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THE ADVOCATE

Serving Santa Clara University law students since 1970

Volume 27, Issue 3, November 2005

BGLad sends 13 to Lavender Law

Steve Jacob, layout editor

From October 27-29, thirteen students from Santa Clara University School of Law attended the annual Lavender Law Conference in San Diego, California. While there they participated in a career fair of over fifty employers, attended two days of panels and forums on pertinent legal issues, and helped run the first student leaders meeting of the National Lesbian & Gay Law Association.

According to Jacklyn Bentley, president of Bisexual, Gay and Lesbian Advocates (BGLad), preparations for Lavender Law began last year. From personal fundraising efforts to discussions with Dean Donald Polden, Bentley and other members of BGLad have worked since April to plan and implement the group's attendance at the conference.

Dean Polden's support was vital to BGLad's success. After he described initial conversations about

funding with last year's president, David Tsai, Polden said, "Jackie and I talked this year and the need was somewhat greater than last year. However, I again arranged additional support (That is additional to the financial support that BGLad received from SBA)."

Polden further refused to limit his reasons for assisting BGLad to amelioration for Solomon Amendment compliance. "Attendance at Lavender Law may be an aspect of the school's ameliorating efforts, but I believe those efforts are much broader and



David Tsai, Ramon Lopez, Deena Smith, Jorge Espinoza, and Jackie Bentley pose before the keynote speaker at the Lavender Law Conference in San Diego, California.

photo provided
by Jackie Bentley

tailored to assist all our students – gay, lesbian or not – in understanding the implications of employment discrimination...The support that the law school provided to our BGLad members to attend the conference

was a part of its support for its gay and lesbian students."

Even though amelioration did not factor into Polden's funding decisions,

— BGLad, pg. 12

Tulane 3L a welcome guest at SCU

Jonathan Sip, staff writer

In late August 2005, Lara Carney returned to New Orleans to finish her last year of law school at Tulane University. Carney had just wrapped up a productive summer working for a San Francisco law firm and had been settling into her new apartment close to the French Quarter.

Merely a week had gone by when a tropical storm began to make its way towards the city. "I began hearing about Katrina Friday night, but like most everyone, I brushed it off," said Carney. Then around noon the next day, her friend Lauren informed her that the storm was a

category three hurricane and was headed directly for New Orleans.

"I had always heard that Cat 3's would breach the levee and that a direct hit would cause the city to fill up like a soup bowl," said Carney. This seemed to be the same overused warning that was issued every year around hurricane season. Nonetheless, Lara took it seriously.

On Saturday, August 28, two days before Katrina was to hit the city, Lara prepared for a short stay north of the Gulf Coast. She moved her belongings to the upstairs floor of her apartment, snatched a duffel bag



full of clothes, grabbed her cat, and drove to her friend Lauren parents' house in Lafayette, Louisiana. "If I had known it would turn out like this, I would have taken so much more from my apartment," said Carney. "I really thought we'd be back in a couple of days."

— Tulane, pg. 5



Above: Turning trash into art.
Right: Horse and buggy greet Lara on her return to New Orleans.

photos provided by Lara Carney

From the Dean's desk:

Addressing substance abuse at Santa Clara University School of Law

Recently, at a Council of Leaders meeting, a prominent judge addressed the student group leaders about the services of The Other Bar. The Other Bar is a group of lawyers and judges who assist other lawyers and judges with substance abuse problems. His presentation was well received and I encouraged our student leaders to assume the responsibility for assisting the law school in addressing the problem of substance abuse by lawyers and law students. I want to use the privilege of my space in *The Advocate* to describe this public health problem and encourage greater attention to addressing it.

Several years ago, I was asked to join a special committee of deans, associate deans, and faculty members from several law schools to study the incidence and causes of alcohol and drug abuse in law schools and make recommendations to the ABA's Commission on Lawyer Assistance Programs. In working with the committee I learned that there is considerable literature on the subject of substance abuse in law schools and in the legal profession. In 1993, a committee of the Association of American Law Schools surveyed more than 3500 law students on their use of drugs and alcohol.¹ The committee reported in part that:

- 82% of the law students used alcohol, 8.2% used marijuana and 8.8% used other illegal drugs within 30 days of the survey;
- 12% of the law students reported they abused alcohol (used it in a way that harmed themselves) during law school;
- 13% reported that their abuse of alcohol and drugs affected classroom attendance, 7% reported that it affected their class participation, and 2% reported that it affected their performance on examinations;
- 33% admitted to driving impaired during law school and 3% said they did it often;
- 37% of the respondents knew an impaired student and 37% estimated that 4% or more of their classmates were impaired at school;
- 21% believed there was at least one faculty member at their school whose performance was impaired by drugs or alcohol.

Another recent study of substance abuse among lawyers concludes with an alarming note:

a significant percentage of practicing lawyers are experiencing a variety of significant psychological distress symptoms well beyond that expected of the general population. These symptoms are directly traceable to law study and practice. They are not exhibited with the lawyers entering law school, but emerge shortly thereafter and remain, without significant abatement, well after graduation from law school.²

The causes of substance abuse in law schools include psychological distress caused by the difficulty of legal materials and the lack of certainty in mastering subject matters, the "culture" of emphasizing alcohol consumption as a way to "bond" with classmates, lack of effective education programs in the law school and lack of effective policies to govern alcohol use. Some of these same causes—particularly psychological distress caused by uncertainty about success in law practice and a culture that emphasizes alcohol use—contribute to substance abuse in the legal profession. The authors of a study

on alcohol problems among lawyers concluded that psychological stress "directly relates to the fact that between 9% and 20% of lawyers exceed expected norms for current alcohol-related problems. Even more alarming, the data suggest that nearly 70% of lawyers are likely candidates for alcohol-related problems at some time within the duration of their legal careers."³

Why is this information on substance abuse in law schools troubling to me and other law school deans and faculty members? First, and foremost, we are not talking about students embarrassing themselves by "silly" or "juvenile" behavior. The medical evidence demonstrates that this is a serious public health problem. Second, state boards of bar examiners are concerned about bar applicant's behavior that suggests or manifests a substance abuse problem. Third, after admission to the practice of law, alcohol or drug abuse contributes significantly to the rates of attorney malpractice and other misconduct and can be "an aggravating factor" in disciplinary cases.

