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MOTIONS

University of San Diego School of Law

Volume 44, Issue 5

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March 2009

OBAMA'S FIRST DAZE

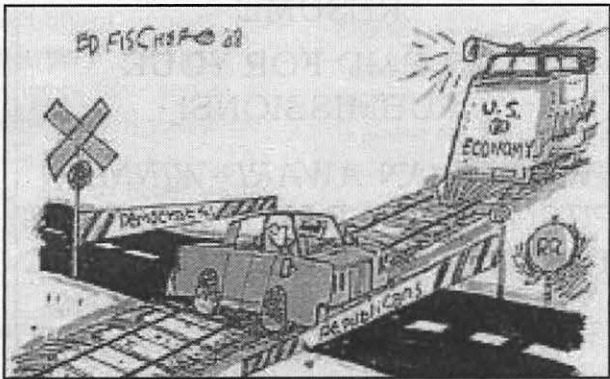
By Forrest Merithew, Staff Writer

Obama has quickly discovered the work load, political challenges, fickle public opinion and lack of privacy that comes with the honor of being President of the United States. On his first day as the 44th president of the United States he only needed to travel 3 blocks to a church service, but the trip required 20 Secret Service agents, a 14-car motorcade, precautionary gas masks and a specially armored Cadillac limousine, nicknamed "The Beast". Vice President Joe Biden and his wife, and former President Bill Clinton and Secretary of State Hillary Clinton joined the Obamas at the service. Prior to his inauguration and first day in church, Obama attempted to notify the rest of Capitol Hill that change was coming – starting with the economy. He's now discovering that many did not get the memo, but for now the numbers game on Capitol Hill is in his favor.

While Obama was working on the stimulus package, he was also performing administrative duties. To be well-informed, every President surrounds himself with foremost experts in politics and infrastructure. One of his first tasks was the appointment of cabinet members and department heads. While the task may be mundane, the people are not. They are an interesting mix of donkeys and elephants, leftover members, new blood, large egos, politicians and academics. There may be questions as to whether this diverse mix can work together to produce needed and lasting changes.

Besides the failing economy and administrative duties, Obama and his new administration have picked other goals to tackle. It announced salary freezes for White House employees making over \$100,000 a year and placed limits on lobbyists' White House access. Notable positions affected by the freeze are the White House Chief of Staff, National Security Advisor and Press Secretary. The lobbying rules prevent lobbyists from giving any gifts to any member of the administration. Obama defended these decisions, saying "Families are tightening their belts, and so should Washington."

Obama also drafted an executive order to close



the detention center at Guantanamo Bay within a year, a decision countering Bush's flood of policies immediately prior to leaving office. I'm not one to live in fear or be persuaded by threats of danger, but I believed that maintaining a distant location for dangerous international criminals was a solid option. However, I respect Obama's consideration of international opinion and constitutionality in making the decision. The draft order not only plans to shut the facility down within the next year but also halts all trials currently underway. This may decrease military costs and provide legitimacy to our international peacekeeping and War on Terrorism.

The President made several comments as to future initiatives regarding national security and the War on Terrorism. Obama said he would alter the policies of the Freedom of Information Act requests, so that government agencies are more responsive. His goal as to our military conflicts abroad is to "responsibly leave Iraq to its people and forge a hard-earned peace in Afghanistan." However, he did not provide specificity as to tactics, dates, or numbers.

Now, just over a month into office, the lore and excitement that comes with any new experience has worn off and Americans are showing their "what have you done for me recently" faces. Critics have begun to turn on the administration, questioning spending and what they feel is a lack of results. However, Obama has made at least one big accomplishment with the passage of the stimulus package.

The day the package was signed into effect, the Dow Jones industrials closed less than a point above their lowest level in five and a half years and our unemployment rate was at 7.6 percent. There certainly was a need to spur positive financial change. Surprisingly, the package that passed had many similar provisions to the one initially proposed. The main difference was that the program

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BALANCED BUDGET PHILOSOPHY IN CA?

By Chuck Billinger, Staff Writer

As Treasurer of the Student Bar Association at USD, I am obligated to adhere to a "Balanced Budget" philosophy. The basic premise is simple: spending expenditures cannot exceed revenue earned. Because of this economic approach, dues paid by law students are protected from irresponsible spending. After observing the current California Budget Crisis, I have concluded that a balanced budget approach should be implemented in California.

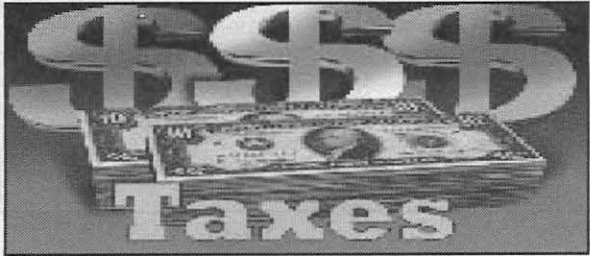
Lawmakers in Sacramento have failed to reach an agreement on how to adequately deal with the projected \$42 billion shortfall. California is close to running out of cash because its tax collections have fallen amid the U.S. recession. California has already ceased paying income tax refunds, and will likely be forced to pay obligations with IOUs for the second time since the Great Depression, unless a new budget is agreed.

The Budget Proposal is full of tax increases meant to deal with the revenue shortfall. The Budget Proposal included the following:

1. An increase in the state sales-tax rate to 8.25 percent from 7.25 percent;
2. A boost in vehicle license fees to 1.15 percent from 0.65 percent of the value of an automobile;
3. Adding 12 cents to the per-gallon gasoline tax;
4. A reduction in the dependant-care tax credit to \$100 from \$300;
5. Imposing a surcharge on income taxes of up to 5 percent.

In short, Governor Schwarzenegger and the Democratic-controlled state legislature hoped to solve the budget shortfall by significantly raising taxes without drastic cuts in mandatory spending. Even though some Republican lawmakers were able to negotiate \$15.1 billion in spending cuts, the opponents to this proposal believe that the tax increases as proposed are too steep and are unlikely to be repealed following 2013-2014. The California Budget Crisis is a

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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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2L AT USD SCHOOL OF LAW WINS WORLD RECORD FOR LONGEST TO- DO LIST EVER!

by Joanna Fuller

Jenna Lilly, a 2L at USD, was honored this week by the Guinness Society for her amazing contribution to the history of list-making. According to a press release, Ms. Lilly achieved the amazing feat of creating a to-do list that would be able to keep a healthy adult employed full-time for the span of two and a half years. According to the release, it would take 6 weeks alone to have proper maintenance done to her automobile.

The President of the Guinness Society phoned Ms. Lilly early Friday morning with the news. "It was the greatest 2 minute break from studying that I've ever had in law school!" Ms. Lilly exclaimed as she rushed to her favorite study carrel.



