senior Assistant Dean for Administration, commented on the search.

"The University has a process for searching for a new dean of a university school approved by the Board of Trustees...The last search [committee] included a student member. The Law School would eagerly embrace student participation [for this search]."

The Advocate would like to thank and congratulate Dean Polden for his tenure as the School of Law's Dean. The SCU Law community no doubt shares in Dean Wender's sentiments:

"I would like to express my gratitude to the Dean for all he has done and all he will continue to do. I was privileged to work with him these past five years and look forward to this remaining year."

Dean Polden, we wish you the best of luck.

Prop 34

Voting "Yes" Right Call for Public Policy

By Ellen Kreitzberg
Professor of Law

On November 6th, the voters of California will, for the first time since 1978, decide whether to replace the death penalty with the punishment of life without the possibility of parole. While the death penalty is always controversial, there is no disagreement, even among death penalty supporters, that the death penalty, as implemented in California today, is dysfunctional and does not work. The question for voters is- do we finally say "enough" and end this wasteful, ineffective program? If Californians learn the truth about our death penalty system, the answer is clear: Yes on Prop 34.

Proposition 34 would do three things: 1) it would replace the death penalty and convert all existing sentences of death to a sentence of life without the possibility of parole; 2) it would require inmates to work and pay a portion of their earnings to a victims restitution fund; and 3) it would allocate $30 million each year for three years to local law enforcement. Prop 34 is good public policy because it will save California hundreds of millions of dollars while keeping us safe, it requires accountability of inmates to their victims, and it will make certain that we never execute an innocent person.

The death penalty is more expensive than keeping an inmate in prison for life until he or she dies of natural causes. This is a fact. It is true in every state including Texas, where executions occur with greater frequency and at a faster pace. Justice Arthur Alarcon, Senior Judge, U.S. Court of Appeals for the Ninth Circuit and death penalty supporter, spent five years researching the cost of the death penalty. In a recent article with his law clerk Paula Mitchell, Justice Alarcon concluded that the death penalty has cost California $4 billion since 1978 while the state has carried out thirteen executions (for non-math majors that would be a cost of about $300 million per execution). Justice Alarcon also determined that if the current system is continued between now and 2050, California will spend an additional $5 to $7 billion dollars over and above the cost of life without the possibility of parole.

The state legislative analyst estimated that the savings of Prop 34 would be $130 million per year. Although this estimate failed to account for the completed plans to build a new 1,000 inmate death row facility at a cost of almost $1 billion including the hiring of additional staff. The bulldozers are prepared to break ground on this project if the proposition fails to pass in November.

The death penalty does not make Californian safer- in fact it may do just the opposite. Today, 55% of reported rapes in California are unsolved. Although victims of these crimes undergo physical exams during which biological evidence is taken and preserved for testing, thousands of

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Looking at the Legal Implications of the "Infield Fly Rule"

By Amanda Demetrus
Associate Editor

It's that time of year again. Orange October. This year's post-season has been of particular interest to the bay area with two teams in the playoffs. Even though the A's are now out of the running, bay area sports fans still have their eyes on the Commissioner's Trophy. With all the buzz surrounding the recent series, bay area fans may have missed a rare occurrence in the National League Wild Card game between the St. Louis Cardinals and Atlanta Braves where the often unknown or misunderstood Infield Fly Rule was implicated. While the rule is generally unfamiliar and mysterious, baseball fans even less often give thought to the origins of this somewhat bizarre rule. William S. Stevens wrote a Law Review note in 1975, while a student at the University of Pennsylvania, analogizing the origins of the Infield Fly Rule with the origins of Common Law. The note has gained notoriety in legal circles and has been cited in scholarly articles on subjects ranging from bankruptcy to constitutional law to ethics.

A fly ball triggers the infield fly rule when a batter hits a fair fly ball that is not a line drive or an attempted bunt. If the team has runners on first and second or the bases loaded, and if an infielder can catch this fly ball with ordinary effort, then the batter is automatically out regardless if the ball is caught. If the infielder drops the ball and it remains fair, the runners can advance at their own risk. There must be less than two outs and the umpire must declare the

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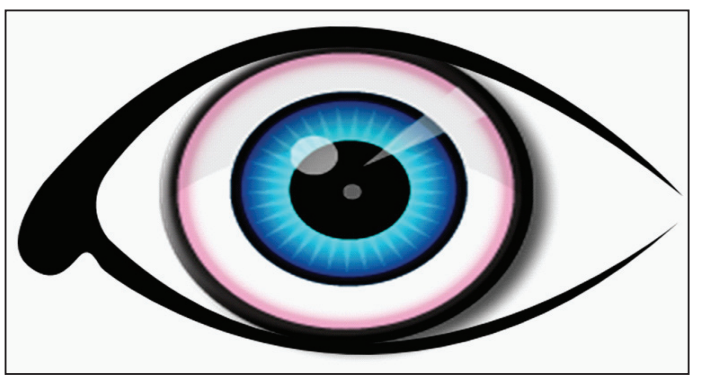
Heafey Library Staff Launches New Research Initiative

By Mary Sexton
Librarian and Foreign, Comparative and International Law Librarian

During the month of October, the Heafey Law Library staff will be offering quick introductions to and refreshers on practical aspects of legal research, from finding materials using OSCAR (the SCU library catalog) to compiling a California or federal legislative history.

During the week of October 15th, Heafey librarians will be giving a series of brief (10-15 minute) presentations in the TOSO lab, Monday through Thursday, from noon to 1:00 and from 4:00 to 5:00.



An online LawGuide -- All Eyes on Legal Research , http://lawguides.scu.edu/alleyes -- and the library display case across from near the circulation desk will be updated each morning to list the subjects to be covered that day. Presentation topics include developing a Research Strategy, searching Hein Online, conducting California legal research, finding treaties and foreign law, and more. Come for one presentation, stay for another, ask questions during and between presentations.

Also during the week of October 15th, Heafey will be holding reference hours in Bannan at noon, at a table in/around the student lounge. Look for an oversized eyeball logo at a table nearby.

Because Career Services is offering noon-time presentations every day during the week of October 22nd, the library will be scheduling its

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CONGRATULATIONS!

For the second year in a row, The Advocate was recognized by the ABA Law Student Division as the nation's best law school newspaper. We would like to offer our utmost congratulations to last year's staff and Editorial Board for their achievement. We aim to make it three years running.

Lastly, a special thanks to our readers. We put this paper out for you. Thank you for reading it.

Tidings to Tide You Over

STATE

LOS ANGELES, CA - Everybody deserves a break. Exotic dancers from the LA area finally got one. A federal judge awarded class settlement for exotic dancers to the tune of $12.9 million. The settlement was levied against adult entertainment clubs who denied benefits to the exotic dancers by labeling them "independent contractors." Dancers from California, Florida, Idaho, Kentucky, Nevada, and Texas will receive the class settlement.

BERKELEY, CA - Do you like exotic birds? Well, apparently two dudes from Berkeley Law do not. On recent trip to Las Vegas, Boalt Hall students Eric and Justin thought it would be humorous to behead a peacock milling about in a casino wildlife habitat. Their sacrificial ritual was caught on tape. The two were arrested and charged with a felony. Passing the moral character application just got a lot more difficult for them. Moral of the story: do not ostrich-ize yourself by beheading exotic birds in Vegas.

TECHNOLOGY

Microsoft has released its tablet, "Surface," at a price point of $499. Some analysts says its too high. Meanwhile, Apple is preparing to release its "iPad Mini," which is said to come in twelve different colors. Twelve! For those that don't know, the "iPad Mini" is smaller than the iPad but larger than an iPhone. It is about as necessary as a wallet-sized backpack. It too will probably be priced at $499, which some analysts will most likely say is too low.

BOOTLEG T-REX

The U.S. Attorney's Office arrested Eric Prokopi, a commercial paleontologist, for illegally selling the above fossil of Tyrannosaurus bataar. He smuggled the bones out of Mongolia. The U.S. Attorney's Office had their best man, Indiana Jones, on the case.

