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Bon Voyage Bannan: SCU Law Eyes New Building for 2017

By Brent Tuttle
Editor-in-Chief

As the academic year kicks off, SCU Law's planning commission is busy writing what is perhaps the school's most important chapter to date. Slated to break ground in the Spring of 2016, the school is in the process of finalizing project details for a new law school building: Charney Hall. With a price tag of $68 million dollars, this new state of the art facility will overtake what is now a surface parking lot just in front of the Leavey School of Business and the Arts & Sciences Building. This location will make the new law school building quite literally the face of Santa Clara University as it will be the first structure people see entering via Palm Drive and also the most visible part of the campus from El Camino Real.

Last year while SCU Law was in the midst of planning this ambitious new project, it also saw its lowest 1L enrollment numbers in nearly four decades. Because of this, previous development plans had forecasted a smaller law school and one that had many faculty and staff worried about the future. The scaled down design proposals had classrooms and facilities that would not be able to accommodate three full time sections, which is the usual incoming class size. There were multiple complaints that these plans presupposed enrollment would never go back up, and if it were to, SCU Law's proposed facilities would not be able to accommodate the resurgence in students.

SCU Law hosts club day outside of Bannan Hall

However, with the current proposal, those fears have been alleviated. Thanks to the adamancy of Dean Kloppenberg, Dean Joondeph, and Dean Erwin, the planning commission was assured that last year's decline in 1Ls was an unrealistic forecast for the future. Instead, they were confident that SCU Law would attract anywhere from 230 to 270 new students each year. This year's incoming 1L class boasts roughly 263 students and if everything goes according to schedule they will be the first group of students that gets an entire year in the new facility.

See Page 2 **"Charney Hall on the Horizon"**

Senate Seeks To Put An End To Loan Forgiveness Program

By Nikki Webster
Managing Editor

To forgive, or not to forgive, the Senate is asking America. It sounds absurd that the dedicated givers among us, those who work in the fields of public interest and social justice, would need to be forgiven. But such is the term we associate with student loan debt: "loan forgiveness."

The United States House of Representatives has already recommended eliminating the Public Service Loan Forgiveness Program. Apparently the fiscal year 2016 budget can no longer accommodate educating those who serve the indigent and other underrepresented populations in our communities. Unfortunately, this makes sense: typically only those with money lobby before Congress . . . for more money.

Despite the growing need for legal services, the Bureau of Labor Statistics reports that there are 500,000 fewer public sector positions than before the recession. The American Bar Association recognizes that "[l]egal aid lawyers and others at nonprofits help low-income elderly, veterans, and families remain stably housed, employed, and receiving due benefits and services, whether they live in urban or rural communities, including on tribal lands." Though serving some of the neediest among us, legal aid lawyers start their salaries at $44,600, and prosecutors and public defenders around $50,000, according to the National Association of Law Placement's 2014 survey. Contrast these starting salaries with the 2014 average law school debt of $122,000 upon graduation – not including the average $30,000 in undergraduate student loans – and suddenly public interest law suddenly does not seem like a practical career choice.

Here we are, at Santa Clara Law, with one of our primary centers dedicated to social justice and public service. Of course, students' primary interest in pursuing a Public Interest and Social Justice Law Certificate is likely their passion for serving the community. However, a major boon to pursuing a career of legal service is that the Public Service Loan Forgiveness Program forgives a professional's remaining federal student loan balance after 120 monthly payments (10 years) while employed in full-time public service. Recognized public service organizations include government organizations at any level, tax-exempt not-for-profit organizations under Internal Revenue Code, section 501(c)(3), other types of not-for-profit organizations that provide certain qualifying services, and full-time AmeriCorps or Peace Corps positions.

Without your help, this Program will be discarded as of Halloween this year. The American Bar Association is recommending using social media to convince our Senators to keep loan forgiveness. Post a video to YouTube, Instagram, Facebook, or Twitter. Or share the ABA video: https://youtu.be/u8dVh56FrNY. Senator social media handles are listed at http://www.americanbar.org/content/dam/aba/uncategorized/GAO/senator_handles_72015.authcheckdam.pdf. For more information about Public Service Loan Forgiveness, go to the Department of Education's Website for Federal Student Aid: https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service.

The Public Service Loan Forgiveness Program is critical to sustaining legal aid, social justice, and public interest work as a profession. Spread the word and advocate for forgiveness. #loan4giveness

Charney Hall On The Horizon

Currently, the planning committee envisions a building will have the ability to house all classroom space, faculty offices, and the law library under one roof. As of now, plans have the building at roughly 100,000 square feet. There will be two 120-seat classrooms, two 100-seat classrooms, and three 50-seat classrooms, in addition to plenty of new open and collaborative spaces. This will allow the law school to run three sections of first year curriculum, required upper division classes, large enrollment bar classes, and all other electives.

Aside from the classrooms and collaborative spaces, the law school has some other interesting design features it hopes to implement. With resounding support from the students, the planning committee is fighting hard to get some sort of food and beverage service inside the new building. At a minimum this concession would serve coffee and snacks. In addition, there will be significantly more open meeting space for students to congregate. Further, in the same vein as the current undergraduate library, the law school also hopes to have an outdoor area above the ground floor that will allow students to work and study outside the confines of the library walls. There is also hope that the new building will feature a multi-faith meditation/ quiet space and also a room dedicated to the needs of newborns and their parents.

And while the law school's new plans are certainly exciting, this is only the first phase of what will be a massive campus transformation encompassing nearly ten separate buildings. Both Bannan and Heafey are slated to become part of a new STEM complex (science, technology, engineering and mathematics), designed to bolster the University's programs in those fields. This will provide the Engineering Department with new facilities. It will also centralize the Science and Mathematics Departments, which are currently scattered throughout the campus.

If all goes according to plan, construction will be complete by the start of the 2017 academic year. Aside from running to the bookstore for supplies, Charney Hall will be a one-stop education hub dedicated to developing the legal minds of Santa Clara.

Rumor Mill with Dean Erwin

By Susan Erwin
Senior Assistant Dean

Welcome to the new school year!

This edition of the Rumor Mill starts with some posts on the SBA Facebook page this summer. A student asked her classmates to submit resumes for a position at her firm. Then she posted another comment shortly thereafter asking people to stop sending BAD resumes, pointing out that at a minimum the name of the company should be spelled correctly. I started asking around about this. Had this happened before? Is this an SC Law issue? Is this a law school thing? Is this a millennial thing? Are we teaching people how to write resumes??

I learned that it's not the first time we have been informed about bad cover letters and resumes from employers. (I believe the phrase was "how do I turn off the spigot of bad resumes that are filling up my inbox?" Ugh.") We have trainings, we have OCM counselors who spend hours editing resumes and letters, and we have faculty who are willing to help. We also have on-line resources – it took me less than a minute to find the links on the OCM website.

So let's be honest – because this column is all about being honest - spelling a company's name correctly is not rocket science. I know junior high kids who can put together a cover letter and resume without typos and spelling errors. This isn't that hard. We are all perfectly capable of producing quality work products. IMHO, the problem we are experiencing is a lack of OWNERSHIP. We can all do this; we just need to OWN IT.

OWN your job search! Read the emails from OCM, attend the events, check out all of the info on their webpage, do informational interviews, network, and follow the handy Checklist in the Pink Book! At the very least, run spellcheck before you hit the "send" button.

OWN your academic career! Run your degree audit, use the Graduate Checklist in the Pink Book, put the deadlines in your calendar. Investigate certificates, classes, and experiential learning opportunities. Attend the info sessions that we offer about all of these opportunities! Attend office hours, talk to your professors, look up their research and papers – they are really amazing people!