Editor's Comment

Dear Readers,

This is to address some of the responses I came across regarding Austin Evans' opinion piece from the February issue.

I stand by my decision to run the article. Aside from obvious free speech considerations, *Motions* is by and for the student body, and I do not have a right to refuse articles because I do not like the message. And neither does any other student.

It is irresponsible journalism to censor messages I may find disagreeable, or to silence content that I fear will cause negative reactions. The purpose of the paper is to give the student body a voice. One of the greatest things about *Motions* is that it need not be confined to law; students can write, opine, or rant about whatever they wish. It would be doing the paper a great disservice if I believed my role was to put out a newspaper with only positive messages and content that I believed to be appropriate.

I am here to organize and manage the paper. I am not here to impose self-righteous views or to manipulate the content of the paper.

Further, because of lack of interest in writing for *Motions*, even after I used larger font for the last issue, and extra pictures, we still couldn't fill the whole thing. Finally, the designer graciously offered to put in extra time right before the issue went to print, and wrote an article herself in order to fill space. She sent the final version to me well past midnight on a Sunday evening. So from a practical standpoint, I was not in any position to tell Mr. Evans, who consistently and enthusiastically contributes to each issue, that I was not going to run his article because I disagreed with the content.

If you are concerned about how this paper represents our school, please note the disclaimer on the second page of every issue. The views expressed here purport not to be that of the administration, the school, or the student body. There is no university endorsement or support for these messages. They are solely the views and products of the writers. Also, *Motions* is open to all students. If you want to change the content of this paper, you are free to submit articles. As Justice Brandeis said, when faced with bad ideas, the remedy to be applied is more speech, not enforced silence. Any law student who cannot stand a free press in a monthly tabloid written by and for law students should find another line of work in which one's sensitivities will not so often be offended.

If you are unwilling to write articles, but dislike the "trash" that *Motions* prints and believe it is a waste of money, feel free to take it up with the administration. But to expect me to run blank pages rather than print interesting yet inflammatory editorials is absurd.

The fact that *Motions* allows for so much freedom is something that has really enriched my experience as an Editor, writer and law student at this school.

Jenn Chou
Editor-in-chief



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According to Guinness' rules, competitors for "Longest To-Do List" can include only lists generated naturally and may only include items where the author has an honest intent to complete the task. Ms. Lilly explained that she intends to start checking things off her list as soon as she finishes her brief, competes in a tournament, writes her two papers, applies to a board, gets a summer job, and takes finals. Lilly's list includes such things as "clean bathroom," "mend shirt," "wash hair," and "send Christmas cards." According to sources, Ms. Lilly began her list on January 12, 2009.

IRAN'S WIZARD OF OZ

By Peter Stockburger, Staff Writer

Since its inception in 1979, the Islamic Republic of Iran has been a mainstay of American political culture, popular cinematic satire, and international saber-rattling. Iran is the 18th largest country in the world, hosting a population of over seventy million people. It is also the home to one of the world's oldest civilizations, with historical and urban settlements dating back to 7000 B.C. What most don't realize, however, is that Iran is a constitutional democracy and will hold, for the 10th time in its history, a presidential election on June 12, 2009.



Ali Khamenei

The political system of Iran is based on its 1979 Constitution, comprising of several intricately connected governing bodies. The Supreme Leader of Iran, for example, is elected and supervised by the Assembly of Experts and is responsible for the dictation and supervision of the general principles of the Islamic Republic. The Supreme Leader, Ali Khamenei, also serves as the Commander-in-Chief of the armed forces, controls military intelligence, security operations, and has the sole power to declare war or peace. The Council of Guardians, appointed by the Supreme Leader, serve as heads of the judiciary, state radio and television networks, commanders of the police and military forces.

After the Supreme Leader, the Iranian Constitution defines the President of Iran as the highest state authority. The President of Iran, like the President of the United States, is elected by universal suffrage for a term of four years and can only be re-elected for one term. Presidential candidates must be approved by the Council of Guardians prior to running to ensure they exhibit the requisite allegiance to the ideals of the Islamic revolution. In short, the President is responsible for the implementation of the Constitution and for the exercise of executive powers, except for those powers reserved to the Supreme Leader.

The incumbent President of Iran is Mahmoud Ahmadinejad. Ahmadinejad was elected in a run-off poll after the 2005 presidential elections, and is the first President of Iran who was not a religious cleric. Prior to becoming President, Ahmadinejad was mayor of Tehran and governor general of Iran's Ardabil Province. Ahmadinejad is a controversial figure, often recognized for calling for the dissolution of the state of Israel and describing the Holocaust as a myth. Ahmadinejad is a leading contender for the 2009 Presidential election. His main competition is former Iranian president, Mohammad Khatami.

Mohammad Khatami was the fifth President of Iran, serving from August 2, 1997 to August 3, 2005. He also served as Iran's Minister of Culture in both the 1980s and 1990s. Khatami won the Presidency in 2005 on a platform of reform and liberalization. During his two terms as President, Khatami advocated freedom of expression, tolerance and civil society, constructive diplomacy and an economic policy that supported a free market and foreign investment. During Khatami's Presidency, Iran's foreign policy began a process of moving from confrontation to conciliation. As President, Khatami met with many influential leaders such as Pope John Paul II, Koichiro Matsuura, Jacques Chirac, Johannes Rau, Vladimir Putin, Abdulaziz Bouteflika and Hugo Chavez. In 2003, Khatami notably refused to meet Iraqi cleric Moqtada al-Sadr.

Before running for President in 2009, Khatami sought the approval of Khamenei, the Supreme Leader. Khamenei, however, has publicly endorsed Ahmadinejad. Analysts believe the contest in June will be dramatic, offering voters a candidate who promotes liberalization at home and accommodation abroad, and a candidate who has been blamed for economic mismanagement and for isolating Iran. If Khatami became President again, he could be the leader who, in the words of Barack Obama, would "unclench the fist" and improve Iran's strained relations with the United States. If Ahmadinejad is re-elected, it's unclear what the Iranian posturing will become. Unofficial polling shows Khatami would beat Ahmadinejad by a two-to-one margin, but an unusually big turnout would be needed to ensure victory.

One thing is certain – whoever wins the election in June will not be controlling Iranian policy; the Supreme Leader will. Ali Khamenei is the heart and soul of Iranian policy, both domestic and foreign. Khamenei is a man who has criticized women's rights activists, claims homosexuality is a major problem in the Western World, has closed schools because music education corrupts the minds of youth, authorized the beating of women who do not adhere fully to the strict Islamic dress code (fully hijab), and has not allowed a single Sunni mosque to be built in Tehran. Khamenei has supported persecution of Baha'is and signed documents recommending several organized methods of oppression

and ways of decreasing the group's influence both domestically and abroad. Khamenei is the most powerful influence in Iran, and will play a strong role in whoever wins in June. Those concerned about Iran's official stance should take a closer look at this man who, in all reality, is Iran's Wizard of Oz.