What should law schools do? What should we do at Santa Clara Law School? The first step must be to educate everyone—students, faculty and staff—as to the existence of the problem in law schools. The second step is to provide the law school community with information on how to deal with substance abuse problems and how to help others who may be suffering from those problems. The third step is to examine law school policies and practices that may encourage excessive alcohol use or inappropriate drug use.

Students (or anyone in the law school community) can contact the ABA's Lawyer Assistance Programs for confidential and, when requested, anonymous advice and assistance at 1-888-LAW-LAPS (529-5277). The Senior Assistant Dean for Student Services, Julia Yaffee, and I will provide immediate and confidential assistance to students who would like to contact a health care professional, or a lawyer or judge with The Other Bar, for advice on a substance abuse problem. I also encourage all our students to take responsibility for any law school friends or colleagues who are abusing alcohol and/or drugs. Encourage him or her to seek counseling or other assistance from one of these persons or sources of professional care.

In the past two years, Dean Yaffee and I have worked with the SBA leadership and law student organizations to review their policies on alcohol use at law student events and implement methods of decreasing alcohol use if it is prevalent or excessive at those events. There are indications that student organizations are attempting to promote less "alcohol-fueled" events for the professional and social interests of their members.

One of the great enjoyments at our law school is the ability to have a glass of California wine with our colleagues. However, we all need to be careful that the stress and demands of law school don't increase use to the point of harming our health or the health of our colleagues. ■

(Endnotes)

¹ Report of the AALS Special Committee on Problems of Substance Abuse, 44 J. Legal Ed. 35 (1994).

² Connie J. Beck, Bruce D. Sales, G. Andrew Benjamin, Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among A Sample of Practicing Lawyers, 10 J. Law & Health 1, 2 (1995-96).

³ Id. at 3.



**Donald
Polden**

The best way to kill

A review of the methods of capital punishment used in America

Ahamed Iqbal, staff writer

While there is considerable debate over whether or not capital punishment should be implemented at all, there has been relatively little debate over the best way to take life. Determining the most efficient and painless administration of death is in the interest of everyone involved in the capital punishment debate, regardless of their opinion of the system in general. Apart from certain extremists, advocates for and against capital punishment seem to agree that if the death penalty is imposed, then it should be the least 'cruel and unusual' method possible. The purpose of this article is to explore what characteristics should be used in analyzing electrocution, death by firing squad, gassing, hanging and lethal injection and to define each of the methods using such criteria.



photo from electric-chair.ccadp.org

Implementation of the death penalty is an often overlooked aspect of the criminal justice system. While there seems to be a significant degree of attention given to the merits of the system in general, there seems to be relatively little concern towards the final act of execution. Morbid as it may be, the procedures and actions necessary to administer death are critical to evaluating the best method of execution.

The method used must be both simple and lethally efficient so that the chance for human or technical error is minimized. Efficient and error free administration of the death penalty reduces the chance for mistakes and ensures the least amount of suffering possible.

The period of time leading to actual death is a significant consideration in deciding the best method of execution. If the time leading to death is extended, the act of execution may reach into what is considered torture. Much of this is tied to the notion that the pain of the condemned should be minimized as much as possible. While there is uncertainty over whether severity or duration of pain is a more important factor, it is clear that a swift execution allows for less pain than an extended one.

Complicating this matter even further is the question of whether pain ceases after one loses consciousness or only at the time of death. Differing

theories and an understandable lack of research in this field leads to high degree of uncertainty in regards to how much pain is actually felt in any of the methods.

The dignity or sanctity of the corpse after execution is an aspect of capital punishment that is easy to comprehend but very difficult to quantify. It is in the interest of none to leave the corpse in a gruesome state as it demeans the executed and the system responsible for the execution. While it would be ideal to prevent any visible damage to the body beyond that which is essential to bring about death, reality makes this a difficult proposition. The very act of death, whether natural or externally imposed, brings about certain physical consequences that tend to distort or otherwise mar the appearance of the corpse. Allowing for the dignity of the corpse is a difficult and highly subjective task balancing current values and the inherent side effects of death.

To make an informed decision as to the merits of each of the existing capital punishment methods, details of their current implementation must be known.

Electrocution- Defendant is restrained to a chair and a skullcap shaped electrode is placed over the head along with a moistened sponge. Additionally, an electrode is taped to the leg along with conductive jelly. With a wet sponge and the conductive jelly, electricity is able to flow freely from one electrode to the other with as little resistance as possible. After a blindfold or hood is placed on the defendant, a current of 500 to 2000 volts is initiated and travels between the electrodes, for a period of 30 seconds to two minutes. Following

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The Advocate is the student news and literary publication of Santa Clara University School of Law, and has a circulation of 1,000. Bylined articles reflect the viewpoint of the authors, and not the opinion of *The Advocate*. *The Advocate* is staffed, including writing and layout, by law students. Printing is contracted to Profess Printing, Inc. of San Jose, California.

Submissions to *The Advocate*, including Letters to the Editor, are encouraged and welcomed. Contact the Editor in Chief by phone or e-mail about format requirements and submission dates. Submissions are subject to the printing and editing discretion of *The Advocate*.

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a cool down period, administrators check for a heartbeat and if found, repeat the process at a lower voltage, in order to prevent excessive burning of the body.

Unconsciousness should occur a second or two after the initial jolt. Next, intense heat severely damages internal organs leading to a failure of essential systems. Despite the precautions taken to prevent visible damage, side effects like burning of the skin and flesh, bleeding, and breaking of limbs from spasms are generally unavoidable. Improper procedure may lead to the defendant catching on fire or cause a delay in the midst of electrocution while the machinery is being fixed. Execution may also be prolonged even in ideal situation due to the varying electrical conductivities of individuals.

Firing Squad- Defendant is blindfolded and restrained to a chair while a target is placed over the exact location of their heart. Five sharpshooters stand 20 feet away in an enclosure where they can only see the target. All five shooters fire one round from .30 caliber rifles at the target but one of the five rounds is a blank.