OWN your law school experience! Read the Grapevine each week when it shows up in your mailbox to see what's going on. Go the Events Calendar on Emery and click "subscribe" to have everything show up on your Google calendar. Attend stuff! We have so many awesome clubs and events and amazing opportunities for you here!

OWN your reputation! Don't be Number Nine. Don't be the Underwear Girl. Don't be the person in class who makes offensive jokes or the one that is never prepared or the one who shows up hung over every Friday morning. OR . . . don't be the person at the Halloween Bar Review with random body parts making inappropriate appearances. (Your classmates might not remember how smart someone was 10 years later when they meet them in court, but they WILL remember their inappropriate costume at the bar review.)

OWN your wellbeing! Law school is stressful. Don't let it get to you. Check out the Health & Rec section on the Current Students webpage. Stop in and see us just to chat. Let someone know when you are having problems, you would be surprised how quickly this community will rally around one of our own!

OWN the bar exam! Take the bar classes. Go to ASP sessions. Talk to Adam Ferber during his office hours in the lounge (he was the actual guy who was actually in charge of the bar exam in CA). Take ALW: Bar Exam. Go to Grad 101 and the bar exam information sessions! Attend the BRICS sessions. Do practice exams. Do whatever the smart folks in the Office of Academic and Bar Success tell you to do!

OWN your future! Network, network, network. Attend stuff, meet people, and ask questions. Pay attention when the Alumni Office announces events open to students, attend club speaker events, read the Career Pathway Guides on the OCM website. Do informational interviews. Talk to faculty. Meet our alumni. They are a close knit community of really nice people – take advantage of all of the opportunities to get to know them!

I fully realize that some of you are rolling your eyes right now and complaining to each other about how patronizing this article is. You're right. I'm annoying and repetitive and preachy. But you know what???? I'm gonna go ahead and OWN that.

Heard any rumors lately? If so, send me an email – serwin@scu.edu

#Blacklivesmatter Seeking Accountability This Election

By Nnennaya Amuchie
Social Justice Editor

We are in the midst of a revolution. Black youth from all over the world are coming together to declare their humanity and worth. Assata Shakur's spirit is at the center of the revolution. She was an unapologetic Black woman who was wrongly arrested, charged, and beaten for speaking candidly about institutionalized racism and sexism. Because of her, we can.

This spirit has carried on into the 2016 election. Black youth are confronting all elected officials head on and holding them accountable for their words and actions. Every citizen has the right to confront their government and demand what is necessary for the survival of their people.

Black issues can no longer be ignored. Racism can no longer be ignored. The daily murders of Black people can no longer be ignored. The growing economic inequality can no longer be ignored. The continued homophobia and transphobia can no longer be ignored. Xenophobia can no longer be ignored. Black youth are fed up and they are making their frustrations known to 2016 presidential candidates.

For decades, the Democratic Party has taken the Black vote for granted. In fact, Black women are the largest voting demographic in the country. They shape elections. To put things into perspective, while White women got the right to vote in 1920, Black women and other women of color did not get the right to vote until the 1970s and 80s.

Today, Black women are still struggling to vote at a time where the Supreme Court has ripped apart the Voting Rights Act. But despite all these voting barriers, Black women still turn out more than any other demographic. And yet, Black women are still underpaid, undervalued, abused and murdered. So it makes sense that Black women would be at the forefront of the revolution, demanding their future elected officials to pay attention to their issues. Black women represented one of the many groups that have been ignored in the past. #Blacklivesmatter represents every Black person around the world.

In the past two months, #Blacklivesmatter activists have interrupted Bernie Sanders at his campaign rallies and confronted Hilary Clinton about her racist policies that led to mass incarceration. Many have critiqued #Blacklivesmatter activists for being unprofessional and too confrontational, but the candidate's response are reminiscent of century-long, ignored cries for help.

When confronted, Bernie Sanders and Hilary Clinton both gave highly political responses and failed to capture the spirit and hearts of the movement. The goal of #Blacklivesmatter is end anti-black violence in all sectors of the United States from economics to health care to domestic violence to political brutality to education to immigration. Activists want presidential candidates to understand the racist fabric of our country and how it continues to disproportionately affect Black people in America. It is important for activists to continue to put pressure on candidates and demand accountability for past actions. It is important for candidates to have candid responses and strategies to undo the racist policies of past administrations.

> **"It is our duty to fight for our freedom. It is our duty to win. We must love each other and support each other. We have nothing to lose but our chains."**
>
> **-Assata Shakur**

President Obama was able to capture the hearts of the youth. Bernie Sanders and Hilary Clinton have both fallen flat. While Bernie Sanders has a record of civil rights, his voting record has consisted of policies that also negatively effect Black people. Furthermore, #Blacklivesmatter has a decentralized structure that focuses on a myriad of issues in different ways. The strategies implemented during the Civil Rights movement are not the same strategies activists are using today. Thus, Bernie Sanders records means nothing if he is unable to understand the complexity of issues and defer to the solutions that have been presented by #Blacklivesmatter. The #Blacklivesmatter movement is not only fighting for the civil rights but both economic and human rights.

Recently, the Democratic National Committee put forth a resolution addressing institutionalized racism. #Blacklivesmatter network put out a statement responding:

"The Democratic Party, like the Republican and all political parties, have historically attempted to control or contain Black people's efforts to liberate ourselves. True change requires real struggle, and that struggle will be in the streets and led by the people, not by a political party. More specifically, the Black Lives Matter Network is clear that a resolution from the Democratic National Committee won't bring the changes we seek. Resolutions without concrete change are just business as usual. Promises are not policies. We demand freedom for Black bodies, justice for Black lives, safety for Black communities, and rights for Black people. We demand action, not words, from those who purport to stand with us. While the Black Lives Matter Network applauds political change towards making the world safer for Black life, our only endorsement goes to the protest movement we've built together with Black people nationwide -- not the self-interested candidates, parties, or political machine seeking our vote."

These activists have engaged in tremendous political education and understand the downfalls of past movements. They are no longer settling and we should not either. We have to push each other to think beyond the confines of what is in front of us. We have to re-imagine a better world that is equitable and suitable for all people no matter your ability, race, gender, sexuality, immigration status, age, educational level, or class. #Blacklivesmatter is fighting for us all by attacking the underlying disease of this country, racism.

Straight Outta Compton: Delightfully Controversial

By Lindsey Kearney
Associate Editor

In *Straight Outta Compton*, award-winning director F. Gary Gray delivers moviegoers a fast-paced, emotional, provocative, and controversial cinema experience from the opening scene to the end credits. Taking place in Compton, California during the late 1980s through mid 1990s, *Straight Outta Compton* chronicles the rise of rap super group N.W.A. as they transformed from underground artists in rough urban conditions into genre-pioneering music icons.

The film's raw locations in Compton blend perfectly with its cinematography to bring viewers straight to the streets where it all happened, with details as small as Kareem Abdul-Jabbar jerseys to complete the "late-80s in L.A." vibe. Of course, the group N.W.A. is no stranger to controversy; quite appropriately, controversy is an exciting and recurring manifestation throughout the film, even bleeding into critical condemnations of what was included and what was omitted from the biopic.

