



## REWARDING EXPERIENCES AWAIT AT THE KGACLC

By **Jessie Reeves**

Staff Writer

*"Knowledge gained through experience is far superior and many times more useful than bookish knowledge."* Mahatma Gandhi.

Are you looking for a law school experience that is more relevant to the work you'll perform as a lawyer than the course work in your doctrinal classes? This summer I had the opportunity to participate in the Katharine and George Alexander Community Law Center (KGACLC) Litigation Skills 1 course; the program consists of a classroom learning portion and a clinic section where students get assigned to open consumer law cases. Students are able to choose their own schedule as long as they complete the required number of office hours by the end of the semester.

KGACLC teaches students how to perform various activities that attorneys are responsible for in the day-to-day workings of a law firm; KGACLC focuses on legal issues concerning consumer law, immigration



Students and Faculty at the Katherine & George Alexander Community Law Center

and worker's rights. This real life experience allows students to gain confidence and improve their legal writing and research skills in an environment that fosters independent growth and comradery. The professors are down to earth and make students feel like a crucial part of the team. They encourage students to ask questions and to express their own ideas for cases that may be different than the original direction

of the case. All the students taking the skills course brainstorm and bounce ideas off each other; this activity gives the students different viewpoints on the cases they are handling and can help formulate a plan on how to address current and potential issues that may arise in their case.

Students have the opportunity to conduct client intake interviews of potential clients to see if they meet the income and type of cases that KGACLC works on. After performing the initial interview, the student then discusses the matter with the supervising attorney to determine what options are available to the client. This includes looking up the California laws that correlate with that specific issue. The student is responsible for relaying the options from the supervising attorney back to the client and, if needed, the student will assist in filling out forms. If the case is one that the clinic is able to help with, like filing a motion with the court, the supervising attorney will assign the case to one of the students to prepare the motion for filling.

Over the duration of the semester I had the opportunity to research California consumer law and write a motion to set aside a default judgment. Having

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## JOBS HAVE GONE GLOBAL. SO SHOULD YOU.

By **Professor Donald Polden**

Dean Emeritus

Director of the Center of Global Law and Policy

The practice of law is increasingly international in scope and opportunities and it appears that this will continue to be true for today's new lawyers as they launch their careers. Today's lawyers need to understand how law is practiced and how justice is dispensed in other countries to serve the needs of their clients whether they are attempting to navigate immigration laws, complete a tech licensing agreement with a Korean company or understand the workings of the International Court of Justice at The Hague.

Santa Clara Law students are fortunate to have experienced and knowledgeable professors teaching international law courses and clinics and those courses provide invaluable knowledge about international legal issues. Another important asset for Santa Clara students who are interested in the increasingly global practice of law is the law school's broadly based summer international law programs. These programs permit students to gain important knowledge of both the substantive law and how law is practiced in other countries or regions. The 2017 programs will be conducted in Costa Rica, Oxford, The Hague, Geneva, Munich, Vienna, Shanghai, Tokyo, Singapore, and Sydney. The programs vary in duration and generally last three to four weeks, begin near the end of May and are completed in June. However, many students remain abroad and take an externship at a court, company, non-profit organization or law firm.

Information about the dates for the summer 2017 programs and the varied externship opportunities can be found on the law school website at:

<http://law.scu.edu/international/summer-abroad/>

The courses offered at the programs are taught mainly by international law experts from the host country. Further, the programs' curricula permit

immersion in the law of those countries or regions and often permit students to advance their knowledge in areas of law such as intellectual property, human



rights, transnational business and others. When coupled with a externship experience in that or another country, the students develop a deeper understanding of how law is practiced abroad and the important cross-cultural competencies that today's lawyers need to possess. For example, one student in Santa Clara's Tokyo program is very interested in sports law and he secured an externship in one of Tokyo's leading sports law firms.

The summer programs also provide students with collaborative learning environments that foster personal friendships and professional relationships with the faculty and with law students from Santa Clara and other law schools. Several of our programs are located in cities where Santa Clara law graduates practice law and stay involved in the summer programs by meeting with students and assisting them with externship placements. For example, several of

the prosecutors at the International Criminal Tribunal for the former Yugoslavia at the Hague are Santa Clara law school graduates and welcome our students and explain the important work that occurs at the Tribunal. The curricula, the externships and the contacts all add significantly to the depth and richness of the educational experiences at the ten summer programs.

For more information about these exciting opportunities to study and learn abroad, attend the next information session, scheduled for **Wednesday, November 9th at 12:00pm in Bannan 127.**

Additional questions can be discussed with the program directors (see below) or with Professor Polden or Carly Koebel (cglp@scu.edu).

### 2017 Program Directors

**Costa Rica** – Francisco Rivera - frivera@scu.edu

**Geneva** – Claudia Josi - cjosi@scu.edu

**The Hague** – Anna Han - ahan@scu.edu

**Munich** – Tyler Ochoa - ttochoa@scu.edu

**Oxford** – Gary Neustadter / Patty Rauch - gneustadter@scu.edu / prauch@scu.edu

**Shanghai** - Deep Gulasekaram (program)- pgulasekaram@scu.edu /

Anna Han (internships) - ahan@scu.edu

**Singapore** – Yvonne Ekern - yekern@scu.edu

**Sydney** – Evangeline Abriel - eabriel@scu.edu

**Tokyo** - Don Polden - dpolden@scu.edu

**Vienna** – Philip Jimenez / Jiri Toman - pjimenez@scu.edu / jtoman@scu.edu

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**Email The Advocate:**

lawadvocate@scu.edu

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## Rewarding Experiences Await at the KGACLC

a judgment against my client was an extreme hardship on his entire family. They were forced to borrow money from family members and live off of credit cards because the wage garnishment was taking a large portion of the family's overall income; all of the KGACLC clients are low-income, and usually do not have the means to pay a judgment against them and still provide basic necessities for their families.

