

## Tenure Tug-of-War

Saul Levmore and other law school deans don't want the American Bar Association

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## Pushing Paper

Stephen Becker says the PTO's plan to cut its backlog would cost inventors — and their lawyers. See Ad Hominem.



# THE RECORDER

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ALM

## City held not liable in 'fajitagate'

By Pam Smith  
RECORDER STAFF WRITER

The two civilians whose 2002 street fight with three off-duty cops set off the fajitagate political brawl will not be able to collect damages from San Francisco.

U.S. District Judge Jeffrey White threw out their suit Thursday, granting summary judgment for the city because the cops

weren't acting in their official capacity.

The plaintiffs' attorneys said it was too soon to say if they would appeal.

Thursday's development leaves plaintiffs Adam Snyder and Jade Santoro with only one more opportunity to get compensated for the injuries from their early morning run-in with then-officers Alex Fagan Jr., Matthew Tonsing and David Lee. They have sued all three individuals

in San Francisco Superior Court, and are scheduled to go to trial in early May.

The city is not defending them in that case because they were sued as individuals, rather than in their official capacities.

"If we don't have a federal remedy, I guess we'll just have to resort to our state remedies," said one of Snyder's lawyers, San Francisco attorney John Scott, who

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## Small law firms wary of plan for State Bar control

By Cheryl Miller  
RECORDER STAFF WRITER

SACRAMENTO — State Sen. Joe Dunn wants more scrutiny of California's 15 unaccredited law schools. Leaders at some of those schools say the senator really just wants to put them out of business.

Dunn, chairman of the Senate Judiciary Committee, is pushing legislation that would give oversight of the unaccredited schools to the State Bar's Committee of Bar Examiners. That power now rests with the state's Bureau for Private Postsecondary and Vocational Education.

Dunn, D-Santa Ana, contends the state agency doesn't have the staff or experience to ensure the schools are offering a good legal education to their students, who traditionally pass the bar exam at lower rates than peers at accredited campuses. The senator wants the committee to create rules for unaccredited schools that are separate and less stringent than those for Bar-accredited schools. The bill authorizes the committee to charge an unspecified fee for providing oversight.

At a state Senate hearing last fall, faculty of unaccredited schools did not oppose the switch, Dunn said Tuesday, "with the caveat that they wanted to ensure that was not simply a precursor to an assault on the unaccredited community."

And it's not, he insisted. "I'm happy to continue the dialogue with unaccredited law schools to ensure that nothing in this bill imposes unreasonable fees or interferes with affordability."

But the deans of some schools see a more sinister intent in the bill.

"It's an attempt to put us out of business," said Sherry Ross, dean of the University of Silicon Valley Law School in Gilroy. Bar examiners "will, if they get control, which is what they're seeking, impose fees on the schools so onerous and burdensome that the small schools that cater to small communities of students

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## No lawsuits for bean balls

Pitches thrown at head inherent in sport of baseball, court rules

By Mike McKee  
RECORDER STAFF WRITER

College baseball player Jose Avila took another bean ball Thursday when the California Supreme Court ruled that pitches aimed at a batter's head are a historic and intrinsic part of the national pastime.

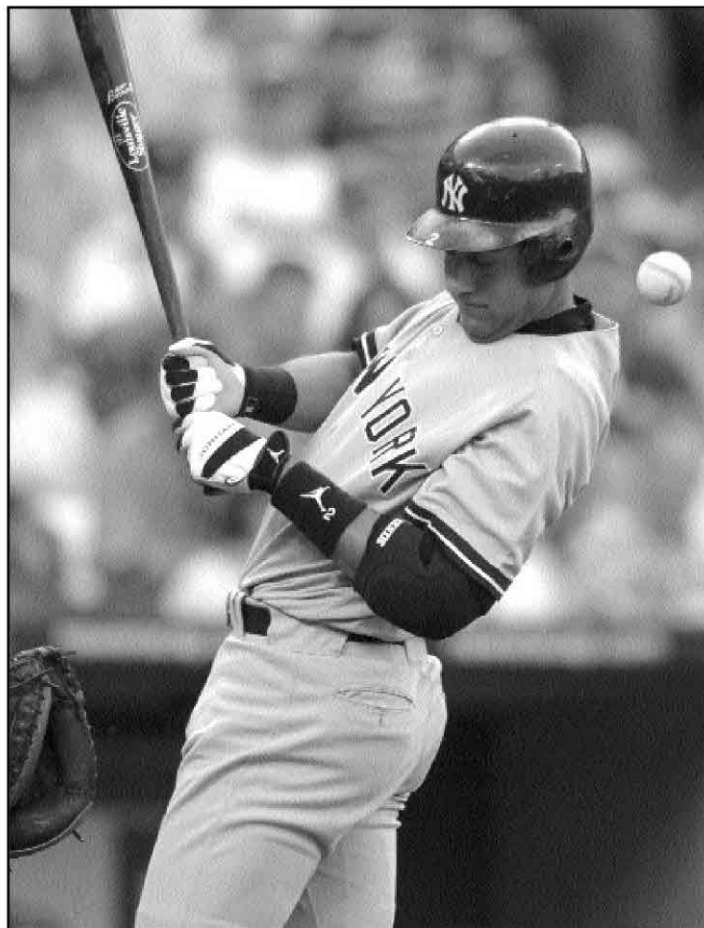
"For better or worse," Justice Kathryn Mickle Werdegard wrote for a 6-1 court, "being intentionally thrown at is a fundamental and inherent risk of the sport of baseball. It is not the function of tort law to police such conduct."