Mahmoud Ahmadinejad & Mohammad Khatami

STEROIDS IN BASEBALL: SO WHAT?

By Andrew Adams

A-Rod came out as a steroid user last week -- the latest baseball player to come out. I guess "come out" is an inappropriate term because he was not the primary information-provider. Rather, an MLB employee provided the information. He had, for whatever reason, decided to release the results of a test that was supposed to be anonymous. So maybe "revealed" or "exposed" would be a better word.

"So what?" you ask. You don't like baseball . . . no one really likes baseball any more, now that LeBron is in the 2010 dunk contest -- a contest that now draws more interest than any Division Series (if you even know what that is). Baseball is about the 4th most popular sport in the U.S., even following NASCAR, and is quickly being overtaken by weird sports like swimming and soccer.

Baseball is really only good for an excuse to get out of the house for three to four hours and eat a couple bags of sunflower seeds. No one watches it on TV, and even fewer listen to it on the radio. This might hurt the Ken Burns/Andy Rooney/Huell Howser nostalgia-porn crowd, who keep insisting that baseball is the "national pastime," whatever that means. If it just means our nation has done something for awhile, you could call "kissing Saudi Arabian ass" a national pastime as well.

The interesting part of A-Rod and Barroid being shown to be the users that they are is not that we are shocked, but rather that we knew it all along. We all knew that Mark McGwire, Sammy Sosa, and Jose Canseco weren't getting ripped simply by lifting. And Bud Selig and everyone else in charge of MLB knew it too. It was good for baseball, and between 1998 and when Barry hit 73 homers, baseball thought it could step into the MJ-less NBA void.

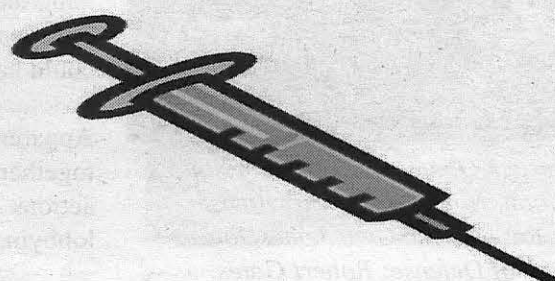
So because homers are good for baseball, and enormous pitchers (not CC Sabathia enormous, more Eric Gagne/John Rocker enormous) bring in the fans, baseball didn't regulate and didn't test. If they had wanted to rid steroids from the game, then they could have followed any of the other testing programs developed for the Olympics or any other international competitive association. Put simply, they didn't; they let it all slide -- just like the amphetamines, cocaine, and meth use in the pre-steroid years.

The problem is the hypocrisy that we see now. Of course they all used steroids -- steroids make you bigger and allow you to recover that much faster. Instead of relying simply on their natural gifts, players could get a boost and join the group that was dominating baseball without any consequences from the league. If you were in the league, you would too because steroids make you better.

Human nature is to use whatever you can to gain an edge. The only thing that stops baseball players, or any other athlete, from juicing is the potential of getting caught, losing endorsement money, or even losing salary if they are suspended. While there may be some that can resist the temptation to get better by cheating, cheating is only what is prohibited, and then enforced with serious consequences. Denying this and pretending that players will abide by the rules simply because it is the right thing to do is ignoring every fiber of competitive being. If that were true, there would be no need for referees or umpires, and we could rely on the players to call their own balls and strikes. We don't even do this for law school, co-ed, intramural softball.

As a country, we need to come to the realization that the leagues in charge of regulating the sports we watch are in charge of regulating against cheaters. When they fail to do this appropriately, they must have their reasons. Major League Baseball in the 1990s-2000s did so to try and recruit fans, and is now paying the price for allowing steroids to taint some of the records that its adherents give near-religious reverence to.

Does it really matter? No. Is it surprising? No. Blaming the players for taking steroids is like blaming the dog for eating a steak you left on the floor. If you want a clean game, then you better test players' blood, no matter what the union says. Until then, owners need to get off their high horses and quit blaming steroid use on the players. Everyone was involved, and everyone signed off on it. "So what?" you ask. And you're right: So what?



SBA ON PATH TOWARDS NEW CONSTITUTION

By Austin Evans, Staff Writer

The SBA Council on February 16 sent a new Constitution and Bylaws to the student body, marking the first time in over twenty years the SBA's foundational documents have been changed to such a degree.

SBA President Marshall Skaletsky was excited with the vote: "I was very pleased that the SBA Constitution [Reform] Committee's proposal was unanimously passed." The council's vote begins a ratification process that ends with votes in the upcoming spring elections. Formed in April by the then-newly elected SBA executive board, the Constitutional Reform Committee worked over several months to draft the new documents. Highlighted by several key issues in the document's clauses, the committee recommended changes to streamline SBA governance and make the executive board more accountable.

"The constitution and bylaws needed to change," noted committee chair Jodi McShan. "Under the old documents, it was unclear as to who was even a part of SBA, much less how voting could go." The changes largely focused on clarity and consistency, with McShan noting "these new documents will prove to be less complicated and more straightforward."

The most obvious change, to correct one of the current Constitution's noted flaws, was to pare the constitution to three pages, down from the current version's 19. "This required radical change to fix," noted committee vice chair Kevin Cleveland. The current Constitution contains several sections of

procedure. The new Constitution will address "only important foundational questions" while the new bylaws will focus on procedure. Cleveland added, "This will allow greater flexibility to the SBA to effectively govern."

The council vote formally replaces the current constitution and bylaws with the newly proposed versions. Instead of highlighting the changes individually, the committee recommended the substitute restatement out of efficiency and clarity.

"There were literally three to four hundred individual changes made. To list those all out would have just confused the voters," said Cleveland. A comparison between the current and new versions for each document shows more of a rearranging of terms instead of outright revisions. "We're essentially asking students to look at the new documents and OK them on their face," added McShan.

The new documents faced questioning during the meeting, with council members concerned about how future changes could be enacted. Under the current version, changes can be made through initiative or a council vote followed by student body ratification. The new version retains the initiative process but also allows the council itself to make changes with an absolute three-fourths vote. The new version does not require a subsequent ratification by voters.

In defense of the change, McShan clarified, "councilors are representatives voted upon to represent the student body, as well as clubs. As

elected representatives, these individuals represent their constituencies and those interests." McShan further noted that an overwhelming majority in the SBA Council would signal general consensus among the student body. "If the Council agrees to pass an amendment to either document, they are representing all students and voting as such."

Under the current process, the council needed a two-thirds vote to send the amendments onto the student body. The unanimous vote by the council cleared this step. In order to become final and effective, the student body must ratify the changes by a majority vote in the upcoming spring elections.