Having direct client contact allows students to create a personal connection; for me this connection with the client gave me the drive and motivation needed to



write a motion to present to the court that I just did not have while working on hypothetical legal issues in the doctrinal courses. Throughout the summer I filled multiple documents with the court, and also learned how to serve documents on opposing counsel.

Near the end of the summer a hearing was conducted on the complaint and motion I had submitted to the

court. It was nerve-racking waiting to see if the court felt that the default judgment against our client was an unjustified hindrance. What a relief when the court granted our motion to set aside the default judgment and quash the complaint that opposing counsel had previously filed against our client. This ruling saved our client close to \$20,000, which we can all agree is a large sum of money for any family. After the clinic contacted the client to tell him the ruling of the court we received a thank you letter from him and his family graciously thanking us for the amazing work that was done by KGACLC and its students. Seeing how the outcome positively affected the client's life was heartening. Many students chose to attend law school because they want to make a difference in the lives of others. Seeing the gratitude this client had for our work and the dedication at the consumer law clinic showed me that students can have a huge impact in the lives of the individuals we assist in representing.

I am grateful for the opportunity and the practical skills training that KGACLC has provided me with; by the end of the summer I had gained confidence in my capabilities to navigate through the legal profession. It gave me a great feeling of accomplishment being able to see how the legal system is capable of helping individuals who are in a rough patch in their life and do not have the means of correcting the issue on their own. The experience that you will receive from participating in a clinic is different from any other opportunity you will have in law school and each student should take advantage of this great learning tool.

## FOOD INSECURITY AT SCU LAW

**By Kerry Duncan***Associate Editor*

We have all heard stories about college students living out of their cars or skipping meals due to high education costs, but we don't hear about law students facing the same struggles. Even though law school is an expensive academic endeavor, it doesn't seem to come to mind that students could go hungry in law school. Especially not here at Santa Clara University, and definitely not in our law school. Yet the Food Insecurity Survey conducted by Student Services reveals our law school is not immune from these struggles.

A survey conducted by student services that received more than 200 responses, with 122 filling out all questions, produced alarming results. The survey shows that more than 50% of responding students have reported going without food, skipping meals, or cutting the size of a meal due to lack of resources to buy food. 50% of these students have to choose between food and academic expenses including paying tuition, buying books, or purchasing school supplies. 60% of the students report that they have to choose between food and living expenses, like rent, transportation, and utilities. Most shocking is that more than 80% of students who filled out the survey said that they either sometimes or often lack resources to purchase food regularly.

At a private university with bright green grass and blooming flowers during California droughts, these results are unexpected. Our little oasis is not free from the financial difficulties of a higher education. Not only are there some students dealing with financial and food issues, but many are. Despite the shock of losing free food for Law Student Organization events, perhaps the

anger and discord elicited from the issue of food insecurity for law students stems from something deeper. Perhaps an upside to the policy change was that the issue of food insecurity is now at the table where we can work to fix this issue instead of Band-Aid solutions with free lunch.

More than 60% of students believe that food insecurity needs to be addressed in the law school community, and the staff and faculty agree. The community has already started coming together to work on this problem. With the support of Dean Kloppenberg and Dean Joondeph, different avenues are being explored to help fix and address the problem. The Wellness Taskforce is attempting to create a Stone Soup Project occurring in November to help provide hot food for students once a week. Student Services is looking into getting a second refrigerator for the lounge and creating a food pantry based on the honor system for students.

Even students are brainstorming ways to deal with the situation. Ani Martirosian, an ASP fellow, is looking to create an affordable and sustainable way for law students to get food. She is hoping to make PB&J sandwiches and bagels available for students to address the issue. To ensure sustainability, donations would be accepted for supplies. This would give choices to law students, instead of making them rely on the more expensive options provided by campus cafeterias or cafes. As different solutions are being sought, more resources on campus are becoming clear. The Forge Garden on

campus has fresh organic produce at its farm stand and payment is what you can afford to give.

With all of the different projects and solutions being created, SCU law is taking the issue of food insecurity seriously. It will be a long road to fix the problem in our law school, but the first step of acknowledgment of an issue has been taken. If you have experienced food insecurity and need help or have ideas to help, reach out to Jill Klees in Student Services or an ASP Fellow.



## ELECTION DRAMA: LISTENING TO THE “OTHER SIDE”

By Evelyn Minaise  
Staff Writer

This year’s polarizing presidential election is wrought with name-calling and partisan stereotyping. Between Donald Trump and Hillary Clinton nagging one another, the media and American citizens alike have also been sucked into the negativity. It seems that many people have strong opinions about who should run our country for the next four to eight years, but others have just as strong of an opinion that this year’s election is so dissatisfying that it’s not worth their vote. Neither sentiment is what the candidates would hope for.

Gerald Jones (1L) shared that “When Obama was elected, there was a lot of premature talk from media pundits that his election was proof of America becoming a post-racial society. If that were true, then this election is symbolic of how America has regressed into a divided country. The truth is that as a country we have always been divided and have always alienated others, whether it be because of their skin color, political stance, [or their] religious beliefs”

Because this election has the potential to mark a defining era of our history, it is important to take it seriously. But beyond the candidates themselves, it is important to also take each other seriously. I have seen many moments where my peers have alienated “the other side”: the person who thinks differently than they do, the ardent Facebook commenter, the classmate who refuses to discuss the manner. There is a general fear that, when the election subsides, we will all look to one another with hatred and disdain because of the lines we have drawn in the sand. I will admit I am guilty of this myself, not wanting to talk to someone because they have promised to vote for the candidate whom I find unqualified. To avoid the chilling, polarizing effect of the election, do not

forget that on the other side sits individuals whose opinions are just as strong and valid as yours.

