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MOTIONS

University of San Diego School of Law

Volume 43, Issue 5

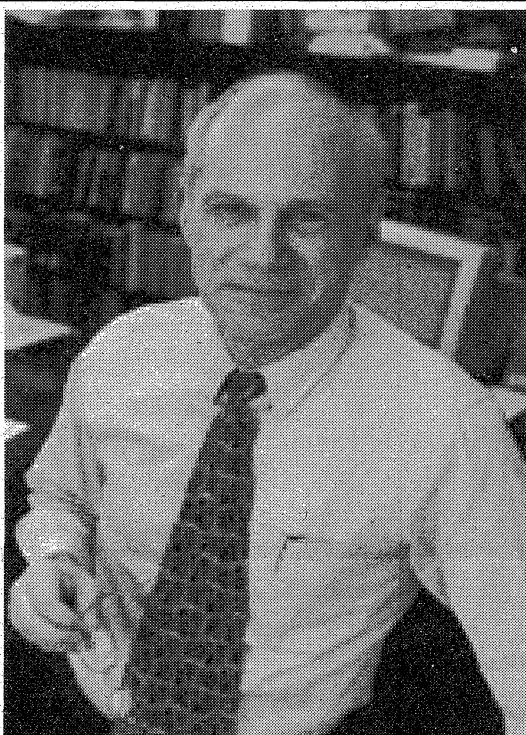
March 2008

Leaving Things Unsaid: A Response to Professor Bennett

by Eric Carter, *Staff Writer*

"I'm not here to bury originalism but to set it free" said Nathaniel L. Nathanson Professor of Law and former Dean of the Northwestern University School of Law Robert W. Bennett, the honored speaker at the 24th Annual Nathaniel L. Nathanson Memorial Lecture. In a presentation titled "*Originalism: Lessons From Some Things That Go Without Saying*," Bennett then proceeded to argue that there was too little attention in constitutional law to "things that the text left unsaid" and that the attempt by originalists to ascertain the original intent, meaning, or understanding of the Constitution is often futile. Should judges look at the original "intent" of the various framers at the Philadelphia convention, or at the "understanding" of the various ratifiers at the state conventions? How about areas where the meaning of the text is vague or silent? Bennett explained that the framers and ratifiers of the Constitution could never have even conceived of many of the constitutional issues with which we deal, regarding such institutions as political parties, state initiatives and referendums, and the modern presidential voting system, which simply did not exist at the time of the founding. Regardless of whether you believe that the Constitution's principles can be applied to these particular contemporary issues, few would dispute that there aren't at least a few areas where such application isn't highly problematic. So far so good. However, Bennett then claimed that this implied the need for judges to incorporate their own values into constitutional interpretation. If this is the meaning of being set free, originalism would no doubt prefer to be rolling in the proverbial grave.

Please See: *Things Unsaid*, page 7.



Professor Robert W. Bennett, of Northwestern University, presented the 24th Annual Nathaniel L. Nathanson Memorial Lecture, at the Joan Kroc Institute for Peace and Justice. His presentation focused on some of the gaps in the theory of Constitutional Originalism.

Environmental Activism is Alive and Well

by Rachel Dorfman, *Staff Writer*

At its February 6, 2008 meeting, the California Coastal Commission (CCC) had its largest audience ever, with an estimated attendance of over 3,000 people. This audience was, however, quite different from the handful of men and women in business suits typically present at CCC meetings. The large majority of attendees were feisty environmental activists wearing T-shirts with catchy slogans, such as "Save Trestles" and "Stop the highway from hell," and waving signs, surfboards, and in some cases, small children. Bringing their dogs and their grandmothers with them, thousands of Southern Californians, as well as several professional surfers, gathered to testify in front of the Commission and chant, "Save Trestles, Stop the toll road," to anyone who would listen. Additionally, members of various Native American tribes attended to sing sacred ceremonial songs. So what, you might ask, is this toll road that everyone is talking about?

The toll road in question is the 241-Toll Road extension, also known as Foothill South. This is the last segment of the Foothill Toll Road (State Route 241) and would stretch from the existing SR-241 terminus at Oso Parkway to Interstate-5 at Camp Pendleton. The project area would include the San Mateo Creek watershed and campground and the Donna O'Neill Land Conservancy. The toll road is the brainchild of the Transportation Corridor Agency (TCA), which is a private company that

will finance the road through toll revenue bonds. The TCA claims that the purpose of the project is to relieve traffic congestion. In order to begin building the toll road, the TCA must get several federal agency approvals pursuant to the Clean Water Act, the U.S. Highway Code, and the Endangered Species Act, to name a few. Additionally, the TCA must get certification that the proposed activity complies with the federally approved California Coastal Management Program.

On February 6, 2008, the CCC voted 8-2 to deny this certification. The staff report cited several problems with the proposed road. The project is inconsistent with various resource protection policies of the Coastal Act, and involves development within environmentally sensitive habitat areas. Several endangered and threatened species inhabit these areas, and construction of the proposed road would inhibit their chance at recovery and survival. The project also involves wetland fill and is inconsistent with the allowable use test of the Wetlands policy. Additionally, the area for the toll road includes historical and archaeological sites that are used by Native American tribes for ceremonial and religious purposes.

The staff report also points out that building the road will result in considerable greenhouse gas emissions (GGE). Though the TCA claimed that the relief in traffic

Please See: *Saving Trestles*, page 7.

SBA Election is Challenged

by Michael K. Hayes, *Editor in Chief*

Two days removed from the SBA election, as students were setting out for spring break, current SBA President Cole Cannon announced, via email, that a timely election challenge had been filed. Some aspect of the election process was being contested.

Cannon explained that the delay in the official announcement of the election winners was due to the pending challenge. He quoted the SBA bylaws, which require that the SBA Council "hear and decide any Challenges to an Election Committee action, inaction, or decision. Challenges are presented, in writing, within three school days after the alleged unsatisfactory action or inaction occurred or after receipt of the Election Committee's decision."

Cannon did not elaborate on the substance of the challenge, nor did he indicate who brought the challenge. He did say that "this challenge was not brought by any of the candidates but it may have an effect on one or more of the positions in the general election." In spite of the potential effect on the election results, Cannon explained that the yet unnamed election winners would hear the appeal and vote on its merits. The new board will have taken office on March 19, and will hear the appeal on March 25. Thus, the winners of a challenged election may decide a case in which they (or at least some number of them) are the parties in interest.

As this issue of *Motions* goes to print, there are a number of unanswered questions. First, it is not known what procedures, or lack thereof, are being challenged. Second, it is not known who brought the challenge, and more pointedly, on whose behalf the challenge was brought. Third, it is not known which, and how many, SBA positions a successful challenge may affect. Fourth, it is not known whether any members of the newly constituted board will recuse themselves from the case. Should only those whose positions are at issue recuse themselves? Or, considering the color-coded party system that seems to have taken root in the SBA election process, is it inevitable that the hearing of this challenge will be tainted? Cannon was not available for additional comment, as he explained in his communication.

Within hours of Cannon's school-wide communication, the law school community received another email, this time from the USD Public Interest Law Foundation (PILF). PILF boldly congratulated the "newly elected SBA Board" and listed the presumptive winners of each office. Whether PILF was aware of Cannon's previous communication is also, unfortunately, unknown. PILF representatives were not available for comment as *Motions* went to print.

By the time most students pick up this issue of *Motions*, the challenge will already have been heard, and a decision reached. A full report on the election, including the election challenge and its resolution, will appear in the next *Motions*, after the facts and issues have come to light.

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Our mission is to provide news, information, analysis and commentary to the students, faculty and staff of the University of San Diego, the University of San Diego School of Law, and the general legal community of San Diego. We believe that journalistic excellence is the soundest foundation for success. We pledge to seek and report the truth with honesty, accuracy, and fairness. These principles are cautiously guarded by each member of the Motion staff.