Massive loss of blood occurs once the bullets rupture the heart or a major blood vessel and leads to near instantaneous loss of consciousness when the brain loses oxygen. At the same time the loss of blood and the destruction of the heart shut down other essential functions and lead to sudden death. Sand bags are placed around the defendant prior to execution for the purpose of absorbing the large amounts of blood. Error in administration generally can only come from shooters intentionally missing the target, thereby prolonging death, but the presence of five shooters mitigates this risk significantly.

Gas Chamber- Defendant is restrained to chair in an airtight room and then, at warden's signal, cyanide crystals are released into a bucket of sulfuric acid. The resulting reaction forms hydrogen cyanide gas that spreads throughout the chamber. Generally, amounts of cyanide exceeding what is required are used to ensure a speedier and more efficient procedure.

Loss of consciousness should occur a few seconds after inhalation of the gas while simultaneously causing respiratory failure. Loss of oxygen to the brain and other essential organs results in death in a few minutes. Visible pain has been observed as a side effect along with symptoms similar to strangulation. While defendants are informed to breathe normally in order to facilitate rapid death, as a result of disobedience or attempted self-preservation, they often they hold their breath and therefore prolong the pain and side effects of the execution.

Hanging- The rope used in hanging must be selected and prepared properly in order to facilitate rapid death. The length is determined by the defendant's weight and the rope is treated to ensure smooth sliding without coiling. Once tied in a hangman's knot, the rope is placed over the neck of the

defendant who is bound by the hands and feet and hooded. The trap door under the defendant is opened and the weight of their body pulls them down.

The drop of the body combined with the properly placed noose causes a rapid cervical (neck) fracture and dislocation that severs the spinal cord and leads to instant paralysis. This results in the cessation of breathing and cardiac reflexes and the unconsciousness from the lack of oxygen to the brain. Hanging that follows proper procedure leads to a distorted neck but relatively few other visible side effects due to the suddenness of death. If the defendant is light in weight, has abnormally strong neck muscles, or the rope is not prepared correctly, the neck may not break and strangulation will be the cause of death.

Death by strangulation generally takes significantly longer and involves gruesome side effects including the eyes leaving their sockets, the tongue protruding unnaturally, engorging of the face and defecation.

Lethal Injection- The defendant is restrained to a cross shaped medical table in order to allow for easier insertion of two independent intravenous (IV) tubes. With one IV serving as a backup, three separate chemicals are injected through the main IV.

Sodium thiopental serves as an anesthetic and makes the defendant unconscious. Either pavulon or pancuronium bromide is administered which paralyzes the entire muscle system thereby stopping breathing. The third chemical, potassium chloride, serves to stop the heart from beating. It is the combination of the second and third chemicals that leads to the failure of the respiratory and cardiovascular systems and death. In lethal injection, relatively few visible side effects occur beyond what occurs in natural death, however the process may take upwards of 10 minutes from the initial injection. Significant delays and errors may occur due to the lack of medical professionals in the administration of

executions. Doctors are ethically prohibited from participating in the taking of life. This lack of experience combined with the fact that many on death row have histories of drug abuse often leads to delays in finding a viable blood vessel for the IV and a slower delivery of lethal chemicals once they are found.

The answer to the question of what the best method of execution is not clear. The lack of hard data and a general aversion of the act of execution makes the decision one that is highly subjective. While the time of death is clear, the duration and severity of pain preceding death is uncertain. In order to select a method that consistently and effectively administers punishment, the potential pain felt by the executed must be weighed against societal values regarding the dignity of the body. By no means a simple task, given the gravity of the punishment this decision is one that merits further inquiry and debate.

The result of all capital punishment is common, but the means by which the different methods deliver death have far reaching implications on the criminal justice system and society in general and should be considered in depth when imposing the most severe of all punishments. ■



photo from injection.gurney.dc.state.fl.us

LCS: OH THE PLACES YOU'LL GO, TAKING A PAGE FROM SUESS

With the fall semester coming to a close, many of you will take a much deserved break from your studies and spend some time with your friends and family which by now are feeling a bit neglected. While recovering from the hectic fall semester, not to mention final exams, will be at the forefront of your thoughts, some of you (hopefully) will also take time to continue or jump start your summer or post-graduate job search.

For 1Ls especially, the month of December offers the first opportunity to start a search. Indeed, for 1Ls interested in working at a larger law firm, initiating a job search in December is critical.

With exhaustion setting in, however, it is easy to lose direction or momentum. Remember—LCS is open through December 22 and available to help! Even if you don't stop by and see us, you might want to think about completing some "career homework" while you are not busy with law school.

Finding a job is hard work no matter how you go about it so it is important to keep your focus and avoid feeling overwhelmed with the task. To help, you might want to consider completing one or more of the following career homework assignments during your break:

→*Update and polish your resume:* Even if you revised it this past summer, chances are it might already be outdated. In fact, a good rule of thumb is to update your resume every three months.

→*Prepare a 2 minute self-introduction:* Such an introduction can be very helpful not only during a job interview when answering the "Tell me

about yourself" question, but also when you have the opportunity to speak with any practicing attorney. Your goal is to produce a short and concise statement that summarizes your background as well as your career goals. (Last year a law student landed a summer job by speaking with a seatmate on a plane ride. She was able to articulate her goals and background on the spot in what turned out to be an impromptu interview!)

→*Research employers:* In a competitive job market, it is critical to be proactive in your job search. In order to do this, you must identify your target employers and tailor your application materials (such as a cover letter and resume) to meet their hiring needs.

→*Identify and contact SCU alumni:* Informational interviews can provide invaluable insight into what you can expect during your job search as well as after you have the job. The more knowledgeable you are, the more prepared and competitive you will be. If you are having trouble locating a contact in a practice area or with a specific employer, be sure to ask LCS for help!

→*Attend a bar association meeting or event:* Your success in the legal profession is highly dependent on the relationships you develop. It is never too early to become more comfortable networking with your future colleagues.

With some career homework completed that is appropriate to your career goals, you will be ready for the opportunities as well as the distractions that the beginning of a new semester will bring. The first week of classes in January will come sooner than you think and with it many programs and deadlines including resume collection deadlines that happen in mid-January. To find out more about upcoming programs and deadlines, subscribe to our listserv. And remember, Law Career Services is open throughout the month of December, so stop by even after your exams are over! ■



Alexandria
Bullara

Tulane, from 1

En route to Lafayette, the highway had been converted into a one-way artery in a procedure called "contra-flow." Lara said she took the opportunity to drive on the wrong side of the highway at 70 mph, while traffic on the right remained jammed.