Branca v. Mann: Michael Jackson Meets Storage Wars Meets Copyright Law

By Jake McGowan
Associate Editor

When a celebrity goes bankrupt or forgets to pay a bill for his/her physical-space storage locker, opportunists may swoop in and purchase the goods so they can try to turn a profit reselling them. But sometimes, these buyers get a little overzealous--they convince themselves that their interest in the tangible property gives them an interest in some of the celebrity's underlying intellectual property rights. This leads to poorly designed pay-for-access websites with risqué names like "parisexposed.com."

A district court in California heard one of these storage locker disputes in Branca v. Mann, where the defendants set up a pay-for-access website relating to the late Michael Jackson. The court lowered the boom on August 10th, granting summary judgment in favor of the plaintiffs for a long list of claims including copyright infringement, false designation of origin, misappropriation of likeness, cybersquatting, and so on.

Background

The Jacksons have been blessed with many talents, but financial management is not one of them.

In the late nineties, Michael Jackson's parents and two of his brothers owed money to a company owned by one of the defendants. To collect on the debt, the company found a storage facility with Jackson family memorabilia and sought to authorize a bankruptcy sale including photographs and audio recordings found in the storage facility (the "Subject Property"). Jackson tried to block the sale, but the defendants ended up buying the Estate's right, title and interest in the Subject Property.

In 2004, some of the defendants in this suit created a pay-for-access website using Jackson's name, likeness, photographs and other copyrighted material from the bankruptcy sale. Jackson fired back, filing a suit alleging copyright infringement, false designation of origin, cybersquatting, and misappropriation of likeness. The court granted a preliminary injunction, but dismissed the action with prejudice in '06 after Jackson failed to prosecute. If you recall, Jackson's legal team was a little busy at the time.

Jackson died in 2009 and the defendants tried to cash in, creating new websites and selling access to more of Jackson's copyright-protected material. Jackson's lawyers promptly threw the kitchen sink at them, filing a suit alleging copyright infringement, false designation of origin, cybersquatting, cyber piracy, misappropriation of likeness, and unfair competition. They asked for declaratory relief, along with an accounting of how much defendants profited from the alleged unauthorized use and a permanent injunction.

The district court sided with Jackson's estate, granting summary judgment on almost every claim. The key question in this case, however, was whether the defendants' purchase of the Subject Property granted them any interest that would justify their pay-for-access website.

Defendants Did Not Acquire IP Rights Through Bankruptcy Sale

The defendants argued that they acquired an interest in Jackson's IP rights through the original bankruptcy sale. In support, they pointed to a 7th Circuit decision which held that a sale agreement need not include the exact word "copyright" to transfer an interest in the corresponding IP rights. The court distinguished the 7th Circuit case:

"Language in the bankruptcy court's order and from an exchange between the lawyers and the bankruptcy judge also made clear that the sale had transferred intellectual property rights. Here, to the contrary, none of the facts surrounding the sale of Debtors' personal property from a storage facility indicate a transfer of any intellectual property rights."

Ultimately, the court held that the bankruptcy sale covered only the personal property of the Jackson debtors, and did not transfer any rights, title, or interest to Michael Jackson's intellectual property.

This is a great example of the conceptual difficulties that arise when intangible property is embedded in tangible property, like a cassette tape. After all, the Jacksons' storage locker contained valuable, unreleased audio recordings alongside the other tangible property. Many non-lawyers might believe that by purchasing the locker, they purchased everything, including the intangible property contained on tangible property. Although the physical tapes are somewhat valuable in a memorabilia sense, the true value lies in the rights to copy and distribute the song itself. But the tapes are merely a medium for the combination of protected musical tones and lyrics--they don't grant those rights. They shouldn't grant those rights, because it would not be fair to allow the songs to leak simply because they were on the wrong cassette at the wrong time.

Now imagine that the storage locker contained only tapes, and the defendants paid thousands of dollars. If they can't distribute the songs on the tapes, why did they invest in the first place? They could try and recoup by selling the tapes as memorabilia, but in reality they just made a bad investment due to a legal error.

EDITORIAL:

THE ADVOCATE APPLAUDS THE SUPREME COURT'S CELEBRITY, BUT WITH SOME RESERVATIONS

In this issue's Feature "The Court at Crossroads" we highlight several high profile cases appearing before the Supreme Court. These cases address significant constitutional issues such as affirmative action and human rights policy. SCOTUS continues to attract substantial media coverage that began with the Health Care Cases. It has garnered a celebrity-like status, which The Advocate applauds.

The prominent media-coverage of the Court only serves to better inform the public about impactful cases and decisions. While the Health Care Cases and its subsequent opinion by Chief Justice Roberts affected the entire country, there is no reason why cases such as Fischer or Kiobal are any less deserving of the American public's attention.

In October of an election year, too often do people get swept away by the rhetoric of political candidates. The media places emphasis on campaign promises, buzzwords, and idealistic speeches catering to political preferences. SCOTUS' position in the media offers a hearty contrast.

Consider Chief Justice Roberts' Health Care opinion; he transcended political party lines to deliver a masterfully crafted opinion based on legal reasoning. As the media provided coverage about the opinion's release, there was something concrete about the Court's celebrity. It was not constructed out political debates, attack ads, or political party support. Law and fact, with various interpretations by SCOTUS justices, made the Supreme Court a media darling. There is actual substance to the Court's celebrity. It has made legal savviness and being informed popular.

The Court, however, should not use the good-will and celebrity generated by the non-partisan Health Care opinion to mask voting along party lines in the future. Pundits have speculated that Chief Justice Roberts may have partially voted against party lines in the Health Care in order to vote along party lines in cases such as *Fischer* without substantial scrutiny.

If that is the case, the celebrity of the Court is somewhat cheapened. The Court should stand alone from politics. Unlike the other branches, SCOTUS does not need political buzzwords for a momentary bump in the polls. It does not need to sway voters. The stances the justices take cannot afford to be associated with campaign promises, not when the Court's profile temporarily reaches a larger, more captivated audience. The messages delivered by the Court are not simply some sound bite for the evening news or rousing campaign speeches. They are the law.

Agree? Disagree? Send your thoughts on the Supreme Court's celebrity to The Advocate at scuadvocate@gmail.com.

If there are any issues you'd think The Advocate should address, send those thoughts

Rumor Mill with Dean Erwin

By Susan Erwin
Senior Assistant Dean

As you all are registering and wait listing for classes now, schedule issues seem to be the topic of the month. Dean Mertens and I have found – over a few years of putting the schedule together – that for each class we add there will be students who love the time and those who don't, students who love the professor and those who don't, and students who see way too many choices and those who see none. We also have to work with professors who love mornings and those who love evenings, those who have multiple time-consuming commitments, those who are in demand at weekend conferences and those who are full time attorneys with heavy case loads. We have to balance those classes that need 100 seats (in the 2 rooms we have that are big enough), those that need moveable chairs, those that need classroom taping and other AV capabilities, and various other room features, requests and availabilities. It really is impossible to keep everyone happy, but we keep trying. :)

Some things that are mostly true now (but probably won't be tomorrow):

1. Generally law students don't like morning classes. Registrations for 9 am classes are always low unless we put a popular professor or a 1L class that students have to take in the 8:40 or 9 am slot. This leaves us one morning time slot at 10:30ish.
2. We don't schedule classes during the noon hour because of all of the wonderful events we have every day and the need for lunch breaks. This leaves 3 time slots in the afternoon – 1:15, 3:40 and 4:10ish.
3. We don't schedule classes on Wednesdays between noon and two because it is set aside for faculty meetings and programming. This knocks out the MW 1:15 time slot.
4. Generally, law students won't take classes that meet on Fridays. Again, the 1L and popular professor rules apply.
5. If a class meets three times a week, most of you will not register for it. (Probably has something to do with Fridays, see item 4 above.)
6. Many of you will take anything if it is offered for one week only, or one weekend only. We keep adding options for you!
7. If we offer 4 sections of a bar course in the fall and 1 in the spring, all law students will wait until spring to try to register for it. Please note that we try to balance them, but sometimes it doesn't work out depending on the professors who are teaching and their schedules.
8. Generally our specialized small seminars taught by adjuncts have to go late in the day because the lecturers are working and can't get here – even 6 pm is difficult for many of them. Hence, the proliferation of 6 pm and 7:30 pm seminar classes.

