

# THE COMMENTARY

## Bookstore to Close

BY SAMI HADDAD  
EDITOR-IN-CHIEF

The California Western School of Law bookstore, which sells books, school merchandise, school supplies and many other items, will be closing in the middle of June, just before fall registration on June 17<sup>th</sup>. The space will be vacated and all law books will be sold online, through a virtual bookstore run by Follett Corporation. Follett is a long standing company, founded in 1873, that provides a variety of educational products

Upon registration a link to Follett’s webpage will be provided which allows students to purchase their material immediately. The booklist for all courses will be available via the web link from registration through the term. Moreover, the switch to a virtual bookstore will provide students more options in purchasing their books, as they can buy new, used, rental or e-books moments after they register.

Students will also be able to purchase California Western merchandise and various school supplies online through the virtual bookstore. Standard 4-5 day shipping will apply, however, the administration is in the process of creating “free shipping” time periods, where student’s shipping charges will be waived. Students are advised to look for emails, banners, signs and posters indicating the free shipping times.

The move to the virtual bookstore is being done for a number of reasons. First, the technology is becoming more up-to-date, providing online access to students and giving them a greater convenience when shopping for books. Second, the virtual bookstore is more cost effective, especially considering the free shipping period and e-books being offered. Finally, a virtual bookstore limits the school’s financial risk, one of which is the cost of stocking merchandise for students who buy books at the beginning of the semester, during which they are waiting to determine whether: 1) They actually need them; and 2) they are waiting for their books to arrive from a cheaper source.

Crystal Hengel, the Director of the Bookstore for the past 25 years, has been working diligently on the change and is excited for it. She is confident that the change will bring about more options to accommodate purchasing students and increase student convenience. A URL will be rolled out shortly.

## Moot Court Honors Board Continues their Success



California Western students (from left: Shane Lauritzen, Mary Naoom, Dayna Ellsworth and Mike Brenn) pose after winning 1st place in the AAJ Trial Competition the American Association for Justice’s (AAJ) regional Student Trial Advocacy Competition in Seattle, Wash. the weekend of March 21-23. **Story below.**

## MCHB Success: The Massacre at Kings County

Next: The National AAJ Competition,  
April 10th-13th in Santa Monica, CA

BY COREY GARRARD  
AAJ TRIAL TEAM ALTERNATE

Conte calls them The Team of Destiny. For some of us the lure of trial advocacy is powerful. So, we drink that Kool-Aid. There is an implied promise at this school that our trial program is the best. And while our alumni prove that in courtrooms across Southern California, a large burden is placed on Conte’s “Trial Dogs” to deliver on that promise. On March 23 The Team of Destiny did exactly that. I witnessed it, and it was glorious.

But, as I basked in the glory of my friends’ achievement I could not help but reflect on the immeasurable suffering and sacrifice that had gone into securing that victory. For Mary Naoom, Dayna Ellsworth, Shane Lauritzen,

and Mike Brenn the suffering began almost a year ago. It was then, at Boot Camp, that Mario Conte explained “The Rules” which among other things, forbid losing. More Kool-Aid. From there onward it was a life style. Day after day of “constructive criticism,” dry cleaning, vending machines, Advil, and egos. Tension is constant and relationships are strained. Ten months of this preceded The Massacre at Kings County.

After seventy-two grueling hours spent between the Kings County Courthouse and our hotel in downtown Seattle, the five of us stood alone in a suddenly empty courtroom. Mostly, there was laughter. More still, there was exhaustion. Sweating,

stinking, sleep deprived human beings free at last to breath. It was a moment I know each of them will remember and cherish forever.

The advocacy had been as near to flawless as I have ever seen. It has to be to win these types of competitions. In three days The Team competed five times. Each competition had three judges. When it was all said and done, they had swept every round – taking fifteen of the fifteen judges who saw them. There were judges who literally fell in love.

I could go on for pages about The Team’s opens, closes, cross examinations, and witness testimony, but instead I will share one powerful

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## Grades “Soft Release” Aftermath, Everything you need to know

Grade transformation process explained

BY SAMI HADDAD  
EDITOR-IN-CHIEF

Beginning this semester, CWSL will transition from the current grade scale (50-95) to a letter (A+ through F) grade and number-based (4.33 through 0) GPA system. Grades issued for Spring 2014 classes will appear using the new system.

CWSL had a soft release of grades on March 20, 2014. Previously earned grades and GPAs will be converted into the new system. Students will be able to access their transcripts online. These transcripts will show grades in the new grade scale. To receive official transcripts that use the old grade scale, students will need to make a request through the Registrar. Students will not be able to access or print out transcripts that show grades in the old grade scale.

Individual grades will be calculated the same way that they always have, faculty will submit grades to register in the 50-95 scale. These grades will then be converted by the Registrar to the new letter grade scale.

Number Grade	Letter Grade
93-95	A+
90-92	A
87-89	A-
85-86	B+
80-84	B
77-79	B-
74-76	C+
72-73	C
70-71	C-
65-69	D+
60-64	D
55-59	D-
54 and below	F

At this point, your letter grade will be recorded on your transcript. However, for purposes of GPA calculation, the number of units of the course will be multiplied the number grade in the class, creating a total number of points (PTS). The GPA is determined by dividing the points (PTS) by the total number of units to determine the number grade equivalent on the 50-95-grade scale. This number is then converted to the corresponding grade point on the new grade scale. The conversion from the current 50-95 point grade scale to the new GPA is as follows:

Grade	GPA
93.00-95.00	4.17-4.33
90.00-92.99	3.84-4.16
87.00-89.99	3.51-3.83
85.00-86.99	3.33-3.50
80.00-84.99	2.80-3.32
77.00-79.99	2.42-2.79
75.00-76.99	2.12-2.41
74.00-74.99	2.00-2.11
69.00-73.99	1.46-1.99
65.00-68.99	1.17-1.45
60.00-64.99	0.70-1.16
55.00-59.99	0.01-0.69
50.00-54.99	0.00

Previously earned grades will be converted into letter grades and the corresponding GPA. Students who matriculated prior to Spring 2014 will still have the option of requesting transcripts using the old grading system. Any student who matriculated prior to Spring 2014 and who believes they have been disadvantaged by this conversion can choose to have their grades presented using the old system.

## INSIDE

**Meet your future Editors** Please join me in welcoming, the newest editors of the Commentary for the 2014-2015 school year, Seve Gonzales and Clinton Pierce. Pg 2

**SBA Introductions** A new board of SBA members began their terms on April 1, 2014. Meet them all on Pg 4-6

**A Day in the Life of ADR** Professor Gregg Relyea takes a look into ADR, a practice of law that although used but many, is often neglected in law school. Pg 11

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# INSIDE COVER

## Letter from the Editor



**SAMI HADDAD**  
EDITOR-IN-CHIEF

This past year I have had the distinguished honor of serving as Editor-in-Chief of The Commentary. I have met a lot of new people, had a lot of great experiences, and I have had the opportunity to explore my passion for journalism on a daily basis. The experience has been more than I could have ever imagined, and I want to thank all of the writers and contributors who made the 41st year of the Commentary such a success.

Law school will be over quicker than you know it. To be honest, it really isn't as bad as everyone makes it seem. Sure the job market is not the friendliest, but it is not like getting a job in any field is a walk in the park. The work is strenuous, but it is well worth it. The people can be stressed at times, but at the end of the day we are all in the same boat together. As I conclude my third year in law school, I know that I will miss this place.

I've spent the last few months trying to enjoy as much as I could from my law school experience. My fellow graduating 3Ls and I will be finished soon, and reduced to individual cubbies around the country studying for the bar exam. We will take the bar in different states and go on to lead different lives. But amongst all the diversity, all the political, ideo-

logical and practical differences, we will all be part of the California Western graduating class of 2014. We have seen each other during our best and worst moments, through trials (pun not intended) and tribulations. And no matter where our degrees take us, we will always share that bond.

I'm very excited about next year's Commentary. Co-Editors Clinton Pierce and Seve Gonzales are very well equipped to take The Commentary to new heights next year. At times during this past year, The Commentary was very understaffed, and I doubt we will face that problem next year. They have expressed a lot of new ideas to me, which I am very excited about. I encourage all students with time still remaining in their law school journeys to get involved, and make this experience "yours" by doing more than just going to class.

To my fellow students at California Western, regardless of whether you are a 2L or if you have just one year to go, figure out what drives you and immerse yourself in it. Be the things you are passionate about, and you will help make California Western a better place to study and practice law. Don't be afraid to go against the norm, and be sure to take advantage of the incredible opportunity to study law in beautiful San Diego.

## Meet the Future Co-Editors



**CLINTON PIERCE**  
2014-2015 CO-EDITOR-IN-CHIEF

My name is Clinton Michael Pierce, but my closest friends call me Mister Clinton Michael Pierce. I grew up in Bakersfield and bounced around California as a brewmaster's assistant, bowling alley attendant, telemarketer, and chocolatier before managing to graduate from UC Santa Cruz. With a BA in modern American literature and a Certificate of Participation from the San Francisco School of Bartending, I ran off to Colorado to work as an executive for the Boy Scouts of America.

Upon returning to the greatest state in the Union, I decided the next logical step was to parlay my failed semi-professional blackjack career into a JD. I chose to study law because I like to sound important and use big words. I chose Cal Western so I could live near the ocean and make my ex-wife jealous by posting beach-sunset photos to Facebook.

I really am enthralled with legal studies, but my other passions lie in the written word and in building communities. I am fascinated with watching society form. In a lecture hall, bar, or bowling alley, I prefer a seat that provides me with a view of the whole room. From that perspective I see friendships form and fade, and watch a cohesive community develop from a room full of strangers. This publication is about providing that perspective, conglomerated from each of yours.

I'm thrilled to be a part of your world, and I look forward to working with Mr. Seve Gonzales to bring you the latest in newsworthy happenings and opinions. I want *The Commentary* to be your connection to the Cal Western community, your open forum, as well as your little escape from the daily cataclysm of law school. Close your laptop. Put down your smartphone. Pick up the paper and read something entertaining and informative about the life that is going on around you.

Hello, my name is Seve Gonzales and I am excited to serve alongside Mr. Clinton Pierce as the new Co-Editors-In-Chief of The Commentary.

I like to think of myself as a fairly simple guy. I was born in National City and grew up in La Mesa. After high school I was lucky enough to attend Yale University where I majored in Economics. While at Yale I had the privilege of playing on the men's golf team. My years in New Haven were some of the best of my life, but after four New England winters, this California kid was ready to come home.

When I came back to San Diego, I took my nice new diploma and hung it above my bunk bed at my parents' house. Man, did I miss the free meals! After a few years of chasing the professional golf dream, and after several "what am I going to do with my life" moments, I decided I wanted to go to law school.

I only have one year under my belt, but it's been one heck of a year. I've learned so much and met many amazing people. I feel honored to be a part of the California Western community and am grateful for the opportunity to serve The Commentary.

