

# Cal Western Attendance Policy Finally Explained

ELENA SHAYGAN  
MANAGING EDITOR

Ever wonder why the kids over at University of San Diego Law School get to slink in and out of class as they please without having to worry about an attendance sheet? Ever wonder why you're allowed eight absences for some classes and not even allowed to use the restroom without an absence in others? Here are your answers.

According to Dean Aceves there are three main reasons why the attendance policy is the way it is.

The first is because there are ABA standards. The ABA requires law students attend at least 80 percent of their classes. They also conduct a site visit every seven years to ensure the school is complying with the requirements. However, how the school chooses to enforce the requirements is at the school's discretion. Cal Western has been its current attendance policy for decades and takes it "very seriously." Other schools monitor this on an "honor code" basis.

In order to help the students stay notified, they do provide an email to students who are at or near their maximum allowable absences. According to Dean Aceves, they do so because "it is very important for students to be aware."

In addition to the ABA requirements, Dean Aceves says there is also the practical aspect to the attendance requirement. If you're missing 20 percent of your classes you are "not going to be able to process the material" and are "missing the classroom experience."

Lastly, there is the financial aspect. If you're taking a full load of class you're likely taking about 13 units. If you take your 13 hours per week and multiply it by the 15 weeks we have in a trimester, you're looking at 195 hours of class time. With tuition being \$21,300, you're looking at about \$109

per class. So next time your alarm goes off at 6:30am for your 8am evidence class and you're thinking about how nice it would be to just stay under the covers, you may want to ask yourself if it's worth a hundred bucks.

So what happens if you still want to miss class? How strict is this policy exactly? The enforcement of the attendance policy depends on your circumstance. If you really have just slept in a few times too many and hit your max then you're in trouble. In that case you would have to just receive a 50 in the class. Not pretty, but that's the worst case scenario.

If you've actually experienced some medical illness, family issue, or other reasonably tragic experience that forced you to have to take that many absences the school is "willing to work with you." Dean Aceves expressed, however, that it would be most helpful if you didn't wait until you've already hit the absence limit. "Students need to talk with us before these problems arise," said Dean Aceves. So if you have an issue, come talk to him as soon as you possibly can.

You may have noticed that some classes are more strict on attendance than others. The 80 percent requirement and attendance sheet enforcement are MINIMUM requirements the school sets to comply with ABA. That means your professors are allowed to have additional attendance requirements. Some of these include mandatory attendance or even absences when you leave the room for a second.

The school gives professors this attendance discretion because attendance can "effect the dynamic of the class," according to Dean Aceves. The only requirement is for the teacher to disclose the policy in the beginning of the trimester. However, if you have a medical condition or unique circumstance, you may be accommodated.

# Best CWSL Talent Show Yet

BRIAN HORAN  
EDITOR-IN-CHIEF

On November 15th, California Western hosted our annual talent show. This year's event was the biggest and, in this writer's opinion, best yet. The show featured 18 performances and talents ranging from song parodies to a violin concerto.

It was not only the number of performers that made it a big show, but also the impressive size of the audience. An estimated 200 people attended the event and many of them managed to stay until the final act: a rousing performance by Ashcraft and the Tortfeasors. The band performed a medley of "Friday" songs (Think: Katy Perry and Rebecca Black) and managed to close the night on a high note, so to speak.

Still, the performance wasn't enough to ensure that the Tortfeasors would repeat as talent show champions. That honor went to Marianne Leleuf, who performed a beautiful violin concerto by Tchaikowsky. Taking second place was DJ Dinari Lee on the ones and twos, who, if this was a bravo show, probably would have won fan favorite. Third through fifth went to Nereida Melgarejo for her rendition of Adele's "Someone Like You," Salina Bristol, who belted out "No One" by Alicia Keys, and Alex Webb, who made the ladies swoon with "Your Song" by Elton John.

There were too many great performances to list them all, but one of the more tender moments was provided by Bobbi Weaver when she strummed her guitar and sang "Someone to Watch Over Me" while a slideshow promoting San Diego pet adoptions played in the background. Following Bobbi were two comical acts from Joy Worden and Brendan Daly. Joy taught us all about the legal pratfalls of being Santa Claus in her poem based on The Night Before Christmas, and Brendan put a hilarious spin on law school debt while reminding us that our elevator doesn't yet reach the 4th floor.

Overall, the event was a huge success. Much thanks must be given to organizer and performer extraordinaire, Ben Pezner, and to his Talent Show Committee: Kevin Magennis (Master of Ceremonies), Cedric Anderson, and Michelle Ryle. Also, special thanks to Donna Blain, who not only donated many of the prizes, but also did a fantastic job catering the event. And thanks are due to our esteemed panel of judges, Prof. Stiglitz, and Prof. and Mrs. Yeager, to the CIP band for keeping the evening moving with their music, and to John Lancaster for setting up the room and providing the A/V equipment.

Though this year's show will be tough to top, we look forward to next year's show.

# SUPREME COURT TRIVIA

HEATHER MOSS  
COLUMNIST

Welcome back to the Supreme Court beat. The month of December is a slow time for the Supreme Court, unlike the CWSL law student, so we thought we would make this month's article fun. This month, I have researched fun facts about the justices. You can be hit around the holiday table with USSC trivia. Here we go, in order of seniority:

1. Antonin Scalia- born in 1936, appointed by President Ronald Reagan in 1986. Justice Scalia's father was a Sicilian immigrant, and his mother was a child of Italian immigrants. Even though he was an only child, he turned out to be quite the family man. He met his wife, Maureen McCarthy, on a blind date, and had 9 children.

Quote: "This case, involving legal requirements for the content and labeling of meat products such as frankfurters, affords

*In light of finals the usual Supreme Court Beat has been replaced with this fun little column... See more on the back!*

a rare opportunity to explore simultaneously both parts of Bismarck's aphorism that 'No man should see how laws or sausages are made.'"

2. Anthony Kennedy- also born in 1936, and appointed by Ronald Reagan two years after Scalia in 1988. While Kennedy is known as the swing vote in the court, he has been described as "straight-laced" or a "goody goody." During his college years, Kennedy traveled around Europe one summer in a red Volkswagen. His father gave him a bottle of whiskey to take on the trip, which he used only for medicinal purposes (gargling with it when he felt a cold or sore throat coming on).

Quote: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mys- See SUPREME on page 12...

# Dear Occupy Movement: It's Now or Never

BRIAN HORAN  
EDITOR-IN-CHIEF

An orange cloud of chemicals has breathed life into what was seen as a dying protest movement. What started as a small group of protesters on Wall St. in New York has spread like wildfire across the United States and around the globe. What many people do not know is that it was actually started by a Canadian activist group who call themselves Adbusters. While the movement is largely directed at addressing economic inequality between the haves and have nots, it has also spurred debate and protest regarding a wide array of other social issues.

On a recent trip to Occupy San Diego, it became readily apparent that a large part of the "99%" have no idea what the movement actually stands for. This is because there is no leadership to be found. Protesters mill about carrying signs calling attention to issues from the legalization of marijuana to the condemnation of Israel for being "responsible for 9/11." Others take breaks from the tough work of protesting to update facebook statuses on their macbooks while leisurely drink pints at Downtown Johnny Brown's. It is largely due to this lack of organization that many Americans refuse to support the Occupy movement. However, due to a recent outbreak of police brutality, the tide may be turning in favor of the protesters.

On October 25th, in Oakland, California, Scott Olsen, a former Marine and Iraq War veteran was shot in the head with a tear gas canister. Those who went to his aid were scattered with a flash-bang grenade.

On November 15th, in Seattle, Washington, police pepper sprayed 84-year-old Dorli Rainey, a former mayoral candidate and retired school teacher. Mrs. Rainey stands all of four feet, ten inches tall. Among the others sprayed by police were a priest and a pregnant teenage girl.

On November 18th, in Davis, California, Chancellor Linda P.B. Katehi ordered U.C. Davis students to leave the campus quad. When those students refused, campus police, including the now infamous Lieutenant John Pike proceeded to pepper spray the student protesters producing perhaps one of the most recognizable photos in recent memory.

With all this police action taking place and the indelible impressions created as a result, the Occupy movement is starting to, once again, gain momentum when it appeared to be waning. In order for the protest to not die in vain, the movement must address several key issues to become more organized.

First, there must be true leaders of this movement. If the movement is to have any success, it must have charismatic and passionate leadership capable of guiding these wayward protesters. They must be able to articulate the message and make sure that all activities are peaceful and law abiding. As this article goes to print, there are Occupy camps in more than 80 countries. The people associated with the movement here must focus first and foremost on the problems in this country. Solidarity with our fellow nations is fine, but problems in other countries are subject to their own sovereign laws.

Second, there must be a clear and concise message. Some of the various goals of the Occupy movement are to reform Wall St., change banking policy and upset the monopoly that large corporations and industries have on lobbying Congress. These are admirable, yet extremely complex, goals which need to be fully explained to protesters. Further, it's not enough to simply complain about injustice; there must also be a plan of action to fight it. As of now, there has only been a list of demands issued. Camping out in front of city hall isn't going to magically get the powers that be to acquiesce to these demands.

Last, the movement must expel those protesters who are not a part of the Occupy movement. This is not about medicinal marijuana, or any number of issues that are now being espoused by "the 99%." It is about economics, plain and simple. All other issues, valid or not, only serve to discredit and destroy the cause for which the protesters are fighting.

When and if the Occupy movement can accomplish these things, it can serve as a tool to help correct a paralyzed and fragmented political system. Until then, it will simply be their 1%, the 1%, and all of us watching from outside the ring, waiting for the inevitable knockout punch.

OPINION

# School Bullying and Religion

LEAH REEVES  
STAFF WRITER

Imagine if people were legally allowed to bully and harass you simply because of their opposition to your hair color, eye color, gender, or sexual orientation. Well stop imagining, because if Michigan republicans in the state’s congress had their way, that activity would be acceptable, as long as the bully’s reasons were of a religious nature.

It is no secret that school bullying is alive and well. This disgusting practice is the most frequently reported discipline problem at schools in the U.S., according to The National Center for Education Statistics, U.S. Department of Education (<http://nces.ed.gov>). In addition, most of us are well aware that the implications of such abuse have resulted in a lot of children and young adults taking their own lives as a way to escape the torment. According to the website for the show Countdown with Keith Olbermann, “There are at least 10 Michigan children in the past decade whose deaths are directly attributable to bullying.”

A group of republican lawmakers in Michigan were working on a law that would make it illegal to bully; however, they added this atrocious language: “This section does not prohibit a statement of a sincerely-held religious belief or moral conviction of a school employee, school volunteer, pupil, or a pupil’s parent or guardian.” So essentially, as long as you have religion to back yourself up, then you are free to harass anyone you please.

I do not need to preach about the “separation of church and state” that is inferred in the Establishment Clause of The Unites States Constitution, nor about the freedom of speech given to us in the same Amendment. Rather, I want to focus on how it should NEVER be okay to harass anyone, for any reason, regardless of one’s personal belief system. I wholeheartedly believe in the right to religious freedom, as that is part of what this country was founded on; however, I do not support the right of people to practice hate and harassment when it infringes on the rights of others. Freedoms such as religion and speech are wonderful, but not if they can be used to hurt other people.