So, as I walk down the halls and hear "What were they thinking scheduling ** at the same time as **??" or "Why would you put ** at 6 pm??" or "They are only offering one section of ** this semester and it conflicts with **!!," I just sigh and trudge on back to the office for another 14 hour shift of trying to build a better schedule.

Hope your registration went well, keep an eye on the waiting lists, and let me know if you have heard any good rumors lately. *serwin@scu.edu*

People on the Streets:

If a plaque on campus could be dedicated in your honor, where would you want it?

"Middle of the white board in Bannan 127."
- Chris Glass, 2L

"In the back of the lounge so it can be seen everyday."
- James Voge, 2L

"In the undergrad library, downstairs, attached to a bust. It would replace the bust of the other guy there now and be bigger and in gold."
- Tiffany Henderson, 1L

"I would want it to be in the hall of the library, because B.T. Collins already claimed the men's room."
- Karl Frasier

"Over by my bench next to the fountain of St. Ignatius. That's where I decided to go to Santa Clara."
- Kendall Gourley-Paterson, 2L

Heafey Staff Steps Up Research Support

"Library"
From Front Page

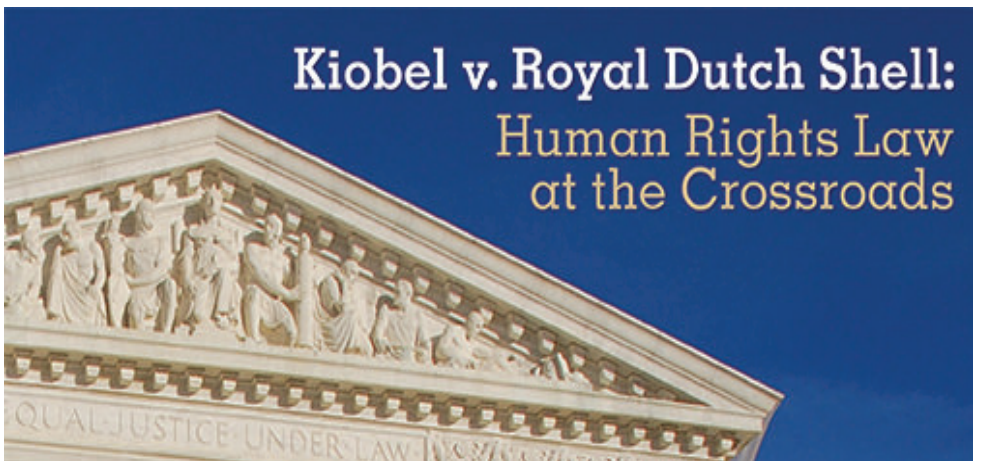
presentations that week in the afternoon only, at approximately 4:00, 4:20 and 4:40. Part-time and summer hires are usually expected to do a lot of legal research, so sharpening research skills is an excellent career investment. Refreshers in legal research will also be useful for journal members, moot court participants, research assistants, and students working on SAWRs and other papers.

Both weeks, at noon and 4:00, there will be library staff at circulation, at reference, and near the public access computers to demonstrate how the scanners work, where old exams are kept, how to make an interlibrary loan request, and where else you should be looking when you can't find something on Lexis, Westlaw, Bloomberg Law, or Hein Online.

While the law library won't be offering presentations per se in the evenings or on the weekends, reference and circulation staff will be more than happy to answer any questions you may have, to demonstrate how equipment works, and to explain law library procedures.

Feature: The Court

While the Supreme Court's decision concerning the Health Care Acts has garnered a celebrity-like status, there are several cases now appearing before the Bench that could radically alter the landscape of current constitutional jurisprudence.



By Matthew Toyama
For the Advocate

Perhaps one of the most elusively interpreted pieces of legislation archived in U.S. public law, the terse Alien Tort Statute (28 U.S.C. 1350) has been called a "legal Lohengrin," for the intense debate surrounding its origins and purpose in twenty-first century American law.

After two centuries of his law collecting dust on the shelves of American public law from its inception in the Judiciary Act of 1789, Oliver Ellsworth must finally be smiling as his statute has found cutting edge importance in our present globalizing world.

The ATS states, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations ...."

The ATS was first called off the bench the 1979 in the Second Circuit case, *Filártiga v. Peña-Irala*. There, the court validated its long arm power by wringing the Paraguayan Inspector General of Police, Americo Norberto Peña-Irala, into a U.S. court to answer charges of human rights violations. Peña had allegedly tortured and murdered a 17-year old boy, whose family then fled to the United States and successfully brought an ATS suit within U.S. borders. However, the jurisdictional and substantive boundaries of the ATS were solidified in 2004 by the Supreme Court in the poignant *Sosa v. Alvarez-Machain* decision.

Ultimately, the concise construction of the statute and a lack of direct legislative history gave rise to questions of delineation between federal judicial versus legislative/executive power, persisting enclaves of federal common law and the general appropriateness of adjudicating private international complaints that could potentially bear on U.S. foreign policy. From this backdrop, the ATS is commanding the international legal spotlight again in *Kiobel v. Royal Dutch Petroleum Co*.

The *Kiobel* case arrived in 2011 via a Nigerian plaintiff taking refuge in the U.S. against a British-Dutch company for charges of aiding the Nigerian government in violently suppressing resistance to oil exploration. What has been come known as "*Kiobel I*," the case originally addressed the question of whether a corporation could be subject to liability under the ATS as a "person." But after deferring *Kiobel I* for re-argument, the Supreme Court recently heard oral argument in *Kiobel II* on October 1, 2012, and the question presented has changed (and broadened) dramatically.

As it stands now, the primary issue is whether it is constitutional for a federal U.S. court to even adjudicate what has been termed a "foreign-cubed" case--or the question of liability of an alien plaintiff against an alien defendant for a wrong occurring outside the borders of the U.S., albeit for a violation of international law?

Just to give the headnotes version, the Highest Court of the U.S. seemed to believe the following concerning the ATS:

1. Congressional intent suggested mainly a jurisdictional grant to federal courts, but one which was/is self-executing and not reliant upon further legislation by Congress for employment;
2. The violations of the law of nations with reference to "tort" originally contemplated only violations of safe conduct, infringement of rights of ambassadors and piracy;
3. Any claims based on the present-day law of nations should rest on a norm of international character originating out of 18th-century international law paradigms;
4. Modern conceptions find that common law is created, not dependent upon statutory change. Post-Erie, there are still limited enclaves in which federal courts may derive some substantive law in a common law way;
5. Thus, the door is not closed to further judicial recognition of actionable international norms but still ajar, subject to vigilant doorkeeping. The courts must be vigilant and judicial progress be made cautiously as determinations weigh on foreign policy concerns where foreign defendants are made subject to U.S. civil law.

The fact that at least four Justices favored postponing resolution of the original question of corporate civil liability under the ATS for the addressing of the statute's general propriety originally seemed to signal that the Court was likely to strike a fundamental blow to its functionality. After the second round of argument, however, there seems to be much more dissension amongst the Court.

The current fight early this month seemed to focus almost exclusively on the foreign policy concerns inherent in adjudicating ATS claims. The Justices' quetions sought to address two things: (1) the potential for U.S. persons/corporations to then be subject to reciprocal liability under other foreign national forums invoking universal civil jurisdiction through their own ATS-type domestic legislation, and (2) the presumption against the extraterritorial application of U.S. law.

The Court seemed to show its concern over having to adjudicate claims under the ATS by questioning counsel for Petitioner about the propriety of avoidance measures, such as forum non conveniens, political question doctrine, and alternatively, using general 1331 jurisdiction. But the Court never fully discounted the ATS route, in which the plaintiff could assert proper personal jurisdiction over a defendant for violation of a sufficiently specific, universal international customary law.

