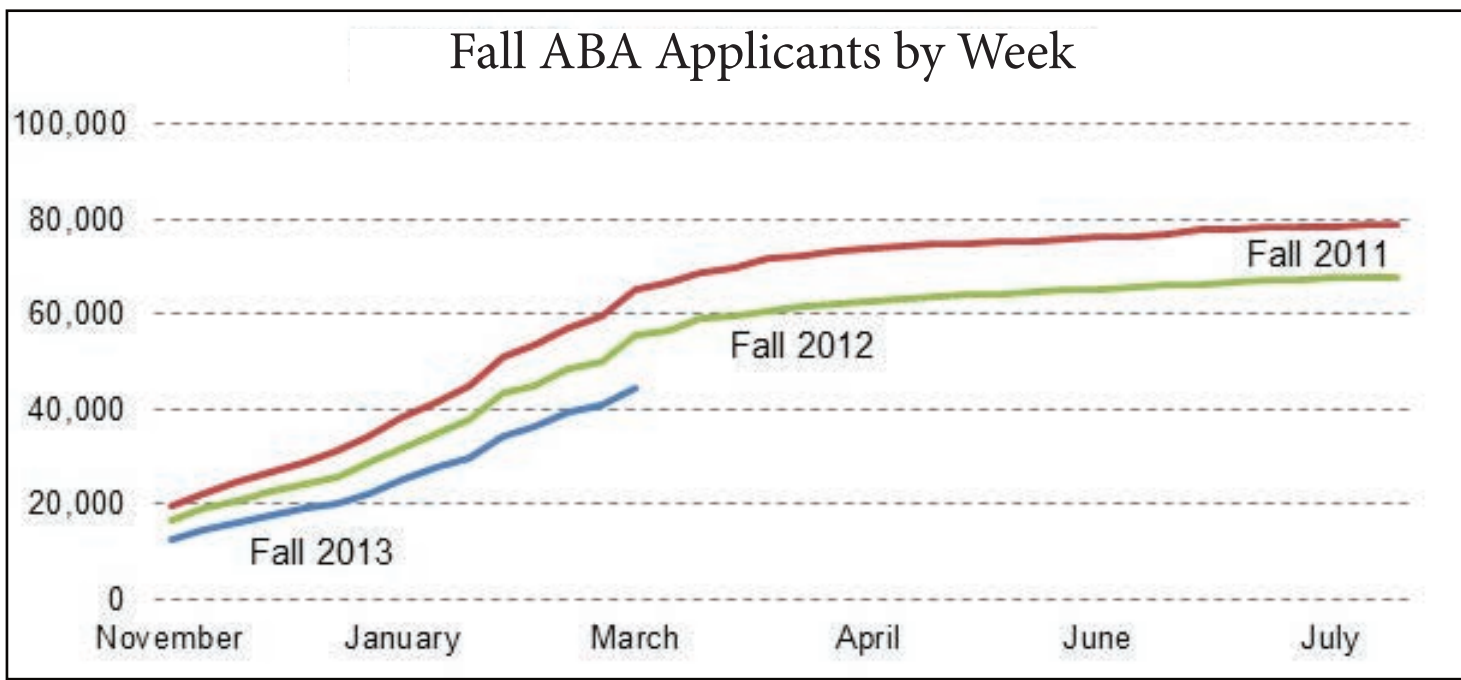




MAILING IT IN

The number of law school applications continues to decline nationwide. Is Santa Clara Law making smart decisions to remain competitive? See page six to learn more.



CREDIT: LSAC CURRENT VOLUME - THREE-YEAR SUMMARY

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Ending Violence Against Women

One in three women on the planet will be raped or beaten in her lifetime. One Billion Rising is dedicated to ending this global atrocity.

By
Paria F. Amini
Staff Writer

This article is written to honor the one billion women worldwide who are victims of violence.

"She was raped. We never say, 'He raped her.' She is the subject." Dr. Laura L. Ellingson, Director of Women's and Gender Studies at Santa Clara University, brought attention to the language we use to discuss rape at a panel following the University's screening of "The Invisible War," a documentary about sexual assault in the United States military. Dr. Ellingson commented that while the wording may not seem pertinent, language depicts our cultural values. All too often when speaking of rape, the majority of attention (and often blame) is placed upon the "she"—upon the victim.

We ask what "she" did to cause it—was she intoxicated? Too flirtatious? What was she wearing? Did she even resist or say no? Then we ask what she could have done to prevent it. Should she have been out that late or walking

alone? Should she have even gone there?

Dr. Ellingson remarks that this is because society classifies women as the "gatekeeper" and does not grapple with the idea of male violence. A vast majority of time and effort is utilized in a defensive reaction to rape, when we should be on the offense.

While numerous articles, studies, and books are published annually about rape, there is unfortunately little discussion of it in our public sphere. Rapes are portrayed as isolated occurrences—not as a daily reality for the female population. In actuality, one in six American women has been the victim of sexual assault in her lifetime.

For women, rape is a constant thought on the forefront of our minds. I think of how many times I alter my own life because of that fear: I can't go out alone at night. I always watch my drink. I dread empty parking lots, elevators, and hallways. In this regard, women are all victims regardless of whether they have actually been attacked.

Our legal system has failed women, and is set up in a way that virtually encourages rape and violence. After undergoing a traumatic attack, a victim should at least feel secure that her attacker will face justice. But even though rape occurs every 2 minutes in the United States, only 6% of rapists will ever spend a day in jail. The federal government estimates hundreds of thousands of rape kits sit untested, with women waiting years to see their aggressor tried, if ever. Where is the justice in that?

