



The ADVOCATE

Santa Clara University School of Law

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OCI In A Poor Economy: Jobs Remain Scarce

By Jessica Renee Springer
Staff Writer

One thing on the minds of many returning students as the school year begins is the opportunity to participate in On Campus Interviews (OCI). Most students hope to get a summer position, while others participate for the experience and feel lucky if their efforts produce a job. The benefits of OCI are tremendous, but the time and effort required can be overwhelming. In addition to these factors, students participating need to consider the economy and how it will affect their OCI success.

A student needs to consider whether or not OCI will be a useful search technique for him or her. Law Career Services provides many tools

that will help students determine if OCI will work for them. Most of the initial process is done through E-attorney, where students can research employers and post resumes.

Law Career Services also arranges for the interviews to take place on campus. OCI works for students who are interested in the kinds of employers who participate in OCI. Although the same number of students participated this year as did last year, the number of employers participating had gone down. Skip Horne, Assistant Dean for Law Career



Firms from across the country come here to interview SCU Law students.

Services, noted that the poor economy had less of an effect on the technology market than in other legal areas.

Students with engineering and technology degrees were more attractive to those employers and might have been more successful than other candidates.

When speaking with a national large firm, the most notable point was that their recruiting numbers had gone down just a little over half. They also reduced the number of schools they visited. In addition, they reduced the number of full-time offers being made to

third year law students entering the job market. In the aftermath of the

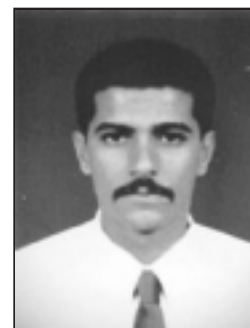
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IS Racial Profiling A Violation of Constitutional Rights?

By Sabrina Rusnak
Staff Writer

In December of 2001, Assem Bayaa, an American citizen of Middle Eastern descent, was intending to travel from Los Angeles to New York. Soon after he boarded the United Airlines plane, after he had cleared through numerous security checks, he was ordered off the plane. Bayaa was told that the crew "felt uncomfortable" having him on board. Moreover, following his removal from the plane, Bayaa was not questioned or searched by security personnel nor was his checked luggage removed from the original plane before it took off. Rather, he was promptly offered a boarding pass for the next flight.

In response to this incident, Bayaa turned to the courts for justice



Have recent terrorist attacks from the Middle East caused racial similarity to be an indication of guilt?

and filed a lawsuit on the basis of discrimination. United Airlines responded by filing a motion to dismiss on the basis that the federal courts were powerless to intervene even if all of Bayaa's allegations were true. In other words, the airline claimed that due to national security, they are exempt from civil rights protection laws. However, earlier this month (Oct. 11), a federal district judge denied the motion to

dismiss the claim, declaring that a pilot's discretion "does not grant them a license to discriminate."

Since the aftermath of September 11, 2001, racial profiling, like the Bayaa case, has become an urgent concern among people of Middle Eastern origin or physical attributes. In the midst of this crisis, the U.S. Government, airlines, police forces, and other organizations, in a

presumed attempt to protect national security, have applied racial profiling tactics to solve inchoate terrorist crimes. This resurgence of racial profiling among more minority groups has caused people to wonder if such a practice is constitutional and if not, is it justifiable given this particular crisis?

Racial profiling is defined as any action that relies on the race,

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School of Law
Santa Clara University
500 El Camino Real
Santa Clara, CA 95053-0426

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Allonn Levy

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Santa Clara University School of Law
500 El Camino Real
Santa Clara, CA 95053-0426
(408) 554-4839
theadvocate@scu.edu

campus news

The Changing Face of East San Jose Community Law Center

By Carol Gachiengo
Staff Writer

East San Jose Community Law Center moved into new premises at 1030 The Alameda on September 28. East San Jose Community Law Center staff and Santa Clara Law students had been providing legal services to underprivileged silicon valley clients in a dilapidated old building at Alum Rock Avenue in San Jose for several years.

"The building was in abominable condition," says Professor Cynthia Mertens, Director of the Center. Without heat or air conditioning, it was sizzling in the summer months, and in the winter they wore gloves indoors. When it rained, the ceiling leaked, and students attended classes in a warehouse with no windows year-round regardless of the weather. Still, the Center opened its doors each day to provide the much-



The new East San Jose Community Law Center (aka SCU Law Civil Clinical Programs) building. It's address is: 1030 The Alameda, San Jose, CA 95139; 408-288-7030.

needed services to low-income individuals.

The clients did not fare much better on these old premises. The building had no waiting room. Rain or shine, they queued outside. Some had

children, and all waited their turn for legal advice.

"My major concern was client confidentiality," says Professor Mertens. The old building had no private interview rooms. They were interviewed in cubicles, which meant that others might hear the most intimate details and emotions that are often part of

client's legal issues.

Despite these conditions, staff and students were at a loss when they heard the building was to be sold. They had been looking for new premises for

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SCU's Bart Volker Honored As Pro-Bono Project's Volunteer Of The Year

By A.E. Levy
Editor Emeritus

On, October 3, 2002, third year law student Bart Volker was honored at the Pro Bon Project of Silicon Valley's Annual Volunteer Recognition event held at the San Jose Museum of Art.

The Pro Bono Project works to connect low-income clients in need of help, with volunteer civil attorneys. The group boasts an active cooperative of 200 attorneys who participate in providing approximately 2000 clients with free legal services each year. According to Jennifer Wallace, Director of Outreach for the Pro Bono Project, "Many of our clients do not have the educational or cultural background to navigate our complex and confusing legal system by themselves." The Pro Bono Project helps such clients obtain an equal footing and resolve their disputes with opposing parties who often have far greater power and resources, according to Wallace.

Wallace describes the Pro Bono Project's Volunteer of the Year



Scott Mauer (Left) presents Bart Volker with the Pro Bono Project of Silicon Valley's Volunteer of the Year award.

Award as an honor given annually "to one law student who has demonstrated outstanding legal talents and donated a significant amount of time to any of the participating legal aid agencies in the county." Scott Mauer, a supervising attorney with the East San Jose Community Law Center, presented Volker with the award.

According to Mauer and Wallace, Volker was chosen as a recipient of the prestigious award for his hard work and dedication as a volunteer at both Santa Clara

University's East San Jose Community Law Center and at the Pro Bono Project's legal advice clinic. Volker, who began volunteering at ESJCLC advice clinics early in his first year in law school, has reportedly been a dedicated volunteer at the Consumer Rights and Debtors' Rights Clinics throughout his law school career. According to Mauer, "throughout his three years [as a volunteer], Bart has demonstrated the highest levels of competence, conscience and compassion."

feature

Intellectual Property Association: Doing Our Part

By Ross Martin
Guest Writer

Whether you've known since your days in the Berkeley labs that you want to prosecute patents or whether you simply want to know what intellectual property (IP) law is all about, then the Intellectual Property Association (IPA) is for you. The IPA's goal is to improve the already distinguished reputation that Santa Clara enjoys in the area of IP law. We are a service organization helping students

One of the most difficult challenges in preparing for a legal career may be deciding where to specialize. Our Seminar Chair, Nikki Pope, has arranged several speaker events that we've dubbed High Tech Tuesdays. At these events we're able to hear about the work that area IP lawyers are doing, what they like about it, and how they prepared for it. The first High Tech Tuesday was presented by two attorneys who worked in law firms and then moved on to work as in-house counsel. Three more High Tech

Tuesdays are scheduled for this semester.

In addition to High Tech Tuesdays, we have also scheduled two on-site visits to the legal departments of area companies this semester. The first was a visit to the legal

department of Cisco Systems. There we learned about the automated system that Cisco uses to deal with internal legal issues and afterwards had lunch and met with all of the members of the legal team. This was a good opportunity to experience the culture of the in-house legal department of a big company, and also to learn about the regular issues dealt with at Cisco. The second on-site visit is scheduled for Apple on November 15.

Another program designed to help students decide where to focus their careers is a planned attorney-student mentorship program. We will soon be soliciting student interest for this program, where we will match

students with practicing attorneys who will meet with them throughout their foundational law school years to offer guidance in preparation for their future careers. Chris Howald, Vice President of Alumni Relations, is working with several local SCU alumni who will be participating in this program.

what professors and classes they feel they need the most help with. IPA members also have access to outlines that are posted on the IPA website. These outlines range from first-year courses, to IP courses, to second and third-year required courses, and any other courses that IPA members have



IPA offers a chance to network with other students and attorneys.

learn more about IP law and prepare for their careers whether they hope to work directly in IP law or not.

Like many clubs, we have a number of social activities that give students a chance to meet and network with other students and attorneys. We had a great barbeque early this semester with the world's fattest hamburgers and some great home-cooked food. More exciting events are in the works.