Lara spent the next couple of days in safe retreat among the company of four other evacuees at her friend's house in Lafayette, 130 miles north of New Orleans.

"We basically spent the day eating BBQ and drinking mojitos and wine around the TV," said Carney. They were stressed out and sad, but Lara said her friend's family was incredibly warm and welcoming to them all.

On the following Monday, Hurricane Katrina hit New Orleans, devastated the Gulf Coast Region,

and made history as the worst natural disaster in U.S. history. By Tuesday, Lara was already enrolled at Santa Clara Law School.

For Lara, it was an easy choice to choose Santa Clara. Lara's mother, who had graduated from the law school in 1991, spoke to Dean Polden. "He said they [Santa Clara]

would welcome me 100 percent," said Carney.

In addition, Lara had a

post-graduation job lined up at a San Francisco law firm and was a native to the Bay Area. Consequently, without interruption, Lara was able to transfer smoothly into our law school, take most of her scheduled classes, and was given \$4,000 in FEMA aid.

Unfortunately, not all law students who left Tulane had the same luck as

Lara. Initially, the Tulane Law School Administration would not allow other schools to accept its first-year students. The policy would have essentially forced first-year students to postpone their studies until January and squeeze the entire first year into the spring semester – an inconceivable task absent a major natural disaster wreaking havoc on the city.

In an uproar, many students protested the policy and lawsuits were threatened. Eventually, Tulane's administration relented and allowed 1L's to attend classes at other law schools. However, since the law school had been getting back on its feet, a deadline has been issued to all students requiring a January return.

Recently, Lara took a vacation from Santa Clara and returned to her

apartment in Louisiana during fall break. She found everything to be in order except for a one broken window and a grisly discovery inside her refrigerator. Lara will continue to study at Santa Clara until the end of the semester and will go back to Tulane in January. Upon graduation, she will move back to the Bay Area and begin her new job at a San Francisco firm. ■



Lara reunites with her friend John.
photos provided by Lara Carney

"I really thought we'd be back in a couple of days."

Lara Carney

Ketumile Masire: Former President of Botswana speaks about African Development

Tobin Dietrich, Editor-in-Chief

On October 20, former President of the Republic of Botswana, Ketumile Masire, spoke at Santa Clara University on the topic of “Building Democracies in Africa.” Mr. Masire is currently serving as the Balfour African President-in-Residence at the African Presidential Archives and Research Centre (APARC) at Boston University. APARC is a unique program, dedicated to the exchange of ideas between the United States and developing African countries.

Masire spoke first about African history generally, and how it has led up to the present climate of change and instability. Colonial forces in sub-Saharan Africa have contributed to conflict, disorder and ethnic animosity, he said. By operating under paradigms where foreigners serve as rulers, post-colonial countries tend to regard alienation, discrimination, social exclusion and manipulation of ethnic identities as legitimate means of establishing and maintaining power. This framework, combined with Africa’s vast natural resources, Masire contends, has lead to tremendous suffering of Africans at the hands of fellow Africans in post-colonial countries.

Masire then turned his focus to the significant strides that many African nations have taken to distance themselves from their post-colonial disarray. He pointed to trends among African countries to establish good governance practices, open elections and transparent administrations. Progress will be necessarily slow, as most African nations are economically depressed. But, Masire added, with their wealth in natural resources and careful collaboration among neighboring countries, democratic nations are sure to flourish in the next decade, if properly supported and encouraged by the international community.

Masire cautioned that Western imperialism may still be a limiting factor in Africa. African nations are now “adapting democracy to fit their own specific conditions, without compromising its fundamental principles of representation and accountability.” This process of generating new approaches to democratic governance is vital to post-colonial independence and ultimately the success and legitimacy of African nations.

The New Partnership for Africa’s Development (NEPAD) is a coalition of African governments and leaders who are dedicated to economic and political development throughout sub-Saharan Africa. Masire highlighted the efforts NEPAD is making to create conditions conducive to social, economic and political growth. These efforts include: establishing international conflict management and prevention mechanisms to ensure peace and security, promoting democracy through sound political governance, instituting sound economic and corporate governance and regulation, promoting agriculture

through increased productivity and food security, and mobilizing resources through increased market access and capital flow between African nations.

Masire turned to his home country, the Republic of Botswana, as an example, of both the struggles that African countries face and of the nearly limitless potential when those countries dedicate themselves to open, democratic ideals. When the British protectorate of Bechuanaland established its independence in 1966, it had a scant 6 miles of paved roads in a country roughly the size of France and Belgium combined. The economy of Botswana was nearly completely dependent on cattle and food crops. However, the

Progress will be necessarily slow, as most African nations are economically depressed.

drought-prone weather patterns of Botswana rendered this an unstable economic footing. So the country shifted its focus to mining minerals, primarily diamonds and established a more stable economic base upon which they could erect a basic infrastructure.

From the independence of Botswana in 1966, until the end of Masire’s term as President in 1998, Botswana achieved the strongest economic growth rate of any country. Masire credited that growth with giving his country the opportunity to finally establish a viable governmental infrastructure and provide basic services such as water, food, and transportation to a majority of its citizens. Botswana, it should also be noted, is currently ranked lowest in “perceived corruption” among all African countries by Transparency International, an organization dedicated to the study of open, transparent government.

Masire concluded his remarks by cautioning that the growth of which African countries are capable, and Botswana, in large part, has achieved, is threatened by the pandemic of HIV and AIDS. The unchecked spread of AIDS cripples the human capital these developing economies rely on in order to establish a foothold in the global economy. The most difficult aspect of the spread of AIDS is that, by crippling African economic growth, this disease is also limiting the ability of governments to do anything but try to assist those in most dire need of medical assistance, effectively curbing the spread of open, democratic governments throughout sub-Saharan Africa. He expressed cautious optimism at the efforts that Botswana and its neighboring countries are making to combat the spread of HIV and AIDS, saying that this is clearly the greatest challenge for African nations in the years and decades ahead.

Western imperialism may still be a limiting factor in Africa.

