

COMMENTARY

CALIFORNIA WESTERN SCHOOL OF LAW

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THE COMMENTARY IS BACK - RESILIENT AS EVER!



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Note From the Editors

Meet the Editors!

Alyssa Kucera

Alyssa is a 2L at Cal Western with an interest in IP and entertainment law. Alyssa is one of the Editors-in-Chief of *The Commentary*, as well as the VP of Entertainment for the Entertainment and Sports Law Society. After law school, she hopes to work at a firm and help artists protect their work. In her free time Alyssa likes to shoot and develop 35mm film, hike, and spend time with her husband, their dog, and their cat.



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Brenda Mendes

Brenda is currently a 3L, who is spending her last year serving as one of the Editors-in-Chief for *The Commentary*, President of the Employment and Labor Law Society, and Vice-President of XONR8. In the past, Brenda has served on the board for Latinx Law Student Association, Health Law Society, and Public Interest Law Foundation. Before law school, she worked in criminal defense, personal injury, children's law, family law, and human rights and constitutional law. In her free time, she enjoys spending time with her two dogs (Nina and Charlie), hiking, and riding bikes.

New Media Rights: An Internet & Media Law Clinic

By: Alyssa Kucera

New Media Rights is a clinical program offered year-round at California Western. The clinic is located on campus and is run by Director Art Neill and Assistant Director Erika Lee. The clinic is comprised of three units and includes both clinic hours and a class component that meets once per week.

New Media Rights was founded by Art Neill in 2007 as part of San Diego's Utility Consumers' Action Network. New Media Rights was initially founded to address the need for public interest legal services in the realms of intellectual property, internet and new media. Since its inception, New Media Rights has served the public by providing pro bono legal services, educating students along with members of the community, and advocating for creators and entrepreneurs. Early grants from the California Consumer Protection Foundation, Rose Foundation, Prebys Foundation, and others allowed for New Media Rights' expansion, and in 2012 New Media Rights became a clinic at California Western School of Law.

New Media Rights' goal of educating the public about legal issues in the creative sphere is supported through its publication of a book, Don't Panic, its website containing legal guides, and its fair use app. Most of the clinic's educational resources are free and open to the public. The clinic and its members also

collaborate with a variety of local and not-so-local schools, creative organizations, and legal organizations including the San Diego Film Consortium, KPBS, California Lawyers for the Arts, and Harvard's Berkman Center for the Internet and Society.

Since joining California Western, hundreds of law students have worked in the clinic as interns and student fellows. While working in the clinic, students get hands-on experience with client interviews, drafting and reviewing contracts, sending DMCA takedowns, conducting copyright holder searches, and writing memoranda for clients, among other activities.

The clinic is kept small – each trimester six applicants are accepted as new clinical interns, and two to four prior interns continue as student fellows. The small nature of the clinic fosters teamwork, creativity and friendship between the students involved. Throughout the course of the trimester, students have the opportunity to address a variety of different legal topics through their work with real clients in the transactional realm, including fair use questions, copyright infringement cases, trademark cases, and contract-related issues.



Many of New Media Rights' graduates have gone on to work in the entertainment law and privacy law sectors. Graduates include attorneys working at Lionsgate, Privacy Rights Clearing House, Wikimedia Foundation, Microsoft, and Netflix and many have gone on to start their own law firms that address issues surrounding intellectual property, technology, and media. In addition to New Media Rights' student successes, the clinic itself has had a variety of successes over the years. New Media Rights employees and student fellows have participated in DMCA Anti-Circumvention proceedings and discussions relating to the Copyright Office Small Claims Board, as well as supported fair use expansions for the benefit of filmmakers and creatives.

Students interested in transactional law, intellectual property, privacy law, or entertainment law are likely to find a welcoming and safe environment to learn and improve their skills within the clinical setting of New Media Rights. The clinic typically seeks to hire students who are interested in the clinic's practice areas and the types of clients the clinic works with, as well as problem-solvers. According to Art Neill, the clinic also looks for those who are open to learning "how to lawyer in a problem solving generative way where not all cases are as clearly adversarial as a litigation context." Interested students are encouraged to apply early and often, and to reach out directly to Art Neill and Erika Lee with any specific questions.

Author
Alyssa
Kucera, 2L



Career and Campus Opportunities in International Law



The International Law Society held its first general meeting of the 2023-2024 school year. Professor Cooper, Professor Aceves, and Professor Oppong each spoke about potential career paths students can pursue within the international law field. The professors also highlighted the International Law Concentration offered at California Western and some exciting international law opportunities on campus. Opportunities such as the competitive Jessup team to one of the oldest International Law Journals in the nation. Our Junior President and Vice President covered upcoming events to keep an eye out for. This includes new crewnecks for sale, a textbook fair on November 13th and 14th, and a networking mixer!

Return of the Great Protector? Current State of the 10th Amendment

By: Nicolas Cussen

The 10th Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." (1) This one sentence, crafted by the founders of our nation, has proven to be one of the most important tools in regulating federal power against the states.

The 10th Amendment post-1937 was minimized to nothing more than a "truism" affirming federalism. (2) However, this period of unlimited federal power began to end with the hallmark decision of *Printz v. United States*. The Supreme Court reaffirmed that the Tenth Amendment places affirmative restraints on Congress, and the Tenth Amendment serves as a structural mechanism to protect liberty. (3) This case concluded that "although the Framers intended the federal government to rely on state officers to perform certain duties, Congress could not impose these duties without the consent of the states." (4) Why is this important? Because it helped contribute to the establishment of the anti-commandeering principle that continues to hold significance in contemporary courts.