To help 2Ls and 3Ls prepare for on-campus interviews, we had a mock interview workshop where high-profile attorneys like John Ferrell from Carr and Ferrell who conducted mock interviews with participating students. After each interview, they gave us personal feedback and then sat on a panel during lunch to discuss other interviewing tips and skills to focus on. Another mock interview workshop is planned for next semester. This workshop will be especially helpful for 1Ls as they begin to think about how they'll spend their summers.



The IPA outside Cisco Systems during a recent visit.

We are a service organization helping students learn more about IP law and prepare for their careers whether they hope to work directly in IP law or not.

Another focus of the IPA is helping students do well in class. Several programs are set up with this goal in mind. One is a mentorship program where 2Ls and 3Ls volunteer

chosen to submit outlines for. These outlines are top-notch quality and have helped several IPA members make it through their classes over the years.

Speaking of classes, the IPA also has a voice in the high tech curriculum offered. Marilee Chan, our Academic Chair, sits on the High Tech Advisory Board and has recently put together a survey for the students to find out ways to improve the high tech curriculum and schedule. This survey will be integrated into the registration process. Be sure to participate in the survey so that your voice will be heard. The results of the survey will be used by Dean Powers and the High Tech Advisory Board in discussing new classes, changes in certificate requirements, changes in class scheduling, etc.



The IPA gets an inside look at Cisco Systems.

to help 1Ls prepare for midterms. The 1Ls are assigned mentors based on

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technology

What Are You Looking At? Technology Improves At The Expense Of Our Privacy

By Jennifer Szitar
Staff Writer

The government may be watching you. Using the threat of terrorism as a justification, a new act has been proposed that would provide officials more intrusion into your private life. According to a report made by CNN, the proposed PATRIOT (Provide Appropriate Tools Required to Intercept and Obstruct Terrorism) Act would provide investigators with more access: to wiretap your cellular phone, intercept your e-mail, and monitor your Web surfing.

You might be thinking, don't I have any right to liberty or privacy? "The new law will bring us up to the 21st century in terms of our capability, but in no way does it infringe on constitutional values or rights," explains an anonymous prosecutor who interviewed with PCWorld.com, so

long as his identity would not be revealed. "I really think a computer user [who is] not a criminal, has nothing to fear by the proposed amendments." He explained that the PATRIOT Act would still require investigators to have a good reason, and approval from a judge. Still, proponents of civil liberty are expressing concern. CNN.com reported that Grover Nordquist, president of Americans for Tax reform testified before a Senate subcommittee, arguing that the proposed legislation was happening too quickly. "I wrote a letter to all members of the House and Senate urging them to promise not to vote for any legislation on civil liberties restrictions that they had not actually read. I did receive one fax from the Hill asking if I was kidding. I was not." David Henderson, an economist and research fellow at the Hoover Institution, worries more about privacy. "What they will do is capture all kinds

“What they will do is capture all kinds of other people in their net and reduce our privacy in the process.”

of other people in their net and reduce our privacy in the process. This is the government we are talking about and government tends to use whatever it has.”

The Act would allow surveillance of all wire, oral, and electronic communications. It would protect citizens from threats of terrorism, money laundering, and strengthen immigration measures. However, it does require warrants and subpoenas, subject to clarification of the scope necessary. Judges are designated and congressional oversight is mandated. The Act explicitly provides that “[T]he warrant prohibits the seizure of any tangible property, any wire or electronic communication ...,

or, ... any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.” This was the 107th Congress.

This seems to be in direct conflict with the 106th Congress. As reported by MSNBC.com, Ari Schwartz, a policy analyst for the Center for Democracy and Technology stated that, “[T]he 106th congress has been the most privacy focused, ever. They held more hearings on privacy and on a greater range of issues than before

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ESJCLC

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five years, but had failed to find suitable affordable space. The building on The Alameda was the perfect solution.

“It came together like a miracle,” said Professor Mertens. The University closed escrow on May 24. In the next four months, the interior was completely rebuilt. Staff and students now have well-equipped, private workspaces. Clients have a reception area with plenty of seats and a play area for their children. Most important, they are now interviewed in private conference rooms that protect their confidentiality.

“Our clients deserve to be treated with respect and dignity,” says Professor Mertens. “We’re going to function like a law firm now.”

One of the concerns the Center faced was maintaining a presence in East San Jose, where the majority of their clients are based. To that end, ESJCLC also plans to continue offering workshops in East San Jose. Fortunately, the No. 22 bus that ran to



Clients await their turn for advice in the ESJCLC lobby during the Immigration Clinic on Oct. 9, 2002.



Attorney Ellen Braff-Guajardo confers with law student, Eva Martel (in back) and translators Juan Luna and Marisol Monarrez during a Workers' Rights Clinic on Aug. 8, 2002.

the old location also runs to the new location. In fact there's a bus stop right outside the Center. Parking is available, though somewhat limited. The distance should therefore not deter East San Jose clients from coming to the Center.

Certainly, the proximity to Santa Clara University is a major plus for students participating in the program. Tight schedules will be more workable with the ten-minute drive to ESJCLC. It is Professor Mertens hope that this will increase student enrollment in the clinical program, which depends heavily on student participation.

ESJCLC offers free advice clinics in consumers' rights, workers' rights, workers' compensation, and immigration law, as well as representation to some clients. Students receive between 1 and 6 units of credit and qualify for the Certificate in Public Interest and Social Justice Law. Students enrolled in Advice Clinic Courses attend an all-day Saturday session at the beginning of the semester and put in 25 hours at the Advice Clinic of their choice for 1 unit of credit. The workers' rights clinic requires more clinical and classroom hours for a total of 2 units.

Students enrolled in the ESJCLC course receive 3 to 6 units of credit for working in one of the full representation practice areas. They attend an intensive skills training program at the beginning of the semester and two class sessions each week during the semester. The experience brings law out of the classroom into the real world, and gives students much needed skills and experience.

Service and learning at ESJCLC can only get better after the move, which Professor Mertens says has done tremendous things for the morale of the staff and students.

columns

DEAN'S COLUMN

Dean Mack A. Player



As you probably were aware, 2002-03 will be my last year as dean of the School of Law. I will have spent nine years in this position, nine of the best, most professionally rewarding years of my life. The average term expectancy of deans of American law schools is under five years. So, in effect, I did a double term. As I said, there was no single or even multiple events that triggered my decision. It is simply time for me to hand the baton to a fresh runner.

What astute students will observe over the next few months is the phenomena of a dean search, a complex, and to outsiders, an incomprehensible ritual, often compared in its obscure complexity with the selection of a Pope. Here is how it roughly works.

First, a search committee is named. The Committee is selected by the President. This begins by the law

faculty nominating a slate of faculty members, from which the President selects four or five faculty. The President adds to this number four or five committee members from among law school administrators, alumni, and university administrators or faculty from other disciplines.

Cut to the chase. At the end of the process, the President appoints the dean.

But, back to the process leading up to the President's decision.

The Search Committee plays two key roles. First, as its name suggests, the Committee searches for and recruits possible candidates. It arranges the logistics for interviews, which for political reasons, often are called "exploratory discussions". After discussions with a number of possibles, the Search Committee nominates two or more acceptable finalists who are receptive to offers. The President reviews the Committee's nominees and

President makes a decision. If an offer is extended (and the President may elect not to make one) and if accepted (and many a candidate withdraws) a whiff of white smoke emerges from Walsh Hall indicating that the School has a new dean.

In addition to providing at least a plurality of the members of the Search Committee, the law faculty as a whole plays a critical, but less well defined role. Tradition and minimal accrediting

I believe that a number of very able candidates will make themselves available. As I have stated before, if a person wants to be a dean, I cannot conceive of a more desirable place to do it than here at Santa Clara.

conducts further inquiries (interviews), perhaps discussing (negotiating) terms with one or more of the nominees. Based on these discussions, the

obligations dictate that a dean will not be appointed over the objection of a majority of the faculty. As seen by

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Law Career Services

Skip Horne

What's Out There Beyond OCI?

OCI is really the tip of the proverbial job search iceberg. It's kind of exciting and flattering that people come here looking for you. But that's not the way the real world typically operates, and I think you all probably know that.

This year, thinking outside of the box is going to be even more critical than ever. OCI participation this year was down slightly from 2001, and firms anticipate hiring about as many, if not fewer, clerks and entry-level associates as last year. The competition is getting tighter and legal jobs seem scarcer.

So is there a way to get a job "beyond OCI?" Where do you get started? How do you find jobs that are out there? More importantly, how do you find the people who are doing those jobs? In general, how do you start tapping into the many resources out there within the legal profession?