Intentional shots at batters are so ingrained by custom, she noted, that they're known in baseball lingo as bean balls, brushbacks and chin music.

"Some of the most respected baseball managers and pitchers," Werdegard added, "have openly discussed the fundamental place throwing at batters has in their sport."

Justice Joyce Kennard dissented, calling the majority ruling "a startling conclusion. It is contrary to the official view in the sport that such conduct 'should be — and is — condemned by everybody.'"

Avila was batting for the Rio Hondo Community College  
See BEANBALLS page 11



DAVE KALIP/NEWS.COM

**HEAD GAMES:** The Yankees' Derek Jeter gets beamed in a 2005 Major League game. On Thursday, the California Supreme Court refused to let a college player sue for getting hit in the head.

## DOJ evaluators rap Ryan's management

By Justin Scheck  
RECORDER STAFF WRITER

It was a just a matter of time before the longstanding complaints about U.S. Attorney Kevin Ryan's management style made their way to Washington.

That was the takeaway from a presentation last Friday by Justice Department evaluators to managers in Ryan's office.

The reviewers spent last week auditing the office.

In presenting their criticisms, they said Ryan was inaccessible to his subordinates and has a detached management style that engenders low morale among assistant prosecutors, said sources with direct knowledge of the meeting.



### Kevin Ryan

Auditors found the U.S. attorney has a detached management style that engenders low morale.

Such reviews are performed every three years on each federal prosecutor's office by the Executive Office of the U.S. Attorney.

The process is known as EARS because it's administered by the executive office's Evaluation and Review Staff.

Once an EARS review is concluded,

evaluators are required to verbally present their negative findings to managers before preparing a written report.

It was at that verbal presentation that the EARS team read off a list of relatively minor administrative complaints — recommending, for example, that certain open jobs be filled — in addition to harsh criticisms of the U.S. attorney that surprised everyone in the room, Ryan included, said sources familiar with the meeting.

The reviewers did preface the critique by saying that positive aspects of office performance would be outlined in the final EARS report, said sources familiar with the meeting, in addition to a Ryan spokesman.

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## Today's C.D.O.S.

### Criminal Law and Procedure

■ **IN RE VASQUEZ-RAMIREZ:** District judge could not refuse to accept tendered guilty plea that met requirements of F.R.Crim.P. Rule 11, 9th Cir.

■ **PEOPLE v. JURADO:** Reinstatement of special circumstance allegation after guilty plea did not violate double jeopardy. Cal. Sup. Ct.

■ **PEOPLE v. RYAN:** Defendant's multiple check forgeries with respect to particular incidents constituted only single acts of forgery. C.A. 5th

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## Meeting Notices

### San Francisco

**Today**  
**Fulbright Symposium on Current International Legal Issues.** 9 a.m.-5 p.m. Earn up to six hours of MCLE credit at Golden Gate University School of Law, 536 Mission St. Call (415) 442-6602.

**Tuesday, April 11**

**San Francisco Paralegal Association Estate Planning Section Meeting.** Noon (brown bag lunch) at SFSU, 425 Market St., Room 314, R.S.V.P. to Esther Lane at (415) 296-0800 ext. 243.

### Alameda County

**Thursday, April 20**

**Barristers Section Monthly Mixer.** 6:30-8 p.m. Third Thursdays at Luka's Taproom, 2221 Broadway, Oakland. Free admission, no-host dining and bar. R.S.V.P. not required. Alameda County Bar Association.

### Contra Costa County

**Thursdays**

**The Other Bar.** 6-7 p.m. Weekly peer support meeting for members of the legal profession with alcohol or chemical dependency concerns. Completely confidential. Call Bob Resner at (800) 222-0767.