The documentary "The Invisible

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See "ONE IN THREE"

Law, Business Students Abroad in Seoul

By **Ava Miller**
Staff Writer

As the culmination of Professor Jimenez's Fall 2012 class, International Business Negotiations- Simulation, a group of SCU Law students arrived in Seoul, South Korea early January 2013. We arrived to the coldest winter in the

patents, whilst law students at Seoul National University would represent a more established South Korean manufacturer interested in expanding their company by acquiring our new technology. Through a series of email interactions and Skype teleconferences, we conducted negotiations in order to arrive at an agreement palatable to both



Students from Professor Jimenez's class at leading South Korea law firm, Shin & Kim

city since 1956, with temperatures as low as -8 degrees Fahrenheit. However, not even the freezing weather could dim our enthusiasm.

The class had run throughout the Fall semester on the premise of representing fictional clients. The SCU students would represent a Californian startup keen to license its nanotechnology

parties.

A mixture of technological, cultural and language difficulties, as well as each side being deeply invested in securing the best outcome for our clients, meant that our initial negotiations did not go as smoothly as we had anticipated.

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State, Nation, and World

STATE

Redwood City - Electronic Arts' recent launch of "SimCity" has been critically acclaimed, but many players have not been enjoying the massive server issues that come with the game. The new release, hosted entirely online and thus at the mercy of servers, has angered players as their cities are destroyed amongst system crashes. EA responded by adding servers and awarding a free EA game to all who purchased "SimCity."

Santa Clara - The new "San Francisco" 49ers stadium is seventy-five percent sold out,

according to recent figures released by the team, raising sales of \$403 million dollars. The sales approximately equal the costs that the team has put in to building the stadium. The most expensive suites, each priced over \$500,000, are completely sold out.

NATION

Austin, Texas - Whole Foods Markets recently announced that all items sold in its American and Canadian stores must be labeled as containing genetically modified organisms. The labeling requirement will be enforced starting in 2018, providing time for products to

prepare, but setting a standard unprecedented. The decision comes after California voters recently struck down Proposition 37, which would have required labeling of specific GMO products statewide.

Arizona - The Freedom of Information Act continues to be used for purposes far beyond what Congress originally could have imagined. The International UFO Congress recently recognized Grant Cameron for his work in uncovering information on the relationship between American Presidents and

UFOs. His groundbreaking discoveries can be viewed at presidentialufo.com.

WORLD

Kenya - Kenyan voters elected Uhuru Kenyatta as the new president by a slim margin of 8,000 votes. While he may be a winner in Kenya, Kenyatta has been charged with crimes against humanity by the International Criminal Court. His victory is being challenged by the runner-up, Raila Odinga, who alleges "rampant illegality" in the electoral process. The charges stem from violence after Kenya's last election, which left 1,200 dead.

AIA Bringing Changes For Inventors Bio-Prospecting, Bio-Pirating Rising

By Samuel Levine
For *The Advocate*

In mid-March, the remaining provisions of the 2011 Leahy-Smith America Invents Act (AIA) will go into effect. While the changes will not dramatically affect the lives of most people, they do mark a significant departure from the current U.S. patent system and the patent system's first major overhaul in more than half a century. Most important among these changes is that the AIA will move America closer in line with the rest of the world by changing us from a "first to invent" to a "first to file" system.

When filing a patent application at the Patent Trademark Office (PTO) under the current system, the date of invention serves as an important landmark. The date of invention is the day when an invention is conceived and reduced to practice. The PTO assumes with any application that the effective filing date is the date of reduction to practice.

An inventor can be awarded an earlier date of invention if he can demonstrate that the invention was conceived in its final form at an earlier date. However, after the AIA takes full effect in mid-March, the date of invention will no longer be relevant. Starting March 16, the effective filing date, and not the date of invention, will be the most important date for determining the proper inventor. Currently, when two pending patent applications cover the same invention, the PTO conducts an "interference

proceeding" to determine the earlier inventor. Under the AIA, because the date of invention will no longer pertain to awarding patents, this proceeding will be eliminated. Instead, the PTO will primarily look at which application had an earlier effective filing date, although exceptions do exist.

As a result, the AIA provisions create a "race to the PTO," whereby inventors will rush to get their application to the PTO as quickly as possible to beat out other potential inventors. It removes the ability to use laboratory notebooks and other evidence to demonstrate an earlier date of invention, a frequent source of litigation. However, as the success rate of winning an interference proceeding when you were the second to file is minuscule, in a practical sense, this will not significantly alter the current filing landscape.

The AIA will also add or change several mechanisms that allow parties to challenge the validity of patents that have already been awarded. One such mechanism is a post-grant proceeding, which will allow third parties to challenge the validity of an issued patent on almost any ground (including novelty, non-obviousness, sufficiency of the description, and patentability eligibility).

Under the new system, a third party can file post-grant proceeding within nine months of a patent's date of issue as long as it has not yet filed a civil action against the patent. Post-grant proceedings will mirror litigation in many aspects and contain discovery, protective

By Paola Aguiar
For *The Advocate*

"Bioprospecting" and "Biopiracy" are two terms that became deeply known during the 1990s.

"Bioprospecting" is the process of discovery and commercialization of new goods based on biological resources using indigenous knowledge. For example, multinational companies profited in acquiring medicinal plants and extracts of plants. By copying indigenous techniques, these companies would recreate a product to market in the health industry, cashing in on a lucrative business venture.

The act of using this communal indigenous knowledge and techniques for profit without previous authorization is considered "Biopiracy." Bio-pirate firms, after acquiring the plant or seeds, obtain a patent of their product. A patent controversy ensues when the bio-pirated products are not novel and do not improve on the indigenous technique.

One of the most important cases involved the "neem tree," which is originally grown in villages in India and

orders, oral hearings, and settlement. However, post-grant proceedings have a significant downside because third parties that have initiated a post-grant proceeding will be barred from raising any defenses in litigation that could have previously been raised during the proceeding, severely limiting the effectiveness of litigation.

Finally, there are also a

Nepal. It has been used for centuries by communities as an antibacterial and stomach pain relief. The Indian people use the neem tree on a daily basis as a toothpaste, face cream, cosmetic, and also for other medicinal benefits.