Clinton and I are thrilled to tackle this new challenge. With our shared experiences and strengths, we hope to continue the The Commentary's tradition of informative yet entertaining journalism. Clinton and I strongly believe in the importance of community, and that one of the pillars of a strong community is a well-informed populace. By keeping students, faculty, and staff well informed and connected, we hope to strengthen the California Western community.

Law school often forces students to focus on individual success and achievement. However, I firmly believe most of us came to law school with hopes of serving something greater than ourselves. In serving the SBA, Clinton and I hope to bring our community together and encourage others to stay involved. As Cesar Chavez wisely said, "We cannot seek achievement for ourselves and forget about progress and prosperity for our community... Our ambitions must be broad enough to include the aspirations and needs of others, for their sakes and for our own."



**SEVE GONZALES**  
2014-2015 CO-EDITOR-IN-CHIEF



# CRIMINAL LAW FROM THE OTHER SIDE

## A Letter from the Other Side of the Bar(s)

Written by a Former Client of a  
Public Defender

As someone who has experienced how it feels to be handcuffed and shackled, crammed into a bus full of convicts (some of them murderers and rapists) for a 45 minute ride before being shuffled into a courtroom, I can tell you that the justice system is terrifying when you're on the wrong end of a police baton.

As a kid, I remember a field trip to the county sheriff's office and county jail where I grew up. I don't remember if the trip was part of the D.A.R.E. program (which did nothing for me except evoke an interest in drugs and crime) or if someone's dad was a deputy or what. We took turns standing in a holding cell and having the door slammed shut on us. Everyone giggled. The deputy asked us if we were ever going to be in there again and a room full of ten-year-olds yelled a resounding, "NOOOOO!"

Twelve years later, I found myself in that holding cell again.

Imagine being escorted from the back of a police cruiser, through a dark basement, into a white room. The handcuffs dig into your wrists and feel like they're scraping against bare bone. Your shoulders feel like they're going to dislocate from the pressure as the cop pushes you forward by your cuffed hands. You answer a series of questions while someone empties your pockets. The cop removes your necklace, and the locket that your mother gave you slides off the chain and falls to the ground. It bounces and rolls down a drain in the floor. The officer says, "You probably wouldn't want that anyway after it's been on this floor." You're shuffled into another small room where they take off the handcuffs and fingerprint you and take a photograph.

Then you're escorted (or thrown face-first) into a holding cell, and the door slams behind you. You then realize that you have absolutely no control over anything. Claustrophobia sets in. Panic. Terror. And you have to hide it because the other fifteen people in that little room all look bigger and tougher than you, and they're all staring at you, and you're not sure how the dude crumpled up in the corner bleeding from his ears got

there. You realize that you can't leave this 10-by-20 room until someone allows you to. It smells like vomit. There's a naked guy passed out on the single aluminum toilet at one end of the room. The two toilet paper rolls have been claimed as pillows by the biggest guy in the cell. All of the space on the two benches is taken up by sweaty, semi-conscious caricatures of Saul's fat bodyguard from Breaking Bad and Ed Norton's character in American History X. Even the space under the benches is filled with sleeping, shirtless tattooed guys. There's nowhere to sit except in the middle of the floor that looks like it hasn't been mopped in a decade. The once white paint on the brick walls, floor, and ceiling is the color of infected puss. There is no clock on the wall. No windows. There's a barred opening, about one foot by two feet, in the blue solid steel door, but the view is obstructed by some guy who is chewing on the bars – yes, he is chewing on the bars. You sit down on the floor, bring your knees up to your chest, and rest your chin on your knees. You try not to make eye contact with anyone, and try not to breathe through your nose. Time passes while you run through the last several hours over and over in your head and become overwhelmed with self-loathing, anger, disgust, hatred. Every time someone new gets thrown in, a toothless twaker asks him what time it is and the new guy says something like, "I dunno man, but it was right after last call when the pigs jumped me," or "Does it look like I have a freaking watch, pendejo?" When someone finally has an answer, you're shocked to learn that only 12 hours has passed because you could swear it had been at least one full day already. Time passes. Every now and then the door opens, and someone's name is called, and they either get to go home or move across the hall to be booked for a longer stay. Thirty-six hours pass before you hear your name. Most law students, most attorneys have no idea what that feels like. While you may have come to law school with hopes of defending the hopeless, the distance between sympathy and empathy is unfathomable. If you're planning to be a public defender, remember that

my experience described above is likely similar to what your client went through even moments before sitting down to talk to you.

Remember the "new fish" scene in Shawshank Redemption? The guys take bets on which new inmate is going to break down crying first. After "lights out" everyone begins chanting and rattling the bars, and finally one of the newbies starts blubbering, "I don't belong here! I wanna go home! I want my mamma! I ain't supposed to be here! Not me! You don't understand! I ain't supposed to be here!" You may not see it, but that's what is going on inside the head of the guy across the desk who is telling you that all cops are assholes or saying that he doesn't trust you because you're just part of the system.

If you've ever been that guy, you know that the cards are stacked against you, plain and simple, and that is terrifying. Aside from the fear of what is going to happen to you, it's a pretty crummy feeling when everyone assumes that you're a criminal – and they do assume that. That whole "innocent until proven guilty" bit looks great on paper, sounds great in a junior high school oral report, but the subtext is another story - "If you were arrested, you must have been doing something wrong." The prejudice of our judicial system is highly visible to anyone who just spent thirty-six hours in a holding cell.

I can see how a public defender might become jaded over time and I can understand how a seasoned prosecutor might not even give a moment's thought to the emotions of the guy in handcuffs - it's inhuman to ask an attorney to shoulder that much sympathy over the course of a career. But I implore you, if you are planning a future in criminal law (on either side of the system), don't begin your career with that prejudice. Please remember that, while your client (or your adversary's client) may not be crying and blubbering like in the movies, he is scared, sad, maybe just as angry at himself as he is at anyone else, and he may very well be completely innocent. With your help, he might even be a future attorney.

## MCHB Success

From MCHB SUCCESS on page 1

moment. After the Defense rested in the final round, the court allowed a five-minute recess. I stretched my legs, and consulted with team coaches Billie Gibson and Michelle Ryle (both CWSL alumni superstars). When I looked to the back of the courtroom The Four huddled close. Each member was giving input to Dayna as she prepared to close. It was emblematic of their approach; everyone had something to contribute. They were on point with lazar like focus. Then, cool as a block of ice, Dayna put a few nails in the coffin for good measure, and buried opposing counsel.

But I don't think Professor Conte was focused on their advocacy alone when he dubbed them The Team of Destiny. It

was their unrelenting commitment to one another as teammates. It was their willingness to apologize and forgive when tempers flared, their insistence on supporting each other through missteps and uncertainty. Each member brought something to the table, and each was willing to lean on the others when necessary. I watched them look after one another during all the in between moments: airports, hotels, and meals. Months of effort cultivating that bond, never giving up on each other, provided the kind of trust and chemistry it takes to win. For me, it was the pinnacle of camaraderie and leadership. It was deeply humbling and inspiring to observe.

The Massacre at Kings County included victory over two very well pre-

pared and classy teams from the University of San Diego in the semi-final and final rounds. I wish you could have been there to see it. On behalf of all our trial teams I would like to thank Ben Grueschow and the members of the Moot Court Honors Board, without whom the trial teams are merely a clan of blabbering egomaniacs. On behalf of myself and all the other Trial Dogs who ever broke The Rules by losing, I thank Mary, Dayna, Shane, and Mike for the sweet, sweet redemption. I love you guys. I know you will continue to make us proud next year.

The Team competes in the National Competition on April 11 in Santa Monica. I will be there. I hope you come too.

## Negotiation Team Competes at UCLA



Congratulations to CWSL Negotiation Team Members (from left: Nicole Schirm , Noura Bariche, Katrina Julian, J.R. Canlobo and Alicia Morelle, who made it to qualifying rounds in the California Bar Environmental Law Negotiation Competition at UCLA . Eighteen teams of two from law schools across the State competed in this year's Student Negotiation Competition. This competition wass sponsored by the Environmental Law Section of the State Bar of California.



# MEET YOUR NEW SBA BOARD

## Julie Davis- Administrator

My name is Julie Davis and I will be a 2L this summer. I grew up in Camarillo, CA where I was blessed with the most amazing family and group of friends. I really look forward to joining the SBA as the Administrator. If you ever have a question about the SBA, any of the organizations, or just how to find balance in the midst of all the amazing things we are achieving as law students please don't ever hesitate to reach out to me directly or stop me in the hallway. If you want an ice-breaker; I played soccer at The University of Alabama so I am a diehard Bama fan. All you have to say is "Roll Tide" and I will likely stop whatever I am doing. Also, I am allergic to gluten (no it's not just a fad) so if you ever want to recipe swap, I'm your girl! I truly look forward to making a difference with my legal career, so if there is anything I can do to help you do the same I will be your advocate and biggest supporter.



## Brittany Casola — Treasurer



Making the move from Florida to the west coast forced me to leave my comfort zone. California Western helped me branch out by providing opportunities to explore different interests through internships and social events. My love for this law school has encouraged me to get involved with SBA and become a face for our student body. I've recently developed an appeal for the financial side of the law: I became certified as a volunteer IRS Income Tax Assistant and now help file tax returns for low income individuals on a weekly basis. During my undergraduate years, I sat on the executive board of my sorority and helped create and manage the budgets allocated to each committee and acted as a liaison between the sorority and the university. I'm highly detail-oriented, organized, and ready to put these qualities to use in representing our school. I'm enthusiastic for the year ahead to serve as your SBA Treasurer!

**Editor's Note:** If you hold a leadership position in a student organization and would like to use this section of the paper to publicize your events, email us at [cwslcommentary@gmail.com](mailto:cwslcommentary@gmail.com) so we can accommodate you.

## Message from your SBA President

Hello to my fellow California Western students, faculty, and administration! My name is Joanne Heilburn and I am excited and honored to represent you this upcoming year as your SBA President! I look forward to meeting each and every one of you over the next year, and welcome your ideas and suggestions on how SBA can better serve you!

I was born in South Carolina and raised here in beautiful San Diego. I majored in Communications at California State University San Marcos, and worked in business management before attending law school. I have genuinely enjoyed my time on SBA over the last two years, and hope that this year we can continue the positive momentum initiated by Lauren Foley and her board.

I am passionate about providing an inclusionary environment for all students, and creating a community on campus that values the individual talents of each student!

In deciding to run for President and Vice President, Merrick and I considered how we could positively contribute to SBA and the California Western student body as a whole. This year we will be focusing on increasing SBA's visibility on campus and increasing our reach into the local community. We are excited to hear your ideas and welcome your help in achieving these goals!!

Please feel free to stop me on campus to say hello, or to share any thoughts or ideas! Wishing you all luck on finals!! Here's to a great year ahead!!



