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 facultly 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.

However, with the current proposal, those fears have been alleviated. Thanks to the adamancy of Dean Kloppenburg, 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 community. However, a major boon 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. #loanforgiveness
OWN IT. OWNERSHIP. We can all do this; we just need to recognize the problem we are experiencing is a lack of quality work products. IMHO, we are all capable of producing quality work products. High kids who can put together a cover letter correctly is not rocket science. I know junior lawyers about being honest—spelling a company's name incorrectly is not rocket science. I know junior lawyers about being honest—spelling a company's name incorrectly is not rocket science.

Where does it go wrong? Why don’t we care? Why do we let these bad resume and letters do battle for our students? We have trainings, do I turn off the spigot of bad resumes that are filling up my inbox? "Ugh."

Rumor Mill with Dean Erwin

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 to the Events Calendar on Emery and click “subscribe” to have everything show up on your Google calendar.

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 costumes 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 BRCIS 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 Nennaya Amuchie
Social Justice Editor

In the past two months, #BlackLivesMatter activists have interrupted Bernie Sanders at his campaign rallies and confronted Hillary Clinton about her racist policies. The film Straight Outta Compton is a powerful moment for the rap genre, Dr. Dre and Snoop Dogg have both gone through political and personal adversities, and the goal of #BlackLivesMatter is to end anti-black violence in all sectors of the United States. The film is about the experience of the artists from the opening scene to the end credits.

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 Networkclear is a resolution from the Democratic National Committee, but 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 downslopes 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.

by Lindsey Kearney
Associate Editor

In Straight Outta Compton, award-winning director F. Gary Gray successfully merges a fast-paced, emotional, provocative, and controversial cinematic experience from the opening scene to the end credits. Taking place in Compton, California during the late 1980s and early 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-shaping 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 not the only conspiracy; quite appropriately, controversy is an exciting and recurring manifestation throughout the film, even bleeding into critical condemnation of what was included and what was omitted from the biopic.

First, there is police brutality—a lot of it. Gray brilliantly interspersed news footage from the fatal unfolding Rodney King riots, and juxtaposed them against recurring depictions of N.W.A.’s own disturbing interactions with the police. As much as N.W.A. revolutionized the world of rap music, their music also was a part of 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 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 mainstream radio stations. “Speak a little truth and people lose their minds,” said Ice Cube (portrayed by Jason Mitchell) at the culmination of the film. The #Blacklivesmatter activists for being unprofessional and the candidate’s response are reminiscent of century-long, ignored cries for help.

When confronted, Bernie Sanders and Hillary Clinton both gave highly political responses and failed to capture the spirit and heart behind the movement. The goal of #BlackLivesMatter is to end anti-black violence in all sectors of the United States. The film is about the experience of the artists from the opening scene to the end credits. #Blacklivesmatter represents every Black person around the world.

The strategies implemented during the Civil Rights movement are not the same strategies activists are using today. Thus, Bernie Sanders records mean 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.

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 powerful moment for the rap genre. 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 comfort level just to avoid missing a single scene. Earp utilizes foreshadowing techniques in a subtle but skilled way, as Easy-E’s cough becomes increasingly worse as the movie continues on. Unlike the way in which one can watch Titanic for the 37th time and still cry when Jack Dawson dies, Easy-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.

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.”

-Assad Shakur

#Blacklivesmatter activists are the heart and soul of the movement. The #Blacklivesmatter activists for being unprofessional and the candidate’s response are reminiscent of century-long, ignored cries for help.
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? That’s hard to say, when I think back to law school, I don’t know 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 exciting mixture of legal interpretation and argumentation, politics, history, and current events that I remember being excited for every class. The class 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 I have read the most is Invisible Man, by Ralph Ellison. It’s easily my favorite book, and I probably read it once every couple years on average. I think about it often, and I think one reason why I have a protagonist that certainly speaks to core aspects of the immigrant identity in America as well, especially from a South-Asian American perspective.