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Motions welcomes all letters, guest columns, complaints and commentaries. Budget permitting, we do compensate contributing writers with a modest honorarium if their piece is selected for publication. We reserve the right to edit for content, length, style and the requirements of good taste.

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Editor's Comment

Welcome back from Spring Break! Now the real work begins in earnest, no matter what your class year. And then the *real* work, if you are a third year student.

I would like to take this opportunity to introduce next year's Editor in Chief, Jenn Chou. Jenn has written for *Motions* for two years, and last year served as an Associate Editor. Her articles have always been among the best in terms of substance, style, and overall journalistic integrity. Prior to USD Law, Jenn was the Editor in Chief of *Fem*, a feminist publication at UCLA. I have little doubt that *Motions* will be left in good hands. As a matter of fact, I am nearly certain that *Motions* will be left in *better* hands.

Jenn will be assuming some of the responsibilities for the final publication of the 2007-2008 school year, and she will also begin assembling her staff for the next school year. We are still considering applicants for assistant editor positions, so don't hesitate to contact one of us!

This present issue could not have come about without the help of several people - some of whom contributed in the nick of time. Peter Stockburger, Jenn Chou, and Kevin Cowan have really made my life easier. The fact that I can count on a few regulars is something for which I cannot adequately express my appreciation. Andrew Adams is quickly becoming a reliable and entertaining writer, as is Rachel Dorfman, with her environmental enthusiasm. Eric Carter and Austin Evans made their debuts, and I hope there is more to come from them. A special thanks to Hali Henderson, who really came through "in the clutch."

I should also thank Haley Miller and Nicole Tino, my assistant editors. They have never wavered, and have sometimes completed assignments without much advance notice.

In the future, I hope that more students will step up and tell all of us what they're thinking - it doesn't take much, and you never know what sort of avalanche your little pebble might start.

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New and exciting Records Office Announcements!!

WEB REGISTRATION IS COMING!!!!!! In an attempt to prepare for this monumental transformation away from paper, pens, and lines we are pleased to present the following Registration activities and opportunities:

March 13th from 9:00am – 3:00pm in front of the UC

- Enter to WIN a brand new Nintendo Wii
- Sign-up for remote registration on BANNER – the new web registration system.
- Each volunteer will receive one raffle ticket to enter in the Wii sweepstakes

March 20th from 12:00pm – 2:00pm

- Remote Mock Registration for those who signed-up on March 13th
- Participate from anywhere with an Internet connection
- Participate in the remote registration and receive 10 additional raffle tickets to enter in the Wii sweepstakes

March 27th from 3:30pm – 6:00pm in the Writs and Back Patio

- On-campus Mock Registration - come see and experience the new BANNER web registration system
- Laptops set up in the Writs
- Each student that test drives the new web registration system will receive one raffle ticket to enter in the Wii sweepstakes
- Food, drinks, and MORE raffle prizes available every 15 minutes

April 3rd

- Actual Pre-Registration for Fall 2008 begins on the web!!!!!!
(more details to follow)

Campus Folk:

An Interview with Doug Pollack, the “Coffee Cart Guy”

by Kevin Cowan, *Core Staff*

This month I interviewed Doug Pollock, the proprietor of the coffee cart behind the Writs. I have always wondered how one gets a job like that. Talk about cush! I didn't know it was possible to make a decent living selling coffee, but the back door of his house leads to the ocean. You do the math. Oh, and buy his coffee! What am I doing in law school? (A: drinking his coffee).

Doug is a Scot who likes Mexican food, jazz music, and the movie Sideways (but doesn't share the distaste for merlot).

Living next door to the ocean, I'm assuming you like to surf. Where else have you been surfing?

DP: All over, I've been to Australia, New Zealand, Indonesia, Hawaii...but not South America yet

Did you grow up here?

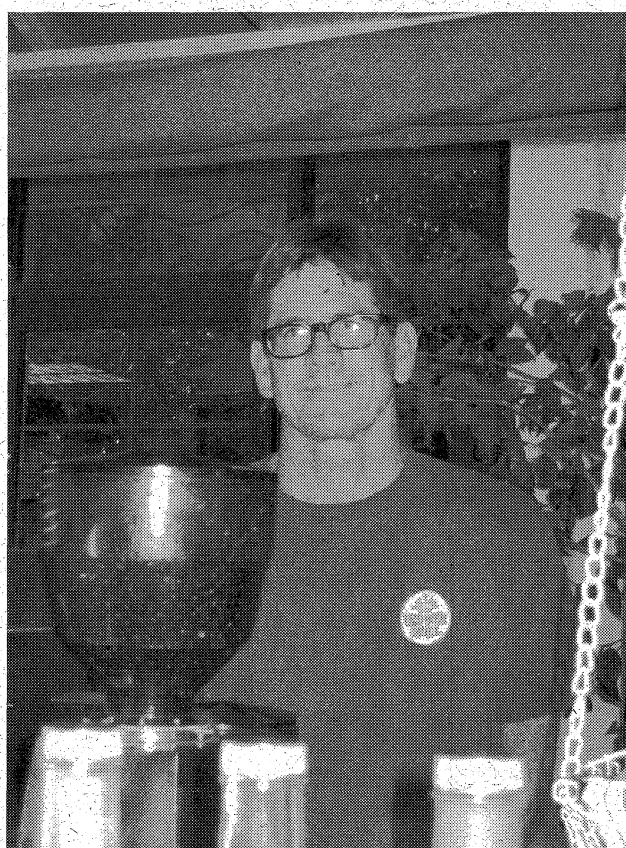
DP: Yes. I was born in Texas, but I moved here when I was 5, and I am NOT a Texan

What did you do before selling coffee?

DP: I was a wine rep for awhile, and I bartended at the Catamaran in Mission Beach. I graduated from SDSU before you were born.

How did you get into this line of work?

DP: I saw some coffee carts in Seattle and thought it was a good idea. In the late 80's, they weren't really around like they are now. I knew a girl that went here, and at the time if you wanted coffee you had to go clear across campus.



Law School without coffee?

DP: Right! So, in 1992 they let me set up and it worked so well they opened their own coffee shop the following year, but let me stay here, and here I am.

So you own the business?

DP: Yup, I have another cart at Cal Western.

OK I have to ask: any crazy stories about students from years past?

DP: Crazy...not really, but I DID introduce two people here at the cart. They went on a blind date and ended up getting married. I'm still friends with them.

How about some words of wisdom to the students reading this?

DP: I get to hear a lot from students here, and I've learned that meeting people really helps you get where you're going. Be social, study hard, and good luck!

A FOOL'S ODE TO DOUG

Thank you, Doug, for the helpful delays,
For the jolts of energy during slothful days,
And also for muffins and bananas, truly...
Arabica! Arabica! I hardly knew thee!

You were there through all the law school ruts,
When we were on the brink of vanilla nuts,
And when we needed it, there was your Moto,
Without you, Doug, life is Kansas and no Toto.

A nice reminder of reality, you were,
And a happy, healthy capitalist, for sure!
And there's another thing that I should mention...
Oh yes! Thank you for the hypertension!

-Michael K. Hayes

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Guess Who’s Getting Published!

by Hali Henderson, *Staff Writer*

As most of you may know, each year the *San Diego Law Review* Executive Board has the task of reading through numerous student comments to determine which lucky authors will be chosen for publication. While the *SDLR* board members may know who these select student authors are, it dawned on me that the rest of the student body may not. As Social Relations Chair for the *SDLR*, I recently had the privilege of speaking to some of these dedicated students, to find out a little bit about them, and about their soon-to-be published comments.



Zach Myers

Hometown: Westminster, MD

Name of your comment: *Fighting Terrorism: Assessing Israel’s Use Of Force In Response To Hezbollah*

What your comment is about: My comment analyzes Israel’s actions under the international customary rules of war and Protocol I of the Geneva Conventions.