The aggressive questioning of Justices Breyer, Kagan, Sotomayor and at times Chief Justice Roberts regarding Respondent's distinction of her extraterritoriality argument seemed to give insight into the Court's opinion of its own abilities. Respondent's main argument that the Court should not proceed to interpret modern conceptions of law of nations in order to expand the Framers' original paradigms in 1789 without prior congressional action met hot resistance from the Chief Justice. He rebuked the idea, finding that the Court in fact has that power, as supported by the *Filártiga-Sosa* line of cases. And relying on *Filártiga* again, both Justices Breyer and Kagan pushed Respondent to explain why piracy on the high seas in the 18th century should not translate to the torturers, dictators even in their own territories of the 21st century, the hostis humani generis, enemy of all mankind, for the propriety of allowing universal civil jurisdiction in such situations.

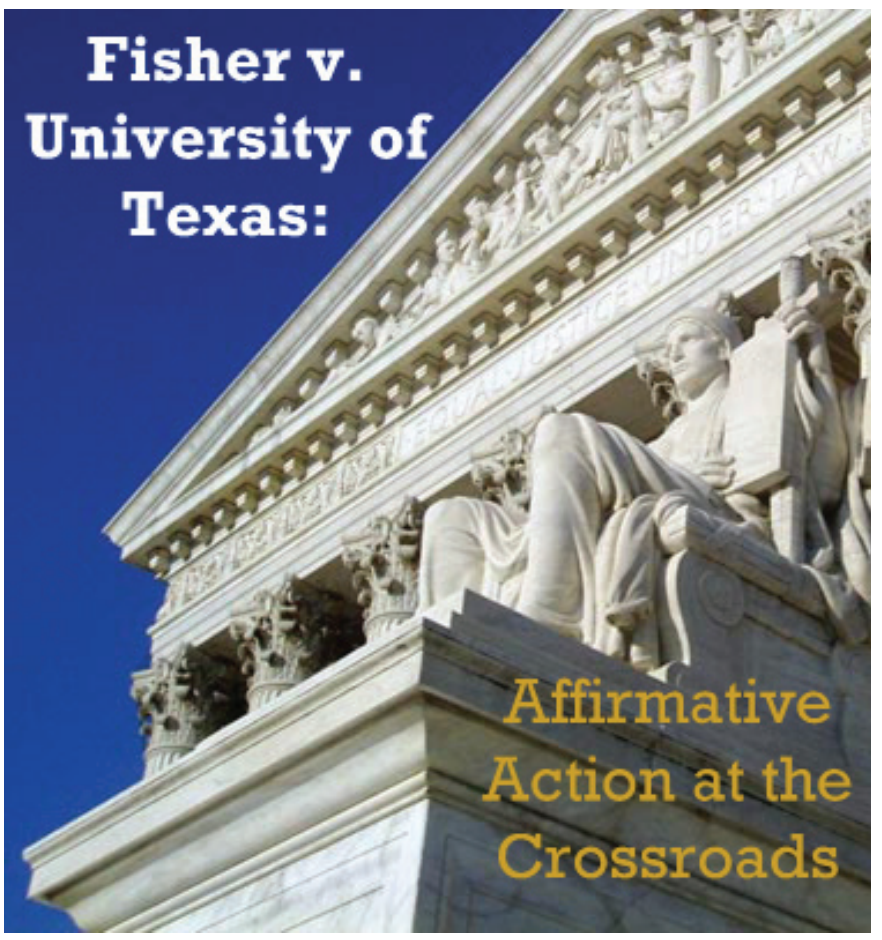
While there remains a strong possibility that Petitioner-Kiobel will lose on a 5-4 decision against Royal Dutch in some form or another, it appears reasonable that the Court might avoid resting its decision upon broad rules concerning "foreign-cubed" cases, as the validity of such do find support in recent precedent, or an extraterritoriality argument. There now seems to be hope that the Court may come out on narrow grounds by deciding *Kiobel* exclusively on its individual merits.

In keeping with traditional ideology, this pen hopes and believes our High Court will not cravenly disregard the purpose of the First Congress in including section nine of the Judiciary Act of 1789 nor stray from the comprehensive treatment given the ATS in *Filártiga* through *Sosa*.

Know your Supreme Court Justice

- Justice Kagan likes to refer to herself as the "frozen-yogurt justice" after she helped procure a yogurt machine for the SCOTUS cafeteria.
- According to a 2004 report, Justice Scalia is the funniest justice, averaging seventy-seven rounds of laughter per term.
- Before joining the bench Justice Sotomayor specialized in Intellectual Property litigation while providing pro bono work for several groups, including the Puerto Rican Legal Defense and Education Fund.
- Justice Kennedy taught at University of Pacific's McGeorge School of Law for twenty-five years.
- It is well known that Justice Ginsberg loves the opera, but it is lesser known that she has appeared as an extra in two Washington Operas, one in costume and one as herself.
- Justice Thomas originally set out to become a Catholic priest, graduating from seminary school, but changed paths after the assassination of Martin Luther King, Jr.
- While an associate at Hogan & Hartson, Chief Justice Roberts played a critical role in preparing arguments for the landmark gay-rights case Romer v. Evans.
- In his Princeton yearbook, Justice Alito wrote that he hoped to "eventually warm a seat on the Supreme Court."
- Justice Breyer has a recent history of being on the wrong side of robberies. In May, his Georgetown home was burglarized, and in February, a machete-wielding man robbed him while he was vacationing in the Caribbean.

AT CROSSROADS



By Brandi Hines
For the Advocate

Is it time to reconsider whether universities can use race as a factor in the admissions process? The Supreme Court believes so. On October 10th, the Court heard oral arguments in *Fisher v. University of Texas at Austin*, which challenges the constitutionality of using race as factor for acceptance in higher education.

The Supreme Court last visited the controversial issue in 2003, when they decided, in *Grutter,* that universities could only consider race in admissions if the policy is narrowly tailored to meet the university's compelling educational interest. The University of Texas ("the University") joined schools across the nation in aligning their policies with the requirements set forth in the opinion.

The University's admissions program considers applicants on both an academic index and a personal achievement index. The personal achievement index measures applicants on a variety of personal merits that the academic index falls short of illuminating. Race is one considerable factor. The admissions council also reviews each student "holistically." If the personal achievement index was the exclusive way that race influenced admissions, Fisher would not have a basis for a claim against the school.

The crux of Ms. Fisher's complaint relies on the fact that the above-mentioned program reviews approximately a mere 15-25% of the admitted class. The other 75-85% of applicants automatically gain admission under the "Top Ten Percent Law" enacted by the Texas legislature. The statute guarantees state university admission to students graduating in the top ten percent of their high schools. The legislature intended to increase minority representation in the universities, and it effectively served that purpose. Fisher argues that the law, in conjunction with considering race within the personal achievement index, exceeds constitutionality by reaching the degree of racial balancing.

The lower courts disagreed with Fisher. Educational institutions have a compelling interest in filling their classrooms with a "critical mass" of underrepresented minorities. Chief Justice Roberts seemed most concerned about the concept of critical mass, and its practical implications, during oral arguments on the 10th. Based on past decisions by the sitting justices in *Grutter*, Justice Roberts will likely decide the fate of this case.