How a letter can change the world, or at least SCU

“With great power comes great responsibility.”

-Uncle Ben

In temporarily discarding my normal Bush bashing, I choose instead to comment on an issue which stirs my passions: civic involvement. More specifically, letters to the editor, and a general lack of them. This is the third issue of the paper, and *The Advocate*'s editorial staff has yet to receive a single letter. I am tired of wandering the halls of Bannan and hearing a hundred good ideas, or worthy complaints, go unnoted by those in a position to make change. Particularly when an effective means of communication is readily available, and sadly underutilized. Journalistic freedom and participation may seem like mixed blessings, depending on the administration, but their purposes are legion. They prevent those in power from abusing that power. They provide a prod to progress and overcome administrative lethargy. They provide an opportunity to foster change and growth. Finally, they extend the debate beyond the talking heads of CNN and Fox News to the grassroots of Everytown, America. Unfortunately, this effectiveness is limited by community members' desire to engage their media.

General apathy on the part of the student body permits those in positions of influence or power to intimidate right-minded individuals from expressing their ideas. I know a 1L who took issue with a certain column in the last issue of *The Advocate*. Although the column was passed off as an opinion piece, she felt the facts cited misrepresented the situation and cast her in a bad light. I prompted her to write a letter to the editor to protest, and she even wrote one, but upon reconsideration she felt submission of that letter would expose her to possible retaliation in future columns. If students who felt strongly about an issue used the forum available in *The Advocate* to voice their opinions, my friend may not have felt so hesitant to raise her concerns.

Furthermore, students' silence contributes to the stagnation of progress and the continuation of mediocrity. Since the last issue of *The Advocate* hit Bannan, several individuals have approached me to discuss its contents. Some have suggested the purpose of *The Advocate*, and every student organization, should be to improve the reputation of the School of Law. Others have wondered if some aspect of the paper bordered on libelous behavior. Still others had more than a few choice words to say about opinions published in its pages. I believe

many of these are worthwhile and fair criticisms, but unless they are made through students' exercise of their civic rights, they remain ephemeral suggestions lost to those with editorial power. If one wants to alter policy, one must speak up.

The Advocate offers an open and accessible venue for discussion of administration policy and ideas for improvement. When someone suggested to me that *The Advocate* take a long view of its relationship to the SBA and SCU School of Law, I took their point as a good one. My response, though, is this: the most effective way for a student organization like *The Advocate* to improve the reputation of this school is to provide a fair and open forum to praise and to criticize, as the case may warrant, School of Law policy and practice. If someone wants to change the purpose of *The Advocate*, let them write a letter to the editor. If someone wants to suggest a way to improve the School of Law rankings, write a letter to the editor. Dean Polden reads the paper, he'll see the suggestion. If someone enjoyed a panel, or speaker, or other resource available on campus, write a letter to the editor. The person responsible will read it and feel ten times better. Use *The Advocate* for its purpose, an opportunity to inform and to report important news to the students here at Santa Clara University.

It is important to understand, though, that the nature of *The Advocate* imposes certain limitations. Because *The Advocate* is a monthly publication, it is difficult to fill its pages with late breaking news, or up to the minute reports about fascinating legal developments. What has always worked best, and will continue to work best, is a more timeless approach. Instead of trying to beat daily papers, newscasts, and web media, *The Advocate* is best suited for op/ed pieces and feature articles that highlight the achievements of students and faculty here at SCU. Limitations in reporting should not discourage anyone from participating in their community.



Steve Jacob



A vital and lively debate should not be limited to election time. The other day I surveyed past issues of *The Advocate* and discovered that published letters to the editor peaked during the 2004 presidential elections. As students of the law it seems our consideration of involvement should include more than national issues. Not every graduate of SCU School of Law will find themselves ensconced in the marbled halls of Washington, D.C., lobbying to affect national policy. Many, if not most, of us will spend our days interacting with clients, firms, or corporations. We will live our lives surrounded by friends and family, flesh and blood people, if you will. In the midst of our depersonalization of the human experience, shouldn't we wonder how to improve our state, city, neighborhoods, and families? That is the purpose of a publication like *The Advocate*, to provide a place to worry and to wonder about all levels of society.

If *The Advocate* is not immediate enough, or high tech enough, I am posting this column to my blog and I welcome feedback and

comments there. I would like to see a community of people involved and, to whatever extent possible, I intend to use my access to the media to encourage that involvement. You can submit letters to the editor at editor@theadvocate.us. This column and other musings are also located at thesiegeperilous.blogspot.com. Please shed the apathy and get involved. ■

The *Advocate* welcomes letters to the editor from all law students, faculty and administrators.

Please e-mail letters to editor@theadvocate.us.

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NBA Dress Code: Sure they look nice, but is it legal?

On November 1, 2005, NBA Commissioner David Stern instituted a minimum dress code for current players. The code requires business casual for players whenever they are engaged in team or league business (with the obvious exceptions). Additionally, a sport coat and dress shoes are required of players who attend games with a team and sit on the bench but do not play.

The dress code specifically prohibits:

- Sleeveless shirts
- Shorts
- T-shirts, jerseys, or sports apparel (unless appropriate for the event e.g., a basketball clinic, in which case they must be team-identified and approved by the team)
- Headgear such as 'do-rags
- Chains, pendants, or medallions worn over the player's clothes
- Sunglasses while indoors
- Headphones (other than on the team bus or plane, or in the team locker room)

To date, no penalties have been set but most likely they will be in line with current player fines for misconduct.

The most intense controversy stems from the exclusion of accessories such as 'do rags, chains,



Ahamed
Iqbal

and pendants. This prohibition, some say, indicates an intent to discriminate against limited groups of players. "They want to stay away from the hip-hop generation," said Golden State Warriors guard Jason Richardson.

One of the most vocal critics of the new policy has been Allen Iverson of the Philadelphia 76ers. "They're targeting my generation — the hip-hop generation," Iverson said in a recent television interview. Iverson has more than just his sense of individuality to worry about, however. Iverson often uses public appearances in connection with the NBA as opportunities to debut new styles from his clothing line. This new dress code may lead to missed marketing opportunities for the NBA star.

