



SCU Law's \$10 Million Dollar Man: Howard Charney

By Brent Tuttle
Managing Editor

In December 2014, Howard and Alida Charney announced they would be donating \$10 million to Santa Clara Law, the largest gift in the history of the law school. Naturally the news caught my eye, but once I started to do a little research on this Charney character, the money became background, just ones and zeroes. Charney was the real story.

Howard Charney co-founded 3Com and now serves as a Senior Vice President in the Office of the President at Cisco, but that's not really why I wanted to interview him. Aside from being appreciative of his generosity, I liked the fact that he referred to himself as a "dirtball engineer." He also has an uncanny sense of humor, reminiscent of a laid back Larry David but with a little bit of mad scientist thrown into the equation. Most importantly he cares about the future of Santa Clara Law.

Charney, who graduated from SCU with an MBA in '73 and a J.D. in '77, came to campus February 10th to guest lecture at the Entrepreneurs' Law Clinic. Faculty and students hosted a welcome reception to show gratitude for his kindness. Charney was bashful



Dean Lisa Kloppenberg welcomes Howard Charney to a reception of faculty and students thanking him for his \$10 million gift – Photo: Nancy Martin

about the praise being sent his way. Sure he wrote a check, but really it was Howard Charney who was appreciative of the SCU Law faculty. These are the people who make the school run day in and day out.

Our interview was brief, but I gathered Santa Clara Law taught Charney many lessons that were not on the syllabus. I suspect these lessons played an important role in his success. It's apparent Charney is committed

to SCU Law's faculty and programs. However, I think a big part of his gift aims to ensure that students for decades to come receive the same educational opportunities SCU Law afforded him. We should all be thankful for that.

Q: How does a self-described "dirtball engineer" end up at Santa Clara Law? What inspired that?

A: My educational path took me to an area specialty of engineering called tribology. It comes from the Greek root which means to rub, and tribology is a study of friction, wear, and lubrication. So you might say, how does this relate? You'll see in a second. I went to grad school to study this particular area of technology. That particular area of technology was a real big problem for the IBM Corporation in the early 1970s. They went to the professor who was my advisor and they said "do you have any students who can come to work for us in San Jose?" So here I am in the Northeast of the United States and he said, "Yes I do, I have a student who is going to be getting their masters. Maybe you'd be interested."

So the IBM company picked me up and relocated me to San Jose, California to solve this really big problem they had. But once I got here, I had been

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Resources for Recovery from Falling Bar Passage Rates

By Nikki Webster
Senior Editor

There's a reason why we law students spend our days immersed in lecture, case law, statutes, and legal research. There's a reason why our mouths answer "it depends," our dreams speak in legal jargon, and our thoughts masticate on jaw-locking fact patterns. If you're weird like me, your *raison d'être* is that you're a law nerd and have an addiction to learning. If you're at least somewhat normal, your reason is most likely the Bar Exam.

In California, the Bar is administered every February and July (the majority of law students

sit for the July exam). It is comprised of six essay questions and two performance tests on California law, and the MBE (Multistate Bar Examination). Eighteen examination hours span three days to test our dedication to learning the law and ability to speedily word-vomit legalese in a coherent, logical, and organized fashion.

Last July, the Bar passage dropped significantly across the nation on account of extremely low MBE scores. In a [memo](#) to "Law School Deans," National Conference of Bar Examiners (NCBE) President Erica Moeser explained, "All [indicators] point to the fact that the group that sat in July 2014 was less able than the group that sat in July 2013." This dubious defense to the NCBE's purportedly reliable 200-question testing of federal legal

knowledge is admittedly disheartening. Yet the reality is that California Bar passage rates dropped 10%, and whatever the NCBE says, the onus is on us law students to pass.

Below [statistics](#) reveal that Santa Clara Law's bar passage rate dropped 13% from July 2013 to July 2014.

Other states where some Santa Clara students may choose to practice also showed significant drops in passage rates.

of succeeding on the Bar. [Remedies](#) is also a popular course to take 3L year in preparation for the Bar as it covers a range of subjects (torts, contracts, etc.) that often have not been touched since 1L. In addition, the Santa Clara Office of Academic and Bar Support is offering bar counseling appointments and a supplemental lecture and review series through BRICS-Kick Start. The law school is also providing free access to [BarEssays.com](#).

California Bar Exam		All California	Santa Clara Law
July 2013	First-Timers	68%	73%
	Repeaters	21%	42%
	All Takers	56%	57%
July 2014	First-Timers	55%	60%
	Repeaters	41%	29%
	All Takers	45%	45%

	July 2013	July 2014	% Drop
New York	69%	65%	4%
Oregon	77%	65%	12%
Texas	82%	71%	11%
Washington	85%	77%	8%

Whatever the cause for the steep decline in Bar passage, we at least still have the power to prepare. Through Santa Clara University and the California State Bar, we have many resources at our disposal to prepare for the subjects tested.

Santa Clara regularly offers [Advanced Legal Writing: Writing](#) (ALW:W) as a Bar prep course. ALW:W emphasizes building law students' analytical writing skills specifically for the purpose

The California State Bar posts [prior examination questions](#) and "selected answers" that are free to view at any time. "Selected answers" are not necessarily model answers, but they are at least real students' answers of passing quality. Taking timed prior Bar exams is a great way to practice and gauge legal knowledge under time pressure.

Whatever your reason is for studying, make sure to remember that the Bar is a significant gatekeeper on the path to becoming an attorney. If you frontload the work by crafting your outlines as memory banks and quick reference guides, by practicing your analytical writing skills and organization, and by taking real exam questions under time pressure, you will not only build practical skills that will be useful in your profession, but you will also hopefully pass through the flaming gates unscathed on the first go.

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The Advocate Celebrates Black History Month



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Class of 1996



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Silver Star, Bronze Star, Founding Sponsor of the
Martin Luther King Memorial
First African American Graduate of SCU Law
Class of 1952

Rumor Mill with Dean Erwin

By **Susan Erwin**
Senior Assistant Dean

I hope you all have settled into the new semester and are enjoying your classes. Spring semester promises to be really busy this year!

Don't miss Academic Advising Week beginning March 16th. The ABA Site Inspection Team will be here that week as well, followed by summer term registration, Grad Week, commencement activities, and fall semester registration. Keep checking your SCU email to make sure you don't miss any important announcements!

On that topic . . . during orientation you each had to sign a Memorandum of Understanding acknowledging that you understand that your SCU email is our official method of communication to our students. It stated and you acknowledged that if we send a notice to your SCU email address, we consider you informed and responsible for the information. Giving your professor a blank stare, and shrugging your shoulders, and saying "oh, I didn't know because I never check my SCU email" does not absolve you from deadlines and responsibilities. Check your email! Your life will be so much easier if you do.

On to your questions:

1. Why was our break shorter?

We moved the start date up by 3 days this year. Instead of starting the second week of January, we started in the middle of the first week. We

made the change after a lot of discussion in the faculty meetings. We were responding to student complaints about other law schools starting (and therefore finishing) earlier in spring. Students reported that they were late in starting their summer jobs and externships and in starting their summer bar study programs, as compared to their counterparts from other schools. They felt that this late start put them at a disadvantage. We are keeping an eye on things and will revisit the scheduling options when we set the next schedule. Please feel free to shoot me an email if you have an opinion.

