

# SANTA CLARA LAW EYES NEW FACILITIES

By Lindsey Kearney  
Associate Editor

Most Santa Clara Law students are aware that the school is in the midst of a series of organizational changes, many of which are affecting current students, and most of which will affect incoming students going forward. The student body may not be aware, however, of the large-scale structural changes to the law school that are simultaneously in the works. On August 27, Dean Kloppenberg held a town hall meeting for a lecture hall packed with faculty, staff, and students seeking to learn more about the physical future of the law school. Among the topics discussed at this meeting, here are some highlights and points of consideration for the law school community.

### Process Update

So far, SCU Law Committees have had three meetings with architects and facilities experts to discuss and analyze plans for the new building, which will be located in what is presently a faculty parking lot adjacent to the Leavey School of Business on the western side, and the Franklin Street cul-de-sac to the north. The project is currently in the programming and planning phase, but since the law school is first in line for University-wide capital construction funds, it is working rapidly under a tight timeline.

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Faculty face hard choices as they map out SCU Law's future

# The Letter I Wish I Had Received My 1L Year

By Nikki Webster  
Senior Editor

Dear 1L Students:

1L year can get pretty crazy, with everybody offering generic advice like, "remember to sleep," "take some time for yourself," and "get into a study group" while you're just trying to figure out how in the world you're going to get through all of your reading. Instead of offering you some generic advice that can be difficult to apply, here are thirteen specific user-friendly tips that may help you become more successful in managing your studies throughout the semester.

In no particular order of importance:

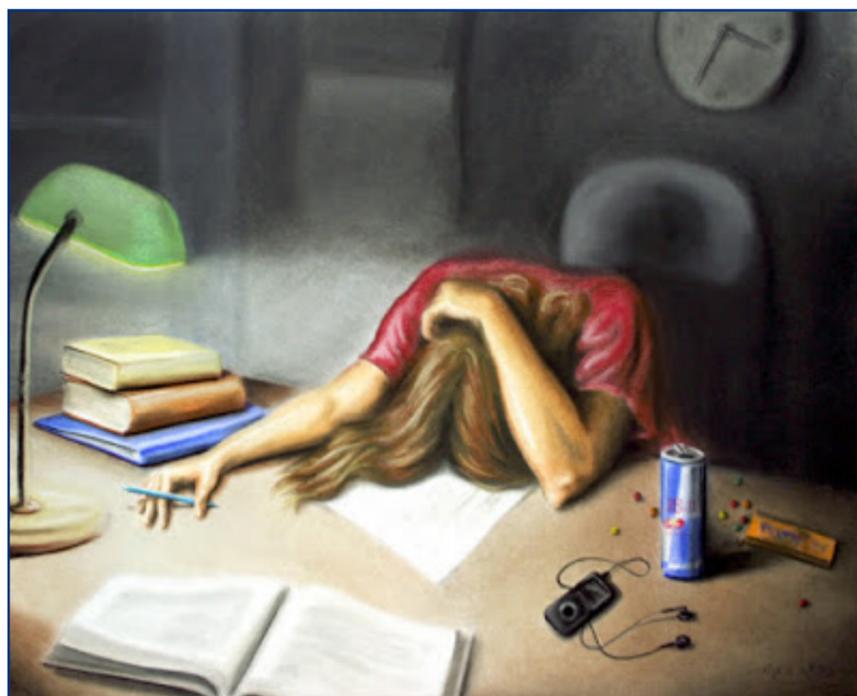
### Note-taking:

1. If you take notes in class, it may be worth your while to note whether it is the professor's words or a student's words that you're taking down. When you go back over your notes and outline at the end of the semester, sometimes it's difficult to tell what's the real deal.

2. If your professor says she "loves" a particular case or says, "This case is my favorite!" make sure to know it like the back of your hand. It is highly likely that case has been or will be an exam question in some form.

### Outlining:

3. Organize your outline by the rules, not the cases. If you are having trouble figuring out what the rule is, look at a commercial outline or simply take a peek at your textbook's table of contents.



Chances are the section title will be a big hint.

4. If at all possible, it is ideal to outline while you're in class to be efficient with your time. Definitely do not let it compromise your learning, but if you can organize by topic, then it will be easier to clean up your outline after class and not miss a beat.

### Taking Practice Exams:

5. It is never too early to try out a practice exam. It is best to try exams from your professor and compare model answers to your response. Many professors have old exams posted at <http://claranet.scu.edu/eres/courseindex.aspx?page=search&auto=true&key=de>

[ptname&search=exams](#). There, you can click through the pages to view exams by subject and then by professor.