The new dress code highlights cultural and generational conflicts between the NBA and its patrons. The average fan in the stands is generally older, less wealthy, and has significantly different life experiences than the average player on the court.

Legally, the NBA is on solid ground with the new dress code. Courts generally agree that an across the board policy with a reasonable and legitimate business interest is an acceptable business requirement. The broad language and general applicability of the NBA code removes the appearance of discrimination and makes the code more a business decision than a cultural one.

Stern instituted this policy in large part because he felt the reputation of the league's players was "not as good as our players." The logic behind the NBA dress code, Stern contends, is the same as that of a number of companies and organizations who implement dress codes to maintain or improve their public image.

It remains to be seen whether the dress code will improve the image of the players or the league in general. As with any business decision, there is a risk that catering to the needs and desires of one segment of customers may alienate another. ■



Supreme Court Nomination

Will Samuel Alito's nomination stand the test of partisan politics?

Meg vanSteenburgh, staff writer

Well boys and girls, here we go again. After President Bush's first Supreme Court nominee stepped down amidst allegations of cronyism due to her complete lack of qualifications (or her strong ethical stance on not revealing privileged White House communications, depending on which way you vote), Bush has put forth a new nominee this month.

Judge Samuel Alito, quickly dubbed "Scalito" or "Scalia Light" by the left, will throw his hat into the ring to vie for one of the top nine judicial appointments in the land. Qualifications will certainly not be a problem for this 3rd Circuit Appeals judge, a post he's held for the past fifteen years.

The son of an Italian immigrant, Alito was educated at Princeton and received his J.D. from Yale in 1975. He was a member of the Army ROTC program at Princeton and was discharged in 1980 as a captain. Alito first came to Washington as an assistant to the solicitor general during the Reagan administration. He then returned to New Jersey with his wife in 1987 to be the U.S. attorney for the District of New Jersey and raise his two children. He was appointed to the 3rd Circuit Court of Appeals by Bush's father in 1990.

Interestingly enough, in his 1972 Princeton Yearbook entry it reads, "Sam intends to go to law school and eventually warm a seat on the Supreme Court." So, for many in Alito's family this nomination was a foregone conclusion. His mother has even been quoted as saying that he was "upset he didn't get there in the first shot" before Ms. Miers.

His most noteworthy opinion is his lone dissent in the case of *Planned Parenthood v. Casey*, in which the 3rd Circuit struck down a law requiring women to notify their spouses before getting an abortion. It is this decision which prompted Jon Stewart, of *Daily Show* fame, to note that "Scalia Light" is an appropriate nickname because he has "all the abortion restrictions, and half the fat". The Supreme Court, in a 6-3 ruling, struck down the spousal

notification, but Chief Justice William Rehnquist quoted from Alito's opinion in his dissent.

Alito professes to be a strict constitutionalist, not interested in legislating from the bench. In a May 2005 profile in *The Newark Star-Ledger*, Alito said, "Most of the labels people use to talk about judges, and the way judges

decide [cases] aren't too descriptive. Judges should be judges. They shouldn't be legislators, they shouldn't be administrators."

Also, in 2000, Alito joined the majority that found a New Jersey law banning late-term abortions unconstitutional because it did not include an exception for when the mother's life was endangered. Alito's colleagues insist that the "Scalito" nickname is incorrect, and that in style and substance Alito is more likely to resemble a case-by-case conservative like newly minted Chief Justice Roberts, rather than a philosophical ideologue like Justice Scalia.



photo from www.uscourts.gov/ttb/july02ttb/unpublished.html

With a united Republican front behind him, Alito's confirmation will be hard to block. With this much judicial experience and the positive endorsement of several Democratic senators even a filibuster will be a long shot. Sen. Joseph Biden, Dem. DE, has reserved his judgment of Alito until after the hearings, but believes that "the probability is that [a straight up or down vote] will happen".

However, other Democrats have raised the prospect of filibuster until they get a better sense of where Alito will stand on important social issues where O'Connor has been the swing vote. Issues such as privacy, police powers, and rights of the disabled will be popular topics at Alito's confirmation hearings which are set to begin January 9, 2006. Of the eighteen members of the Senate Judiciary Committee, ten Republicans and eight Democrats, none have expressed any doubts about Alito's qualifications. The mood on the Hill is optimistic that the bench will be full by the time the snow melts. ■

"Judges should be judges. They shouldn't be legislators, they shouldn't be administrators."

Samuel Alito

Is Intelligent Design another scientific theory or Creationism in disguise?

Roopali Malhotra, staff writer

Two states, Kansas and Pennsylvania, are currently dealing with the issue of teaching “intelligent design” alongside evolution in public schools, following a trend which began in Ohio in 2002. While the issue in Ohio and Kansas limited itself to each state’s board of education, the issue in Dover, Pennsylvania, made its way to federal district court in *Kitzmiller v. Dover Area School District*, with both sides recently concluding six weeks of expert witness testimony regarding the merits of the theory.

The theory of intelligent design has been gaining momentum over the past decade by a number of academics with solid, traditional science training, who maintain that this theory is supported by both microbiology and mathematics. They differ from fundamentalist creationists in that they accept the Earth is more than the Biblical age of 6,000 years old and also that some species do change,

slightly, in a process known as micro-evolution.

Intelligent design is simply creationism wrapped in pseudo-technical language, and... is simply bad science.

They differ from evolutionists over a process known as macro-evolution, the transformation over time of a species into another species. They claim this theory of evolution cannot account for either the broad diversity of species, or the complexity of even the most miniscule organisms which exist today.

Intelligent design claims that various forms of life began abruptly through an

intelligent designer, with their distinctive features already intact, e.g. birds with wings, beaks, and feathers. However, these theorists insist they do not necessarily call that intelligent designer God. They do not tie their theory to any sacred text or the creation account in Genesis, although intelligent design theory admittedly claims a type of “divine spark.” Because of the lack of referral to a specific religion, these theorists are seeking to have this concept worked into the science curriculum of public schools.

Those subscribing to the theory of evolution claim intelligent design is simply creationism wrapped in pseudo-technical language, and state it is simply bad science which does not stand up when held against Darwin’s theory of evolution. Biologists claim the proponents of intelligent design display either ignorance or deliberate misrepresentation of evolutionary science.