2. Why did grades take so long to get back?

My answer was going to start with "The grades weren't any later than usual and here's the numbers to prove it . . ." And then I ran the numbers, comparing the Grade Status Charts for the last couple of semesters. Grades actually were turned in later this semester than they usually are. Of the 140 grade rosters that were submitted, 67% of them were turned in well before the deadline. Another 10% were turned in on the due date. The remaining grades were late - 14% were a day or two late, 7% were about a week late and a few were over 10 days late. We usually have less than 10% of the grade rosters turned in late. Maybe it had something to do with faculty having to start classes a half a week earlier? Maybe we inadvertently took away that whole week in January, when they would have finalized their grades and submitted them? We shall discuss amongst ourselves . . .

And, I apologize for the stress it caused some of you.

3. Is it true the new law school library will house significantly less students and have an increased noise level, similar to Bannan Lounge?

The various building committees (university and law school) are nowhere near the point of designing the inside spaces of the new building. We are reasonably sure it will be located on the parking lot to the east of the business school building. Everything else is still unknown. I think it's a reasonable assumption that the library will be different. You all don't use the library in the same way anymore, so the space should reflect that. We do know that law students value study space; individual and group spaces will be included throughout the building. It's an exciting and on-going process. If you have thoughts about the building, please feel free to email them to me and I will forward to the committee.

4. Who is Number Nine?

Hopefully, none of you.

Heard a rumor? Have a question? Send me an email - serwin@scu.edu

OFFICE HOURS UNWOUND



Dorothy J. Glancy
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Education:
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1. What was the most enjoyable thing you did over the break?

I went to Dallas, Texas and visited with my 102-years-old mother. It is amazing to think of the changes in our lives since she was born more than a century ago. Not only were there no computers, there was not much in the way of radios, no airplanes, and automobiles were a very new thing.

2. What is your New Years' resolution?

I resolved to get more exercise. Keeping up with law students can be exhausting, unless one is in really good condition.

3. What was your favorite course from law school and why?

So many of my law school courses were great, mostly because the professors were among the smartest and best people in their fields. I enjoyed Professor Casner for Property and Professor Michelman for Local Government Law. In many ways, I think I may have learned the most from Legal Philosophy courses taught by Lon Fuller and Charles Fried.

4. What did you want to grow up to be when you were a child?

I am not sure, exactly. At one point I think I wanted to be a racecar driver. I grew up with a father who was a mechanical engineer, loved science and patented several inventions. However, since girls were not supposed to do math, science or engineering, those possibilities were never very real to me. I thought about being a journalist, but decided I would never learn to type well enough. So I considered becoming an actress or maybe a teacher. When I was a child, I did not know any lawyers.

5. What is your favorite guilty pleasure?

Dark chocolate. I am also very fond, but not guilty about it, of traveling with my husband to far places with interesting people and histories.

6. What is your favorite source, (news / journal / legal blog / other) for keeping current with the law?

I read almost everything, including newspapers (*New York Times*, *Wall Street Journal* and the *San Francisco Chronicle*) as well as various blogs – no particular favorite there. I even watch television news from time to time, including “The Daily Show.”

7. Who are your favorite characters in literature and/or film?

I am a big fan of Henry James, so I suppose I think about Isabel Archer in *The Portrait of a Lady*. Of course Portia in Shakespeare's *Merchant of Venice* will always be very important to me: “The quality of mercy is not strain'd,/ It droppeth as the gentle rain from heaven/ Upon the place beneath. It is twice blest:/ It blesseth him

that gives and him that takes.” I would have liked to have met Cleopatra, although from what history seems to say of her, she might not have enjoyed meeting me. I did know Elizabeth Taylor, who played Cleopatra in the movie. So maybe that counts.

8. What was your favorite job (externship/ clerkship/ fellowship/ associate position) that you had while in law school and why?

I was a law-student lawyer for the Community Legal Assistance Office, where I learned a great deal about human nature, as well as law. I liked working there because it provided an opportunity to reach out to actual people who needed help that I could provide.

9. What do you consider your greatest professional success?

I am not sure what I think would be my greatest professional success, so far. Most of the work I do is as part of a team. For example, I was recently awarded a National Academies of Sciences legal research contract, with Professors Peterson and Graham, to study the legal environment for driverless cars. I was also recently selected to be a member of the NIST/DOJ Organization of Scientific Area Committees that develop scientific standards for forensic purposes. My focus is mostly on legal issues, including privacy, related to biometrics and speaker recognition. I suppose that I should also count the resignation of President Richard Nixon, since I worked on the Watergate investigations.

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

I work in several fields. In property law, probably recognition of same-sex marriage was the most important development. In land use, it would be legislation requiring regional planning for sustainable communities. In administrative law, probably the most important development has been the online availability of regulatory materials, such as proposed rules, and the ability to comment on regulatory initiatives online. In privacy law, I think the most important development is reflected in the U.S. Supreme Court's decisions in *Jones* and *Riley*. These decisions indicate that the Court is becoming aware of (and concerned about) the dimensional change in what happens to individual privacy when personal information is both digital and aggregated. I might also add the growing problem of really big privacy breaches (e.g., the recent ones at Sony and Anthem) and the increased need for good privacy lawyers to help clean up after them and, more important, to try to prevent them.

1. What was the most enjoyable thing you did over the break?

I was able to sleep in. During the school year I must wake up very early to feed my twin sons and get them to high school.

2. What is your New Years' resolution?

I need to exercise more. It's hard to find the time.

3. What was your favorite course from law school and why?

Believe it or not, my favorite course was Commercial Transactions. Codes are fun to work with. I love the way the statutes fit together.

4. What did you want to grow up to be when you were a child?

In high school I wanted to be an astronomer. I still have a strong interest in science, and enjoy research in the fields of assisted reproduction, cloning, and genetic engineering.

5. What is your favorite guilty pleasure?

I treasure chocolate in all its forms.

6. What is your favorite source, (news / journal / legal blog / other) for keeping current with the law?

I read the news and also keep tabs on scientific developments via scientific journals.

7. Who are your favorite characters in literature and/or film?

My personal icons tend to come from real life: people who stood up for their ideas at great risk to themselves, like Galileo Galilei or Martin Luther. I also admire Joan of Arc for her passion and courage.

My favorite movie is *Dr. Zhivago*. The main character represents a triumph of the human spirit over governmental oppression.

8. What was your favorite job (externship/ clerkship/ fellowship/ associate position) that you had while in law school and why?

I had a great job after my second year working for a law firm in Honolulu.

9. What do you consider your greatest professional success?

I have published two books on human cloning and the law with Cambridge University Press. I am starting to work on a third book on genetic engineering and the law.

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

I'd like to answer that question using a longer time span. In 1997, Ian Wilmut and Keith Campbell announced the birth of Dolly the cloned sheep. Since then, legislators and regulators have shown a strong interest in controlling what scientists and doctors do. In some states, they have succeeded in criminalizing legitimate research. Such conflicts between science and law will only increase in the twenty-first century as biologists make new and startling discoveries.



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HOWARD CHARNEY INTERVIEW

going to school for so many years that it sort of seemed odd not to go to school. I mean just to work? You mean you go to work during the day, then you go home at night and you're not studying? So then I went to business school. One of the courses I took in business school was called "Business and the Law" and I thought that was amazing because it was so interesting that there was all this backdrop around how human beings behave with respect to one another. Not just contractually, but from a tort perspective or a criminal or whatever perspective.

At that point I was working for this engineering company in New York that made printers. I decided, I'm going to go to law school. But here was the problem. I got accepted to all these law schools, some of them very prestigious. The problem was I had this little boy and a wife. Some of these prestigious law schools became a problem because I couldn't work and so how am I going to support my little boy and my wife? But if I move back to Santa Clara or San Jose, what I could do is I could work as a disk drive engineer and I could go to Santa Clara Law School. They have a part-time program.