How you chose your topic: I had been studying international law abroad in a summer abroad program when this conflict involving Israel arose. I was immediately interested in researching the legal aspects further.

Why your comment is important: With terrorist attacks becoming more prevalent, nations are going

to be forced to assess how they can respond while still acting within the confines of international law. This case study highlights many difficult questions surrounding military responses to terrorist attacks.

Your Faculty Advisor: Professor Claus

Advice for anyone trying to get published: Find something you are actually interested in and solicit feedback in developing the comment.

Advice for anyone thinking about writing onto *SDLR*: Start early! Begin as soon as you get the packet for the write-on competition.

Favorite hobby: Tennis

Favorite restaurant in San Diego: Oceanaire Seafood Room



Jennifer Shyu

Hometown: Cupertino, CA

Name of your comment: *Speak No Evil: Circumventing Chinese Censorship*

What your comment is about: Short-term solutions designed to prevent U.S.-based technology companies from aiding the Chinese government in persecuting Chinese political dissidents for exercising free speech on the Internet.

Why your comment is important: Globalization and the advent of the Internet have erased many of the jurisdictional boundaries, leaving us to either rethink traditional notions of law or create new global standards. I think my comment at least gives people a glimpse into the legal problems associated with an increasingly integrated world.

Your Faculty Advisor: Professor Henning

Advice for anyone thinking about writing onto *SDLR*: Do it. It’s not that bad, you’ll have busier weeks in law school, and it’s always good to keep your options open.

Favorite Hobby: Hiking

Favorite restaurant in San Diego: Bronx Pizza



Leslie Reed

Hometown: Huntington Beach, CA

Name of your comment: *Is a Free Appropriate Public Education Really Free? How the Reallocation of the Burden of Proof and the Denial of Expert Witness Fees to Prevailing Parents Will Adversely Impact Children with an Autism Spectrum Disorder*

What your comment is about: My comment discusses the United States Supreme Court decision of *Arlington Central School District v. Murphy*, which denies expert witness fees to parents of disabled children who prevail in suits against the school district. I explain that this decision was decided incorrectly and completely undercuts the purpose of the Individuals with Disabilities Education Act (IDEA), which was intended to provide children with special needs a Free Appropriate Public Education

(FAPE) at no expense to their parents.

Your Faculty Advisor: Margaret Dalton – the most influential, inspiring individual I have ever met during my law school career. If it were not for her, I do not think I would have achieved the depth and degree of specificity required to write a publishable comment.

Advice for anyone thinking about writing onto *SDLR*: Do it! It is daunting to have to write on after first-year finals, but it is well worth it. *SDLR* is a challenging but rewarding experience.

Favorite Hobby: Snowboarding

Favorite restaurant in San Diego: Nobu



Jessica Snorgrass

Hometown: Scottsdale, AZ

Name of your comment: *Waiving the Effectiveness of the FMLA: The Anti-Waiver Approach to Enforceability of FMLA Severance Agreement Waivers*

What your comment is about: I argue that a waiver of rights in an employee severance agreement that bars an employee from pursuing Family and Medical Leave Act claims against an employer should not be a valid or enforceable contract.

Why your comment is important: I think it’s important to protect the rights of employees when they’re at their weakest and could be taken advantage of by an employer, like when they’re going through a family medical crisis.

Advice for anyone trying to get published: Don’t underestimate the time you have to invest in writing and researching all sides of your position.

Your Faculty Advisor: Professor Dallas (and Professor Lobel helped too!)

Any other story you would like to share about writing your comment: A case with my issue was just filed with the United States Supreme Court – if the Court grants cert and the Justices are smart, they’ll take my position. Just kidding!

Favorite Hobby: Hanging out at the beach and traveling

Favorite restaurant in San Diego: The Fishery in Pacific Beach

When the Good Guy is Really Just a Bad Lawyer: Examining *Eli Stone*

by Jenn Chou, *Core Staff*

I never used to watch television because I felt that shows, and especially commercials, dictated bad values and stupid ideas to the public. It was all a huge bombardment of melodrama, cheating spouses, materialism, and irrationality.

My views have somewhat softened over the years. I am a compulsive *Jeopardy* watcher, and *South Park* amuses me to no end. However, every time I am brave enough to venture into the realm of a new show, I find my old views utterly reaffirmed and validated. The latest vile offender is *Eli Stone*, and this show is relevant to all of us as law students.

Eli is a show about an attorney who starts to experience hallucinations and discovers that he has a fatal brain aneurysm. This causes him to reexamine his morals and fight to take ethical actions at work, and the audience is supposed to sympathize with this formerly evil and blood sucking lawyer because now he has decided to work for the good side.

Eli is lead counsel in a products liability case involving a children's vaccine that allegedly causes autism. There is scant, if any, evidence that the small amount of mercury in the vaccine has any side effects at all. The majority of mainstream researchers strongly disagree that there is any link between autism and the vaccine. There actually have been cases about these vaccines – and there is no science to back up these claims. I always thought Autism was congenital or genetic, but if it is indeed caused by extraneous influences, maybe it was because the plaintiff was a crappy and irresponsible mother who blames others for her shortcomings. Who knows?

Eli's firm is defending the vaccine manufacturer, and the case seems to be going well for them, given the lack of evidence in favor of the frivolous plaintiff. But before the second day of trial, Eli has a hallucination

involving synchronized dance, gospel choirs, and George Michael. This causes him to arbitrarily recall that the plaintiff, the mother of the autistic child, was a girl he slept with in college. He suddenly feels an overwhelming sense of compassion for her and decides to switch sides in the litigation.

Eli decides that the most ethical thing to do is to take the plaintiff's case, even though he was originally representing the defendant, and even though he used to sleep with the plaintiff. These actions surely constitute all kinds of violations of rules of professional responsibility and ethical conduct, but all the conflicts of interest involved here are explained away by a citation to a case that probably does not exist, and it comes to be that Eli is an advocate for a frivolous suit that should have been 12(b)(6)'d.

In his closing statement, Eli delivers a passionate speech: even though there is only a pittance of evidence, the jury should have faith in the plaintiff's cause. Her son has autism, and she knows that the vaccine caused it; therefore, the jury should have some "faith" and do the right thing. Faith in what, I am not sure. Have faith in evidence that doesn't exist? Have faith that our society will increasingly become sue-happy? Have faith that juries can be easily tricked and misled? The jury awards his empty statement and his lack of any substantive information with a \$5,000,000.00 award in favor of the plaintiff.

Eli's next case is an appeal from a prior judgment for defendant car manufacturers. The plaintiff was drunk, had a fight with his wife, and left a bar in his SUV. His vehicle flipped after he swerved to avoid a mysterious metal object in the road, which was never found and never admitted into evidence, and he was rendered a paraplegic. Being drunk is probably contributory negligence, but Eli again switches sides and pulls some strings to help the plaintiff. With only a pittance of evidence and a

contributorily negligent plaintiff, Eli again manages to get a huge award for the plaintiff.

I fail to see how any of this demonstrates a moral reformation for Eli Stone. Rather, his is a complete turn toward depravity and professional irresponsibility. He completely ignores facts and the issue of fault and demands that the party with more money pay the party with less money, regardless of evidence, truth, or the standards of tort law. Why even go to court then? Just compare bank accounts before the case goes to trial and decide who should pay whom. That would be an easy system indeed.