Skaletsky is optimistic for the vote. "I am confident that once the student body reads over the proposed constitution and bylaws and sees the quality changes that were implemented, they will overwhelmingly agree with the Council's unanimous decision that the new documents are in the best interests of the school."

Although in planning stages, the spring elections are currently slated for March 23-24. A yes vote on the measure will ratify the changes, while a no vote will retain the current constitution and bylaws unchanged. Copies of the proposed changes are posted outside the SBA office and are available on the SBA website.

Austin Evans was a member of the Constitutional Reform Committee and did not take part in the council vote's debate.

From First Daze, page 1

was slightly restructured to give more support in tax cuts and less in direct federal funding in order to gain the "all important" 3 republican votes in the Senate. The 787-billion-dollar package was approved by a vote of 246-183 in the House of Representatives with no Republican support. Senator Sherrod Brown, who was in Ohio for his late mother's memorial service, flew back to Washington and cast the decisive 60th "Yes" vote for the bill, resulting in a 60-38 passage. There was not as much oversight or analysis of the targets for funding as I expected and hoped for, but at this point any progress may be positive.

One of the first goals of the stimulus package is to stem foreclosures and assist home buyers in order to support US homeownership. Part of the plan will require more information and clarity from lenders, by making the mortgage principal a mandatory piece of information to be included in the paperwork. The plan also involves \$50 billion in borrower's assistance and subsidizing for lenders with the goal of lowering borrower's payments. Homeowners who owe more on their

mortgages than the home is worth will be allowed to refinance. Additionally, bankruptcy judges will have more discretion to modify mortgages and allow leniency in respect to payments. The plan also created an \$8,000 dollar tax credit for first-time homebuyers.

There were no additional recovery funds for beleaguered automakers, but the other goals that were originally stated by the administration are still in the forefront of the package. Obama still believes in investing in creative and green technologies, especially ones that will decrease our reliance on fossil fuels and the foreign suppliers; creating a computerized health care information system; creating or saving 3.5 million jobs; and improving the quality of K-12 education all through federal investing. These goals have been fostered with the hope of boosting consumer spending and rebuilding infrastructure.

The package included plans to increase domestic spending on domestic products, which other countries are claiming is illegitimate protectionism. Brazil is looking to challenge some of the provisions before the World Trade Organization (WTO). The result of these disagreements should not have a great impact on the general population.

One of the greatest incalculable assets Obama brings as president is the improvement of the perception of the United States in international public opinion. With the current globalized economy and information systems, this could go a long way in future political and economic situations abroad. People around the world watched the inauguration at odd hours of the day and in the middle of the night and shared many Americans' zeal for the potential heights this new president could take us and the potential impacts it could have for the whole planet.

Apparently, chaos and politics still go quite well together. We've been discovering more unethical actions by politicians, whether it be illegitimate lobbying or getting private services for free. Those



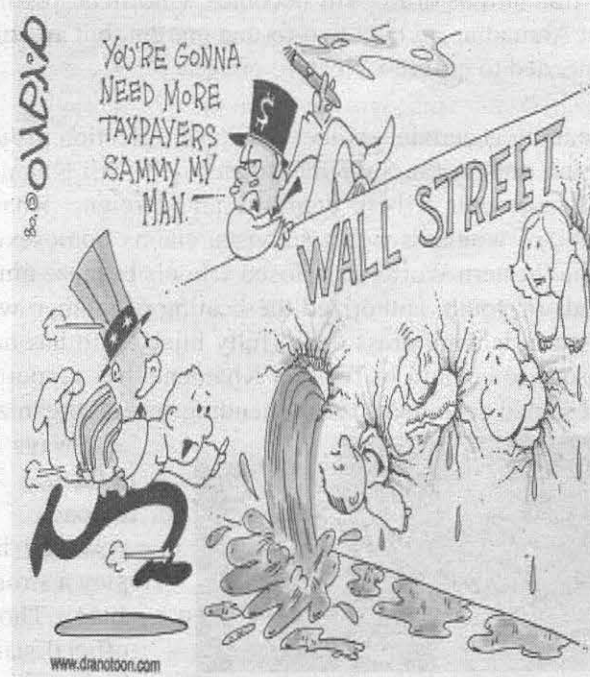
Guantanamo Bay

egos and staunch political lines have been evident in the early and tumultuous stimulus evaluations and discussions in the House and Senate. This complete lack of bipartisanship may be a warning for what is to come. Obama may have to cross hurdles, not speed bumps to get additional legislation passed.

But he knows that action is necessary "to help restore faith in government without which we cannot deliver the changes that we were sent here to make."



President Barack Obama, Secretary of State: Hilary Clinton, National Security Adviser-designate: Ret. Marine Gen. James Jones, Secretary of Defense: Robert Gates





FEDERALIST SOCIETY EVENT: ILYA SHAPIRO FROM THE CATO INSTITUTE SPEAKS.

By Jenn Chou, Editor-in-Chief



Ilya Shapiro

The Federalist Society hosted Ilya Shapiro from the Cato Institute on February 4, 2009. Shapiro spoke about the increasingly political nature of judicial nominations, including the cause for such politicization and possible solutions. Before joining Cato, Shapiro was Special Assistant/Advisor to the Multi-National Force-Iraq on rule of law issues and practiced international, political, commercial, and antitrust litigation at Patton Boggs LLP and Cleary Gottlieb LLP.

Shapiro began by pointing out that in the early sixties, Justice Byron White's confirmation hearing for a seat on the Supreme Court of the United States lasted only 50 minutes and consisted of 3 questions. In contrast, today's lower court confirmations last much longer. This could be because of the politicization of the Senate or the polarization of the country. Shapiro contends that while either or these reasons may or may not be true, what has really happened is that "the politicization and poisonous nature of confirmation hearings is a function of the judiciary's having perverted its own rule in constitutional interpretation."

Shapiro explains that the Constitution the framers envisioned was largely about unenumerated rights retained by the people, and limited powers granted to the government by the people. "This view of the Constitution and the constitutional order, with some necessary amendment held firm for the first 150 years of American history." Shapiro points out that through the first 19th century, debates on government action were not about whether it was good or bad - it was about whether the government had the power.

He cites the majority opinion in *Kansas v. Colorado* (1907): "But the proposition that there are legislative powers affecting the nation as a whole which belong to, although not expressed in, the grant of powers, is in direct conflict with

the doctrine that this is a government of enumerated powers." This conception of government began to deteriorate during the progressive era, under Roosevelt and the New Deal: Roosevelt threatened to pack the court if they did not approve his plans; although he did not carry out his threat, the court bent to his will to prevent packing of the court, Shapiro notes.