If you want to express your religious opposition to homosexuality in a church, that is fine, and that is your right. However, if you want to express that same opposition at school, directly to a person who is homosexual, and you want to do so in a harassing manner, well that is where I have a problem (as should everyone else!).

How many more children have to die by suicide before people wake up and realize that this is a serious issue? When will parents and educators teach children to have love and acceptance for all people, regardless of the their inborn traits or chosen beliefs? I may not agree with someone’s anti-homosexual opinions, but I respect the right to have those opinions and to express them under certain circumstances. But I do not support harassment due to religious beliefs.

I am a big supporter of individual rights and to the right of the pursuit of happiness (thank you, Declaration of Independence!), as long as your pursuits do not infringe on the rights of others. Harassing people for their sexual orientation (or anything) infringes on their right to the pursuit of happiness. And this should never be okay.

The Michigan republicans who tried to get this passed should be ashamed of themselves, trying to make anti-gay bullying a government-sanctioned activity. But, thankfully, we can all sleep well tonight, since the law did not gain enough support to pass.

# Terry Discrimination Lawsuit

CHANTE COLEMAN  
GUEST WRITER

One of my fondest childhood memories is a trip my family and I took to the U.S. Olympic swimming trials where a very close family friend, Alison Terry, won a silver medal and placed it around my neck in the stands. She is one of the fastest and strongest swimmers I have ever seen. In high school she dominated her sport. In 1990-1991, she was named swimmer of the year by San Diego coaches. At one point, she held six individual records in San Diego and later competed nationally, including her participation in the Olympic trials. On another occasion, she stood on a dais with Magic Johnson and Muhammad Ali at an event organized to honor them as outstanding athletes. She was also once featured in People magazine.

However, from 1992 to 2009, while Ms. Terry worked as a seasonal lifeguard for the City of San Diego, she claims she was repeatedly overlooked for promotions to a full-time position, not because of her lack of ability, but because of discriminatory practices against women by her employer. On November 18, 2011, a federal jury found that under both federal and state laws the City of San Diego Lifeguard Service discriminated against women and awarded Ms. Terry \$100,000 in damages. Following the verdict, Ms. Terry responded by filing a motion for injunctive relief asking the federal court to force changes in how the city hires and promotes lifeguards. She is the fifth female lifeguard who has sued the city in the recent past for discrimination and is the first to have a verdict because the other cases settled.

Ms. Terry’s attorney, Michael Conger, produced evidence showing that out of the ninety-four full-timed lifeguard positions, there are only six women (or 6.7%). At the same time, almost 27% of the seasonal lifeguards were women. These are the guards who work the summer months and are paid hourly with no benefits.

Ms. Terry told a reporter that this case is “one of the hardest things I’ve ever done.” But she hopes by winning she has paved the way for future women to be promoted in the department. She also said, “It was never about the money. It was about the City of San Diego, specifically the lifeguard service, really taking these complaints seriously and making a real effort to make some changes. That’s all this is about.”

Conger will bill the city \$1,000,000 in attorney’s fees. He has been the lawyer for all five of the female lifeguards who have filed complaints. He told reporters that while some changes have resulted from the previous lawsuits, little has improved for the female lifeguards. He stated further, “She sued basically to try to get it to stop and really to help women that come after her. She didn’t want anybody to ever have to go through what she had to endure.” Overall, it was proved that male lifeguards were informed of classes they should take and certificates to earn that would help them be promoted. The female lifeguards were not given that same information, creating hurdles that led to only males being promoted.

# Letter from the Editor

I’ve been struggling for the past several days trying to figure out what to write for my last Letter from the Editor. Okay, maybe I haven’t been struggling so much as avoiding writing it. For me, this letter isn’t just to mark the end of the year. Instead, it marks the end of my career here at Cal Western. For most people this would be a joyous occasion, but I must confess that I am truly going to miss it here. I’ll miss the great friends I’ve made, the professors who taught me so much, the support staff who have been there to help me make it this far, and of course, the staff of The Commentary, who took a crazy idea to turn our school paper into a monthly edition and actually made it happen. I’d also like to wholeheartedly thank our SBA President, Kevin Magennis, for trusting me to handle this job.

So as I sit here, with three hours of class and three exams to go, I can’t help but think back on my time here at Cal Western. Aside from just missing the school, which I know I inevitably will, I also wish that I had used my time more wisely and taken better advantage of the resources (human and otherwise) that CWSL has to offer. In fact, that has been the main purpose of what we are trying to accomplish at The Commentary.

In this issue we will give you some insight into one of the most valuable programs the school has to offer: the clinical internship program. Additionally, we will provide you with information on how to protect your online reputation and undo some of the harm caused by your wayward youth. In another article (especially

for 1Ls) you will learn that there are actually places to party after finals that aren’t called The Local. We all know you’ll still go there. We just wanted to give the more adventurous among you a few options.

These are just a few of the topics in store for you in this December/January issue of The Commentary. Flip through the pages and read the artichoke for a laugh, check out the pet competition, or spend a few minutes on our word search. We publish this paper to take you away from your outlines, highlighters, and case briefs, if only for a brief moment. It’s our gift to you: sanity.

In the words of Steve Jobs, there’s one last thing...

Enjoy this time in your lives. Please don’t look at this as hell, because when it comes time to graduate you’ll realize that you wasted three of the best years of your life being bitter and angry. Law school is a time for you to challenge yourself, both mentally and personally. What it is not is a be all end all that defines who you are. Remember that. You are not your Crim Pro grade, your G.P.A., your internship, or your student organization. Do those things that make you feel happy and fulfilled and then don’t worry about the rest.

These past two years and four months have been some of the best times of my life. I would stay forever, but eventually I suspect they’ll stop loaning me money. So instead, it’s 74 and out the door for me. And you know what? I’m okay with that.

Enjoy the issue.  
Brian Horan  
Editor-in-chief

**Please direct all letters, corrections, articles or club messages to Managing Editor Elena Shaygan at [aeshaygan@gmail.com](mailto:aeshaygan@gmail.com) by the third Friday of the month.**

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Negotiation winners Anette Radonski (left) and Greg Gianoni (right).

## Negotiation Team Takes Another Win

BRIAN HORAN  
*EDITOR-IN-CHIEF*

On November 5th and 6th, two teams from California Western competed in the ABA Regional Negotiation Competition. In what has become a regular occurrence, our school was once again represented in the final round. The difference this time is that we won. 2Ls Greg Gianoni and Anette Radonski took home the top prize in the western regional, guaranteeing the opportunity to compete for the title of national champions.

The team, coached by Deputy City Attorney Dan Rawlins and distinguished alumnus Tracy Nation, was extremely well prepared due in large part to the other team of competitors, Anna Burnett and Lauren Sheppard (both 3Ls). While Burnett and Sheppard did not make the finals of this competition, both have demonstrated continued success in both inter- and intra-school competition.

This win caps a tremendous streak for the negotiation team. Having now made the finals in four of the last six competitions it has entered, the team is now poised for an even bigger and better 2012. Radonski and Gianoni will soon begin preparations for ABA Nationals on February 3rd and 4th in New Orleans, Louisiana. We at The Commentary wish them good luck and are confident in their ability to bring home a championship to Cal Western.

Additionally, the ADR traveling teams will now have a summer boot camp similar to the one taught by Professor Conte for the trial teams. The class, taught by Dan Rawlins, will not be limited to Distinguished Advocates, but one way to guarantee a spot will be to demonstrate success in one of the school's negotiation or mediation competitions. For more information on dates of upcoming events, be sure to look for emails from Moot Court Honors Board and look for posters in the lobby of the 350 building closer to the competition dates.

HEY COMMENTARY FANS!  
Do you have something to say...  
...about our school?  
...about our student body?  
...about the law?  
...about sports? bars?  
sports bars?  
...about something completely  
random but cool to you?  
Then come to our  
open meetings!  
:: THURSDAYS AT 6 ::  
:: 2ND FLOOR COUCHES ::  
:: NO RSVP REQUIRED! ::

## From Bathroom Walls to Facebook Walls: What is the Internet Saying About You?

SARENA KUSTIC  
*STAFF WRITER*

Forget your resume; a Google search is far more thorough. And it's no secret that employers are searching online to learn more about the person behind the resume. In today's highly competitive job market, your online reputation can be the difference. This is an issue specific to today's job seekers. Right now, there's a generational gap because a majority of employers aren't from the "Social Media" era. Older employers aren't entirely sure how to evaluate one's online reputation. So what should be disregarded (like the writing on the bathroom wall) is now shaping employers' first impressions of you. Because you don't always have control over what's publicized online about you, creating a professional online image is easier said than done. However, there are steps you can take to manage it.

For starters, take down the beer bonging picture from that party last Fourth of July. Career Services has warned you that your Facebook profile picture should display a professional image, an image you wouldn't mind the legal community viewing. This means that all you have to do is log in to your social media account, change your default picture, and set your profile to private. Problem solved, right? If you think it's that simple, go ahead and Google yourself.

You'll soon understand what Professor Klein meant when he said, "Online information is never truly deleted (and) anything you say, or write, or post, can and will be used against you (even if it's a joke or a lie)." Of course, he was just speaking in the context of admissible hearsay evidence, right? Yes and No. Yes, given that he teaches the Federal Rules of Evidence. And no, because the warning applies to everyone desiring a professional image. Professor Klein confirmed the importance of a favorable online image by explaining, "I never proceeded to litigation without Google-ing my client, my opponent, and opposing counsel, first." Today, online searching is an essential practice for all advocates, and it's likely the reason why firms are searching their applicants.

To reiterate Professor Klein's point, online postings are never erased. That default profile picture you replaced had a thumbnail image that matched it. This means a smaller version of the image is still publicly available and will appear when a search query matches your profile name (i.e. your name). Better clarified by GoogleGuide.com, "Google takes a snapshot of each page it examines and caches (stores) that version as a back-up." While its possible to have the "snapshot" removed, Google will only do so after the original image has been removed from the host site.

This presents a second, more difficult issue. You're not always the one controlling the host profile. For example, there are a number of websites called, data aggregation sites. This type of website collects publicly available information about you and provides the compilation to anyone willing to pay, such as employers conducting background checks (or stalkers). Basically, any personal information which was once public (like back when you weren't familiar with the security options in your profile editor) has been nicely packaged for anyone's review, even though you've since changed your profile to private, or no longer use Myspace. And, of course, you can't just delete your name, address, and photo from these websites.

More alarming is a website (I choose not to advertise), which allows anyone to publicly and anonymously comment about any Facebook or Twitter user. This is an exact illustration of Professor Bohrer's defamation lecture. In class, he described the Internet as the "proverbial bathroom wall." Websites like these now associate that "bathroom wall" with your Facebook profile. Therefore, it's associated associated with the name on your resume and business card.