Here are a few tips to humanize this election:

### Listen to the other side.

Do not avoid nor exclude yourself completely from other opinions. Expose yourself to different



media. This is easy to do in the modern era. Follow different outlets on social media and read articles as they arise on your news feed. Anonymous 2L says, “In order to grow and back your own position, one needs to be able to actively listen to the ‘other side’ . . . One should be prepared to rebut the other side with hard facts, and win by logic and persuasion.” Fight the urge to unfollow accounts or unfriend individuals who disagree with you. For some, this might mean avoiding the conversation altogether. Anonymous 1L admitted difficulty having a conversation with those who support an opposing view without alienating them. But this is one way to acknowledge the other side. Reading about their opinions and how they view things is the first step to understanding who sits opposite you.

### Watch and listen to the presidential candidates themselves.

What you read about in articles is different from what you experience in real life. A liberal news outlet’s written description of Donald Trump is just as different from reality as a conservative news outlet’s depiction of Hillary Clinton. Watch presidential debates. Find old, pre-candidacy videos of the candidates in action. Listen to how and what they talk about, and learn about what matters to them.

### Fact check.

When something is said in a debate, it is easy to take it at face value. One can get caught up in the rhetoric. Anonymous 1L recognizes that fact checking goes beyond the figures, stating, “It’s important to not simply look at a fact but see how it’s being spun to support arguments.” It is helpful to have news sites available during and after a debate to learn the extent to which the candidates’ thoughts are accurate and realistic. Understanding the extent of truth behind their words helps you find out whether you actually agree with a candidate.

### Talk to someone you disagree with.

This is the hardest yet most necessary task to accomplish amid the rest. You never know when you’ll meet someone who, shockingly, has unexpected political opinions. Take the time to validate them; although you might not agree, show that you care to listen. Ask them genuine questions, and learn about what motivates them. It might change your own perspective or help you consider your values in a new light. Even more, though, it will humanize the “other side.”

### Vote on November 8.

We have a privilege to exercise in this country, and reminding ourselves of the importance of democracy in turn reminds us of the importance of this election.

## DEATH PENALTY: WHAT WILL CALIFORNIA DECIDE?

By Linnea Doan  
Staff Writer

In the ballot initiative for this upcoming election, there are two propositions that have been proposed to amend the legality of the death penalty in California. California Proposition 62, Repeal of the Death Penalty Initiative, is a measure effectively repealing the death penalty and making life without the possibility of parole the maximum punishment for murder. Proposition 66, another measure on the November 8th ballot, changes the procedures governing state court appeals and petitions that challenge death penalty convictions and sentences. It is designed to shorten the time that legal challenges to death sentences take to a maximum of five years. Each provide a unique perspective in how California approaches capital punishment today.

Looking at Proposition 62, the initiative takes a unique approach in requiring that prisoners sentenced to life in prison without the possibility of parole to pay restitution to victims’ families. The portion of their wages to be provided as restitution would be increased to 60%. The initiative also applies retroactively to prisoners who have been sentenced to the death penalty at the time the measure would take effect. Proponents of the ballot measure argue that the

initiative reduces fiscal impact on the criminal justice system, saving taxpayer money by replacing

death row . Heller argues that not only is capital punishment economically ineffective, but it



an extremely costly system of punishment. Additionally, supporters of the proposition argue that it will remove the possibility of executing innocent persons.

Don Heller, a Sacramento attorney and author of the California death penalty initiative that was passed in 1978, stated “a death penalty is not the answer”, adding that it has failed to bring justice. Currently, there are 749 condemned inmates on

fails to effectively deter the most heinous crimes. The total cost of imposition of the death penalty is \$4.6 billion, \$1 billion allocated for the incarceration itself .

Proposition 66 aims to reevaluate the procedural regulations that govern death penalty appeals. The initiative effectively designates the superior court system of California for initial petitions to appeal sentences, and establishes a time frame for state court death penalty review. The initiative’s primary goal is to make efficient an increasingly complex and drawn-out process. Proponents argue that the initiative would speed up the appeals process and serve a fiscal impact by saving taxpayers millions of dollars. Supporters of Proposition 66 argue that California needs the death penalty as the highest form of punishment for the worst criminals.

See Page 6 “What Will California Decide? (Con’t)”

# OFFICE HOURS UNWOUND



**Stephen E. Smith**

*Associate Clinical Professor*

**Education:**

-J.D., Hastings College of the Law, University of California  
-B.A., Northeastern University

**Currently Teaching:**

Constitutional Law  
Fall 2016

**1. When was the last time you left the country? Where did you go and why?**

I visited Bogota and Cartagena, Colombia, last winter. Just for fun.

**2. What was the most valuable course you took in law school and why?**

So many of them, but my Contracts professor taught me to resist superficial takes, and that cases could be about different things than they at first appeared to be. He had a legal realist streak in him.

**3. Who is your favorite character from literature and/or film?**

The various protagonists in Robert Walser's (a contemporary of Kafka) stories often resonate with me. Or maybe Lisa Simpson.

**4. What is your top source (news / journal / legal blog / other) for keeping current with the law?**

supremecourt.gov, scotusblog.com, abovethelaw.com

**5. What was your favorite job you had while in law school?**

Working for the Federal Public Defender in San Francisco.

**6. What is your go to restaurant in the Bay Area?**

Many to choose from, but probably Rosamunde on Mission Street in SF. Sausages (including vegan), fries, beers. For higher-end, we spend a fair amount of time at Foreign Cinema (also on Mission Street in SF).

**7. What is your favorite show on television, Netflix, HBOGO, etc.?**

My wife has an internet radio show/podcast about TV, so we watch a LOT of it. All time: The Simpsons, first season True Detective, The Wire, Breaking Bad. Recently: Casual, Game of Thrones, Mr. Robot.

**8. What is your favorite sports team? If no team, then do you admire a particular athlete and why?**

I've become a Giants fan over the years and was lucky to attend one of the 2002 World Series games.