**JOANNE HEILBURN**  
SBA PRESIDENT

## SBA Vice President

Hi California Western! My name is Merrick and I am very honored to serve as your SBA Vice President for the upcoming year. I have been involved with this great organization for the past 2 years, serving as both a 1L rep and a 2L rep. We have some very motivated individuals in the SBA with some wonderful ideas. Our goal is to get YOU excited about getting involved and make this campus a more welcoming, cohesive community. If you have any ideas or interests, please feel free to approach me at any time or shoot me an email at [CaliforniaWesternVP@gmail.com](mailto:CaliforniaWesternVP@gmail.com). We're all in this together, Cal West. Let's make it count!



**BY MERRICK WADSWORTH**  
SBA VICE PRESIDENT

## New Local Business- Kundalini Yoga

**BY IRJA WADSWORTH**

OWNER OF SHYNIYA YOGA SAN DIEGO

Sat Nam!

A Kundalini yoga greeting meaning, "I am the Truth. Truth is my identity"

I was born in Saaremaa, Estonia. Saaremaa is the biggest island in Estonia – a whopping 100 miles long and 50 miles wide. One town, many villages... Our farm is in the centre of the island. I tell people, "if you take a needle and stick it in the middle of a map of the island, it probably hits our haystack." ("Labu" as we would call it).

I always wanted to get off the island, so after high school I went to college in Tallinn, the capital of Estonia. I studied law for three years; I was in class from 8:30AM until 4:00PM every day... no time wasted. On top of that, I worked full-time at a coffee shop so I could pay for school and the costs of living in the city. Yes, it meant a lot of transcribing notes at night and on the weekends... memorizing books to pass tests... But somehow I still had time to go out, dance, sing, date...

In 1997, I moved to upstate New York to work as a Girl Scouts summer camp counsellor. The next winter I moved to Boston – my home for the next 13 years. I did not dare to continue my law school studies in the US. I was intimidated, and the endless working hours did not appeal to me. But yet, I ended up working for a law firm for the next 12 years. Life went on - marriage, house, dog, daughter, divorce, no new beginning.

During the winter of 2008, I found myself at a dead end. It was too cold and snowy. I was stuck, miserable, stressed, depressed, and cold. I was unable to pull myself together. My therapist did not care how I was feeling. He gave me a bottle of antidepressants and scheduled me for another appointment – in four weeks. I needed help now!

My sister came to visit me that winter and was reading "Eat, Pray, Love." I finally gave up and read the first page. It seemed like I was reading a story of my own life... When the main character reaches India, she begins

to describe Kundalini Shakti. "In Indian Yogic tradition, ...[Kundalini shakti] is depicted as a snake who lies coiled at the base of the spine until it is released by a master's touch or by a miracle, and which then ascends up through seven chakras, or wheels, and finally through the head, exploding into union with God..." The main character decided that Kundalini was not for her, but I had found what I was looking for!

A week later, and after several hours of driving in more snow, I reached the Millis Kundalini Ashram Yoga Center. I was the last person to enter the classroom and the only one who wore black yoga pants and dark clothes. Oh well, I did not know... We finished a series of weird exercises, chanted something strange, and stared through our somehow-criss-crossed fingers for at least ten minutes... But whatever it was, it worked and I cancelled my next therapy appointment.

I learned how to meditate, manifest, believe, and receive. I learned how to breathe, watch my thoughts, emotions, and feelings. I learned every mantra by watching YouTube while driving my car to work. I cried; I let go; I was healing! Kundalini yoga gave me a new beginning! That summer, I drove my daughter, cat, and hamster cross-country to San Diego.

To my surprise, there was no Kundalini Ashram in San Diego. I took classes here and there, but no place where it all came together. My practice was hurting. I borrowed money for a flight to India for the 11.11.11 Kundalini Yoga and Music Festival.

There, I learned so much about myself! I fully let go. I needed more Kundalini. I was like an addict. I was becoming me. Then the voice came during a meditation from Matre Ganga: "You need to become a teacher..." "Me? Huh?" "You need to become a teacher!" "OK..."

I am so happy when people cry and weep in my class – they are letting go. I am proud when people snore

and sleep during relaxation – they are resting. I am honoured when people talk to me after class – they had a great experience.

Among established yoga traditions, Kundalini is known as the most powerful of all. The techniques of Kundalini Yoga essentially provide an operating manual and tune-up kit for life. In fact, it awakens your inner mechanic. Through specific breathing, movement, stretching, meditation, and mantra, you will transform yourself and everything you touch. Our fundamental objective is to awaken the power of the individual to excel—to experience her Infinity and fulfil her personal destiny.

The primary objective of Kundalini yoga is to awaken the full potential of human awareness in each individual; that is, recognize our awareness, refine that awareness, and expand that awareness to our unlimited Self. To clear any inner duality, create the power to deeply listen, cultivate inner stillness, and prosper and deliver excellence in all that we do.

And it works!

Sat Nam



Jade  
Owner of Shuniya Yoga San Diego



# SBA CLASS REPRESENTATIVES

## Allan Acevado-Chairman of the Board



I'm excited to continue serving as a representative for our 2L year. I'm also excited to expand my involvement by serving as Chairman of the Board. I'll be supporting all of the SBA representatives as we serve as a resource to our peers. I went to SDSU for undergrad (Go Aztecs). Before law school I had worked as senior staff for a series of political campaigns ranging from city council, state assembly and Congress. I came to law school because I wanted the tools to create positive change. Aside from my naive belief that we can all work to make the world a better place, I enjoy: running half marathons; making gourmet jelly shots; learning to juggle; and coffee (black, one sugar). If you have any questions, concerns or ideas let's talk: [afacevado@law.cwsl.edu](mailto:afacevado@law.cwsl.edu).

## Katie Aul- 3L Representative



"Hey Everyone! My name is Katie Aul and I will be a 3L Representative for the 2014-2015 school year. I grew up in San Diego and majored in English at the University of San Diego. I look forward to hearing from students about their concerns and hopes for the Student Bar Association, student events and budget issues, and the school generally. I truly like hearing people's complaints, and feel that sometimes progress can only occur when people speak up, so please feel free to email me at [kraul@law.cwsl.edu](mailto:kraul@law.cwsl.edu) with ideas, gripes and anything at all that strikes you as important. I'm really excited to represent my 3L class, filled as it is with talented and diverse people, and look forward to a wonderful 2014-2015 school year!"

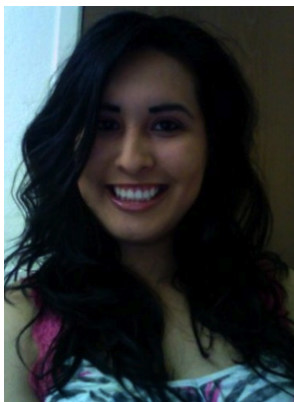
## Mike Miller- 2L Representative

I'm Mike Miller and I am one of the 2L representatives for next year. I am an LA native (Go Lakers!) and moved down to San Diego two years ago before starting law school. I went to UC Santa Barbara as a political science major and was fortunate enough to work for an Los Angeles City Councilman after undergrad. I'm a Dodgers and Lakers fan, a bit of a Futurama and Seinfeld addict, and love the abundance of craft beer breweries San Diego is home to. I look forward to adding to an already dynamic Student Bar Association and hope to foster a fantastic learning environment in the coming year. When you see me around feel free to stop me for any suggestions or questions, shoot me a question at [MSMiller@law.cwsl.edu](mailto:MSMiller@law.cwsl.edu), or just to say what's up!



## Stephanie Franco- 3L Representative

Hello Everyone! My name is Stephanie Franco and I am your new 3L Representative. I was born and raised in Downey, California. I received a double major in Political Science and Philosophy with a minor in Theatre from UC Davis. My main interest is sports and entertainment law, which is why I decided to come to law school. I look forward to the wonderful year we have ahead! Please contact me at [sfranco@law.cwsl.edu](mailto:sfranco@law.cwsl.edu) for anything you may need or want to see happen this upcoming year. I want to make this the best year possible for everyone!



## Megan Mangassarian- 2L Representative



Hi, My name is Megan Mangassarian and I am going to be one of your 2L Representatives. I was born and raised in Los Angeles. I studied Criminology at CSU Northridge before moving to San Diego for law school. My favorite thing about being a representative is connecting with classmates. My position is meant to link the students with SBA. Please feel free to stop me to ask any questions, or contact me at [MMangassarian@law.cwsl.edu](mailto:MMangassarian@law.cwsl.edu).

## Teena Fodge- 3L Representative



Hi, my name is Teena Fodge and I am your 3L Representative. I was born and raised in Oregon, but have lived in New Mexico, Texas, Nevada and California. I successfully raised three children and I am the proud grandmother of four little girls. I majored in Criminal Justice at Colorado Tech Online and worked mainly in retail before coming to California Western. My passion is criminal defense. As your representative, I intend to be available to answer any questions you might have about the SBA or to find the answer if I don't have it readily available. If you see me on campus, please feel free to chat or ask for a business card. You can contact me at [ecfodge@law.cwsl.edu](mailto:ecfodge@law.cwsl.edu). I look forward to meeting and working for all of you.

## Megan Newman- 2L Representative

Hi, my name is Megan Newman and I am one of your 2L Representatives. I was born in North County San Diego, grew up in Redlands, CA and returned to San Diego after high school to attend CSU San Marcos where I majored in Political Science and minored in Communications. I look forward to serving my class, being approachable and engaging, and making sure your voice is heard. I enjoy meeting new people and collaborating with my peers! Please feel free to contact me at [MMNewman@law.cwsl.edu](mailto:MMNewman@law.cwsl.edu) for any reason, even if it is just to say hello. I hope to have the opportunity to meet you and positively contribute to the success of the Student Bar Association. Good luck in the following year as you continue to further your legal career!



## Celene Alfaro- 3L Representative

Hi all! My name is Celene Alfaro, and I am a 3L Representative. Apart from the law, my other passions include reading, music, and television. I graduated from California State University, Stanislaus with a major in both political science and communication studies. I am very excited about what SBA has planned for this upcoming school year, and I am grateful for the opportunity to work alongside incredibly dedicated and passionate people to help increase California Western's involvement in the community. If you have any questions or concerns, please contact me at [CJAlfaro@law.cwsl.edu](mailto:CJAlfaro@law.cwsl.edu) or feel free to stop me in the halls. I am more than happy to chat with you!



## The "Mini" Artichoke- Security Cameras to be Installed in Student Break Rooms and Refrigerators Over Break

BY STUDENTS FOR THE SAFETY OF OTHER STUDENTS

Due to the recent increase of reports of students stealing each others food, security cameras will be installed in the 350 building student break rooms on the lower level and 4<sup>th</sup> floor over break.