First, there's police brutality—a lot of it. Gray brilliantly interspersed news footage from the then-unfolding Rodney King riots, and juxtaposed them against recurring depictions of N.W.A. members' own disturbing interactions with the police. As much as N.W.A. revolutionized the world of rap music, their music also was part of a movement providing a voice to a demographic that had been ultimately passed over by mainstream media, including mainstream music. Perhaps the most poignant depiction of that rhetoric was the recurring anti-police brutality sentiment, bringing viewers along for the (at times deeply uncomfortable) ride. In one scene, the artists of N.W.A. go from being harassed and bullied by two police officers on the sidewalk outside of their recording studio, to stepping back inside the studio in the next scene and recording the wildly controversial and generation-defining hit "Fuck the Police."

Censorship is another controversial theme spanning the biopic. N.W.A.'s explicit lyrics resulted in the group's music being banned from a hefty handful of mainstream radio stations. "Speak a little truth and people lose their minds," said Ice Cube (portrayed by the rapper's real-life son, O'Shea Jackson, Jr.), driving through Los Angeles amidst protests and record-burning ceremonies stemming from the controversial lyrics in N.W.A.'s 1988 debut album. Viewers also get to witness a reenactment of Detroit Police arresting the entire group when they performed "*Fuck the Police*" onstage despite explicit instructions to refrain from doing so by the Police themselves. Censorship as a major theme is depicted again in Ice Cube's powerful on-stage line, "They tried to tell us what we can't say. They tried to tell us what we can't play. This is N.W.A."

Perhaps the biggest treat that Straight Outta Compton offers its audience is an opportunity to witness the group's immensely popular songs at their inception. With two of N.W.A.'s surviving members (Ice Cube and Dr. Dre) on the production staff, moviegoers can enjoy a uniquely behind-the-scenes perspective, an inside view into tracks that would go on to be monumental classics and pave the way for the burgeoning genre that was rap music. The film showcases N.W.A. frontman Eazy-E's (portrayed by Jason Mitchell) reluctance to record vocals, couched in his statement "I'm not a rapper." In one powerful scene, Dr. Dre (portrayed by Corey Hawkins) coaches Eazy-E on injecting passion and believability into the iconic line "Cruisin' down the street in my six-fo'." In another powerful moment for the rap genre, Dr. Dre and Snoop Dogg stand in the living room of Dre's mansion and Snoop begins to cue the lyrics, "One, two, three and to the fo'," which would go on to become the opening line of the hit single "Nuthin But a G Thang."

It is painfully rare that I come across a movie that rivets me to the point that I am unwilling to leave my seat to use the restroom, instead risking the well being of my kidneys and compromising my own comfort level just to avoid missing a single scene. Gray utilizes foreshadowing techniques in a subtle but skilled way, as Eazy-E's cough becomes increasingly severe as the movie continues on. Not unlike the way in which one can watch Titanic for the 37th time and still cry when Jack Dawson dies, Eazy-E's not-so-secret death at the culmination of the film elicited a tremendous emotional reaction that can best be described as sadness, bewilderment, and I-knew-this-was-coming-so-why-the-hell-am-I-so-sad.

In this sense, the film achieved what most biopics attempt but few can materialize: allowing the audience to connect emotionally to the artists, and delivering a performance that is well worth a trip to the cinema (or three and counting, in my case).

Office Hours Unwound

Pratheepan Gulasekaram
Associate Professor of Law

Areas of Specialization:
Constitutional Law, Immigration Law, Citizenship and the Rights of Noncitizens, State and Local Immigration Laws

Education:
-J.D., Stanford University
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1. What was the highlight of your summer?

I direct the SCU Law Shanghai Summer Program, so it was fun to take students to China for classes and internships, but also for eating soup dumplings and attempting to improve my kindergarten-level Mandarin. For those interested, it's a great summer abroad program and both Professor Anna Han and I will be directing it again this coming summer. Another highlight was finishing the final edits on my book on state and local immigration laws that will come out in late September. The lowlight was getting shoulder surgery, which is why you'll see me around campus in a sling for several weeks.

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

That's hard to say; when I think back to law school, I don't think about the subject matter so much as I think about the great professors who inspired my own curiosity regardless of the subject. That said, I definitely liked Constitutional Law (although I didn't particularly distinguish myself grade-wise). It was such an engaging mixture of legal interpretation and argumentation, politics, history, and current events that I remember being excited for every class. The class that I experienced the largest difference between my expectations going in, and how great the class ended up being, was Federal Income Taxation. I teach Immigration Law now, but when I was in law school it wasn't offered at many schools (including the one I attended) but I suspect I would have liked that too.

3. Which character(s) from literature and/or film do you most identify with?

I've never thought about the question in terms of "identification," but the book that I have read the most times is *Invisible Man*, by Ralph Ellison. It's easily my favorite book, and I probably read it once every couple years on average. *The Namesake*, by Jhumpa Lahiri has a protagonist that certainly speaks to core aspects of the immigrant identity in America as well, especially from a South-Asian American perspective.

As for film, there are characters in the John Hughes (Breakfast Club, etc.) and Rob Reiner (Stand by Me) films of the 1980s that I think struck chords for anyone growing up during that time. I thought Anthony Michael Hall's characters were especially likable. Other films that represented some of the cultural milieu of my youth as an immigrant growing up in South Los Angeles were movies like Better Luck Tomorrow, Stand and Deliver, and Boyz 'N the Hood.

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

I always read the New York Times, especially articles by Julia Preston and Adam Liptak. My browser opens to the following blogs: SCOTUSblog, Balkinization, and the Immigration Law Professors Blog. And, I always download the "We the People" podcast from the National Constitution Center.

5. What was your favorite job you had while in law school?

I was an Extern at the Asian Law Caucus in San Francisco for my entire third year of law school. It wasn't paid, but I learned a lot about community-based lawyering, and the many different hats that lawyers can wear. The attorneys there were part community advocates, part political organizers, part educators, part impact litigators, and part direct services lawyers. It was (and still is) full of highly dedicated, public interest minded lawyers who make a tangible difference in people's lives on a daily basis.

6. Which restaurant(s) in the Bay Area do you highly recommend?

It really depends on if I'm going everyday dining or fine dining, and which cuisine I'm in the mood for. Huge burrito/taco fan, so in San Francisco - La Taqueria and El Farolito (both in the Mission); in San Jose - Lorena's and Metro Balderas. For Korean fried chicken (trust me, its different than other fried chicken) - Bonchon Chicken in Sunnyvale. I regularly go to Rangoon Ruby (Burmese/Palo Alto), Shiok (Singaporean/ Menlo Park) and Sumika (Japanese/Los Altos) as well. For fine dining/ splurges, my favorite restaurant is Manresa in Los Gatos, although the best meal I've had in the U.S. was a few years ago at Saison in San Francisco. For ice cream - I really like Mr. & Mrs. Miscellaneous in Dogpatch in San Francisco.

7. What is your favorite concert that you've attended?

Two of my most memorable concerts were both by the band U2: I went to my first concert ever in 1986 to seem them perform at the Rose Bowl; and, then another time at Madison Square Garden in their shows after 9/11. But, I usually prefer smaller venue live music to big concerts. Having lived in New Orleans for 2 years, its always fun to see acts like the Rebirth Brass Band, Kermit Ruffins, or famous classic jazz musicians in small bars and street festivals. And, for an overall music and food scene, it's hard to top Jazzfest in NOLA.

8. If you could sit down for dinner with any Supreme Court Justice, dead or alive, who would it be and why?

Does it have to be just 1? I think it would be interesting to ask Chief Justice John Marshall about his mindset when he was writing *Marbury v. Madison*, and what he thought the reaction to the case would be from other federal officials. But others on that list would be Chief Justice Earl Warren, Thurgood Marshall, and of course, the Notorious R.B.G.