**9. What do you consider to be the most important development in your field over the last 5 years?**

The law develops pretty incrementally, accretively. I'm not sure I can point to any particular recent doctrinal or mechanical disruptions. But let's say Obergefell, for its broad social impact.

**10. How do you unwind?**

I walk my dog a lot. I spend a fair amount of time writing songs and recording with friends.

**1. When was the last time you left the country? Where did you go and why?**

A couple of years ago I went to Vancouver, Canada. I went to watch my oldest son play soccer. More interestingly a few years back I went to Mongolia to teach on the investigation and prosecution of online child exploitation. I went with an ngo and taught their federal police. We actually made a case on an individual downloading child pornography while we were there.

**2. What was the most valuable course you took in law school and why?**

Not because I teach it, but evidence. The rules of evidence are critical to what a prosecutor does on a daily basis. A trial attorney has to be able to evaluate a case from the onset and having a good idea what is and is not, admissible is critical.

**3. Who is your favorite character from literature and/or film?**

Shane. Who wouldn't want to be a lone gunfighter righting wrongs?

**4. What is your top source (news / journal / legal blog / other) for keeping current with the law?**

My sources on the law are varied. I get the Daily Journal for published cases. I read the Volokh Conspiracy for First, Fourth and Fifth Amendment theory from a libertarian perspective. Scotus Blog for USSC decisions and analysis. There are others that are specific to prosecutors but I try to be broad based in my knowledge.

**5. What was your favorite job you had while in law school?**

It wasn't technically a job but an externship with Justice Edward Panelli. The job entailed a lot of writing under the tutelage of excellent full time staff attorneys. I reviewed petitions for certiorari and after reading the writing of some of the briefs, knew I could be an attorney. Trust me, there was some pretty poor writing.

**6. What is your go to restaurant in the Bay Area?**

Fiorillo's right down the street from the University. My wife and I have lunch dates there.

**7. What is your favorite show on Television, Netflix, HBOGO, etc.?**

I don't watch much TV. Recently watched some Ray Donovan online. Did I mention Shane earlier. Same plot.

**8. What is your favorite sports team? If no team, then do you admire a particular athlete and why?**

SCU men's soccer. My oldest son is a sophomore midfielder. I have been known to be at the games after tailgating by Guadalupe Hall across the Alameda. Law students welcome but you have to come to the games and cheer for the team if I feed you and give you libations.

**9. What do you consider to be the most important development in your field over the last 5 years?**

I am not sure about developments in the past 5 years but the Crawford decision had a tremendous impact on how prosecutors try cases. Courts are still wading through all of the factual permutations of Crawford and its progeny. On balance, if the sixth amendment means anything it is that a criminal defendant has a right to confront his/her accuser. It was a needed change.

**10. How do you unwind?**

I attend my kid's athletic events. With wine.



**Charles Gillingham**  
*Deputy District Attorney*

**Education:**

J.D., Santa Clara University  
School of Law  
B.A., Stanford University

**Currently Teaching:**

Evidence  
Fall 2016

## PREPARING FOR FINAL EXAMINATIONS

By Susan Erwin

Senior Assistant Dean

Hi All!

Let's talk about the topic of the season – exams! I'll try to answer some of the questions that I know have really been bothering you.

### **Why is my LARAW professor Michael Flynn sending me so many emails about ExamSoft?**

We actually have 2 Michael Flynn's working at the law school! Michael Flynn, the younger, is our esteemed LARAW professor and bar support expert! Michael Flynn, the elder, is our systems manager and is our data, survey and ExamSoft expert. Our Michael Flynn sends you emails regarding the downloading of the newest ExamSoft program, about submitting papers and assignments through ExamSoft and about downloading your exam files prior to taking an in-class exam. All of these things are important to you. Please read them.

### **What's the deal with the ExamSoft software?**

#### **Why do we have to use it?**

ExamSoft (also called Softest) is the software you'll use when you take the Bar Exam. We use it for your exams here to help prepare you for that experience. It allows your professor to limit what you have access to during the exam - so your computer might be totally locked-down with no access to your hard drive or the internet, or something more permissive. Those are decisions your professor makes when they setup your exam. You should ask them in class for that information so you're not surprised when you arrive for your exam.

### **What if my laptop isn't working during an exam? Do I get to reschedule?**

No, if your laptop doesn't work during the exam, you have to hand-write it. The use of computers to take exams is offered to you as a convenience, not a right. If you have a finicky computer, take it to the Law IT Helpdesk in the Student Lounge well before your exams start to get some help with it. If your computer crashes during an exam, immediately go to the front of the room and inform the proctor and grab a bluebook and start hand-writing your exam from where you left off. The proctor will call the tech support people. They'll do what they can to get you back into the system. If you have to hand-write the rest of the exam, we will put the typed and written portions together. And no, you don't get any extra time. (That's why Professor Kinyon encourages you to hand-write a couple of practice exams. You want to be ready in case you experience

computer problems.)

### **What if the internet doesn't work during my exam? How can I upload my answer?**

The easiest way to avoid this problem is to go buy an internet cable and plug in your laptop during your exam. This ensures that you won't have wireless internet issues. If you do have problems at the end of the exam, ask for help. Don't worry about your exam file; the ExamSoft system auto-saves your file every 5 minutes and when you close your exam it saves a final version. The file can be easily uploaded as soon as you connect to the internet.

### **What if I have a take home and can't upload my answer?**

Most of the time, the upload process goes pretty smoothly. If you are not technology-savvy or have a finicky computer, you might think about uploading during regular business hours and then if you have a problem you can call us. If you can't reach anyone, send an email to Law Administrative Services at [las@scu.edu](mailto:las@scu.edu) and someone will get back to you. If it is a paper you are trying to upload, you can also attach that paper to the email you send to LAS so that they have a record. ExamSoft records every keystroke and upload attempt, so we can always go back and pull the log and see when you downloaded and when you attempted to upload.