I go "This works perfectly. I can make a lot of money as an engineer and then I can go to law school." So that's how I ended up at Santa Clara, because of the proximity to Silicon Valley and because the hours of class were adjustable so I could support my family.

Q: You said law school was the most academically challenging pursuit you ever undertook, harder than quantum physics and differential equations. Why was it so difficult?

A: It involved a great deal of reading and verbal analysis. You see, you guys in the law do not analyze things based on closed form solutions. In other words, the integral of this over that gives you this answer. This set of differential equations is solved by this structure, this is the answer. It's just that simple.

In the law what you do is, you do the same things, but you do it all in words. That makes it very much a subject of argument. So yes you have your stakes in the ground. We call them Supreme Court decisions and Courts of Appeals decisions, and they set boundaries upon human behavior, but anything short of that, you argue. That makes it very, very absorbing. It's not clean. It's kind of well, messy. That makes it very intellectually challenging.

In engineering school, if I read the materials and I understood it, I'm done. Law school, uh-uh. You have to read it ALL, and you're not done. Did you read ALL the footnotes? I found it to be really, really difficult, but very structured in a nice way, but very difficult.

Q: What was the hardest course you took in law school?

A: The tax code because it's not subject to as many logical rules as other forms of law. If you study torts, or you study contracts you're taught, "here are the principles that underlie how people behave and here are the consequences of not behaving in that way." But the tax code is this voluminous document and sometimes it's not so logical because it's meant to express public policy and then part and parcel of the tax code are all the decisions and rulings underneath it. To me that was really impossible. Maybe I just didn't get it, but it was impossibly

difficult. But I did it.

Q: Was there a faculty member you really remember from that time, fondly or otherwise?

A: Peterson. Bob Peterson taught me civil procedure, criminal procedure, and maybe evidence. Peterson just stands out as this amazing man. I don't know how he knew all this stuff, but he was, and still is just great.

There was a guy who passed away, Herman Levy. He taught me contracts. He was really kind and sensitive, really a great guy.

Howard Anawalt. He taught me something. I remember him as being a difficult professor.

Peterson stands out.

"I BELIEVE WHAT THE GIFT WILL DO...IS CATALYZE THE PEOPLE THAT WORK HERE TO BELIEVE THAT SOMEBODY CARES."

Q: What stands out as your favorite course that you took in law school?

A: One of the classes that was most capturing of my interest was Intellectual Property. And you know I became an intellectual property lawyer. The whole notion of the trade secrets and the proprietary information laws that underpin companies, and then this arcane part of the Constitution which deals with patents. Patents go back to 1791. They are written into the Constitution. That was very interesting and as a result of that I became an intellectual property lawyer. Now most of the students here can't do that because they're not engineers. You have to be a technical propeller head of some dimension to be in that field. It just doesn't work otherwise. How do you write cases based upon chemistry or physics or mechanical engineering if you're not?

That was one of the most pivotal courses. It has since become one of the major specialties of this law school. When I took it, it wasn't. When I took it, it was sort of this elective class that was important and we understood that it was a very important factor, but what also happened is that the Court of Appeals for the D.C. Circuit changed the respectability of patents in around 1980.

There was once a time when if someone said, "You owe me money for royalties because you infringed my patent," you would just say "That patent is not valid and I don't infringe it. Call me another day." But the Court of Appeals in, I can't remember exactly what year it was, they said "Uh-uh-uh! These are now presumptively valid instruments. They are property and they are to be respected. They are not to be disrespected," and that changed the complexion. So Cisco for example went from zero patents to thousands that we have today, thousands. And why did we do that? We did that because it's now a really valuable piece of property of the company.

Q: You have said that reading Supreme Court decisions is like reading poetry because they use such beautiful

language. Who is your favorite Justice as a writer?

A: I thought Rehnquist was amazing. Now you know, these are Justices, but then they have clerks. You don't know who drafted what. But Rehnquist's writings are brilliant. They're absolutely brilliant. Oliver Wendell Holmes, absolutely brilliant. Justice Douglas, absolutely brilliant. Now incidentally these are not necessarily some of the most important cases in the history of the United States, but their writings are pretty amazing I think.

Q: You've been referred to as a very good people person. What skills or traits have helped you gain that reputation?

A: You can't be a good people person if you are not with the person you're speaking to. You have to listen to what they're saying. Your listening skills have to be really good. You have to be really sensitive to their body language. How do they keep their hands? What about the shape of their mouth? What about the movement of their head?

So being a good people person is basically being with, and hearing well, the person you are with and being very sensitive to that.

I have tried really hard to respect the people who I was with at the moment, and also respect crowds. I can stand in front of a crowd of people. You know I think humor is a very high art form, and some people just don't have it. They do not have it. But I do. I can do it.

And so when you say "being a good people person" it has to do with respect for people. It has to do with when you make a commitment to somebody, you deliver on that commitment.

I remember I once asked somebody, "You know what makes you think that I do this job well?" And he said, "Remember back a ways you promised me something and you did it? You would be surprised how few people make promises and keep them." And I said, "Well gee that's really weird because I can't imagine another behavior." But he said, "No, no, no, no, no, no...it's really quite not common."

So I think what makes a person a good people person is this mixture of personality traits and apparently I adopted them.

"...I THINK HUMOR IS A VERY HIGH ART FORM."

Q: Have other individuals inspired you or motivated you to steer your life in one direction and make the decisions that you've made?

A: Well, there is this guy, he's a professor in the School of Engineering at the University of Texas in Austin. He was my fraternity brother at MIT. We together founded 3Com. He's special. I could tell when I was just this young kid living in this fraternity at the time. I could tell there was something very special about this man. He subsequently went on to invent the Ethernet. I mean very, very special. So he influenced my life I'm going to say positively and materially.

But you know, it's hard to mention people because there's this error of omission. There probably are others. But I've read. I've read two biographies of Einstein, at least a couple of Lincoln, at least a couple of Washington, and

Franklin, and Adams, and Jefferson, and Hamilton.

So when you say other people who have influenced your life, they're not all alive now. But there are certain individuals that figure prominently in the value system that I have.

Q: What made you decide to gift Santa Clara Law with your very generous donation?

A: Once you provide for your family, they're okay. They will have a roof over their head and they will have food and they will have medical care. I'm talking about your spouse, but I'm also talking about your children. Once you make that and then you add some other monies on top of that for play toys, well what's the money for?

And I've been very lucky. Some people would say that "you've been really smart" and then they say "luck befalls those who plan for it" and that may be true. But I think I have been lucky and I have worked very hard, but after some point I had accrued enough money that I didn't have a present need to spend it.

There's only two things that you can do with money that's laudable I believe. Yeah you can invest it, and I do that. But one is medical research and the other is education. Medical research changes a lot of human beings and every now and then we discover something that's amazing.

The other is education. Education changes a lot of human beings. Medical science can actually change the lot of mankind in a shorter period of time. Education takes a generation or two. But it turns out that the entirety of my background is almost been not medical science. That's not what I do. So when it came to "What should we do?" I talked it over with Alida and we decided that Santa Clara Law was really important. And the law school was at this delicate pivot as to whether that added institution that is the law school was going to be part of Santa Clara in say 2020 or 2030, and I just felt like if we don't do something then maybe, I don't know if this actually occurs, but maybe we don't have a law school. We decide it's not viable. But now it's viable.

Q: Well thank you for that. What do you hope that your gift to Santa Clara Law will accomplish?