Of course, looking out for the underdog and the little guy is great. "Lost causes are the only ones worth fighting for," Mr. Smith Goes to Washington style – I might even say that that is why I came to law school. However, the nobleness in fighting for those causes is premised on the fact that those causes are worthy, but merely unpopular. Eli Stone paints with a broad brush and contends that sick people and paraplegics should always win, regardless of evidence, regardless of justice, and regardless of the law. The show glorifies ambulance chasing, frivolous lawsuits, and presents a distorted and sick version of moral affirmation. It deeply offends my sense of justice. If I have to behave like Eli Stone to not be considered a cunning, bloodsucking lawyer, then I will gladly choose to be a cunning, bloodsucking lawyer.

For brief information about the vaccine suits and how mainstream science finds no link between autism and the vaccine:

<http://www.nytimes.com/pages/politics/index.html>.

No Profession for Honest Men?

by Michael K. Hayes, *Editor in Chief*

Nice guys finish last, they tell me. I suppose that means that I am in some kind of race, with a start and a finish line. I must have missed the starting gun. In any event, I wonder, is there a prize for first place? And would last place be so bad? And finally, what is a "nice guy," anyway?

In the Negotiations course offered by Professor Steve Hartwell, we often examine some of these questions, albeit indirectly. The entire course is designed as a competitive arena, where we duel on a regular basis against one another, with our scores dependent on the success of our negotiations. If you get the best deal for your hypothetical client, you achieve the highest score. Simple enough, it seems. And yet, Professor Hartwell has a way of making things slightly more complicated.

In our final class before spring break, we discussed theories of attribution. Sometimes we attribute a person's actions and behavior to their character. For example, "that guy cut me off – what a jerk." Other times we attribute a person's behavior to circumstances. We are especially likely to attribute our *own* bad behavior to circumstances. For example, "I had to cut that guy off because I'm late for work." To demonstrate this theory, Professor Hartwell created a circumstance in which half of the students were likely to behave dishonestly.

The students on the "buyer" side of the negotiation table were given a script to read. Following their script, they promised to conduct the negotiation "honestly and fairly," and they elicited a reciprocal agreement from the "sellers." Thus, the sellers were given the impression that the adversarial element had been removed from the negotiation context, and that an agreement fair to both parties was the shared goal. A suspicious sounding agreement, yes. Even preposterous. But an explicit agreement, nonetheless, and an agreement made at the behest of the buyers.

Somewhat predictably, the buyers have at their disposal "secret facts" which give them reason to believe that the property is significantly more valuable than the appraisals indicate. In spite of their proposed agreement to act "fairly and honestly," the buyers fail to disclose the existence of these "secret facts" to the sellers. Nevertheless, they offer to purchase the property for an amount that, based on the appraisals, is more than fair.

If the seller is "on their game," then the suspicious sounding agreement and the suspiciously

generous opening offer should make them, well, suspicious. To borrow a lesson from one of my own family members: when someone uses the phrase "to be perfectly honest with you," or some variation of the same, what follows is more likely to be a lie. If you do not harbor a healthy dose of skepticism, you will be led like a sheep to slaughter, "only dimly aware of a certain unease in the air," as Roger Waters put it. One of the pedagogical purposes of Professor Hartwell's exercise was, I believe, to alert students to deceptive practices, in order that they may better equip themselves. In other words, don't trust the person on the other side of the table. To be forewarned is to be forearmed.

I did not initially attribute the buyers' dishonesty to their character. I do not believe that any person in that exercise would ordinarily have opened the negotiation with the ridiculous proposal to act honestly and fairly. And I realize that, in the course of an ordinary negotiation, no lawyer worth his or her salt would, as a buyer, disclose their belief that a property is worth more than the seller believes it to be worth. Professor Hartwell had set the students up – they made a promise to be honest and then had to back away from that promise in order to use their knowledge to their advantage, and to get the best deal for their client. It was a perfect example of bad behavior attributable to circumstances.

But as we discussed the exercise, I began to wonder about character. It seemed that I was part of a small minority of people who actually believed that the buyers had transgressed some sort of ethical or moral boundary. Some of the sellers simply didn't mind what the buyers had done, and believed that, from a practical perspective, such concepts as "honesty" and "fairness" are secondary to the overriding obligation to get the best deal for the client. Some of the buyers, meanwhile, actually did not believe that they had acted dishonestly or unfairly. Since they had not told any outright lies, they could not be accused of dishonesty. This second contention was the more befuddling and infuriating of the two, while the first contention, that honesty and fairness cannot be expected, is the more problematic.

(For those who believe that honesty means not telling lies, I suggest an introductory course in morality. For those who would argue the same, but only for the sake of their position, I would suggest greater emphasis on intellectual integrity. For those who do not believe that honesty means not telling lies, and who are willing to

recognize the dishonesty that was a necessary part of the exercise, thank you. We all know that Hartwell made you do it.)

While the argument over lies and honesty is the more frustrating intellectual hurdle to have to leap, the general notion that lawyers are not bound to higher principles of morality is, of course, the more damning of the two ideas to surface in the class discussion.

The fake proposal to act "fairly and honestly" served as a sort of olive branch – an offer of peace, at least for the time being. For the purposes of this one negotiation, the parties would cease to be adversaries. It was a truce of sorts, or at least a cease-fire. But, when the second party reached to grasp the olive branch, the first party snuck the dagger out from beneath their cloak. It wasn't a fair fight. It was treachery. But, if I am to believe my classmates, I should always expect the dagger. Even when someone tells me to my face that they will be honest, I should expect dishonesty. To do otherwise to be the sheep who does not realize that the knife is being pressed to its throat. The sad thing is that I do believe my classmates in this regard – life experience is disheartening, if nothing else.

But I do not agree that, as lawyers, we automatically receive immunity for acts of unfairness and dishonesty, all in the name of "zealous advocacy." If you are willing to compromise your morals for the purposes of your *profession*, you have compromised your whole character, because what you *profess* is dishonesty, double-dealing and back-stabbing. It is no good to claim a different character for yourself when you are away from the job. After all, your job takes up a third of your life, and a person cannot divide their character into segments.

So who finishes first? The jerks and liars, perhaps (time will tell). And what prizes will they receive? Professional acclaim and riches, I suppose. They will be the most "successful." And what will be so horrible about finishing last, if you are one of those poor nice guys? Less acclaim and fewer riches, I suppose. Less distinction at class reunions, possibly. The last place finishers will be less "successful." But the last place finishers will at least know the difference between being a "successful" lawyer and being a "good" lawyer. And finally, what does it even mean to be a "nice guy?" I am not prepared to offer a definition, but I hesitate to reduce the principles of fairness and honesty to the level of a social nicety.

Democrats Multiplied My Vote by Zero

by Austin Evans, *Staff Writer*

I miss my young days. Growing up in one of the most conservative counties in the country, I did what all the cool kids did: I joined the Republican Party. I wasn't sure who was better between Bush and McCain, but hey, I got to wear some pretty sweet J. Crew clothes. I even got a membership card, thinking it'd work on the ladies at parties. It didn't.

It was only after leaving the protective cocoon of suburban Milwaukee that I realized I leaned slightly left of center, and in 2004, I cast my first vote in a Presidential primary. Clark was my man. Former General, straight talker, Rhodes Scholar -- what else could one ask for? And just one week before the election, the General came to Wisconsin - to my own campus, no less - to announce that he was dropping out of the race.

I was devastated, heartbroken, despondent. Here was my first chance to cast a vote for the most important job in the world, and my electoral love just dumped me. I was hoping such heartbreak would never happen to me again.

Later that election cycle, a young man by the name Edwards caught my eye. That hair and his love for the working class just swept me off my feet. I was ensorcelled for the last four years, and finally February 5th was around the corner. Like a drunken prom date, I was ready to go all the way with this one, and I nearly flipped when I got my absentee ballot. The day I filled it out, I got the "Dear John" letter from New Orleans. I guess it was never meant to be.