### **Do I really need to do 10 practice exams?**

That's the advice that Professor Kinyon gives at the beginning of the year. What he means is that you need to do a lot of practice, and to practice consistently throughout the semester to be ready to do your best on your graded exams in December. What he says is "the equivalent of 10 practice exams per subject." What that means is doing some practice regularly every week of the semester and during the Reading Period. If you spent 90 minutes writing out answers to E&E questions and assesses your own performance that counts. If you did 20 MBE practice questions and worked through the answer explanations that counts. If you went to the ASP practice exams, that counts. And if your professor gave a midterm, that counts too. You want to build up a solid cache of practice so that you're ready for anything your professor could throw at you on an exam.

### **What if my professor has only released a couple of old exams? How can I get ready for my final?**

Save those exams until close to the end of your practice process. But you can use lots of other good resources to get ready. There are E&E books, MBE questions,

Siegel's supplements, and lots of other good sources. Always check out the ASP Resource Room for materials, and ask Professors Capatos and Kinyon and the ASP fellows for referrals. If you do a lot of practice with those commercial sources throughout the semester, using the few exams from your professor will be the icing on your practice cake right before you take your actual exam.

### **What are the worst things that have happened during exams?**

I've been involved in the exam process for about 25 years and have seen it all! Common problems have been forgetting any and all forms of ID, forgetting power cords, not downloading the exam file (see Q1 above), showing up late, showing up sick and forgetting allowed books, notes, etc. The more interesting things were power outages, fire alarms that auto-locked all of the classroom doors, students spilling sodas on their keyboards right before tests, students sitting in the wrong room (taking the wrong exam) and not noticing it for a half hour or so, spouses going into labor, and multiple fender-benders trying to get here in a hurry. The worst things include the time ExamSoft floppy disks were corrupt and 200 1Ls raised their hands at the same time to report that they couldn't save their finals, the time a student treated her friends to lunch and then locked all of their computers and her car keys in her trunk minutes before the exam started, and the classic nightmare scenario of showing up for an exam only to find out it ended hours before!

The exam period is stressful. Remember that we are here for you! Administrative Services, Law Tech and Student Services all work together to make the exam period as easy for you as we can. Please let us know if you are having issues. If you are sick or injured, don't attempt to take your exam anyway. If you are freaking out, come talk to me or Jill or go over to CAPS. If you have an emergency, email [lawstudentservices@scu.edu](mailto:lawstudentservices@scu.edu) or call (408) 554 - 4766 or stop by our office. Nicole Maxwell is our head proctor and knows everything about the schedule, the exams and our procedures - [las@scu.edu](mailto:las@scu.edu). Law Tech has lots of folks at their help desk waiting to help - [lawhelpdesk@scu.edu](mailto:lawhelpdesk@scu.edu).

**We are here to help.  
Good luck!**

## SOCIAL MEDIA AND THE 2016 PRESIDENTIAL ELECTION

By **Christina Faliero**  
Staff Writer

In an era where technology is the driving force of innovation, social media has re-shaped the way Americans read the news. Specifically, Facebook has evolved into a primary news source for a large percentage of the U.S. population. Mark Zuckerberg, CEO of Facebook, recently stated at a town hall meeting in Rome, "We're a technology company. We're not a media company." Yet, statistics are beginning to prove otherwise. Facebook, initially created as a networking site for college students, is now a key news source for a majority of users. As a result, it is impacting the 2016 presidential election.

In May 2016, Pew Research Center conducted a study on the relationship between social media and the news. It found that 66% of Facebook users get their news on the Facebook, and 59% of Twitter users get their news on Twitter. Facebook reaches 67% of U.S. adults, which amounts to 44% of the general population reading news on the social media platform. Furthermore, of those users who get their news from social media, 64% get their news from only one site, most commonly Facebook.

While Facebook has attempted to cluster categories of news together in order to appeal to its massive user-base, the company faced accusations of political bias in May, claiming that they were suppressing conservative outlets on the "Trending Topics" sidebar. Accordingly, this past August, Facebook fired employees from its editorial team and replaced them with a group of engineers in order to fix discrepancies in the coding algorithms.

Still, this change did not prevent a fake story claiming that Fox News anchor Megyn Kelly was a "closet liberal," from trending. With nearly two-thirds of the American population using Facebook to read the news, such problems can lead to dangerously misplaced public opinions concerning politics, especially during an election year.

In 2010, researchers from the University of California in San Diego estimated that Facebook's implementation of an "I Voted" button urged an additional 340,000 voters to polling sites. A similar pattern occurred in September of this year when Facebook displayed a voting banner in users' "News Feeds"; the reminder inspired 200,000 voter registrations in California, 30,000 in Indiana, and 25,000 in Kentucky.

While Facebook's size in general has the capacity to promote social behavior, Facebook still remains in control of its content, partnerships, and publications. Interestingly, ABC News and Facebook entered into a partnership this year to deliver live video coverage of the three presidential debates. ABC News and Facebook had worked together previously during the democratic and republican debates, when Facebook allowed ABC News to use Facebook Live, garnering 28 million video views across their combined platforms. Additionally, Facebook provided data to debate moderators leading up to the debates about what Facebook users were searching and saying about the candidates and the issues.

Though Facebook gathers its trending data based upon what its users are sharing and reading, there is a blurry line distinguishing content that Facebook is deliberately filtering and

the stories that the American people actually care about. With Facebook feeding ABC News data on trending conversations, it is hard to determine if the people are in charge of the issues being presented or if the media has an overpowering role. After the second presidential debate between Hillary Clinton and Donald Trump, the three primary issues that trended on Facebook about the debate were: (1) Trump's dismissal of Mike Pence's idea regarding military intervention in Syria, (2) when Trump insisted Clinton answer a question first because "he's a gentleman," and (3) when Trump told Clinton that if he were in charge of the law, she'd be in jail. Moreover, Trump's treatment of women lead the social media discussion more than policy topics pertaining to terrorism, foreign affairs, the economy, or healthcare. It seems as if superficial topics are outweighing actual policy issues at a time when it is crucial to pay attention to substance.