A: What I believe will happen is that people produce when they believe that the products of their hard work are appreciated. So I believe that what the gift will do and I believe it already has, is catalyze the people that work here to believe that somebody cares. That not only do this donor and his wife care, but there really is a place for us in Santa Clara 2020 and beyond. I believe that what the gift accomplishes and I think the way it will be interpreted is this makes the study of law, not just legitimate, but something that is core to the this University. That's what I wanted and I think I got it.

Q: We've been focusing a lot on you. But we realize that this gift was a decision made by two of you. What can you tell us about your wife Alida?

A: Alida and I have been together since 1980 and married since '84. I grew up on the East Coast. She grew up in the Berkeley area. She is incredibly insightful. It's hard for me to describe it, but I'm always shocked at how clever she was about knowing what was going on and what motivated people and what

they were all about. Sometimes some of us go through the world going “La-la-la, isn’t that great?”

And she would say, “That person, don’t trust them. That person, you can trust them.” She’s very, very smart. She’s an expert on the Civil War. I can’t tell you how many books she’s read about the Civil War and Elizabethan England. She reads history all the time. I’m shocked at how much she knows about the American Revolution, about the Civil War, about England in the Seventeenth and Eighteenth Century. So, that’s kind of what she’s about.

She cares a lot about me. So there’s a trust. She’s the other half of the trust and I couldn’t do this without her. If she said, “Over my dead body!” this gift would not occur. And it’s the right thing. The trust is both of our trust. But she said that this was a valid use of the wealth accretion that we have been lucky enough to obtain.

She’s met Father Engh, the Board of Trustees, and Lisa. I never specifically asked her, “Did that really make a difference to you?” but maybe it did. So that’s what she’s about. I wouldn’t be who I am without her.

Q: I know that you do a lot of work with the Internet of Everything or the Internet of Things, and that you believe it will fundamentally change education and healthcare. How do you think the Internet of Everything will change the legal education?

A: Well it already is. I was having a conversation with your head librarian Prano. She was explaining to me about how the law library I used when I went to school here in 75, 76, 77, the law library that I used is different than the law library of tomorrow. I believe that the Internet of Everything and the technology that we use basically frees us from having to be drones in stacks.

In other words, by having technology and by having the ability to access it, and by having search as a primary tool, and by being smart about it. Because you can’t be stupid! If you’re stupid, you get back stupid answers. But if you’re smart about it then the library of the future becomes something different.

I was telling Prano I visited this brand new library at California State University of Pomona. So I was visiting there and the President showed me their brand new library. It was a library without books. He said that, “There is this room over there, and that room does have manuscripts and books in it. But the reason we have that is that room is dedicated to wine making. And the State has a very high value placed upon making wine. So those are original texts that relate to wine making. But other than that and some periodicals, this is a library with no books.”

So when you talk about the Internet of Everything what it’s going to do is it’s going to transform the way that people access information. You now, if you’re smart about it, have all the data from all fifty jurisdictions plus the Feds on any matter. Whether it’s a civil procedure matter, whether it’s a criminal matter, you have access. Do you know how hard that would be when I went to law school? It would be impossibly difficult.

You also have access to the European Hague. So when you talk about how will this access change things, it already is. It’s already giving us information. We used to say that ignorance of the law is

no excuse. Well guess what, you don’t have to be ignorant because all of us have smartphones and laptops. These devices allow us to know what is going on, what is news. There is no reason for any of us to have ignorance anymore.

We are connecting people to other people, we are connecting people to machines, like blood glucose monitors and heart rate monitors and blood pressure monitors, and we’re connecting machines to data, and it’s all being connected together via process. That will change life on this planet.

We used to surmise because sailors said there was such things as rogue waves that got propagated across the ocean. For many years scientists said, “Meh! Nonsense!” Now we know that they really do exist. There are waves that propagate across the Atlantic and the Pacific and they really are gigantic. Nobody knew they existed, but now we have sensors on the ocean that tell us not just the ocean temperature but the height of the ocean. And we know that they are real! So isn’t that kind of cool?



Professor Ellen Kreitzberg chats with Howard Charney before he guest lectured at the Entrepreneurs’ Law Clinic – Photo: Nancy Martin

Q: Yeah it is. But going back to how the Internet of Everything will change things, how do you think it will impact the actual practice of law?

A: I think what it does is it provides universal connectivity. The practice of law means that you have clients and you have purveyors of knowledge, lawyers. This makes them much, much more connected together. In the old days, the only time you were interacting with your counsel is when you went to see them.

Now all of the sudden your access to them might be instantaneous. The medical profession is at least dealing with this now. I can send my doctor a message and ask him a question about some med, and he will answer me.

I believe it will make the practice of law instantaneous. We talk about criminal law and prisoners that have ankle bracelets. But that is so crude. We don’t need ankle bracelets anymore. Everybody’s got a smart phone. We know where people are. So I believe this is going to manifestly change the way that the criminal justice system interacts with the people who are ensnared in its web. But also people who are not part of the criminal justice system who need advice. It will make advice instantaneous.

Plus you know as a lawyer, there was this library and I had access to it. It was sort of a sacred hallowed place. But now anybody has access to that same information. I can go on Google instantly.

I may be a lawyer in the State of California, but that’s silly. I haven’t practiced for so many years that the whole notion is stupid. But having said that, I can go online and ask a question in Google like “If I put my fence over there, how many years does it take to adversely possess, blah, blah, blah?” I actually can do that! I don’t need to be a lawyer. So it changes the practice of law in that laypeople get access to the same information lawyers have.

Q: You’ve said that with the onset of this, that there is a grey area with the exponential collection of data, retention, who has access to it. How do you feel about Santa Clara Law’s new Privacy Certificate that they’ve launched?

A: So privacy and security are two signs of the same notion. Security has to do with locking information down. Privacy has to do with your rights to have your information locked down and not shared.

See I’m a lawyer, or was educated as a lawyer, but we now know that in the old

days to be a lawyer what that meant is that you would get trained and then you would hang a shingle out and now you’re a lawyer. And you get clients I guess, and people call you up and you provide legal advice to them and charge them money.

But what’s going to happen in the future is that we’ll need more specialties that answer not general questions like “Oh you’re a lawyer can you help me with X?” but the specialties of intellectual property or the specialties of privacy.

What I think the certificate is about is training people that privacy is a very delicate matter. It’s Pandora’s box, and once the box is open we have a real problem. We have to have behavior that respects human privacy. What is it? Who has a right to expect what? In exchange for what medical care do I give up what privacy rights? Etcetera, etcetera.

So I think that this notion of the certificate is really important and that this notion of privacy is a real hot button. Now understand that the legal profession is shrinking, but I think that’s a good thing because we’ve probably created too many lawyers.

What I think is going to happen is that certificates are one way of distributing intellectual value. They may not have to become lawyers, but they can become privacy experts.

Q: What sort of legal challenges do you see on the horizon with the rapid pace of technology and the Internet economy? Jurisdictionally for example.

A: So you understand that States are arbitrary boundaries that were established many, many years ago. I happen to be a resident of the State of Nevada. It’s real. It’s not a fake. I really do live in Nevada even though California doesn’t like that. But what does that boundary mean?

The Internet economy and also the concept of information that has no situs, you know it just is out there, it calls into question well what does the jurisdictional behavior mean in this case?

This is one of the reasons why taxes were never collected on transactions over the Internet because nobody really knew where these transactions were. Where are these transactions? Well they’re in cyberspace. Well what does that mean? Well...