Why create the anti-commandeering principle? The rationale is that the federal government should not be able to use the states' resources to further their own objectives, as seen in *Printz* where the Supreme Court decided that

state agencies would not be required to perform federal duties. (5) The creation and enforcement of this principle has strengthened the dual sovereignty between the federal and state governments and allowed the states to have the power to strike down federal laws believed to impede on the states' powers or rights.

One of the main arguments that has driven the Supreme Court to reinterpret the Tenth Amendment as an extremely strong tool to strike down laws is the concept of "original intent." (6) This concept is based on what the framers intended with the creation of the Tenth Amendment. Now, does the post-1990s Supreme Court provide an accurate representation of the original intent of the framers? This is debatable because the original intent argument consists of two bases. First, the literal reading of the Tenth Amendment grants all powers not delegated to the U.S. to the States. However, this can be quite vague regarding whether the states are allowed to strike down the laws of the federal government. Second, the debates and writings on the Tenth Amendment, provide a strong argument that the Tenth Amendment is not intended to limit the substantive power of the federal government because the first eight amendments already intend to limit federal power. (7) In addition, even though the current Justices "have held that the Tenth Amendment limits federal action pursuant to an enumerated power have conceded that the Amendment was not intended to be a substantive limitation." (8) On the other hand, the Supreme Court

post-1990 has rationalized the use of the Tenth Amendment as a limitation to counteract the extremely expansive state of federal commerce power. (9) This rationale has successfully achieved a rebalancing of power between the federal and state governments, adhering to the framers' intent to strengthen the federal government from the limitations of the Articles of Confederation, while concurrently preserving state power to prevent the establishment of a tyrannical government.

This approach by the Supreme Court can be argued to represent the original intent of the Framers. The post-1990s Court found that the federal government had been greatly expanded by the Commerce Power, which the Court found to be against the original intent of the Framers. (10) For instance, if reviewing the little correspondence or debate transcripts from the Constitutional Convention relating to the Commerce Clause, it can be suggested "that [the Commerce Clause] was not intended to have the immense scope that it has been interpreted to have today." (11) This reinvigoration of the Tenth Amendment has helped to rebalance the States' powers in regard to the federal government by curbing the greatly expanded Commerce Power.

In conclusion, when examining why the Supreme Court, in the post-1990s era, transformed the Tenth Amendment into a potent tool capable of striking down federal laws that encroach upon states' powers, the primary motivation has been to rein in the excessively expanded Commerce Clause. This clause has provided the federal government with justification to intervene in various aspects of individuals' or organizations' lives

throughout the U.S. A crucial takeaway stems from the Tenth Amendment, explicitly stating that powers not delegated to the federal government are reserved for the States. The post-1990s Supreme Court justifies the transformation of the Tenth Amendment into a formidable instrument as a means to diminish the influence of the Commerce Clause. The lingering question revolves around whether the Supreme Court will persist in this interpretation of the Tenth Amendment.

Note: I would like to express my sincere appreciation for the invaluable assistance provided by Professor Jessica Fink during the entire process of writing this article.

Author Nicolas
Cussen, 2L



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Can You *Really* Sue the City of San Diego?

By: Caitlyn Nicole Bellamy

As residents of San Diego, you have probably noticed the ongoing crisis regarding unhoused individuals. As of January 2023, the homeless population has drastically increased to 10,264 individuals – a 22% increase from 2022. (1) Business owners claim they are being unfairly subjected to deterrence of their businesses due to the expansion of encampments. In fact, seven downtown businesses, with the named plaintiff as Alcer, have recently filed a claim against the city of San Diego. (2) These businesses are seeking \$2.5 million in damages “related to the deepening homeless crisis they say has decimated their livelihoods.” (3)

Now, one might be wondering if their claim is even valid. In other states across the U.S., business owners have tried, and somewhat failed, to sue their cities for a lack of responsiveness to said crisis. Recent lawsuits that have made it to the Ninth Circuit have set precedent that may damage others’ suits against their respective cities.

Does the City Even Have a Duty?

The duty of the City to reduce the homeless population does not actually exist. (4) There is no penalization for state or local governments for failing to reduce the homeless population or to make housing available to those without it under current California law. (5) However, Governor Newsom has recently laid out a proposal that would force municipalities and the state to house homeless Californians. (6) The likelihood of this new proposal making its way into law is uncertain, as a large majority of

the house would have to vote to pass it. (7) However, San Diegans might be turned off by this idea, considering that San Diego is now the most expensive city to live in within the United States. (8)

Although the City has no existing duty to house the homeless, it certainly has a duty to maintain public health and safety standards, which is the basis of Alcer’s lawsuit. The claim asserts that the City is “liable for injuries and damage caused by dangerous conditions of public property under its jurisdiction pursuant to Cal. Gov. Code § 835.” (9) Further, Alcer states:

Claimants in the Zone have suffered special injury distinct from the injury to the general public by the virtue of their ownership of properties and operation of business in the feces-ridden, urine-soaked, open air drug market, which the City has permitted and encouraged to exist as they have lost sales, tenants and suffered a diminution in property values which is directly connected to the unsafe and dangerous condition of City property. (10)

Those who are a part of this lawsuit do feel they have a moral obligation towards the unhoused community, but the damage done to their businesses leaves them blaming the City. This action should come as no surprise. Several businesses, such as the longest-standing Starbucks in Hillcrest, have had to close their doors due to the ongoing crisis. (11) The parties to the lawsuit fear for both individual and public safety. One party to the lawsuit stated in the collective claim that their employees have been both verbally and physically assaulted by unhoused individuals;

one employee was even punched in the face. (12)

Let's Talk Precedent

The Ninth Circuit Court of Appeals recently held that homeless people cannot be criminalized for sleeping outside if no alternatives exist. (13) Strangely enough, after the Ninth Circuit's holding, the judge presiding over *Brown v. City of Phoenix* executed a preliminary order in March that required the city to begin clearing out the encampment also known as "The Zone." (14)

In theory, the Ninth Circuit's holding makes sense – it doesn't seem right to criminalize someone for not being able to afford housing. However, the "no alternatives exist" language calls for criticism. There are alternatives, likely not enough, but they do exist. How the Ninth Circuit expects to know if there are actually no alternatives or if an unhoused individual has no interest in these alternatives creates an issue in and of itself.