What makes me saddest is how great candidates can never make it past the initial primaries. I've never been to New Hampshire, and all I remember about Iowa is a lot of corn and second-rate college football. But these people get to decide my President? While I think the dogfight between Obama and Clinton right now is doing wonders for the party, I hate to see interesting and thought-provoking candidates dwindle to single-digit polling because of what one-percent of the country thinks. It seems that this primary hopscotch is not serving the country, and is really instead hindering the marketplace of ideas that chooses our leader.

And don't get me started on the superdelegate dilemma that could potentially ruin the Democratic convention. Having lived in Chicago, land of Daley, I find smoke-filled room politicking repulsive, and I hope this stays out of our national party. While I generally think voters lack the necessary cognitive skills to make informed decisions (see Prop. 91), our democracy needs to be directly driven by the people, not far-left politicians and appointed party leaders. Senator Daschle said it right when he urged every superdelegate to follow the popular vote. While the electoral math might seem like a calculus function right now, following the popular vote will make sure no one's vote is multiplied by zero in June.

As for future Presidential candidates, apparently March is a good time to talk to me. Just a thought, though.

The Importance of Keeping the Eyes on the Prize

by Andrew Adams, *Staff Writer*

They say that politics is the show-business for ugly people. If that's true, then the Democratic primary is Indiana Jones, Close Encounters of the Third Kind, and Howard the Duck all rolled into one big showcase, hosted by Ryan Seacrest.

You have the intrigue of two candidates, both of whom would set precedent for being the first non-white male major party candidate. You have the Baby Boomer vs. post-Boomer, Harvard vs. Yale, man vs. woman, etc., etc.

The problem is, this piece has no ending and no producer who pulls the strings. In fact, if the rest of the delegate counts stay on pace, the race won't be over until the Convention, at the end of August. And if that happens, then the whole process could get thrown into a maelstrom of smoke-filled rooms and weird deals where superdelegates all become the new hotness in town. Because these 800 superdelegates do not need to actually publicly (or privately) pledge their votes, both Obama and Hillary Clinton could go to Denver in August trying to bring home those delegates like it is last call at Typhoon Saloon.

What's so bad about that? Aren't conventions supposed to determine the winner? The problem is that any momentum and increased press coverage most likely will not make for a winning formula for the eventual nominee. Primaries are not like the playoffs, where the hottest team closing the season can have an advantage over the bye team that has been resting for a week. Campaigning doesn't make the candidate better at campaigning; instead, it leaves them broke, exhausted and trying to explain why their advisors called the opponent a "monster." It isn't the inter-party punches that are so damaging; it is the silly amount of money that a candidate must spend on the primary as opposed to keeping their eyes on November.

Despite every Democrat in America wanting the race to be over so we can celebrate how diverse and intelligent we are for nominating a woman or a minority, the fact is that it may be a long way off. Neither candidate will back down and take a Cabinet or Senate Majority Leader deal because they know that 2008 is a once-in-a-generation opportunity, with an out-going, extremely unpopular Republican president and an incoming Democratic Congress. Giving up on the campaign now would just be foolish.

The most ridiculous talk is that some sort of super-ticket will be brokered with both Hillary and Obama. That will happen just as soon as the LRC replaces the California tax law section with a Bounce House. And with Obama leading Hillary by at least 100 delegates, offering the VP spot to Obama is kind of like

Please see: *Dumbocrats*, page 7 -

Jan Egeland: "A Billion Lives"

by Peter Stockburger, *Core Staff*

The Institute for Peace and Justice [just on the other side of campus for those of you who are geographically challenged] is a diamond in the rough here at USD [The University of San Diego for those of you who don't know where you go to school.] Apart from the beautiful architectural features, the IPJ gives the USD student body a rare opportunity to interact with world leaders from all parts of the globe [Planet Earth for those of you ...if you don't know this, please stop reading.]

Recently, I had the pleasure of taking advantage of the IPJ by participating in a small, intimate student panel discussion with Jan Egeland, the former United Nations Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator from June 2003 to December 2006. Mr. Egeland was appointed to the United Nations by former Secretary General Kofi Annan in June of 2003, after his predecessor was assassinated in Iraq. His career in public service, however, goes back to the early 1990's, when he served as State Secretary in the Norwegian Ministry of Foreign Affairs. From 1999 to 2002, Egeland was the United Nations Secretary-General's Special Adviser on Columbia. His most recent post was taken up on September 1, 2007, as director of the Norwegian Institute of International Affairs.

Mr. Egeland has had his hand in a number



Have You Seen Me?

of important peace negotiations over the years. Most notably, he co-initiated and co-organized the Norwegian channel between Israel and Palestine Liberation Organization (PLO) in 1992, which led to the Oslo Accord of September 1993. He was also involved in directing the Norwegian facilitation of the United Nations-led peace talks, leading up to a ceasefire agreement between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) guerrillas, signed in Oslo in 1996. In contemporary terms, Mr. Egeland has helped shape the peace process and resolve complex emergency humanitarian situations pertaining to the Lord's Resistance Army insurgency in northern Uganda, the Darfur region in Sudan, and the Democratic Republic of Congo. In 2006, Time Magazine named him one of the 100 "people who shape our world."

During his talk, Mr. Egeland made very interesting points on the crisis occurring in the Darfur region of Sudan. According to Mr. Egeland, the solution in Darfur will not come about from American military intervention, but rather from China. China is Sudan's key ally and trading partner. China must present the Khartoum regime with a variety of carrots and sticks to ensure they will stop the bloodshed in Darfur. "You must come to the negotiating table with all your tools," says the aged diplomat, "you must make a balanced offer of carrots and sticks. In essence, you must maximize the benefit of negotiating a peace deal while maximizing the penalty of backing out." Through this economic and diplomatic pressure, China, according to Mr. Egeland, will play the biggest role in ending the suffering in Darfur.

Uganda was also on the discussion plate. The nearly 20-year long civil war in Northern Uganda between the Lord's Resistance Army and the Museveni government has left hundreds of thousands dead and millions displaced. War crimes have been committed on both sides. According to Mr. Egeland, there must be a mix of social reconciliation, amnesty, and criminal prosecutions in order to achieve peace. Without this balance, the atrocities will continue. This position is somewhat contrary to the present positions in the region of either full amnesty or complete criminal prosecution. Only time will tell if Mr. Egeland prescriptions will prove to be prophetic.

It is rare to have such an intimate dialogue with a person of Mr. Egeland's caliber. As a man who says we need "guns not blankets" to protect those vulnerable to exploitation and violence, Mr. Egeland is a progressive diplomat who chooses his words carefully. The title of his new book captures the effect he has had on our generation, "A Billion Lives."

I'm a Flexitarian

by Peter Stockburger, *Core Staff*

Unequivocally and without reservation, I am a flexitarian. As a preliminary note, being a flexitarian does not mean that I am constantly "throwing down a flex." It also does not mean that my name is Tarian and I am highly flexible. Nay. Being a flexitarian means I primarily eat a vegetarian diet, but for social, pragmatic, cultural or nutritional reasons, I will eat meat. In essence, I am a flexible vegetarian.

Before I go any further, perhaps a brief history on where the term flexitarian comes from is in order. In 2003, the American Dialect Society voted flexitarian as the year's most useful word and defined it as, "a vegetarian who occasionally eats meat." The earliest known use of the term actually came from an October 17, 1992 issue of the Austin American-Statesman where reporter Linda Anthony wrote an article entitled, "Acorn serves up flexitarian fare." In that article, Ms. Anthony discussed the recent opening of the new Acorn Café and stated that owner Helga Morath calls her fare "flexitarian."

Being a flexitarian means changing your whole way of life. I talk different. I walk different. My hair has changed color. My DNA has actually changed structure. With this personal change has come a great deal of discrimination. For example, just the other day I was in Target cruising around the patio furniture area, minding my own business, when a saleswoman approached me and asked, "Are you finding everything alright sir?" Just because I don't eat meat as much as you do, I'm incompetent? This type of flexism makes me sick. The utter lack of civility and empathy that I experienced from this monster makes me wonder whether the future of our

society is in peril.