If a student discovers his food has gone "missing," he can go to the security desk to ask a security guard to roll back the footage recorded that same day. Once a student identifies the culprit, that person can be reported to administration for further disciplinary action. The clearer students mark or label their food, the easier it will be to identify it if they ever have to roll back the tapes.

Food stealing has been a problem at Cal Western for years, but this is the first time administration has taken such drastic measures to combat the war against "food thieves."

Why do people take other's food? It's obvious these food thieves know the food doesn't belong to them and they also know they probably won't be caught if they take it. But hopefully the battle against food thieves comes to an end May 5, 2014.

In an inclusive interview with an unnamed thief who refused to identify himself will be held for further questioning, we asked what his motivation was. He responded by saying, "Well firstly I'm a hungry student like everyone

else. I could go to the deli across the street and pay \$5 for a sandwich or I just grab a lunch. Second, it's fun, because you never know what kind of lunch you are going to get. And in the sad life of a law student, you need those moral boosts once in a while.

Finally, it helps with the brutal curve, meaning that if I can better myself by having a lunch, while causing another student to be frustrated because they don't have theirs, well, then I'm doing all the other students a favor. You're welcome Cal Western."



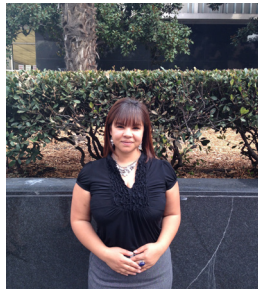
# SBA POSITIONS FILLED

## Kelly Haynes- Race Judicata Event Director



My name is Kelly Haynes and I will be a 3L this summer. I was born and raised here in San Diego. For the past two years I have served on SBA as a class representative and I am excited to be serving on SBA as the event director of Race Judicata this year. As director of Race Judicata, my goal is to ensure that it is a success involving as much of the student body, alumni, and legal community as possible, as well as family and friends. I hope you to see you all at this year's Race Judicata and look for more information regarding details about Race Judicata 2014 as the event gets closer!!!

## Sarah Reddicono -ABA Representative



My name is Sarah Reddicono, and I am your 2014-2015 American Bar Association Representative. I am a current student member of the ABA, and want to keep the Cal Western community informed of what's going on with the ABA. Plus, the ABA offers a lot of great information and services to its members, and I want to make sure everyone is aware of everything that comes with membership. If you ever want to learn more about the ABA or attend an event with me, you can contact me at: [SMReddicono@law.cwsl.edu](mailto:SMReddicono@law.cwsl.edu).

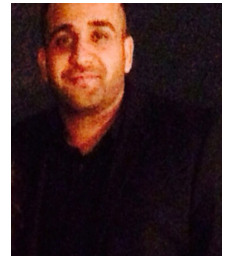
## Lane Torsy- Race Judicata Marketing Director

"Hello everyone! I'm Lane and I will be your Race Judicata Marketing Director for 2014-2015. I was born and raised in sunny Southern California, but I did my undergrad at Northern Arizona University. My hobbies include going to the beach, NFL Football, and running. I know, you're probably wondering how anyone could ever enjoy running, but I do which is why Race Judicata for Cal Western's 90th Anniversary is going to be the best 3.1 miles you've ever run! Please feel free to email me with any questions, comments, or concerns about Race Judicata at [ltorsy@law.cwsl.edu](mailto:ltorsy@law.cwsl.edu)."



## Monty Randhawa -FBA Representative

Hi, my name is Monty Randhawa and I'm a 1L. I will serve as the FBA representative for the 2014-2015 school year. I hope to make the relatively new FBA position a smooth transition into the student body. I look forward to learning a great deal from the committee and members of the SBA.



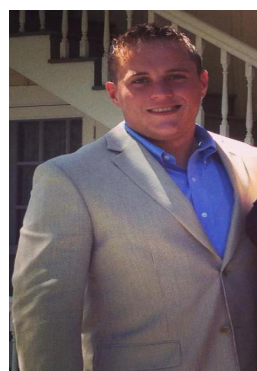
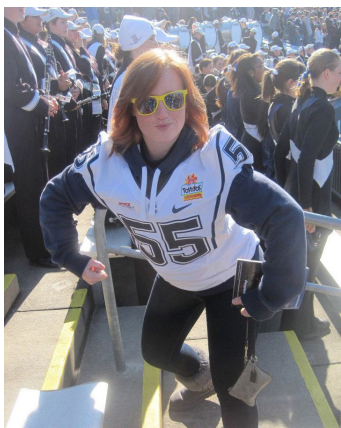
## Jackie Yu -Webmaster



Hi my name is Jackie and I am excited to be the new webmaster for SBA in this upcoming year. I am currently a 1L from Los Angeles and I love to travel! Feel free to say hi if you ever see me around campus.

## Amy Vaughan- Director of Intramurals

Hi there, my name is Amy Vaughan and I'm your Intramurals Athletic Director. I grew up in New England, so naturally I support all the best professional teams in the country. I also spent four years as a student athlete representing the University of Connecticut (my apologies if we ruined your billion dollar bracket). I'm familiar with many types of sports including skiing, snowboarding, figure skating, and ice fishing. All of which are of no help to you. All jokes aside, I do intend to improve student participation in existing activities, while also expanding intramurals with a few ideas of my own. I like to appeal to the masses so please don't hesitate to contact me with any questions or suggestions. My email is [AAVaughan@law.cwsl.edu](mailto:AAVaughan@law.cwsl.edu).



## Turner Hopkinson- SDCBA Representative

Hello everyone, my name is Turner "TJ" Hopkinson and I am your San Diego City Bar Association representative. I was born and raised here in San Diego, spent five years in the United States Marine Corps as a K9 handler, and now am here at law school looking to become a criminal defense attorney at some point (hopefully, provided I don't fail miserably this trimester) down the road. I look forward to sharing all the information the SDCBA passes along and am always available to answer your questions. Please don't hesitate to e-mail me at [tjhopkinson@law.cwsl.edu](mailto:tjhopkinson@law.cwsl.edu) and good luck on finals!

## Bradley Young- Public Relations Co-Director

My name is Bradley Young and I am your new Student Bar Association Public Relations Director. I'm looking forward to working to build community at CW and keeping ya'll informed of all the exciting events and activities SBA has to offer. Stay Classy!



## Sasha Aguilar- Director of Activities



Hi everyone, my name is Sasha Aguilar, I am your Director of Activities for the Student Bar Association. I attended Cal Poly in San Luis Obispo for undergrad and majored in Political Science. I love San Diego and have really enjoyed living in the city. Law school has been a great experience so far, and I look forward to meeting more of the student body and being involved with the SBA. I hope to help make the SBA activities successful and entertaining. Please don't hesitate to email me at [sgaguilar@law.cwsl.edu](mailto:sgaguilar@law.cwsl.edu) for any reason. Can't wait for an exiting new year at California Western.

## Travis Kohler- Public Relations Co-Director



Hi CWSL! My name is Travis Kohler and I am the new Public Relations Co Director for the 2014-2015 year. I am excited for this position and look forward to keeping you all updated with events, fundraisers, mixers, meetings, forums, and also offering opportunities for students to network and become more involved. I hope to ensure that you will have a memorable experience at CWSL. If you have any questions about upcoming events, feel free to stop me and ask!

## Irene Choe- Community Outreach Co-Director (External Affairs)

Greetings! As Community Outreach Co-Director, I'm very excited for this opportunity to get more involved with the San Diego community with all of us here at CWSL. I hope to bring interesting venues for students who wish to integrate with local groups from their new professional capacities. These experiences will surely be personally fulfilling in unexpected ways, allowing us a firsthand look at the ways we can impact our surroundings.



## Anali Cortez- Community Outreach Co-Director (Internal Affairs)

Hello! My name is Anali (Ana-lee) Cortez and I am one of the new Community Outreach Directors. I look forward to organizing and promoting community service projects around the San Diego Community. I also look forward to help making Race Judicata a successful event. I am excited for this great experience and excited to work with other members of the SBA as well as the California Western student body.

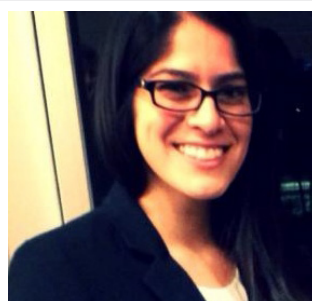


## Christine Espejo- Community Outreach Co-Director (External Affairs)



My name is Christine Espejo and I will be one of your SBA Community Outreach Co-Directors for 2014-2015. I'm a 2nd year JD/MSW student so this past year I've spent my time at SDSU. I love hanging out with friends, swimming, and dancing. I'm very passionate about working with youth and want to work with them after graduation. I'm looking forward to planning volunteer opportunities for the Cal Western students to allow us to give back to the community. I love meeting new people so if you have any ideas or just want to say "Hi" please stop me and we can chat!

## Jennifer Monterroso- Community Outreach Co-Director (Internal Affairs)



Hi, my name is Jennifer Monterroso and I am one of the Internal Directors of the Community Outreach Committee. As an Internal Director, it is my job to generate student interest and participation in various community service projects throughout the year. If you have any ideas, suggestions, or feel strongly about a particular charity, please feel free to let me know. You can approach me at school or contact me at [JNMonterroso@law.cwsl.edu](mailto:JNMonterroso@law.cwsl.edu). Thanks and I hope to hear from you soon!



# ALI INSTITUTE: A STUDENT PERSPECTIVE

## Space Law- To Infinity and Beyond? What Challenges will the Future Bring

BY ALISON SCHLICK  
STAFF WRITER

*AIR LAW INSTITUTE (ALI) presented the Inaugural Air and Space Law Symposium on March 14<sup>th</sup> at California Western School of Law. Dean Schaumann welcomed attendees to the law school, making note of the law school's 90th anniversary. The symposium was moderated by California Western Professors William Lynch and Glenn Smith; as well as Joanne Gabrynowicz, Professor Emerita, Univ. Mississippi School of Law, Editor-in-Chief of the Journal of Space Law who had flown in to moderate the last panel on Space Law – Commercial Space in the 21<sup>st</sup> Century.*

This event was free for California Western students. Since this was an inaugural event, students that missed it this year can look for the event to hopefully be repeated in the years to come. Also the school videotaped the event. ALI is a pending 501 (c) 3 California Benefit Corporation formed to advance the study of air and space at the intersection of business, law, and engineering and co-founded by David Cain of General Atomics, and Christopher Celentino, Partner, Foley & Lardner LLP. David Cain is an alumni of California Western, School of Law and this type of symposium was his brainchild.