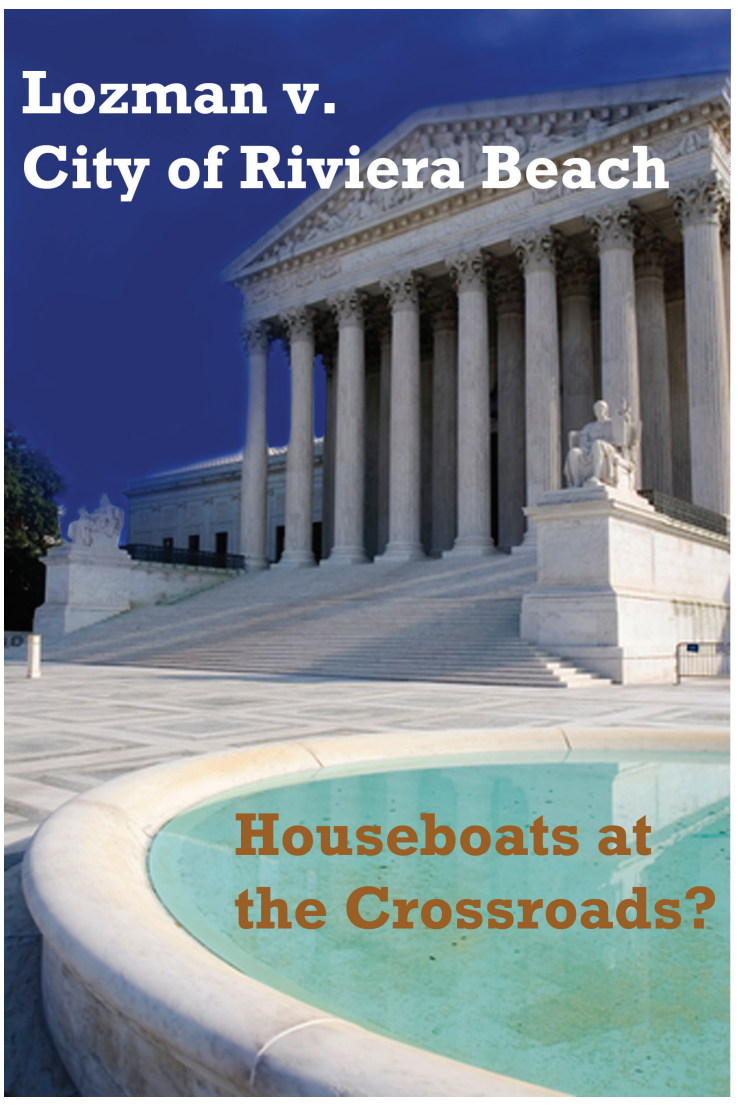
The University evaded giving the Court a clear definition of "critical mass," and instead urged the Court to trust the University not to go too far. In essence, critical mass functions to give representation to a diverse group of students without those in the minority feeling silenced, or feeling like they are a spokesperson for their race.

Universities have a compelling interest in diversity because they function beyond providing a forum for memorizing and regurgitating facts from textbooks. Universities prepare students to become civically engaged and responsible citizens in an increasingly global and diverse market. Education that is rich with multi-cultural learning serves all students, not just those admitted under the affirmative action policies.

Diverse classrooms particularly benefit law students, who will serve diverse clientele throughout their career. Santa Clara Law prides itself on its status as one of the most diverse schools in the nation, and students here appreciate it. A current 1L student, Celine Purcell, noted, "I finally get the experience I was hoping for as an undergrad- to be able to meet people from a variety of backgrounds and to learn about other cultures."

Diversity further enriches the learning experience within the subject matter of a legal education, especially in criminal law. Despite constitutional standards that forbid racial discrimination, the law does not treat racial minorities equally. Generally, a gross disparity exists between the people creating and revising law, and the people who experienced the enforcement of those laws on families and communities. A diverse classroom that has achieved a "critical mass" begins to fill that disparity, by giving a first-person voice to those experiences beyond what can be learned from the books.

The Supreme Court certainly believes in this compelling educational interest, but the very fact that they took up *Fisher v. University of Texas* does not look good for proponents of race-conscious programs. With Elena Kagan recusing herself, will there be a 4-4 tie? A decision in favor of Fisher does not require overturning *Grutter*, but will the Court make such a bold move? Will they answer the question of racial preferences once and for all?



By Michael Branson
Managing Editor

Nearly every case before the Supreme Court has significant importance, if not to the American people as a whole, then at least to those within its field. *Lozman v. City of Riviera Beach*, Florida is no exception. It seeks to answer a simple question—what is a vessel—and its answer will have significant implications for those involved in maritime law and the marine industry. However, for those that follow the Court just for the entertainment value, the outcome of *Lozman* is beside the point.

The case involves a clash between Fane Lozman, the wealthy owner of a motorless floating home unit, and the city that owned the marina it in which sat. The Court granted certiorari after the Eleventh Circuit decided the ridiculously-titled *City of Riviera Beach v. That Certain Unnamed Gray, Two Story Vessel Approximately Fifty Seven Feet in Length*—the full defendant name also included "her engines, tackle, apparel, furniture, equipment and all other necessaries appertaining and belonging in rem."

A wave of lawsuits began after Lozman entered a storage agreement with the city marina for his "floating residential structure." Two months in, Lozman sued the city for attempting to redevelop the marina, which would require his boat to be moved.

Lozman took credit when the city postponed the renovations, but was quickly greeted with a notice of eviction for "fail[ing] to muzzle his ten-pound dachshund." The city lost the lawsuit after the jury found the action to be retaliatory, but the city wasn't about to jump ship.

The city council implemented a revised dockage agreement requiring all marina vessels to be capable of vacating in case of emergency. Lozman refused to sign, and the city brought the case to admiralty court. Lozman filed a motion to dismiss, arguing the court had no jurisdiction because his vessel was actually not a "vessel" as required for jurisdiction. The lower court and the Eleventh Circuit both concluded his house was indeed a vessel.

After the decision, the city auctioned the vessel and had to outbid a representative of Lozman to take possession ($4,100). The city attempted to sell it, but after accruing $32,000 in moving and maintenance costs, it opted to destroy it.

The oral argument before the Supreme Court was a mix of ridiculous moments and serious legal questions. Justice Alito questioned classifying a vessel by its "purpose" to transport people, rather than its "capability," the word used in the statute. But readers are unlikely to read the opinion to learn about the law. If they read it to see if anybody said anything silly, they would be disappointed.

Justice Kennedy called the vessel "a magnificent structure," and described its destruction as "merciful." He later questioned whether a vessel could be considered "indefinitely moored" if those moorings happened to include rope, a garden hose, and an extension cord.

Then, Mr. Lozman's counsel sought to clear up confusion between a houseboat, and a floating home (a houseboat has a motor while a floating home does not). Justice Kagan's explanation quickly muddied the water. First, she rhetorically asked if "a floating home is just a poor man's houseboat." Then, she explained the purpose of owning a floating home instead of a houseboat: so you could just tow it around with your boat instead. Counsel responded, "with all due respect, Justice Kagan, that's not why people have floating homes."

And, of course, there were many colorful hypotheticals. Among floating contraptions discussed were skiis, flotsam, garage doors, docks, casinos, trampolines, inner tubes, inner tubes with pennies taped on to it (so as to transport "things"), and decommissioned boats. When counsel for the United States began discussing a dredge's function as carrying crew and equipment, Chief Justice Roberts objected, and said he believed "the function of the dredge is to dredge." Counsel for the city eventually outright refused to respond to hypotheticals as they became more and more far-fetched.

But if anything will be remembered of *Lozman v. Riviera Beach*, it will be Justice Breyer's hypothetical. Justice Breyer, seeking to ground the argument in "common sense," asked the lawyer for the city to explain how a Styrofoam sofa was different than Mr. Lozman's floating house. When the lawyer's answer was unsatisfactory, Justice Breyer decided to enhance the hypothetical by adding retirees to sit atop the Styrofoam sofa.

We will have to wait to hear the holding of the case, but unless Breyer writes the majority opinion, readers feel satisfied in just reading the oral arguments.

Stuck in Traffic? Proposition 35 Takes on Human Trafficking

By Amy Askin
Co-Editor-in-Chief

At first glance, the slogan, "Stuck in Traffic?" conjures an image of gridlocked, griping motorists throughout California, from bumper-to-bumper Los Angeles to bottlenecked San Francisco. This slogan, however, refers not to a proposal to build a 16-lane highway across the Golden State, but rather to a widespread but not widely visible grave human rights violation in California.

On the upcoming ballot, California voters will decide how best to prosecute the horrendous crime of human trafficking. Proposition 35, the "Californians Against Sexual Exploitation Act" (CASE ACT), aims to strengthen penalties for those who exploit women, children, and men for personal financial gain. Though the reasonable (Californian) person opposes human trafficking, the issue here is how to best craft legislation against such a depraved human rights crime.