The European Patent Office (EPO) granted the patent to the U.S. Department of Agriculture and a multinational pharmaceutical firm WA Grace. When WA Grace patented the technique of extraction, the Indian Government, in collaboration with activist movements around the world, started the battle against Biopiracy through global campaigns. One of the enthusiastic voices standing up for this legitimate cause was Vandana Shiva, a representative of Research Foundation for Science, Technology and Ecology (RFSTE) and the International Federation of Organic Agriculture Movements (IFOAM).

The illegal misappropriation eventually became a double theft. While in possession of the patent right, bio-pirate firms started

Continued on Page 6
See "BIO-PIRATE"

host of other changes that will go into effect, ranging from extending what can be considered for prior art to the introduction of a new class of a patent applicant (a micro-entity).

These changes will begin to affect patents filed on or after March 16, 2013, so if you're looking to file under the old system, you should get your PTO patent applications in quickly!

EDITORIAL:

With new Dean Search underway, The Advocate has compiled a list of qualities and attributes we hope the Search Committee will take into consideration.

Maintain and Strengthen the School of Law's Identities: SCU Law has garnered a national reputation as an IP law school. Under Dean Polden's watch, the school rose steadily in the technology rankings. Maintaining, and improving, our position as a premier, if not the top, IP law school should be a top priority for the candidates. Furthermore, the new dean should continue pushing our growing reputations in international law and environmental law.

Establish Santa Clara Law as a National Brand: Santa Clara Law is in a prime location. We are near the forefront of cutting-edge industries and enterprises and have the opportunity to competitively place our graduates with these companies. The University needs to market this, nationally. When people discuss the top law schools in California, there should be no reason why Santa Clara Law is not included in that conversation.

Improve Santa Clara Law's Facilities and Resources: The new library plans have leaked and have slowly made their way around the SCU Law community. Breaking ground for the library and bringing the remaining of the law community's facilities in line with the rest of the University buildings (see the new Admissions building and the Business School) should take precedent.

Rumor Mill with Dean Erwin

By Susan Erwin
Senior Assistant Dean



It's that time of year again. First year students are looking ahead and realizing that they have no idea when and how and what to register for in the summer or fall. Second years and continuing Third years are looking around asking when the schedule will be posted.

So, this edition of the Rumor Mill is dedicated to my favorite rumor of all – "There is NO academic advising at SCU Law"

First thing we want you to know is - we hear you. We know it's frustrating to have to figure all of this out. We work very hard to try to give you all of the information that we can to help ease the process for you. We create a quick reference book full of all the info you need called The Pink Book (that has actually been copied by many law schools in California). We add tons of notes and information to the schedule of classes posted on our web page (above and beyond what you will find in the Ecampus system). We bring together experts and advisors for a whole week of events. We sit in the lounge for a whole week, so that you won't have to walk all the way to the second floor to ask your questions. We train upper-division peer advisors to answer your questions. Four of us in Law Student Services are available year round to sit with you and discuss registration and

graduation. Law Career Services is available to sit and talk about career and academic choices - or just check out the Career Pathways Guides on their web page! APD is always an amazing source of academic advice and information. And our faculty are very generous with their time and available to share their wisdom and answer your questions. In fact, in last year's Law School Survey of Student Engagement, many more SCU Law students were happy with their school's academic advising than were students at other law schools both in California and nationally - by a big margin! I think we must be doing some things right and we continue to try to improve!

The second important message is - don't worry about this now. Worry about it in April. The week of April 15th, many law school departments will come together to host "Academic Advising Week". The week starts with a mandatory session for all first years, where we will review the requirements to graduate, the resources available to you, the process of registration and many other things you need to know. Continuing students should plan to attend Grad 101 - to prepare for a smooth third year and begin thinking about preparing for the bar. Later in the week, representatives from the Centers, the Clinics, APD,

and Law Career Services will host sessions. On Thursday of that week, most of the faculty will be in Bannan to meet you and answer your questions on courses and career paths. And you will get your very own copy of the famous Pink Book!!!

You will all have the opportunity to register for summer classes the week of April 22nd. Fall registration will be the week of June 3rd. We will make sure you have access to the information you need before it is time to register. Please don't worry about it now.

And the third thing to think about is this - figuring out how to meet the requirements of SCU Law and the ABA and the California Bar is the first step in a long road of having to meet professional responsibilities. I know that for many of you, particularly those of you that came straight from undergrad, the idea of not having a personal advisor to tell you which classes to take every semester is disconcerting. Please keep in mind that this is grad school. Not only are you learning to be a lawyer, you are learning to be a professional.

You are learning to manage professional responsibilities - one of which is to successfully complete all of the requirements to graduate and take the bar. It might seem a little scary to figure this out on your own, but that's okay. Figure it out. And if you can't or just have a question or just want to be sure . . . we are here to help you!

Lohan Loses Publicity Rights Claim Against Pitbull

By Jake McGowan
Associate Editor

In 2007, after a string of unsuccessful movies and a long battle with substance abuse, Lohan found herself on probation for two drunk driving incidents. Since then, she has had multiple stints in rehab, probation violations, and other legal trouble stemming from a necklace theft. Unfortunately for Ms. Lohan, it now seems she is equally unsuccessful as a plaintiff.

The former child star recently brought a publicity rights lawsuit under New York law against Miami rapper Pitbull and R&B singer Ne-Yo, along with others responsible for mentioning her name in the hit song "Give Me Everything."

On February 21, a district court in New York dismissed the complaint and even sanctioned Lohan's attorney.

Background

The song in controversy is Pitbull's "Give Me Everything," featuring Ne-Yo, Afrojack, and Nayer. The lyrics referencing Ms. Lohan appear about a minute into the song:

"So I'm tiptoein' to keep blowin'/ I got it locked up, like Lindsay Lohan."

According to Lohan's complaint, this subtle jab damaged her because at all relevant times, she was "a professional actor of good repute and standing in the Screen Actors Guild" (sarcastic emphasis added). She alleged that the defendants violated Sections 50 and 51 of the New York Civil Rights Law, and she also brought claims for unjust enrichment and intentional infliction of emotional distress (IIED).