The Symposium opened with the history of air travel. William Janicki, Air and Space Law attorney, Morrison Foerster, LLP, explained how in 1909, Wilbur Wright circled the Statue of Liberty with a plane, then cruised over much of the coast with 1 million people gathered! Within ten years, thousands of planes were in use. During the panel on the "Aeroregulatory Bramble Bush: Where we've been and where we're going", David Cain, Air and Space Attorney observed that in the history of aviation – innovation comes first and regulation responds. In fact, right now the Federal Aviation Administration has been working on a regulatory scheme for integrating unmanned aircraft ("UAS" or AKA "drones") into the national airspace system since 2008, but they are still stalling on it, reported Ben Gielow, General Counsel and Senior Govt. Relations Manager, Assoc. for Unmanned Vehicle Systems International (AUVERSI). David Bannard, Partner Foley & Lardner LLP noted that UAS are currently being "shoe-horned" under FAA's OTA category (stands for Other Transaction Authority). In other words there is no specific regulatory framework for UAS. However, there should be an emergency rulemaking forthcoming. Doug Davis, retired from the FAA, with 20 years of experience in the FAA reminded attendees that the FAA is focused on SAFETY. He also noted that compared to 100 years ago when flying machines first took to the skies, the



Stephanie Thompson

### Dave Cain (CWSL '13) receives a special award from Dean Niels Schaumann

safety culture has changed and the "public does not tolerate unsafe systems."

Just this March, FAA's administrative case against Raphael Pirker who used a remotely operated glider to take aerial video for the Univ. of Virginia Medical Center was dismissed. The FAA investigation had concluded that Pirker operated the aircraft within 50 feet of numerous persons, about 20 feet from a crowded street, 100 feet from an active heliport, causing at least one person to take "evasive measures" to avoid being struck by the aircraft. For this unauthorized use and by operating the plane in a "careless or reckless manner so as to endanger the life or property of another" the FAA had proposed a \$10,000 civil penalty. Essentially, said one of the speakers at the symposium, he ruffled the feathers of some coeds. The penalty has been stayed while the FAA appeals the decision to dismiss, and surely this will result in some emergency rulemaking regarding small UAS.

These potentially ubiquitous devices could be constructed by nearly any high-schooler from parts purchased at Radio Shack. In contrast, large and medium examples are Dept. of Defense "predators, reapers, and global hawks" and FedEx and Amazon's recent headline grabbing consideration of small package delivery using drones. The panels explored different ideas to regulate these aircraft. Other concerns are nuisance, noise, and of course PRIVACY. One commentator (in the audience) explained the reason that privacy concerns are so unsettling in this area is that if the government, such as the Sheriff, used UAS with a camera that activity is restricted by the 4<sup>th</sup> Amendment's prohibition on unreasonable searches and seizures. However, the private individual is not constrained by the 4<sup>th</sup> Amendment. What remedy is there if a private person uses a small drone one and a half miles away to capture video and/or pictures of you doing things in your private space, at home where you would not want prying eyes? Doug Davis, retired FAA, reminded us that the focus for regulated use of these aircraft is on safety, and noted that there is no "U.S. Dept. of Privacy". Congressman, Scott Peters (D), questioned on this issue, mentioned that societal expectations of privacy change and have in fact changed from when he studied this in law school. With everyone online sharing the intimacies of their daily lives, the reasonableness of any privacy claim will likely be diluted by current norms. Finally, whether governmental or private intrusions on privacy will arise at a greater rate due to the use of UAS we don't yet know because we do not know how widespread their use will be in the national airspace until FAA reveals a regulatory framework and business rolls out these aircraft. Will use of these aircraft here, at home, erode the freedoms they were designed

to protect through their initial use by our government abroad during the "Millennial decade of global conflict" as one speaker described that time period?

This Brave New World does have some technological fine-tuning before commercial roll out: One of the biggest problems for use of unmanned aircraft is technical sense and avoid. Brandon Suarez, an aeronautical engineer from General Atomics Aeronautical Systems, Inc., explained that "sense and avoid" is not a big problem for human piloted craft because we humans have a built in survival instinct line of sight to avoid collisions. For technology, if the craft is remotely piloted the challenge in "sense and avoid" is the strength and security of the data link between the unit and the pilot. Additionally, Michael Jagers explained autonomous UAS. An autonomous aircraft is both unmanned and not remotely piloted. How does that work? In essence, the aircraft is set up for its flight plan and programmed in such a way to account for all contingencies before it is catapulted into the air and set on its way finally being caught at the conclusion of its flight like a fly in a web. Not all UAS manufacturers embrace autonomous UAS. We are all familiar with computer crashes, software viruses, malware, hackers, and generalized chaos that is present in the cyber-verse – wouldn't an autonomous UAS be less reliable than a human piloted craft for those reasons? For that, Michael Jagers of Northrup Grumman explained built in "quadruple" redundancy. Any type of new technology is likely to raise fears for the public especially and Jagers analogized to the time when Elevators were first in use, the Bellman sat pushing buttons for several decades before the public became comfortable. This writer notes that being stuck in an Elevator is still quite scary.

Steve Pennington, from the Dept. of Defense mentioned that non-military applications of drones include recent use during fires in California to scout out the fire and keep firefighters out of harm's way. Ben Gielow mentioned the biggest benefits of commercialized UAS is job creation and agricultural use (monitor water use, apply pesticides remotely). But others said we don't know the full commercial benefits until companies begin to use them. Whether widespread use will predate regulation as in the history of air travel is currently unknown. Some speakers discussed replicating a liability limiting scheme for UAS similar to that which first made carriage by air, and later air travel possible (The Warsaw Convention and Montreal Convention).

In contrast, in the law of space liability is strict, reported Professor Emerita Joanne Gabrynowicz. However, there is quite a lot to consider regarding space law than liability. (Title 51 USC as well as state and local laws and regs). Environmental issues for space focus on the long-standing peaceful mission of NASA and the chief fear of the public to avoid nukes in space. Satellites travel at 17,000 mph and are spaced 2 degrees apart around the equator. At this rate of speed, collisions do occur, causing falling debris. There are also low earth orbit (LEO) satellites that burn up during the solar maximum. There is no current method or plan to reliably remove orbital debris above us. An "end of life" plan is now required, but the focus is on getting the spent device out of the slot to make room for a replacement instead of clean up of airspace, still, this is a slight improvement. Kevin Lippert wryly shared that there is no "Satellites' Law for Dummies."

There will be numerous opportunities for lawyers and scholars to "take off" in the field of Air and Space Law. From the local to the global and beyond, from licensing and contracts, to torts, to international peace negotiations this is sure to be a lively field of law in the coming years. Congratulations to David Cain for bringing this thought provoking subject to California Western School of Law. We look forward to a continued discussion as well as creative problem solving on the challenges ahead.



SARENA KUSTIC

Dean Niels Schaumann opens the Law Institute Awards Dinner on March 14, 2014.



# MAKING THOSE TOUGH DECISIONS

## Handling Multiple Offers

BY MATTHEW LAB  
CAREER SERVICES

In a perfect world, you’ve been offered the job of your dreams. It is your top choice, there are no other offers to consider and you are confident and comfortable in accepting the offer.

We wish it were this simple. As many of you have discovered, the job search is usually much more unpredictable... You have likely interviewed with multiple employers over the course of a few weeks with each employer representing a job opportunity that falls on a different level in terms of your preference. This generally means that you will receive any forthcoming offers in a similarly random manner; and none of which will fall in line with your order of preference!

In a tight legal market, it is important that you tactfully handle multiple job offers to ensure that you secure the position while maintaining professionalism and not damaging your developing reputation. As such, when confronted with early or multiple job offers, be sure to have any delicate conversations (a request for additional time to accept an offer or an inquiry with another employer regarding their hiring timeline) as soon as possible. Below are some common scenarios that happen and tips on how you could handle them. If you have any specific questions as to the content below, please consult with a Career Advisor in the Career & Professional Development Office:

**Scenario 1:** You’ve been offered and accepted a position with your top choice employer. You have other interviews scheduled on later dates.

In accordance with school policy, you must interview with the other employers as scheduled. The reason for this policy is multifold, but most importantly for you, it gives you additional exposure to different employers, interview styles and gives you the opportunity **to defer a potential job offer to a later date**. At subsequent interviews, it is best to not volunteer that you have already accepted a job offer, since doing so may cause the employer to disqualify you. Of course, if asked by the employer whether you have any other offers, you must be candid. It is important that when you convey this information, you also express your genuine interest in working with the interviewing employer in order to preserve your chance for a deferred offer. Additionally, it may also be an option for you to work with more than one employer at a time, especially during the summer when you may not have classes.

**Scenario 2:** You’ve received **two equally desirable job offers**, neither of which can be deferred. How do you decide which one is right for you?

First of all, it is good to be wanted! When dealing with more than one offer, make a list of pros and cons for each. Make sure each list is all-inclusive. Think about the features of each position. This will help you see the differences more clearly and make a better decision. Then determine which of these features are really important

to you and your long-term career plan. Discuss your options with a Career Advisor as well as your Academic Advisor.

It is also perfectly acceptable to ask for additional time when considering multiple offers. It is much better to ask Employer A for an extension of time, than to accept Employer A’s offer and wish you had requested the additional time to make a well-reasoned decision especially if you decide that Employer B is a better fit for you.

If you are given extra time, use it wisely and ask any additional questions you may have about the job. Again, you need to handle this conversation in a delicate manner. When speaking with the employer listen to how they are reacting to the request, and be prepared to be given an additional day or two or no additional time at all.

**Scenario 3:** You are **offered the position during the interview** with Employer A, which is not your top choice. You are waiting to hear from your top choice, Employer B.

It is rarely a good idea to accept a job offer on the spot as doing so may suggest an impulsiveness that may not be valued by the employer (never mind the fact that the employer itself may have been impulsive with the offer). In response to such an offer, thank the employer for their confidence in your ability and let them know that you have some matters to consider (i.e., class schedule, finances, familial etc.) and ask by when will they need your decision.

It’s perfectly acceptable to let Employer A know that you are considering another opportunity (although an offer from Employer B is not yet on the table), particularly if that is the motivating reason for inquiring about their hiring timeline.

The offer from Employer A may work to your advantage if you receive an offer from Employer B. Knowing that there is competition may encourage Employer B to make a more attractive offer. Mentioning additional offers is a negotiating tactic, not a threat. While any employer who makes an offer is obviously interested in hiring you, the way you handle the negotiations may be indicative of your potential as an employee just as much as the interview. Be professional, tactful and well-prepared just as you would in a work situation.

**With all Scenarios:**

Once you have made your decision, you can relax. But don’t forget the employer that you didn’t choose. Keep in mind the importance of diplomacy when declining an offer. Express your appreciation of being offered the position and how impressed you were with the employer. Be sure to thank them for their time and consideration. When turning down a job offer you can never be too diplomatic, because you never know when your work environment may shift and you may need to approach this employer in the future.

## Maintaing Your Brain and Your Beauty

BY KELLY HAYNES  
2L REPRESENTATIVE

Two weeks ago a fellow classmate told me they were going to stop working out for the next six weeks in order to study for finals. Immediately, I responded, “NO! You cannot do that!” I am sure my friend is not the only one who stops working out in order to make more time to study for finals, but we cannot let finals get the best of our bodies! Law school already adds so much stress to our bodies and with finals right around the corner many of us tend to put our lives outside of school, (what little of it we still control), completely on hold and bury our heads in the books. When it gets close to finals students tend to let themselves go, resorting to a wardrobe that consist of sweats and Uggs, messy hair or unshaven facial hair, and the library becomes a camping ground.