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

In immigration law, I think the substantial rise in state and local regulation – so-called immigration federalism – is a vitally important development that is going to have repercussions for federal policy and the lives of immigrants for the immediate future. In fact, I thought the development was so crucial that I co-wrote a book about it that will be coming out this fall – The New Immigration Federalism (Cambridge Univ. Press, 2015).

10. How do you unwind?

I'm a huge cineaste, so I watch a lot of movies, and will watch the entire bodies of work by directors that I like. Some of my favorites are Chan Woo Park (Oldboy, Thirst), Wan Kar-Wai (In the Mood for Love, 2046), David Cronenberg (History of Violence, Eastern Promises), Christopher Nolan (The Dark Knight, Memento), and Michel Gondry (Eternal Sunshine of the Spotless Mind). And, I'm a sports junkie, and watch a lot of soccer (European leagues and the US national teams), basketball (Lakers!), baseball (Dodgers!), and almost anything with athletic competition. Professor Yosifon and I maintain a now-9 year old, very intense bowling rivalry/comraderie in which we periodically meet to see who can stink it up the least on a given day.

Anna Han
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Areas of Specialization:
Chinese Trade and Investment Law, Business Organizations, Legal Issues of Start Up Businesses, Technology Licensing

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-J.D., Hastings College of Law
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1. What was the highlight of your summer?

Seeing hundreds of dolphins swimming off the coast of Mexico. Quite a site.

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

I am going to sound like a nerd but corporate tax. The professor was new and we were his first class. My school had an "Over 65 Club" and most professors were too well known or intimidating for the students to approach them. Years later, when I went back to teach, he still remembered the paper I wrote and where some of my classmates sat. I think we made an impression on him too.

3. Which character(s) from literature and/or film do you most identify with?

Spock on Star Trek. I am logical.

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

I read from a lot of sources but the best thing I have found is to be able to search a subject and get different perspectives on it. However, I also found out how often news sources just copy each other, mistakes and all.

5. What was your favorite job you had while in law school?

Summer intern after my first year at the Asian Law Caucus where I helped low income Asians. To this date, I remember the clients and cases and I have forgotten most of my corporate ones.

6. Which restaurant(s) in the Bay Area do you highly recommend?

The response requires a clarification on which type of cuisine. However, playing to stereotype, I would go to Great China in Berkeley for their Peking duck and other dishes since I just went this weekend. I even take friends from China and many think their duck is better than the ones in Beijing.

7. What is your favorite concert that you've attended?

Simon and Garfunkel reunion concert. It took me back to college days before the first song even started since someone near me in the audience was "liberally" partaking in a substance now legal in Colorado.

8. If you could sit down for dinner with any Supreme Court Justice, dead or alive, who would it be and why?

Sandra Day O'Connor. I would be interested in her experience as the first woman Supreme Court justice and how she dealt with legal and personal issues that she has encountered throughout her career.

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

It is a bit over 5 years and not necessarily a good development: the *Citizens United v. FEC* decision.

10. How do you unwind?

I read a lot of novels. Currently working on book 5 of a 14 book series. I also really like classical literature in Chinese. They take me to a different era and world.

Reflections From A Ms. JD Fellow

By Sona Makker
Privacy Editor

Note: Sona was recently selected as a recipient of the Ms. JD Fellowship. Each year the American Bar Association sponsors ten fellows who are selected based on their academic performance, leadership, and dedication to advancing the status of women in the legal profession. Sona is the first recipient of this award from Santa Clara University School of Law. Below are her reflections and excerpts from her submission to the Ms. JD Fellowship Program.

While growing up, the words 'gender inequality' were not part of my vocabulary. I never conceptualized what a barrier to the glass ceiling actually looked like. Things change the higher up you go though, as Nobel Peace Laureate, Wangari Maathai, put it: "The higher you go the fewer women there are." I remember the day I was able to first conceptualize in my mind what a barrier to the glass ceiling looked like. I was eight weeks into my first job after graduating from college. I was 20. I was sitting at my desk, writing a memo, when I got an IM notification. The message was from a male co-worker. I didn't know him very well, but sometimes we chatted in the break-room about the weather in San Francisco. His message to me said: "Hey, I think I saw you walk by desk earlier. Why didn't you say hi? ! You're wearing that top again. Very nice :)" "Well that's sort of weird," I thought. I didn't reply. A week later he messaged me: "No lace top today? When are you going to come grace us with your presence at the next happy hour?" Again, I thought, "Why is this person interrupting me to say that?" That feeling of being interrupted, of being objectified, as though your presence is an open invitation to flirt or hit-on you—that feeling is jarring. It can make you feel small even though you consider yourself to be a generally confident person. It makes you want to avoid interactions like those, and so you decline happy hour invitations, avoid the break-room at peak hours, and wear headphones more often. But doing those things sets you behind. I remember getting feedback from a former boss who told me that I needed to do a better job of staying in the know with what business development and marketing were working on. When I asked for recommendations for how to achieve this, he suggested that I stop wearing headphones and smile more, so I that I would seem more approachable.

In a brilliant TED Talk, novelist Chimamanda Ngozi Adichie explained how small instances of sexism affect women in their daily lives:

"The first time I taught a writing class in graduate school, I was worried. I wasn't worried about the material I would teach, because I was well prepared… Instead, I was worried about what I was going to wear. I wanted to be taken seriously. I knew that because I was female, I would automatically have to prove my worth…If a man is getting ready for a business meeting, he doesn't worry about looking too masculine, and therefore not being taken seriously. If a woman is getting ready for a business meeting, she has to worry about looking too feminine, and what it says, and whether or not she will be taken seriously."

These worries and woes, about wardrobe, about the color of my nails, or the tone of my voice—these are things that I don't want to think about, but sometimes, I have to. There was this time during 1L when I was a few minutes late to 9am class and a male classmate came up to me afterwards and said: "Saw you sneak in late today. Sweats, hair tied back and no-makeup? Late night last night, Sona?" Sometimes these types of comments can be ignored, but after a while, they start to take a toll. What I've learned since starting law school and working with some of the brightest minds in the Silicon Valley is this: The barrier to the glass ceiling is hard to see. It's opaque and takes on different forms in different contexts. The barrier exists as small acts of sexism that add up over time.

So what I am proposing we do about this? First off, I don't think I am alone in my experience. Ask many of your classmates about their current externships/ internships, previous roles at technology companies, and they will have similar stories. Gender is a difficult topic for both men and women. It's not something we openly call out at work, but the law school environment might present us with the opportunity to. Law school is a stressful and strange place, but it is also the ideal testing grounds for challenging yourself and practicing how you want to present yourself as an attorney in the real world. I did not expect that the people I would form my 1L study group with would be three guys. I am glad things turned out this way, because those experiences immensely helped me in my professional life, where I have had two male managers and have been the only female on my team. As female attorneys, we have to be proactive in practicing public speaking and injecting our opinion into the conversation. I advocate for actively finding male study partners to work with because it gives you the opportunity to observe how you interact in different situations. For example, when there is a disagreement and you are the only female in the room, or when you feel that you may have a better approach to the issue at hand and want to interject to pivot the conversation. Practice speaking up. And for the men here, studying with us and going to moot court competitions with us, speak out and stand up with us. If you are a man and you notice your classmate interrupting the female in your study group, or repeatedly assigning note-taking to a woman, does it occur to you to say: "Why are you interrupting her?" Or, "Let's rotate who takes notes at this meetings." Saying those things matters.