6. Commercial outlines and supplements also offer hypotheticals that can be valuable resources. The APD Resource Room and the Heafey Law Library have such resources available for free checkout with your access card.

7. Taking practice exams is also a great way to pinpoint the important rules. If you can't answer a question in a practice exam, chances are that that answer will be the key to a general rule or an exception that you should know for

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# 1L Letter Continued...

your final. The more practice questions you work on before finals, the more answers you will have prepared for your real final exam.

8. When you first start out, don't worry about staying within the time the exam allows, but do time yourself so you can keep track of your progress as you take more and get a feel for how long it takes you to actually write out an exam response. As you progress through the semester, try to stay within the confines of the time allotted.

**Clubs and Law Student Organizations:**

9. Try out different organizations, but remember that your studies are most important right now. Everybody understands, so be true to yourself and try not to over commit. Attending lunch meetings and extracurricular events is a great way to get a feel for areas you may be interested in taking your legal practice and useful for building your network.

**Office Hours:**

10. Office hours are a great way to check in with your professor to see if your answer to the hypothetical you tried out merits a good grade. Prepare specific questions and bring a legal pad so you can record your professor's advice and responses.

**Studying:**

11. Study time should be spent in the way that is most productive for you. If you aren't sure what will make the law stick, try out a few methods such as creating flash cards, outlining, taking practice exams, diagramming, whiteboarding, explaining a legal issue to a person who is not in the legal field, researching online through Lexis and/or Westlaw, or reviewing secondary sources online or in the

library. You know yourself better than anybody else, but if you don't know how to teach yourself, now is the perfect time to learn.

**Family, Friends, and Significant Others:**

12. Remember what the flight attendant always says during the safety routine before takeoff? Put on your oxygen mask first, then you may look to help others. Ladies and gentlemen, 1L class of 2017, you are already taking off. Your family and friends and anyone else in your life may have realized or may not yet be aware of this; some will always be in denial and won't understand and others will support you throughout the journey. Just remind them that you still care, and that you will have time for them again – in the distant future. This is one of the few times in your life that you will need to be selfish with your time in order to survive, so embrace it, but remember to give love to those who matter when you do have a spare moment.

**Purpose:**

13. Finally, remember what you came to law school for. You are here to learn and to grow, and the Santa Clara Law community is here to support you. You will not regret every moment you spend trying your hardest to be the best you can be. Ultimately, you may surprise yourself in all that you achieve.

Sincerely Yours,

Nikki Webster

J.D. Candidate, May 2016

Santa Clara University School of Law

## New SCU Law Proposals

While the exact specifications of the new law school building have not been set in stone, there are some parameters that are unlikely to change, including the location, the size of the building (3 stories totaling approximately 100k square feet), and the cost (roughly \$60 million). As a point of comparison, the current law school building comprises 130k square feet; the downsizing is said to account for a variety of factors including the new population size of SCU Law. Dean Kloppenberg stated that the current concept is to consolidate the law school, including the library, under one roof with the exception of the Katharine and George Alexander Community Law Center, but as a caveat, she reiterated that the plans are not yet set completely in stone.

**The Downsizing of the Law Library**

Heafey Law Library currently comprises approximately 31k square feet. The new law school building proposal allots it 10k. This means imminent, inevitable reductions in the print collection. Among the reductions highlighted by library staff include a 50% reduction in federal material, a 50% reduction in international material, and "heavy weeding" of the majority of the collection. Importantly, both Dean Kloppenberg and the librarians have articulated their goal of not losing any substantive material, but merely the print format of it. What this means is that ideally, only print material that is also available on Westlaw, Lexis, Bloomberg, or Hein Online will be discarded.

**Trends and Topics**

SCU Law has been working with CannonDesign, an international architectural firm with a practice that centers heavily on higher education. Their multifaceted research on SCU Law as a community produced a set of trends and topics to be used as guidelines in the planning of the new building, among which include creating:

- Space that can be used in multiple different ways
- Investment in targeted student support functions that are highly visible
- Spaces without hierarchy
- Space to bring members of the Silicon Valley community into the law school
- Greater classroom scheduling flexibility

Throughout the design process, the metaphor of SCU Law as an "incubator" was discussed: the law school was said to not only be serving the campus, but also serving the Valley, and "incubating" lawyers who will be leaders in the region. One faculty member noted that the "incubator" concept comports very well with the Silicon Valley startup culture and ideals.