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 it still is) full of highly dedicated, public interest minded lawyers who make a tangible difference in people’s lives on a daily basis.

6. What 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 Taqueta and El Farolito (both in the Mission), in San Jose - La Loncheria (metro Bakers). For Korean fried chicken (trust me, its different than other fried chicken) - Bonchon Chicken in Sunnyvale. I regularly go to Rangoon Ruby (Burmes/Palo Alto), Shik (Singapore/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 see 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 regulars, 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 Univar 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 Wook Park (Oldboy, Thirst), Wong Kar-Wai (The Namesake, In the Mood for Love), Paul Thomas Anderson (Boogie Nights), 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 Yousef and I maintain a now 9-year old, very intense bowling rivalry/comedrie in which we periodically meet to see who can stink it up the least on a given day.

1. What was the highlight of your summer? 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.

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The response requires a clarification on which type of cuisine.

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

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**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 it means to be a woman unless it 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 from a 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 look at the clock when you were coming in 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 talk more on the phones and smile more, so 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 careers:

“...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 after class and said: “Saw you sneak in late today. Sweats, hair tied back and no-makeup? Late night last night, Sonal?” 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 am I 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 externalships or 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 an ideal testing ground for roles I will play in the real world, 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 informed my first few years 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, structuring how we speak to 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 lunch, court, and out to dinner, speak up 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: “Hey, Sonal, don’t you think this might be an opportunity to interrupt her?” Or, “Let’s rotate who takes notes at this meeting.” 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 someone is feeling bad 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 itself as company with adequate cybersecurity measures. The 3-0 ruling “reaffirms the FTC’s authority to regulate data security resulting from data theft.” Wyndham challenged the FTC by arguing that the agency lacked authority to enforce security standards, containing the FTC claimed such authority to regulate data security in public statements between 1998 through 2001. Wyndham analogized this to the FDA’s analogous “leaving the FTC to judge whether a company’s ... threaten the public health, pose a public health problem.” 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? Faced with the 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 cybersecurity efforts are adequate.” Furthermore, 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 held up.

Wyndham claimed the FTC by arguing that the agency lacked authority to enforce security standards, containing the FTC claimed such authority to regulate data security in public statements between 1998 through 2001. Wyndham analogized this to the FDA’s analogous “leaving the FTC to judge whether a company’s ... threaten the public health, pose a public health problem.” 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? Faced with the 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 cybersecurity efforts are adequate.” Furthermore, 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 held 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 a clear portrait of who Ulbricht is, or what his motivations were in masteringminding 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 Winter, was released on iTunes last week. The film, is however, underwhelming, and does little to contribute to the known narrative around Ulbricht.

Quickly recap: 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 naive, libertarian-esque, laissez-faire marketplace.

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 BNY Mellon were found guilty of violating the Foreign Corrupt Practices Act (FCPA), enacted 1977, and were charged with a crime.

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 applies to 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 required to bring criminal actions against public companies. Ulbricht’s parents, BNY Mellon created unique positions for the son and cousins of the Officials which filled no actual 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 anti-corruption program and an increased number 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 investigative U.S. officials are in policing various hiring practices for internships. Today, internships are an important step to full time employment for many and connect young professionals to the opportunity to work in a big firm. 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 another 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 the Internet as the rest of us know it. The world operates in an anarchy-like state, but are neither - at least, not going forward – invisible, nor free.
By Brent Tuttle  
Editor-in-Chief