Santa Clara Law is one of the most diverse law schools in the nation (more than half our student body are women!). We have an opportunity to learn from each other. It starts with choosing to be aware of gender, by asking your female classmates about their experiences, and by calling each other out when you know that something looks and feels wrong, because even in gender-balanced environments where women are equally represented and have the same opportunities as men, small acts of sexism still persist.

Third Circuit Affirms FTC's Role In Data Security

By Angela Habibi
Staff Writer

In 2012, the Federal Trade Commission ("FTC") filed a complaint against Wyndham Worldwide Corporation (collectively, "Wyndham" Hotels) for failure to protect consumer's personal information in a series of data breaches spanning from 2008 through 2010. The FTC alleged data security failures, which caused its consumers substantial injury by misrepresenting security measures in its privacy policy for protecting consumer information. Such failures led to fraudulent charges on consumer accounts, more than $10 million in monetary losses and the export of consumer payment information to an Internet domain address registered in Russia.

More specifically, according to the FTC's June 2012 press release, the agency claimed that Wyndham failed to implement complex passwords, "firewalls and network segmentation between the hotels and the corporate network." Additionally, the FTC alleged that Wyndham stored consumer credit card information in unencrypted format; failed to adequately inventory computers connected to the Wyndham network; and, failed to remedy improper network connections and operating systems, among other contentions.

The FTC further claimed that intruders were able "install 'memory-scraping' malware on numerous Wyndham-branded hotels' property management system servers," which compromised over 500 thousand payment card accounts. Intruders accessed Wyndham servers three times in two years, leading the FTC to charge that Wyndham failed to remedy "known security vulnerabilities; failed to employ reasonable measures to detect unauthorized access; and failed to follow proper incident response procedures."

Wyndham challenged the FTC by arguing that the agency lacked authority to enforce security standards, contending that the FTC disclaimed such authority to regulate data security in public statements between 1998 through 2001. Wyndham analogized this to the FDA's disclaimers in *FDA v. Brown & Williamson Tobacco Corp.* over tobacco regulations. The district court rejected this however, distinguishing *Brown* in opining that "data security legislation was intended to compliment--not preclude--the FTC's authority." Further, the district court opined that the "FTC did not take a 'plain and resolute position' that it lacked jurisdiction to regulate a particular area."

Furthermore, Wyndham argued that the FTC failed to adequately notify companies through "rules, regulations, or other guidelines" as to acceptable data security standards. In failing to implement such guidelines, the FTC violated principles of fair notice and due process to hold Wyndham liable. The district court rejected this claim as well, opining that long-standing precedent suggested the opposite of Wyndham's contention.

On August 24, 2015, the U.S. Court of Appeals for the Third Circuit ruled in favor of the FTC, promoting the agency's power to hold companies liable for failing to provide adequate cybersecurity measures. The 3-0 ruling shot down Wyndham's claims that the FTC did not have the power to penalize companies for bad security resulting from data theft.

FTC Chairwoman Edith Ramirez stated in a press release following the decision that the case ruling "reaffirms the FTC's authority to hold companies accountable for failing to safeguard consumer data" continuing that, "it is not only appropriate, but critical that the FTC has the ability to take action on behalf of consumers when companies fail to take reasonable steps to secure sensitive consumer information."

However, the FTC did not issue a list of specific protections businesses must provide consumers, and with the increase of sophisticated cyber threats, cybersecurity guidelines are crucial. Security experts opine that companies handle sensitive consumer data differently and provide protection in various ways. Here, the FTC found Wyndham's actions "unreasonable" and thereby unfair and deceptive. But, defining "unreasonable" is the crux of the problem for businesses going forward. Where is the line drawn? With the changing nature of security threats, a detailed list of security practices may be problematic. Despite this, experts have clear concerns with "leaving the FTC to judge whether a company's security efforts are adequate."

Furthermore, earlier this year, the FTC issued a report on the Internet of Things ("IoT") urging Congress to implement laws surrounding data privacy, to no avail. Without such legislation, businesses dealing with consumer data should take proper measures to ensure their current consumer privacy practices, passwords and firewalls are holding up.

Revisiting the Silk Road's Ross Ulbricht: Deep Web

By Hannah Yang
Business Editor

Ross Ulbricht is as polarizing a figure as there ever was. Optimistic, bright, and hopeful, or conniving, troubled, and dark? The media coverage of Ulbricht's story in the past two years has been confused, at best, with no clear portrait of who Ulbricht is, or what his motivations were in masterminding the Silk Road marketplace. A few months now removed from the trial and sentencing that occurred earlier this year, "Deep Web", a documentary film by Alex Winters, was released on iTunes last week. The film, is however, underwhelming, and does little to contribute to the known narrative around Ulbricht.

Quickly recapping Ross Ulbricht's story: back in October 2013, Ross Ulbricht was arrested at a San Francisco public library by federal agents, laptop open, and logged into the Silk Road as the Dread Pirate Roberts – the apparent leader and main administrator of Silk Road. Silk Road existed (maybe still exists?) in the deep web, the underbelly of the Internet as the rest of us know it (or, the "surface web"). Ulbricht's trial began in January 2014 in the Southern District of New York, where he was eventually convicted of all seven counts, including a kingpin charge, and ultimately sentenced at the beginning of the summer to life in prison without the possibility of parole, a sentence greater than what the prosecution had requested. Judge Forrest was clearly making an example of Ulbricht in hopes of deterring others from similar conduct. Some have even suggested that Ulbricht was punished for political dissent, a notion that should concern us all.

Amidst the trial, and the details that emerged, however, it was easy to portray Ross Ulbricht as a sympathetic figure. He just seemed so . . . normal. Winters' documentary takes this

angle throughout the film, so while the film adequately questions some of the tactics used by the FBI and raises issues concerning the lack of transparency throughout the investigation, it misses an opportunity to explore the mystery around Ulbricht. In other words, Ulbricht had admitted to creating the Silk Road. By the time he had been arrested, the Silk Road's business had been well-established, and went far beyond the naïve, libertarian-esque, laissez-faire marketplace that Ulbricht espoused as his intent for initially creating Silk Road. Prior to its shutdown, Silk Road was distributing bitcoin worth millions of dollars and was primarily an illegal drug marketplace. No doubt arises around why a person would go to Silk Road. Herein lies the mystery: does anyone know the real Ross Ulbricht?

Winters had exclusive access to interviews with the Ulbricht family. Unfortunately, the family is not convincing as people who believe their son was really not involved. Winters fails to draw out from Ulbricht's parents a believable narrative of a Ross who was truly incapable of being the Dread Pirate Roberts. The interviews produce perhaps the opposite effect than what was intended; it makes the relationship between the parents and their son feel distant. Their core position is that the investigation was improperly conducted, and the government violated Ulbricht's Fourth Amendment rights. Their insistence that Ross could not have been the Dread Pirate Roberts or was capable of the acts he has been accused of, is underscored by the idea that they perhaps, do not know who their son was in his private, adult life. That is a better story, and one that could have attempted to inject some stability and truth into a story that seems to stand on very questionable grounds.

This story will continue to evolve. The Internet is still a new frontier, with new cowboys, sheriffs and outlaws. Judges themselves are uncertain of this realm; the deep web and dark net apparently operate in an anarchy-like state, but are neither - at least, not going forward – invisible, nor free.