Putting aside the legal avenues to deter defamation and prevent cyber bullying, what remedy is available when truthful but (subjectively) sensitive information is made public without your consent? Odds are, you won't find one. I asked Professor Klein, if he had any advice for current job seekers. His response was, "Don't let what others say (or publicize), change you." As he agrees, it's inevitable that someone, somewhere, will post something, not in your favor. The way he sees it, "We're all flawed and technology will force us to be mindful of that." He's right, you shouldn't really stress over that which you have no control of, but my inner control freak just wasn't satisfied.

I spent over a week searching solutions for everyone who decided to go to law school, years after becoming members of the social media world. While I'm still awaiting several responses to my inquiries, I've received a few suggestions you may find helpful.

One good idea is to contact such sites directly and ask them remove information about you. However, it can be difficult to find a website's contact information, or get a positive response to your request. I browsed the Consumer Affairs website and found a complaint forum dedicated to one particular data aggregation site. Although consumers in this forum seemed more concerned with safety implications than online reputations, they still sought the same end. One consumer wrote, after asking the site to remove her info, "(They were) quick to tell me that they would not & have every right to make my information public as they had retained my information from public websites." More surprising is another consumer's story, "I contacted the site 5 times arguing back and forth to be removed from their website. I have a stalker who found me again recently (thanks to them) and I have explained the situation to them. They asked for proof such as Order of Protection to be scanned and emailed to them." This demonstrates how difficult it can be to control your online reputation. Difficult, yet not impossible.

For those with severely negative online reputations, there are companies which claim they can help. I put in an inquiry with Reputation.com and received a response the next day. I spoke to a representative over the phone, who took the time to personally explain exactly how it works. He confirmed that there's no such thing as a delete button for the Internet, so the only option is content suppression. Translation, Reputation.com will feed the Internet with more positive, interesting, and relevant information for a starting price of \$1000. This pushes back negative info, so the first page of the search results (the area most people don't browse past) will be all in your favor. Similar to painting over the bathroom wall, if you look close enough you can still read the writing, but at first glance you will miss it entirely.

I verified this content suppression idea with 2L Mike Federici (my friend and internet genius). Mike also suggested a less expensive route. "Starting with the most technical, you can create your own websites (www.yournamehere.com, www.firstinitiallastname.com, other variants thereof). These cost about \$10-20 a year to maintain, if you're just using them as splash pages for yourself. Along with creating this website, you should do what is called search engine optimization, or SEO. SEO is in high demand because it can be tailored to whatever you want, such as image search, scholarly writing search, news search, etc. In a nutshell, the website designer will use data from Google to figure out the relationship between what people search for and what they click on after that search. As an example, these programmers make sure that people who search for "personal injury attorney San Diego" will land on a specific page or very close to it. As an amateur, you can find guides online for very basic SEO. Or pay someone to do it, which probably won't be overly costly, if you consider it an investment in your future career. You could also take a drive down to any undergrad campus and look for where the computer science students live. Put up flyers offering a few bucks for basic SEO. I'm sure some broke kid will bite."

Another company called DeleteMe, claims to be able to delete any unwanted accounts for a small fee. Unfortunately when I checked out their services, the fee was a lot more than advertised and I'm still awaiting a response from them. For those who just need a simple thumbnail removed from Google images, after deleting the image from the host cite, Google has a Webmaster tool with instructions on requesting the removal. I'm still waiting to see the results of my own experiment, but according to what I've read (online of course), it seems to work. I also contacted several data aggregation sites. A couple of them responded within a day and provided me with instructions on how to remove myself from their site. Luckily, I didn't get any responses like the one's described on the Consumer Affairs forum. Lastly, for anyone with old social media, online dating, or networking profiles, that just never go away even though you deleted it years ago, here's a good idea. One site moderator suggests you log back in, change the profile name (to something other than your real name), delete all the personal information and photos, and then re-delete that account. This will prevent the account from appearing when your named is searched.

While shaping your online reputation into a more professional image may require a lot of time and diligence, the bottom line is it's not as impossible as it seems. The best thing to do is to get to work on it now. Search yourself periodically and see what's out there. Some information can be removed from search results within a week or two, and the rest suppressed. While your online reputation doesn't change who you are as a professional, it can impact an employer's first impression of you. Taking action now will certainly improve your image. At the very least, your self-awareness may provide a higher level of confidence as you walk into an interview. At most, you'll be in complete control of what is seen when a potential employer searches for you online.



# NEW IDEAS OF PLACES TO PARTY AFTER FINALS

GRACE GARNER  
STAFF WRITER

It's that time of year. Finals are almost upon us. We are exhausted and our brains are pushed to the max. Soon enough though, we will be taking that last final (as fast as we possibly can), and then it is time. Time to party! Here are a few places, other than The Local, that offer great food, drinks and ambiance. Legend: \$ - ten dollars and under, \$\$ - ten and up, \$\$\$ - 15 and up.



Photo from Yelp.com

**The Shout House**—Dueling piano bar! If you've never been to one, I highly recommend it. The piano players are extremely talented playing everything from Miley Cyrus to Billy Joel. The atmosphere is lively and the enthusiasm is infectious. Plan on staying the whole night; there are few people that make it out before closing time. Average fried food, but you'll soon forget as you down another hurricane while singing along to your favorite tunes. Bring extra cash to tip for song requests. \$5 cover before 7pm and \$10 after. Specials every night. Street Parking.

Price-\$\$.

655 4th Ave. Downtown, San Diego, CA 92101  
[www.theshouhouse.com/San\\_Diego/home.asp](http://www.theshouhouse.com/San_Diego/home.asp)



Photo from Yelp.com

A suggestion from my mom, and probably yours too—Skip the alcohol and get a relaxing massage at **The Knot Stop**, where first time customers pay only \$55 for an hour massage. Then follow it with a delicious cup of rosemary mint hot chocolate at **Eclipse Chocolat**. Your body and mind will thank you. Plus, your mom will be happy you chose to debunk the drunken lawyer stereotype.

Price- \$ to \$\$\$

1080 University Ave. San Diego, CA 92103.  
[www.theknotstop.com/index.html](http://www.theknotstop.com/index.html)  
[eclipsechocolat.com](http://eclipsechocolat.com)



Photo from Yelp.com

**Cali Party Bus**— Uninterested in the usual restaurants, bars, and clubs? Make your own! Get together a group of friends and split the cost of one of the best party bus experiences in SD. Bring your own booze, snacks and music to custom make a finals party. They can pick you up at the school and you can plan your own route or just tell the driver to surprise you. Just watch out for that pole in the middle of the bus (wink, wink).

Price- \$\$\$

[www.calipartybus.com](http://www.calipartybus.com)



Photo from Yelp.com

**Counterpoint**—A wine (and beer) bar in Golden Hill with the simple motto of “a place for people.” Despite the unique menu and great wine list, it truly is that. It is an unpretentious but classy and fun spot that brings together a variety of groups. The bartenders are knowledgeable about wine and beer and you can't beat the fried bologna sandwich. This is an ideal spot to class up the celebration and get yourself some good nourishment after the last month of stress and junk food. If you are heading over earlier in the evening they offer very nice sidewalk seating as well.

Price-\$\$

830 25th St, (between F St & E St), San Diego, CA 92102  
[www.counterpointsd.com](http://www.counterpointsd.com)



Photo from Yelp.com

**Station Tavern and Burgers**—A block away from the Whistle Stop is a casual and hip restaurant/bar. The wait staff is incredible and the food is divine. Divine might not be the word most used to describe burgers and tater tots, but they really are that good. It's not open late so stop here first to fill up before heading over to the Whistle Stop. And make sure to splurge (50¢) on the homemade sauces—totally worth it. Great indoor and outdoor seating. Family friendly.

Price-\$ to \$\$

2204 Fern St., (Corner of Fern and Ivy), San Diego, CA 92104  
[stationtavern.com](http://stationtavern.com)



Photo from Yelp.com

**Whistle Stop Bar**—This South Park bar boasts cheap drinks, casual ambiance and jam packed calendar filled with trivia nights and awesome DJ's. No matter what day your finals end you are guaranteed to find something fun at the Whistle Stop. Cash only. No food. Smoker patio.

Price-\$

2236 Fern St, San Diego, CA 92104 (corner of 30th and Juniper)  
[www.whistlestopbar.com](http://www.whistlestopbar.com)



# Songs to Zone Out to During Finals

**SARENA KUSTIC**  
*STAFF WRITER*

We all have songs that make us crank the volume up and allow us to forget about life (at least for the few minutes they’re playing). They’re the songs that I refer to as my “Shut out the World” songs, and can be quite useful for de-stressing or burning off some pent up aggression. Whether for the beat or the lyrics, here are some songs that you thought fit the profile:

- Rachel Macklin 3L**  
Black Eyed Peas—Ring-a-Ling  
Lauren Hill—Lost Ones  
Anuheia—Big Deal
- Kuscha Hatami 3L**  
Judas Priest—Breaking the Law  
Judas Priest—You Got Another Thing Comin’  
Judas Priest—Rapid Fire
- Christopher Androl 3L**  
Stormy Monday (T-Bone Walker version)  
BB King—Thrill is Gone  
Incubus—Drive

**Anna Burnett 3L**  
LMFAO—Sexy and I know it  
Britney Spears—Til the World Ends  
Deadmau5—Raise Your Weapon

**Mike Federici 2L**  
Samuel Barber - Adagio for Strings  
Beethoven - Symphony #7, 2nd Movement-Allegretto  
Mozart - Requiem in D minor

**Sarena Kustic 2L**  
Lost Boyz—Renee  
Saves the Day—Rocks Tonic Juice Magic  
Lorene Drive—Lip Service

**Erick Novik 2L**  
Eric B. and Rakim—Paid in Full  
Muse—Hysteria  
Eminem—The Way I Am

**Tamara Zaki 2L**  
Muse—Starlight  
Panic at the Disco—There’s a Good Reason These Tables are Numbered  
My Chemical Romance—Helena

**Danny Halimi 1L**  
MGMT—Siberian Breaks  
Led Zeppelin—Tangerine  
Massive Attack—Angel

**Joey Gross 1L**  
Sage Francis—Slow Down Ghandi  
Brother Ali—Uncle Same God Damn  
Talib Kwali—Lonely People

**Adam Freeman 1L**  
Led Zeppelin—The Ocean  
Led Zeppelin—Whole Lotta Love  
Pink Floyd—Comfortably Numb

**Sarah Town 1L**  
Pink Floyd—Comfortably Numb  
Bjork—All is Full of Love  
The Pixies—Where’s My Mind

**Lu Lobello 1L**  
Dean Martin—Lazy Mary  
Jack Johnson—Gone  
Dave Matthews—Gray Street

**What’s on your Professor’s iPod?**  
We hit shuffle on their playlists to see the first five tracks that popped up, the results may or may not surprise you...