Recently, the Seventh Circuit handed down a ruling that is going to make it much easier for plaintiffs to bring forth lawsuits arising from data breaches. The case is Remjas 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 was found in its way onto the Neiman Marcus website. The malware infected approximately 530,000 credit card records, 9,200 of which were known to have been fraudulently used. (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. They attempted to settle a class action suit 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, names, and PAN II had not been exposed. The complaint relies on several theories: negligence, breach of implied contract, unjust enrichment, ultra vires, unfair 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. Article III standing requires the plaintiff to show 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, 554 U.S. 380, 388 (2008). The court agreed, finding that there had been no actual or imminent harm, and that plaintiffs alleging only lost time, money, and aggravation in dealing with the breach, as well as an irrevocable loss of privacy, were not entitled to relief. The court held that “the alleged harm is speculative and remote and the loss is simply an indirect and greater susceptibility to identity theft.” The case is Remjas v. Neiman Marcus Grp., LLC No. 14-3122, 2015 WL 4394814, at *3 (N.D. Ill. Sept. 3, 2013) (holding “[m]erely alleging an increased risk of identity theft or fraud is insufficient to state a claim under” standing); see also Strutwin v. Target Corp., No. 12-CV-8617, 2013 WL 4759558, at *3 (N.D. Ill. Sept. 3, 2013) (holding “[m]erely alleging an increased risk of identity theft or fraud is insufficient to state a claim under”). The court held that there “are no concrete, particularized, and actual injuries relating to lost time, money, and aggravation in dealing with the breach, as well as an irrevocable loss of privacy.”

The court agreed with the plaintiffs to demonstrate that it is literally certain that the harms identity theft will identify will come. In some instances, we have found standing beyond a ‘substantial risk’ that the harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that harm.” However, the Seventh Circuit said “easily qualifies as a concrete injury.”

The Seventh Circuit reversed the district court’s decision. It held 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. The court agreed that “there is a reasonable likelihood that such an injury occur.” Thus, the 350,000 Neiman Marcus customers whose information was stolen are entitled to standing to pursue suit to see despite the fact that to have standing

Neiman Marcus represents a significant change in the tide for data breach litigation and as the court noted “it’s going to be an expensive presumption for data breach claims.”

Beyond the Seventh Circuit, at least two cases have also adopted the same line of reasoning. One is 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-22358, 2014 WL 2226777, at *7 (S.D. Cal. Jan. 21, 2014).

The Seventh Circuit’s justification upon which it placed the above reasoning is questionably sound. The court states “it follows from the [Remjas] opinion that the plaintiffs have shown a substantial risk of harm from the Neiman Marcus data breach. Why else would the breach have resulted in identity theft and stealers’ private information? Moreover, the purpose of the hack, sooner or later, to make fraudulent charges or assume those identities’ others? That is quite a circumstantial inference, is it not? How do the plaintiffs know the purpose behind a hack or data breach? There may be other purposes, such as causing embarrassment to the fraud standing beyond a ‘substantial risk’ that the Neiman Marcus, or simply exploiting a security weakness because it is there. On remand, would it be aｍore reasonable to preserve presumption related to the damages phase of a trial?

No one wonders if the facts of the Neiman Marcus case will be extrapolated: is there some presumption for the Sony breach? (Considerably, a suit involving that breach was allowed to move forward but recently settled.) See Corova v. Sony Pictures Entm’t, Inc., No. 13-CV-07464 (E.D. Cal. Dec. 15, 2015). What about the Office of Personnel Management? It is plausible to presume on intent for the stolen database. 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 occurring? The court appeals to the fact that this summer? These breaches certainly don’t seem to fit within the Seventh Circuit’s reasoning that the breach may have at least given hackers the ability to harm the businesses, not the customers. Moreover, other 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 opposite to the entire haystack? And what sort of public policy does this promote by allowing the entire haystack to fall at the superficial cost of Polansky v. Omnicell, Inc., 988 F. Supp. 2d 841, 468 (D.N.J. 2013).”

Recent, acquisition, patent, and litigation activity provides a snapshot of the current state of this struggle. A 2014 World Intellectual Property Association (WIPO) Report 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 that are currently in use and that are used to record malware encrypted keys, which securely store digital payment information, and payment architectures, which provide the transaction interface between user and bank. MasterCard (150), Visa (500), American Express (630), and Discover (58) as well as non practicing entity III Holdings (140).