Summer Internships Result In FCPA Fines

By Kyle Glass
Sergeant-at-Arms

With summer at end and Law School resuming, many students are returning from internships, clerkships and summer associate positions. These opportunities were largely the result of hard work, good grades and lots of interviewing. The primary goals of these temporary positions were to fill-in the resume, gain some valuable experience and leave a positive impression upon the employer, leading to a full time job or a positive reference leading to future employment. However, three interns at The Bank of New York Mellon achieved none of these goals. From 2010 through 2011 relatives of Middle Eastern government officials received internships in exchange for asset management service which eventually led to a SEC inquiry. On August 18, 2015, the SEC concluded a Foreign Corrupt Practices Act investigation of BNY Mellon, ending in a settlement requiring BNY Mellon to implement a more robust anticorruption program and pay $14.8 million in penalties.

The Foreign Corrupt Practices Act (FCPA), enacted 1977, was the first step taken by a country to combat corruption on foreign soil. Motivated by evidence uncovered from the Watergate Scandal, Congress set out to reverse the notion that complying with foreign corruption was just the cost of doing business. 15 U.S.C. § 78dd-1(a)(1) prohibits giving "anything of value" to a government official in order to gain a business advantage, but the full scope of the FCPA prohibits corrupt activity towards political parties, quasi-government agencies such as foreign telecommunications companies as well as relatives of foreign government officials. In addition, the FCPA requires proactive accounting methods in order to compel companies to adequately police their own employees.

The FCPA allows for both criminal and civil causes of action. Criminal proceedings are brought by the Department of Justice and can result in substantial fines for companies in violation and can also result in fines and prison sentences for individuals who willfully participate in or further violations of the FCPA. Only the SEC is authorized to bring civil actions which are brought against public companies. In 2014, the DOJ collected approximately $1.25 billion in corporate fines and the SEC collected a little over $300 million. This large discrepancy is due in part to the SEC's use of administrative actions to pursue enforcement of the FCPA. In recent years, both the DOJ and SEC have turned to non-prosecution agreements (NPAs) or deferred prosecution agreements (DPAs) in which companies can agree to pay a fine and institute increased accounting measures in order to settle prosecution. Most settlements require judicial approval, but administrative actions only require approval of an administrative law judge. Some have criticized this, claiming administrative law judges are more willing to accept lower settlement agreements than district court judges. Others say lessened fines encourage cooperation from companies, resulting in lower investigation costs and faster enforcement proceedings. Especially when corrupt activity occurs in distinct cultures through isolated individuals, a company's cooperation can be imperative to a successful investigation.

In the case of the three interns, cooperation from BNY Mellon led to a comprehensive SEC investigation. From a trail of emails, the SEC determined that two Middle Eastern government officials responsible for the distribution of their Sovereign Wealth Fund's assets exchanged asset management services for internship positions. The investigation uncovered several persistent demands from the government officials, indicating that future business hinged on delivery of the internship positions. Caving to the demands, BNY Mellon created unique positions, separate from their standard internship programs. A very prestigious program, BNY Mellon usually recruited interns from graduate business schools with successful candidates usually having substantial experience. In addition, these positions are effective routes to full time employment and are very work intensive. BNY Mellon created unique positions for the son and cousins of the Officials which filled no official role and were not intended to turn into full employment. The interns were not vetted, were insufficiently qualified, and their overall performance was significantly worse than other interns. Throughout their investigation, the SEC determined that although BNY Mellon cooperated with investigators and began implementing an updated anticorruption program, the lack of internal controls during the internships and clear evidence of FCPA violations required a monetary penalty. The SEC also required BNY to create more specific anti-corruption material aimed at the hiring of government officials and their relatives.

Moving forward, it will be interesting to see how active U.S. officials are in policing various hiring practices for internships. Today, internships are an important step to full time employment for lots of young professionals and often can be the result of "networking" or other less formal methods of getting in the door. It remains to be seen where the line will be drawn between doing a favor and a committing a criminal bribery offense.

Seventh Circuit Lends A Hand To Data Breach Plaintiffs

By Brent Tuttle
Editor-in-Chief

Recently, the Seventh Circuit handed down a ruling that has the potential to make it much easier for plaintiffs' attorneys to bring forth lawsuits stemming from data breaches. The case is *Remijas v. Neiman Marcus Grp., LLC*, No. 14-3122, 2015 WL 4394814 (7th Cir. July 20, 2015). However, since the ruling Neiman Marcus has filed a petition for an en banc rehearing of the case.

Background:

Between July 16, 2013 and October 13, 2013, malware found its way onto the Neiman Marcus computer systems. This potentially exposed 350,000 credit cards, 9,200 of which were known to have been used fraudulently. (The Court noted that all 9,200 fraudulent charges were subsequently reimbursed.)

The company discovered this breach January 1, 2014 and publicly disclosed it nine days later. They offered all customers who shopped at Neiman Marcus between January 2013 and January 2014 one year of free credit monitoring and identity theft protection.

This announcement prompted a number of class action suits spearheaded by four individual plaintiffs who represent 350,000 other customers whose credit card information *may have been stolen*. The disclosures indicated that social security numbers and other PII had not been exposed. The complaint relies on several theories: negligence, breach of implied contract, unjust enrichment, unfair and deceptive business practices, invasion of privacy, and violation of multiple state data breach laws.

The company moved to dismiss the claim, arguing that the plaintiffs lacked Article III standing, a usually successful procedural tactic in data breach litigation. A litigant with standing to sue must have "suffered [a] concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). Plaintiffs alleged injuries relating to lost time, money, and aggravation in dealing with the breach, as well as "an increased risk of future fraudulent charges and greater susceptibility to identity theft." The case was dismissed by the district court, based on the 2013 Supreme Court case *Clapper v. Amnesty Int'l USA*, which held that allegations of possible future injury are not sufficient.

Seventh Circuit's Decision:

On July 20, 2015, the Seventh Circuit reversed the district court's decision. The Seventh Circuit stated "*Clapper* does not…foreclose any use whatsoever of future injuries." In *Clapper*, the Supreme Court decided that Amnesty International did not have standing to challenge the Foreign Intelligence Surveillance Act (FISA) because they could not show that their communications were actually intercepted by the government, but only that such interceptions might have occurred. This was too speculative to establish standing. However, *Clapper* left open what is known as the "substantial risk" standard, stating "[o]ur cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about. In some instances, we have found standing based on a 'substantial risk' that the harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that harm." *Clapper*, 133 S. Ct. at 1150 n.5 (2013). The Seventh Circuit ruled that the data breach plaintiffs alleged a sufficient substantial risk of harm.

The Seventh Circuit concluded that "the Neiman Marcus customers should not have to wait until hackers commit identity theft or credit-card fraud in order to give the class standing because there is an 'objectively reasonably likelihood' that such an injury with occur." Thus, the 350,000 Neiman Marcus customers whose information *may have been stolen* have standing to sue despite the fact that so far we have what appears to be a series of victimless crimes.

Neiman Marcus represents a significant change in the tide for data breach litigation and as this is the first Court of Appeals to lower the bar for plaintiffs to gain standing, it may very well open up the floodgates elsewhere. Past cases (some within the Seventh Circuit) had rejected the "clearly impending" theory of injury. *See In re Barnes & Noble Pin Pad Litig.*, No. 12-CV-8617, 2013 WL 4759588, at *3 (N.D. Ill. Sept. 3, 2013) (holding "[m]erely alleging an increased risk of identity theft or fraud is insufficient to establish standing"); *see also Strautins v. Trustwave Holdings, Inc.*, No. 12-C-09115, 2014 WL 960816 (N.D. Ill. Mar. 12, 2014); *see also Polanco v. Omnicell, Inc.*, 988 F. Supp. 2d 451, 468 (D.N.J. 2013).