Simply, Americans must be careful about the news they acquire through social media platforms. While sites like Facebook offer great opportunities for networking and discussions of opinion, real facts are often lost and misconstrued. Facebook has an important role to play during this election cycle because so much of the population is tuned in to the site's content. However, it is our duty as American citizens to make sure that we are properly informed and wary of bad information, and ensure that our democratic role is not compromised on election day.

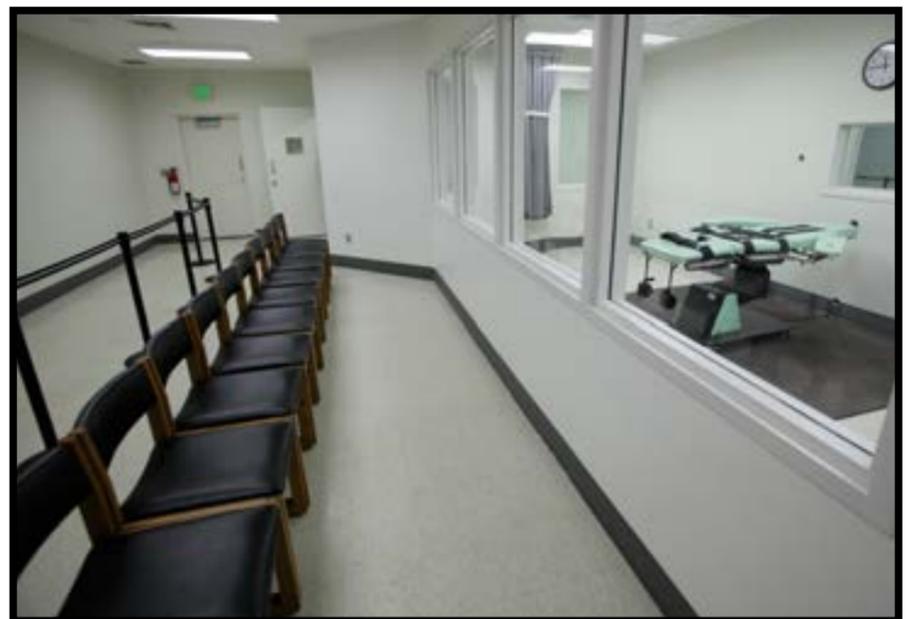
## WHAT WILL CALIFORNIA DECIDE? (CON'T)

Proposition 66 points to one of the central arguments made by opponents of the imposition of the death penalty; the inefficient nature of the death penalty is a drain on the courts. Opponents of the proposition, however, point to whether fiscal responsibility should even be a consideration when balancing the scales of life and death. Additionally, there is concern about whether it is reasonable to use the superior courts to hear appeals for death penalty cases, a responsibility that has historically not been imposed at the trial court level.

These propositions concern issues that our own faculty has considered for some time. Professor David Friedman, who spoke on October 19th about the question of abolishing the criminal justice system, considered why we allocate certain conduct as criminal activity. What are the defining characteristics of criminal law? The purpose of criminal law, in the common understanding, is to express public condemnation of morally blameworthy behavior. Unique from civil law, criminal law places the State as the controlling party in bringing charges against a defendant. Historically, the death penalty has been implemented as a punishment for the most morally blameworthy conduct, because the public deemed it so. Punishment was used as a deterrence for criminal behavior; hosting executions in the public square was so commonplace.

These questions are asked when looking at the propositions that have been placed on the California ballot for November 8th. These initiatives represent a profound shift in the understanding of proportionality in punishment and the kind of punishment that should be imposed, even for the most heinous crimes. The public has determined that the State must reevaluate its understanding of equitable punishment for crimes. Each proposition approaches the existence of the death penalty in unique ways. Prop 62 will effectively remove the death penalty from the books, whereas Prop 66 has created a structure of regulation for determining the procedural mechanisms in adjudicating death penalty appeals.

Ostensibly these initiatives present multiple issues as well in their execution. Upon the passage of either initiative, the State will have to evaluate the allocation of resources for imposition of punishment. Either way, the



The new lethal injection facility at San Quentin State Prison in San Quentin, Tuesday, Sept. 21, 2010. Credit: (AP Photo/Eric Risberg.)

introduction of these historical measures speaks to a significant shift in mindset about punishment in California, and about criminal justice in general.

# AN INTERVIEW WITH ALLONN LEVY: REWARDS AND CHALLENGES OF LITIGATING IN THE NEW MILLENNIUM

By Elena Applebaum  
Senior Editor

Today, rapid innovation poses unexpected challenges for lawyers. I met with Santa Clara Law Alum Allonn Levy, who specializes in high profile technology cases, to get an inside view on what it's like to litigate in a system that's in constant flux. Mr. Levy has argued cases both in front of the California Supreme Court and the U.S. Supreme Court. Hopkins & Carley is located in a vintage mall in Downtown San Jose, so we sat down in a conference room that was once a storefront, to discuss how the face of law has changed since that time....

**What's it like to be an appellate lawyer in Silicon Valley? What kinds of challenges does technology pose?**

Both in the jurisdiction [Pavlovich] case, and the other one, which is *DVD-CCA v. Bunner* (that one also went to the Supreme Court) . . . we had to educate justices who were not at all comfortable with, what at the time, was new technology. We had to spend a lot of the time in the briefing explaining how the technology worked, because applying the law to that technology really mattered.

A lot of the judges and justices thought that the internet was like a loud speaker, like it was pushing information outward, and that's not how the internet works, it's the opposite.