Lohan's Claim Fails to Satisfy the New York Civil Rights Law Requirements

New York does not have a common-law right of privacy, so Lohan's only option was to try for the limited statutory protection under the New York Civil Rights Law. Under Section 50, it is a misdemeanor for a person to "use[] for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent

of such person."

In this case, the court found a few glaring problems with Lohan's complaint:

- (1) the First Amendment protects the song as a work of artistic expression; and
- (2) Lohan's name was not used in the



song "for advertising purposes, or for the purposes of trade."

The court referenced the 2002 New York case *Hoepker v. Kruger*, agreeing that the First Amendment presents a complete defense:

"pure First Amendment speech in the form of artistic expression . . . deserves full protection, even against [another individual's] statutorily-protected privacy interests."

Because music is considered artistic expression, Pitbull's use of Lohan's name is protected as part of "Give Me Everything," the veritable work of art. Also, the name-dropping is so simple and isolated that the court refuses to believe that it was meant for purposes of advertisement or trade.

Lohan's Unjust Enrichment and IIED Claims Also Fail

The court dispatched Lohan's unjust enrichment claim quickly, suggesting that she was trying to invent a non-existent common law claim by merely recasting the statutory claim under the New York Civil Rights Law.

The IIED claim shared a similar fate:

"Accepting plaintiff's allegations as true . . . even if defendants used plaintiff's name in one line of the Song without her consent, such conduct is insufficient to meet

FEATURE: ALUMNI CONNECTIONS

SCU Law students current and past met at Law Career Day to strengthen student connections with our accomplished alumni. The Advocate reached out to alumni to ask for career advice.

PHOTO BY AMANDA DEMETRUS



MATTHEW WAYMAN, JD '97 SYMANTEC



Matthew Wayman graduated from Santa Clara Law in 1997. Afterwards, he served as corporate counsel for Synopsys, Inc. for several years before becoming corporate counsel for many other high tech companies, such as Veritas, Cisco, and

Magma Design Automation. He also worked as an assistant director at Santa Clara University helping JDs and MBAs develop professional and networking skills, while conducting weekly workshops for students. Afterwards, he worked as a deal manager at Symantec before transitioning to his current position as a program manager for the Corporate Finance group at Symantec.

How do you stay active in the SCU Law community as an alumnus/alumna?

Keep in touch with classmates and the law career services office

Is there a particular class that swayed your decision to practice a certain area of law?

Technology Licensing, though I no longer practice law.

Is there a certain technique (in litigation, legal drafting, etc.) passed on by a professor you find yourself using?

No. For the most part classes were very impractical and I learned more on the job through internships.

Do you have any advice for current students?

Unless you're excited about a particular area of law that actually offers employment opportunities, consider alternative careers outside of law. There are a lot more non-law jobs in Silicon Valley than law jobs.

Any general thoughts or comments about being an alumn from SCU Law?

Take some time to figure out what you actually enjoy doing.

MARY GRACE GUZMÁN, JD '09 LAW OFFICE OF MARY GUZMAN



Mary Grace Guzmán is the daughter of a Mexican immigrant and a first generation college graduate and attorney. She graduated from Berkeley in 1996 and spent 10 years working for non-profit organization before

attending Santa Clara Law, which she graduated from in 2009. Ms. Guzmán is dedicated to volunteer and leadership activities in her community. She works with K-12 classes in order to promote education. She also volunteers in pro bono legal clinics to help disadvantaged individuals gain access to legal counsel. She is the Co-Chair of the Diversity Section of the Contra Costa County Bar Association.

Do you have any advice for current students?

If I can do it, you have no excuse. Seriously, I went to law school as single mother with a sick kid commuting 100 miles round trip, plus I have learning disabilities too! I am open about this because odds were seriously stacked against me. I got through law school by being organized, and never giving up. I found my current job situation by being creative and taking advantage of opportunities that came my way.

Is there a particular class that swayed your decision to practice a certain area of law?

Sort of, I found my Legal Ethics class interesting. I always thought that the cases are like People Magazine or a tabloid for attorneys. I wondered how an attorney can practice this area of law because it is a bit of an obscure area of law.

Is there a certain technique (in litigation, legal drafting, etc.) passed on by a professor you find yourself using?

It isn't so much a technique, as much as it is a skill. Professional Responsibility law requires me to be an efficient researcher and be very creative in how I construct an argument. I have to understand the issue which as derived from an area of law, such as Real Estate, but somehow touches upon one's ethical duty. The crossover and how the two areas of law meet is crucial to understanding and eventually constructing an argument as to why an attorney or law student did nothing wrong and everything that happened was "normal" and nobody should worry about the client's actions.

How do you stay active in the SCU Law community as an alumnus/alumna?

I try my best to attend as many events as possible. SCU treated me very well while I was in law school and I try my best to reach out to other graduates through mentoring. I also am in contact with many of my fellow classmates and try to make referrals when appropriate.

SCU LAW BOASTS 11,000 ALUMNI

BETWEEN 5,000 AND 6,000 OF THOSE ARE LOCATED WITHIN THE BAY AREA

IN PRACTICE, NICE GUYS DO FINISH FIRST

By Jil Dalesandro
Class of 1986

One thing I have noticed in my years of practice is an erosion of civility between lawyers. With each advance in communication technology, the need for face-to-face communication dwindles, as does our ability to communicate on that level. I believe that this is true not only in our profession, but in our daily lives as well.

Case in point: Valentine's Day. At restaurants all over the country, people sat down to a romantic dinner. Many people immediately pulled out the ubiquitous Smartphone and ignored the very person for whom they cared most in the world.

Romance appears to be on the decline, along with communication. If one can ignore his/her favorite person in favor of a smartphone and email, imagine what one can do to opposing counsel.