Shapiro also cites to the *Helvering* case, which stands in contrast to a textual interpretation of the Constitution. *Helvering* held that a government can take action *if it is* for the general welfare, while a textual reading of the Constitution indicates that of *the powers Congress possesses*, the enumerated powers must be used for the general welfare. The difference in wording is key, as "the Court has not checked government power," Shapiro insists. He adds that the Court has granted Congress broad discretion, beyond what is allowed by the Constitution.

"If judges are acting like this, then of course it is important whether the judge is left-wing or right-wing, and what their politics are, what they wrote in a memo...if judges are super-legislators, of course it is the politicians' duty to only push along judges that reflect their views," Shapiro concludes. As the judicial role has become more political, so has the hearing process to appoint judges. He points to many vacancies in the circuit courts and the fact that even more than 8 years after he left office, there are more Clinton-appointed judges in active service at the circuit and district level.

Shapiro fears that President Obama will placate his left-wing base by nominating judicial activists. As Senator, President Obama voted against Samuel Alito and John Roberts, one of only 22 Senators to do so. Shapiro is critical of Obama's votes on these justices: "He said of John Roberts that he was lacking in empathy. It seems he was calling for a federal Oprah, someone who can empathize with the little people.

What does that mean? It is a glib line, sweeping rhetoric. But what does that mean?"

Shapiro contends that the idea of looking out for the little guy is untenable. "What happens if it is a single mom against an African American? Or when a poor son of coal miners is denied entrance into a university because a Hispanic student was given admission? Who wins in these situations?"

Shapiro went on to sharply criticize the justices that Obama admires. He reminds the audience that Stephen Breyer employs foreign law to interpret the Constitution, citing the Supreme Court of Zimbabwe and the European Court of Human Rights. Ruth Bader Ginsburg similarly likes to use foreign laws.

Shapiro warns about the use of litmus tests and politics in selecting judges, going so far as to claim that taken to its logical extreme, it would lead to government-financed abortions, punitive damages for selling fatty foods, destruction of the corporate veil, and a Constitutional right to welfare. In response to a student's question, he brought up the curious example of California's medicinal marijuana laws, which was ruled on in *Gonzales v. Raich*. "What was interesting in *Raich* was that the so-called liberal justices voted to strike down California's medicinal marijuana law on the justification that it was interstate commerce. Rehnquist, Thomas, and O'Connor dissented on the interstate commerce grounds."

Erik Carter, President of the Federalist Society at USD, organized the event. He felt the event went well, but noted that it was not as popular as some of the "sexier" topics presented in the past. "Even though I agreed with a lot of the speaker's libertarian views on what the law should be, I don't agree with his view of what the law is, at least in respect to his more expansive interpretation of the privileges and immunities clause," said Carter. Libertarian judicial activism is just as bad as the liberal or conservative kind."

SUMMER PROGRAMS ABROAD AVAILABLE



Oxford, England

Summer programs for going abroad are now available, with programs in Barcelona, Florence, Moscow, Dublin, London, Oxford and Paris. The first three locations run from late May to late June, but the three U.K. locations and Paris begin at the end of June.

These programs are seeing increased popularity, with this summer expected to see full enrollment. This is because the plummeting economy has made summer jobs difficult to find for second year students, and almost impossible for first year students. Also, the improving dollar has lowered the cost of these programs, particularly in the U.K., where the exchange ratio to the pound has improved

dramatically. Improvement against the Euro is less dramatic, but still substantial. Last summer, a Euro cost \$1.65; today's rate is \$1.30, a discount of 20%.

The quality of the programs continues to be very high - Paris courses are taught by faculty from Harvard, Columbia, Georgetown, and the University of Paris, all of whom have written casebooks.

The tutorial in the Oxford program is very attractive to people who wish to improve their writing skills. This program permits students to teach themselves a course using the Oxbridge tutorial method in which each student has a don (or tutor), who assigns an initial paper based on a reading list. The student uses the centuries-old Bodleian Library to research the topic, and writes a short paper that the student then reads to the don, in 10 minutes. The remainder of the hour's private discussion between the student and the tutor covers research, writing style, argumentation, and evaluation skills. At the end of the tutorial session, the student goes off with another topic and another reading list, as well as improved understanding of writing techniques.

Another significant aspect of the programs is the ability to actually practice international law for

clinical credit. These internships are available for persons fluent in Russian in Moscow, for Spanish in Barcelona; and for everyone fluent in English in London and Paris. Occasionally, these internships result in a permanent job offer.

Full details on the programs are at www.sandiego.edu/lawabroad

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Kremlin, Moscow, Russia

From Budget, page 1

culmination of a decade-long spending binge by the state of California. The Golden State has a pattern of spending far beyond its means.

In an attempt to bully Republican lawmakers into supporting the Democratic proposal, Democratic State Senate President Darrell Steinberg locked down the Senate Chamber and prevented lawmakers from going home. "Bring a toothbrush," [Steinberg] said. "I will not allow anyone to go home to resume their lives or any kind of normal business."

This hard-knuckle style of politics failed to convert State Senator Abel Maldonado (R-Santa Maria), the targeted swing vote. Apparently some people cannot be bullied into switching their votes. Because California requires a two-thirds vote to pass any Budget, this proposal will not pass.

Without a new budget in place, Governor Schwarzenegger will notify 10,000 state employees today that they could lose their jobs. Schwarzenegger also announced he will shut down \$3.8 billion of public works projects, including many already under construction, because the state does not have enough money left to pay for them.

Proponents of this bill will attempt to spin this issue as necessary to save jobs and to stem further hardship. But there is no evidence this proposal will solve the crisis. Standard & Poor's cut the rating on \$46 billion of California's bonds to A from A+, giving it the lowest credit rating of any U.S. state. Because of the state's poor credit and inability to borrow money, state lawmakers will be forced into responsible spending and God forbid, a balanced budget philosophy. I know this may be difficult to grasp for lawmakers who are used to spending whatever they want in order to satisfy political constituents. However, California lawmakers need forced financial discipline, a remedy not feasible in the United States Congress.

I am not going to fault opponents of this bill for failing to consent to such a significant increase in taxes. Raising taxes will not help the lives of Californians through this economic climate. Since tax increases have a funny way of staying permanent, I would be hesitant to sign on as well. California remains one of the states in the U.S. with the heaviest taxes. Increasing the tax burden of residents in this state is not the correct formula for moving forward. Until lawmakers pledge to adhere to a Balanced Budget philosophy for the immediate future, I urge California lawmakers to oppose tax increases.

BESIDE THE POINT

By Andrew Adams, Lyndsi Andreas,
Eva Garon & Tom Yatteau

There are watering holes outside of Downtown and PB, unbeknownst to bar review planners. The only question is how to find a good place to get \$2 PBR without ending up in Chula Vista or Tijuana (Tijuana is better). As many students know, there are some great places in the Ocean Beach/Point Loma area, but don't go down there blind. You might find yourself at Winston's on Freestyle Night or in a cave in Sunset Beach (cave is better). So here are some reviews of some selected places to help you on your next night out.