**The Nature of the Learning Spaces**

At the design stage, considerable emphasis is being put on analyzing how law

students study. Do they tend to utilize individual learning spaces, like private study rooms, or do they tend toward more collaborative learning spaces, where they can study publicly or in groups?

The new building will have roughly 20k square feet of total classroom area, the proposed sizes of which are broken down in the following table:

Current Law School Building(s)	New Law School Building
(8) 35-person classrooms	(3) 20-person classrooms
(1) 54-person Moot Court classroom	(5) 40-person classrooms
(2) 80-person classrooms	(1) 60-person Moot Court classroom
(2) 100-person classrooms	(2) 80-person classroom
	(1) 250-person classroom

**Faculty Concerns**

The overall design plan and general structural considerations of the building garnered mixed responses from faculty and staff, ranging from concerns about sustainability and possible LEED certification to the trade-off between locating faculty offices together so that they can better interact and collaborate with each other, versus scattering faculty offices about the building so that they can better interact and collaborate with students. As one staff member noted, hiding faculty behind locked doors in the corners of the building is very hierarchical, as opposed to a more open model where students feel more invited. Additionally, as another faculty member commented, "The assumption that faculty and students only interact in the classroom and in faculty offices ought to be reexamined," therein suggesting the importance of more collaborative, public spaces.

Faculty members also expressed concern over the fact that the new building only has one proposed classroom that holds more than 80 people. "If we ever wanted to return to class sizes from previous years, that would be impossible under the current proposal," according to one professor, "We are baking assumptions into that number." Others expressed interest in collaborating with other departments at Santa Clara University for classroom space, highlighting our close proximity to the business school and the notion that larger rooms invite lecturing as opposed to interactive or Socratic dialogue.

What do you think? SCU Law students have a voice that should be heard, as we offer unique perspective. There is another town hall meeting on this topic scheduled for Wednesday, September 24, and students are encouraged to attend.

# Rumor Mill with Dean Erwin

By Susan Erwin  
Senior Assistant Dean

Welcome to the new school year!

As is my tradition, I will use this month's Rumor Mill to address some of the comments in the last Graduating Students Survey. We asked all of the newly graduated students to tell us about their experiences here at SCU Law. Below are some of the student remarks from the survey and my responses:

**1. "I was very sad to learn as I left the school, that many of the full-time professors (non-tenure) were either retiring early, being let go, or leaving."**

This rumor has been going around and it isn't true. We did not "let go" any of our faculty. We did have a few that elected to retire at the end of last year: Professors Ancheta, Carter, Harrington, Rauch, Schefflin, and Nancy Wright. Prof Hasen moved to Colorado with his family. We were sad to see them all go. Everyone else is still here!

**2. "I was required to take the externship seminar each time I took on an externship even though not all those units counted toward graduation. I ended up having to pay extra tuition for these extra units . . . because I was required to take the externship twice, even though I only could count one of the two externships toward graduation credit."**

Not exactly true. Students can take up to 12 units of externship credit at a maximum of 3 different

placements. The first time you do an externship, you must also take the Externship Seminar which is 1 unit. If you do a second or third externship, you have to sign up for the Externship Workshop, an on-line tutorial which is offered for zero units (which means it is free). Note: if you elect to sign up for more than 12 units of externship credit, it is true that those extra units won't count toward the 86 units required for graduation.

**3. "It would have been ideal to have been assigned a "mentor" or academic advisor from day 1 of law school. This may seem somewhat unfeasible or "hand-holding" but I always wished there was one person assigned to me who understood my schedule / goals for law school so I could get advice on what classes to take at the right times."**

As a lawyer, you will be tasked with finding the rules and following the rules. That starts in law school. We will give you tons of information – orientation in 1L, academic advising week before 2L, grad 101 in 3L. We will compile all of the info that you need for registration and graduation requirements in the Pink Book and spend an entire week explaining it to you. Law Student Services folks are always here to answer your questions. Our faculty are very generous with their time and will help guide you. But you won't have an assigned mentor. But you will have a bunch of us that are here to help! But you have to ask!