But we’ve finally gotten past that because the States really needed the money so they agreed to some nominal tax rate. What I think is that the instantaneous availability of information and the intelligence that this creates insofar as a global population is concerned makes the boundaries between states and countries very arbitrary. And that makes a lot of people really, really nervous.

A lot of our legal precedents come from the states, and what does that now mean? We don’t have regionality anymore. Regionality is sort of a thing of the past. I can fly to New York and now I’m in New York in a few hours, or Dubai. What does that mean?

I think that technology is going to change the notion of boundaries, and nobody is ready for that. Nobody. But that’s just the way life is.

Q: On the subject of life and on a final note, I’ve heard you say something like data every now and then becomes information, even more rarely information becomes knowledge, and very rarely knowledge becomes wisdom, which is information that changes your behavior permanently. What wisdom did you get from your legal education?

A: What I learned from my legal education is that there are behavioral expectations that exist between people. It’s not by accident that when people sign contracts, that specifies something. My legal education taught me that there are relationships that I had not previously appreciated that have to do with agreements between people, people who enter into agreements, people who do not enter into agreements. Those are called torts. They don’t really have an agreement except one person’s behavior violates another person’s space. Now all of the sudden a relationship is created. So my legal education taught me this backdrop that exists between people, the voluntary and the involuntary part, and I was clueless about that before.

Just like when I went to business school. I didn’t know what an income statement or balance sheet were or cash flow. I didn’t know that there were norms for managerial behavior and that operations research did these things and statistics did that stuff.

What I found is that education has made me much, much more aware of all this stuff that’s in the background, that affects you, but you almost don’t realize that it’s there until it bites you. And all of the sudden your behavior has been modified.

PREDICTIONS FOR 2015: NPE PATENT LITIGATION

By Jodi Benassi
IP Editor

Our last article left off with how the new procedures at the U.S. Patent and Trademark Office have impacted non-practicing entities (“NPEs”) since the introduction of the America Invents Act (“AIA”); specifically when filing suit against multiple defendants or when faced with defendants using the inter partes review process (“IPR”). IPRs and the anti-joinder provision, as well as the recent 2014 U.S. Supreme Court decision in *Alice v. CLS Bank*, are forcing patent law to evolve at an accelerated pace. 2015 is poised to be an exciting year for patent litigation given the rapidly increasing numbers of IPR proceedings and recent Supreme Court rulings on patentability.

Anti-Joinder Provision

To slow the storm of troll suits, Section 299 of the America Invents Act intended to limit the NPEs ability to join dozens of unrelated defendants into a single patent infringement lawsuit. The court in *WIAV Networks, LLC v. 3COM Corp.* described the issue as: “[e]ach defendant has simply been thrown into a mass pit with others to suit plaintiff’s convenience.” Under the §299 provision, a party can only name multiple defendants if the right to relief arises out of the same transaction and is based on the same question of fact, thereby restricting the number of

defendants.

In the wake of §299, the average number of defendants per case dropped from 5 to 1.4 over the past five years, while the absolute number of patent suits filed from 2011-2013 increased significantly. Although the number of defendants decreased, effects from §299 have been diluted through requests for pretrial centralization. In *In re Bear Creek Technologies, Inc.* the judicial panel concluded there is no conflict between the anti-joinder provision and 28 U.S.C. §1407, providing for consolidation of pretrial proceedings. Since the AIA, this case has been invoked where NPEs target multiple defendants. I predict that throughout this year, we will see district courts continue to consolidate unrelated defendants for pre-trial purposes under both §1407 and Rule 42. The national average should settle at 1.2 defendants per case.

Inter Partes Reviews

When inter parte review actions first became available in 2012, companies were slow to avail themselves of this litigation tool. Initially, only 50 IPRs were filed per month. However, despite IPR’s slow start, it has become a powerful weapon for accused infringers to challenge the validity of patents. Last year the use of IPRs skyrocketed by 155%, exceeding 150 per month. One of the largest global patent holders in the world, Intellectual Ventures, contended

with over a 1000% increase in the number of IPRs asserted against them in 2014.

The 24 month trend, outside of academia, reflects the number of IPR filings against NPEs is advancing. Look for a continued increase in the number of IPRs filed against patent owners. I predict that even though IPRs have been used to attack weak patents being asserted by NPEs, we’ll start seeing the industry as a whole using IPRs as a shield for those accused, as well as those who anticipate, patent infringement claims. IPRs might be preferable to an organization than district court litigation for many reasons: the PTAB brings more sophistication than a jury, lower discovery burdens, and lower costs. Since IPRs have the potential to be cheaper than licensing, I predict smaller companies will want to ride this wave and that IPRs will grow by 20% over the next twelve months.

Patent Lawsuits

Patent lawsuits declined by 18% in 2014 when compared to 2013, according to Lex Machina. The decline was across all categories of NPEs. The prominent NPE, Intellectual Ventures, filed 38 lawsuits in 2013 and only 7 last year. The decline can be attributed to the rise in IPRs, as well as the Supreme Court decision in *Alice v. CLS Bank*.

At the Licensing Executives Society

annual meeting, *Alice* was considered a sea change and the one thing most analysts agreed on is the decrease in software patent case filings in 2014 can be directly attributed to *Alice*. *Alice* altered the view of business method patents when the Court ruled that the method was not patentable because abstract ideas cannot be patented. Essentially, *Alice* broadened the definition of an “abstract idea” and created confusion about software patents that use computers to more efficiently perform tasks. The lack of clear guidelines as to what does or does not qualify as an “abstract idea” led to a decrease in lawsuits filed by NPEs 2014.

Although patent lawsuits declined in 2014, the trajectory reflects an upward trendline. Averaged out, there has been a 20% annual growth since 2009. My prediction is we will continue to see growth in patent lawsuits, but with the impact of IPRs and the *Alice* decision we should see this number normalize at 10%.

Conclusion

We live in interesting times, with the new rulings and post grant review procedures. Clearly we are in the early stages of a post-*Alice* world and throughout 2015 we will see how the details continue to evolve on the ground.

FEDERAL TRADE COMMISSION ISSUES IoT REPORT

By Sona Makker
Privacy Editor

In an essay about cultural shifts in design, author Paola Antonelli [notes](#): “In contrast to the twentieth-century triumph of semiotics, which looked down on communication as nothing but a mechanical transmission of coded meaning, the twenty-first century has begun as one of pancommunication — everything and everybody conveying content and meaning in all possible combinations, from one-on-one to everything-to-everybody. We now expect objects to communicate.”

This shift, fueled by the proliferation of sensors and cloud computing, is what has been coined the “Internet of Things” (IoT). Experts predict that by 2020 the world will be home to 50 billion connected “intelligent things.” Our society is rapidly approaching the point where everyone and everything will be connected to a network. Will this type of pancommunication become a privacy nightmare?