It may come as a surprise that human trafficking was only criminalized by the federal government in 2000 and by California in 2006. Prop 35 will build upon current legislation by increasing the prison sentencing guidelines for convicted traffickers from the current five to eight years to fifteen years to life. Additionally, the proposition raises fines from $100,000 to $1.5 million, money that will go to funding victim services and benefit providers.

The state's official voter guide includes the following long-form summary for Prop 35:

- Increases criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to $1,500,000.
- Fines collected to be used for victim services and law enforcement.
- Requires person convicted of trafficking to register as sex offender.
- Requires sex offenders to provide information regarding Internet access and identities they use in online activities.
- Prohibits evidence that victim engaged in sexual conduct from being used against victim in court proceedings.
- Requires human trafficking training for police officers.

The arguments in favor are simple-convicted human traffickers would face harsher criminal penalties. The arguments against Prop 35 are more nuanced. Opponents note that it is crucial for any legislation that combats human trafficking to be premised on a comprehensive approach by law enforcement, legal aid, and victim service providers. The comprehensive approach, opponents claim, is not included in Prop 35.

One opponent is California's largest newspaper. Pointing to the complexity of human trafficking, the *Los Angeles Times* questions how well the proposition was written: "Voters must ask more than whether they would like to see those cruelties come to an end. They must be satisfied that the particular, far-reaching and inflexible penalties and procedures that would be enacted by this measure would help; that they are the best approach to solving an actual problem; and that actual progress would dwarf any unintended consequences. Prop 35 fails those tests."

The stance against Prop 35 echoes regrets many Californians had about the three strikes law, a proposition passed in 1994. After its implementation, many voters felt that the law was too harsh and inflexible. Now, eighteen years after its implementation, California voters will again head to the polls to decide whether to limit punishment under the statute for nonviolent drug possession for defendants previously convicted of two crimes.

Opponents also question the discrepancy between penalties for labor and sex trafficking. A conviction of the former can result in a maximum of twelve years in prison, but a sex trafficking conviction can result in twenty years in prison. This dual approach furthers the incorrect idea that human trafficking is by definition only sex trafficking, which has contributed to labor trafficking victims receiving inadequate protection.

Nevertheless, proponents see progress, arguing that it improves upon the status quo. They note that current California law, which calls for a prison sentence of three to eight years, is too soft for such a heinous crime. By contrast, a federal conviction of human trafficking calls for a prison sentence of fifteens years to life.

No law is ever perfect, but should the perfect be the enemy of the good? Supporters are keen to note that a good law, or any law for that matter, would improve upon the grade given by Shared Hope International and the American Center for Law & Justice in evaluating California's record on child sex trafficking: an F.

To learn more about human trafficking in the California Bay Area, on October 25th, Santa Clara Law student organizations will host speaker, Minh Dang, a survivor of sex trafficking in San Jose, to share her incredible story to spread awareness about the issue of human trafficking in the area.

Yes on Proposition 34 is Good Public Policy

"Prop 34"
From Front Page

these "rape kits" sit on shelves in closets around the state -untested due to lack of funds. These victims are being denied the justice they deserve.

Statewide, 45% of our homicides are unsolved. And yet, many District Attorney offices have closed their cold case units due to lack of funding. These victim's families have been denied the justice they deserve.

Two weeks ago, Los Angeles announced that they would no longer do fingerprint comparisons in all cases due to a lack of funding. Oakland police chief Anthony Batts quit in 2011 because he was unable to get the funding he needed to put the necessary number of police officers on the street to keep Oakland safe. And yet, the cost of a single execution in California is the same as the cost of almost 6,000 police officers.

We know that innocent people are convicted and sentenced to death. With over 720 men and women on death row in California, over 300 of whom do not yet have lawyers, we have no idea how many may be innocent. We do know that last year, the Innocence Project at Santa Clara exonerated three men who were incarcerated for murders they did not commit. Luckily, because they received life sentences, they were able to be freed.

Recent critics of the death penalty include those who are not your typical abolitionist. California Chief Justice Cani Takil-Sakauye and former Chief Justice Ron George, both death penalty supporters and conservative jurists, have publically acknowledged that the death penalty no longer works. Jeanne Woodford, former warden of San Quentin state prison who presided over four executions, now leads the state-wide campaign to abolish capital punishment. Don Heller and Ron Briggs, both of whom were instrumental in writing and passing the ballot initiative in 1978 that re-instated the death penalty in California, (known as the Briggs initiative) and who are self-proclaimed "staunch conservative republicans", now campaign to abolish the death penalty. Judge Donald McCartin, who presided over and sentenced ten men to death earning him the nickname the "hanging judge", in 2011 publically called for an end to the death penalty in California which he declared to be "so inefficient, so ineffective, so expensive and so emotionally costly"

For those who say, "mend it-don't end it," the fact is that California is unwilling to do what it takes to even try the repair. In 2008, the California Commission on the Fair Administration of Justice made several recommendations to fix the death penalty. None have been enacted. Then Chief Justice Ron George testified it would take an infusion of hundreds of millions of dollars for more court staff, clerks, and lawyers to "fix" the system. To divert even more money when we can't fund our schools, bring down our debt, or provide services to our most vulnerable, borders on the absurd.

The Catholic Conference of Bishops in California endorsed Prop 34 and declared that it brings "common sense, compassion and prudent justice into California's public policy"

Proposition 34 is good public policy. It keeps us safer, protects the innocent, and severely punishes our worst offenders. California voters now have a

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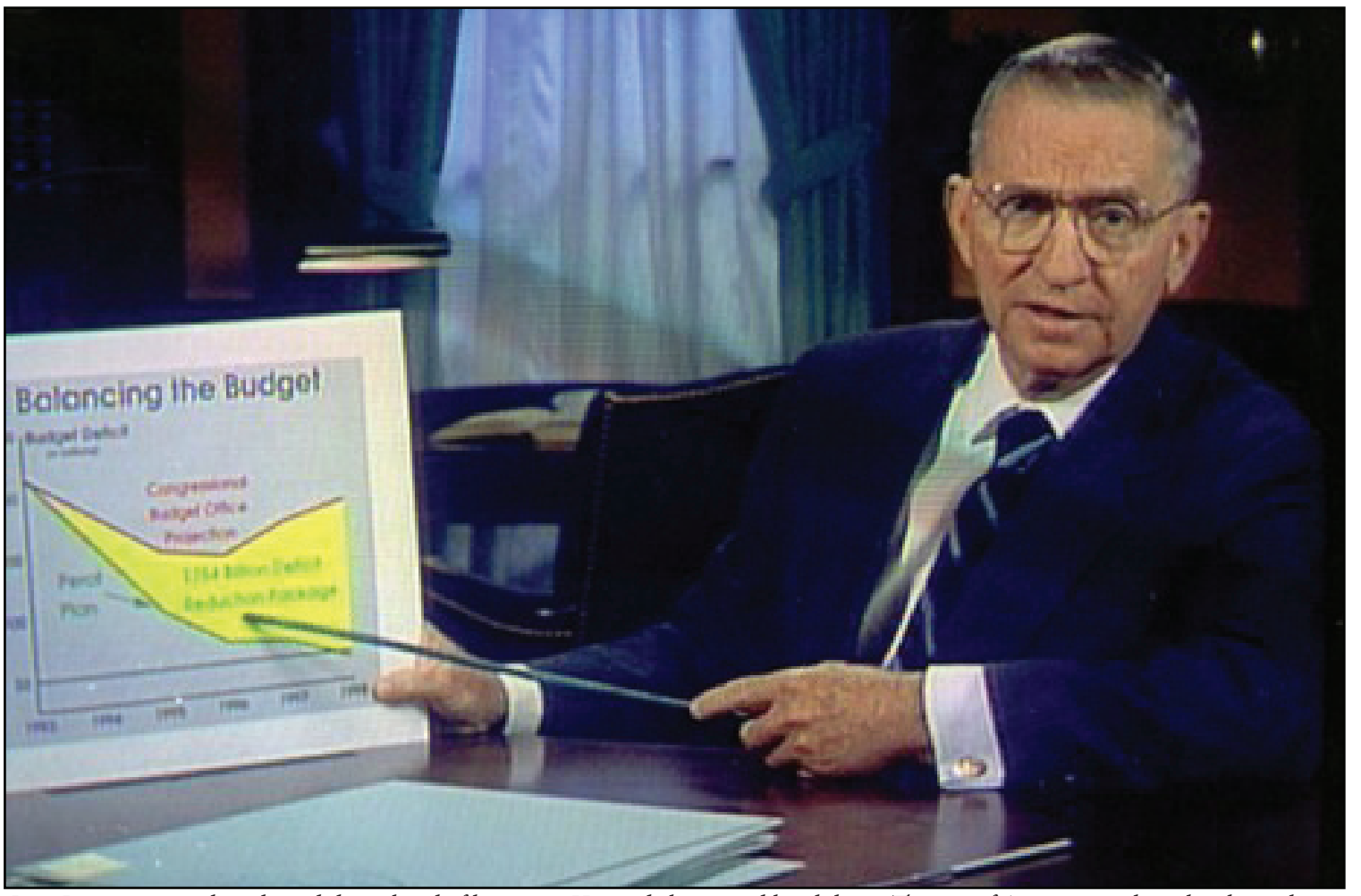
Jotting Down the Details