**4. "Having to make an appointment and fill out extensive forms and wait for a response to pick up exams is unacceptable. It's pretty outrageous that we can't just drop in to pick up exams with sufficient**

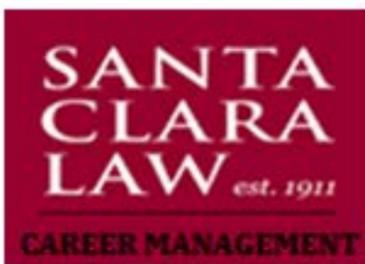
**identification (assuming the teacher makes the exams available for pickup of course)."**

If you consider that we give over 100 exams and that over 900 of you take three or four or five each and that professors request either review only, return and review, review part one but not part two, review but no notes taken, return part one and review part two, read page 5 but not page 6, review from 5 feet away . . . the process can be a bit overwhelming! Especially so for a group of staff who are also busy helping their faculty prepare for the new semester! It seems kind of reasonable to me to ask you to make an appointment.

**5. "Our facilities are honestly terrible. As a barbri student, we have heard many students from other schools ridiculing our lounge, our bathrooms, etc. I don't blame them - the bathrooms are absolutely disgusting. The buildings and library are so run-down. Although I love the library, it needs a lot of work. All of the law facilities need updating or Santa Clara runs the risk of losing potential students to other schools."**

We all agree that we need a better building. We are planning for a new law school building. Erica Sutter is your student representative on the Law School Building Committee. Look for future emails from the dean and notices about future town hall meetings with more information.

Heard a rumor? Have a question? Send me an email – serwin@scu.edu.



## Office of Career Management

*Formerly Law Career Services*

**Empowering Students, Employers, and the Law School Community**

By Vicki Huebner  
Assistant Dean for the Office of Career Management

Law Career Services changed its name to the Office of Career Management. The rebranding was more than symbolic. The office's new name highlights that the Career Management professionals are here to support the Law School in its mission to educate "employment ready" graduates; and to integrate the Santa Clara Law competency framework into the method by which we provide job search skills training.

The primary goal of the Career Management team is to provide Santa Clara Law students and graduates with the resources to successfully navigate the job market. As the legal industry evolves, and more entrepreneurs develop professional services or technology which disrupts the traditional law model, it is critical that Santa Clara students develop the resources to be nimble within the 21st century profession. It is critical that students become educated about the forces changing the legal industry, and develop the critical professional skills (also known as soft skills) to permit them to manage their current and future professional development.

Along with the new office name, the Office of Career Management has developed a new vision statement focusing on three elements: collaboration, professional development and experiential learning, and knowledge management. Today's job market requires law students to demonstrate the skills necessary to be a client service provider. Students need to focus on more than just performing well academically. They also need to

acquire legal practice skills and demonstrate that they can provide solutions for their clients, work in a team setting, and effectively manage a project.

According to Crystal Wammack (3L), "OCM's new model will give students the support they need to effectively find and obtain the job they desire." The Office of Career Management will continue to support the many initiatives of which students are aware such as resume and cover letter review, mock interview coaching, and work with employers to post their job notices and organize interview programs. However, we will also focus on connecting students, Santa Clara Law faculty and administrators, and the employer community to each other. Under this new vision, the Office of Career Management will provide information to each of these constituencies and facilitate communication between them.

Some of the most visible immediate changes will be an emphasis on helping students develop fundamental job search skills. We are using the Santa Clara Law competency framework to guide us as we provide this training. We need students to understand that the writing skills, relationship management skills, and presentation skills they develop in the classroom all need to be applied in the job search setting. These parallel the skills they will be required to demonstrate in practice. For instance, a student who understands how to build and maintain a professional network for their job search will be able to do the same for business development. Additionally, the office will provide mentor, networking programs and off-site employer visits to facilitate connections between students and

employer community. In response to this change, Krysha Chatman (2L) stated, "Integrating vocational preparation into the curriculum shifts law school from being an academic exercise into a professional education with practical training."

Other future plans include enhancing connections between employers and the Office of Career Management staff and developing methods for students to effectively articulate their professional identity to employers. Alessandra Cain (1L), "Believes that the Office of Career Management's new name and newly branded message will provide me with a broader range of services that will better assist me in my professional development; and, also help me fulfill the Law School's mission of being a "lawyer who leads." The OCM staff hopes that these changes will produce entrepreneurial and innovative law graduates who are capable of directing their own professional destiny now and in the future.

We invite you to visit with us and learn more about our new vision and its application to the manner in which we deliver services. Come celebrate the "launch" of our new Office and direction by coming to the Bannan Block Party on September 10th from 5:00 to 6:00 p.m. There will be refreshments, and opportunities to receive valuable prizes. The Bannan Block Party gives the offices which reside in Bannan Hall the chance to reintroduce themselves and help you find them after the law school reorganization and changes this summer. Come learn where different offices are located, and about the newly enhanced slate of services they are providing.