**Professor James Cooper:**  
Pizzicato Five—Groovy in My Name  
Jorde Altinho—Ne Mantra Nao  
Miles Davis—So What  
The Clash—English Civil War (Live)  
Kraftwerk—The Robot

**Professor Kenneth Klein:**  
Janis Joplin—Move Over  
David Allan Coe—If that Ain’t Country  
Tears for Fears—Everybody Wants to Rule the World  
Sarah Brightman & Steve Barton—All I Ask of You (Phantom of the Opera Soundtrack)  
Willie Nelson—Forgiving You was Easy

**Professor Barbara Cox:**  
Jackson Browne—I Thought I was a Child  
Neil Young—From Hank to Hendrix  
Holly Near—No More Genocide  
Coleman Hawkins—There’s No You  
Meg Christian—Living in the Moment

**Professor Robert DeKoven:**  
Fleetwood Mac—Dreams  
Foreigner—Feels like the First Time  
Styx—Fooling Yourself  
Doobie Bros.—Minute by Minute  
Chaka Kahn—Through the Fire

**Professor Arthur Campbell:**  
Recently refreshed his iPod and has a dozen Dharma lectures by Zen Buddhists and 40-plus segments of “the most e-mailed episodes on National Public Radio.” Past playlists include Louis Bonfa and Carly Simon.

**Professor David Austin:**  
Stan Getz/Joao Gilberto—O Grande Amor  
John Coltrane & Johnny Hartman—My One & Only Love  
Aretha Franklin--Without the One You Love  
Keith Jarrett & Charlie Haden—One Day I’ll Fly Away  
Sweet Honey in the Rock—We’ll Understand It Better Bye & Bye  
(Not a single Streisand track, Professor DeKoven!)

**Professor Roberta Thyfault:**  
“The interesting thing about my iPod is that the music on it is a combination of music my son added and music from an iPod I won at a CWSL auction, which contained a selection of music from Dean Aceves. I haven’t added any music to the iPod personally.”  
Louis Armstrong & Ella Fitzgerald—Summertime  
EMF—Unbelievable  
Del Amitri—Roll to Me  
Temptations—Just My Imagination  
James Taylor—Country Road

**Professor Ruth Hargrove:**  
“I would love to have an iPod, but I am apparently still in the 12th century. If I HAD an iPod, it would have Dave Alvin, Alison Krause, Mumford & Sons, Grateful Dead, Bonnie Raitt, and a ton of others.”

# Mission Impossible: Flirting Tips for Law Students

**GRACE GARNER**  
*STAFF WRITER*

Law students often have terrible cases of lawschoolitis. All they do is eat and study. It takes months to get to know a law student because 90% of the conversation is about law school. They drive themselves and others crazy with their incessant chatter about civil procedure and how many practice tests they’ve done.

With that in mind, how do law students manage to go on dates or more importantly, flirt? Are they even capable? Of course, I am sure many are quite skilled. However, there are some of you who would rather take double the exams than show off your flirting skills. This article is for you. Here are a few of my simple methods that can help you find your swagger...

- 1. Don’t talk about law school.**  
Seriously. Sure, you can mention that you are a law student but when (s)he asks for more details they are just being nice; don’t give them the history of property law.
- 2. Keep the conversation focused on them.**  
There should be some give and take but most people suck at that. Stick to focusing on the person you are flirting with. Ask them questions about themselves—actually listen to their answers. If there is some common ground pursue that. You’re both fans of 1940s big band music? Whoa! Cool. Now, discuss.
- 3. Get up and leave.**  
Remember, these are flirting tips. When things are going really well, stop the conversation (at an appropriate point) and walk away. Take a phone call, go to the bathroom, pretend to see a friend across the bar. Anything. Just let the person think about you for a few minutes. While you are gone they will think about how great you are and what a fun night it’s been. Or, they could think the opposite and take up talking with someone else while you are gone. In that case: ABORT! and find a new person to flirt with.
- 4. Smile and move a little closer.**  
If things continue to go well on your return, make sure you are smiling and add some subtle touches. A playful touch on the arm or a brushing of hands. Don’t go crazy here. No crotch grabbing, people. Once you’ve reached this stage and the light touches are mutual, you’ve made it.
- 5. Get a number or a date.**

Ultimately the goal of flirting is to get a date (or sex, but that’s another story). Now that you know there is a mutual attraction, ask them out! I know this is scary for most people, but chances are the other person is hoping for the same thing. Here, I’ll tell you what to say, “I’ve been having a great time with you, (insert name here). Would you like to go out with me next week?” If the answer is yes, then have a place in mind and say “Great! I know of this awesome restaurant on the beach, does Thursday at 7 work?” And go from there. See? Easy. You can always just get a number but that is so passive. Be active and set the date.

**6. Go on the date!**  
Law students tend to be flaky. Studying trumps everything. Don’t let that happen here! Set the date and stick to it. It’s better to go on a shorter date (let your date know this in advance) than no date at all. Be yourself and have fun! And please, please do not let law school dominate the conversation (even if you are on a date with a law student).

*Disclaimer:* The Commentary does not necessarily support discourage, confirm, or deny the author’s claims. The author makes no guarantees and results may vary. She is by no means a professional on dating or flirting - simply a confident lady with a winning smile!

# Jumping on the Clinical Internship Bandwagon

**CASSIE GOTTSCHALK**  
*STAFF WRITER*

So you’re entering your second trimester as a 2L. You’ve made it this far and have been studying your tail off, but you haven’t had an internship yet. Don’t worry; you aren’t alone. We can’t all be the Kevin Magennis’s of the world (yeah, he is kind of super-human). So what do you do now? You check your thousands of emails from CWSL and find the ones from Ruth Briscoe about CWSL’s Clinical Internship Program.

You can get the basics of how the program works and what the goal of the program is from Ruth, but a look into the actual process couldn’t hurt, could it? Here’s a quick glance into CWSL’s clinical internship program from a student’s point of view.

The best thing about the program: course credit. If you plan for this ahead of time, you can spend your last (or second to last) trimester working at your internship and not taking any classes. You can earn up to eleven credits for your participation in the program. That breaks down to a maximum of ten credits for forty hours of work per week and one credit for the Internship Seminar.

The Internship Seminar was my favorite part of the program (my professor was Professor Ferhman, and she is amazing, so I could just be biased). The seminar is the stress reliever of the program. You meet with your professor and a small group of students, and you talk about your week. You brag about the awesome things you have done, and you vent about the awful things you had to put up with. It is completely confidential so you can talk to this group about anything and, believe me, you will want to. You will experience some not-so-great moments during your internship because it’s just like a real job. Yay!

Not only do you get to vent and brag during the seminar, but if you’re lucky (like I was) you will also get to eat. Each week some students in the seminar give a presentation on different things lawyers are faced with. See INTERNSHIPS on page 6...

# How to Get Going on Your Clinical Internship

...from JUMPING on page 5.

The topics range from maintaining a healthy work-life balance to dealing with substance abuse to dealing with clients. You get some good advice on how to be a lawyer and not just the law part. By the time you are a 3L, you'll learn to appreciate that.

So you get snacks (S'more Cupcakes, if you were in my seminar), helpful advice on how to be a lawyer, and a group of people who have to listen to you whine. What more could you ask for? Oh, you want to actually learn how to be an attorney? That's where your internship comes in handy.

Ok, now back to the actual internship. First, make sure you ask a LOT of questions at your interview. Ask about the type of assignments you would be assigned if hired. Ask about the office (i.e. is it sociable or is it nose to the grindstone). Ask how often your Supervising Attorney (you will learn to call him/her your "SA") would be in the office. You also need to know how accessible your SA will be, in case you have questions. If your SA is not available, you should find out if someone else can help and advise you.

Fast forward to when you have gotten a few internship offers and you have to say 'no' to all but one. Let me be the first to warn you: this is one of the most awkward experiences you will have throughout your participation in the program. At the same time, however, it is one of the best learning experiences you could have. No one ever teaches us what to do when we get offered a job we want to pass on, but it is something we need to know. Just remember to be grateful and sincere (you never know when you may run into that attorney again).

The hard part is over. Now all you have to do is show up and do as you are told. Ok, it is a little more involved than that, but you get the picture; we've all had a job before. Don't be shy; ask questions. But always remember, you are paying for this. You deserve to have the best learning experience available. And remember, if it doesn't work out, tell your seminar professor and Ruth. They will get you out of there ASAP!

Overall, is CWSL's Clinical Internship Program worth it? My vote is yes. Because who really wants to study and take finals during their last trimester of law school?!

# DURING TIMES OF STRESS... REMEMBER TO KEEP CONSIDERATE

SARENA KUSTIC  
*STAFF WRITER*

With finals just around the corner, everyone's patience is running thin. Those tiny everyday annoyances become needless contributors to stress. Contrary to the very common egocentric law student opinion, we aren't just living in YOUR world. Translation: BE CONSIDERATE.

We all have our own pet peeves, but there are several I've found which are shared amongst many students at California Western. Don't forget, now is the time where your fellow students will remember that annoyingly selfish thing you did and possibly resent you for it. Being mindful of your actions isn't just good karma, it will also create a more positive light in which your fellow students view you. Here are several ways we can be more considerate towards each other, especially during the finals rush.

**Elevators**

- If you're the first to enter the elevator and there are several people behind you, don't stop right at the entrance and force everyone to squeeze past you.
- If you have a roller bag, there's no need for the handle to be extended out and taking up enough space for two people.
- Before you rush the elevator, let the people arriving at the floor exit.
- For those of us who use the elevator out of sheer laziness, take the stairs when the elevator is crowded and let the student with crutches or a wheelchair have your spot.

**Stairs and Hallways**

- If your conversation can't wait until you reach the bottom of the stairway, finish it at the top. Stopping in the middle of the stairs to chat frustrates the flow of traffic.
- Passing period is not the ideal time to clean out your locker. Some of us have only a couple minutes to get our stuff and get to our next class. Don't block the lockers.
- Share the road! When someone is hurriedly trying to get somewhere, allow room to pass. Not everyone is on your leisurely schedule.

**Library and Study Rooms**

- Just because you're wearing headphones doesn't mean that max volume is permitted. People sitting at other tables shouldn't be able to hear your music. Otherwise headphones wouldn't be required.
- While you can easily reserve a study room by writing two names in the book, it's obvious when only one person is using it. Save it for those who truly need the group study environment.
- Re-shelve your books and push in your chairs—Mom isn't here to clean up after you.
- Most importantly, ZIP IT! Nobody cares about last night at the Tippy Crow, or how annoyed you are with your classes. The library is not a place for conversations! Go outside, go in the copy room, or go on G-Chat... we don't care! Just keep it locked up, please! Also, when you're chatting in the front "lobby" of the library or near the elevators, your voice echoes (just something to be conscious of).

On the flip side, remember that everyone is at max stress right now. It's easy to point out the faults of others, but try to practice tolerance as well. We all want to be respected but we need to give respect to receive it (excuse the cliché). Now is the time we can demonstrate our considerate side. Everyone will appreciate it. Remember the Golden rule: Treat others the way you want to be treated.