However, we cannot put our health on hold. Maintaining a healthy body will only benefit you during finals. By maintaining a healthy body, you will also benefit from a healthy mind. Working out not only releases endorphins, which make you happy, but it will also give you more energy and help you to focus. However, working out is only part of the equation to maintaining a healthy body. You must also take into account your diet, but this article is not focusing on diet. I want to be able to provide you with a school friendly workout that can be done in 15 minutes or less and still be effective. I think CWSL is the best looking group of law students in the nation and we cannot lose this reputation due to finals. Now I know how important finals are and that many of you may not have time to go the gym during the next week leading up to finals, so I have come up with some school friendly workouts.

1. Instead of taking the elevator, use the stairs in both the library and the 350 building.

2. Rather than driving your car to school, bike or walk so long as you live within a reasonable distance (I know how much us law students love

that word “reasonable”).

3. Since we do not have weights on campus grab a book or a few books if you are feeling like the Hulk and use it to do bicep curls.

4. There is plenty of floor space in the library, so when you feel the need to take a break try some push ups or crunches on the floor, but shhhh!, as not to disturb others.

5. Grab two chairs, make sure there are not students sitting in them, and do some dips to work out your triceps.

6. While holding your books do squats in place or lunges

7. On some empty wall space hold a sitting position for at least one minute.

8. Our school consist of three blocks, so get some cardio in by walking or running around our school.

**Try This Full Body Workout Called a Ladder:**

1. Before beginning the workout do 3 sets of stairs in the library emergency exit starting at floor one and going to floor four. After you finish this cardio exercise begin the ladder workout.

2. Start with 15 Reps of each of the following exercises: squats while holding 1-3 textbooks, push ups, and sit ups.

3. Then start over doing these three exercises and do 14 reps of each

4. Then do the same and do 13 reps of each and so on...

5. Continue doing these three exercises working all the way down to 1 rep of each.

6. After you have completed the ladder you are finished and while you may be tired immediately following, your body will be thanking you later.

As potential lawyers one of the skills we are learning to master is time management so I encourage you all to find some time to keep working out to maintain your beauty and brain, even if it is only 15 minutes (1% of your day)... Do not let finals get the best of your body!!!

*Do you have an interesting (or uninteresting) hobby, a special talent, a unique knowledge of snails, or collection of antique teacups? Whatever it may be, The Commentary wants to know more. Tell us about the things you do when you are not studying. We want to know what keeps you sane during those long hours of studying. Send your ideas and stories to: cwslcommentary@gmail.com*



# STUDENT PERSPECTIVES

## Hasher: An Unknown San Diego Tradition

BY MARC EBEL  
HASHER MEMBER

You may have seen them around San Diego County. You may have heard voices screaming, “Are you?” and “On one!” while bobbing headlamps run up and down trails in the dark. Maybe you have seen them by day throwing puffs of flour on the ground and crying, “On two!” or “Checking!” while blowing whistles and drinking beer. If you have spied such odd people, you have spotted the elusive and esoteric members of a running group that call themselves the Hash House Harriers, or the Hash for short. Members of the



group are known as Harriers (males) and Harrietts (females).

I was doing my clinical at Higgs Fletcher & Mack in the fall of 2013. I felt the increasing need to network in the evenings or on the weekends, but wanted to go out and have fun. I also wanted to get a workout in and remain active. My supervising attorney told me about this running and drinking group. Running you say? Drinking you say? She said this group called themselves “a drinking club with a running problem.” I decided to look into this group.

I did some research, and it turns out the group was started in the 1940’s by servicemen in the South Pacific. The servicemen were tired of sitting around and drinking so they decided to combine drinking and running. They devised a system whereby a person called a “hare” would lay down a trail. This is not a trail that is necessarily designed to accommodate people following it. The rest of the group, called the “hounds” would then set off in an attempt to follow the trail cleverly laid down by the hares. Along the way there are “drink checks” where weary runners can re-fuel with a beer or some other adult beverage. Water is also usually available if needed. I was utterly shocked by how easy it is to have a beer and keep running. Arnold Schwarzenegger regularly drank a beer before working out though, and if it is good enough for the Terminator its good enough for me!

I should mention they almost have a language all to themselves, from “shiggy” and “down-downs” to “pack arrows” and “YBF’s.” I cannot tell you what that last one means for fear of offending the delicate sensibilities of our more sensitive readers, which reminds me, the Hash is not for the faint of heart. If running around on streets and cross-country, and getting sweaty,

muddy and wet, and having a ton of fun doing it is not your proverbial cup of tea, then the Hash is not for you. If you do not enjoy beer, jello shots, pink panty-drop-pers, Bloody Marys, if you do not enjoy drinking, the Hash is not for you. If you do not enjoy lacrosse and fraternity-styled shenanigans and camaraderie with some of the most genuine people you will meet, then the Hash is not for you. But if you are thinking, “Did you say awesome trail running with drinking and a chance to connect with amazing people?!” then read on.

The Hash is ran literally all over the world. We often have “visiting hashers” (people who hash back home) from Michigan, Oregon, London, and Columbia who run with us. They are always welcomed with open arms as fellow hashers. Now, I know some of you are thinking, “Well, I am not a fast runner.” First, there is only one way to get faster, and that is through practice. Second, remember that the group is a drinking club with a running problem. The runs have two speeds. I’ll spare you



the hash names for them and call them fast and moderate. Sometimes there is even a walking trail. The trails are not usual any more than 5 miles.

As finals draw near, it is important to have an escape from the confines of the dusty books in the library and the pestering of fellow nervous law students. It is important to connect with non-law people (normal people) once in a while. It is paramount to maintain a workout schedule in order to mitigate the stress of this place, and I don’t think I even need to comment on the importance of beer to law students! You also never know what opportunities will come from the most unusual places. If any of this rings true for you, snag me on campus and I will be happy to answer questions, or shoot me an e-mail at [marcebel@live.com](mailto:marcebel@live.com). You can also look the group up online at SDH3.com, but it may not make any sense because you do not speak hasher...yet!

## When You’re Freaking Out Over Exams, Dig a Hole

BY CLINT PIERCE  
FUTURE EDITOR

My body is sitting at a fourth floor library desk. It’s 15 ‘til midnight. On the desk, a to-do list rests atop a stack of cases that I should have read a month ago. The only item marked off the to-do list is “Go to the library.” My body is there at that desk, on the verge of shutting down from sleep deprivation and malnutrition, but my mind is about 1100 miles northeast of Cal Western. I am digging a hole in Pueblo West, Colorado. I’m preparing to plant an Asian pear tree next to the fishpond in my garden. A little waterfall burbles, and the silver gambusia dart beneath the water lilies. It’s about 70 degrees out. The breeze is unusually light this evening. I taste the sweat on my upper lip. I’m wearing an old pair of yellow deerskin gloves, some tattered carpenter’s pants spotted with white paint, and an old Stussy t-shirt that I’ve had since I was twelve. My mutt-dog Flipper rests a few steps away, pawing at an itch on his nose, occasionally flopping around on his back in the grass and snorting. I pause from digging, toss the shovel into the hole, wipe my forehead with a bandana, and reach for a bottle of Prosecco that sits atop a fencepost. I’m not big on wine, but a client sent me this bottle today with a thank you note. I take a swig, light a cigarette and stare out at the horizon. The sun is just beginning to set over the Sangre de Cristo. I can feel the soft dirt that crept in around the heel of my shoe when I stepped in a mound of loose soil. I can smell the damp clay caked on my shovel and barbeque chicken from my neighbor’s grill. There are a few bees buzzing around the chamomile and okra. A robin sits on the fence, scoping out the ripening blackberries. I inhale deeply, and say to the dog, “This is alright. This is all right.”

There is nothing special about that moment. It was just an average summer evening a few years ago, but it is a moment in which I was at peace. When I am on the verge of freaking out, selling all of my possessions and moving to Columbia to pursue a more profitable career that requires less studying, I stop, take a breath, and I focus on that simple memory of digging a hole.

Stress makes it hard to focus and can cause some pretty serious health problems. Everyone deals with it in his own way. Some people vent their frustrations upon very patient friends and loved ones. Some spend time at the gym or the beach or the zoo. Some drink. Some drink heavily. Some drink very heavily. Sometimes you can’t get away from campus though, and bringing liquor into the library is frowned upon. At those times, meditation can be a quick and healthy way to find a little

relief. If you’ve never tried it before, I highly recommend it. It’s very easy. I’m no Professor Campbell, and I’m certainly not a shrink or guru, but I do know that sometimes this whole law school gig really sucks and it’s nice to pretend like I’m somewhere else for a few minutes. I’ve always thought of meditation in the way that Peter from Office Space sees hypnotherapy – “Is there any way that you could, sort of, just zonk me out so that I come home and think that I’ve been fishing all day, or something?” It’s like structured daydreaming. Close your eyes and think back to a moment when you were happy, relaxed, without worry. Concentrate on that moment. Guide your mind through all five senses. What did you smell in that moment? Was your skin warm and tight from the sun? Was the hair on your arm standing up from the brisk winter air? Was the cheesecake kind of bitter? Did the carbonation of your soft drink tickle your nostrils? What kind of birds did you hear? What song was playing? Were her eyes brown... or more of a hazel?

I have a whole catalogue of these snapshot memories that I set aside for when I need them most. If you ever see me in the library (or sometimes even in class) staring off into the distance with a grin on my face, you can bet that I’m probably somewhere in the Southern Rockies with my old mutt-dog or lying next to a beautiful (and insanely talented) woman on a catamaran off the coast of Nassau. Next time you’re freaking out, certain that you will flunk out of law school and be forced to reinvent yourself as a prostitute on the streets of Detroit or as a used car salesman in Oshkosh, just take a moment to breathe, and go on a little five minute vacation to some place, some time when you didn’t have to worry about parole evidence or quasi in rem jurisdiction. If you can’t conjure up a mental vacation of your own, feel free to borrow one of mine... except the catamaran one... that one’s just for me.

If you’re really struggling with stress or depression and need some advice from people who actually know what they’re talking about, reach out to your faculty advisor or Student & Diversity Services on the second floor of the 225 Cedar Street building. They’re dedicated to promoting a healthy and productive law school community. If you are in need of counseling or assistance in solving problems that interfere with your academic experience, please email [StudentServices@cwsu.edu](mailto:StudentServices@cwsu.edu) or call (619) 515-1576.