The most obvious and probably easiest place to start is by combing



through job listings. Law Career Services regularly receives job listings, for both part-time positions during the

school year and full-time during the summer and after graduation which we post in binders in the LCS resource library and on eAttorney. We also subscribe to a number of job listing publications—newspapers and periodicals such as *The Recorder*, *California Lawyer* and *PIES Job*

Alert. The most current issues are available in the LCS resource library. Of course, the Internet is always a great source for job listings and employment leads. From the LCS web site you can access links to other legal and non-legal job search sites; go to Career Management, then click on Web Links.

If you're conducting a job search outside of the San Francisco Bay area, we offer two additional resources. We currently subscribe to job bulletins from law schools across California and the nation (these bulletins primarily list graduate positions). We can also attempt to arrange for reciprocity with career services offices

includes access to their online job listings.

What if you can't find the "perfect" job? Shouldn't you just fire up the laptop, do a mail merge and send out blind letters and resumes? Most career counselors advise against the "I'm looking for a job—any job" type of mass-mailed letters because they're often time-consuming and misdirected. You may feel as if you've accomplished something by typing, merging and mailing 100 letters but chances are your responses are going to be limited or non-existent. These letters are the most long shot method of locating employment in any profession. If they arrive when there are no positions available, they are apt to become junk mail. By the time a position may open up, many more letters have arrived and it is unlikely, though not impossible, that the attorney will pour through files to locate your letter.

A better method is to target attorneys who work in the areas you're interested in for informational interviews, or as Lisa Abrams says, information gathering. Sometime in the spring semester, upper division law

at other law schools. Go to the LCS web site and click on the Reciprocity link on the far right to find out more about reciprocal arrangements with other law schools. When granted, reciprocity enables you to access the resources of career services offices at other universities. In some cases, this

This year, thinking outside of the box is going to be even more critical than ever.

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columns

PRESIDENT'S COLUMN

Meena Chidambaram
meenakc@yahoo.com

The Student Bar Association (SBA) is the representative organization of the Law School student body with the general goal of improving the law school experience.

Hello, everyone. This the semester is half over. Whew! Went fast. I can only offer these words — Learn how to say “No.” It will save your life and your sanity.

Moving on, as you know, Dean Player has resigned as Dean of the Law School effective this year. A Search Committee is being formed with faculty and non-faculty members, including one student member. We are in the process of appointing a student member, now. The good news is that the faculty on the committee are very student-friendly and will be responsive to student's needs when going through the search process. For now, please email me any feedback you might have.



Next item: It was brought to my attention that the Bannan Lounge T.V. remote was stolen. I purchased a replacement and attempted to program it, only to discover there is no power button on the t.v. I was very sad. I am working on rectifying the problem, but if anyone happens to have a JVC remote they can spare, I would be very grateful. In the meantime, I am hoping to have the T.V. operational by Final Four (and Sweet Sixteen, Crazy Eights, etc.)

Lastly, I wish you all good luck during this last half of our semester, and I hope all of your registration dreams come true. Also, Congratulations to the 2003 Moot Court Team! Take care of yourselves and better start popping those Vitamin C's. Cheers!

The Dean's Search Committee is holding a student forum on Nov. 6th at noon in Bannan 135. Come to the session to learn about the search process and to give your input on what you would like to see in the next dean. The Committee anticipates that the student representative to the committee will be appointed by that time, so that students will have a well-defined way to give on-going input.

The faculty members of the committee are: Professor Ken Manaster, chair Professor Brad Joondeph, Professor Mary Emery, Professor Cynthia Mertens, and Professor Jerry Uelmen. The alumni representatives are Rolanda Pierre-Dixon and Gordon Yamate.

FULL-TIME VP'S COLUMN

Jenna Boitano



I am sure that you have all been wondering - when is the next SBA social event? Mark the following dates on your calendar - Thursday October 31 and Thursday November 14th.

Thursday October 31st is the SBA Halloween Party. This year we will be holding the even at Fanny and Alexanders in Downtown SJ - 72 N Almaden Ave. Use your creativity and come up with a great costume so that you win the costume contest. There will be a DJ and lots of dancing so BE THERE. Watch the Grapevine for more information.

Thursday November 14th will be our final bar review of the semester. If you have not had an opportunity to

attend any of the bar reviews yet - **THIS IS THE ONE TO GO TO!** The final bar review will be held at Britannia Arms in San Jose - 173 W Santa Clara St.

I would also like to congratulate the members of the social committee. They are - Sarah Arnott, Kosta Demiris, Hannah Fabrikant, Sia Korovilas, Julie Oneto, and Caryn Margolis. If you have any suggestions for events, please let a member of the social committee or myself know. I can be reached at jboitano@scu.edu.

We look forward to seeing you at the Halloween Party or the final bar review.

PART-TIME VP'S COLUMN

Jennifer Martin

So, we're in the 9th week. Panic is setting in. We're now just past midterm reviews and we should all be studying outlines and working on practice exams. At least we *should* be. If you're not, don't panic, there is still time.

Just take it one day at a time. Start reviewing your notes and re-scanning the reading that you've done. Then, go to the library and get some old exams, or actually attempt those exams that your professor has given you. Most professors are willing to take appointments to read what you've written and give you feedback on where you're missing important points.

After my first year, I have to say my best advice would be to do **PRACTICE EXAMS**. Each professor wants to read information you've learned in a different format. Some professors want a regurgitation of the lecture and some want a real analysis of multiple, more broad concepts. Other, want to see an argument for both sides. The trick is learning which



professors want which. That is where practice exams help. Trust me, **THEY HELP**.

Other than that, I just have to say **DON'T PANIC**.

As law students you've learned to budget your time. Make sure you take time for yourself in all the chaos of approaching finals; even if it's to The Hut on Thursday nights. And, as an SBA officer, I have to promote Bar Review. Not necessarily drinking, but the socializing is healthy, if at least to get away from studying for an hour or so.

So, study, study, study, take some time for yourself, and call me in the morning.

Professor Spotlight: The WRIGHT Stuff!

By Aila Malik
Staff Writer

Most of us know her as a Tort Professor here at SCU Law, but Nancy Wright is much more than that.

Once a childhood actress, this remarkable redhead debuted on famous shows such as the I Love Lucy show, the Donna Reed Show, and an hour long live drama show called NBC Matinee Theater. Instead of pursuing her acting career in Los Angeles, Nancy decided to move to the bay area where she attended UC Berkeley and received her Bachelor's degree in Psychology.

Nancy devoted nine years to Juvenile probation—six years at Santa Clara County and three years at Alameda County. Her courtroom experiences while a probation officer sparked a legal interest which Nancy pursued at our very own SCU! Nancy loved her SCU experience, which was greatly enhanced by her favorite Professor of all-time, Eric Wright. After

she graduated and years later, in 1994, the Robert Redford look alike swept Nancy off her feet and made her Mrs. Wright!

Initially, Nancy was a Teaching Fellow teaching legal research and writing class. In just one year, Nancy became in charge of the program and subsequently taught Stanford's Moot Court class and ran their externship program.

In 1984, Nancy became what was then called Placement Director at SCU Law School (now Director of Career Services), while simultaneously teaching Moot Court and the Upper Division Writing Class at SCU Law School. In 1990 Nancy was hired on the tenure



track continue teaching her two classes while directing the LARAW department. In her "spare" time, the

Wrights jointly wrote grants and got the funding to start and originally co-direct the East San Jose Community Law Center. This year marks the fifth year Nancy has taught Torts. She looks forward to co-teaching a Public Interest Law Practice Seminar with her husband spring semester.

Nancy greatly enjoys waterskiing, playing tennis, and traveling. Her more exotic adventures include travels to

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Women and Law: Alive and Thriving

By Kathleen (Kat) Schinkel
Staff Writer

Like a phoenix rising from the ashes, Women and Law is gaining a vital presence on campus. In 1999, law student Jennifer Johnson resurrected an old club constitution, which had been on file since 1987. Her driving passion for women's issues propelled Women and Law from a piece of paper to an alive and thriving organization. Women and Law has an ambitious mission statement which includes fostering "awareness of women's legal, political, and social issues," highlighting "the achievements of women in law," "providing academic and personal support for law students," and community outreach.

The current President, Marisa Johnson, believes that community outreach is a key to increasing awareness of women's issues, including the education of young women who may consider a legal career as they approach college. Last year, members of Women and Law went to a career

fair at Notre Dame High School and talked with the young women who attend this all-girl school, hoping to interest students in a legal career. Marisa stated that the girls asked lots of questions and even followed up in e-

mailing for economically deprived women in training and transition for careers.

Women and Law is in the process of expanding its network of support and community. On November

Women and Law has come a long way from a largely ignored constitution in a file. It is one thing for an organization to survive. It is quite another for an organization to come alive, and an even greater accomplishment for it to thrive.