Evolutionists are particularly frustrated with the timing of this debate – given the backseat the United States has recently taken to countries such as South Korea in the realm of cloning and stem cell research. From their standpoint, Darwin’s theory has been more than proven with strong DNA analysis and fossil evidence.

Furthermore, evolutionists believe any reference to a creator, an intelligent designer, or a divine spark constitutes a reference to God and, therefore, religious theory, which constitutes a violation of the separation between Church and State if taught in public schools.

Over the past fifty years, the United States Supreme Court increasingly held in favor of evolutionists and against creationists with respect to their theories being taught in public schools. In 1987, the Supreme Court eliminated the teaching of the biblical account of creation in public schools altogether, holding that doing so would violate the constitutional ban on establishment of an official religion. The Supreme Court has never heard a case regarding intelligent design, however, which is why *Kitzmiller* is so significant.

This case is the first of its kind to be argued in federal court. The suit was brought by the parents of children in the Dover school district who opposed the

district’s addition of intelligent design to the science curriculum. This policy change directed the superintendent of schools to enter ninth-grade biology classes at the start of the semester and read, in part, the following statement:

“Because Darwin’s theory is a theory, it is still being tested as new evidence is discovered. The theory is not a fact. Gaps in the theory exist for which there is no evidence... Intelligent design is an explanation of the origin of life that differs from Darwin’s view. The reference book, *Of Pandas and People: The Central Question of Biological Origins*, is available for students to see if they would like to explore this view... As is true with any theory, students are encouraged to keep an open mind.”

In their submissions to the Court, both parties conceded that the applicable test to ascertain whether the challenged policy is unconstitutional under the First Amendment is that of *Lemon v. Kurtzman*. Under the *Lemon* test, a government-sponsored message violates the Establishment Clause of the First Amendment if: (1) it does not have a secular purpose; (2) its principal or primary effect advances or inhibits religion; or (3) it creates an excessive entanglement of the government with religion.

Plaintiffs argue that the school board’s policy violates the first two prongs of the *Lemon* test; what they must show, then, is that the Dover area school board’s decision would have an unconstitutionally religious purpose and effect.

The plaintiffs in *Kitzmiller* were joined by the American Civil Liberties Union and Americans United for Separation of Church and State, with support from the National Center for Science Education. The Dover school board is being defended pro bono by the Ann Arbor, Michigan-based Thomas More Law Center, which says that its mission is to defend the religious freedom of Christians.

The case is being heard without a jury in Harrisburg, Pennsylvania, by U.S. District Judge John Jones III, whom President Bush appointed to the bench in 2002. Given what some describe as the President’s “Christian politics,” concern regarding judicial bias has been expressed.

Thus far, it seems this concern is unnecessary. Judge Jones, in fact, denied the defendant’s motion for summary judgment in late September, holding that “genuine issues of material fact exist regarding whether the school board’s policy has a secular purpose and whether the policy’s principal or primary effect advances or inhibits religion.” Additionally, the definitive nature of this case, as well as the appeals process, will help to diminish, if any, judicial bias.

A ruling in *Kitzmiller* is expected no later than January. Whether it will follow in the footsteps of the Ohio state school board’s decision of 2002 and allow an inclusion of intelligent design in public education is unclear.

In the meantime, the intelligent design issue is expected to arise in approximately twenty other states, including traditionally liberal ones such as Michigan and New York. Whether the debates will remain limited to school boards or will be carried out in court is yet to be seen, but it is quite possible the Supreme Court will need to weigh in on this issue in the near future. ■

The theory of intelligent design has been gaining momentum over the past decade by a number of academics with solid, traditional science training.

Eating Around Japantown:

Discovering the Cuisine of San Jose's Japantown

Growing up in a small town, on relatively conservative cuisine, the only thing that I knew of Japan until the age of 13 was that all Japanese exchange students were incredibly nice, relative to my older sister, and that consuming raw fish would likely kill me. A psychotic episode by a friend's ex and some culinary experimentation has proven me doubly wrong.

*In college I lived with a sushi chef (now chef-owner of **Tokyo Go Go** in San Francisco's Mission District, tokyogogo.com) and a fisherman. Needless to say, life was good and sushi was plentiful. Living in San José I have taken my taste for Japanese cuisine to the streets of Japantown. It offers a chance to dine in a nice atmosphere at minimal costs. Located just North of Downtown San José, generally around Jackson Street in between 1st and 7th, Japantown is not huge but is full of surprises. Wandering the streets will reveal stores selling Japanese goods, Taiko drumming, free Salsa lessons, and of course a lot of food. Here are a few favorites, I encourage you to find your own.*

Vince Cogan, entertainment writer

Hukilau

One of my best friends is native Hawaiian and in honor of him I thought I would precede this review with a pot-shot at the Japanese who have purchased a good portion of Hawaii – but I changed my mind. Japanese and Howlies alike feel welcomed at this Hawaiian-owned establishment. Sample the different Poke (pronounced *po-keh*, sort of like Hawaiian tapas) such as the Ahi Poke (with Tuna; \$9) or Tako Poke (with Octopus; \$10). For a full plate with macaroni salad and two scoops of rice, go for an entrée like the Hukilau Chicken – deep fried chicken in a special “Aloha Shoyu” sauce with sesame seeds for \$7.75. If you are feeling like a real Ho – Don Ho, that is – then give the Spam Musubi a shot (effectively, this is a Spam sushi roll; \$2).