Every day attorneys are inundated with not only those demands placed on them by their clients, but also by opposing counsel (who is facing similar high demands from his or her clients) and by the courts.

Thanks to movies and television,

many clients have an image of what they believe a lawyer should be – tough and nasty. Many clients want to use their lawyer to punish their opponent and his or her lawyer, and too often many lawyers – for whatever reason – embrace this image and act accordingly. This is where civility breaks down. Rambo did not become a lawyer for a reason.

Being civil or granting professional courtesy does not connote weakness. "Civility" does not mean that an attorney lacks aggressiveness or that he or she is not a vigorous advocate. A lawyer, in fact, has an ethical obligation to assertively represent his or her client.

This obligation does not mean being uncivil, abrasive, rude, condescending, or demeaning. Many lawyers, in their efforts to be advocates, become uncivil with each other through oral and written communication that sometimes devolves into personal attacks.

This is such an important issue that in 2011, the California Court of Appeal took civility head on in *Marriage of Davenport*, 194 Cal. App. 4th 1507. In

Davenport, the Court of Appeal gave a stern reminder to lawyers about their conduct and made it clear that free speech and zealous advocacy are no defense to a claim for sanctions brought about by a lawyer's uncivil behavior.

The court warned that unnecessarily demeaning, accusatory, and personal attacks contained in correspondence or pleadings serve no useful purpose in advancing the resolution of disputed issues. It is a sad commentary that we needed a judge to remind us of that fact.

Here are some tips to preserve civility, and in turn, ensure that other counsel are gracious to you, because, let's be honest here, the bar is a small community with a long memory.

1. Avoid e-mail when possible. We lawyers are a gregarious lot, and it is easy to misinterpret the tone of an email, especially if you and opposing counsel have never met face-to-face.

2. Try and meet in person, at least in the beginning of a case. E-mail makes it too easy to de-humanize another person – which makes it easy to forget manners.

Meeting people face-face will make you remember you are dealing with a real person.

Obviously, you do not have to become BFFs, but knowing counsel personally does make adversarial relationships a lot less stressful and contentious. Remember, you are likely to encounter opposing counsel often. Rather than start World War III, it is best to make an effort to develop a working relationship. It will make future interactions less contentious, and that means you will be able to do the best job for your clients.

3. Do not react in kind. If you are attacked, do not go on the offensive. If you draft a response, hold it overnight before sending, or run it by someone else before sending it. Remember, your reputation is on the line, and more practically, a judge will read your response attached to a declaration at some point. Better to always take the high road.

As stated in *Marriage of Davenport*, "Zeal and vigor in the representation of clients are commendable. So are civility, courtesy and cooperation. They are not mutually exclusive."

This is a lesson that all lawyers should take to heart for their benefit and that of their clients. I know I do – daily.

"RAMBO DID NOT BECOME A LAWYER FOR A REASON."

PHILIP GREGORY, JD/MBA '80 COTCHETT PITRE & MCCARTHY



Philip Gregory is a principal at Cotchett, Pitre & McCarthy, where he specializes in intellectual property litigation. He was an Article Editor for the Santa Clara Law Review and served on the Moot Court Honors

Board. After graduating in 1980, Gregory served as the first chair of the State Bar's Trade Secret Subcommittee and on the State Bar's Federal Court Committee.

Is there a particular class that swayed your decision to practice a certain area of law?

The classes that swayed my decision to practice business litigation were Corporations and Advanced Corporations, taught by Professor Jost Baum. Professor Baum made cases involving large scale business disputes come alive. During his explanations, I could see the procedural and substantive law intricacies of the underlying disputes. Professor Baum guided our class through these cases using methods that made me understand how to solve the factual puzzles created.

Is there a certain technique (in litigation, legal drafting, etc.) passed on by a professor you find yourself using?

Professor Ed Steinman taught us to focus on every aspect of an opinion, particularly footnotes. Through him, I learned how to read and apply a decision to the practice of law.

How do you stay active in the SCU Law community as an alumnus?

I try to mentor both current students and future students. I also lecture at the law school.

Do you have any advice for current students?

Make your memos and briefs clear, concise, and direct. Long sentences and lengthy discussions of cases do not persuade; they confuse.

Any general thoughts or comments about being an alumn from SCU Law?

You will realize the true importance of attending SCU Law after graduation. The SCU Law community outside the campus is very strong. We work to help each other continue the excellent principles of advocacy and professionalism taught at the law school.

AKSHAY VERMA, JD '06 AXIOM LEGAL



Akshay Verma is a 2006 graduate of the Santa Clara School of Law. His law practice consisted primarily of environmental litigation while at Pillsbury Withrop and Farella Braun and Martel. More recently, Akshay has moved in a business development role with Axiom Law, where he heads up a practice team that focuses on technology clients in the Bay Area.

Is there a particular class that swayed your decision to practice a certain area of law?

I started out as an environmental attorney, and Ken Manaster's Environmental Protection class was an excellent introduction to the major federal environmental statutes. He's also an amazing professor – one of the best SCU Law has to offer.

Do you have any advice for current students?

Be honest with yourselves about why you are in law school and what you want to do. Once you can do that, the possibilities are endless.

Is there a certain technique (in litigation, legal drafting, etc.) passed on by a professor you find yourself using?

Not particularly.

How do you stay active in the SCU Law community as an alumnus/alumna?

As Co-President of the South Asian Bar Association, I often put together and host career development programs at SCU. In late January, we put together a panel on solo practice and conducted mock interviews for interested students. I also occasionally speak on panels at SCU and attend LCS events to stay in touch with the student body.

Any general thoughts or comments about being an alumn from SCU Law?

I had an amazing time during law school and took advantage of every opportunity I could. SCU Law alums in the Bay Area have a great reputation for being good, capable lawyers, and good people. That's a testament to the SCU Law faculty and administration. I am proud to call myself an alum.