So, Does Alcer's Lawsuit Stand a Chance?

After the decision in *Brown v. City of Phoenix*, it appears Alcer might actually have a chance if the business owners choose to move forward with the lawsuit. The group's attorney, Craig Combs, feels that is the only option left for the group after countless efforts to resolve the issue on their own. (15) The City's ongoing efforts to combat the crisis may put a dent in Alcer's argument; in *Brown*, the court explained that the City of Phoenix was maintaining a public nuisance, which is what led to the order to clear the encampment known as "The Zone." (16) Ultimately it will be up to the

judge who hears Alcer's case, but the outcome will have a major effect on any subsequent lawsuits that may follow.



Author Caitlyn Nicole Bellamy, 2L

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Five Tips to Survive Law School

By: Sydney Stuhmer

Law School is hard; trust me I know. I remember being a 1L searching on reddit for tips and advice on how to manage the stress and confusion of your first year of law, and I remember feeling validated and relieved when I read similar stories from other students. Now that I am a 2L, I find that I now have a better idea of how law school works and 5 things that I learned from my 1L year that I still try and implement in my 2L year to maintain my mental and physical health while in law school, while also doing my best academically.

1. Find a routine that works for you

Routines are key. Now, I understand that not everyone may be as structured and focused on a routine as others, however, making and following some sort of a structured routine is pertinent to making it through law school. Whether this means you have every day and time blocked with what you will be doing, or a loose idea of what needs to get done within the next few weeks on a sticky note, any form of a habitual routine with help free up more space in your mind to be able to do other fun things besides school, while also staying on top of school. By creating a routine that works for you, you will be able to stay on top of things and navigate this extremely stressful and chaotic period of your life.

2. Comparison is the thief of joy: Do NOT compare yourself to others

This was something that I struggled with daily in my 1L year, and sadly continue to struggle with in my 2L from time to time. Law school is all about YOU and YOUR success. While it

is easy to compare yourself to your classmates and what they are doing and how often they are studying, it is so important to stay focused on you and do what is best for you. It's easy to compare yourself and doubt yourself when you feel you aren't working as hard as others or going to as many office hours as others. However, if that is not your studying technique, or what works for you then please, please, please do not feel you are any less or not doing enough. Comparison truly is the thief of joy. Although law school may not be the most "joyous" activity, comparing yourself to others is the thief of your own happiness and hard work. Just remember to do what is best for you, and success will always follow.

3. Balance, balance, balance

Law school is all about balance. Whether you are balancing friendships, work, school, extra-curriculars, and most importantly, your own happiness, balance is *key*. To maintain proper mental and physical health, you must make it a priority to balance your personal life with law school. Although it is easy to fall into a trap of just doing school and focusing on this very important part of your life, you won't succeed if you don't focus and balance on the other parts of your life as well. Make sure you take time for yourself, take study breaks, go on walks, and take care of your physical and mental health.