# OFFICE HOURS UNWOUND



**Marina C. Hsieh**  
Senior Fellow

**Areas of Specialization:**

Civil Procedure,  
Constitutional Law,  
Legal Methods, Leadership, and  
professional skills

**Education:**

-J. D. Boalt Hall School of Law,  
University of California, Berkeley  
-A.B., Harvard University

**1. What was the highlight of your summer?**

Taking my 12-year old son to the Selvatura Insectarium in Monteverde, Costa Rica. It claims to be the second largest collection in the world, and is magnificent.

**2. What did you want to grow up to be when you were a child?**

A scientist who would advance production of thermonuclear fusion power.

**3. What historical event do you find most interesting and why?**

The negotiated end to apartheid in South Africa in the 1990s, including the 1994 democratic election and the Truth and Reconciliation Commission. While far from perfect or complete in execution, the aspirations to truth, dignity and alternatives to violence give me hope.

**4. What is your favorite guilty pleasure?**

Chicharrón.

**5. If you could sit down for coffee, a cocktail, or a meal with any person, dead or alive, who would it be and why?**

Benjamin Franklin. He was smart, pragmatic, inventive, productive, and frisky. I would love to hear his take on 2014, and watch how he savors

food and drink.

**6. Who are your favorite characters in literature and/or film?**

Oh, too many to say! Atticus Finch, Callie Stephanides, Luna Lovegood.... Most of the characters by Abraham Verghese and Benjamin Alire Sáenz.

**7. What was your favorite job (externship/ clerkship/ fellowship/ associate position) that you had while in law school and why?**

My summer job between 1L and 2L was with the then-Hufstедler, Miller, Carlson & Beardsley firm in Los Angeles. It was exhilarating to apply book learning to real cases with consequences like the preservation of a historic Greene and Greene home, to watch a senior partner surgically pick an associate's brain in a 20-minute car ride over and then execute a masterful client meeting, and to watch Seth and Shirley Hufstедler debate law and policy.

**8. What do you consider your greatest professional success?**

More through his skill than mine, opening my head, hands, and heart to Hon. Louis H. Pollak, the District judge and law professor for whom I clerked out of law school. Lou modeled integrity, hope, and wisdom. Carrying that year

forward into a lifelong quest to engage with the law through his eyes has been a professional and personal privilege.

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

Citizens United, although more for its real world impact than as a legal development.

**10. What piece of advice would you today have given yourself in law school?**

Luckily, I have few regrets about law school. The time to develop deep and enduring friendships with fellow students and professors, to think about concepts until my head hurt, and to explore electives, extracurricular activities, and jobs that weren't immediately related to what I thought would be my eventual career was all well-spent. However, I would advise my 20-something self to: (1) Always read and study everything for true understanding, not just to triage enough for the exam. Those holes matter later in real practice, when there isn't as much time to fill them in. (2) Improve my irregular practice of yoga (or tai chi or other meditative practice) to be a non-negotiable part of every week, forever. Healthy habits of body and mind and focus help everything work better.

**1. What was the highlight of your summer?**

Watching our son (Akhil) in the San Francisco Ethnic Dance Festival. He performed a duet with a young girl in the Indian classical form of Odissi, sharing the stage with some of the best living Indian dancers from around the world. There is no joy quite the same as being a proud parent.

**2. What did you want to grow up to be when you were a child?**

Starting point guard for the Seattle Supersonics.

**3. What historical event do you find most interesting and why?**

There are too many to choose from. Perhaps I would pick the Civil War and Reconstruction (roughly through 1877). It constituted a second American revolution, and was probably more significant than the first in terms of defining the nation we would become. And although it left much unaccomplished, it rid us of our greatest sin.

**4. What is your favorite guilty pleasure?**

Surfing eBay for authentic soccer jerseys; listening to Justin Timberlake.

**5. If you could sit down for coffee, a cocktail, or a meal with any person, dead or alive, who would it be and why?**

Aside from my family, it would probably be Siddhartha Gautama. Outside my wife and son, I have learned more from the life he led—and his insights into the human condition—than from anyone else I have encountered.

**6. Who are your favorite characters in literature and/or film?**

Again, there are just too many. A partial list would have to include Raskolnikov from Crime and Punishment; Dr. Bernard Rieux from The Plague; Lee from East of Eden; Saleem Sinai from Midnight's Children; and Krishna from the Bhagavad Gita.