# Prison Time for Justin Bieber?

*Fair Use Doctrine, YouTube Covers, and Pending IP Legislation*

BEN PEZZNER,  
CHRISTIE PALCISKO,  
JOANNA SCHNEIDER

Justin Bieber gets a five year prison term for... wait, recording covers on YouTube? Teens, tweens, and 1Ls across the land can breathe a sigh of relief because this hasn't actually happened. It's part of an elaborate promotional campaign called Free Bieber. The free speech and fair use advocacy group Fight For the Future has put on this campaign in response to some pending copyright legislation – specifically, the Commercial Felony Streaming Act (S.978). This bill, along with the House's proposed Stop Online Piracy Act and the Senate's proposed Protect IP Act, represent a recent effort by Congress to update US Copyright laws in order to better protect IP interests online.

S.978 would make unauthorized streaming of copyrighted material for the purpose of "commercial advantage or personal financial gain" a felony (it is currently a misdemeanor), with up to five years of prison time as a possible penalty. If this law were in effect when Justin Bieber was just beginning to make a name for himself by uploading covers on YouTube, the argument goes, he could have landed in prison under this law. However, S.978 "does not criminalize any conduct that is not already illegal," according to a blog post by sponsoring Senator Christopher Coons. Instead, the bill is a way of "strengthening the intellectual property laws we already have, not expanding them to cover new material."

Consequently, if Justin Bieber's early YouTube covers constitute legal material under today's Copyright Act, then the proposed laws should not change that. So what does today's copyright law have to say about posting videos of yourself covering another artist's music on video streaming websites like YouTube? The common convention is that these videos constitute a prima facie case for direct infringement, since they infringe on the original artists' right to publicly perform their works. However, what is up for debate here is the fair use defense.

The fair use doctrine exists as a defense to direct copyright infringement, and it has been considered by some to be the most troublesome in all of copyright law. This doctrine attempts to balance the public's interest in access to copyrighted works with the copyright owner's exclusive rights. The doctrine is a difficult hurdle in copyright litigation in cyberspace. In order to understand how fair use has been applied on the internet and where it is heading in the future, it is necessary to analyze the history of the doctrine by looking at how it has been applied in other formats.

**History of Fair Use**

The Fair Use Doctrine is codified in 17 U.S.C. §107. This section provides four factors to determine whether the use made of a work in a particular case is fair. These factors are: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyright work as a whole; and (4) the effect of the use upon the potential market for or value of the copyright work. Whether a particular use is fair is considered on a case-by-case basis.

In *Sony v. Universal City Studios*, a pivotal fair use case from 1984, the Supreme Court addressed whether the sale of videotape recorders to the general public violated the rights of the copyright holders or if it could be considered fair use. Sony determined that the unauthorized time-shifting of copyrighted material for private home use was fair use because it was a noncommercial nonprofit activity, the nature of the copyrighted work and the time-shifting in question merely enabled viewers to view the work at a later point in time, and there was no actual harm to the plaintiffs' copyrights. This copying technology was determined to be capable of commercially significant noninfringing uses and the time-shifting in question "expanded public access to freely broadcast television programs which yields societal benefits." As the copyright holders could not prove any harm by the private act of time-shifting, the concept of fair use was supported. Sony analyzed the balance between protection for copyright owners and the public right to use. As this private time-shifting was not commercial activity and halting this emerging technology would stifle the creative incentive to make video recording devices, the court found this to be fair use.

**Application of Fair Use on the Internet**

A 2011 Computer and Communications Industry Association report, "Fair Use in the U.S. Economy," stated that the fair use doctrine has "grown in importance with the rise of the digital economy, as fair use permits a range of activities that are critical to many high technology businesses and are an important foundation of the Internet economy."

For example, courts have held that the main service provided by search engines, such as Google, is fair use. In *Kelly v. Arriba*, the Ninth Circuit found that displaying thumbnail versions of copyrighted images in response to search queries constituted fair use. The court weighed the four factors and found that the search engine's use of the thumbnails was transformative because the thumbnails served an identification function; whereas the original images served an aesthetic purpose (they were artistic photographs). Users would not use the functional thumbnails as substitutes for the full sized photographs; furthermore, the thumbnails guided users to Kelly's work rather than away from it. As such, there was no adverse effect on the market value of the photographs. The transformativeness of the search engine's use, combined with the lack of effect on the market for Kelly's copyrighted works were the two factors the court stressed in its decision that the thumbnails qualified as fair use. These two factors continue to be important in fair use analysis today.

**YouTube Covers**

Fair use doctrine in this area, like many other areas, is tricky. Analyzing the first factor, a court would look at the commercial and transformative aspects of an artist's cover. In Bieber's case, he used his recordings in order to make a commercial name for himself. One has to look only as far as the Billboard 200 to see that his plan worked (Bieber's *Under The Mistletoe* is in the #1 spot, as of this writing) – easily a commercial success.

But commercial use alone does not mean automatic disqualification from a fair use defense. As the Ninth Circuit reasoned in *Kelly v. Arriba*, what's important is a determination of whether the YouTube cover merely supersedes the object of the original song, or instead adds something new, with a "further purpose or different character, altering the first with new expression, meaning, or message." This transformation analysis can be argued both ways. On one hand, cover artists put their own spin on the song. They use their own vocals, their own inflections, and their own instruments. Sometimes, their interpretations contain none of the actual audio of the original work,

See BIEBER, page 12...



# Fandom and Why We Love to Love Our Sports Teams

MARISA MANDOS  
STAFF WRITER

Welcome to the Sports section. I take it you're interested in sports? Well, so am I. When I sat down to write this, I reflected on the essence of sports. Why are we as a society so interested in professional sports? Further, why are we so territorially dedicated to fandom?

As an Eagles fan, I've been burned this season. Like "left a bagel in the toaster oven then left for work" burned. If you're a Chargers fan, I thank you for your implicit empathy. It's become difficult for me to even speak the words "Andy Reid," I often avoid ESPN on Mondays, and I can't even wear my Dream Team basketball jersey without shuddering. Although these symptoms might not qualify as emotional distress, I have considered disowning the Eagles. But I can't! What will everyone think of me?! What will they say if I give my loyalty to a new team?! More importantly, why do my currently imaginary, albeit guaranteed, critics give a damn?

I grew up in the Philadelphia suburbs. Considering geography, the caliber of the NFC East, and the fact that my father is a season ticket holder, I am compelled to be an Eagles fan. That is to say, I did not jump on the bandwagon when they signed a certain felonious quarterback. Since 2000 I have been elated, then deflated, by nine post-season appearances. None have ended in a Super Bowl Championship. I witnessed the Giants sack McNabb 12 times in one game. I've thought that the cheerleaders would provide more protection than our offensive line. Year after year, I have seen Andy Reid manage time more poorly than I do during finals. And I have to say, I've seen enough.

This tension – this moral dilemma, if you will – is not new to me. It's one of the most universal human processes: (1) invest in something consistent with personal values, (2) feel repeatedly disappointed, and (3) become ultimately dissatisfied to the point of terminating the loyalty. This is the process of relationships, paradigm shifts and renaissances. This method is the reason educated constituents change party affiliations. But we accept a divorce rate of almost 50%; we embrace social change so much that Obama's campaign was based around it; and let's face it, most of us abandoned our Blackberries for iPhones. So, why does the subculture of fandom abhor application of this process to team loyalty? I'm no social scientist, but my hypothesis can be illustrated by deconstructing my affinity for "my team."

Lack of Socio-economic Boundaries: I grew up a tomboy and attended quite a few games. I also lived in downtown Philadelphia. Not "upscale urban living" Philadelphia. South Philadelphia. I had a local bar. I went there (unaccompanied) to watch games; I socialized with plumbers, soldiers, attorneys and accountants. We weren't talking about the economy or the weather – we were talking about the Eagles. The same goes for the strangers I high-fived at games and with whom I complained in Monday morning convenience store lines. "How 'bout them Eagles?" I don't know my socio-economic status. It's not that of the busboy on my train and it's sure as hell not that of the CEO I met in the bathroom line – but we connected over our football team. We are a community – card-carrying members of the same fan club – and that's why I'd be excommunicated if I left. My empathy would seem feigned, the relationships: meaningless.

Nostalgia: Remember, my dad is an Eagles fan. My uncles are fans; my grandfather, too. They all remember that one play, one game, or one season that changed their lives. They've shared those memories with me and, by silence, I've accepted the invite into their club. If you're a third generation Chargers fan and you've decided that Philip Rivers is starting to have some very Romo-esque tendencies, how do you retire the blue and gold? Trade it in for a Jacoby Ford jersey? Absolutely not. Stick to your roots.

Geography: Wisconsin isn't exactly known for its weather, but have you ever seen the stands empty at Lambeau? Since around 400 A.D., Packers fans have had virtually nothing else to do on winter Sundays. Every weekend is a holiday. Same goes for SoCal, except Southern Californians are using those holidays to surf, day trip, or sleep off a PB hangover. In high school and college, we Northeasterns didn't have much else to talk about. Plus, football represents winter and holidays. It's not 72 degrees year-round everywhere, ya know?

It all comes down to this. In a rapidly changing society where we are forced to adapt to technological innovation and frightening political change, we can still cling to sports. One by one, we've left our Blackberries and our American Exceptionalism behind. If we leave our sports communities, what will they have left?

# No Duty to Rescue the Penn State Baby from the Fountain

BRIAN LYNCH  
STAFF WRITER

In law school you're taught there is no duty to rescue. Those of you who took Professor Boeher's Torts II class know this. He uses an example of a drowning baby in a fountain while an observer looks on and times how long it takes to drown. The example reduces to "not my baby, not my fountain, not my problem" and the baby drowns. The only reassuring part is thinking no one on the planet is so sociopathic as to let something so heinous happen to a child. Officials at Pennsylvania State University (Penn State) let the proverbial baby drown in their football locker room showers.

A grand jury's findings are absolutely damning for Jerry Sandusky, the defensive coach for Penn State's football program. Sandusky was caught, allegedly, raping a 10 year old boy in 2002 in the showers by another school official, Mike McQueary. According to the grand jury findings, McQueary found Sandusky raping a 10 year old in the Penn State showers. Instead of rescuing the child, he went home and called his father. McQueary has since changed his story about what happened in the showers claiming he stopped the assault and talked to police. If this is true, why he didn't bring it up in the grand jury proceedings is a mystery.

This incident doesn't stop here. After the conversation with his father, McQueary reported what happened to Joe Paterno, the head coach for the Penn State football program. Paterno informed the athletic director, Tim Curly. Tim Curly informed the senior vice president Gary Schultz and the president of the university, Graham Spanier. No one thought to fire Sandusky or call the police. Or, you know, fire Sandusky and call the police like any sane, rational thinking individual. All these actions revolve around preserving the integrity of the football program. Penn State University decided to take away Sandusky's shower privileges as an appropriate remedy for allegations of raping a child.

Earlier this month the skeletons all came rushing out of the closet for the Penn State officials. Joe Paterno was fired by the school despite his request to finish out the season. The president was forced out by the board of trustees after being given the choice to step down or be voted out. Tim Curly and Gary Schultz have stepped down from their positions and face perjury charges for claiming they didn't know about the abuse.