In all seriousness, being a flexitarian is a principled choice. The meat industry is terribly inhumane to animals. The utter lack of any regulatory oversight by government agencies has led me to believe that my dollar and my stomach is better served elsewhere, such as the legume section of my nearest Trader Joe's.

It is my opinion that if someone has any moral compass or has been exposed to any sort of video showing the exploits of the meat industry, he or she will at least embrace flexitarianism. On that note, who's in the mood for some In and Out? That's what she said.

U.S. Per Capita Meat Consumption:

1950: 144 lbs.
1955: 156 lbs.
1960: 161 lbs.
1965: 169 lbs.
1970: 189 lbs.
1975: 178 lbs.
1980: 190 lbs.
1985: 194 lbs.
1990: 193 lbs.
1995: 202 lbs.
2000: 211 lbs.
2005: 219 lbs.

* USDA Economic Research Service

Things Unsaid, from page 1:

Originalists may be correct that they better respect the legitimacy of the democratic process, by taking a more humble approach, than those who advocate constructing a “living Constitution” by judicial fiat. But the question remains how best to respect that legitimacy in light of some inevitable uncertainty. While many originalists arguably abandon their humility in the attempt to divine answers to such unknowables, perhaps they should retain their humility by leaving things unsaid...unsaid.

In *Luther v. Borden*, the Court did just that in addressing one of the very issues that Bennett brought up: the Article IV, Section 4 clause guaranteeing to every state a “republican form of government.” Acknowledging the inherent ambiguity of the term, the Court resisted any temptation to apply their own view of what a “republican form of government” consists of, and held that this was a non-justiciable political question. The Court declared that “it rests with Congress to decide what government is the established one in a State...as well as its republican character.” Had the Court ruled otherwise, it would no doubt have opened the door for judicial activists in both parties to further interfere with the political process.

In his book *Judging Under Uncertainty: An Institutional Theory of Legal Interpretation* (Harvard University Press 2006), “rising-star” Harvard law professor Adrian Vermeule argues that this judicial restraint should be more widely applied by the Court. He traces his approach to James Bradley Thayer, a Harvard law professor of the late 1800s who devised the “rule of clear mistake,” i.e. that proper judicial review should only strike down laws that clearly violate the Constitution. Vermeule would have the Court defer controversial issues to the democratic process, and highly technical issues to administrative agencies, with the latter checked by the former and both checked by the Court as a “kind of backstop” when they occasionally throw a “wild pitch.” He argues that the Court simply does not have the institutional competence to do otherwise.

Vermeule further presents such an approach as a sort of “arms control agreement” between dueling ideological factions in the courts, over issues better left to the democratic process. Liberals would lament that such a constrained jurisprudence would not have allowed for the *Brown v Board of Education* decision - but it wouldn’t have allowed for the decisions in *Dred Scott*, the *Lochner* era, and more recent cases limiting campaign finance reform and school desegregation plans, either. Similar views have been adopted by liberals like Cass Sunstein at the University of Chicago and NYU lawyer-philosopher Jeremy Waldron, who argued just last year in the Yale Law Journal that issues like abortion and homosexual rights should be resolved in legislatures. Another liberal, University of Virginia’s Michael Klarman, has even argued that the Court’s role in promoting progressive social policies has been largely superfluous, since it has largely followed public opinion anyway.

Libertarian and conservative originalists might prefer a more limited interpretation of federal power, but even originalist icons like Supreme Court Justice Antonin Scalia would be loath to overturn a long precedent of using the elastic general welfare and interstate commerce clauses to expand federal power. In a world in which four clones of Supreme Court Justice Clarence Thomas are unlikely to be appointed, much less confirmed to the bench, the best originalists might hope for is an end to the judicial manufacturing of rights, most popularly exhibited in the controversial *Roe v. Wade* decision. This is what Vermeule calls his theory of the “second best.” The answer is not to set originalism “free” but for the Court to recognize its limits and leave things unsaid.

Erik Carter is the President of the USD Federalist Society.

Scottie Pippin “making room” for Jordan to come play on his team.

Brokered ticket or no, this foolishness has to be resolved somehow. If the Democratic nominee comes into the race tired, broke and deflated, the Democrats would be sending back an election that is being handed to them on a silver platter. If they can’t win when the current Republican president has us spending trillions in Iraq for reasons that even Colin Powell is now ashamed of, and with an increasingly bad economy, then the entire party should go the way of the Whigs.

Shockingly, despite the fact that McCain has to deal with the 800-pound gorilla around his neck in President Bush, there are a few scenarios where he could pull out a victory in November, even going so far as to win in California. While everyone under 40 thinks California votes Republican as often as Haley’s comet crashes into the Arizona desert, it just might happen this year, and both scenarios depend on Hillary’s campaign.

If Hillary gets the nomination and McCain

Where’s the Best Carnitas?
A Comprehensive Review of Nearby Mexican Food

by Andrew Adams, Staff Writer

JV’s
Location: Down Morena Blvd., just past the Valero gas station)
Rating: 4.75 spray-painted donkeys

JV’s is by far the best of the bunch, but it can get a little crowded. There is an amazing assortment of meals, with burritos larger than most newborns. The Surf and Turf (carne asada and shrimp) and California Burritos are among the best in San Diego, and the selection for breakfast is out of sight. JV’s colorful decor is peppered with plasma televisions featuring Mexican league soccer at all times. The array of salsas and veggies at the fixins bar, together with the excessively large burritos, can make the most gluttonous gringos go gaga. JV’s has great value for your dollar, with free refills for even the Bang/Horchata. Make sure that you don’t miss the rolled tacos, especially the fish rolled tacos (taquitos for those born North of San Clemente).

Special recommendation: No matter what time it is, go for the Breakfast Burrito. The regular breakfast burrito comes with egg, rice, beans, and ham, but we recommend bacon as a substitute for the ham, which JV’s will gladly do. JV’s service is almost as great as their food and the servers personally deliver you the food with smiles on their faces. If you’re feeling adventurous, go with the Breakfast Burrito Grande, but be prepared for flop sweat and temporary blindness, followed by a sense of accomplishment. That is, if you actually finish it. Just be aware that you will give off the bean/cheese/pork smell long enough that your classmates may question if you slept inside last night. A full meal at JV’s goes for around \$8.

Filibertos
Location: Up Linda Vista Road, across from the Vietnamese place
Rating: 4.5 cans of Pacifico

Filiberto’s is probably the best bang for your buck. Filiberto’s has great burritos. The carne asada plate or burrito combo, which are both less than \$6 each, are delicious, but require that you follow them up with a siesta. There are great machaca burritos and a wonderful drink selection and salsa bar. It is one of the few places that actually provides turnips and grilled onions on demand. The bean and cheese burrito is simple yet sumptuous, as

congestion would result in a net decrease in GGE, the staff report rebutted this by pointing out that the toll road would likely “encourage continued growth, low density housing and inefficient transit patterns, and that the traffic system within the region would be equally or more congested than it is currently.” Not only would this result in an increase in GGE, but also an increase in the negative environmental impacts caused by the road. As the Surfrider Foundation, which is a non-profit organization dedicated to protecting the ocean and surrounding environment, points out, the toll road might not even provide traffic relief. Accordingly, these environmental impacts are an incredibly large price to pay for an uncertain benefit.

Last but not least, there’s Trestles. Trestles is a group of surf spots at San Onofre State Beach, which is just north of San Diego. Lowers, the best known of the spots, is widely regarded as one of the best and most consistent surf breaks in the world and is home to an annual professional surfing competition. Although experts disagree over exactly what, if any, effects this construction project and the resulting traffic would have on Trestles, TCA’s own engineers admit that this project would likely result in

is the salsa, which they make in house. It is a quick trip from campus, but never crowded. A full meal goes for around \$7.