**7. What was your favorite job (externship/ clerkship/ fellowship/ associate position) that you had while in law school and why?**

In between my second and third years, I served as a summer associate at a firm called Hogan & Hartson (now Hogan Lovells) in Washington, D.C. My summer mentor was a partner by the name of John Roberts. He has since gone onto some other things.

**8. What do you consider your greatest professional success?**

I'm not sure I would consider anything I've done a "success" as such. Perhaps it has been in somehow finding myself into a job where I have the privilege of teaching and working with wonderful students at a great university. This job is a true blessing.

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

In constitutional law, I think it has been rightward (and almost libertarian) drift of the Supreme Court. The Court has really upended long-settled understandings in a variety of areas, from campaign finance to labor law to class actions to religious freedom to Congress's enumerated powers. These may well be the best understandings of the Constitution. But they certainly have shifted constitutional law in a conservative directions, and very quickly.

**10. What piece of advice would you today have given yourself in law school?**

To relax and enjoy every minute of the journey; to understand that it is more important to improve than to achieve; to listen carefully to the contributions and insights of others; and to appreciate that our greatest gift as human beings is the opportunity to help others.



**Bradley W. Joondeph**  
Associate Dean for Academic  
Affairs and Inez Mabie  
Distinguished Professor of Law

**Areas of Specialization:**  
Tax Law, Constitutional Law

**Education:**

-J.D., with distinction, Order of the Coif, Stanford University  
-B.A., with distinction, Phi Beta Kappa, Stanford University



**Allen S. Hammond**

Phil and Bobbie Sanfilippo Chair  
and Professor of Law, Director  
of the Broadband Institute of  
California

**Areas of Specialization:**

Mass Communications,  
Cyberspace Law, Contracts Law,  
Telecommunications Law

**Education:**

-J.D., University of  
Pennsylvania School of Law  
-M.A., Annenberg School of  
Communications, University of  
Pennsylvania  
-B.A., Grinnell College

**1. What was the highlight of your summer?**

Watching tennis at the French Open after having been at the Australian Open earlier in the year. My ultimate goal is to attend Wimbledon and the U.S. Open as well.

**2. What did you want to grow up to be when you were a child?**

An aeronautical engineer and an astronaut.

**3. What historical event do you find most interesting and why?**

The ongoing evolution of civil and human rights during my lifetime. We have learned to see beyond ourselves to include others. In the process we grow stronger.

**4. What is your favorite guilty pleasure?**

Reading Science Fiction/Fantasy novels by J. R. R. Tolkien, Ursula Le Guin, Stephen R. Donaldson, Octavia Butler, George R.R. Martin, or David Brin and reading comics.

**5. If you could sit down for coffee, a cocktail, or a meal with any person, dead or alive, who would it be and why?**

I would have a meal with my grandparents and great grand parents to thank them and let them know how things turned out...so far.

**6. Who are your favorite characters in literature and/or film?**

Antigone, Hercules, Sydney Carlton, Tyrion Lannister, Superman.

**7. What was your favorite job (externship/ clerkship/ fellowship/ associate position) that you had while in law school and why?**

Summer Clerk at the Citizens Communications Center in Washington D.C., a public interest communications law firm in Washington, D.C. I realized I could provide legal assistance to minority communities seeking to be fairly represented in the media.

**8. What do you consider your greatest professional success?**

Attorney in the Office of Telecommunications Policy, White House

and then Program Manager of the Minority Telecommunications Development Program, National Telecommunications and Information Administration. I helped develop the minority and women broadcast ownership policies and then administered the policies for the executive branch. In eighteen months, the MTDP helped increase minority ownership by 60% and minority station advertising revenues by \$18,000,000. President Carter personally acknowledged the program's success.

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

Net Neutrality: The growing recognition that deregulation of internet service providers is problematic.

**10. What piece of advice would you today have given yourself in law school?**

Work to develop and hone your skills and work habits to become the best lawyer you can be. Be sure to take Evidence and a clinical course.

# FERGUSON, MICHAEL BROWN, AND RACE: LET'S TALK ABOUT IT

By Nnennaya Amuchie

President, Black Law Students Association

The Ferguson tragedy presents a teaching moment for myself and for my fellow law students, faculty, and staff. This is an opportunity for us as a Jesuit Institution to gain a deeper understanding of racism and implicit bias and how it affects the people the law purports to protect.