7, 2002, they will host a combined event with the International Law Students Association (ILSA), and plan future combined events with Women in Engineering and Women in Business. This year, Women and Law will become part of the National Women's Law Student Association (NWLSA), which will provide a greater support network, scholarship opportunities, and conference experiences to its members.

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Scholarships are a new addition to support the Women and Law goals. Last year, at their first annual banquet entitled "The Sky's the Limit," Women and Law raised \$3,000 for their initial scholarship drive. As a result, one \$1,500 and two \$1,000 scholarships will be awarded this year. Next year, the banquet (and silent auction) will be held on February 22, 2003. Of course, any donations for the silent auction will be gladly accepted.

Men are "absolutely" welcome to join the student-run organization, states Johnson. Since Women and Law addresses equality issues between the genders, men's voices and input are valuable to the membership as a whole. While it is true that a powerful group of intelligent women can be intimidating to some men, all persons will be greeted with the same warmth and enthusiasm, regardless of gender.

Energy and ideas abound within this organization. At every meeting, members are interactively involved in the creation of events and projects.

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SCU Helps in Supreme Court Preparation: Will “Three Strikes” Strike Out?

By Mia Giacomazzi
Staff Writer

Two years ago, Gary Ewing was seen walking with an unusual stiff-legged limp as he left the pro shop at the El Segundo Golf Course. As it turned out, he had three Calloway golf clubs in his pants leg—clubs that sold for \$399 each. He had nine prior convictions on his record, including three felonies. The theft of the golf clubs sent him to prison for at least 25 years under the Three Strikes Law.

Is the California “Three Strikes and You’re Out” law unconstitutional? Does it violate the 8th Amendment protection against “cruel and unusual punishment?” Is a sentence of 25 years to life in prison “grossly disproportionate” in relation to the crime of theft? The U.S. Supreme Court will review *Ewing v. California* in early November to decide, or at least

clarify, these issues. In the Panelli Moot Court Room, every seat was filled and the aisles were overflowing

when Professor Uelman announced, “Oyez, oyez, the Supreme Court is now in session.” This marked the beginning of the U.S. Supreme Court Moot in the matter of *Ewing v. California*, an event sponsored by the Heafey Center for Trial and Appellate Advocacy. Santa Clara Law students were given a unique opportunity to witness arguments that will make their way to Washington,

D.C. “It was a good representation of the level of expertise and knowledge required to hold one’s own in front of

nine people with so much power, who already have their own biases, and who want to make you sweat,” noted

Paresh Makan, 1L.

Quin Denvir, federal defender, appeared to be sweating as he faced a grueling hour of questions posed by a panel of seven made up of Santa Clara Law Professors and guests. Professor Brad Joondeph, who participated in the moot court and recently clerked for Justice Sandra Day O’Conner, began the questioning when he interrupted Denvir mid-sentence. “Why not question the judicial discretion of the trial court?” In fact, the trial court did not exercise an option to discount his earlier felony “strikes.” The prosecution also chose to charge his offense as a felony instead of a misdemeanor. In the trial court decision, the judge



The U.S. Supreme Court Moot Panel in the matter of Ewing v. California.

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BRAZILIAN LAW STUDENTS TRAVEL TO SCU LAW SCHOOL TO STUDY COMMUNITY-BASED LEGAL EDUCATION

By Sergio Lopez
Guest Writer

It was a tiring, 18-hour flight from São Paulo, Brazil, but they finally made it to the San José International Airport last Thursday, October 17th. They were exhausted but determined to get to work. The President of São Paulo Lawyers’ Bar Association, who is a Professor of Law, and four students from the Universidade Paulista’s Law School are on a mission, and Santa Clara University’s East San José Community Law Center is their subject of study.

In their country, the students and Professor Reis are considered mavericks because of their daring approach to the dissemination of legal information to the masses in the São Paulo region. In a country where the monthly minimum salary is 200 Reales (about \$50), the most disadvantaged villagers cannot afford to take a day off from work, travel miles on an expensive bus ride, and spend precious time looking for someone in the maze of

government ministries who is willing to listen to their legal problems. So the legal teams, composed of five lawyers



From left to right: Rogerio Piccino Braga, Edson Reis (Professor at Law), Nubia dos Anjos, Alisseia Luciana de Souza, Diaton do Nascimento

and 20 law students, bring the information to the people.

The students identify the target neighborhoods and contact the local police. The police station lends them an office-van for the event. The week before the event, a community volunteer

drives through the streets with a loudspeaker, announcing the date and time of the “legal clinic.” In a typical

clinic, the law students, under the supervision of attorneys, see between 50 and 100 people with issues ranging from consumer, family, and workers’ rights matters. Says Diaton do Nascimento, “After their consultation, people know their rights and leave with a very clear idea of which public [government] agency they’ll have to see to solve their problem.”

Their program has been operating very successfully for a year and half. However, the team felt the need to share its experiences with

similar projects in other regions of Brazil and even internationally. The Law School’s Civil Clinical Program, the East San José Community Law Center (ESJCLC), is honored to be considered for their study and celebrates the similarities between both programs.

The ESJCLC serves the most disadvantaged members of our community by providing free legal advice in consumer, immigration, worker rights, workers’ compensation, and small business matters. The Brazilian team spent a week observing SCU law students at work in the advice clinics at the ESJCLC. They also attended a community presentation at the Day Worker Center, where law students, under supervising attorney Cindy Thorp, explained the services offered at the Law Center and gave information on how to start a small business. The Brazilians also attended a law clinic class and presented information on their program to the SCU clinical law students. They were

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editorials

Condolences for Bali

By Carolyn Lees
Associate Editor

Bali, a natural paradise in Indonesia, known for its beautiful beaches, lush hillsides and jungles, attracts thousands of tourists annually. The island, located close to northwest Australia, has been a popular vacation spot for Australian families, honeymooners, and spring breakers. It was not until October 12th when bombs went off in the small beach town of Kuta, razing the Sari Club and Paddy's Irish Pub and taking the lives of approximately two hundred people, that a Balinese tourist area became a victim of terror and evil- an image Americans know too well having experienced the horrific destruction and death at Ground Zero.

In fact, this occurrence shares many similarities with the events of September 11th- namely, faceless terrorists, civilian casualties, and mass

suffering. Although investigations continue, the attack is suspected to have been carried out by Jemaah Islamiyah, an Indonesian group, which has longstanding ties with Al Qaeda. Moreover, the death toll easily makes the Kuta bombing the largest terrorist event since September 11th. The official death toll states that there are at least 40 Australians among the 200 dead from over 20 countries. 103 Australians are missing and presumed dead while 80 have been confirmed seriously injured.

Sympathy for victims of the tragedy has come in different forms. In particular, families of those killed in September 11th have offered their support by creating a toll-free number for relatives of victims to call and speak to someone in New York who has experienced similar loss. Other Americans have written to Australian newspapers to express their sympathy while official expressions of condolence



Local Balinese offer prayers for the victims at the site of a bomb blast in Kuta, Bali, Friday, Oct. 18, 2002. Nearly 200 people were killed and more than 300 were injured in the Saturday nightclub bombing. (AP Photo/Achmad Ibrahim)

have been made by President Bush and Secretary of State Powell.

However, what has been the reaction of the American public? Unfortunately, the typical American response seems to consist of a certain

level of apathy. Surprisingly there has been little discussion among graduate students and virtually no significant response on our campus.

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Student Perspective

“... because races condemned to one hundred years of solitude did not have a second opportunity on earth.”

One Hundred Years of Solitude, Marquez

By Payam Enrani
Guest Writer

Marquez presents a somber message that is unfortunately ignored by many, this institution not being an exception. In the tumultuous sea of modernity in which agency has been abandoned and man no longer exists as an individual entity but simply as a system, what difference does our solitude make? What difference does anything make? In the long run, nothing, for we are all sand dunes by the ocean—similar and monotonous, falling by the grace of G-d and nature. In the short run, it leads to such dire consequences as segregation and Enron. Why?

If the actions of man have no consequence and man himself has no existence, then man has no incentive to change the world in which he lives in. Modernity turns man into Camus' The Stranger, not knowing when our

mothers have died, not shedding tears at their funerals. What hope then is there; what prevents man from turning into such a soulless monster?

For Camus, the answer lies in morality, the unwritten rules controlling our destiny and preventing children from being born with pigs' tails. Morality, however, by itself, has no value. In order for Morality to have any teeth it must be linked in an authoritative pyramid; there must be some greater entity in which the moral truth is stored in and from which morality derives from. Traditionally, this entity has been G-d. In Law School, however, we cannot teach theology so we replace G-d with the Law and bestow it with all of the same omnipotent powers. While the Law by itself might infuse Morality with some weight it is merely an irrational fear and thus provides no incentive for rational man. How then do we link the Law and Morality?