4. Maintain and create relationships with your professors

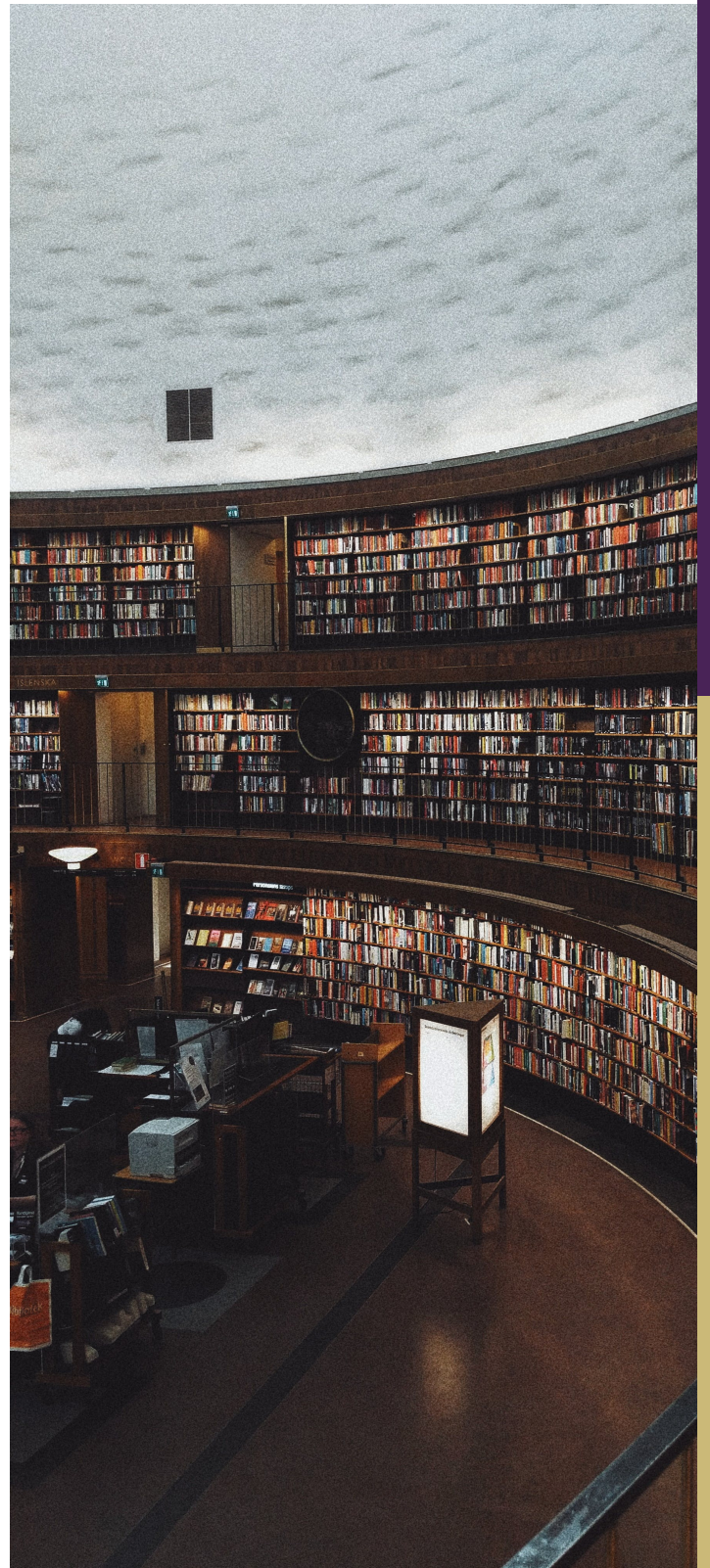
This is something that I learned and have applied more so in my second year of law school and wish I utilized more of in my first year. Our professors are here to help us, not only because it is their job,

but because they *want* to. In my second year, I have found myself going to more professor's office hours not only for help and clarity, but also to get to know and build a relationship with these professors. Our professors have been in our shoes and are so willing to help and it has been proven to me time after time now that I have reached out and asked for help. Although it may seem scary, it will benefit you in the long run. Whether you are reaching out to talk about the stresses of life, school, or asking for career advice, I have found that each teacher that I have reached out and spoken to has been more than happy to help, and I encourage everyone to at least try and reach out to one professor during law school.

5. DO THE READING

Now, while this might seem like an obvious tip, it is one that tends to be overlooked semester after semester. I know the readings are long, and the thought of reading and briefing a case every time sounds daunting. However, staying on top of the readings is so important, whether you are on call or not. It is so easy to fall behind on the readings and save it for another week, however, it only creates more stress. If you stay on top of your readings, you will find yourself not only more engaged in class because you know what is going on, but you will find yourself not as stressed.

Author Sydney
Stuhmer, 2L



WHAT IS THE BLACK LAW STUDENTS ASSOCIATION UP TO?

By: Caitlyn Nicole Bellamy

BLSA strives to create and sustain a community of Black students and attorneys, dedicated to the academic, professional, and social progress of the greater Black community. Throughout this semester, BLSA has held several events and meetings to bring this goal to fruition.

Tri-BLSA BBQ

In August, CWSL's BLSA, along with Thomas Jefferson and USD, hosted a tri-BLSA BBQ. The BBQ gave students an opportunity to network with their peers in a relaxed and comfortable environment.



BLSA BBQ at Mission Bay

Judge Bell's Book Scholarship

At our second general body meeting, BLSA had the privilege of hosting three honorable judges: Judge Houston, Judge Simmons, and Judge Bell. Due to Judge Bell's kindness and generosity, we were able to raffle away a \$500 book scholarship to a 1L. The Fall 2023 recipient was Nathan Character!

BLSA's 2023-24 Executive Board:



Zarina Sementelli, Maya Murphy-Cook, LeBrian Mays, Caitlyn Bellamy, Danielle Sanderlin, and Cody Hightower (not photographed).

Wind Down Wednesdays

Our social chair, Zarina Sementelli, created Wind Down Wednesdays to cultivate and sustain a welcoming environment for Black law students. This recurring event features arts & crafts, great conversation, and delicious snacks!



Nathan Character Receiving the 1L Scholarship from Judge Bell

So, What's Next for BLSA?

BLSA has several exciting events planned for the Spring semester! Additionally, we hope to retain our title as Western Region's BLSA Chapter of the Year.



Current and Past BLSA Board

We would also like to give a special thank you to our members and supporters for their commitment to the success of our Black law students!

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Fear Surrounds Me

By: Anonymous 3L

Fear (noun) is a distressing emotion aroused by impending danger, evil, pain, etc., whether the threat is real or imagined. There is a theme of warning new law students they might experience anxiety, depression, and possibly imposter syndrome. No one warns them that fear is the unseen beast that lingers in the air, heavy on your chest. I know this because since the beginning of 3L, my chest has felt compressed. The question is whether these fears are real or imagined.

I am a proud, Palestinian-American, first generation law student. My family fled from Jerusalem, Palestine in 1948 following the expulsion of many Palestinians from their homes. The recently heightened conflict between Palestine and Israel has left me scared to claim my identity. I fear that my claim to Pro-Palestine will hurt my career, hurt my non-Palestinian social circles, and hurt my chances of being a licensed attorney. Nevertheless, I also fear that my inaction to claim Pro-Palestine will result in the hurt of my Palestinian social circles, disappointment of my loved ones, and even trigger an identity crisis in myself. Others have claimed, following the recent reciprocal attacks in Israel and Gaza, that they fear me and my loved ones. Are these fears real or imagined?