The firing of Joe Paterno left Penn State University students furious for some not readily apparent reason. Students actually rioted to support Joe Paterno and caused significant property damage.

Somehow it gets worse. Sandusky ran a charity called The Second Mile for troubled children. Sandusky did an enormous amount of fundraising and turned down opportunities to head coach in favor of remaining at Penn State to continue his work with The Second Mile. Through this charity he would select and groom his victims. There are 8 victims in the grand jury findings. In an interview with Bob Costas, Jerry Sandusky vehemently denied any wrongdoing, but tempered his statement by stating "maybe I shouldn't have showered with those kids."

The NCAA's death penalty for football programs has a limited use and serves to protect the NCAA's mission which includes preserving integrity. The penalty bans a school from competing in an event for up to a year and for a lucrative sport like college football this is a very serious consequence because the school loses financial support. As discussed in a previous Commentary article, the death penalty is typically reserved for repeat pay for play violators. This is the perfect opportunity for the NCAA to make itself relevant and absolutely punish an institution so blinded by the money coming from the football program that a child was raped without real consequence. The NCAA needs to deter this collectively sociopathic behavior, support it's mission to preserve the integrity of its members, and ban Penn State from participating in football.

The proverbial baby drowned in Penn State's showers. Firing these people isn't enough. Penn State deserves the death penalty and the NCAA needs to send a clear and powerful message that this kind of behavior is abhorrent and will not be tolerated. Anything less is a travesty.



Photo from Athletics Frontier

CHECK OUT A MUSEUM AT BALBOA PARK. MEET A FRIEND. HEAD DOWN TO THE BOARDWALK. LIKE A QUICK COFFEE BREAK. RUN TO THE OFFICE. GO TO THE DOCTOR. GET TO A MEETING. STOP AT THE GYM. WORK ON YOUR BICEPS. DROP OFF THE LAUNDRY. TAKE A STROLL AROUND THE GASLAMP.



Getting around San Diego is a breeze. Simply take a car2go when you need it, and leave it when you're done. Sign up now for FREE registration and 30 minutes of FREE driving time (promo code: PLUGIN). Offer available for a LIMITED time. Sign up at sandiego.car2go.com.

Must be 18 years or older to register. Must have valid U.S. driver's license.

CAR  
2GO

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## PRISONER SUES CIP FOR EMOTIONAL DISTRESS AND HARDSHIP

By: Grace Garner & Rafael Cuesta

In a bizarre twist, a San Quentin inmate has filed a law suit against the California Western branch of the California Innocence Project.

The prisoner, Carlos “The Icepick” Koleski, claims that CIP failed to deliver on its promises and that this failure has caused him great emotional distress and economic hardship.

“They sent me a letter saying they was going to get me off,” Icepick told us in an interview. “I was so excited, but the other inmates didn’t believe me. So we made a bet.”

Icepick, as he is now legally known, has served 15 years of a life sentence for the murder of a hydrangea named Chloe that lived in a downtown district of San Francisco.

Identified primarily by his dirt-stained coveralls and evasive behavior, members of the neighborhood claim that Icepick was a talented gardener, albeit a brown recluse.

Undaunted by the theft of his gardening tools a week prior to the incident, he resorted to using household items to complete his work. However, catastrophe struck when he decided to use an icepick to aerate the roots of a prized hydrangea.

“It was horrible,” claimed Eunice Sagmore of the neighborhood watch committee. “He just kept stabbing the ground - over and over - and there were children watching!”

Witnesses claimed that Icepick had threatened the bush before. “I heard him yelling at the bush, ‘I will kill every last on one of you.’” Icepick, however, maintains his innocence claiming that he was only talking to the junebugs which had infested the victimized foliage.

Unfortunately for Icepick, recent legislation, passed due to the efforts of PET-APCDPW, People for the Ethical Treatment of Annuals, Perennials, Conifers, Deciduous Plants and Weeds, had provided the various flora and fauna of California with equal rights and equal protection under the law. Therefore the state brought felony charges against Icepick.

After 15 years of lonely incarceration, a ray of sunshine came to poor little Icepick in a letter from CIP representative Kile Shufflefluffel.

“The letter said that they specialized in getting people off, and after 15 years I didn’t want to wait another minute,” recalled Icepick through the tinny sound of a prison phone. “So I went and told some of the other inmates and showed them the letter.”

His cellmate, Dogbone Zerlege, told the Artichoke, “When I read that they’d been getting prisoners off for years, I thought everything was going to be alright.”

When a few inmates refused to believe the letter, a betting pool was started, which Icepick was ultimately to lose. Through a hail of laughter, prison warden, Vincent Cullen told the Artichoke that he knew all about CIP, but didn’t have the heart to tell Icepick that they did not provide conjugal visits.

The Artichoke questioned the law student involved. She had this to say...

“I am so sorry. I should have been clearer in the letter about what our services entailed.”

## CWSL Third Floor Lobby to Get Twenty-Seven More Recycle Bins

*Students are encouraged to use the public trash cans on 3rd and Cedar for their non-recyclables*

By: Ben Pezzner

With the end of another banner calendar year, there is much to reflect upon. December is the month during which some of the lesser known entities that keep our school running smoothly come out with their annual reports. This year, the Artichoke has chosen to highlight the California Western Recycling Task Force (RTF). The RTF’s 2011 Report on Student Recycling Habits and Systems for the Implementation of a Greener Tomorrow (the “Report”) has once again lived up to the hype. With so much on the line, the RTF’s ever-increasing battle on waste is a noble one. According to the report, only 85% of students, faculty, and staff recycled on campus this year. That is down from 87% last year.

Thomas Freely, a 2L studying History Law, represents the 85%. “I recycle because I have no choice,” says Freely. “There are literally no regular trash cans left on campus. They are all blue. I didn’t know you could recycle Styrofoam.”

When asked for comment, Je-

## CWSL Arrestees Considered Employed After Arrest at Occupy SD

By: An Actual Artichoke

The Occupy San Diego movement brought an unexpected benefit to California Western School of Law. The Dean, during an interview with the Commentary, announced that recently arrested law students at the Occupy movement could now be reported as legally employed as they decided to go toe to toe with the district attorney as pro per defendants. The Dean continued proclaiming the wonderful news. He announced the school would provide a new clinic: Civil Disobedience and The Law.

Students would be required to occupy San Diego and participate in police brutality law suits and supply their own pro per defense under the guidance of the faculty. “This is truly what law school ought to be! Students using their legal skills in real life! They get a full experience with the criminal justice system unparalleled by any other school.”

This Commentary reporter went to the jail to inter-

person Carole of the RTF remarked, “Students like Thomas are such adamant recyclers that they don’t even see the normal trash cans anymore. Their love for the environment has blocked out all non-blue containers.”

While the recycling rate is high, there are also many false positives (i.e. non-recyclables being accidentally thrown into the blue bins). To address this issue, the RTF is recommending that Facilities Management add more recycling bins to the areas where there is the most confusion. For example, the lobby on the third floor of the classroom building currently only has three recycling bins next to each column, and 11 circling the perimeter. The RTF plans on adding 27 more to the room, in a starburst configuration. Carole explains that having a total of 38 recycling bins in one lobby may seem like overkill at first, but in the end it is necessary. “We think that if there are enough blue bins concentrated in one area, students will have no choice but to recycle harder. And the harder they recycle, the less trash there is on the street for the bums to recycle. We don’t like bums.”

view recent graduate, Occupy arrestee, and former Commentary editor Brian Horan. Brian appeared very pleased with the way he was lawyering his way through the criminal justice system.

HORAN: Man. You gotta help me. I can’t afford bail and the police won’t let me wash the pepper spray out of my eyes until I give a full confession! You have to help me. Please. Help!

ARTICHOKE: So would you say you’re satisfied with your new legal employment?

HORAN: What?! No! Please! You know me. I can’t see from all the pepper spray. This isn’t funny. You have to get me out of here!

The Legal Skills program director said students involved in the Occupy movement were generally more likely to participate as gainfully employed pro per defendants after graduation due to the slow nature of criminal justice in San Diego caused by budget cuts and furloughs.

“Students learn quickly the difference between Law and Order and real life.” He continued, “The way I view it, with all the arrests of our law students I see US News and World Report giving us a ranking somewhere in the top tier law schools by next year.”

## Government Reclassifies Pepper Spray as a Vegetable

By: Brian Horan

According to a recent report released by the federal government, pizza isn’t the only new vegetable out there. What many news outlets missed was the fact that pepper spray was also included on the list, along with ethanol, rubber and nicotine gum.

FDA spokesman Frederik Fairbanks commented, “All of these things are plant based, and most of them probably won’t even kill you when ingested in small amounts.” Fairbanks went on to compare pepper spray to Brussels sprouts, noting that nobody likes to eat them either, but sometimes you just need to suck it up and get your nutrition.

UC Davis agricultural science professor Bill Kornheiser had an interesting

Continued on Page 9...



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## Pepper Spray

*The New Vegetable*

Continued from Page 8. take on last Friday’s pepper spray incident on campus. “Due to a UC rule prohibiting the use of hunger strikes, the officer who sprayed those kids was well within his legal rights.” He went on to observe that the officer seemed to be ecstatic to be helping those students “get their daily recommended 6-8 servings of veggies.”

Police organizations throughout the country applauded the re-classification of pepper spray as both a means to help the malnourished among us and also to “stamp out rebellion and rabblertousing wherever it may be.”

## CALIFORNIA WESTERN STUDENT ORG BOASTS NON-NON PIZZA LUNCH IN LIGHT OF DEMAND

By: Ben Pezzner

The advent of the Pizza Lunch during the turn of the 19th century was considered by many lunch scholars to be a turning point in lunch history. For several generations, law schools used the Pizza Lunch as a tool to maximize turnout. These were simpler times. Pizza was relatively new to the law school landscape. Over the years, student leaders caught on and began planning Pizza Lunch-type get-togethers which would soon morph into the precursor of what is today commonly referred to as the “general meeting.”

But with the commercialization of pizza in the United States, law students began to think of the savory meal as less of a delicacy and more of a pain in the butt. All of a sudden, students who “had pizza for dinner last night,” or “were tired of getting the same old thing,” or just thought it was cool to complain about “pizza, again??” ended up monopolizing the student org general meeting scene. This disdain for the Pizza Lunch created what is commonly seen today on posters and in Student Services emails as the new, hip tool that student orgs utilize to get people to show up: the Non-Pizza Lunch.

Yet there was only so much law students could take. Jill Handerson, a 3L studying Apparatus Law, sums up what most of her colleagues think when they see a Non-Pizza Lunch.

## New Triplex Printing Technology Installed on East Printer

By: Ben Pezzner

The library printers have been our trusty friends since the first day of school. You can print to them from any computer on campus. You can print to them wirelessly with your laptop. You can even print on both sides of the page, which is commonly referred to as “duplex” printing. But perhaps most importantly, the library printers never go down, which is why there has been much confusion over the last couple weeks as to the reason SCL-290-Printer-East went down.