**What's the difference between posting on the internet and publishing a newspaper article?**

One of the key differences is control, if you are a newspaper publisher, as you are for *The Advocate*, you can control the distribution. Now, I might take your newspaper and take it to Michigan, but that's one of those random fortuitous acts . . . You knew where your newspaper was being published: it was within Santa Clara County. As opposed to, if it's on the internet, well, you can't control where that's going to go.

**How is the Ninth Circuit different than others?**

I think the Ninth Circuit is one of the more sophisticated circuits. Having practiced in a lot of other jurisdictions, I think the level of sophistication here is much higher than in most areas.

When you are living and working in an environment that is even close to Silicon Valley, much less in Silicon Valley, you sort of absorb information and it affects the way you look at things in terms of the importance of technology. And when you are weighing interests between technological innovation versus stifling competition, I think a Ninth Circuit justice may have very different views than someone else around the country.

**You've been in front of the U.S. Supreme Court a couple of times, what is it like being a part of creating law?**

I think it is the most fulfilling and exciting thing that I get to do, and I get to do a lot of exciting and fulfilling things.

I really got the sense that everybody from the lowest line clerk all the way up to the chief justice is really honestly interested in getting the best correct result, and that's not a criticism of lower judges. Some of that is just a matter of resources, including time.

If you think of just the oral arguments at the California Supreme Court level, you've got seven of the smartest people in the state, all sitting there, not just listening to you, but they are fully prepared and they are debating with you on a particular issue. That's a huge amount of resources. And the U.S. Supreme court—add two more—plus you've got all of their staff who have combed through your briefs, the other side's briefs, the amicus briefs, they've read up on law.

**Is there any justice in particular whose comments stuck with you?**

Yes. The Supreme Court argument that I had was really great. Most of the time you will get some participation from most, though commonly not all of the justices. I had participation from all of the justices.

**Was there any question that you weren't sure how to answer?** This oral argument happened, I think, about a year after September 11th, so the whole concept of massive terror attacks was on people's minds—it was at the forefront—and . . . Justice Baxter asks me if a terrorist in Washington fires a missile aimed at Nevada, but inadvertently hits California, can California sue that terrorist? Can they bring that terrorist to justice?

It is connected to the concept of express aiming and targeting for purposeful avilment questions. I know that for me, the answer has to be 'no,' because there's no express targeting. So why is that a stupid answer? There is absolutely no reason that I, representing Mr. Pavlovich, need to defend the terrorist—so, the better way to answer, the right answer for that actually, is 'that isn't what we have before us, because...' and then talk about your facts.

**Are there any high profile technology cases that come as a surprise to you?**

I recently had an appeal on a non-technology issue, and that caused me to watch the Yelp case you may have read about. Yelp was a non-party to a defamation action. And in the defamation action there was a default judgment entered, and after the default judgment was entered, Yelp as a non-party came in and did a particular motion and tried to substitute a new judgment in place of the prior judgment, which in limited circumstances you can do (and that was the issue I had in my appeal which is why I was watching this). It raises some really interesting First Amendment issues, because Yelp's position is that the order that came out between the two parties is going to affect Yelp, because it includes an injunction, [that] could cause Yelp to have to remove material from their site, and could infringe on Yelp's First Amendment rights. I predicted that the petition for review would be granted, and it just got granted, so the Supreme Court is going to look at that issue now.

**What are some areas of the law that you personally think need to change?**

The treatment of older people. They as a whole are such easy targets for fraud, but also things that are just below fraud.

The problem is that our laws are set up for two scenarios, one where you are completely together with your cognitive abilities, and one for people who are incompetent. The reality is actually totally different, and I think that there are millions of people who are in between those two places.

The only place where I think we actually do a better job than that, is surprisingly enough the DMV. The DMV actually has pretty good guidelines, and among those guidelines, they actually try to let people keep their driver's license as long as they can, because just like forcing someone into incompetency before they are really there, there are lots of studies and literature that tell you that removing control, removing the ability to drive, removing the ability to make decisions on your own, dramatically hurts older folks.

The reality is there is never a simple fix on these things, that's part of what you see in our election process, everyone wants simple answers, but those are never truthful.

**Are there any laws you know to be in flux?**

There are a couple of really strong cases that set up good protections for online discourse, including the right to anonymity in discourse, and the connection of that to First Amendment rights—and I do think those are very important. The part that I think is unaddressed right now, and I think you're going to see it addressed in the next five or six years, are extreme instances of abuse of that.

**How do you weigh what is more important, privacy or freedom of speech?**

I think that at some point, we are going to have to create a line that has to be clear.

If you really can't do anything about information that's out there that is negative and provably false,



I think that is a problem. The old answer to that is that you fix bad speech with good speech . . . [but] that doesn't always work, because the hits on the bad information are going to be prioritized, because people are going to read those more, so those are going to advance higher up on your Google search. So that means that your rebuttal may never get read. And, at some point perception is reality.

I have had a number of folks who have contacted me about issues where someone has spread falsities about them and it's cost them their career, because what happens is when they go to another employer, the employer looks them up, does the google search and sees terrible things, maybe they even see the good things, but why would you take the risk?

Same thing with businesses. Businesses end up closing down because they can't convince people that they didn't do some particular thing. Or they did it, but then they fixed it, but no one cares about the fix, no one knows about it.

It is really disruptive. I have had at least one person contact me about the revenge porn issue, it's really disturbing.

**Is that really just impossible to take down?**

Actually, on the revenge porn there is actually a fix, that is disturbing in and of itself, but you can do it. What you can do, is you can actually copyright images of yourself . . . it's horrible. They feel completely out of control, and just severely emotionally and personally violated.

That is the dark and unfortunate side of anonymity, and of speech that really isn't intended to be protected. We don't intend to protect obscenity, we don't intend to protect false statements, that's why defamation laws exist.