Fear is a mysterious phenomenon. Despite the mystery, it is well understood. A fearful person, more often than not, misperceives the magnitude of the risk of harm. Fear is also contagious and can spread just upon the observation of another fearful person. We can see how many fears can be imagined, right?

The largest perpetrator of fear is the media. Media outlets incite fear in viewers through their reporting as a resource. Following October 7, 2023, the media reported a plethora of attorneys who lost their jobs and law students who lost work opportunities because of their pledges to Palestine. I feared that I would be next. I deleted the Palestinian flag from my Instagram bio, took off my necklace that reads “Palestine” and even urged my fellow student organization members to pledge their neutrality. I feared not just for my future, but for the future of my colleagues and friends. At that moment, my fears felt real. Not imagined.

In my journey of dissociating and retreating from the fear, I felt lost. I was missing a piece of myself that could only be reclaimed as Palestinian. I let the fear of losing respect as a professional replace my self-worth as a Palestinian.

Over the month of an ongoing massacre in Gaza, I realized that my five foot, six inch frame is not what made people on campus fear me. My intelligence nor my lack thereof is also not what made people on campus fear me. Rather, my love for my Palestinian culture, my obsession with the smell of fresh pita bread, my heart beating to the beat of a goblet drum, and maybe even the necklace on my neck that read “Palestine” incited some fear in my colleagues.

I want to remind readers that most of us are fairly similar. We all have one common goal in our journeys here at California Western, whether it be to graduate, practice the law, or maintain the law. My background and culture do not hinder my ability to be an effective practitioner. Nor does my counterpart’s background affect their ability to be an effective practitioner. My point is that our ability

to thrive in our careers should not be outlined by our personal faiths or cultures. I don’t want to give my life to a career where my colleagues fear me and my ability to represent the law because of my Palestinian background. Nor do I want my Palestinian background to prevent me from paving a way to success.

I strive to preserve the sanctity of this campus and our collective educational goal. I do not write or speak to create a divide on our campus, but rather find the unity of accomplishing our similar goal despite our differing passions and sentiments.

In short, I just want to practice and learn the law. I want to leave this campus without fearing for my career because of my devotion and love to Palestine. So please, legal community, let me.



The California Innocence Project

By: Gabrielle Stockwell

“Freeing the Innocent and Changing the System.” This is the declaration the California Innocence Project embodies. I was a clinical intern for the California Innocence Project during the 2022-2023 school year and I saw the embodiment of this saying firsthand. The attorneys at the California Innocence Project have dedicated their lives to freeing the innocent and changing the system. The California Innocence Project was founded in 1999 and within the last approximately twenty-five years, the California Innocence Project had exonerated over thirty-six wrongfully incarcerated individuals. Added together, these exonerees

have spent more than 570 years in prison for crimes they did not commit.

Along with working to exonerate those who have been wrongfully convicted, the attorneys at the California Innocence Project have extensively studied what leads to wrongful convictions in order to prevent further wrongful convictions. In addition, the attorneys at the California Innocence Project work to reform policies and create new laws in an effort to better the system and prevent wrongful convictions. The California Innocence Project attorneys and Policy makers have passed numerous bills, later enacted as law, to prevent innocent people from being convicted before they become another victim of the criminal legal system. As a clinical intern, I had the opportunity to learn from inspirational attorneys and staff including Justin Brooks, Alex Simpson, Alissa Bjerkhoel, Raquel Barilla, Audrey McGinn, Michael Semanchik, Claudia Salinas, Sydnie Mitchell, and Jamila Michael.

As a clinical intern with the California Innocence Project, I had the opportunity to investigate many cases of alleged wrongful convictions. This included handling my own personal caseload consisting of about a dozen felony cases, with crimes including thefts, robberies, assaults, and murders. I had the opportunity to work with clients, attorneys, witnesses, clients' family members, private investigators, victims, and law enforcement officials as part of case investigations. To provide real-world context, I had the opportunity to visit crime scenes, courts, and prisons all around California. Clinical interns are also responsible for gathering, reviewing, and processing the client's legal file, including

trial briefs, appellate briefs, police reports, and other legal documents associated with their case.

One of the most amazing moments during my time with the California Innocence Project, occurred when I had the opportunity of witnessing the day one of our clients was finally released from prison after spending over twenty-five years of his life in prison for a crime he did not commit. He went to prison before I was even born. On the day he was released from prison, I joined fellow interns and staff attorneys in sharing a special moment of taking this client and his family for his first meal outside of prison walls. It was an experience that is hard to put into words. This exoneree was one of the kindest and most joyful people I had ever met. Having been through more than I can ever imagine, he still showed so much excitement for the opportunity to begin his life. He shared plans of going forward to work with at-risk youth and help prevent kids from entering the system. To say he was an inspiration in an understatement.

“Inspirational” is one of many words I could use to describe my experience at the California Innocence Project. I was constantly inspired by the staff attorneys, my fellow interns, and our exonerees. I am incredibly grateful for my time with the California Innocence Project. It is an incredible organization that truly is “Freeing the Innocent and Changing the System.”