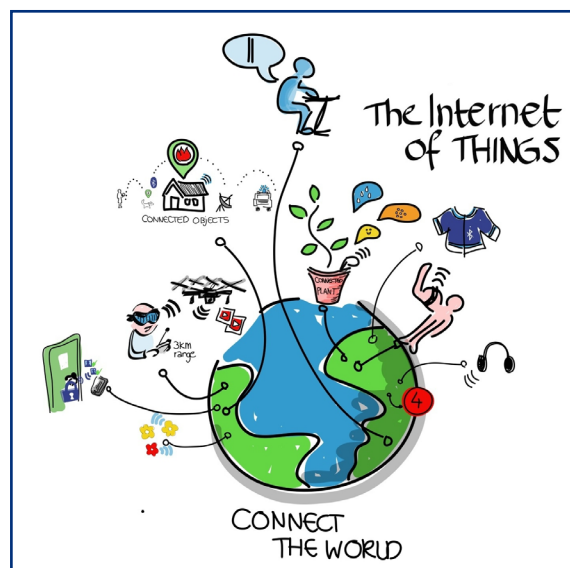
The Federal Trade Commission (FTC) recently [published a detailed report](#) that provides insight into some of the potential industry-wide risks associated with the “Internet of Things.” Here are some takeaways from that report:

Overall, FTC staff acknowledges that a use-based framework is a promising approach in the IoT space, but they were quick to disclaim that use-limitations alone are not sufficient:

“A use-based approach to IoT data

privacy would mean that businesses would only notify consumers when collecting data that consumers shouldn’t expect to be collected by the device, and only if they decline to deidentify that data.... However, use-based limitations are not comprehensively articulated in legislation, rules, or widely-adopted codes of conduct... [and] it is unclear who would decide which additional uses are beneficial or harmful.”

I agree that without a clear understanding of the potential harms of consumer IoT technologies it would be premature to rely on a use-based framework. However, I do think that such an approach is worth a continuing dialogue because it is in line with many of the pre-existing tools we have for consumer protection. The report acknowledges this, with respect to the Fair Credit Reporting Act (FCRA)—noting how this approach informs parts of the FTC’s current privacy framework (including its unfairness authority



to challenge harmful uses of consumer data).

The forthcoming debate in the privacy world that is likely to come out of this IoT report will implicate the FTC’s stance on data minimization. FTC staff laid out three options on this front:

“Companies can decide not to collect data at all; collect only the fields of data necessary to the product or service being offered; collect data that is less sensitive; or de-identify the data they collect.” They recommend that companies develop policies and practices that impose reasonable limits on the collection and retention of consumer data in light of their business needs, but the report stops short of providing any recommendations as to the scope of data collected or duration for the retention of data.

On this topic FTC Commissioner Maureen K. Ohlhausen issued a separate statement disagreeing with the report’s recommendations for deletion:

“I am concerned that the report’s support for data minimization embodies what scholar Adam Thierer has called

the “precautionary principle,” and I cannot embrace such an approach” she writes. “The report, without examining costs or benefits, encourages companies to delete valuable data – primarily to avoid hypothetical future harms. Even though the report recognizes the need for flexibility for companies weighing whether and what data to retain, the recommendation remains overly prescriptive.”

I agree with Ohlhausen on this one. The beneficial (and potentially highly impactful) uses of data are not always immediately clear at the time of data collection. This is why the agency is likely to receive a lot of pushback on their recommendations surrounding minimization.

Finally, on the topic of legislation, the FTC repeatedly emphasized that it is not recommending IoT-specific regulation, but that it does support “broad-based” privacy and security legislation. Critics have pointed out that this is a bit of a misnomer given that the Internet and “the Internet of Things” will eventually become synonymous, as IoT scholar, [Adam Thierer put it](#).

Regardless of whether the FTC has hashed out recommendations for every kind of IoT product or enterprise, understanding how the agency is thinking about privacy overall is helpful for companies in the IoT space and is relevant to us—future privacy lawyers who will be working with these companies as they bring their products to this fast-growing market.

SILK ROAD FOUNDER SWASHBUCKLED IN COURT

By **Hannah Yang**
Business Editor

Dread Pirate Roberts sails across seas, pillaging and looting unfortunate ships that crossed his path. Then one day, Dread Pirate Roberts passes on the ship, the mask, and the name – the cycle is renewed, and Dread Pirate Roberts lives on. So Dread Pirate Roberts is not a person, but a symbol and status, a persona with immortality as long as there is a body who assumes the role. Enter, Ross Ulbricht. The Dread Pirate Roberts of the Internet, who started an illegal online drugs marketplace, was caught, and convicted on all seven charges, including: one count of narcotics conspiracy, which carries a maximum sentence of life imprisonment and a mandatory minimum sentence of 10 years; one count of conspiracy to commit computer hacking, maximum sentence of five years in prison; and one count of engaging in a continuing criminal enterprise (also known as the “kingpin” charge), which carries a maximum sentence of life imprisonment and a mandatory minimum of 20 years.

Ulbricht’s choice of Dread Pirate Roberts as screenname was peculiar. On the one hand, the name is fanciful, it has “pirate” in it, there is a higher likelihood of recognition, and it is a reference to pop culture. And on the other hand, the Dread Pirate Roberts story from *The Princess Bride* makes sense if Ulbricht’s intent was to sell, or pass the reigns off to someone else, or in fact, did sell the Silk Road as the defense argued, and was no longer Dread Pirate Roberts. This theory has support from chat logs found on Ulbricht’s personal computer, where he seemingly discusses having let go of the Silk Road as its operations became too stressful for him. For whatever purpose Ulbricht chose this particular identity, if there even was a reason, is unknown. And in any case, it is inconsequential now that the jury had found him guilty.

So, what was the Silk Road? Simply put, it is

the dark web’s e-Bay-esque marketplace for drugs, hackers, and other illegal goods and services. It operated anonymously so users could trade without their identities being traced, and also involved a complex money laundering system so that the Bitcoin transactions were not easily traced. The Silk Road provided a forum for illegality with all the convenience of the Internet and the anonymity of cash. Marijuana, heroin, ecstasy, counterfeit identification cards, and offers to hack individual social media accounts were just some of the goods and services for sale. According to the FBI’s press release announcing Ulbricht’s

early stages of the Silk Road, such as using personal e-mail accounts to set up accounts associated with the Silk Road, and posting on forums to ask questions related to development of the Silk Road under his real name. Ulbricht also maintained a journal on his personal laptop which was seized during his arrest that contained entries discussing the Silk Road. The personal laptop also contained evidence of a Silk Road accounting spreadsheet, chat logs, and encrypted files of moderator’s names and identifications. Ulbricht also had the penchant for using unsecured wireless internet, such as at the San Francisco Public Library on the day of his arrest.

Certain aspects of the FBI’s investigation are also eyebrow raising. The FBI located and seized the Silk Road’s servers in Iceland, but how exactly they were able to find the servers is unknown, and the FBI has declined to give a full explanation. The Silk Road utilized Tor, which anonymizes user’s activity by routing it through multiple computers in the Tor network and essentially masks the user’s IP address. The FBI’s story boils down to a leak in the CAPTCHA service for accessing the Silk Road’s main site – the annoying step where you type the unreadable and distorted text and numerals to prove you’re not a robot – that revealed the IP address of the Silk Road servers. However, this story does not match up with traffic logs from the server. Additionally, the FBI would not reveal how it recorded the IP address it claimed to have gotten from the leak, nor do they have their own traffic logs, leading to speculation that the FBI was utilizing some unknown, possibly illegal, method.

Regardless of the methods employed by the FBI and other government agencies in bringing down Ulbricht, the jury found him, the accused Dread Pirate Roberts of the Silk Road, guilty beyond a reasonable doubt on all seven charges, and Ulbricht faces life in prison. However, Dread Pirate Roberts does not live and die by one person - at least not in *The Princess Bride*. Sentencing is scheduled for May.