See Next Page for a Continued  
Discussion with Allonn Levy

## INTERVIEW WITH ALLONN LEVY (CON'T)

**We have an election coming up, and you mentioned it can be hard to speak truthfully in politics. Hillary Clinton says she will attack ISIS via the internet, and Donald Trump says he wants to tighten-up libel laws. Are there legal avenues for them to do either of these things?**

I didn't mean to say that politicians can't be truthful, I actually think that they absolutely can. I think that the problem is that we as a society don't always want to digest that truth.

I think that Mr. Trump is excellent at packaging bite-sized information that people want to hear, and I think he is very good at that. I think Hillary Clinton provides lengthier, more thorough, carefully-worded responses and I think people are completely turned off by that. I think her responses tend to be the more truthful ones, but they are a lot less interesting.

In terms of the two proposals that you mentioned, there are almost certainly ways to attack ISIS. We are

rumored to have very good cyber warfare capabilities. Assuming the attacks would be extraterritorial (outside the U.S.) we would have the ability to do that.

As soon as it crosses into the U.S., it becomes much more difficult to engage in activities that would be unlawful within the U.S.

When I was working on these technology issues, I remember everyone talking about how great it was that you would have this platform for publication that was totally unregulated, and how that would unshackle ideas and allow for this great exchange of intellectual concepts. And that's true . . . but what about the other side of that? What about the fact that you will lose the ability to ever identify experts? I think truth becomes a casualty.

I can't say I foresaw ISIS, but what they do is they use the same idea, that nobody's going to challenge them on what is true, or what is untrue. They peddle in lies,

and package a form of extremism that suits their ends, and they do it really well. And, I think the challenge of battling that is really difficult. Technologically disrupting it is problematic, because now you are starting to run into First Amendment issues.

**Right, because then you are preventing the free flow of information.**

It is the worst kind of infringement because it is content-based; government would be deciding 'this content is bad, and I am going to block it,' so you can't do that.

And to Mr. Trump's approach on libel laws, I think that it would be difficult for him to do what he wants to do . . . that's court-created precedent based on an interpretation of the First Amendment. And while the President is very powerful, he (or she) doesn't have the power to change the Constitution without our say-so.

## RENT CONTROL: CAN IT FIX THE HOUSING SHORTAGE?

By **Auria Maleksalehi**  
Staff Writer

placed rent control on the November 8th ballot.

On a recent episode of KQED's Forum, Juliet Brodie, Professor of Law at Stanford University and Director of the Stanford Community Law Clinic, said "[the people] respond[ed] to community needs for rent stabilization." However, the cause of rising rents is a shortage of housing. Basic economic theory explains that in markets of low supply and high demand, the price of a product will rise. Economists highlight that rent control will not add a single unit of affordable housing, or adjust market

further drive up market prices.

Opponents claim that rent control lacks means-based testing. Rent control is bright-lined rule and at times an inappropriate policy prescription to resolve displacement. This is because the policy does not consistently protect individuals who are unable to afford higher rents from displacement. High and middle-income individuals who do not need protection are unintended beneficiaries of rent control. In my personal experience as a property manager in a rent controlled property, I knew a Stanford trained medical doctor who specialized in neurosurgery and paid 60% of market rent, that's \$600 less than his neighbor for an identical apartment. Another tenant was an executive at a global technology company paying a similar percentage below market, \$670 less than his neighbor for an identical unit.

Bay Area cities with existing and proposed rent control policies do not have any form of means-based testing to ensure the individuals who benefit from rent control are the policy's intended recipients—low and middle-income families who would be displaced without rent control. Nor have the same communities cultivated the political will to address the housing shortage and streamline the process for new housing development. Irrespective of one's political perspective, communities in the Bay Area are facing great challenges and a housing affordability crisis that severely impacts low and middle-income families.

Whatever the outcome of this election, the people must address the underlying cause of rising home prices and rents—a major shortage in the supply of housing that has not kept up with population growth.



Rent control is on the ballot this November 8, and voters will decide whether to adopt an ordinance to cap rent increases and require just cause for eviction. Six cities across the Bay Area, including Mountain View, the closest city to Santa Clara University, have ballot measures offering relief to tenants in a market of raising rents.

Less than a decade ago, the Great Recession left the country grappling with an unprecedented drop in real estate prices. Since then, the national economy has been growing steadily. The Bay Area is generating many jobs, partly because it is home to several of the world's best technology companies, such as Alphabet (previously known as Google), which is growing rapidly. However, housing construction has not kept up with population growth, causing home prices and rents to rise.

Between the years 2011 and 2015, the cost of apartment rentals in Mountain View increased more than 50 percent—an average increase of \$1,000 per month—while average income has risen 1.2 percent. Sixty percent of the residents in Mountain View are renters, and large rent increases cause displacement in communities, especially among low and middle-income families with school-age children. As a result, tenant advocates mobilized, drafted a rent stabilization ordinance designed to combat the displacement, successfully garnered more than 7,000 signatures from the city's voters (exceeding the 4,671 needed), and

prices for new renters. However, building adequate housing to create a more balanced market and put downward pressure on prices is a decade long endeavor. Brodie clarified that "Rent stabilization is about preventing community destabilization in the meantime . . . and preserving the kinds of communities that has made Silicon Valley and the Peninsula a very desirable place to live."

Despite agreeing that housing is necessary for all income levels, opponents to rent control point to two main arguments against the policies. First, it fails to address the underlying shortage of housing and lacks means-based testing. On the same episode of Forum, Tom Bannon, CEO of the California Apartment Association added that "Rent control does not address the issue. At best, it serves as a quick relief for those tenants that currently occupy a rental unit." He explained that it shifts the burden of the broader community to one particular group, buildings owners.

Carol Galante, professor at UC Berkeley and former Assistant Secretary for the Federal Housing Commissioner at HUD under President Obama, analogized that rent control is like giving morphine to a medical patient and is, at times, needed for pain relief. She quickly followed that too much morphine will kill the patient. Expanding rent control policies without addressing the root cause has been shown to constrict the supply of housing, because it incentivizes people to stay in their rent controlled housing and