Beyond the Seventh Circuit, at least two cases in the Ninth Circuit have also afforded data breach plaintiffs standing through the substantial risk standard, one of which was cited in the Seventh Circuit's opinion. *See In re Adobe Sys., Inc. Privacy Litig.*, 66 F. Supp. 3d 1197, 1214 (N.D. Cal. 2014); *see also In re: Sony Gaming Networks & Customer Data Sec. Breach Litig.*, No. 11-md-2258, 2014 WL 223677, at *9 (S.D. Cal. Jan. 21, 2014).

The Seventh Circuit's justification upon which it placed the above reasoning is questionable. The Court states "…it is plausible to infer that the plaintiffs have shown a substantial risk of harm from the Neiman Marcus data breach. Why else would hackers break into a store's database and steal consumers' private information? Presumably, the purpose of the hack is, sooner or later, to make fraudulent charges or assume those consumers' identities." That is quite a presumption, is it not? How can anyone truly know the purpose behind a hack or data breach? There may be other purposes, such as causing fear itself, seeking to increase the costs of Neiman Marcus, or simply exploiting a security weakness because it is there. On remand, would this be a rebuttable presumption relegated to the damages phase of a trial?

Further, one wonders if the facts of the Neiman Marcus case will be extrapolated: Is there such presumption for the Sony breach? (Coincidentally, a suit involving that breach was allowed to move forward but recently settled. *See Corona v. Sony Pictures Entm't, Inc.*, No. 14-CV-09600 RGK EX, 2015 WL 3916744 (C.D. Cal. June 15, 2015)). What about the Office of Personnel Management breach? Is it plausible to presume any intent or motive with that incident? The enemies of the U.S. government likely have different motives from the enemies of Neiman Marcus.

How about the Ashley Madison hack that has been in the headlines? Adult Friend Finder earlier this summer? These breaches certainly don't seem to fit within the Seventh Circuit's reasoning above. Those may have been primarily targeting the businesses, not the customers.

Another consideration is that hackers might take haystacks of data in order to identify the desirable needles. Can a court presume that a breach isn't really targeting a needle as opposed to the entire haystack? And what sort of public policy does this promote by allowing the entire haystack a bite at the apple if it's unknown whether they were ever actually harmed or the target thereof? The Seventh Circuit's language in Neiman Marcus may just be a presumption, but it's going to be an expensive presumption for data breach defendants to bear.

It is further problematic that the Seventh Circuit partially grounded its decision on the basis that "[i]t is telling in this connection that Neiman Marcus offered one year of credit monitoring and identity-theft protection to all customers whom it had contact information and who shopped at their stories between January 2013 and January 2014. It is unlikely that it did so because the risk is so ephemeral that it can safely be disregarded." It may be true that Neiman Marcus's actions are unlikely a result of ephemeral risk. However, the Seventh Circuit ignored the fact that at least one state data breach law requires Neiman Marcus to pay for such services if offered (*See* Cal. Civ. Code § 1798.82(G)). Furthermore, many laws require that data breach notices provide the victim with information as to where they can obtain free credit reports (*See* VA. Code Ann. 18.2-186.6; *see also* Wash. Rev. Code § 42.56.590; *see also* W. Va. Code § 46A-2A-102.) It is a logical fallacy to conclude that Neiman Marcus's actions, then, were related to an assessment of risk rather than statutory obligations.

There are other legitimate reasons, beyond risk, why Neiman Marcus would offer such services. First, it makes for good public relations, to give the appearance their response is proactive. Second, it typically renders moot the standard plaintiff's claim that the breach forced them to purchase their own credit monitoring. However, the Seventh Circuit has challenged that tactic as well. On remand, the court not so subtly advised the district court to investigate how long stolen data puts consumers at risk (a question they will not find an answer to). It seems this will be used to assert whether the 350,000 potentially harmed customers will need credit monitoring services beyond the twelve months that Neiman Marcus has offered to pay for, something the Seventh Circuit says "easily qualifies as a concrete injury."

It is troubling that the Seventh Circuit has utilized evidence that Neiman Marcus is taking measures to mitigate any further harm from the breach against them. Customarily, evidence of remedial measures is inadmissible to prove a breach of duty. Although it may be admissible as proof of harm (or standing), the prejudice may outweigh the probative value.

In sum, there could be a "substantial risk" that we'll see a lot more class action data breach suits getting filed under this new theory. This should make for some interesting developments in the field data breach litigation as most plaintiffs have not previously been able to get around the Article III standing issue. However, it's hard to say whether the ruling will have a positive net impact on privacy for consumers, or merely just benefit plaintiffs' attorneys looking for a payday.

Cashless Is King

By Campbell Yore
Science & Technology Editor

Imagine walking into *Trader Joes*® and leaving with your items without waiting in line at the checkout. Now it's stealing but soon it will be legal thanks to digital wallets with near field communication (NFC) technology. A quick and easy way of exchanging information, NFC enables electronic devices to establish radio communication with each other by direct contact or placing them at close proximity (less than or equal to 10 cm). Soon smartphones will use this technology to provide automated cashless payments.

The idea of cashless payments is an ancient concept dating back to Edward Bellamy's 1887 science fiction novel, *2000 – 1887 Looking Backward*. Today cashless is king. In 2011, sixty six percent of global consumer spending ($42 trillion) was done with cashless payments. Last year, this figure grew to eighty percent in the US and eighty five percent in Belgium, France, Canada, the UK, Sweden, Australia, and the Netherlands. Cashless is also catching on quickly in Asia. China had the fastest growing cashless infrastructure from 2006 – 2011 and currently over half of consumer transactions in the people's republic do not involve cash. In South Korea, government tax incentives tied to adopting cashless payment technology have helped create a payment infrastructure that is 70% cashless.

Despite global momentum for transitioning to a cashless payment infrastructure, innovation in this area has come slowly. Most cashless payments still occur at a cash register and involve swiping a credit card through a card reader. Small screen sizes and the meticulous process of typing billing and shipping information are frequently blamed for the disparity between the 93% of consumers who use mobile phones to research products and the 17 % of consumers who purchase products directly on their mobile phone. Recently, an assemblage of Silicon Valley's A listers has sought to disrupt cashless payments. By replacing credit card infrastructure with mobile phones and automated payments, the tech giants seek to oust cashless tycoons MasterCard and Visa.

Recent, acquisition, patent, and litigation activity provides a snapshot of the current state of this struggle. A 2014 World Intellectual Property Association (WIPO) Report compiled by LexInnova estimates 6,494 patents and patent applications have been granted or filed on cashless payment technologies. Claims featured in this art cover a wide variety of technologies including sensing systems, like fingerprint sensors which authenticate a user's identity, record carriers, which securely store digital payment information, and payment architectures, which provide the transaction interface between user and bank. MasterCard (150), Visa (149), and Google (92) are the top three assignees of cashless payment patents and patent applications. Others active in this field include practicing entities eBay (62), Sony Corp (52), LG (51), Nokia (43), Samsung (41), IBM (45), Blaze Mobile (84), Research in Motion (41), First Data Corp (41), Intellitix, and IGT Reno (58) as well as non practicing entity III Holdings I (40).