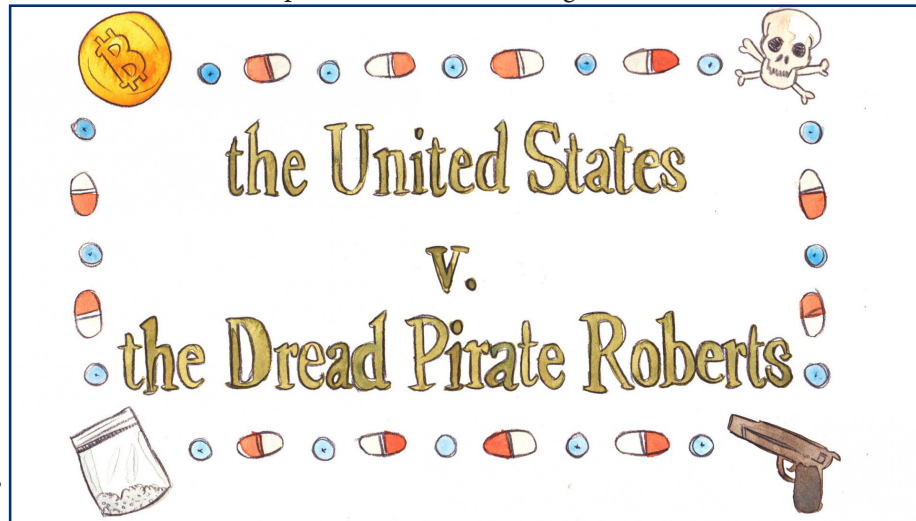


Illustration Credit: [Susie Cagle](#)

indictment, over \$150 million worth of Bitcoins have been seized in the course of the investigation. According to the criminal complaint against Ulbricht, the Silk Road turned over \$1.2 billion in revenue since its creation in 2011. The Silk Road was shut down in 2013.

How the government managed to trace Silk Road to Ulbricht is a combination of both Ulbricht’s brazen openness (or perhaps, naivety in protecting his own identity and movements online), and some cloudy “how-did-they-do-this” investigatory work. Beginning with the former, Ulbricht made several missteps in the

EXPERIENCE TEACHES: MCMANIS-FAULKNER LECTURES ON ADVOCACY

By **James Giacchetti**
For *The Advocate*

While aiming to become ‘lawyers who lead,’ discussion about practicing outstanding advocacy seems lacking at SCU Law. Certainly, zealous advocacy is an ethical ideal, but how is that requirement of our profession (inextricably linked to becoming leading lawyers) actively pursued in law? Might we revisit why we are here – what becoming a leading advocate means in practice?

In three segments this semester, leading attorneys from McManis-Faulkner, a San Jose law firm, have lectured Honor Moot Court Internal (HMCI) students on different components of advocacy and what it entails in practice. The lecturers provide a synthesis of opinion and experience on the practice of advocacy.

Some law students will wait to pass the bar before considering this topic. For Honors Moot Court students, learning excellence in advocacy is an immediately pressing issue. Students (Mooters) represent hypothetical clients, brief unsettled law, and argue before judges – practicing bench members or attorneys. Advancing requires scoring higher than one’s peers in both the brief and oral argument components of a final score. The competition challenges students to develop knowledge of law and the skills of written and oral argument.

McManis-Faulkner:

Stated in the firm’s webpage, [mcmanislaw.com](#), unwavering dedication to law and client is the firm-wide expectation. McManis-Faulkner distinguishes itself by its commitment to excellence, integrity, and kindness in representing people, corporations, and the community. McManis-Faulkner adheres to the principles of dedication to trial advocacy, unwavering client focus, and a commitment to team excellence. First class service – from beginning to end, in all facets of its practice – is the standard of care at McManis-Faulkner.

A recent example (among others) of the firm’s dedication to trying cases and advocating justice is *Ibrahim v. Department of Homeland Security*, 669 F.3d 983 (9th Cir. 2012). The firm represented an Islamic Stanford PhD student wrongfully placed on the Department of Homeland Security ‘no fly’ list. McManis-Faulkner took the case on a pro-bono

International Academy of Trial Lawyers. McManis lectures at Bolt Hall, Stanford Law, and USF. McManis presented January 22nd on the ‘Art of Advocacy,’ emphasizing the need for advocates to pursue their cases and careers with passion for justice, originality in style, and unwavering morality.

Christine Peek:

Research and writing are essential tasks of lawyering. Excellence in writing becomes even more important when dealing with complicated questions, such as those posed in Constitutional law (as is the case this semester for HMCI students). Christine Peek, a graduate of Santa Clara Law and a partner at McManis-Faulkner, has written extensively on the subject. Peek practices at the trial and appellate levels in both state and federal court and is respected as a leading scholar on issues of Constitutional law and civil rights. Peek is on the ‘Top Women Attorneys in Northern California’ list by Super Lawyers. Peek lectured January 29th on ‘Appellate Brief’ writing.

Gregory Ward:

Effective courtroom behavior requires learning the needs of judges. Judge Gregory Ward is of counsel at McManis-Faulkner. In addition to having argued before the US Supreme Court, he has served as a Superior Court judge, presiding over thousands of cases while on the bench. Judge Ward is the author of “California Objections,” a trial guide for litigation practitioners. He will lecture on ‘Effective Appellate Etiquette and Strategy’ from the perspective of attorney and judge, February 19th.

McManis-Faulkner demands more than victories. Pro bono cases, community involvement, and giving back to the profession (exemplified in voluntarily visits to SCU Law), are central elements of their practice. It’s one thing to claim a standard. Quite another is actively pursuing an ideal. McManis-Faulkner attorneys practice the values of excellence, integrity, and kindness. Outstanding advocates have led this winter HMCI, inviting us to learn how we can prepare to manifest through practice our school’s vision of educating students to become leading lawyers.



Jim McManis lectures SCU Law students on advocacy components.

basis and litigated the issues for nearly ten years. It is the first case to successfully challenge a placement on the ‘no fly’ list, prevailing on a due process challenge to the placement.

Jim McManis:

Founding partner of McManis-Faulkner, Jim McManis, is a unique advocate and ambassador for the profession. McManis’ numerous awards, memberships, and long list of published (and winning) cases speak for themselves. McManis has been a practicing trial and appellate attorney for over 40 years, and has long been listed a ‘Super Lawyer.’ He is a fellow of numerous elite professional groups, including the American College of Trial Lawyers, and the

THE TALE OF JUDGE FOOTE AND LAWYER STARK

By Arthur Gilbert

*Presiding Justice California Court of Appeal
Second District, Division 6
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A recurring character in my columns is the redoubtable Judge Learned Foote. In 1992 he made his debut. It is possible the events related here bear a striking similarity to a case that originated in the Los Angeles Superior Court.

Ethyl and Pixley Foote often joked about their name. Pixley used to say, "What good is a hand without a foot." The puns flew fast and furious in the Foote household, especially whenever the word "stool" came up.

Not surprisingly, the Footes' family physician, Dr. Speck, grew tired of this word play and let his irritation show. The Footes in turn grew tired of Dr. Speck. Perhaps this was the reason that when the Footes had a son, they desperately wanted him to be a lawyer, or better yet, a judge.

With a twinkle in their eyes, the Footes named their son "Learned." The name reflected both their quirky sense of humor and a desire that some day their son be a great judge like Learned Hand. They got half their wish.

Their son grew up and became a judge, the well-known Judge Learned Foote.

Even when he was a youth, it was apparent that Learned was destined to ascend to the bench. In high school he carried a briefcase. In college he used Norcross pens, and in law school refused to read Gilbert's outlines.

His name turned out to be appropriate because no one could deny that Learned was learned. He understood the rule against perpetuities. If someone mentioned a retraxit, he knew what they were talking about. He read dissents and concurring opinions with gusto, and often said "ipse dixit" in ordinary conversation. He was uncommonly smart and efficient.