# PROFESSOR'S PAGE

## "Zen and Law"

BY PROFESSOR CAMPBELL  
FACULTY CONTRIBUTOR

Part Two of a Three-Part Interview of Art Campbell by James B. McEnteer  
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Arthur W. Campbell and James McEnteer were close friends before either went to college. Campbell graduated from Harvard in 1966, later collecting a J.D. and an LL.M. His treatise, *LAW OF SENTENCING*, has been cited as authority over 600 times, and his three-part memoir, *TRIAL & ERROR: The Education of a Freedom Lawyer*, has achieved critical acclaim. He's practiced Zen Buddhism for nearly half a century. James McEnteer was educated at Wesleyan University (BA), the University of British Columbia (MFA) and the University of Texas at Austin (PhD). His published books include: *Shooting the Truth: the Rise of American Political Documentaries*, *Deep in the Heart: the Texas Tendency in American Politics*, and *Fighting Words: Independent Journalists In Texas*. Having lectured at universities in the United States, Europe, Asia, Latin America, and the South Pacific, his work has been translated into Spanish and Chinese.

Part Two of this interview starts with Campbell's last statement from Part One.

CAMPBELL: There's great potential mischief when attorneys try to view new, large, multi-leveled problems with old, small, single-level lenses— then "fix" them using old-box formulas. On the plus side, this process lends great stability and predictability to society. Of course, latent hazards rise from law's disregard for facts and views that don't fit in its prefabricated boxes.

McENTEER: Doesn't that disturb you when you see it happening in court?

CAMPBELL: It used to. I recall frustration when I first practiced as a litigator. I'd be aware of a solution to some problem in a case but couldn't get the judge to buy it since it didn't come already wrapped in same-box precedent. Or I'd get aggravated when the judge refused to let me present crucial facts before the jury because they fell outside the box of "admissibility."

At times I'd get steamed at law's refusal to recognize a larger view of what is real. Once I threw my hands into the air and said, "Your Honor, can't you see what's really going on here?" And His Honor pinned me with a glass-eyed stare and answered, "Yes, Mr. Campbell, I know exactly what's going on here. And unless you present your case in a more lawyer-like way, I'm going to hold you in contempt. I suggest you take five minutes, go out in the hall, and recall you're an attorney."

McENTEER: That sounds almost hopeless, a Catch-22 that zaps you if you see too much but makes you keep on fighting with one eye. What made you stay inside the ring?

CAMPBELL: Well, that day I strolled down the hall and replayed my confrontation with the judge as if I'd been observing from the balcony. From that different level I saw my petty strutting on the stage. Then I closed my eyes and pondered all the good law does. One extremely valuable aspect of law's limited approach to problem-solving is its insistence on appropriate procedures for doing so. This creates a vital counter-weight to our human herd's frequently primitive reactions to

what its leaders or mass-media dub a "problem." Due-process also checks what otherwise could be tyrannical control by powerful folks and entities over the powerless. So, for all its faults, law provides society with problem-solving methods that at least aspire to be fair and impartial.

McENTEER: Does this mean the law contains a built-in equilibrium, a yin to balance off its yang, like both sides of Dame Justice's scales?

CAMPBELL: Yes, that's a useful way to view it. The trouble is that judges and attorneys sometimes get so fixated on legal process they forget their ultimate goal is to find fair, workable solutions to disputes between citizens or businesses ("civil law"), or find justice when the government accuses one of us ("criminal law.") From what started as a pig with too many curls in its tail, often there's scant value in what's squeezed out through the judicial meat-grinder.

Zen, on the other hand, is suspicious of trying to capture and transform what's real— life that's happening now— inside boxes of abstractions. Indeed, it takes a dim view of the conceptual boxes I'm creating as we speak! So Zen's doubly wary of using abstractions to force "solutions" onto what in many cases is just "the way life is."

McENTEER: So how do Zen folks operate in the real world? Aren't there times when they recognize a problem— or is everything always just "the way life is"?

Oh, yes, Zennists still see problems. Although most folks' mental suffering is needless— caused by refusing to acknowledge or accept what's real— there are factual problems too. Zen practitioners are keen to sense an out-of-balance situation. Once they can completely grasp the multi-level aspects of a given set of circumstances, often they can see the need for some harmonizing act or acts. If the practitioner is a bodhisattva— a fully awake person whose purpose is to help the world— she'll take that action with compassion for everyone and everything involved. Remember Saint Augustine's famous maxim, "Love God and do what you please?"

McENTEER: Yes, I really liked that saying when I was a teenager at church socials—especially later,



driving back with my date.

CAMPBELL: Me too— weren't we devils quoting scripture! Anyway, a Zen analog might go, "Be awake and do what you must."

McENTEER: That's a curious pick-up line but I'm not sure where it leads. For instance, what about karma? In your work as a Zen lawyer and law prof, what role does karma play in "do what you must"?

CAMPBELL: Uh-oh, you've tossed in a real zinger. You know, Buddhism defines "karma" differently depending on the context. Still, the driving engine of its diverse meanings is the force of cause-and-effect. Let's see if I can place this in a couple contexts of Zen lawyering and teaching.

When advising clients, some Buddhist lawyers (not I) might say, "Whatever will be, will be. Leave things alone and let each cause have its own natural effect; don't mess with karma; don't interfere. Whatever 'problem' you think you've got will work out naturally. I'll just help you see what's real and what you've manufactured in your mind."

Likewise in trial, some Buddhist attorneys (again not I) might say, "Let the other side present its evidence; I'll present my client's side; then let the jury say which they prefer." Or in a classroom some Buddhist profs (not I) might say, "Let my students read books, come to classes, take exams, and become whatever kind of lawyer that comes naturally."

But— by emphatic contrast— I feel it's my karma to nudge clients, trials, and students closer to a natural, balanced order of things.

McENTEER: Can you explain, when you face cosmic karma greater than your own, why you even try to intervene? When you functioned as a trial lawyer, didn't verdicts always come down the way they were meant to, or supposed to, come down...?

CAMPBELL: Let me get a little picky here. In my view verdicts come down as they must— not as they're meant to, in some predestined way, or supposed to according to my clients, my opponents, or the press. In other words, any given outcome was what it absolutely had to be at that time and place. It was the sum of all the causes and effects that worked on the judge's or the jurors' minds. But— and here's the vital catch for me as litigator— those results included my own efforts.

As I matured I grew to recognize that basic truth, regardless whether I was prosecutor or defense attorney, regardless if the government won or the accused walked free. But because I held this karmic view about the end of trials, that meant before the verdict my karmic duty was to strive with utmost vigor as a trial lawyer— or now as negotiator, problem-solver, or teacher— to influence the ultimate outcome with the strongest evidence and arguments available. So I'm a

CONTINUED AT CAMPBELL ON ON page 12...



# ADR IN PRACTICE

## ADR: A Day in the Real Life of a Practicing Civil Lawyer

BY PROFESSOR GREGG F. RELYEA  
ADJUNCT MEDIATION PROFESSOR

Being a civil “trial attorney” is a highly coveted and enviable position. Trials attorneys are the prosecutors and defenders of civil justice. They are the most highly skilled of all practitioners, with a comprehensive set of intellectual, presentational, and personal skills. Only the best and brightest can reach this pinnacle of individual success in the legal profession. It is the ultimate expression of personal and professional achievement. Fail. The reality is that the case study method and over-emphasis on the trial process in law school curriculum can create the (mis)impression that disputes inevitably lead to litigation, which inevitably leads to trial and, later, a published decision on appeal. This misimpression can lead to choices in class scheduling and selection that do not necessarily optimize a law student’s practice skills.

For most lawyers (including civil litigators), trial is a rare event. Only a small fraction of lawyers, e.g., prosecutors and public defenders, engage in trial on a regular basis. Even litigation specialists can go for a years without a single trial. With rare exceptions, most civil litigators and transactional attorneys are actually pre-trial attorneys. Most of their time is spent interviewing clients, drafting documents and pleadings, conducting pre-trial discovery, and resolving dispute and lawsuits before trial. Routinely, well over 90% of civil lawsuits are resolved before trial through some form of ADR (alternative dispute resolution), including negotiation, mediation, and arbitration, with a tiny percentage of cases being dismissed by dispositive motion or other procedural mechanism. While this may seem like an inglorious fate to some, this is the real workaday world of civil law practice.

The reality of pre-trial resolution of lawsuits begs the question, if most lawsuits are resolved primarily through some form of ADR, would it be wise to focus time and attention on courses that develop ADR skills? If most civil lawyering takes place in the pre-trial period, or even pre-lawsuit, would it be a valuable use of time to consider taking courses that focus on proven methods for helping clients achieve optimal results during the pre-trial/pre-lawsuit period?

Because many law students--and some legal educators--are unaware of the critical and pervasive role that ADR plays in everyday contemporary law practice, let’s examine a day-in-the-life of hypothetical civil attorney Samantha Thompson (“Sam”). Sam is one of two partners conducting a general civil practice in a 5-attorney law firm. Sam employs a staff of 12 people, including three associate attorneys, 2 paralegals, a part-time office manager and a receptionist. Sam begins the week on a Monday morning. (All references are to google word searches for a relevant technique for managing conflict)

**7:45 a.m.** Sam’s children, ages 8 and 10, are enmeshed in a knock-down, drag-out fight in the upstairs bedroom. Sam was planning to head into the office early in preparation for a 10 a.m. mediation conference. Best laid plans--Sam’s children are fighting over toys. On the way out the door, Sam sternly instructs the children to divide the toys 50/50 and to “share and share alike.” Sam feels like she has brilliantly managed the conflict and taught the children an important life lesson. Fail. (styles of negotiation; compromising). Gulping down a half-burned bagel, Sam hears her husband remind her that she has agreed to pick up the children from day-care at 5:30 p.m., to which Sam mutters, only half-focused, “Okay, whatever.” Fail. (styles of negotiation; accommodation)

**8:15 a.m.** On the way into the office, Sam’s hands-free car phone signals an incoming call--it’s Carl Wilson, at out-of-state attorney and opposing counsel on a case Sam is trying to settle through negotiation. Carl makes a “bottom line” offer, which Sam considers low. She feels he is being condescending. Instead of responding strategically, Sam reacts emotionally and decides to “get tough” with Carl by telling him his offer is an “insult” and that he cannot “nickel and dime” her. In the process, Sam narrowly avoids another car that is moving into her lane. The call is dropped. She’s exiting the highway and getting ready to enter her parking garage. She’ll have to call him back later. Fail. (deferring; word choice in negotiation; acting strategically)

**9:00 a.m.** Sam’s secretary wants to talk about the schedule for the day. The secretary launches into a jumbled, disorganized rendering of all the appointments, “to do” activities, and “must do” activities. It’s overwhelming, so Sam shuts down and tries her best to appear as if she is still

listening. One of the critical points--Sam must decide which court reporter will get her business for the next year and what the terms of engagement will be. One candidate is scheduled to meet Sam at 1 p.m. to go over the terms of a potential one-year contract. Sam hasn’t even had time to research the offer made by the court reporter’s office or to consider what might happen if Sam fails to reach an agreement. Overwhelmed, Sam snaps, “We’re going to have to go over all that after the mediation.” Fail. (BATNA, active listening, setting an agenda)