The acquisition 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; $8 billion), Mint Bills (not disclosed). Finally, a private equity group led by Bain Capital handed out 2014’s richest payment patent infringement lawsuit (not disclosed). Finally a private equity group led by Bain Capital handed out 2014’s richest payment patent infringement lawsuit (not disclosed). Finally a private equity group led by Bain Capital handed out 2014’s richest payment patent infringement lawsuit (not disclosed). Finally a private equity group led by Bain Capital handed out 2014’s richest payment

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 court could see more data breaches being filed under this new theory. As on remand, the court not so subtly advised the district court to investigate how long stolen data is available for sale (and not find an answer to). It seems this will be to use the Seventh Circuit as a precedent, customers will need credit monitoring services beyond the twelve months that Neiman Marcus offered. This seems to be a bad idea for Neiman Marcus, but this Circuit says “easily qualifies as a concrete injury”.

It is troubling that the Seventh Circuit has utilized such a broad definition for “reasonable” to require remedial measures is inadmissible to prove a breach of duty. Although it may be admissible as proof of harm (or站在), the prejudice may outweigh the probative value.

In sum, there could be a ‘substantial risk’ that we’ll see more data breach data breaches. This might be getting filed under this new theory. This should make for some interesting developments in the field, but for now, plaintiffs have not been able to get around the Article III standing issue. However, it’s hard to say whether the ruling will have a positive impact on privacy for consumers, or merely just benefit plaintiffs’ attorneys looking for a payday.

By Brent Tuttle  
Editor-in-Chief

July 2015

SevenCircuit Lends A Hand To Data Breach Plaintiffs

Imagine waking into Trader Joe’s and leaving with your items without waiting in line at the checkout. Now it’s not stealing but it is legal to take this 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 made back to 16th century as a science fiction novel, 2000 – 1887 Looking Backward. Today cashless is king. In 2011, sixty six percent of mobile users purchase products directly on their mobile device. Recently, an American survey has shown that 95% of consumers have bought items from a website, disrupt cashless payments. By replacing credit card infrastructure with mobile phones and automated payments, the tech giants seek to out cashless tech companies of their own. Recent, acquisition, patent, and litigation activity provides a snapshot of the current state of this struggle. A 2014 World Intellectual Property Association (WIPO) Report 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 that are currently in use and that are used to record malware encrypted keys, which securely store digital payment information, and payment architectures, which provide the transaction interface between user and bank. MasterCard (150), Visa (500), American Express (630), and Discover (58) as well as non practicing entity III Holdings (140).

The acquisition 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; $8 billion), Mint Bills (not disclosed), Check (now Mint Bills), a mobile app which consolidates and automates online bill pay went to Intuit ($360 million), and Craft, the original mobile gift card 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 Holdings 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 technology. In 2012, E- Micro (a small patent enforcement company in the Eastern District of Texas alleged Google’s Google Wallet android app employed on Samsung’s Galaxy S4 infringed its patented digital wallet consolidator. The suit was dismissed with prejudice after Google showed that the technology was being sold online without a one dollar application encompassing the disputed technology. With such a much top and the activity present many have more than 40,000 of the cashless technology firms cashes the purpose 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 technology, revitalize, and consolidate theaines of cashers jobs obsolete, and change how we all visit the grocery store.
Intellectual Property Research: A Review of Legal Analytics SaaS

By Iodi 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 provides 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 (ITC), and Patent Trial and Appeal Board (PTAB). Lex pays to look at the text of the court filings, however to view the court filings, one must go to Docket Nav. Docket Nav is 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 2009, 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 dispute 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 in light 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 by claim. The database contains all patents granted, and patents expired over a time period ranging from 1975-2015.

Lex Machina
Lex Machina has an intuitive interface and is simple to use. It’s the lawyers experience and skill that dictates what to look for and how to interpret the data. As Wayne Gretzky once said, “You don’t skate where the puck is. A great hockey player plays where the puck is going to be.”