“The printers never go down,” says Ryan Markush, a 2L studying Cartography Law. “Whenever I need to print out a map for class, I can always rely on the closest printer

to do the job.” As of the beginning of December, Printer-East has been down, causing Markush and those similarly situated on the east side of the computer lab to send their print jobs elsewhere - sometimes all the way to the west side of the room. It is for this reason The Artichoke has assumed an investigatory role to get to the bottom of this rare event.

It turns out, the reason Printer-East is down is not because it is broken. While the printer looks the same from the outside, it has actually been updated with new internal hardware, enabling it to print in Triplex mode. That’s right - triplex printing has found its way to CWSL! For those unfamiliar with

this relatively new technology, triplex allows you to print on all three sides of the page, saving time, money, and the environment.

There have been some hiccups, however, which brings us to the reason the printer is down. Triplex printing is only possible on three-sided paper, which is, as of this writing, still tied up in the processing plant.

As soon as that first shipment arrives, though, we’re going to have access to the new technology. Until that time, students on the east side of the room will continue to have to send their print jobs to Printer-West, which is scheduled to be converted into a hot tub in the spring.

## IRAC to be Updated by ABA

By: Ben Pezzner

The new Legal Skills Division of the American Bar Association has come out with new guidelines for legal writing. In their first ever Restatement of Legal Writing Form, the ABA has organized many of the complaints that have been received from professors, attorneys, and judges. In short, IRAC is outdated.

Rick Sofgrove, head of the LS Division, spoke of the decline of IRAC in a recent interview with The Artichoke. “It’s just no longer a reasonable method of getting a legal point across in an academic paper,” reported Sofgrove. “There was an IREAC movement that attempted to insert Explanation into the mix, but that was quickly shot down because explanation has always been an integral part of the Analysis section.”

The Restatement calls for some additional sections. Firstly, the new method calls for a Summary and quick Conclusion that immediately follows the issue. “Many times, a judge will read the issue and not know where it fits into the bigger picture,” according to Sofgrove. “We all know that judges skip to the end of the brief to get to the good stuff anyway, so adding a summary and an initial conclusion between Issue and Rule will help to facilitate that process.”

The Restatement also suggests adding a Teaser section immediately after Analysis but before the actual Conclusion at the end. In a note to this rule, Judge Moff Tarkin,

an Imperial County probate judge, explained how a good teaser will keep the judges on their toes. “Sometimes when I’m reading a brief, the Analysis section puts me to sleep. If the brief includes either a teaser of the conclusion, or a teaser of a new movie that’s coming out, I’ll usually be alert when I get to the actual conclusion,” said Tarkin.

Lastly, the Restatement calls for a Handouts section at the very end of the brief. Judges like to receive handouts. If a brief comes with coupons stapled to the back, gift certificates for massages, or actual paper money, a judge will be more likely to rule on your behalf. According to Judge Tarkin, “The other day I found a dry cleaning groupon in the back of a brief. Our robes get wrinkled a lot, and we always forget to take them to the cleaners. Suffice it to say, that person ended up being awarded the entire estate.”

While the new method, Issue Summary Conclusion Rule Analysis Teaser Conclusion Handouts (ISCRATCH for short) has much promise, it should be noted that some judges disagree with it. Justice Scalia, for example, has just come out with a dissenting opinion in which he suggests his own alternate method: Summary Conclusion Analysis Literature Index Attack (SCALIA). The Artichoke urges caution when deciding which new method to adopt. Of course, you could always check with your Legal Skills professor first. But where’s the fun in that?



# CWSL Cutest Pet Competition

The submissions are in! Help decide the cutest pets of California Western students!  
The Commentary will be giving out amazing first, second and third place prizes for your pet.  
If you're pet appears here, rally the troupes and go to <http://tinyurl.com/CWSLPets> and VOTE!  
One vote per person. Results will be posted in the February issue. Good Luck!



CONTESTANT NUMBER 1  
PET: Akela  
OWNER: Chanel Call



CONTESTANT NUMBER 2  
PET: Ali  
OWNER: Arash Yadegari



CONTESTANT NUMBER 3  
PET: Batman  
OWNER: Rochelle Ratkovich



CONTESTANT NUMBER 4  
PET: Bones  
OWNER: Leah Reeves



CONTESTANT NUMBER 5  
PET: Bruno  
OWNER: Alana Rutberg



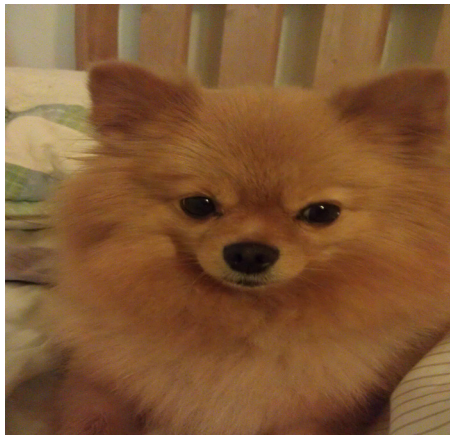
CONTESTANT NUMBER 6  
PET: Celica  
OWNER: Matt Springmeyer



CONTESTANT NUMBER 7  
PET: Chance  
OWNER: Grace Garner



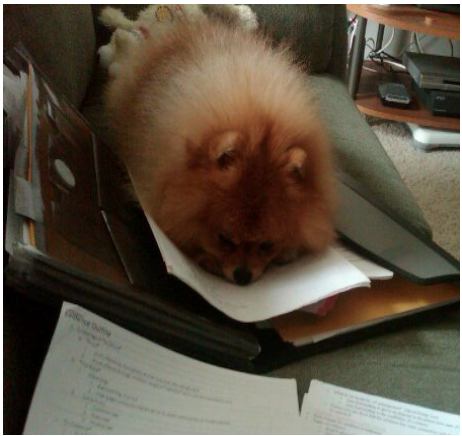
CONTESTANT NUMBER 8  
PET: Coco Chanel  
OWNER: Tiffany Scott



CONTESTANT NUMBER 9  
PET: Fifi  
OWNER: Sonia Salazar



CONTESTANT NUMBER 10  
PET: Flor Silvestre del Camino  
Vaquero (a.k.a. Flower)  
OWNER: Grace Garner



CONTESTANT NUMBER 11  
PET: Gunner  
OWNER: Cassie Gottschalk



# Pet Competition

11



CONTESTANT NUMBER 12

PET: India

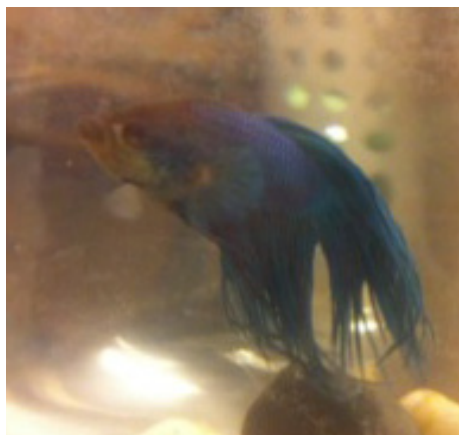
OWNER: Matt Springmeyer



CONTESTANT NUMBER 13

PET: Izzie

OWNER: Amanda Bennett



CONTESTANT NUMBER 14

PET: Jimmy

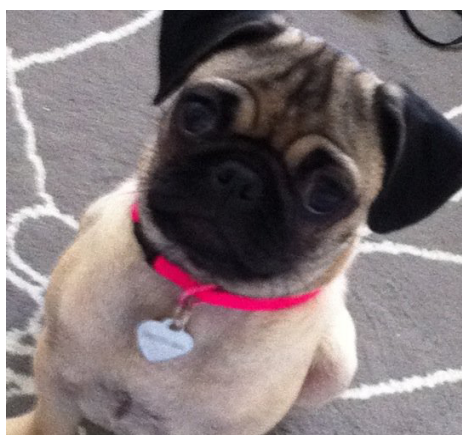
OWNER: Elena Shaygan



CONTESTANT NUMBER 15

PET: Kya

OWNER: Elena Shaygan



CONTESTANT NUMBER 16

PET: Lucy

OWNER: Jenna Griffin



CONTESTANT NUMBER 17

PET: Lucy

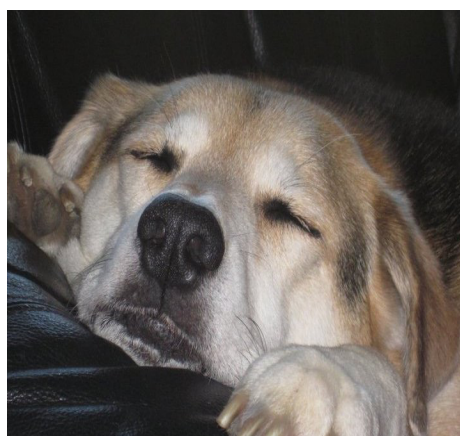
OWNER: Sarena Kustic



CONTESTANT NUMBER 18

PET: Lucy Lui

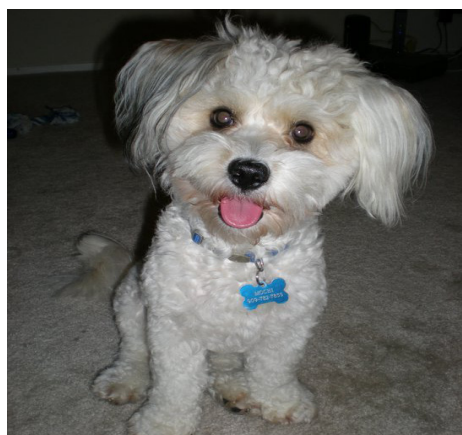
OWNER: Elena Shaygan



CONTESTANT NUMBER 19

PET: Meicko

OWNER: Chanel Call



CONTESTANT NUMBER 20

PET: Mochi

OWNER: Gisela Acevedo



CONTESTANT NUMBER 21

PET: Oscar Patches

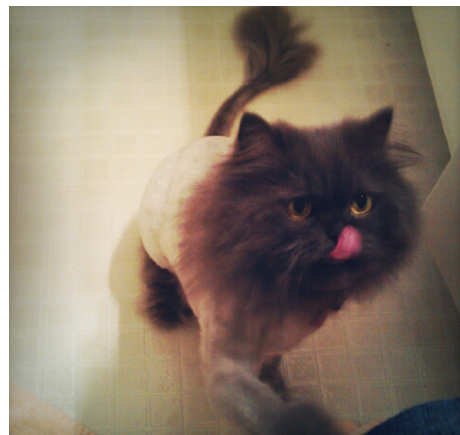
OWNER: Amy Broderick



CONTESTANT NUMBER 22

PET: Romeo and Juliet

OWNER: Joyful Worden



CONTESTANT NUMBER 23

PET: Sebastian

OWNER: Rochelle Ratkovich



CONTESTANT NUMBER 24

PET: Sophia

OWNER: Matt Springmeyer



CONTESTANT NUMBER 25

PET: Star

OWNER: Leah Reeves



CONTESTANT NUMBER 26

PET: Toby

OWNER: Beth Carino



CONTESTANT NUMBER 27

PET: Mortimer

OWNER: Kiley Schaumleffel



LAW SCHOOL WORD SEARCH

K A D A V E L B A N O I C S N O C N U C  
T S A N C T I O N A S T Y H E J U S A O  
S E I R A S S E C E N U K A T O C I B N  
E C D R N A I D R A U G T L W I E T G C  
V J O E I N T E N T P N A L R N C U E R  
I T U T I L I T Y T I L I B A T I B A H  
D H I Z V I T I A T E B A R H L L Y E N  
I M P R A C T I C A B I L I T Y A N R I  
Q U A N T U M M E R I U T Q U O M O N A  
Y H R X I M F Y N O I T U N I M I M I D  
T C T N E M E S A E F T N A G I T I L J  
N A E I E D N O T I C E I R W I T R T S U  
A E T O Y L R E F F O L A E O I U S S D  
R R I D L O H E S A E L V P N G C E E I  
R B O K G N E T T I R E L E V A N T N C  
A I N N N O I N S E A D E T A W T O E T A  
W Y L K I R F A T R A E D O T E C D I T  
E P A I W M U T C I D I B I R E N I W I  
F L T S O Q E T A G O R B A C T R F V O  
L B B V N L G O J D N A M E R I Q A U N  
A E N I K J U S T I C I A B L E M N L Q  
N O B C G G N O I T U N I M I D I O T U  
C B A I L N E G L I G E N C E N R B H I  
E L U R L L U K S L L E H S G G E U U T  
B I Z A U Q H F E P R O C E D A N R J S