The acquisitions market in cashless payment technology is also bustling. In last two years, Braintree, a provider of e-commerce processing software for merchants, was acquired by PayPal (an eBay subsidiary; $800 million), Check (now Mint Bills), a mobile app which consolidates and automates online bill pay went to Intuit ($360 million), and Gyft, the original mobile gift card wallet was purchased by First Data (not disclosed). Finally, a private equity group led by Bain Capital handed out 2014's richest payment technology deal acquiring Nets Holding A/S, a provider of payments, information and digital identity solutions ($3.14 billion).

Patent Litigation has been used by small and medium sized firms to monetize early developed cashless payment technology. In 2012, E-Micro Corporation filed a patent infringement lawsuit in the Eastern District of Texas alleging Google's Google Wallet android app employed on Samsung's Galaxy 4S infringed its patented digital wallet consolidator. The suit was dismissed with prejudice after Google purchased thirteen patents and one pending patent application encompassing the disputed technology.

With so much activity and the top 20% of assignees owning far less than 80% of the cashless payment patents/patent applications, ownership of this technology is uncertain. As usual, lawyers will determine control by litigating granted patents, prosecuting filed applications, and licensing existing technology. Their work will disrupt the retail experience by automating checkout, render millions of cashier jobs obsolete, and change how we all visit the grocery store.

Intellectual Property Research: A Review of Legal Analytics SaaS

By Jodi Benassi
IP Editor

Legal analytics applications parse through large amounts of data and transform it into cohesive graphical interfaces that enable lawyers to quickly analyze pertinent information. There are a number of companies that build web-based Software-as-a-Service (SaaS) platforms that aggregate data from public sources, run it through proprietary algorithms, and output meaningful information that can be easily consumed. This growing category of legal technology profoundly changes how we compete in law and in business. In this article I review five SaaS platforms that provide information pertinent to patent, trademark, and copyright research.

Lex Machina

Lex Machina, a spin out of Stanford Law, recently won 2015 New Product of the Year by the American Association of Law Libraries. The platform crawls millions of pages of unstructured intellectual property law data and IP litigation documents daily and encodes them into a searchable, structured database. Most of its case information comes from the district courts (PACER), International Trade Commission (EDS), and Patent Trial and Appeal Board (PTAB). Lex pays to look at the text of every docket in every case and automatically downloads what they believe to be the primary documents, and then they allow users to download everything they think is important. A very nice feature considering PACER is $3 per document. The platform does not include any information from U.S. appellate courts or any foreign litigation.

The database provides insights into cases, judges, lawyers, parties, and patents, and goes so far as to predict the outcome of new patent cases by weighing a number of variables at its disposal. Moreover, it provides valuable information about trademarks and copyrights, in addition to patents. Its trademark database gives users immediate insights into Lanham Act claims, which include trademark/trade dress infringement, trademark/trade dress dilution, unfair competition, and DMCA claims. Unfortunately Lex has not expanded its database to include cases from the Trademark Trial and Appeal Board, so all trademark case information is from the district courts.

Lex has an intuitive interface and is notably simple to use. Once logged in, users can search the entire database from the landing page search bar. From there, users can view district court documents, dockets, cases, patents, PTAB trials, and ITC investigations among other information. I've used Lex for over a year and find it's my "go to" application when I want to know anything about a case, patent, or law firm. As a student, one of the great things about Lex is they have a commitment to the public interest, and provide free access to students, those engaged in research of IP law and policy, members of Congress, judges, and court staff.

Docket Navigator

My second "go to" application is Docket Navigator. Docket Nav, for short, collects records from the same public record services as Lex (note, so do most of the others). The database includes all patents in U.S. district courts cases going back to 2000, as well as documents and cases filed with the PTAB and ITC. Docket Nav only provides information related to patents and patent cases; unlike Lex, it does not provide any information related to trademarks or copyrights.

From the main search page, users can research cases and view a description of the court filings, however to view the court record requires downloading it from PACER for a fee (whereas with Lex it's free). All of the information provided is available in an easy to use grid-like interface. I found Docket Nav to be superior to all applications reviewed, in how it enables users to search by legal issues. For example, I searched the specific infringement defense of "anticipation", in all U.S. district courts, and only for dispositive motions for summary judgment. This query provided me with a list of all motions that had been filed where the defense of "anticipation" was used; from there I was able to narrow my search by the result of the motion, judge, court, party, patent, case status, and date. Unique to Docket Nav is its claim construction database of construed claim terms that allows users to search and find nationwide decisions.

Another reason to like Docket Nav is that it's free to students. It provides a free academic program that allows law students and professors unlimited access. A new feature of the application is its beta analytics which provides charts of summarized data similar to the other IP analytic platforms reviewed here.

Innography

Innography's intelligence and analytics product, Advanced Analysis, provides data on patents, litigation, non-patent literature, and includes a document share component. Its database is worldwide, with over 48 million translated documents from foreign jurisdictions and over 100 million records. It utilizes a natural language semantic search, unique to Innography, that allows for searches as broad as an entire wiki description. Its proprietary algorithms also calculate patent strength. This application is limited to patent research; it does not provide any information or analysis on trademarks or copyright.

The application is fairly comprehensive when it comes to searching both a patent and patent owners. I found the user interface and graphs elegant and extremely intuitive to use. The platform enables users to view patents, revenue, and litigation by company. Users can search a company and see how many applications were filed, patents granted, and patents expired over a timeline, via a grid, or via a worldwide jurisdictional map.

The graphics and analytics were striking; unlike anything the other platforms offered in terms of the breadth of analysis. However, as the old saying goes, you get what you pay for. The service is fairly cost prohibitive for individual researchers; Innography typically sells annual subscriptions to technology companies, law firms, and technology transfer offices in the thousands. Sadly, they do not offer any free access to students or law schools.

Ravel Law

Like Lex, Ravel Law is a recent spin out of Stanford Law. The data provided using the Ravel platform was the most limited of the platforms tested. The application does not provide docket files or links like Lex and Docket Nav, it only provides the court's opinion and even that is not downloadable. Like Docket Nav, Ravel Law is limited to legal information related to patents only. A plus for Ravel is they also provide free educational access to students.

Interestingly, if a general term like "anticipation" is entered in the search bar, it will provide a map going back to the 1800's showing all cases where that word was used. It's an enjoyable map to look at and if you want a graphical display of how cases cited to other cases, it's pretty useful, but I found that when doing specific research it didn't allow me to filter out enough irrelevant data to be efficient.

RPX

In 2014, RPX acquired a research tool called Patent Freedom and repurposed it into RPX Search. RPX Search is the first search engine to provide free access to all US patents, patent applications, every patent litigation filed in a US district court since 2000, and all patent owners and parties in litigation. The database contains information on 8 million patents, 6 million docket entries, and tens of thousands of cases. RPX also launched a free web-based assertion management tool to consolidate all patent data relevant to demand letters from non-practicing entities.

The platform allows users to search by patent litigation, entities, and patents. The interface is simple to use, but users will want to go directly to advanced search to enable narrower searches to retrieve more meaningful data. I was able to quickly see the litigation for a particular patent and download documents from the docket for free, another plus for RPX. All information is displayed in a grid format. Unlike some of the other applications, RPX does not provide any enhanced analytics, but for a free service it is very useful.

I found that most of the free services are connecting to the federal courts, PTAB, and ITC for raw data. What differentiates them are their proprietary algorithms that allow users to narrow searches and see logical connections between cases, courts, judges, and patents.

These software platforms are very valuable when it comes to patent and patent litigation analysis, but at the end of the day, it's the lawyers experience and skill that dictates what to look for and how to interpret the data. As Wayne Gretzky once said, "A good hockey player plays where the puck is. A great hockey player plays where the puck is going to be."