The shooting of Michael Brown revealed to America and the world the frustrations of people of color. This storyline is too familiar for people of color. It reaffirmed the long-standing mistrust for the American judicial system. It reaffirmed the long-standing dehumanization of the black body. It reaffirmed that while police protect and serve in some neighborhoods, they seek to search and destroy in others.

On August 9, 2014, Michael Brown was shot and killed by a white police officer in Ferguson, Missouri. Michael Brown, just 18 years old, was crossing the street to his grandmother's house. He was unarmed.

These shots were heard around the world. Thousands of people from India to Palestine to Brazil to South Africa to Canada protested and marched in solidarity.

Many people have asked for my opinion on Michael Brown's death. Questions like, why do I think this happened? What do I think the outcome will be? Why the police officer has yet to be arrested? What is my stance on the media's portrayal of the victim, Michael Brown? Why has there been a lack of communication and transparency with the Ferguson PD? Last to mention but also very important: Why did the local police take a militarized approach in responses to public protest?

Although these questions are difficult to face, there is an easy and simple answer: racism and implicit bias.

Down to the essence of the term, racism is irrational. It is the judgment and the placement of value on someone based on his or her skin color. This is irrational. It is difficult to understand racism when it is not your reality. But implicit bias studies have shown

over and over again that law enforcement officers disproportionately target blacks.

The Department of Justice found that blacks in the U.S. are three times more likely to get arrested than whites.

According to the Missouri Department of Public Safety and Ferguson Police Department Reports, blacks in Ferguson are arrested at a rate of four times higher than their white counterparts. In 2013, Ferguson police stopped 4,632 blacks and 686 white drivers. Although blacks make up only 2/3 of the Ferguson population, they accounted for almost 90% of the stops. Additionally, blacks were twice more likely to be searched and arrested than whites even though whites had 12% more contraband than blacks.

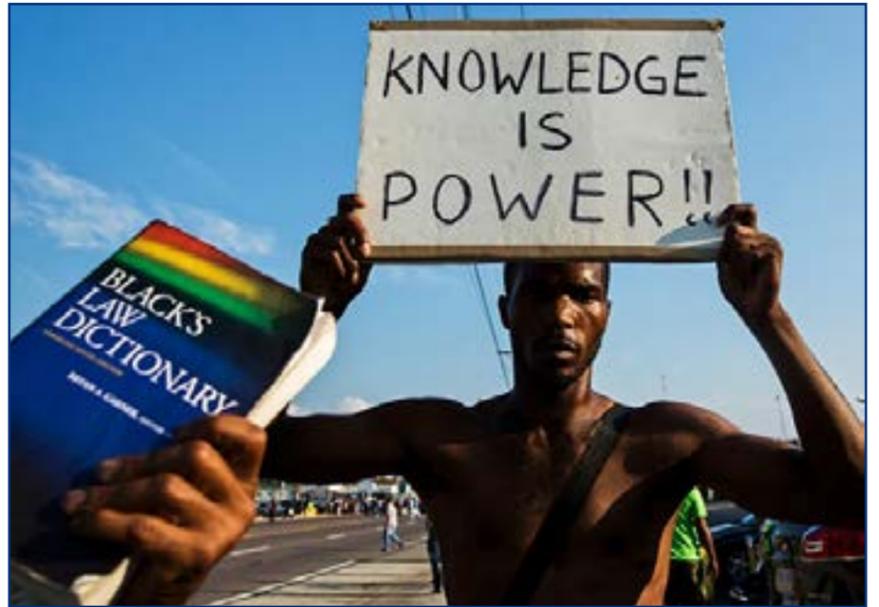
Racism and implicit bias also effect how laws are applied and justice is served.

Eight witnesses have given the same exact accounts of what led to the execution of Michael Brown.

And yet, police officer Darren Wilson is out of state on paid leave.

In 2014, there is the misconception that if we do not actively talk about racism, that racism will magically disappear. There is great danger in the idea that we are a post-racial or a colorblind society because it ignores and silences the experiences of those whose skin color dictates their everyday reality.

Teaching about U.S. history and actually understanding how racism is intertwined in every single institution is critical to understanding the frustrations of #Ferguson. From Constitutional Law to



Torts to Contracts to Civil Procedure to Criminal Law, race informs many of the court's decisions.

As law students we should advocate for transparency, justice, fairness, and human rights. We should find joy and passion in furthering equality for disenfranchised communities. As lawyers who lead, it is our obligation to be the voice of the unheard.

I want to create a law school environment that fosters discussions on race and social injustices because it makes us better lawyers and better leaders. Santa Clara University challenges us to be "lawyers who lead" and this is only possible when we understand the history and tribulations of the communities we serve.