SUNSHINE FACTORY: Located on Newport, OB

This place is awesome. They serve food on the bottom floor right next to the entrance, have a 2nd floor perfect for taking a break under a straw roof and an indoor/outdoor cabana area with an oversized mural of OB. Not particularly cheap, but definitely the biggest and possibly the best place on Newport.

This may be a plus or a minus (depending on where

you stand), but they have a smoking lounge right in the bar. This not only allows you to travel back in time to a different America, but you also get the added bonus of smoking without worrying about the packs of wild dogs that roam Newport. There are about four bars on the way to Newport Pizza, the best being Gallaghers, so don't miss that on your way for a late night swim.

NICK'S: Located on Santa Monica, just north of Newport at the beach

This isn't so much a late night bar, but it is a great place for watching a game during the day. In fact, if you want to watch the first two rounds of March Madness, this will be the best place to do so. Also a good brunch place, because the crab cakes benedict will make you glad you were born with taste buds. Come back for happy hour (from 4-7 every night), which has good specials, including a cheap burger/beer deal for \$6. Or if there isn't something worth watching, head west to the more elegant dining room that overlooks the ocean (where it meets Newport, so you will likely see a drumcircle/crack deal/tourist robbery).

THE LAST DAY: Located on Rosecrans, just north of Nimitz in Point Loma.

It's almost like some giant picked up San Diego and shook all the weirdos out to the point. Some good looking bartenders, owned by a 60-year-old woman who putters around behind the bar, populated by 10-15 stevedores playing pool, some under-21-looking kids, older swaying drunks, all played to a background of karaoke every Friday and Saturday night. And for some reason, a fair amount of good looking girls and a big-screen TV. Note: the pool players are hustlers with the subtlety of Sex Panther (by Odeon). Paul Newman is turning in his grave....

RILEY'S: Located at Nimitz & Rosecrans in Point Loma

This is really a sports bar tucked into a spot that a bad hotel bar was/is. Except someone bought it and spiced it up with Tuesday fish fries/R & B nights and enough space to fit a Bill Withers cover band. Wildcard, for sure. But get out there sometime when you have your adventuring pants on.

CATALINA LOUNGE: Located at Catalina & Voltaire on the Point Loma/OB border

This place is everything you want in a bar, and if you haven't been there yet, get there. The beer is inexpensive, they have pool, shuffleboard, photobooth and a pretty good jukebox. Good TVs, but it has been getting crowded lately so try and get there on a school night. However, there are older women who offer to buy you drinks but react violently to any perceived slight, no matter how minor or imagined. So watch it....

If it is too crowded, visit Mac's up the street, which is a good second option. The regular bartender is an incredibly nice older woman who always has a smile on her face. The drinks are pretty inexpensive, and pool is only fifty cents a game. However, the beer is often skunky, and the floor is slanted, so leave your rollerblades at home.

BAKERS SQUARE PIE SHOPPE PUB: Located at Sports Arena and Midway

This place may be kind of hard to find at first because it's not actually inside of the pie shoppe, but on the side. It's a pretty good place to grab a beer, has some interesting clientele, and even boasts its own Bakers Square Pale Ale that's somewhat decent. However, if your drink starts to fall, the bartender will stop it by sticking her arm inside of the glass and you need to be prepared to find knuckle hair and finger jam floating at the bottom of your drink. The plus side is that there is food conveniently located

inside the building. Can't speak for the knuckle jam content though...

So we hope this helps. You should also know that pretty much all these bars except Nick's are cash only. So hit the ATM before you head out.

ACCOUNTABILITY ON THE RISE

By Peter Stockburger, Staff Writer

For those disheartened and dismayed by the past decade of perceived non-accountability, relief is on its way. Accountability, both domestically and internationally, is on the rise.

Internationally, accountability for wrongful acts of state and individuals is continually developing. In The Special Court for Sierra Leone, International Criminal Tribunals for both Rwanda and The Former Yugoslavia, Special Tribunal for Lebanon, Extraordinary Chambers for Cambodia, and the International Criminal Court, individuals are being investigated, arrested, tried and convicted for their egregious and wholesale abuse of human life. Most recently, in a striking departure from the Bush Administration, United States Ambassador Susan E. Rice, the US Permanent Representative to the United Nations, called for an investigation into possible war crimes committed by Israel in the recent Gaza fighting. Rice noted that there are now credible accounts that need to be investigated. The question is, according to Georgetown Law professor Jonathan Turley, whether "the Administration will apply the same standard to the investigation and prosecution of war crimes that are now clearly identified in the Bush Administration involving an official torture program."

Domestically, accountability is equally on the rise. According to the New York Times, federal authorities are now examining the early, chaotic days of the \$125 billion American-led effort to rebuild Iraq. They have included in their inquiry senior American military officers who oversaw the program, Col. Anthony B. Bell and Lt. Col. Ronald W. Hirtle. As part of the inquiry, authorities are taking a fresh look at information given to them by Dale C. Stoffel, an American arms dealer and contractor who was killed in Iraq in late 2004. According to Mr. Stoffel, before he was shot on a road north of Baghdad, there was a picture of tens of thousands of dollars stuffed into pizza boxes and delivered surreptitiously to the American contracting offices in Baghdad, and payoffs made in paper sacks that were scattered in "dead drops" around the Green Zone, the nerve center of the United States government's presence in Iraq. Mr. Stoffel, who gave investigators information, was deemed credible enough that he was granted limited immunity from prosecution in exchange for information. Prosecutors have won 35 convictions on cases related to reconstruction in Iraq, yet most have been involving private contractors or midlevel officials. The current inquiry is aiming at higher level officials. The investigations are being conducted by the Special Inspector General for Iraq Reconstruction, the Justice Department, the Army's Criminal Investigation Command and other federal agencies.

Although these anecdotes are not exhaustive, they do illustrate that official accountability is on the rise. As a concept rooted in ethics, accountability is often associated in our cotemporary syntax with words such as responsibility, enforcement, and liability. It connotes visions of non-impunity and transparency. It is a word associated with a new administration and a new approach to governing. Whether this trend will continue is yet to be seen.



GITMO: OBAMA'S EXECUTIVE ORDERS

By Annie Macaleer

On his third day in office, Pres. Obama signed three executive orders that will change the way the U.S. combats global terrorism. Primarily, the orders will shut down GITMO by January 22, 2010; require all U.S. interrogators in all agencies to adhere to rules in the Army Field Manual; establish a taskforce to determine what to do with the remaining 248 detainees at GITMO; demand that the U.S. treat detainees in accordance with the Geneva Conventions; and close all CIA detention centers ("black prisons") worldwide.