This is where Social Science comes in and this is why the solitude of

this institution is so dangerous. Philosophy and Sociology link the Law with Morality because they create a logical framework and explain man's and the lawyer's role in the whole superstructure. Whether it be Marx's cynical view that the Lawyer is a simple puppet, or a functionalist perspective which states that the Lawyer is the arbitrator of the law and the vestige of morality. Eliminate the social science and what are you left with? Alienation. You have individuals who must follow the rules of a greater entity, the Law, and achieve a goal, Morality, without having any idea how their own individual contribution will lead to such a lofty outcome.

We open our newspapers and see CEOs in handcuffs and read sob stories of those who have lost all of their savings and pensions and stand in befuddlement as to why when this outcome was nothing but certain. We are not robots; we are not fiefs living in the world of Dante's G-d, scared to

death by the horrors of Hell. We are the children of Guennica living in a G-dless world in which we no longer have souls. Now something might be amiss to you right now if you are thinking clearly; something does not make sense.

If all an individual knows is The Law and some grandiose concept called Morality and this individual lives in our apathetic modern world, then will not this individual simply follow the law? Therein lies the problem. If you assume that the Law is perfect there is no problem. But the Law was created by man and not G-d and thus is not perfect. Furthermore, it was created by men in power over those who have no power and thus is filled with immorality. Consequently, what you are left with are soulless automitrons perpetuating the flawed Law with no real way of changing it. The vestiges to change the law are not only not taught but are frowned upon. Someone once said

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campus news

Voices On Campus

By Athanasia Korovilas
Staff Writer

In the wake of September 11th racial profiling has become a controversial and commonly discussed national as well as global issue due to exacerbated concerns with regard to terrorism. The following Santa Clara law students spoke out with their view on the question of whether racial profiling should be used as an effort to thwart terrorism.



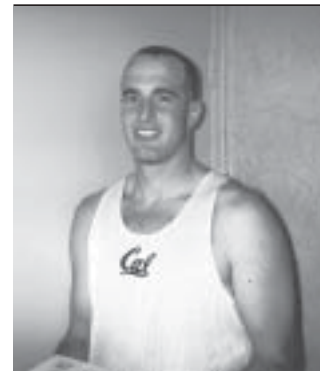
Individual profiling based solely on race would constitute discrimination. However, race combined with other factors, such as suspicious behavior or a suspected affiliation with a nefarious organization should be considered as a means to track a suspect. All factors, race included, should be considered if there is a reason to suspect the individual of criminal activity,
~Pooja Chakravarti (1L)



Racial profiling is a feeble attempt to placate the general populace and divert their attention from more salient issues.
~ Tim Reed (1L)



Racial profiling is simply an unacceptable form of discrimination. However, I believe law enforcement should at least consider as one secondary factor whether a person who first meets a more objective set of potential terrorism identifying standards is from a terrorist sponsoring country. Using racial profiling would be more socially damaging than effective in identifying potential terrorist threats.
~Chris Norem (1L)



We should not divert our attention onto one race because terrorists in turn will direct their attention onto the unprofiled races using them as mediators to carry out their terrorist goals.
~Kosta Demiris (1L)



Racial profiling is not only unconstitutional it's ridiculously ineffective. Singling out one group of people makes little sense when history shows people of all races have committed terrorist acts.
~By Alex Keely (1L)



I think racial profiling will help law enforcement in catching individuals who might be terrorists, but it might impede on civil rights.
~Jed Markfield (2L)

The Judicial Fiat

By Fritz S. Schick
Staff Writer

For almost a year, Senator Torricelli has been besieged by investigations into possible corruption charges stemming from his fundraising practices (including the acceptance of unreported cash, jewelry and other items). Although the Senator has not been indicted or reprimanded yet, his campaign has been in a perpetual state of damage control, which has prompted Democratic Party leadership to ask for his withdrawal from the heated New Jersey Senate race.

From the ashes of the beleaguered Torricelli campaign has risen the unlikely phoenix for the New

Jersey Democratic Party: Frank Lautenberg. For those familiar with both these Democratic stalwarts, the recent decisions by the N.J. Supreme Court and U.S. Supreme Court to permit the replacement of Sen. Robert Torricelli's name with (former Senator) Lautenberg's name on the ballots in November may seem to be a perplexing blend of party politics, judicial mandate, and egoism.

At first glance, the New Jersey Supreme Court's decision to allow Sen.

Toricelli's replacement appeared to be merely a matter of interpretation of *N.J. Stat. § 19:13-20*. But the Democratically appointed Supreme Court in New Jersey decided that replacement beyond the codified 51 day limit was warranted because the legislature had not explicitly forbidden it and "[it] is in the public interest and the general intent of the election laws to preserve the two-party system . . . [and] to allow the voters a choice on Election Day." Laudable goals indeed.

So, did the N.J. Supreme Court overstep its bounds and does this



Prof. Steinman in deep thought.

portend a trend of politicization of the courts? Professor Steinman, who teaches a Constitutional Law course, commented that unlike *Bush v. Gore* where the U.S. Supreme Court "manufactured" an issue to rule on, could have easily passed the buck to Congress (where the same result would have occurred), and squandered much of their legitimacy, the New Jersey case arguably raises Voting Rights Act violations that the Court could have addressed had *Bush v. Gore* not been decided in such a manner. Punctuating his assessment, Professor Seinman explained, "*Bush v. Gore* was bullshit and if the [United States] Supreme Court had granted cert. and overturned the N.J. decision, I would have quit

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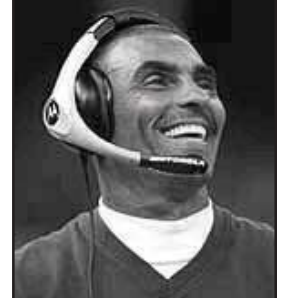
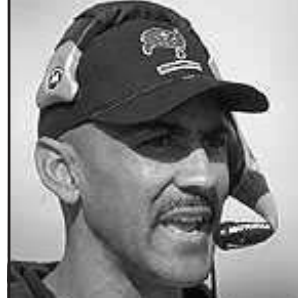
sports - entertainment

NFL Discrimination Lawsuit: Substance or Publicity?

By Michael McMillan
Staff Writer

Earlier this month the National Football League was threatened with a possible lawsuit attacking the lack of black coaches currently in the league. The lawsuit is based on the report, "Black Coaches in the National Football League: Superior Performance, Inferior Opportunities." The report was released by prominent trial lawyer Johnnie Cochran, and Washington D.C. based lawyer, Cyrus Mehri.

The two claim, based on statistical data over the last 15 years, that not only have black coaches been discriminated against in the hiring process, but they have also been held to a higher standard when awarded the job.



From left to right: Ray Rhodes, Dennis Green, Tony Dungy, Art Shell, Herman Edwards

While not dismissing the report, the NFL responded by questioning the statistical data used and the analysis of it. Additionally, any possible suit against the league regarding team hiring processes also hits a stumbling block when addressing what authority could the League Commissioner's office control separately owned franchise's hiring and firing practices. The question

becomes whether Cochran and Mehri were truly planning on suing the NFL or if this was simply an attempt to bring light to important issue.

The report, prepared by University of Pennsylvania labor

only Dungy and Edwards are currently employed as head coaches in the NFL, with the Indianapolis Colts and the New York Jets respectively. The reports show that the five black coaches averaged a total of 1.1 more wins per

economist Janice Madden, was based on the last 15 years and was narrowly focused on head coaches. Over the 15-year span there were a total of 86 white head coaches and only five black head coaches, filling up to 32 total coaching slots per year. The five black coaches were: Ray Rhodes, Dennis Green, Tony Dungy, Art Shell, and Herman Edwards. Of these coaches,

season than the white coaches did. It is not hard to figure out that the white coaches, who must play each other, over this period averaged a record of 8-8. There in lies the first problem with viewing this statistical data as any hard evidence of discriminatory practices. In a footnote to the report, Madden herself admitted that with such few

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OCI

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downturn in the economy, the same numbers of students are vying for far fewer positions.

One OCI participant, Shaham Parvin, is hoping to find a summer job that will lead to a full-time position at the end of his studies. Shaham did not give the economy much consideration when he began OCI since he has an electrical engineering degree. He feels that a lot of firms are still hiring in this field, and therefore people with a technical background have not been affected by the economy. He advises students interested in OCI to highlight their technical background if they have one, "because a lot of employers come to Santa Clara looking for that."

If a student does not have a technical background, he advises him or her to participate in smaller things such as writing contests, or to volunteer to help with Continuing Legal Education programs; things that will help students look better to employers and that show the student is interested and dedicated to the law.