ABROGATE	HOMICIDE	PARTITION
ADJUDICATION	IMPRACTICABILITY	PLEA
BAIL	INTENT	QUANTUM MERUIT
BLACKLETTER LAW	JOINTLY	QUASI
BONA FIDE	JUSTICIABLE	RELEVANT
BREACH	JURY	REMAND
COLLATERAL	KNOWINGLY	RISK
CONCUR	LEASEHOLD	SANCTION
DICTUM	LIBEL	SHALL
DIMINUTION	LITIGANT	SIDEBAR
DIVEST	MALICE	TESTIMONY
EASEMENT	MINOR	TORT
EGGSHELL-SKULL RULE	MITIGATE	UNCONSCIONABLE
FUNGIBLE	NECESSARIES	UTILITY
GUARDIAN	NEGLIGENCE	VITIATE
GUILT	NOTICE	WARRANTY
HABITABILITY	OFFER	WITNESS

...from BIEBER on page 6.

having been completely reworked from scratch. On the other hand, if the lyrics and the chord progressions in the cover are the same as the original, the cover will be less transformative. Courts would have to look at the level of transformativity on a case-by-case basis.

The second factor (nature of the copy-righted work) does not help the Biebers of the online world. As the Kelly court highlighted, works that are creative in nature are closer to the core of intended copyright protection and are less likely to fall under fair use. An artist’s original music contains original lyrics, original chord progressions and instrumentation, and original nuances in the performance that lend to a presumption against its infringement being classified as fair use. On the other hand, the Kelly court admitted that if even a creative original work is published, the first appearance of the original artist’s expression has already occurred, potentially opening the fair use door. Here, YouTube covers deal with highly creative works that have been published. If a court uses the same reasoning as the ninth circuit did in Kelly, the second factor would be neutral.

As for the third factor (amount of original work used), the court in Kelly noted that the extent of permissible copying varies with the purpose and character of its use. YouTube covers are meant to be the artists’ original versions of a copyrighted song. As such, it would be necessary to use the entire song to accomplish that goal. Even so, copying an entire work weighs against a finding of fair use. Again, courts would have to determine this factor on a case-by-case basis. For example, if the original song had an extended instrumental outro which the covering artists copied (rather than performing his own outro), this would not help a fair use defense.

The fourth factor (effect on potential market for original work) would most likely weigh in favor of Bieber. YouTube covers spread the word about the original

song and would most likely not be used as substitutes. If a person liked one of Bieber’s covers but had never heard the original song before, he or she would likely search for the original song and discover that artist. On the other hand, if the cover of the work is associated with a message that is contrary to the original artist’s views, the cover might generate adverse publicity and drive users away from the original artist. Hence, this factor would have to be analyzed on a individual basis.

Good News for Bieber?

The point of this analysis is that there will be no clear answers to whether fair use doctrine will apply to cover artists using online streaming services due to the case-by-case nature of the analysis, and because the doctrine has yet to be fully tested in this area. While there is plenty of precedent to provide guidance, the four factors merely serve as guidelines in determining whether the use represents the very creativity that copyright law was designed to encourage.

The Free Bieber movement is rightly angered by the prospect of their idol and others like him being thrown in prison for five years under the new law. However, their efforts are misguided. Rather than advocating against new laws that do not create any new liability, they should be focusing their efforts on addressing laws that already affect present liability. And fair use doctrine would be an excellent place to start.

November Crossword Solution

W W P N E E D L E S  
O U T T A E E L A T X  
U O T W I N L E A F E  
N P E R C S A J E L  
D E S E R T S T A R V P  
E L P H I N I U M E R C A 6 E D  
D E L P H I N I U M E R C A L S  
A E S E S C A L A T E  
F R E E D O M M N B X  
T S I X O B R Y C H U S  
S T R E A K A T E N D E D  
B H M V N L A E D  
U E M E D U C A T I O N A L  
C I R C U I T E L C  
K E S C O W O W Y H E E  
A S H E F E A U

SUPREME COURT TRIVIA  
CONTINUED...

...from SUPREME on page 1.

tery of human life.”

3.Clarence Thomas- The second African American to serve on the Supreme Court was born in 1948 and appointed by President George H.W. Bush in 1991. Thomas is known as textualist who went almost five years without asking any questions during oral arguments. What you might not know is that Thomas helped to found the black student Union at the College of the Holy Cross in Worcester, Massachusetts. Thomas has spent many hours helping black youths and arranging financial aid for them to attend private schools. (He has also met the CWSL student paper’s author of the Supreme Court Beat.)

Quote: “To define each of us by our race is nothing short of a denial of our humanity.”

4. Ruth Bader Ginsburg- born in 1933, and appointed by President Clinton in 1963. This amazingly strong woman battled colon cancer in 1991, but didn’t miss a day on the bench as she underwent surgery, chemo and radiation. She was married to her husband for 56 years until he died last year. Justice Ginsburg loves opera, and has appeared as an extra in two Washington Opera productions, once in a powdered wig and full costume and once as herself.

5. Stephen Breyer- born in 1938, and appointed by President Clinton in 1994. In 1993 Justice Breyer was hit by a car while riding his bicycle, the accident left him with broken ribs and a punctured lung. However, this did not deter him from leaving the hospital to meet with President Clinton in Washington to discuss his nomination.

Quote: In a 2005 interview with Charlie Rose, Breyer said, “The main thing I would like people to understand about the Constitution is that it does not decide how people in America should live their lives. That its basic object is to create a democratic form of government, a form of government that has limits, but within those limits there is enormous space for people to make up their own minds about how they want to live together in their communities.”

6. John G. Roberts- born in 1955, appointed by President Bush in 2005. Chief Justice Roberts worked at a steel mill during high school to help save money for college, while captain of the football team (he later described himself as a “slow-footed linebacker”), and a regional champion in wrestling. During the late 1990s, while working for Hogan & Hartson, Roberts served as a member of the steering committee of the Washington, D.C. chapter of the conservative Federalist Society.

Quote: In his nomination-day press conference with Bush, Roberts remarked that it was a humbling moment. “I always got a lump in my throat whenever I walked up those marble steps to argue a case before the court,” he said, “and I don’t think it was just from the nerves.”

7. Samuel Alito- born in 1950, appointed by President Bush in 2006. At Princeton, Alito led a student conference in 1971 called “The Boundaries of Privacy in American Society” which, among other things, urged for an end to discrimination against gays in hiring by employers. Graduating in 1972, Alito left a sign of his lofty aspirations in his yearbook, which said that he hoped to “eventually warm a seat on the Supreme Court.” A coffee shop near the Newark federal courthouse carries a blend named after him: “Judge Alito’s Bold Justice Blend: a mix of Colombian, Java, and New Guinea with a bit of espresso.” Quote: “The First Amendment, I think, is the jewel of our Constitution”

8. Sonia Sotomayor- born in 1954, appointed by President Obama in 2009. She is the first Hispanic Justice on the Supreme Court. Justice Sotomayor has arguably lived the American dream. She was born to a Puerto Rican family and grew up in a public housing project in the South Bronx. Her father, who passed away when she was nine, had a third-grade education, did not speak English, and worked as a tool and die worker; her mother worked as a telephone operator and then a practical nurse. After her father’s death, Sotomayor reportedly turned to books for solace, and she says it was her love of Nancy Drew books that ultimately led her to the law.

Quote: “Although I am an American, love my country and could achieve its opportunity of succeeding at anything I worked for, I also have a Latina soul and heart, with the magic that carries.”

9.Elena Kagan- born in 1960, appointed by President Obama in 2010. In Justice Kagan’s Hunter College High School yearbook of 1977, she was pictured in a judge’s robe and holding a gavel.

Quote: “Subsequent hearings have presented to the public a vapid and hollow charade, in which repetition of platitudes has replaced discussion of viewpoints and personal anecdotes have supplanted legal analysis. Such hearings serve little educative function, except perhaps to reinforce lessons of cynicism that citizens often glean from government. Neither can such hearings contribute toward an evaluation of the Court and a determination whether the nominee would make it a better or worse institution. A process so empty may seem ever so tidy — muted, polite, and restrained — but all that good order comes at great cost.” On hearings of nominees to the Supreme Court after the rejection of Judge Bork, in a review of The Confirmation Mess (1995).

We invited some CWSL professors to jump in on the fun with their favorite pieces of trivia from the Supreme Court. Professor Fink, who is on maternity leave at the moment with what I hear is an early, but very cute and happy baby, said, “One of my favorite pieces of USSC trivia is the fact that Justices Scalia and Ginsberg are extremely close friends in their lives off the bench, and in fact spend every New Year’s Eve together with their respective spouses. To me, their friendship is a nice reminder that people can fundamentally disagree on the most significant of issues, but still respect each other’s views enough to forge a strong and lasting friendship.”

And Professor Klein, beloved Civil Procedure professor had too many pieces of trivia for me to list all of them, however one I found especially entertaining was this...

“Justice William Rehnquist and Justice Sandra Day O’Connor were law school classmates at Stanford (Class of 1952). Justice Rehnquist gave the graduation valedictorian address. Several years later, the Arizona Republic reported that Justice Rehnquist graduated number 1 in the class, and Justice O’Connor graduated number 3. But in 1952 Stanford Law School did not rank its class. At a class reunion after both were on SCOTUS, gavels were presented to Justices Rehnquist and O’Connor reading, respectively, No. 1 and No. 3. All other attendees got a gavel that read, ‘I was No. 2.’”