Generally, Obama has the right idea about closing GITMO, but this necessity stems from a combination of public relations disasters and recent constitutional complications in *Boumediene v. Bush*, 128 S. Ct. 2229 (2008). It does not stem from some higher moral philosophy, despite cries from civil libertarians declaring as much. The problems with Obama's proposals are three-fold.

Problem 1: Scrapping Military Commissions

First, and most importantly, Obama's taskforce is considering the following options as means of prosecuting the detainees: civilian criminal courts, courts martial, or an entirely new system.

The American criminal justice system was not designed for non-conventional criminals, such as enemy combatants. Certain safeguards are needed that these courts do not provide, such as ways to handle matters of national security and ways to protect the non-parties (lawyers, judges, jurors, and courthouse staff). The most important consideration is that the Constitution applies to civilian criminal courts. This means that enemy combatants could potentially avail themselves of full constitutional protections, including the rights to Miranda warnings, a speedy trial, and due process. The U.S. government would surely lose most of its cases on criminal procedure technicalities. And this does not even take into account an even bigger public relations disaster--Americans do not want these dangerous terrorists transferred to detention facilities near their homes and their children while they await civilian proceedings.

A court martial is the military's court of justice, which tries criminal charges against members of the military. The Uniform Code of Military Justice (UCMJ) governs courts martial, and it outlines thirteen categories of people who are subject to its provisions. Most of the categories deal with active and retired members of any of the armed forces, but two subsections include POWs and lawful enemy combatants. Unlawful enemy combatants are not included in the UCMJ. Therefore, without either changing the nature of the detainees' status or the provisions of the UCMJ, courts martial cannot proceed. In addition, courts martial are impracticable. The UCMJ mandates heightened evidentiary requirements which are often difficult to meet when dealing with suspected terrorists. The trial of enemy combatants requires a specialized evidentiary standard that is suited to the often difficult-to-prove and circumstantial nature of terrorism.

Building an entirely new system is infeasible and even a bit ridiculous to consider. The time, resources and energy that would be required to design and implement such a system would be astronomical. The War on Terror could even end before such a system could be instituted. Because criminal civilian courts, courts martial, and a new system are unsafe, unviable, and inefficient options, military commissions should stand as the main method of prosecuting enemy combatants. Military officials are highly trained in dealing with sensitive situations, and the military closely guards the secrecy of its proceedings. While such secrecy may foster criticism, it will ultimately protect Americans. Most importantly, military commissions have been used repeatedly throughout American history, including the Revolutionary War, the Civil War, and World War II. They are time-tested and reliable, especially for non-conventional enemies.

Problem 2: Relying on the Geneva Conventions

The second problem with Obama's proposals involves his interpretation of the Geneva Conventions. A strict reading of the Geneva Conventions will reveal that these rules only apply to POWs, which means that the prisoner must be a member of a recognized

nation's armed forces and follow the laws of war. The detainees that the U.S. government is holding at GITMO are some of the most dangerous members or associates of al Qaeda and the Taliban. Neither of these groups have a recognized military that would fall under the Geneva Conventions. Additionally, neither group follows the laws of war, which mandate that the soldier must identify himself as a member of the military and not target civilians. Al Qaeda and Taliban combatants cower in civilian clothing while they murder innocent men, women, and children.

Problem 3: Shuttering CIA Black Prisons

The last problem is that CIA black prisons are crucial in the War on Terror. The nature of this war is unlike any other war that history has witnessed, and new techniques are mandatory. Our national security rests on the ability of CIA interrogators to push when necessary, especially if it results in life-saving information. For example, in addition to confessions relating to multiple past terrorist plots including September 11, the CIA's interrogation of Khalid Sheikh Mohammed foiled several other plots, such as al Qaeda operations to develop anthrax and to strike a U.S. Marine camp in Djibouti.

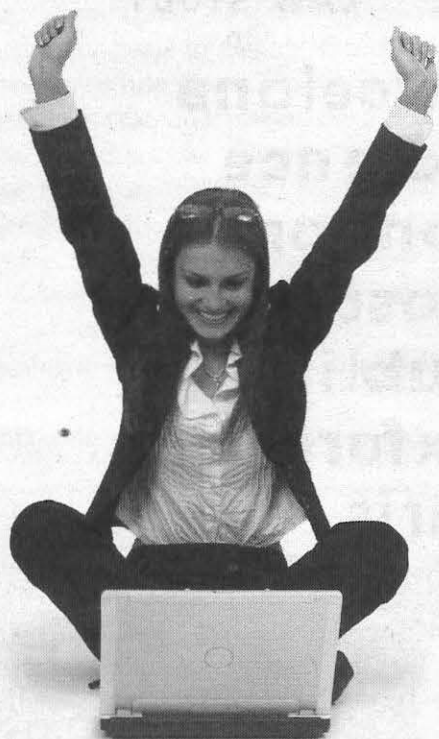
Obama does deserve some credit, however, for leaving a small loophole: Under these executive orders, the CIA still has the authority to conduct renditions, which are secret abductions and transfers of prisoners to countries that cooperate with the U.S. This is a minor victory amidst a sea of losses, but it will be interesting to see how the next year plays out.



Khalid Sheikh Mohammed:
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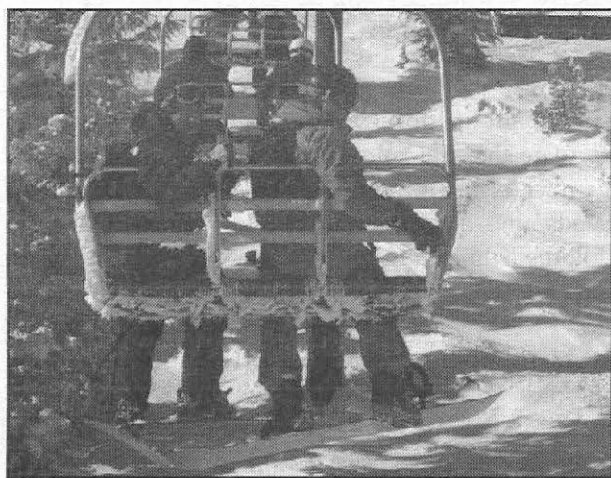
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DUTY TO SKI OR BOARD THAT BOOTY