When speaking to students about the amount of time they invested

in the OCI process, the numbers varied greatly, but no one invested less than fifty hours. A lot of time is spent researching different employers. Mr. Horne noted that "you know who is coming, but the rest is uncertain." Each employer approaches OCI differently and some are more focused on hiring from Santa Clara than others. Mr.

The benefits of OCI are tremendous, but the time and effort required can be overwhelming.

Horne said, "You can't underestimate the time and effort it takes to participate in OCI." While many students did not give the economy much consideration, many did anticipate the time commitment of OCI and took lighter course loads this fall. Mr. Horne feels that the time spent on OCI is not wasted time because it helps students learn a lot about themselves. He calls it a "learning exercise" and says it is one way of finding employment.

Another participant in OCI, Azita Saghafi, did consider the state of

the economy before starting OCI. She had heard it would be difficult and braced herself for the reality of the situation and how it would impact her outcome. Azita was interested in getting a job, but also wanted to learn more about the firms through the research and interview process. She also felt that OCI improved her interviewing skills.

When asked how the state of the economy affected her OCI experience, Azita said, "The state of the economy definitely affected OCI as it did everything else this year." She advises future OCI participants to be realistic, especially since the economy could look the same next year. She viewed OCI as a learning experience and advises others to do so as well.

The economy did have a serious impact on OCI this year. The number of employers visiting was down about 10-15%. Mr. Horne noted that these numbers were consistent with the decrease among other Bay Area law schools. Employers were more critical and selective this year. Another change from last year was that interviews were much shorter.

Jessica Bliss participated in OCI this year and did not consider the state of the economy when she began

the process. She felt OCI was a good learning experience. She learned about researching and interviewing for a job. Jessica was not sure what she wanted to do and said, "I was afraid that if I did not do it, I would lose out on a good opportunity to find a job." She feels that the economy has affected OCI by making it more difficult to get a job. In past years there had been more employers offering more jobs.

When asked how successful Santa Clara law students usually are in getting a job through OCI, Mr. Horne said that 20-25% of students who answered a questionnaire at graduation said they got their job through OCI. He said these numbers were consistent with those of other law schools nationwide. All major law firms in the valley and most from San Francisco come to Santa Clara for OCI. Many employers have commented on the quality of students from Santa Clara, noting their preparation, research, interviewing skills, and maturity. Many firms like hiring Santa Clara law students and OCI is only one way of getting a job. Even though the economy has made jobs more scarce, Santa Clara law students remain competitive in the OCI process.

Racial Profiling

Continued from Pg. 1

ethnicity, or national origin rather than the behavior of an individual or information that leads one to investigate a particular individual who has been identified as being, or having been, engaged in criminal activity. In the realm of law enforcement, racial profiling exists when police use racial or ethnic stereotypes as factors in selecting whom to stop-and-search as opposed to using race or ethnicity to determine whether a person matches a specific description of a particular suspect.

When law enforcement bases its suspicions on ethnic stereotypes, some dispute that it is unconstitutional because it denies the targeted group the equal protection of the laws guaranteed to every person by the 14th Amendment. In other words, some contend that it is unjust to place disproportionate burdens upon one segment of the population defined by its racial characteristics. In part, this is because race is immutable and therefore cannot be altered to avoid unwanted disparate treatment. This is the same argument applied to racial profiling in "DWB" cases, "driving while black" profile stops that involve police stopping black motorists on the pretext that they have committed a traffic violation—often a minor one. While the traffic violation might serve as the objective violation, the actual reason might include the race of the suspect; the assumption that African-American drivers are more likely than white drivers to be transporting illicit drugs. In the case of Bayaa, the factual presumption was that Middle Eastern men are more likely to be involved in terrorist activity than other ethnic groups.

One way to examine the issue, according to Professor Ed Steinman, Santa Clara Law Professor, is to examine consequent issues of potential scenarios. There are two possibilities. A law enforcement officer racially profiles an individual and he or she can be correct or incorrect; either the individual is an actual terrorist or he is not. If the law enforcement officer is correct, the issue becomes whether the ends justify the means; does the fact that you have caught a wrongdoer

justify the officer using racial stereotypes and generalizations to target the criminal? Professor Steinman, in this case, believes it does not. He reasons that each person is entitled to inalienable rights through the Bill of Rights, even though this may serve as an impediment to law enforcement. Moreover, he reasons that such activity is unconstitutional because the forefathers of the Constitution came to the realization that some people will get away with crimes sometimes, but the Constitution provides a certain order or procedure that protects individuals' rights that must always be obeyed.

As for the second scenario, which is the most common, there is a false positive and the individual had been harmed, possibly embarrassed, humiliated, and/or felt that his or her rights have been denied. In this case, the issue is if those harms are justifiable to impose on a massive ethnic group in order to catch a potential terrorist? Does a perceived danger or crisis justify the suspension of the rights entitled to an entire ethnic group under the Bill of Rights?

Finally, one important consideration given the context of using ethnic or racial profiling to catch terrorists is the effectiveness of such a policy. ACLU member, Sherry F. Colb, remarked in an article, "The New Face of Racial Profiling: How Terrorism affects the Debate," that unlike the drug trade, in which very large numbers of people of every race are involved, there is reason to think that relatively few individuals here are engaged in planning terrorist attacks on the US. Therefore, any criteria police use to identify or "profile" terrorists, whether or not those criteria rely on suspect classifications such as race, ethnicity, or national origin, will yield many more false positives than they will disclose true conspiring murderers.

Thus far, the U.S. government has called in over 8,000 men of Middle Eastern origin living in the United States to be interviewed based on a background of associations with the Middle East, frequency of travel, etc. However, only 11 of the 8,000 have been prosecuted. Is that justifiable? And what is the probability of interviewing any random group of 8,000 men and possibly finding 11 guilty of criminal activity?

This notion of applying race to infer one's willingness or likelihood of committing a crime is not novel. The United States Supreme Court, in *Korematsu v. United States*, upheld the internment of Japanese Americans after Japan's attack on Pearl Harbor in 1941. Anyone of Japanese decent residing on the Pacific Coast of the United States was presumed to be a traitor and accordingly placed in what were, essentially, prisoner-of-war camps. Are we repeating the same inference 61 years later?

Prof. Wright

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Tibet, Indonesia, Thailand, and Russia. The Wrights' near future itinerary includes visits to Bhutan, the Galapagos Islands, and various countries in South America. Nancy brings her worldly knowledge into the classroom by sharing her Kodak moments of potential torts (inadequate warnings, etc.) with her 1L Tort students. In addition to her future travels, Nancy hopes to write a novel based on the various lives of her elementary school friends whom she still keeps in touch with.

Anybody who has been to a famous Wright Karaoke Party can attest to the fact that Nancy probably had a career in singing as well! Yet, Nancy continues to inspire law students by using her musical talents to compose and perform one-hit-wonders about negligence and other tortuous topics! On occasion, Nancy can be seen performing duos with her friend and fellow basketball teammate, Professor Ellen Kreitzberg.

Mother of five, grandmother of (almost) three, wife of her "greatest teacher ever," law professor, and friend to many, Nancy Wright is very content with life. She feels lucky to be living the life she does and rightfully so. She exemplifies a grateful and determined woman who did it all...and continues to enjoy her life and her profession. Most rewarded by the connections she makes to her students, Nancy hopes that SCU law students "believe in themselves and in their abilities" and will feel comfortable to "look to faculty to help them achieve their goals." With a professor like Nancy Wright, SCU law students are in the RIGHT hands.

Privacy

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them. They gained a real education on [privacy] issues this year." Yet next came the PATRIOT Act.

Online searching, even in the privacy of your own home, is not safe from exposure. The recent trial of David Westerfield is a prime example of this. Sources report that over 64,000 sexually provocative pictures of teenage girls and 2200 mpeg videos, which revealed about 100 images of minors, were found on his computer. San Diego's Judge Mudd allowed this evidence to be introduced at trial. Jeff Atterbury, a Santa Clara University law student and intern at the Santa Clara District Attorney's office expressed his views regarding this type of impact on the privacy of criminals. "There are procedures that safeguard this type of intrusion. Search warrants are required and justification is needed to even procure one. A judge must authorize the warrant based on this cause. The overall benefits of the crime punished and deterred far outweigh any impact on someone's privacy."

Still, oversight of what you look at on the Web may be allowed without these procedural safeguards. Employers may monitor their employees' actions at any time. Rick Foley, a Santa Clara law student and labor and employment law clerk, believes that this type of intrusion is only justified when related to wrongdoings. "Monitoring of employee Web surfing would be okay if it reflects negatively on the employer, but simple measures can be taken to prevent this. Firewalls can be used to restrict what and where the employees may search on the Web. Anything more than that is obviously an intrusion on one's right to privacy." MSNBC lays out what is allowed and what isn't. "Unless the company you work for specifically states otherwise, your boss may listen, watch, and read your workplace communication."