OVER 400 ALUMNI RETURNED TO CAMPUS LAST YEAR TO PARTICIPATE IN LAW CREER SERVICE PROGRAMS

SCU Law Copes with Falling Application Numbers

By Michael Branson
Managing Editor

Law schools across the nation have seen unprecedented declines in applicants seeking admission for Fall 2013. As of March 1, the Law School Admissions Council (LSAC) has reported 44,630 applicants, down 19.7% from 2012, a year which itself saw significantly fewer applicants. Unless the number of applicants increases significantly - unlikely given huge drops in those sitting for the LSAT - the number of applicants will be around 55,000, below 60,000 for the first time since applicant data was taken in 1983.

Santa Clara Law already saw a decline in applicants last year, and will likely have to brace for even fewer applications. The law school received 3,216 applications last year, down 13% from 3,706 applications for Fall 2011. Rather than compromise the quality of students - Median GPA and LSAT scores for full time admitted students did drop marginally from 3.25 and 160 to 3.23 and 158 respectively - the law school chose to admit 18% fewer students. The part-time program was affected the hardest, decreasing by a whopping 48%.

Most schools are being forced to reduce enrollment. Schools that choose to lower admissions standards will be dramatically punished by the U.S. World



A recent message from SCU Admissions waives application fees and extends the enrollment deadline

and News Report. UC Hastings has publically announced plans to reduce total enrollment by 300 students, down to 1,000, within three years.

But with decreased enrollment comes a meager bankroll. Faced with three years of decreased enrollment, Vermont Law School recently announced staff layoffs and buyouts. In a recent New York Times Article, Brian Leiter of University of Chicago School of Law

predicts that as many as ten law schools could close as a result of the increased financial stress.

Other schools are trying more creative means to prevent falling within this reduction feedback loop. The University of Illinois School of Law is offering across-the board tuition discounts. The Advocate recently learned that Santa Clara Law has waived all application fees and has extended its

application deadline.

With increased shuffle at so many schools in response to application changes, law schools may see significant changes to their rankings, median LSAT scores, median undergraduate GPA, and the acceptance rate together combine for a quarter of the weight of the U.S. News' rankings.

Law schools have seen significant drops in the number of applicants over the last few years, but this year's figures show decreases even larger than pessimistic predictions. If applicant numbers reach newly revised predictions of 55,000, the number of applicants will be nearly half of what they were at their peak in 2004.

The drop has led to a significant discussion in attempt to reverse its course. Some writers and academics point to the ever-increasing costs of obtaining a legal education paired with figures released by the National Association of Legal Placement (NALP) that show only two-thirds of the class of 2011 found a job requiring bar passage nine months after graduation. Others have blamed legal institutions for failing to adapt to the needs of Big Law by not offering enough clinical experience. Unfortunately, clinical experiences offered by law schools are often first on the chopping block when budgets are tight.

Rise of bio-pirating creating new problems for traditional producers

"BIO-PIRATE"
From Page 2

enforcing their patent rights over any producer or seller of neem in India. This imposes royalty fees on any country, company, or people using it without previous license. This practice affects the countries originally producing this product using native techniques and attempting to export it.

The battle of requesting the revocation of the patent of neem tree was initiated in the EU Patent Office, where the pharmaceutical company argued that the Indian knowledge of the neem had never been published in a journal to be considered a prior art. But

the Indian representatives defined prior art of neem as a knowledge that was previously and publicly disclosed (oral and written). Prior art determination bars a patent. Therefore, the neem patent held by this pharmaceutical company was revoked and India won the case. It constitutes a precedent and a warning to other multinational companies to stop pursuing a patent without authorization of the developing country, its national commissions and related laws.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has encouraged third-world countries to reform their own laws on intellectual property matters, especially patents, although many developing

countries in Africa and South-America have created a National Commission in charge of monitoring any bio-piracy activity against biological diversity. The creation of the Biological Diversity Act is favorable to indigenous communities.

Recently, I considered the efficacy of these patent reform laws in developing countries that TRIPS and the Biological Diversity Act have encouraged.

These reforms do not have the positive effect on developing countries as some have argued. Lawsuits against bio-pirates are not going to be the ultimate goal of developing countries because it is too expensive for these countries with limited budgets.

Therefore, the best solution is the

formation of a unilateral or multilateral international licensing agreement in biodiversity resources signed between developing and developed countries in their efforts to generate profit beneficial to all nations.

This sharing-benefit proposal could remunerate indigenous people through the recognition of origin, recognizing the place where the biological resource was originated.

However, it can bring bureaucracy and private permissible negotiations under the table between corrupted authorities, which can detrimentally affect natural indigenous community development.

Students' Business Negotiation Trip to South Korea

"KOREA"
From Front Page

However, as time progressed and each side became more accustomed with the other's style, we managed to make considerable progress with compromises on both sides.

By the time we met in Seoul for our final negotiation, our discussions proceeded much more smoothly. It is amazing how much can be lost in translation when negotiating thousands of miles apart via Skype. It was extremely helpful to have the face-to-face contact, which facilitated our communication. For the most part, our groups were able to "seal the deal," and importantly also able to interact on a more personal level whilst enjoying a dinner arranged by Seoul National University.

However, the negotiations were only part of the trip. We also had the

tremendous opportunity to network with SCU Law alumni such as Shane Hong (Legal Director, Oracle, Korea), Hana Kim (General Counsel, Disney, Korea) and Hazel Suh (former member of Parliament, currently Litigation Director, Logos Law, Korea). We also visited leading South Korean law firms, Shin & Kim and DR & AJU Partners. We gleaned valuable insights about working life in Seoul and advice for foreign lawyers hoping to enter the Seoul legal market.

It is possible for foreign trained lawyers to work as foreign legal consultants, even with minimal or no Korean language ability. However, a steady stream of foreign lawyers keen to capitalize on South Korea's booming economy means that in recent years it has become more competitive to secure such jobs. This nevertheless remains a

possibility for motivated foreign lawyers. We came across at least one recent JD graduate with minimal Korean language ability who was starting his career at a law firm in Seoul.