**CALIFORNIA
INNOCENCE**

P R O J E C T

Reverse-Discrimination Suits: A Perversion of the Law

By: Zameer Karim

According to the American Bar Association's intellectual property section, law is the least diverse profession in the United States, and the legal industry continues to be overwhelmingly Caucasian and male. (1) In the last decade, there has been a decrease in the percentage of African American (2) and Native American lawyers in the field, that has not been experienced in other segments of the profession. (3)

After successfully overturning the decades old precedents (4) allowing for considerations of race in higher education admission determinations earlier this year (5), the non-profit organization that brought the case, Students for Fair Admissions' founder, Edward Blum, decided to form a new organization; American Alliance for Equal Rights. Blum used this new organization to challenge diversity programs that were implemented by two major law firms to promote diversity, equity, and inclusion programs in the legal profession. (6)

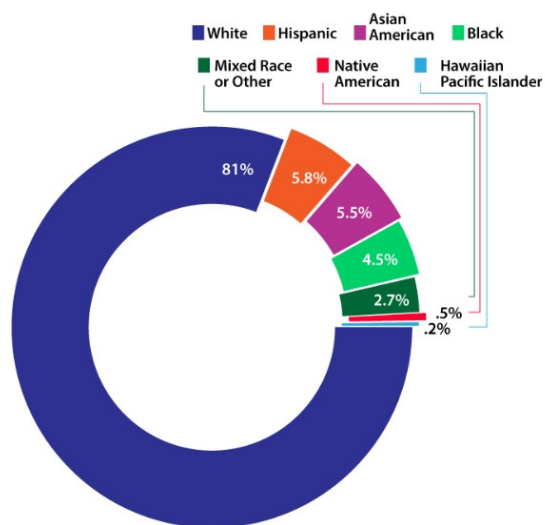
The challenges were brought under 42 U.S.C. § 1981, known as the Civil Rights Act of 1866, which is the federal civil rights statute that was adopted to guarantee equal rights under the law, and prevent unlawful harassment and intentional discrimination in the workplace. (7) The two law firms that were sued, Perkins Coie LLP and Morrison & Foerster LLP, have already agreed to remove language from

their diversity program requirements that were designed to increase representation of historically underrepresented groups in the legal profession, in exchange for American Alliance for Equal Rights dropping the lawsuits against them. (8)

The firms have also agreed not to reimplement the programs in the manner they were originally marketed again in the future. (9) According to a Diversity Snapshot performed by Law360, only 6.8% of associates, and a meager 3.2% of partners at Perkins Coie identify as African American. (10) Furthermore, the number of minority lawyers in the industry does not correlate proportionally with the number of minorities in the population. (11) Clearly, the underrepresentation of certain groups in the legal profession is not some ancient historic relic, but instead continues to embody a disparate reflection of the increasingly diverse clientele that law firms find themselves representing.

In their now dismissed lawsuits against the two firms, attorneys for the Plaintiff, American Alliance for Equal Rights, begin both of their respective

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complaints by stating that “[t]he law abhors racial discrimination”, and that “[t]he lawyers who help administer that law are supposed to abhor it too.” (12) The complaints go on to cite the Rules of Professional Conduct that outline ethical canons which allow state bar associations to punish attorneys who engage in conduct that discriminates on the account of race, and can subject attorneys who violate those rules to potential remedial action being taken against them. (13)

Ironically, the Civil Rights Act of 1866, which made it illegal to deprive people of their civil rights based on their race, is now being used to stifle minority professionals’ access to lucrative positions with potential for advancement. Affirmative action was enacted to redress centuries of discrimination, not to stifle progress towards true equality. (14) If there does not exist a proportional number of diverse attorneys who can adequately represent the diverse clients that law firms serve, “equal justice under law” will continue to be an unattainable figment instead of a reality for many members of society.

I have personally witnessed the importance of diversity and the benefits that a diverse group of people can bring to the table. For example, on the SBA board, there exists a widely varied composition of students who come from different backgrounds, cultures, upbringings, nationalities, religious denominations, and a host of other factors that define who we are and help establish an extensively heterogeneous body. That heterogeneity has led to the discussion of a broad range of topics and the expression of a wide range of opinions that otherwise would not likely have been brought

up. This allows for the consideration of different viewpoints based on each student’s unique characteristics.

If there did exist a proportional representation of minorities in the profession, valid causes of action would be present under the Civil Rights Act. However, until such a point in time arises, if it ever does, these claims should not be considered “ripe” now. Law firms and bar associations should consider litigating similar suits brought against them, instead of agreeing to modify their diversity fellowships. A judgment on the merits that is appealed to highest extent possible is needed to ensure a precedent solidifying the Courts’ stance on the issue exists. If an adverse determination is established, it will surely go down in history as another precedent that is abhorrent to equality.



Author Zameer Karim, 3L

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- 13. Id.
- 14. See *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).



MVLS First Meeting

By: Roberto Gaytan



MVLS held the first general meeting after being reactivated as a student organization earlier this trimester. To no surprise, many veteran students eagerly signed up and attended the event. Many veterans expressed their gratitude in having the MVLS reactivated since they all felt it was necessary to have an org that fosters a community among student veterans and its supporters.

Amnesty International at CWSL: Reigniting the Flame for Human Rights

By: Mariah Mantzke

Greetings, California Western community! We are elated to announce the revival of the Amnesty International student organization on campus. For those unacquainted, Amnesty International stands as a global movement of 10 million individuals dedicated to mobilizing humanity for human rights and campaigning for transformative change. Amnesty envisions a world where those in power uphold promises, respect international laws and are held accountable. Operating independently of government, politics, economics, and religion, we are primarily funded by memberships and individual donations and guided by the belief that solidarity and compassion can reshape societies for the better.