Santana’s
Location: On Morena Blvd., past the I-5 on-ramp
Rating: 4 chilaquiles

With its signature purple and gold décor, Santana’s looks like a Minnesota Viking/matador themed Elk’s Club. Yet, Santana’s has perfected an essential item for any San Diegan who likes to imbibe and wakes with cravings...THE BREAKFAST BURRITO. Santana’s breakfast burrito is top notch, using real fried potatoes rather than french fries, eggs, bacon, cheese, and sour cream. It’s a Chernobyl of cholesterol wrapped in a warm tortilla – the perfect thing to soak up the sudsy delight from the night before. Santana’s has very few veggie options, and is really only an appropriate place to go if you have blasted your taste buds with drinks and/or Civil Procedure. A full meal goes for around \$9.

Tio Leo’s
Location: At the corner of Linda Vista Road and Morena Blvd.
Rating: 3.6 tortugas

Tio Leo’s is by far the most upscale of the restaurants. It shares little with the taco carts examined here. The food is serviceable, but not great. It does have a full bar and a dance-floor and is not too bad of a place to take the parents/classy friends when they are in town. Tio Leo’s is much more like the Old Town restaurants. A full meal goes for around \$15, plus more for drinks.

Super Bronco
Location: Up Linda Vista Road, past the 7-11
Rating: 3.5 sombreros

Super Broncos is greasy, cheap and delicious, but leaves you questioning your inner fortitude – exactly what Mexican food should be. There is a fair salsa bar and a good selection of Mexican beverages, although some of the brands of soda have not been sold in this country in nearly a decade (by choice or by statute). You can enjoy the great outdoors with their picnic benches right off Linda Vista Road. The carne asada is particularly good. Get it with the works, except we recommend getting

Please See: Mexicali, page 8 -

Saving Trestles, from page 1:

a disruption of hydrology in San Mateo Creek, which could cause “significant loss of surfing resources” at Trestles. The CCC staff report pointed out the following: “If adverse effects occurred, they would be unmitigable. Regardless, the proposed toll road would clearly adversely affect the aesthetics.”

Unfortunately, the war over the toll road is not yet won. The TCA has appealed the CCC’s decision to the Secretary of Commerce, who may overrule the CCC’s decision (they are currently considering the issue). Should this occur, the Surfrider Foundation and other organizations will undoubtedly file lawsuits to protect the valuable natural resources that are so important to thousands of people.

So that is why a record number of people showed up at the CCC hearing. Some were expressing their love for the environment, some were expressing their love for Trestles, and some may have even been expressing their love for compliance with the law (that was me, of course). The point is that everyone was expressing their feelings, which clearly indicates that environmental activism is alive and well.

Dumbocrats, from page 6:

can remind everyone that they both voted to authorize occupying Iraq (their bad decision) and she voted against the surge (her bad decision), then he just might take Fresno and the rest of California’s forgotten counties by a large enough margin to offset the loyalists in San Francisco and LA. Of course, if that happens, it means Republicans probably took around 45 states and the Democratic party is stumbling off into the sunset.

The other scenario in which McCain could take California is similar, but involves Obama winning the nomination. There is a chance, with a long, drawn-out primary fight, that the Clinton people could refuse to get behind an Obama campaign. It is not out of the realm of comprehension that if the Clinton people lose, they would take their ball and go home. This could leave Obama high and dry, perfectly positioning Clinton to run again in four years instead of eight.

But enough foolish talk of what may come in November. As the race is now, it is possible we could see delegates wandering around the Convention floor looking

to throw their support to someone, anyone, just to settle it. One thing is for sure: whoever gets the nomination will be expected to take the general election, or else they will be hustled off the national stage faster than you can say “Joe Lieberman.”

My prediction: Hillary takes Pennsylvania, but only cuts 10-20 delegates off Obama’s lead, which would not be enough for a second resurrection to her campaign. Some sense will return and the Michigan and Florida delegates will find a way to be seated – after there is only one candidate in the race. This whole production may not be well produced, but there is too much on the line for one or two egos to get in the way of a W.



Convictions Reconsidered: A Tour of Donovan State Prison

by Michael K. Hayes, *Editor in Chief*

Several weeks ago, Professor Laura Berend and her Criminal Clinic students went on an adventure. Not the sort of adventure that many people might have enjoyed over spring break, but rather the sort that challenges and changes. An advent is an arrival. I was privileged to be a part of the excursion to Donovan State Prison, and what follows are a few of my recollections and feelings regarding that trip. However, it is by no means a complete account.

When I arrived, I discovered, much to the delight of my classmates, that I was not properly attired. I had donned a gray hooded sweatshirt – the sort of garb that was expressly prohibited in our field trip instructions. I had mistakenly thought that I would be in the clear so long as I did not wear anything blue. I was wrong. So, while all of my classmates wore business attire, I was reduced to a green tee shirt and cargo pants. And I was doubtful that my casual style would earn me any “street cred” with the inmates. *Nicely done, birdbrain – you are officially the cheese that stands alone.*

Before we entered the facility, our host, a Lieutenant, briefed us on some of the various types of containment within, and the sorts of procedures that are afforded each inmate, before they can be segregated from the general population. We were assured that the inmates receive a full hearing before any significant liberty interest can be impinged upon. Whew. Some of us offered a silent prayer of thanks to Divine Due Process.

After being properly screened, we proceeded through the security gauntlet, where the Lt. informed us that a certain electric fence would give a jolt sufficient to instantly kill a human being. There was some brief discussion of the various animals that are electrocuted by the fencing, and a fellow student wondered if there were any statistics. *No way, I said. They've got better things to do than count dead birds.* Not so fast, quick-draw – the Lt. promptly corrected my assumption. The prison is legally obligated to collect each dead animal, freeze it, and send it somewhere for examination. This is done to evaluate the “environmental impact” of the prison facility. Thanks be to the EPA! We didn't yet know what it was like to be a human being living inside the prison, but it was nice to know that the innocent little creatures were given their due consideration.

We walked through an intake department, where new inmates were herded in and out of little rooms, all dressed in bright orange. We caught a glimpse of some hearings related to some aspect of confinement. There were lawyers present. *Yes! More Due Process! We love it!*

There were not any lawyers present when we walked into the prison yard, where hundreds of inmates were mulling about. Some of them walked or ran laps around the yard. Others were working out, some distance away. Most just stood around with nothing to do. We were undoubtedly a sight to behold, especially with our contingent of females, but the inmates appeared mostly uninterested in our doings. A few broached questions or offered some acknowledgment of our presence, but only a few. Some seemed to desire some form of human acknowledgment from us, if only some momentary eye contact. All in all, it was a hard bunch, and I knew that I'd get eaten up in this unlucky place.

From the yard, we continued into one of the residential units. All concrete and steel. An observation tower in the middle of the large room, with gun turrets. A sign that read: “There will be no warning shots.”

It was at this point that I began to speculate on how I would survive, if ever I somehow did something stupid enough to land myself in this place. I would need to make friends who could offer me some protection. Someone once advised that, in the event that I should find myself en route to prison, I should shave my head and get some swastika tattoos. Would that be the way to go, at Donovan? When the Lt. explained that there are two main factions at Donovan, the Mexicans and the Blacks, and that the Whites divide up, that neo-Nazi option seemed less plausible. So I would have to somehow ingratiate myself to the Mexicans or the Blacks. What could I offer, in exchange for some level of protection (besides abject

servitude)? Would I be a sneak? A lookout? Someone who could acquire contraband? Could I manipulate prison guards to some end? Or would I have to prove my loyalty some other way?