As well as working hard, the South Korean culture also has a heavy emphasis on the playing hard, which is seen as an essential component of getting to know and building trust with fellow colleagues. We also took the opportunity to explore the country, visiting landmarks such as the Demilitarized Zone (DMZ), a strip of land running across the Korean Peninsula that serves as a buffer zone between North and South Korea, as well various palaces, sampled local specialties such as raspberry wine and tackled karaoke and the Gangnam Style dance in Gangnam.

South Korea is also known for its

cutting edge fashion, and very often the price you are quoted is only the starting price. This was the ideal setting to put our freshly honed international negotiating skills to excellent use, haggling over prices.

I came back from this trip with new contacts, more enlightened about the South Korean culture, the international opportunities that exist and how extensively the SCU Law alum network stretches, as well as a much heavier suitcase.

If any SCU Law students are keen to gain practical, hands-on experience of negotiating cross-border deals and a perspective of the cultural and legal realities of working in international business, then I most certainly advise you to consider this class and the trip to Seoul. Many thanks to Professor Jimenez for organizing this amazing experience.

By the Numbers: The Sequestration

On March 1st, \$85 billion in spending cuts were implemented nationwide. The impact on federal funds to California this year alone includes:

- 2,000** fewer children with access to child care
- 3,690** fewer students with work-study jobs
- 9,600** fewer students receiving financial aid
- 15,810** fewer vaccinations for children
- 64,000** furloughed civilian defense employees
- \$1.6 million** less in Justice Assistance Grants
- \$12.4 million** less environmental funding
- \$87.6 million** less education funding

SOURCE: THE WHITE HOUSE
M.WHITEHOUSE.GOV/SITES/DEFAULT/FILES/DOCS/SEQUESTER-FACTSHEETS/CALIFORNIA.PDF

“One in Three” Movement Making a Paradigm Shift

“ONE IN THREE”
From Front Page

War” sheds light on the brutal reality of women serving in the United States military. I was humbled by the bravery of these women, and their love for their country—the same country that fails them again and again. Rape statistics in the U.S. Military are staggering, but the means of protection and justice for women are even worse. These rapists are not reprimanded or removed from their positions; their superiors simply choose to look away. The only ones punished are the victims themselves.

In the documentary, a group of veteran women bring suit against the Department of Defense for failure to address sexual assault in the military. The Pentagon argued that rape and sexual assault are just “occupational hazards” of joining the military. The case has since been dismissed, the court finding that “congressionally uninvited intrusion into military affairs by the judiciary is inappropriate.”

But the United States military is not the only major institution covering up sexual assault. Universities have been masking the large numbers of rapes and sexual assaults occurring on campuses for years. According to

the U.S. Department of Justice, one in four women on a college campus experience sexual assault. Often these rapists are depicted as strangers, when in 80-90% of cases, the victim and the assailant knew each other.

While rape occurs frequently, “As women, we have come to accept rape as an occupational hazard of living. It doesn’t have to be that way.”

the victims are silenced. Universities, much like the United States military, place a great deal of concern on their reputation rather than on transparency. They too are on the defense, and the victims continue to suffer even further.

I understand that rape victims are not solely women. Men are victims of rape and violent crimes as well. That’s why if we focus our attention on the assailant rather than the victim, this bleak reality can change for everyone. We have wasted our efforts on the defense—on the “she.”

Our primary question should be, “Why do men rape and act

violently, and what can we do to stop that?” The aggressor must be the subject. At some point, we have accepted male violence as a part of the male identity.

There is something fundamentally wrong about that idea of masculinity. Thankfully, far from all men choose to play into that stereotype of chauvinism and male dominance. It is refreshing to see more and more men stand beside women on this issue. Many of these men have witnessed the numbing pain that rape and violence have brought to their mothers, their daughters, their sisters, their friends—men who see this as their fight as well.

Above all, I encourage those moved by what they read not to lose that fire. Do not believe that just because things are a certain way means they must remain that way. One in three! One in three women on the planet will be raped or beaten in her lifetime. The statistics are far from “isolated.”

As women, we have come to accept rape as an occupational hazard of living. It doesn’t have to be that way. Women and men all around that world are finding their voice and speaking out. By coming together in solidarity and challenging that status quo, we can begin to realize a safer, brighter future for all of us.

SCU LAW STUDENTS, FLASH SEE SUCCESS

By Luci Buda
Class of 2012

Santa Clara Law high tech externships are win-wins for employers and students alike. Students receive real world experience, and employers get externs with IP knowledge that can make a real contribution. Two recent students, Teri Karabonik (Class of 2012) and Sneha Pathak (Class of 2013), made significant impact at The Federal Legal Assistance Self-Help Center (FLASH) at the San Jose Courthouse by providing valuable knowledge in copyright, trademark and patent law to the program directors and FLASH clients.

FLASH was established in 2010 by the U.S. District Court, Northern District of California, San Jose Division, to provide limited assistance to litigants without an attorney who are considering filing or who are already parties to a civil lawsuit. FLASH lawyers provide information to pro se litigants regarding their legal rights and responsibilities and about the court procedures applicable to civil cases, such as explanations of court orders, and answers to other procedural issues.

FLASH Director Stephen Soloman had stellar reviews for our students. “Teri and Sneha were instrumental to the success of FLASH by providing services to clients who increasingly bring IP and related legal issues to Federal Court. Copyright, patents, and trademark disputes have become the third most frequent legal area for FLASH. Both Sneha and Teri became invaluable resources to our office and

the two other FLASH program directors in California – as IP experts” stated Solomon. “Thanks to Teri’s initiative, FLASH is now participating in the U.S. Copyright Office’s proposal for a copyright small claims court! Really exciting!” he continued.