So it seems no matter where you are, your communications are not as private as you may have thought. The next time you are surfing the net, be aware. Big Brother might be watching.

Dean's Column

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some, since a dean is appointed as a tenured member of the law faculty, and since the law faculty control appointment to, and tenure on, the law faculty, this requires a dean to have positive and express approval of a super majority of the faculty. While the precise level of faculty approval, clearly some level of faculty acquiescence is a necessary part of the selection process.

Students, too, but to a lesser degree, are involved. Often, a student is named to the Search Committee itself. The student committee member helps organize meetings between students and the candidates and actually votes on matters before the Committee. On other occasions, students, while not on the committee itself, are asked to form a student advisory group that organizes meetings between students and the dean candidates and reports back to the Search Committee.

By tradition, the one person in the school who plays no role whatsoever in the process is the current dean. I get

to watch with detached amusement.

The bottom lines are: 1) the Search Committee has power to first screen, and then nominate, the candidates, but would not nominate a candidate who had not been thoroughly vetted by the faculty; 2) it is conceivable, albeit unlikely, that a committee would refuse to forward to the President a candidate who was proposed by a majority of the faculty; and 3) taken to the next level, though it is inconceivable that the President would appoint a dean who lacked broad support and approval from the law faculty, the President, for reasons of his own, could well refuse to appoint a candidate most favored by the faculty, or even refuse to make an offer to any of the persons nominated by the Search Committee. In the end, deans are appointed only with the approval of three institutions: the Search Committee, the law faculty, and the President.

As one might guess, a lot of politicking takes place at all stages in this complex process, some quietly behind closed doors, some openly in the hallways, and some formally in

By Tradition, the one person in the school who plays no role whatsoever in the process is the current dean. I get to watch with detached amusement.

meetings. Being loquacious types, law faculty tend to argue, and from by former live, I can tell you, argue they do. The air can become electric with tension. Most certainly a dean search consumes a tremendous amount of institutional energy and attention, diverting faculty, students and staff from other issues.

In a given year, about forty American law schools are searching for a dean. Experience teaches that about 30 percent of the searches fail in their first year. If this comes to pass, a one year interim dean is appointed by the President. Typically, but not always, an interim dean is a current member of the faculty.

I believe that a number of very able candidates will make themselves available. As I have stated before, if a person wants to be a dean, I cannot

conceive of a more desirable place to do it than here at Santa Clara. The School has so much to offer an aspiring dean, and so little that would be discouraging. I am confident that not only will a new dean be selected over the coming months, but given the pool that I know is out there, I am confident that the person selected will prove to be an outstanding dean.

Judicial

Continued from pg. 10

invited to observe a portion of a trial in the courtroom of Superior Court Judge Robert Baines, who had them come into his chambers so he could explain what was going on.

The visit by this group of committed Brazilians has been inspiring to all of us who had the opportunity to meet them. The experience not only gave the SCU law students and the Brazilian law students a chance to compare notes on the benefits of community-based legal education, but it has also increased each group's understanding of the pervasive legal problems that exist in both cultures for the underrepresented.

Brazilians

Continued from pg. 8

teaching because it would have exposed the Court as nothing more than another political branch."

It would appear to the skeptical viewer that both the Bush v. Gore and the Torricelli cases represent ad hoc politicizations of the courts by the parties responsible for the appointments to the respective courts. It is this type of manipulation for political ends which only erodes the public's confidence in the judicial branch of the government. Professor Steinman comments that the New Jersey Supreme Court probably acted properly, with regard to their duty to interpret state law and that certiorari is really only meant to resolve issues that will have a broader impact on other cases. That is why it is granted only 75 times a year.

LCS

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students will have access to Santa Clara's online alumni database, an outstanding tool for any law student's job search. You can search the database by both geography and practice area which should enable students to find practitioners in just about every city and every legal specialty.

Regional or national job fairs are a method used by some employers who do not travel to individual campuses to recruit. Such fairs provide employers with the opportunity to see students from several law schools at one place at one time. Employers are usually impressed by the commitment of students who travel to job fairs, often at their own expense, to interview with them. Check with Law Career Services about job fairs that may be of interest to you. DRI, for example, held a job fair a few weeks ago in San Francisco and nearly 40 Santa Clara law students attended—the most of any law school in the Bay Area.

Part-time jobs during the school year can also be a good source of networking and full-time job leads. You can find current part-time job postings in the binders in Law Career Services and on the web site through eAttorney. And don't forget that volunteering, especially if you're interested in a career in public service, can be an excellent way to gain some valuable hands-on experience, as well as to get your foot in the door at a particular organization. Remember that just as private attorneys network with each other, so do attorneys working for government agencies, public interest organizations, legal aid offices and other non-profits. You can find out about current volunteer opportunities through the Public Interest Resource Center in Law House.

It may seem impossible, but with some strategic thinking about what you want to do and a lot of hard work along the way, chances are you'll start to encounter lots of great job leads. And with a little luck, you might just turn one of those leads into an offer!

Women and Law

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Women and Law sponsors "Funk Fitness" every Tuesday at 11:00 am at the O'Malley Fitness Center, free of charge to any one who would like to attend. Last year, the plight of women in Afghanistan was explored in a series of meetings. This year, the focus of their educational programs will be primarily domestic, with individual members bringing timely issues to the audience for what will surely be lively discussion.

Women and Law has come a long way from a largely ignored constitution in a file. It is one thing for an organization to survive. It is quite another for an organization to come alive, and an even greater accomplishment for it to thrive. There is no question that Women and Law is alive, and the evidence points to the fact that this organization will continue to thrive. Maybe it's time to ask yourself "what contribution can I bring to this important group?" You may find that you do some thriving in the process as well.

Three Strikes

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concluded of Ewing, "I do have to consider threats to the community...you are clearly posing a threat for theft offenses."

Public outrage over the kidnapping and murder of Polly Klaas found political expression in 1994 when the "Three Strikes" law was enacted. Passed both in the Legislature and through the initiative process, Californians took a stance against repeat offenders of "serious" and "violent" felonies. Most states impose longer prison terms on repeat offenders

Along with Ewing, the Supreme Court will also hear *Lockyer v. Andrade*, where the defendant's trigger offense was a "petty theft with prior." Normally a misdemeanor, the petty theft becomes a felony when prior convictions are counted. This in turn created the third-strike felony for which he received a sentence of 50 years. This case calls into question whether California is double-counting prior convictions and asks the Supreme Court to review the constitutionality of this procedure under the 8th Amendment. Both cases will be heard in early November and will be under review at the same time.

Denvir was appointed to the case by the U.S. Supreme Court in

evidence the Supreme Court case *Rummel v. Estelle*, where the court concluded that a mandatory life sentence for a repeat offender was not unconstitutional. Rummel remains good law today. Strong believes that the Supreme Court will be looking to "reconcile *Rummel v. Estelle* with Ewing," and believes that making this distinction will be difficult for Denvir. Rummel was given a possibility of parole after 12 years and was convicted for less egregious crimes.

At the root of the Rummel decision is the Supreme Court's deference to state legislatures to develop their own philosophy on punishment. During the moot court at Santa Clara, this issue was brought forward several times. If the voters of California decided that they wanted to impose severe sentences for repeat offenders, it was argued, then why should the Supreme Court interfere? This argument calls into question the intent of the California voters. Enacted as a reaction to the Polly Klaas case, voters were concerned with punishing "serious" and "violent" felonies. Condemning non-violent theft and drug offenders to life imprisonment, however, may not have been the intention of the voters.

Secretary of State Bill Jones, author of the Three Strikes law, has continued to be a adamant proponent of the legislation. In a statement released in response to the news that the U.S. Supreme Court agreed to review the Ewing and Andrade cases, he said, "Since California adopted Three Strikes, our crime rate is down 41%—more than twice the 19% decline experienced by the rest of the country. We clearly focused the law on that small percentage of the criminal population that commits the vast majority of the crime in our society." He goes on to say, "Opponents have argued that Three Strikes targets low-level, non-threatening criminals, but nothing can be further from the truth." He uses as evidence a San Jose Mercury News review of every Three Strikes sentence in Santa Clara County. The study revealed that, "regardless of the severity of the third felony, 95 percent of all three strikes criminals had an extensive history of committing multiple violent acts."