Amnesty International's campaigns operate as dynamic and multifaceted endeavors, combining rigorous research, strategic advocacy, and grassroots activism to amplify the voices of the oppressed and effect meaningful change. The process typically begins with meticulous research to uncover and document human rights abuses, ensuring the accuracy and depth of information. Armed with compelling evidence, the organization then launches targeted advocacy campaigns, employing a variety of channels such as social media, public statements, and direct engagement with policymakers to apply pressure on governments, corporations, and other influential entities. Crucially, Amnesty International

mobilizes a global network of activists and supporters who participate in letter-writing campaigns, petitions, and solidarity events. These efforts create a groundswell of public opinion demanding justice and accountability. By integrating these elements, Amnesty International's campaigns have consistently demonstrated the power of collective action in challenging systemic injustices and promoting human rights on a global scale.

Amnesty International has achieved notable success through a range of impactful campaigns, each contributing to positive change in the realm of human rights. One such triumph is the global effort against apartheid in South Africa during the 1980s; Amnesty International played a pivotal role in mobilizing international pressure to condemn and ultimately dismantle the discriminatory system. Similarly, the "Stop Violence Against Women" campaign launched in the 2000s and brought attention to the pervasive issue of gender-based violence, leading to increased awareness, policy changes, and legal reforms worldwide. More recently, Amnesty International's advocacy for the release of prisoners of conscience, exemplified in the "Write for Rights" campaign, has resulted in the freedom of individuals wrongfully detained for their beliefs. Each of these campaigns showcases the organization's ongoing commitment to defending the rights of the oppressed. These campaigns underscore Amnesty International's ability to leverage public support and effect tangible positive outcomes in the pursuit of justice and human rights.

With the invaluable support of the California Western Community, Amnesty International at CWSL has sent over 35 letters advocating for Khadijatul Kubra, a student in Bangladesh facing unjust charges. Despite medical issues, she has been transferred to a 'condemned cell,' reserved for death-row convicts. Our letters to the Prime Minister signal international support, urging for Khadija's immediate release and highlighting the power of collective advocacy. We hope your letters to the Prime Minister will signal international support for Khadija and pressure her government for immediate and unconditional release.

As we look ahead, Amnesty International is urgently calling for a ceasefire in the Middle East amid the Israel-Palestine conflict. Recognizing the ongoing human suffering, we firmly believe that a ceasefire is not only a moral imperative but a crucial step toward ending the tragic cycle of violence. The continuation of hostilities only perpetuates the tragic cycle of violence and destruction, causing profound harm to civilians on both sides. A ceasefire is a crucial step towards creating an environment where dialogue and diplomacy can prevail over conflict. It is our sincere hope that all parties involved will recognize the urgency of the situation, prioritize the safety and well-being of innocent civilians, and take immediate steps to establish a ceasefire. To amplify our message, we are hosting a letter-writing campaign to President Biden and local representatives, urging immediate action and international support for peace in the region.

We invite every member of the California Western community to join us, attend our events, and contribute to creating a world where human rights are universally respected. Together, we can make a

lasting impact and foster a future defined by justice, compassion, and respect for the inherent dignity of all individuals. Join us in reigniting the flame for human rights at California Western!



Khadijatul Kubra,
photo provided by
family

Please join us for our Movie Night on November 28th at 4:30 PM. We are screening *The Swimmers*, a movie capturing the physical plight and emotional trauma of Syrian Refugees. Dinner and dessert will be provided!

Military Family Divorces

By: Jennifer Prater

Many times, in my Marine Corps career, I watched as junior Marines would leave for deployment and return home to an empty house. Their wives had taken all their money, the children and household items and returned to their state of residency. This is not just a problem in the Marine Corps, but in all branches. California has more military installations than any other state totaling thirty-two bases.

In *Edwards v. Edwards*, 2013-Ohio-117, 15, the appellate court ruled that the trial court was correct in believing Jennifer's testimony about whether her ex-husband consented to her taking the children to be credible. They based their finding on prior facts in the relationship, including but not limited to, her

frequent visits to her parents where she would stay when her husband was conducting trainings.

There, surprisingly, are not many cases to pull from which reference these situations. It may be because the amount of money it costs to appeal the decisions. If their spouse emptied their bank account before leaving, it may be hard for the service member to even pay a lawyer for the custody agreement.

It is hard to imagine that one parent can pick up the children and leave while the other spouse is on deployment. Speaking from experience, deployment is a place where you want to mitigate any stressors so you can focus on the mission in theater. If family issues do arise, the service member needs to feel protected by laws. Right now, it does not feel as if they are.

When service-members are on deployments, they are vulnerable. They entrust their spouse to take care of everything in the home and to take care of their children while they are away. They are gone from their children for six to nine months and then come home to nothing. Then, when they return, they cannot fly out to chase down their ex-spouse to see their children. Their commands will not likely allow them to leave. They may even end up getting stuck litigating where the children are. Now, they are out of money, without their family and likely trying to litigate from a distance. Welcome home.

The fathers' rights to their children have been increasingly more equitable over time, and now there needs to be justice for service members, as well. Although it may be the service member who is getting hurt by these situations, it is the children who they are hurting the most. There needs to be reform in family law regarding divorce during military deployments to protect the service members, and also to protect the children.

Faculty Spotlight: Professor Jessica Fink

By: Brenda Mendes

If you thought it was tough trying to snag tickets for Taylor Swift’s “The Eras Tour,” try securing a seat in one of Professor Fink’s classes! Her classes have become some of the most sought-after classes, with demand surpassing expectations. This fall, Professor Fink’s courses (Remedies and Constitutional Law 1) were moved to the auditorium due to overwhelming student demand. The move to the auditorium accommodated an extra 20 students in each course, bringing her total number of students this trimester to an impressive 220 students.