Ross Perot was a political candidate ahead of his time. He used charts and hard data. The rest of American politics has been slow to catch up.

By Tom Skinner
Staff Writer

Last Sunday on Meet the Press, Obama campaign advisor Robert Gibbs forgot his whiteboard. Instead, he scribbled numbers on a white sheet of paper and held it up to the screen to make a point about Mitt Romney's tax reform promises.

Unlike other visual mediums that convey political messages, whiteboards just might be the tool for our species to evolve politically by allowing candidates to share complex ideas, like tax reform by closing loopholes. Whatever their potential, whiteboards standout against other primitive visual mediums:

Bumper stickers

One-word bumper stickers are like flag lapels. If you drive around town, guzzling gas with a "Hope" bumper sticker, does that mean you're pro-hope whereas the opposition is not? If a politician foregoes wearing a flag lapel, is that an implicit indication of anti-American sentiment? Do candidates with bigger lapels have bigger… ideas?

Policy solutions are what we need. No comprehensive policy solution could fit on a bumper sticker. "Hope" is a trite, monosyllabic word, signifying nothing, that won't close budget deficits or create jobs.

Lawn signs

Who is John Mlnarik?

The primary tool of the aspiring local politician, lawn signs defile grass instead of car bumpers. John Mlnarik, whoever this guy is, is running for whatever position in wherever political locale. His signs are orange and blue and irritatingly ubiquitous. I've always wondered if candidates actually receive votes from voters who have merely seen their name on a lawn sign and know nothing else about the candidate.

I've also wondered how the candidates erect signs on the lawns of their friends and family. "Hey Enrique, mind if I stick this in your grass?" Local candidates begin their political careers by soliciting the penetration of their lawn signs into the front yards of their neighbors. Perhaps politics is the second oldest profession.

Chalkboards

The most galling and pretentious visual prop of clownish pundits. Lou Dobbs occasionally wields chalk to engage in vacuous pedagogy/demagoguery on the Fox Business Network. The pioneer of this visual medium, however, was Glenn Beck. Beck, who brilliantly connected the dots between Joseph Goebbels and Barack Obama to his gullible audience, somehow managed to convince 300,000 viewers to pay for a subscription to his web-based show after he parted ways with Fox News. It's ironic that a college dropout like Beck uses a chalkboard to instruct the societal dropouts that constitute his audience.

I watch way too much cable news. Nonetheless I can't help but miss Glenn's red cheeks, tear-stained eyes, silver hair, and idiot personality.

Whiteboards

Evidence that we're developing as a species. Bumper stickers and law signs can't depict and transmit a complex idea. Whiteboards sometimes come close.

Karl Rove, a frequent guest on The O'Reilly Factor, often clutches whiteboards with his little claws to pontificate about electoral and budgetary math. Even the candidates are taking out their dry-erase markers. Last month, Romney compared his Medicare stance with President Obama's on a whiteboard. What he drew was oversimplified, but I give him credit nonetheless: there were too many words to fit on a bumper sticker.

The budgetary math is a core issue this election from which other issues stem, like tax and entitlement reform. How about a whiteboard where both candidates can specifically list and add up their promises?

It's an opportunity for our species to further evolve.

Exactly what Obama's solution is to plug the persistent trillion dollar deficits is a mystery. In his $4 trillion budget saving plan, he adds the foregone costs from ending the war in Iraq. Sorry, Barack, but you can't add the savings of a soon-to-be averted Martian invasion of Earth, either. Obama used to talk about a "Buffet tax" on the rich, a proposal to collect chump change of roughly $5 billion per year, more of a rounding error than a real number.

Gibbs correctly pointed out that it's hard to aggregate all of Romney's tax reform promises and come up with a sensible number. Last February, Romney promised "to cut taxes on everyone across the country by 20%, including the top 1%." In the first presidential debate last week, he proclaimed that he was for "tax relief," not tax cuts, and that he wouldn't lower the tax burden on the wealthy. If he has to shake his "etch-a-sketch," at least he's shaking towards a sensible position. Bravo, Mitt. People say you're a stiff but really your acrobatic policy shifts couldn't be accomplished without lithe flexibility.

Romney promises to raise revenue by closing or limiting tax loopholes; similarly, Obama proposes to lower corporate taxes by closing loopholes.

Neither candidate will name a significant loophole.

"Closing loopholes to raise revenue" would fit on a bumper sticker. Or a lawn sign. That's precisely why it isn't enough.

It's time to enumerate what loopholes those are. Then add up the savings. Then see if it's reasonable.

Whiteboards, anyone?

Living the Dream?

By Kirstin Glass
Staff Writer

On June 15, 2012, President Obama announced Dreamers. Within days, Mitt Romney helped make immigration a hot issue of the 2012 Presidential Election when he stated that he would revoke Dreamers.

Dreamers is President Obama's response to Congress's failure to pass the Dream Act, which has been on the legislative docket since 2001. Part II of this article series address the Dream Act. For now we will look at Dreamers.

Dreamers is a policy from the Department of Homeland Security reclassifying undocumented young people living in the United States in good standing as low priorities for deportation. Applicants MUST have:

- Been present in the United States on June 15, 2012
- Be older than sixteen years old and not yet thirty-one years old at the time of application
- Entered the United States *BEFORE* they turned sixteen years old
- Evidence of continuous presence in the United States for *AT LEAST* the previous five years
- A high school diploma, GED or in the process of obtaining a high school diploma or GED (other options for military)
- Not convicted of a felony, significant misdemeanor, three or more other misdemeanors, *AND* do not otherwise pose a threat to national security or public safety

All of these requirements are tailored to target a very limited area of very sympathetic applicants. The pool of applicants is further narrowed by two factors. First, many undocumented immigrants living in the United States don't have adequate documentation to prove the aforementioned elements. Second, if an unqualified undocumented immigrant applies, he may be flagged for deportation.

Even the promise of a two year work visa and other benefits and deferred deportation are not enough to overcome the threat of deportation, especially given that Dreamers is *NOT* a pathway to citizenship. In fact, there are no guarantees that Dreamers or any other immigration program will exist in two years.

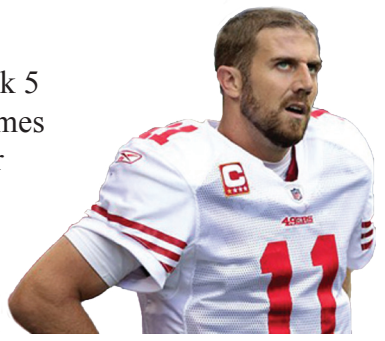
While President Obama has not established the future of Dreamers, or even the Dream Act, Mitt Romney has stated, "the status of young people who come here through no fault of their own . . . should be solved on a long-term basis . . . [Dreamers] can be reversed by subsequent presidents."