"It was a good representation of the level of expertise and knowledge required to hold one's own in front of nine people with so much power, who already have their own biases, and who want to make you sweat."

and 26 states have a version of the three-strikes law. However, California's law is considered the most severe because it can lead to a life sentence for a criminal who has committed nonviolent offenses, such as shoplifting. Although the first two "strikes" accrue for serious enumerated felonies, the crime that triggers the life sentence can be any felony. Bill Lockyer, Attorney General for the State, said that the fact that California's three-strikes law "may be the most harsh among the states does not render it unconstitutional" because "one state has to be the most severe."

"I think the three-strikes law is a significant shift from a retributive to a utilitarian approach to criminal justice. Distinguishing between violent and non-violent offenses is one way of diminishing the threat of violating the 8th Amendment. The possibility of serving a life sentence for a misdemeanor that is prosecuted as a felony under the unique California law is simply an outrage - a gross violation of the 8th Amendment of the Constitution, which I hope the Supreme Court will recognize and address accordingly," opined Vessela Stoyanova, an SCU law student who witnessed the moot court.

April. His stop at Santa Clara is one of four he will make on his way to Washington. He will also appear at Stanford, Georgetown, and a law firm in San Francisco. He argues that he is "not questioning the [three strikes] law per se" but believes that the sentence his client received was "grossly disproportionate" thus rendering it a violation of the 8th Amendment. Normally, the grand theft charge would yield a conviction of two years—Ewing received life, with the possibility of parole after 25 years. Denvir believes that a victory in his case would force California to "set standards" and believes that life sentencing should not be automatic, but should be reviewed on a case-by-case basis. Visiting professor Graham Strong, who participated in the moot court, explains why Denvir takes a detached view of the law: "Even if he thinks philosophically that [revision of the law] ought to happen, strategically as an advocate serving his client's interest you don't want to reach further than you have to."

Professor Strong, Constitutional expert, is not optimistic for a victory in the case. He cites as

IPA

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The IPA is also pleased to announce SCU's participation in the Chilling Effects Clinic, a joint project with the Electronic Frontier Foundation (EFF), Harvard, Stanford, Berkeley, University of San Francisco, and University of Maine Law Schools. Chilling Effects aims to help people understand the protections that the First Amendment and intellectual property laws give to their online activities. The website gathers a searchable database of Cease and Desist notices. Each school is responsible for a certain topic. SCU will be responsible for trade secrets. When a letter comes in, the EFF notifies the school responsible for that subject and the clinic is responsible for uploading the letter to the site with links explaining the legal language in the letters in plain English. It's not legal advice per se (to avoid malpractice) but it is hands-on work with actual clients and the EFF. There will be an informational meeting on Thursday, November 7 at noon in Bannon 142. You can also visit the website at www.chillingeffects.com.

As you can see, there are many benefits and opportunities to serve that come with being a member of the IPA. Please log on to our website at scu.edu/ipa to learn more and feel free to contact me or any other members of the board if you have any additional questions or suggestions.

Marquez

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that in order to make it through your first year of Law School you must leave your humanity behind. The trouble is, once you leave your humanity behind you might never go back and reclaim it. The result is that the apathy and solitude of this institution leads to such negative consequences like the death penalty and segregation, because a flawed law is followed by apathetic souls who will blindly follow any law due to the doctrinal philosophy that humanity and law are not one and the same.

NFL Discrimination

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black coaches it would not make sense to apply formal statistical data in all cases. Paul Smith, the director of the University of Maryland Statistics Laboratory, confirmed that these statistics were being applied outside their scope. After reviewing the report, Smith said, "She can't say that this is statistically conclusive evidence. She's been careful to hedge by making this footnote."

While the title of the report seems to suggest otherwise, Mehri contends they are not trying to claim black coaches are in fact superior, simply that they have performed well when given the opportunity and they deserve more chances. Mehri and Cochran also claim they used the same type of data which was used to analyze civil rights enforcement in suits against major corporations which did not afford

blacks enough opportunity for upward mobility. The problems with this analogy are first, that the corporations have many more positions, and secondly, the corporations have the power to control the decision making in their hiring and firing practices.

A closer look at all the coaching decisions over the past 15-year period should serve to illuminate the picture. While the report states that blacks are the "last hired, first fired" by pointing to the firing of Ray Rhodes after only one season in Green Bay, many analogous situations involving white coaches that were overlooked. One need not look any further than last season to find a white coach, Marty Shottenheimer of the Washington Redskins, who was fired after a single season with an 8-8 record and eight wins in the last eleven games of the season. Shottenheimer's firing, combined with four other white head coaches dismissed after one

season, is further evidence that firings are not as much racially motivated as they are a sign of the times where winning has become the only name of the game. Former Green Bay Packers' General Manager commented, "The object is to win, and that's the whole object. That's why you keep score. That's why people get opportunities."

Getting that opportunity is tough as the head-coaching circle in the NFL is a very tight one. It is no secret that the NFL coaching community is one in which recycling is the name of the game. Proven coaches such as Shottenheimer, Bill Parcells, and others have bounced around from team to team in the hopes that their past successes will directly result in success in their new position. This type of recycling is not exclusive to white coaches, as evidenced both by Rhodes

and Dungy. Despite Rhodes having a winning percentage of .457, the lowest of any of the post-1986 transplants, he was hired for the next season to lead the Green Bay Packers. After last season when the Tampa Bay Buccaneers fired Tony Dungy the Indianapolis Colts snatched him up so quickly that the ink had not even dried on his release and severance package.

The NFL also has their own statistics to back up their assertion that they have been making strides in the area of promoting minority coaches. While the average tenure for all white coaches in the post-1986 era was less than four years, the average tenure of black coaches during the same period was seven years. Additionally, if the scope is broadened to include assistant coaches, the numbers show the NFL is making progress. Today there are 154 black assistant coaches out of a total 547, of which 12 hold coordinator positions. In 1980 there were only 14 black assistants and no coordinators.

What does all this statistical analysis, information and disinformation mean in the end? It shows that while the statistics brought forth by Cochran and Mehri might not be conclusive evidence of any bias against black coaches, it is clear the issue must continue to be addressed. This goal seems to be realized, as their request for a meeting regarding the subject was granted. Mehri will sit down with NFL executives Harold Henderson, executive vice president for labor relations and chairman of the management council, and Jeff Pash, the executive vice president and chief administrative officer-council. If all goes as Cochran and Mehri plan, the meeting will lead to a place on the agenda at the Owners' fall meeting in New York at the end of the month. It is that possibility of a direct proposal to the owners that will most effectively achieve their objective of increasing black head coaching opportunities. While their threatening tactics may be questioned, the end result of generating more discussion regarding the advancement of black coaches and how to promote more future hiring cannot be.

Bali

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Apathy seems to be equally prevalent outside the doors of Bannan and in the communities of the Bay Area. This is astonishing given our zero tolerance stand on terrorism, the recent creation of the Office of Homeland Security and this month's congressional resolution authorizing the use of force against Iraq. Given our commitment to an ongoing war on terrorism, we should acknowledge the significance of this tragedy. Unfortunately, it remains unlikely that many Americans could locate Bali on a world map or that many are even aware that the majority of the casualties were from other Western countries. (It is an atrocious surmise that in America loss of first world life may be mourned more than that of another.)

So who is to blame for our apathy? We are not heartless; however, there is an incongruity here, given that the tragedy in Bali is so similar to what we experienced ourselves just over a year ago. American responses to September 11th are demonstrative of our compassion for mankind, our respect for human life and our bravery in the face of terrorism- an evil we will not tolerate. The manner in which

Americans came together following September 11th, through monetary contributions, donations to blood drives, care for one's neighbor and a newfound appreciation for one's family and one's nation, reveals the enormity

Regardless of who is responsible for our response, it needs to change. How can the United States expect the support of the international community in our war on terrorism when Americans are apathetic to terrorist attacks in other nations? In view of our

Unfortunately, it remains unlikely that many Americans could locate Bali on a world map or that many are even aware that the majority of the casualties were from other Western countries.

of our hearts and the significant effect tragedy has on our lives.

Why is it that the major American newspapers and television stations provided so little coverage of the Kuta bombings and the resulting deaths and injuries? American media coverage of the bombing amounted to a mere couple pages in the middle of the A section and a few moments of television coverage in between sniper updates. Does the media cater to our needs or do we respond to what they air? If the media is responsible for shaping American preoccupations, policies and issues, then it should focus less on the sniper and continue to address global terrorism in a systematic way.

need for international support in a war against Iraq, it would seem that more sympathy and assistance could be provided to victim countries like Bali. The terrorism of one country affects every nation and a worldwide approach is required to tackle this problem. Before a worldwide approach can be taken, however, nations must unite in a commitment against terrorism. Americans have a zero tolerance policy on domestic terrorist attacks and attacks on foreign soil directed at the United States, but this zero tolerance policy must expand so that terrorism against any nation will not be tolerated.

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