Professor Fink’s reputation as a professor shines bright and reflects her commitment to foster a nurturing learning environment. Students appreciate her ability to simplify complex legal theories by incorporating real-life scenarios and analyzing arguments on different sides of cases. This approach relates situations to students’ day-to-day lives and turns lectures into engaging narratives. Professor Fink instills in her students the skills and perspectives necessary to become thoughtful, well-rounded, and responsible legal professionals.

Yet, beneath an inspiring and excellent professor, lies a woman whose priority is firmly grounded in her identity as a wife and mother. As students take their seats during the first day of Fink’s class, she greets her attentive audience with a warm smile and a welcoming environment. After introducing herself she says, “This is my second most important job. My first most important job is being a mother to these

two,” Professor Fink says as she displays a picture of her sons, Leo (14) and Sam (12). Fink emphasizes the significance of family time while actively pursuing and excelling in her career.



The Fink Family from left to right: Sam, Rob, Jessica, and Leo.

While studying for her bachelor’s at the University of Michigan, Professor Fink had a position during the summer after her sophomore year of college. She investigated cases for the public defender’s office in Washington D.C.. This is where she learned she wanted to go into the field of law. As an investigator, Fink helped the attorneys for whom she worked to investigate their cases, question witnesses, visit the alleged scene of a crime, and gather evidence. Here, although she learned her love of law, she also learned she could not go into criminal law, despite her deep respect for those who pursue criminal law. The actual practice of law, being so appealing to Fink, led her to graduate from Harvard Law School in 2001. “My grandma Faye made me apply to Harvard. She said ‘If you don’t apply, my friends will think you didn’t get in because I already told them you applied.’” Professor Fink smiles and continues by saying “I am really grateful for my grandma Faye because I had a great experience at Harvard.” After graduating from Harvard Law School, Fink practiced law at Sidley Austin LLP in Chicago. There, she litigated cases with their Employment and Labor Law group, and litigated a wide variety of employment-related claims and counseling businesses regarding employment-

related issues.

Fink moved to San Diego to be with her (now) husband, Rob, and landed in teaching law, a career she always knew she wanted to pursue. Although Fink describes her experience at Harvard Law School as wonderful, she found herself silent throughout many classes and uncomfortable due to imposter syndrome, something that affects many people. Not wanting to repeat that cycle with her students, Fink tries to provide students with a safe and comfortable place where they can share their thoughts, ask their questions, and express their opinions. Fink realizes students can feel terrible when they are asked a question to which they do not know the answer to. Rather than possibly making a student feel embarrassed, her goal is to “find the answer together with the student, that way the student feels good about the interaction and feels empowered.” Fink describes her positive interactions with students as “gratifying.” This method is popular in school and one of the reasons why her classes are in such high demand.

Fink credits her teaching style and method in part to Laurence Tribe, one of Fink’s professors at Harvard Law School. Fink describes Professor Tribe as “incredibly kind in the classroom.” This is where Fink learned the “I’ll help students get to the answer” method. “Larry Tribe was a master at that,” Fink explains. Fink was in Professor Tribe’s constitutional law class and remembers feeling empowered from her interactions with Professor Tribe in the classroom. Fink’s teaching method fosters a deep understanding of the subject matter while teaching students

how fascinating the law can be.

Due to her experience working at a large law firm, students often ask Fink for advice on working at a large law firm. “Figure out your boundaries, and do not apologize for them.” Fink views her family dinners as her sacred family time. Fink explains “Rather than saying ‘no, I can’t do that,’ instead say ‘no, I can’t do that, but I can do something else instead.’” Fink explains that setting boundaries does not mean a person cannot or should not do their work, but rather means maintaining a healthy balance between professional commitments and their personal life. It is possible to fulfill your professional commitments while remaining cognizant of the many other things that are important in your life.



Professor Fink teaching her Constitutional Law class, after teaching her Remedies class.

Professor Fink’s teaching (and life lessons) resonate deeply with her students. Her students have not only gained a profound understanding of Constitutional Law, Remedies, or Employment Law but have also learned the value of empathy and the importance of maintaining a healthy work-life balance.

At the end of every course that Fink teaches, she shares three of the many lessons she learned from her grandma Faye. During my time in Professor Fink’s Constitutional Law class, I was honored to have some of those lessons shared with me. Lesson 1:

Have character and stick by your beliefs. Do not get scared to take a position and take a stand for what is right. Lesson 2: when things are hard, all you can do is put one foot in front of the other and take it day by day. “You will often do many hard things professionally and personally, and it will feel like you cannot get through them. Get through the day and worry about the next day tomorrow,” Fink explains. Lesson 3: Be kind and see yourself in others. Look at people who are different than you and find shared humanity. “If we can just see that everyone is doing their best, it will make the road we all travel on much easier,” Fink explains.



Author
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Solution for game on page 11:

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7	3	8	2	9	1	4	6	5
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8	4	9	5	7	6	2	3	1
4	5	3	7	6	8	1	2	9
9	2	7	1	4	3	6	5	8
1	8	6	9	2	5	3	4	7

Note from the Editors

We are grateful to have had the opportunity to serve as *The Commentary* Editors-in-Chief for the Fall 2023 publication. This publication took many hours of work, and we are proud to present California Western students and faculty with our final product. We would also like to extend our sincerest gratitude to our outstanding authors. Your contributions made this edition of *The Commentary* exceptional.

With heartfelt appreciation,
Brenda Mendes and Alyssa Kucera
2023-2024 *The Commentary* Editors-in-Chief