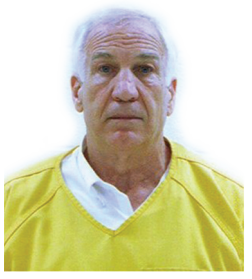
Romney's comments led immigration attorneys and undocumented immigrants alike to believe that Romney would revoke Dreamers and not prioritize a long-term immigration solution like the Dream Act if he were elected president.

With the 2012 Presidential election looming on the horizon, President Obama and Mitt Romney have given many U.S. citizen children of undocumented parents a clear choice.

Sports by the Numbers

108.7 – Alex Smith's Quarterback Rating after Week 5 – highest in the NFL. This comes almost 2 years to the day after Smith experienced his career low in a loss to the Eagles on October 10th 2010; 27-24.





30 – Years in prison to which former Penn State defensive coordinator Jerry Sandusky was sentenced after conviction for 45 counts of child sexual abuse.

11 – Number of former teammates who testified against Lance Armstrong stating he was "doping" or using performance enhancing drugs. Many consider these actions to have broken the code of silence that has dominated the sport of cycling. Many of those cyclists testifying also admitted to doping as well.

2 – Number of New Orleans Saints players whose bounty-related suspensions were reduced. Scott Fujita's 3-game suspension was reduced to 1, while defensive end Anthony Hargrove's 8-game penalty was trimmed to 7 games.

24 – Miles. Felix Baumgartner jumped this height from space in a free fall that broke the sound barrier. The fall lasted approximately 10 minutes and reached speeds of 839 mph (Mach 1.4).

3 – Number of catchers to hit a grand slam in the post season. Buster Posey, catcher for the Giants, is included in this figure after game 5 of the National League Division Series against the Reds. The 2 other catchers to hit grand slams in the post season are Yogi Berra (1956 Yankees) and Eddie Perez (1998 Braves).

Infield Fly Rule Evolution Parallels of Legal Jurisprudence

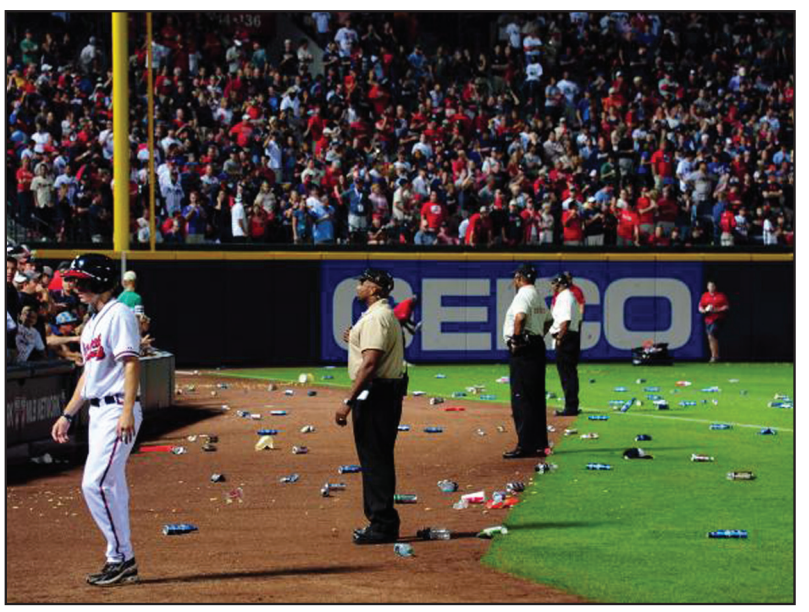
"Baseball"
From Front Page

fly as an infield fly at the top of the trajectory of the hit. For the purposes of the rule, the pitcher, catcher, and any outfielder who stations himself in the infield on the play is considered an infielder for the purposes of the rule. The rule means to remove the incentive of the infielder to drop the ball then proceed to make an easy double, or possibly triple, play. It is clear that the rule is all together confusing, but what does this have to do with common law?

The origins of baseball are rooted in the old English game where attitudes towards the game were meant to promote sportsmanship and the notion that baseball was a gentleman's game. Stevens suggests that the rule was the result of the notoriously dirty baseball played by the Baltimore Orioles during the 1894 season. The sport seemed to be shifting from its origins in fair sportsmanship, to the more Americanized game we know today based in winning and competition. As these values changed, the rule was developed to preserve the spirit of the game. There were many versions of the infield fly rule with three substantive changes over a seven-year period. It finally morphed into the legislative response to infielder misconduct that we understand today.

Steven's note somewhat comically suggests that there are four similarities between this and common law. First, since the values of gentlemanly conduct provide the moral basis for the rule, it is parallel to common law as we value the principles of fair play, due process, and justice and it is these morals shape the common law.

Second, the rule arose and was codified in response for the need for a specific remedy for injury. Umpires saw the injustice on the field but had no rule to turn to or remedy to convey. Similarly, the writ system evolved to give plaintiffs specific causes of action to seek redress for the wrongs incurred. Yet, these writs were not the only solution for injured plaintiffs. They could seek solace in courts of equity if they could not apply a specific writ to their specific wrong. In the same way, the function of an umpire is to impose an analogous idea of fairness since their judgment must be invoked to determine what should be considered "ordinary effort."



Players, security guards, and umpires were showered with boos and trash after fans vehemently disagreed with the infield fly rule.

Finally, much like the common law, the infield fly rule developed incrementally responding to the needs of the game, each revision building on the previous rule.

Braves fans watching the Braves and Cardinals wildcard game last week were furious upon learning their runner was called out even though the ball hit the ground, so much so they began throwing beer cups onto the field and vocalizing their discontent. Little did they know, that the call was made in theory, to benefit the team since the alternative was arguably a double play. While many remain ignorant of the infield fly rule, its connection to common law greatly furthers the idea that baseball is a truly great American pastime.

To read William S. Steven's full note, see Aside, The Common Law Origins of the Infield Fly Rule, 123 U. Pa. L. Rev. 1474 (1975).

10 Types of Pictures that do not Belong on Instagram

By Jon Gault

1) **Food**: I don't care about your food. I don't care what it looks like. I don't care that you're about to eat it. Why don't you stop taking pictures of the food and actually eat it? There are people starving in the world. Congratulations on throwing it in their face.

2) **Cats**: I don't dislike cats. I dislike the people who Instagram pictures of their cats. The internet already has enough stupid owners putting stupid videos of their stupid cats

doing stupid things on Youtube. At least those are entertaining. LOLZ

3) **Fast Food**: In addition to the above comments about food, realize that McDonalds generates fifty-two million hamburgers a day. Your fast food item is just one out of fifty-two million, at least. That should tell you how insignificant and irrelevant your Instagram'd photo of a Big Mac is.

4) **Series of Similar Pictures:** I don't care that you're trying to create an artsy portfolio of handprints on windows. Stop trying to be an artistic photographer with a smart phone. It's just sad. Pick the best one and move on.

5) **New Phone or New Phone Case**: This is not something I need. If you're taking an Instagram photo of your new smart phone, the safe bet is you're using your old smart phone. Stop showing the world how extravagantly shallow you are. #firstworldproblems

6) **Photobooth pictures with "myspace" faces**: You look stupid. That is all.

7) **New Haircut**: It doesn't even look that much different! And why does the photo have thirty seven "Likes?" That means there are people out there who wait in anticipation of your every move. That's creepy for you and sad for them.

8) **Self-portraits taken in the mirror of a bathroom**: This is the worst kind of vanity phone picture to show how good you look in dim light. Everyone looks good in dim light. See also point number six.

9) **Random shots of a bar at night**: This adds nothing to society. Except for maybe alerting me to the places you go. Which again, adds nothing to society.

10) **Over-filtered pictures attempting to make everyone and everything look better**: This essentially is everything of Instagram. Basically, Instagram is pointless.