By Forrest Merithew, Staff Writer



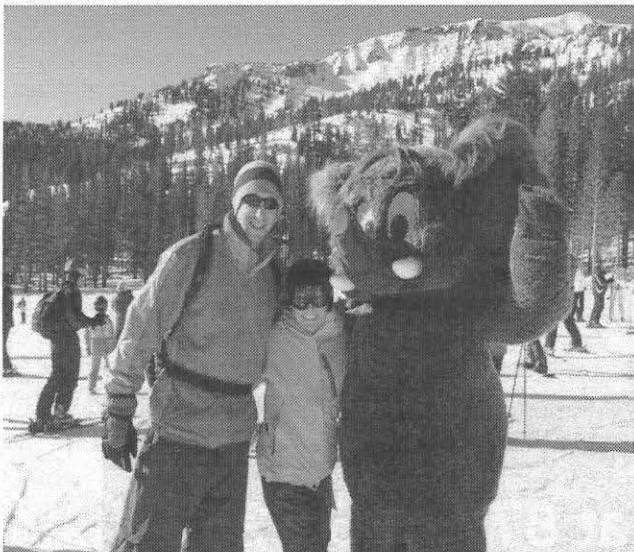
I had a fortuitous start to my summer clerkship, back home in Asheville, North Carolina, last summer. One of my first assignments was researching states comparative duty of care laws for the ski industry. North Carolina was rewriting its ski industry legislation and my firm was lobbying on behalf of the NC Ski Association. We were trying to find laws which decreased the amount of supervision and related liability for resorts, while recognizing certain mandated steps and precautions which they needed to take for the safety of those on the slopes.

Lucky as I was, working on skiing code is nothing compared to what Southern Californians have access to. You can ski on real snow (or at least quality groomed stuff), not east coast ice with all the dangers and obstacles on hand. This season may be an especially good time to hit the slopes with all the winter storms and surprising rainfall that's been coming down laying blankets of snow that have translated into a solid base with potential through-the-trees and over-the-jumps action.

Now, I just had my first experience boarding in real snow about a month ago, and it was amazing. But whether you catch the fresh stuff or a groomed "Southern California sunny slopes day" the quality of mountains in the area are above and beyond what most states or even regions have to offer, especially if that whole "cold" part of heading to the mountains just isn't your thing, baby. As med-semester closes in and the winter season begins to fade, you need to get the blood flowing (beer pong is not a sport) and take advantage of what this region has to offer. If you made spring break a traditional warm location or just haven't made it out of town recently, it's time to hit up one of the several drivable mountains for a ski or snowboard trip (tubing acceptable). I've been contemplating whether to start with quality or proximity and have decided to begin with shorter driving distance and finish with the best mountain experience.*

2 hours and 20 minutes away – **Mountain High Resort:**

While some people contend that Big Bear is closer, this mountain claims victory in the proximity battle (validated by googlemaps). This may be the smallest mountain on the list, but hosts a mixture of park



structures through a variety of alpine runs, all serviced by 16 lifts. It can make a worthwhile day trip, but expect ice and crowds, as you aren't the only one who likes it close.

Located in the Big Pines region of the Angeles National Forest, Mountain High hosts three resorts all within a mile of each other (West, East, and North). The bases are at 6,500 feet with peaks around 8,000 feet. The **West Resort** is made up of advanced technical terrain features and is where they generally host the competitions and promotions. It also has night skiing seven nights a week. The **East Resort** boasts the traditional alpine experience with challenging moguls and scenic forest trails overlooking the Mojave Desert. The **North Resort** is where you folks new to the sports will want to try your skills. It offers 70 acres of beginner terrain and the North Pole Tubing Park, the largest in Southern California - as if it matters.

Generally snow-making covers approximately 80% of the slopes providing groomed trails through April. Mountain High offers a free shuttle service between the bases of each resort which runs from 8 AM till 6 PM seven days a week, while the lifts operate from 8 AM till 4 or 4:30 PM. You can purchase 4-hour (\$49 or \$59), 8-hour (\$54 or \$64), or night (\$30 or \$35) lift tickets (prices depend on holiday and peak times, check website: <http://www.mthigh.com/rates/lifttickets.html>).

2 hours and 40 minutes away – **Big Bear Mountain:**

These two resorts, located in the San Bernardino National Forest above the community of Big Bear Lake, appear to be the more popular of the two nearby mountains. **Big Bear** is mainly a freestyle park, recently named the #1 park in the nation by Transworld Snowboarding Magazine, with an assorted mixture of structures and obstacles, so you can get your tricks on. For you more seasoned law students, be careful as "tricks are for kids" and they can be found flying through the air in all directions. But they do have quite the hip bar/restaurant area at the base from which you can view those whippersnappers in action while drinking a nice cold beer; something which they can't land.** **Snow Summit** is the general alpine mountain with a number of groomed runs from beginner to black diamond. There are also a few jumps and freestyle obstacles to be found if you like to test your luck occasionally (as I often find challenging/embarrassing).

The base lodges are at 7,000 feet and the peaks around 8,800 feet, with a total of 17 miles of runs. Lift tickets can be purchased on weekdays for \$53 and weekends for \$66, you can also ride the lifts after 12PM with a half-day ticket for \$10 less. They also have the occasional night skiing. The lift tickets for either resort can be used at the other, and, like Mountain High, there is a free shuttle between the two bases. So if you wanna hit both, Big Bear may be a more appropriate location than Mountain High for an overnight or weekend trip because it has many more rentals, cabins, and hotel rooms. Information at: http://www.bearmountain.com/index_winter.php.

6 hours away (depending on traffic and conditions) – **Mammoth Mountain:**

Chains Recommended if there's bad weather (Sorry Mike, gotta advise safety)

This mountain, located in the Inyo National Forest, is my new top spot! Oh man, catching this mountain during any storm, even a Sierra Cement Mixer, is like soul food with a private show from your favorite music artist all in one (can you say

perma-grin?). Due to the length of the drive, this is no day trip. I would recommend taking at least a 3 day weekend, which will at least give you the opportunity to spend two whole days on the slopes. This mountain is expansive and if the conditions allow you to get off the groomed paths, you'll never grow bored. The terrain becomes more difficult and has steeper angles as it transitions from skier's right to left, besides chair 9. Of course if you go to the top of any peaks be prepared for a little adrenaline rush.

The mountain elevations range from 8,000 to 11,000 feet. Covering that distance throughout the day will take its toll. While you may expect to head out to Mammoth Village in the evening, beware as a full day skiing or boarding probably won't leave you with much in the tank for socializing. Plan on resting your sore muscles in your lodging with either a full stomach, preferred drink, or both. Information at: <http://www.mammothmountain.com/>.

It's Southern California, so you may get away with flying down the mountain in a t-shirt and catching a little sunset surf at the end of the day if you plan accordingly. Get out there and find out! And remember, for any of those of you with upcoming birthdays, the resorts give you free lift tickets on the day. So if you've been complaining about the recent showers, now's your chance to find out why some of the rest of us are excited about those storms, and it's not just because we're solid tree huggers.

* Minimum 8 hour drive/obligation to space and reason has kept Tahoe out of this discussion

**Inebriation will occur at a faster rate in a higher altitude

***Thanks to my friends for helping make these experiences happen.



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