Food aside, the real draw to the Hukilau has got to be the bar which offers drink specials at least two nights a week. Wednesday is ladies night... oh yes, it's ladies night. And how can the feeling not be right with half-priced drinks? All genders are graced with the half-off discount on Thursdays which generally draw a big crowd. Try the specialty drinks like the Gecko (Parrot Bay Rum, Pineapple juice, splash of Midori) or the Pineapple Head (Absolute Mandarin, Midori and Pineapple Juice) full priced at \$5.50 and \$5 respectively. That's cheap enough to get even a 1L to hang loose. **230 Jackson St., just North of 5th.**



ENTERTAINMENT

Sushi Maru

While I generally avoid the sushi boat/conveyor belt phenom, I do make exceptions to the rule. Sushi Maru is the lone exception in Japantown for me. It has all the elements I need: fresh fish and uber-cheap prices. Rolls range from \$1.90 to \$4.90. California rolls are a mind-blowing \$1.50, unagi (freshwater eel) a steal at \$2.90, spider rolls (deep fried softshell crab) fill you with joy at \$3.90, and toro rolls (fatty tuna – the portion around the collar of the fish) are \$4.90. You can't help but challenge your palate to a Mickey Roll (salmon,



whitefish, and asparagus) or a Sushi Relleno (tuna, jalapeño, and tomato) each deep-fried and set at \$2.90. If sushi isn't your bag, fear not. Chicken, beef, or salmon teriyaki lunch combos (includes rice, soup, and salad) are filling at \$7.25. Later in the night, precede your visit to 7 Bamboo (see article, **Krazaoke**) with a dinner combo including the same as above plus tuna and salmon sashimi for \$11.50. Maru also has a decent array of beers, sake, and shochu (a wonderfully flavorful Japanese liquor). **262 E. Jackson St., just East of 6th.**



Minato

Getting rave reviews from nearly every amateur critic in San José, Minato is a Japanese restaurant with flare – and a wall full of toys that you can buy on your way out. Yes, as with many hidden gems of the culinary world, Minato is “special.” However, for cheap, fresh sushi you can hardly beat it. Full sushi dinners are as cheap as \$10 and a sashimi appetizer with 10 pieces of Ahi (Yellowfin Tuna) is a mere \$6.25. Sake is also reasonably priced. **617 N. 6th St., just North of Jackson.**

photos by Vince Cogan

Gombe

The place for lunch lines the likes of which you won't see outside of Manhattan, Gombei is the place to go for a proper Japanese lunch. Japantown locals, courthouse workers, and nearby employees in-the-know linger in line to crowd the bar or await the next open table. Gombei does not serve sushi as a regular menu item but focuses on other elements of Japanese cuisine. Combination lunches (including an entrée, salad, and rice) are around \$8.50 and offer options such as a Chicken Teriyaki & Deep Fried Shrimp plate which will fill you for days. Donburi (dishes served over rice) and Udon are also available for around \$7.50. A small word of caution: don't order the mackerel unless you like your fish extra fishy. **193 E. Jackson St., East of 4th.**

KRAZAOKE:

Or how to skin a cat in three notes

Vince Cogan,
entertainment writer

Looking around the room, you can't help but ask yourself if you have stepped into the Twilight Zone. The brown 70's furniture is complimented with bright lights, a disco ball, and the "beckoning cat" (the little waving kitty) bringing good fortune. Then there are the servers: an older, Zen-like Japanese couple who arbitrarily assign a cost to your bar purchase; a haggard, Japanese rockabilly waitress; a crazy, inevitably drunk Asian guy who goes by the name "Whiskey"; and the bloodshot eyes of the guy running the Karaoke machine... the one they call "Toker." However, the magic of this place is that within minutes of entering, you are just another member of the most mismatched crowd in the South Bay.

The karaoke bar is called 7 Bamboo (www.7bamboo.com) and it is truly a San José establishment. On any night (and especially on the weekends) it is "the place to be" for



A group of partiers sing at 7 Bamboo.

photos by Vince Cogan



those with a voice... albeit often one that you would never want to hear sing. But that is exactly the point. The place is an auditory anarchist's paradise where anyone can go to not be judged - not by your clothes, not by your hair, not by your preference in drinks, and certainly not by your singing ability. The crowd will cheer you all the same. The downside is that you can't judge

either. When "Whiskey" decides its time to pull his shirt up over his head and flash a nipple, you have to roll with it.

...But that is not all folks.

7 Bamboo broadcasts, live, their performances on their Internet site. For friends and family in distant lands, there is nothing like seeing their loved ones making an ass of themselves to brighten their day. And for those of you who are the suckling on a trust fund, your parents will know that their money is being well spent.

After finals are over, I can only recommend that you put on your dancing shoes, grab a few friends, and make a day in your life a little less ordinary. Head to 7 Bamboo, pick your favorite song, sing like you have never sung before... Because some people in there really haven't. Take a walk on the wild side - which at 7 Bamboo is on the inside.

7 Bamboo is located in San José's Japantown, 162 E. Jackson St.

BGLad, from 1

Professor June Carbone, BGLad's faculty advisor, briefly explained the concept. "I think that the position of the university generally on all kinds of controversial issues has been absolute commitment to the expression of different viewpoints, and if there is one view strongly expressed...and institutionally supported, there ought to be an opportunity for other views to be strongly expressed and institutionally supported, and I think this is an example of that." Amelioration or not, BGLad took thirteen students, the largest student delegation in attendance, to Lavender Law.

"All the schools were very impressed and really surprised to see us there because last year we only had two students go," Bentley said. "They all knew by the third or fourth day that we were the biggest school there."

The size of SCU's delegation also impressed employers, said Bentley. "[They] specifically noted that Santa Clara had a large presence and they were really excited that we had all come down. Some of them were graduates and were excited to see such a contingency."

Not only did SCU students make themselves known to employers and other delegates at the conference, but they took advantage of the day long career fair which featured over fifty employers who actively hire LGBT lawyers and law students. "It is an important conference," Polden said,



Delegates on the last night of the conference.

photo provided by Jackie Bentley

"because it assists our students in learning about occupational and career opportunities; ones that some of our students would not otherwise learn about and have the opportunity to explore."

In addition to conversations and interviews with employers, delegates attended numerous presentations and panels over two days. Panel topics ranged from LGBT immigration challenges to strategies for combating the Solomon Amendment to estate planning and family law. Between the academic discussions, delegates mixed with other conference attendees, toured San Diego, and enjoyed the company of "Big

Girl," their openly gay shuttle driver.

On Saturday, David Tsai and D'Arcy Kemnitz, member of the board of NLGLA, hosted the first student leaders meeting at Lavender Law. Members of SCU's delegation helped moderate discussion designed to exchange ideas and promote organization of LGBT law students. The meeting included conversations about amelioration of Solomon Amendment compliance, strategies to deal with conservative groups on campus, and methods for communication between schools.

In enumerating the benefits to students Professor Carbone said, "I see that sense of involvement, contacts, and an awareness of a greater universe beyond the four corners of the law school tremendously exciting and valuable."