**Saturday, May 13**

**3-on-3 Basketball Tournament.** Boys & Girls Gym, 1301 Alhambra Ave., Martinez. The event will feature players from various Bay Area law firms and legal organizations, and will benefit the Boys & Girls Clubs of the Diablo Valley. Sponsored by Wood Smith Henning & Berman. Call (925) 295-1141 or visit [www.bgcdv.org](http://www.bgcdv.org).

### San Mateo County

**Tuesday, April 11**

**Estate Planners' Round Table.** 8:30-9:30 a.m. San Mateo County Bar Association. [www.smcba.org](http://www.smcba.org).

**Thursday, April 13**

**Estate Planning/Probate/Elder Law Section Meeting.** 1-2:30 p.m. San Mateo County Bar Association. [www.smcba.org](http://www.smcba.org).

**Friday, April 14**

**Family Law Section Meeting.** 1-2 p.m. San Mateo County Bar Association. [www.smcba.org](http://www.smcba.org).

*Information about upcoming events can be mailed to Meeting Notices, The Recorder, 10 U.N. Plaza, 3rd Floor, San Francisco, CA 94102, faxed to (415) 749-5549 or e-mailed to [recorder-editor@alm.com](mailto:recorder-editor@alm.com).*

## FAJITA

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argued the summary judgment motion for both plaintiffs.

The fight that began over the civilians' steak fajitas blew up into a scandal when the district attorney at the time, Terence Hallinan, indicted not only the three officers, but also seven of their superiors in early 2003. Fagan's father, Alex Fagan Sr., was assistant chief of police at the time.

The criminal charges against all the police brass were dismissed in relatively short order, while the three rank-and-file officers were acquitted at trial in 2004 and 2005.

In their federal suit, Snyder and Santoro alleged that the blame for the fight could be traced back to the city, because the SFPD had failed to properly train its officers and condoned the use of excessive force.

In his ruling, White said that when the evidence was viewed in a light most favorable to the plaintiffs, it did raise an issue of fact about whether the police department

had failed to adequately discipline officers for on-duty misconduct.

But in the end, White found that point was legally irrelevant.

In two cases, the Ninth Circuit U.S. Court of Appeals has "specifically rejected the argument that the private acts of an off-duty law enforcement officer are the foreseeable consequence of on-duty misconduct, which the municipal entity failed to supervise or discipline," White wrote.

The fact that the officers weren't wearing uniforms and didn't flash their badges when they ran into Snyder and Santoro that night was significant for the defense, said **Deputy City Attorney David Newdorf**, who argued the summary judgment motion. "They were off-duty in all senses of the word."

The case is *Snyder v. City and County of San Francisco*, 03-04927.

*Reporter Pam Smith's e-mail address is [psmith@alm.com](mailto:psmith@alm.com).*

## RYAN

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The presentation echoed criticisms that have been leveled against Ryan and top deputy Eumi Choi over the past few years by disgruntled assistant prosecutors.

The reviewers said Ryan is perceived as unapproachable, has little interaction with subordinates, and that a lack of confidence among his employees in his oversight of the office has resulted in continuing low morale in the criminal division, sources said.

They recommended several management changes, including that Ryan grant more open access to assistants, and that one of Choi's two job titles — criminal division chief and first assistant — be delegated to another attorney.

The reviewers did not criticize the office's handling of individual cases, or the number of cases it has brought.

In a Thursday e-mail, Ryan said he would take the EARS suggestions into account.

"Given the size of this office and its three branches in San Francisco, San Jose and Oakland, and other competing work demands, I do not always get the chance to interact with our prosecutors and staff as much as I would like," he wrote.

"However, as with any other matter, I am

open to suggestions for improvement."

Ryan further noted that the evaluation team "acknowledged many positive accomplishments by the office.

"The evaluation process is not complete since the final report has yet to be written. We look forward to the full report, but until we receive it, it is premature to discuss whether any specific changes would be adopted."

Rory Little, a professor at Hastings College of the Law — and a former prosecutor who often represents lawyers in the San Francisco U.S. attorney's office — said he expects Ryan to take the criticisms seriously.

"It's not good news," said Little, who is generally supportive of Ryan and Choi.

Little said that while he's generally confident in the EARS process, he wonders if Justice Department critics in D.C. who objected to Ryan's appointment are influencing the findings.

"It's hard to say whether it's substantively legitimate or if there are people in Washington who don't like Kevin Ryan," he said.

*Reporter Justin Scheck's e-mail address is [jscheck@alm.com](mailto:jscheck@alm.com).*