Teri Karabonik stated that she really enjoyed her time at FLASH because it allowed her to get ample hands on experience, such as assisting with a variety of motions for pro se litigants. Teri went on to say, “as the FLASH Fellow, I also acted as a liaison between FLASH and various community organizations such as the Intellectual Property Section of the California State Bar, the IP Inns of Court and New Media Rights. New Media Rights was even so kind as to mention me and Sneha multiple times in the Town Hall meetings held by the Copyright Office in LA regarding a federal copyright small claims court.” Teri concluded by stating, “Steve Solomon is a wonderful attorney to learn from as well, both in terms of client interaction and legal writing.”

If you are interested in externing with FLASH, Solomon is currently accepting applications for new student interns. Copyright knowledge is useful, as the FLASH program has seen an influx in copyright cases, specifically cable tv piracy cases and adult film distributor copyright suits. The position is volunteer and part-time.

Applicants should send a resume, writing sample and cover letter to Steve Solomon at ssolomon@probonoproject.org. Applicants will be considered on a rolling basis.

INSPIRE 2013 – Why?

Inspire 2013, the Class Gift Campaign of the Class of 2013, is off to a great start in providing gifts of support to the Strategic Initiatives Fund. But what is the Strategic Initiatives Fund?

The Strategic Initiatives Fund provides:

- *Scholarships and financial aid* that enable the law school to continue to attract and retain exceptionally qualified students;
- *Graduate Student Fellowships* which provide employment and continuing education opportunities at the law school for outstanding graduates during their search for permanent employment;
- *Instructional technology resources* for the library as well as student learning opportunities such as the law review, moot court competitions and clinical experiential learning programs.

Please help Santa Clara Law with your support! Donate to the Strategic Initiatives Fund so that we can continue to fund resources necessary for students to make the most of their learning experiences and to meet the most urgent needs of the law school!

- Class Gift Committee of 2013

Changes to the SBA Constitution By-Laws

By Jake McGowan
Associate Editor

On February 26, the SBA's Board of Governors voted on revisions to its Constitution By-Laws. Here's a brief recap of some of the changes:

Relaxed Procedural Requirements for SBA Elections:

The Board deleted most of the 1996 language outlining election procedures. According to the Legislative Committee, these requirements were not being enforced anyway and the idea in deleting them was "to foster the maximum amount of participation from the student body."

Finance Policies Streamlined: The Board deleted certain form requirements in the name of "flexibility," and added a recommended quarterly meeting to review the budget. According to the committee, "There is concern about the sustainability of future SBA Executive Board's allotted budget if more oversight and fundraising are not implemented." The Board also bumped up the due date for SOBA forms and also included that all LSO spending will be published and posted for transparency's sake.

Campaign Rule Violators No Longer Automatically Disqualified:

Instead of mandated ineligibility, a candidate found to break a campaign rule would now face a circumstantial review by the Elections and Voting Procedures Committee. In the past, the Board has been torn on whether to disqualify candidates for "minor infringements."

Along with its By-Law revisions, the Board is also proposing certain constitutional amendments, which must go to the student body:

New Positions: The Board is proposing a constitutional amendment to add two new positions: (1) Vice President of External Affairs, and (2) Director of Internal Communications. The VP of External Affairs would be an executive board position meant to involve the university in the community and with local law schools. The Director of Internal Communications would replace the "Online Editor," and focus on partnering club programs to better maintain external contacts.

Miscellaneous: The Board also proposed some minor changes, including amending the constitution to make the Student Action Committee official, and revising the Constitutional preamble to "incorporate the values" from Article X.

Notes on the constitutional amendments will occur next month.

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To review the updated By-Laws in their entirety, the By-Laws before the 2013 revisions, and the minutes from the Board of Governors meeting, check out the recent post on the SBA's blog at [www.law.scu.edu/blog/sba](http://www.law.scu.edu/blog/sba).

## Lohan Getting No Respect from Pitbull, Courts

"LOHAN"  
From Page 3

the threshold for extreme and outrageous conduct necessary to sustain a claim for [IIED]."

This is not the first time Lohan has used the legal system to vindicate her publicity rights. In 2010, she brought a similar claim against E-Trade Bank for its Super Bowl ad referencing "that milkaholic Lindsay." In that case, she asked for \$100 million. It's rumored she made some money when it settled out of court.

With that in mind, it seems pretty clear that Lohan and her attorneys thought they could go back to the well with a weak lawsuit. This time, however, the meritless claims actually came back to bite Lohan's attorney.

In a strange turn of events, the court fined Lohan's attorney Stephanie Ovadia \$750—not for filing frivolous claims, but because she plagiarized "a vast majority of the Opposition . . . from other sources without any acknowledgment or identification."

On the other hand, the court also took issue with defendants' counsel sitting on this information:

The Court also notes, parenthetically, that it is underwhelmed by the nature of defendants' counsel's conduct upon learning of plaintiff's counsel's plagiarism. Defendants' counsel recognized the existence and extent of the plagiarism as early as March 9, 2012 . . . Defendants' counsel certainly had the option of raising the issue with plaintiff's counsel, thereby affording plaintiff's counsel the opportunity to withdraw the Opposition and request leave from the Court to amend the opposition papers. Instead, the first time defendants' counsel raised the issue was when they filed the fully-briefed motion to dismiss and highlighted the plagiarism as part of the reply papers.

As Marty Schwimmer points out, this raises the interesting question of whether the defendants' counsel has a duty to warn its opponent, or whether they can let their adversary shoot themselves in the foot.

Either way, it looks like the drafting was as weak as the purported basis for the complaint. These claims never stood much of a chance.

**SANTA CLARA LAW** est. 1911

**March 23, 2013**  
[10AM – 5PM]

**SAVE THE DATE**

**SCU LAW DAY OF SERVICE**  
**SAVE THE DATE!**

Come join our law school family while we give back to our community!

Kick-off brunch: 10am-11am  
Community Service: 11am-3pm  
Post-service BBQ at The Hut: 3pm-5pm

Alumni, current students, prospective students, faculty, friends, and family of Santa Clara...please bring your kids!

BROUGHT TO YOU BY SBA COMMUNITY SERVICE COMMITTEE