Understandably, he expected lawyers to meet his high standards. These standards became increasingly important as court congestion grew. The court's time and resources could not be abused if the court was to efficiently manage its burgeoning calendar. A judge who fell behind was not doing his or her job and might never catch up. Therefore, he concluded, the rules had to be followed. Unlike hearts, they were not to be broken.

Motions, for example, were to be on opaque, unglazed white paper, 8 ½ by 11, with type no smaller

than 11-point open face and could not exceed 11 pages including the points and authorities. Period.

One day attorney Sylvester Stark filed a motion in Judge Foote's court. The points and authorities totaled 14 pages. The clerk said it was OK, relying on the policy of the judge who had preceded Foote in that particular courtroom.

Foote began reading the motion but stopped at the bottom of page 11. The last two letters on the page read "be-." The remainder of the word on Page 12 was probably "cause." It would never be revealed to the eyes of Judge Foote. The 11 page rule had been broken. Foote was furious. If he read beyond the 11 pages, he would lose the precious time he needed to read all of his other motions, not to mention all the cases cited in the points and authorities, which he invariably shepardized.

If Foote had simply left it there, the strange sequence of events I am about to relate would never have happened. But Judge Foote made a decision, resulting in an inexorable linking of rings in a chain of cause and effect, much like what you would find in a Theodore Dreiser novel, that inevitably led to tragedy.

Foote sanctioned Stark. The sanction order was written in elite type, single-spaced on glossy blue paper, and was 13 pages long. Not only was Stark ordered to pay to the county a substantial sum of money, he was also ordered to show the sanction order to any future judge in whose court he intended to file a motion in excess of 11 pages.

As fate would have it, the very next motion Stark filed was assigned to Judge Foote. It was a complicated motion, and Stark, who thought of his client first and himself second, felt that in order to adequately represent his client's interest, his points and authorities would have to be at least 16 pages long. Along with his motion he dutifully filed a copy of Judge Foote's previous sanction order.

Of course, Judge Foote knew about his own sanction order, but a rule is a rule. Stark also felt compelled to include a declaration explaining in detail his view of the circumstances surrounding the previous sanction order. He also filed a declaration explaining the reasons he had to make his points and authorities 16 pages long.

Upon receiving the motion, Foote flew into a rage. He promptly sanctioned Stark again, and wrote a 17-page, single-spaced sanction order. This order required, among other things, that Stark reveal to any judge in whose court he filed a motion, irrespective of

whether the motion exceeded 11 pages, the previous two sanction orders. Fate can be cruel – or perhaps just indifferent.

Stark's very next motion was again before Judge Foote. Along with his motion, Stark filed the two previous sanction orders along with exhaustive declarations explaining his view of the circumstances surrounding the two sanction orders. Foote was apoplectic. The explanatory declarations were wasting ever more time. He again sanctioned Stark and again required him to show his sanction order, which was even more detailed and vituperative than the last two, to any judge Stark should ever meet in court – or even socially.

Mathematics tells us how infinitesimal are the odds against black turning up on twenty-three successive turns of the roulette wheel. I bet once in every 100 million-trillion years black could turn up on as many as 20 or 30 successive turns. I know it strains your credulity, but trust me dear reader; all Stark's subsequent 23 motions were heard before Judge Foote.

The sanction procedure seemed to feed off itself. Foote, consumed by rage and an obsession with a misuse of the court's resources, wrote more and more detailed sanction orders requiring that Stark show them to judges, lawyers, and even his friends. Stark, in turn, wrote voluminous declarations explaining his side of the story concerning each of the separate sanction incidents. Foote and Stark seemed bound together in an eternal struggle.

The conflict could not go on forever.

The Stark sanction orders caused Judge Foote to get so far behind in his work that he was removed from office by the Commission on Judicial Performance. Stark lost his law practice because all of his time was spent trying to keep up with the orders. For months Foote and Stark wandered the streets of Los Angeles looking for work. One day, to their amazement, they found themselves standing next to each other in the unemployment line. They began chatting about the weather, then about fate, and then about the future.

They soon went into business and became enormously successful. They sell sanction insurance to lawyers. Besides being business partners, Foote and Stark are good friends, but recently they stopped playing golf together. Stark just couldn't stand it any longer. Foote is such a stickler for rules.

SBA FINALIZES SPRING BUDGETS

By Lindsey Kearney
Associate Editor

Ladies and Gentlemen, we have a budget! At the February 4th emergency Board of Governors meeting, the SBA's constitutionally required quorum was met, and the Spring 2015 budget was approved.

Spring Budget Details:

Of the academic year total, funds are typically split 40% for fall and 60% for spring. This is because clubs tend to request and require more money in the spring semester, largely due to banquets and other end-of-year events. The Spring 2015 budget allocates \$21,875 to Law Student Organizations (LSOs). Problematically, a lot of the requested and allocated money from last semester was not spent. Of the \$14,594 allocated for fall events, only \$4,745 was spent. This means that LSOs requested and received close to \$10,000 for planned events that did not actually come to fruition. "If you're requesting money for events, it means that someone else isn't going to get it, so please try not to earmark money that you don't actually need," said Henry Gage, SBA President.

Typically, cutting costs and trimming the fat by eliminating unnecessary events would be considered a good thing, but the LSO funds are locked in; while they can roll over and are now usable in the spring semester, they cannot be applied to any other purpose.

Finance Committee:

LSO budgeting includes a multi-step process wherein each LSO submits a Student Organization Budget Allocation (SOBA) form, detailing its projected events, attendance, and costs for the following semester. Based on the information provided, the Finance Committee then either approves or denies the requested funding for each event, taking into account a variety of factors including whether the event promotes professional development or diversity in the legal profession, or whether it is merely a social event.

The overarching goal of the Finance Committee's decision-making and of the budgeting process as a whole is to use SBA funds to benefit as many students as possible, since it is students' money to begin with. As such, the Committee finds it inappropriate to fund events such as conferences (which would

entail flying 3 or 4 students across the country to attend a national conference for their organization). While SBA monies do fund some of the larger-attended banquets, President Henry Gage provided that, "The problem with funding a ton of money for banquets is that traditionally, not very many people attend, so it's better to use that money for on-campus events that students actually go to."

It was discussed that the Finance Committee severely needs more involvement and more input from the law student body that it serves. The Finance Committee unfortunately has had very low participation this year; there were, at maximum, four students, including SBA Treasurer Travis Cook (who is a Constitutionally-designated member), on the voluntary committee. Said one of the Committee members at the Council of Leaders meeting, "Ideally, the whole student body would offer their input on the finance proposals."

While Finance Committee members were available to meet with students to address concerns during the week that they were deciding the budgets for the upcoming semester, students have voiced their concern with a lack of

transparency in the budgeting process, lamenting that certain LSOs get "better treatment" than others with regard to funding. One student suggestion included increasing transparency by requiring the Finance Committee to publish reports for each organization as to its budgetary allotment decision. "We need more participation so that the Finance Committee has more student voice when making decisions," said Treasurer Travis Cook.

Get Involved!

Any interested students are invited to attend Council of Leaders meetings, and are invited to become members of the Finance Committee for next semester. Simply contact one of your SBA Class Representatives, or SBA Treasurer Travis Cook, to express your interest. Assuming that our goal in the law school community is a democratic, transparent LSO budgeting process, then the more students who are involved, the better. The next Council of Leaders meeting is on 3/11 at noon in the Forbes Room of Lucas Hall.