**9:30 a.m.** Sam meets with her client, an insurance adjuster, to discuss the upcoming mediation. Sam wants to retain the client, so she stays quiet while the adjuster talks about how unprofessional the plaintiff’s attorney has acted, how the claims file is missing documentation about damages, and how the adjuster wants to “send a message” to the plaintiff’s attorney. Before Sam manages to sort through the claims adjuster’s points, it’s time to start the mediation process--without any coherent plan of action. Fail. (preparing for negotiation/mediation; setting an anchor; aspiration price; reservation price; identifying interests)

**10:00 a.m.** Sam presents her case in the mediation conference in a compelling, highly adversarial manner. In asserting her case, Sam interrupts opposing counsel and the mediator when s/he intervenes to manage Sam’s interruption. Sam presents her arguments in negative terms, e.g., her client doesn’t want the case to go on forever and doesn’t want to spend more money on the litigation process and, at the same time, her client doesn’t want to roll the dice at trial on a case that is highly technical and very likely over the heads of most jurors. The mediator talks about Sam’s interests in finality, timing, managing risk, and control over the process. Sam briefly, but forcefully, repeats her points in negative terms, setting a pointedly pessimistic tone. Proudly, Sam anticipates praise from her client during the first mid-morning break in mediation. Instead, the claims adjuster mutters something about things “not going in a good direction.” Fail. (advocacy in mediation; collaborative and competitive styles of negotiation; facilitative role of mediator; reframing)

**12:45 p.m.** The mediation concludes unsuccessfully and Sam realizes she has missed an in-office lunch appointment with her partner, who was going to meet for a case evaluation. Sam believes the evaluation meeting is totally unnecessary because she is 100% sure she will win the case. (lawyer overconfidence) Sam wolfs down a microwave bowl of soup from her desk (how long has it been there? No time to worry about that).

**1:00 p.m.** The court reporter is stuck in traffic, so she will be 15 minutes late. Making use of the time, Sam looks at the material in the “urgent” stack on her desk: a contract for a small business client that must be reviewed (should a binding arbitration clause or some other dispute resolution process be inserted?), a reminder note from her secretary that it’s time for the annual performance evaluation and “salary raise,” a draft letter of engagement for one of Sam’s new clients, and a paralegal’s discovery summary, which Sam scans in a cursory way, certain that there is nothing new in the information. As a result, Sam doesn’t notice that a new witness has been identified in the discovery and that the witness has adverse information. Fail. (change blindness)

**1:15 p.m.** Sam meets with the court reporter. Sam likes her, but feels she does not have enough information to ask the right questions during the interview. While the court reporter is talking about proposed terms of engagement, Sam is consumed by worries about her two children (did she do the right thing that morning; why aren’t they getting along), law firm finances (settlements and verdicts have been few and far between lately, creating a cash flow crunch), and personal relationships (she has put off her 10th anniversary celebration dinner with her husband--again). Fail. (asking effective questions in negotiation; preparation for negotiation; active listening; mind chatter; managing internal dialogue)

**2:00 p.m.** Carl Wilson is on the telephone again, irate that his earlier call was dropped and that Sam didn’t call back. Carl wants a counter-offer from Sam, who leafs through the file, but she can’t find the specific numbers that were part of the last round of negotiation. She’ll have to call him back. Fail. She wants to make a monetary counter-offer, but she has a vague feeling that her client won’t be satisfied with money alone. Unfortunately, Sam doesn’t know how to expand the negotiation to include a broader



# CONTINUATIONS OF PROFESSOR’S PIECES

## Campbell: Zen and Law Continued

Zen man who’s aware of cosmic karma much more powerful than my own. But at the same time my contribution is a vital part of that collective force.

In fact, trying to stay conscious of this fact— alert to signals that it’s time to actualize my karmic duty— could be labeled my “morality,” “salvation,” “at-one-ment with Yahweh ,” or “surrender to Allah’s will.” But I prefer less grandiose terms and think of myself— and my duties as lawyer, teacher, human being— as the proverbial Zen laborer. I’m just a guy who’s chopping wood and fetching water, doing his job in the most aware and compassionate way he can.

McENTEER: Is the law a koan?

CAMPBELL: Hmmm, I’ve never thought about the law in that regard. But no, I don’t think so. A Zen koan is a statement that can’t be grasped by abstract concepts. But law insists on being held that way. Indeed, if you turn law inside out, you’re looking at a microcosm of the human mind, how we only “see” realities inside frames created by our culture and desires. The way law boxes its selected facts, excluding others, and then looks inside its fact-packed box for chosen fixes— is both utterly human and utterly primitive: “Don’t sit there staring at the sunrise, Throgg! Go out and kill someone who’s got a blue-dyed beard. Last night our elders said they’ve got to die, so our red-dyed tribe survives!”

Sometimes I imagine Lady Justice as a child draped in black, slumped upon a stool, trying to pound square pegs into rounded holes. As I said earlier, although purporting to reflect reality, law is a classic example of maya, an illusion we shape wearing mind-forged manacles. But it’s so classically and marvelously human, that seeing this— law’s blind power and yet magnificent aspiration of its illusions— could push a person to enlightenment the way a koan can.

McENTEER: Earlier you mentioned the potential dangers of conventional legal solutions. Are these what you mean by square pegs pounded into rounded holes? Can you elaborate?

CAMPBELL: All sorts of difficulties can arise— often in the form of unintended consequences— when judges, lawyers, or professors mistake law for what is real. From a Zen perspective such errors sometimes look like karmic jokes, like watching an attorney, judge, or law-prof march smugly down the road of his solution and slip on the banana peel he refused to recognize. But when that peel is a person’s, nation’s, or a planet’s life, the outcome can be truly tragic.

As a Zennist I’ve often grappled with how far I should go with judges, lawyers, clients, and my students with my view that life is one majestic game we’re playing. They needn’t snuggle up to my vision of this larger game in order to consider some idea or solution I’m suggesting. On the other hand, I wonder why, especially in this country, they play their games with such ferocious— sometimes suicidal/ homicidal— seriousness?

Part Three, the conclusion of this interview, will appear in the Fall Issue of COMMENTARY.

## Relyea: A Day in ADR Continued

range of terms (diagramming concessions; interest-based bargaining, integrative bargaining)

**2:30 p.m.** While Sam is trying to figure out what specifically her last offer was in the negotiation with Carl Wilson, she feels the urge to make Carl wait for an answer, just to tie him up on the deal a little longer. He can’t talk to her like he did that morning! Carl’s a jerk. She’ll show him. Sam wants to find out whether Carl has any flexibility, but she doesn’t know how to probe for that information without telegraphing desperation. After finally finding her scattered notes on the proposed negotiation terms, Sam calls Carl back and opens the telephone call with an attack on Carl’s last offer. Carl reacts by lashing back at Sam--something about the facts of the case (Sam only heard the points that were favorable to her case) and something about the fact that Sam had no trial experience in this kind of case. Sam is completely comfortable with her “get tough” approach to negotiating, even if it is producing resistance and hostility in opposing counsel. Carl terminates the call without receiving a counter-offer from Sam. Fail. (attribution; Dunning-Kruger Effect; unconscious incompetence; competitive arousal; pacing negotiation; assimilation bias; bracketing; power of a positive no’ reciprocation in negotiation)

**3:00 p.m.** Sam reads a reminder on her computerized case management system that there are only 30 days left before an upcoming arbitration. After scanning the file, Sam decides to take a few minutes to develop a pre-arbitration plan, which consists mostly of reviewing the file and preparing word-for-word scripts for her witnesses. Sam’s last arbitration dragged on forever because there wasn’t time for Sam and opposing counsel to narrow the issues or to talk about witness scheduling before the hearing. Fail. Sam also learned, during the arbitration hearing, that one of her witnesses had become unavailable and that there was very little evidence in the file on the issue of the defendant’s duty. Fail. In the prior arbitration, the arbitrator rendered an award that was ridiculously high. As she prepares for a 4:00 o’clock meeting on an unrelated case, Sam receives a call from the court, indicating that an upcoming trial has been continued for the second time due to conflicts in the court’s calendar. (stipulations, evidence chart, advocacy in arbitration, preparation for arbitration; high-low agreement; outlining witness testimony)

**4:00 p.m.** Sam meets with another attorney downstairs in the same building to discuss a new lawsuit filed by the attorney. While talking to opposing counsel, Sam decides to “get down to business,” so she presses for facts and evidence that allegedly support the other party’s case. Sam fails to notice, by looking around the office and taking time to chat with opposing counsel, that she attended the same law school (diploma on the wall), and that she

shares an interest in European history (books on shelf), and that opposing counsel enjoys skiing (photograph on desk). Opposing counsel is put off by Sam’s brusque approach. The meeting ends with little information exchange and much withheld. Fail. (liking, 6 principles of persuasion; exchange of information; controlled disclosure in negotiation)

**5:00 p.m.** Sam has so many loose ends to tie up. The “to do” list has grown longer, not shorter. If only she had more time. She remembers that she agreed to pick up the kids at daycare and resents the fact that her husband couldn’t cover her today. When she picks up the children, they are still arguing about the toys. Sam hits heavy traffic on the way home, so she is late for her anniversary dinner. Upset, her husband complains, “You’re late--again. You really don’t care, do you?” Sam tries to brush it off by saying she’s sorry for being late and then she launches into a long and detailed list of the reasons why she was unavoidably late. (accommodation, apology, empathy)

After a long day, Sam is feeling harried and stressed. She tries to prop herself up emotionally by thinking she “wouldn’t do anything differently,” yet on some level, Sam is feeling that many issues were left unresolved and poorly handled. Without the benefit of training in ADR, including negotiation, mediation, and arbitration, Sam cannot identify the areas where she could strengthen her skills as a pre-trial advocate. Sam isn’t knowledgeable enough with ADR analysis and terminology to know where to start in her professional development. With training, Sam would not have to live with nagging feelings of incompetence and, instead, she would have a clear conceptual framework to handle any aspect of ADR skillfully and effectively. Sam could feel personally and professionally rewarded for mindfully managing the ADR challenges presented during an average day in the life of a practicing civil lawyer. Sam doesn’t need more time, which is a commodity that will always be in short supply. Instead, Sam needs to learn how to work smarter to take full advantage of the benefits of ADR for the sake of her clients and herself.

*\*Note: Criminal law practitioners face similar challenges in a different setting. Plea negotiations occupy a good deal of a criminal lawyer’s time. Criminal law specialists face many of the same administrative and business issues as civil lawyers. In addition, there are issues involved with navigating through a governmental system with its well-established regulatory framework. The core skills and techniques learned in ADR courses, however, can be easily transferred to and applied in the criminal law setting.*