In other words, what sort of criminal would I have to become, in order to save myself from the criminals? And if my stay in prison lasted two, or five, or ten years, how much of my present self would remain at the end of that term? I've been lucky in life, and I would still be lucky to have family, friends, and an education waiting for me on the other side of the prison walls. I would have options other than a life of crime and violence.

But I wonder about the twenty year-old who grew up in the bad neighborhood and never finished high school. What does he do when he turns twenty-five, and gets out of prison? What does he have to turn to?

What if that same twenty year-old gets convicted of a third strike, and doesn't get back to the outside world until he is fifty years old? What then? That fifty year-old, barring some kind of miracle, is now a criminal, through and through. How many times has he been raped? How many times has he been forced to defend himself against vicious attack? How many times has he felt compelled to give worse than he's gotten, to prove a point and maintain his standing in the prison community? Whatever the answers to these questions, the fact remains that this individual will someday be back on the streets, in someone's neighborhood. And worse than ever.

The prison schemer will only know how to scheme. The victim of rape and violence will be inclined to the same. The gang leaders will continue to network on the outside. And society will be worse for the time that these criminals have spent behind bars. Not to mention the interests of the inmates themselves, in being able to return to society as whole, functional human beings. It's enough to give your average public defender a personal motivation to keep even a guilty person out of that wretched system.

People who know me would not accuse me of being a “bleeding heart.” (The fact that I would deem it an accusation should tell you something.) I don't believe that prison inmates deserve much, and I question the merits of “rehabilitation.” I don't care whether they are allowed to watch television, or lift weights, or make money. But what they deserve, and what the prison should be obligated to provide, is safety. Where there is no safety, there can not be even a pretense of rehabilitation.

My objections to prison conditions (at Donovan and across the country) are not borne from some righteous moral outrage. I object because the conditions that are allowed are divorced from any rational attempt to achieve the end goal: a safer and healthier general society. If everyone who ever went to prison stayed there for life, my point would be moot. But guess what? Just about everyone gets out of prison at some point! And then we've got to deal with them. So what type of person would you want to deal with? If you are not comfortable with people who have not known safety, or stability, or human dignity for years on end, then you should not be comfortable with our present system of “corrections.”

The Lt. told us that it is virtually impossible to know how many rapes take place on a regular basis. But they do know, with exactitude, how many feathered and furry friends are electrocuted each year. We pay for procedures to ensure that no one is unjustly placed in isolated confinement, but not for the necessary security to ensure that no one would *need* to go into isolated confinement. Misplaced priorities, anyone?

Professor Mike Rappaport, in his *RightCoast* blog, has in the past echoed the idea that current prison conditions may violate the 8th Amendment. Obviously, the state does not purposely create an environment where individuals are victimized on a daily basis. But the state is aware of the brutality, and does very little to put an end to it. Could relative passivity in the face of atrocity give rise to a constitutional challenge? You don't have to be a bleeding heart to wonder. You only have to maintain a rational interest in your own society.

Mexicali, from page 7:

the salsa on the side, as the salsa bar offers a variety of great spices/flavors. The experience leaves you with the feeling that you just got slimed with carnitas grease a la “You Can't Do That on Television.” A full meal goes for around \$8.

Valencia's

Location: On Linda Vista Road, at the bottom of the hill

Rating: 3.25 bullfights

Don't let the oft-empty interior fool you. Valencia's does work. The menu is standard fare, but is decent to good on most items. The carne asada is above average and the beans are

quite delicious. With its proximity to campus and lack of any other customers, it makes for a quick trip in between classes. Valencia's is a little pricier than the other restaurants, but has a great breakfast menu. A full meal goes for around \$10.

Nico's

Location: Down Morena Blvd., across from the Valero gas station

Rating: 2.75 pescadors

The carne asada is a little bland, but was spiced up by the homeless gentlemen eyeing us the entire meal, which some said lent the place some truly Central American authenticity. The

Race and Crime: A “Scientific” Study

by Hali Henderson, *Staff Writer*

Okay, okay...so I know it's a little bit late, but I think it's because I'm still reeling from the shock. So, I don't want to keep you waiting any longer. Who wants to know how I kicked off my Martin Luther King Day weekend? Well, I'll tell you!

On January 18th, 2008, BLSA Co-President Kathryn Snyder, and myself (the other BLSA Co-President) decided to show some inter-organizational love by attending an event put on by the Federalist Society* event titled, “*The Real Reasons for the Crime Decline and What the Experts Won't Say.*” Now, to be fair, I had already received a synopsis of the upcoming discussion. The speaker, Dr. Barry Latzer (and I hesitate to call him “doctor”), was set to talk about the link between African-Americans and crime, particularly violent crime. Clearly, right off the bat, I knew that this was a very controversial issue and politically incorrect stance to take, but Kathryn and I decided that while it was a tragedy that someone would spew such nonsense, it would be a travesty if there was no voice of opposition. Plus, if “Dr.” Latzer actually had any basis for his findings, I sure as hell wanted to hear how I might be prone to commit a violent crime. After all, I may want to include that on my Moral Character application, right?

So, “Dr.” Latzer begins by talking about what a glorious organization the Federalist Society is because people are afraid to speak their minds in a world where everyone is so concerned with being “politically correct.” He then launches straight into what he is here to talk about—how race is related to crime. Before putting up a barrage of statistics, he makes reference to Freakonomics theory and says, “that the theory is correct, but it doesn't account for the total decline in crime in the '90's.” So, what is “Freakonomics” might you ask? Freakonomics was a book by a Chicago economist. The gist of the book is that the decline in crime was caused by the legalization of abortion in 1973. The idea is that the babies that would have been born would have been those who were prone to commit violent crimes. Thus, because they were aborted, we have a decline in crime! Voila! At this point, I knew this was going to be a fun talk.

“Dr.” Latzer then proceeds to begin his slide show of graphs and statistics. While I can't remember all of them, I do remember that one graph was titled, “Arrests Rate Amongst Blacks and Whites.” “Dr.” Latzer proudly explains how blacks are arrested at a much higher rate than whites. Hmmm...what's wrong with this statistic? Dare I ask? Yes, I do. “Dr. Latzer, you put up arrest rates, but arrests aren't convictions. So, I don't understand the point of the slide.” He responds, “Yes, I don't have conviction rate information, but the two do correspond.” Hmmm...yeah. And the talk went on like this for the next hour with statistics and graphs that didn't mean anything being cycled through. His final conclusion was this: race is related to crime, and young black males, in particular, are prone to commit violent crime. The only way to control these young black males is to lock them up and scare them. Huh?

Finally, at the end of the lecture, we arrive at the Question & Answer session and “Dr.” Latzer is bombarded with questions, such as “what about the effect of income level, education, historical effects, racism, etc?” And for every single question, “Dr.” Latzer had the same response. “Those things may be small factors, but the real factor, the determinative characteristic, was race.” He had all the answers. The best part comes when I raise my hand to ask a question about his dismissal of the historical background influence, and before I can ask my question, “Dr.” Latzer says, “I know what you're going to say. Before you pull the race card on me, blah blah blah.” Ummm... I wish that was a joke, but it wasn't.

So, ladies and gentlemen, that is how I kicked off my Martin Luther King Day weekend. But it wasn't all bad I guess. I got to see how the MLK's dream may never be a reality...at least for “Dr.” Latzer. I mean, how can he walk hand-in-hand with his colorful brothers and sisters if he's too busy holding onto his wallet?

* The Federalist Society does not endorse the ideas of Dr. Latzer.

More Mexicali:

rice and beans were servable, but not great; however, the veggie burrito has the works – beans, cheese, rice, green peppers, guacamole, jalapenos. In terms of cleanliness and appearance, this is more Tijuana than San Diego, and definitely not the place to go to get anything beyond standard, Americanized fare. But Nico's is a great place to go if you like Pac-Man/grilled onions. A full meal goes for around \$8.