Racism is real. Racism is not something of the past. And we must talk about it. We must confront it. We must restore faith and trust in the legal system. We must restore faith and trust in our future leaders and we must become competent ones.

**"Injustice anywhere is a threat to justice everywhere."**  
- MLK

## SANTA CLARA LAW FACULTY VISIT EL SALVADOR

By Evangeline Abriel

Clinical Professor of Law

In July, I was fortunate to join law professors Francisco Rivera and Lynette Parker on a trip to El Salvador, sponsored by the Ignatian Institute. What we saw and heard there inspired us in so many ways. Led by journalist Gene Palumbo, we met with many individuals, from a former guerrilla fighter and a former member of the Salvadoran military, to the priest of a church in a gang-controlled section of San Salvador, to women gaining self-sufficiency through a women's empowerment project, to a Supreme Court justice working to maintain an independent judiciary. These meetings allowed us to learn about El Salvador's remarkable work to repair the devastation of its twelve-year-long civil war and to respond to the critical problem of gangs. The meetings also explored the work of both El Salvador and the United States to respond to the exodus of unaccompanied minors en route to the U.S. border. And we were moved by our visits to the country's memorials to its citizens fallen and disappeared during the civil war, including Archbishop Oscar Romero and six Jesuit priests and their associates.

I would have to say, though, that the highlight was our two days of meetings with the law faculty of the Universidad Centroamericana Simeon Canas (UCA). Our UCA colleagues welcomed us warmly, and we had a wonderful exchange of ideas and formulated proposals for collaborative projects. We especially loved meeting with the impressive young UCA law graduates representing clients of limited means in the UCA's Office of Legal Assistance.

Professors Rivera and Parker were also strongly impressed by the visit. Professor Rivera summed up by saying that "as a human rights attorney, I was inspired by the powerful stories of those trying to seek justice for the horrible violations committed during El Salvador's civil war. But I am also troubled by the lack of accountability. I look forward to strengthening the ties between Santa Clara Law's International Human Rights Clinic and UCA to find possible ways to end such rampant impunity." Professor Parker added, "In addition to learning about the political efforts to address the economy and social issues facing El Salvador, we had the opportunity to speak with the Minister and staff from the Office of the Environment about the impact of climate change on the basic corn and bean crops, as well as their concerns regarding air and water pollution. We had the opportunity to meet with labor advocates, and to learn about El Salvador's current efforts to pass comprehensive anti-human trafficking legislation. The work being conducted in many areas is very impressive."

We found the visit to be especially meaningful in this particular year because 2014 marks the twenty-fifth anniversary of the Salvadoran army's murders of six Jesuits, their housekeeper, and her daughter on the UCA campus. Speaking with people who had known and worked with the Jesuit fathers allowed us to reflect on their legacy of advocacy for the poor and for justice. It also gives us tremendous inspiration and encouragement in our work for our own clients and students.



Professor Parker, Rivera, and Abriel outside the Supreme Court of Justice of El Salvador

Santa Clara University will commemorate the UCA martyrs with events throughout the Fall on campus and in El Salvador at UCA and Casa de la Solidaridad. The University has created a website listing these events and giving more information on the UCA martyrs.

The URL is [http://www.scu.edu/president/uca25/?utm\\_source=scu&utm\\_medium=email&utm\\_campaign=3039&](http://www.scu.edu/president/uca25/?utm_source=scu&utm_medium=email&utm_campaign=3039&)

# PATENT LITIGATION: TRENDS BY PATENT ASSERTION ENTITIES

## PART I OF III

By Jodi Benassi  
IP Editor

This is the first of a three part series where we will explore trends in patent litigation specifically initiated by patent assertion entities (“PAEs”).

Let’s start with terminology; common in our lexicon is the term “patent troll” which evokes images of ugly creatures who live under bridges, charge travelers to cross, and threaten to harm those who refuse to pay. It’s a term Peter Detkin, a lawyer at Intel Corp., coined in 1999. Black’s Law defines it as “a company which acquires a range of different patents, without ever having the intention of creating any of the products. The primary purpose of a patent troll is to find infringers, and file a suit in order to make money.”

Over the years the term has gained currency and according to Shawn Ambwani, COO for Unified Patents, a membership organization created to deter assertions of low quality patents by non-practicing entities (NPEs); the name “patent troll” is a derogatory term for NPEs that perhaps isn’t entirely justified, but is easy for the public to understand. He more eloquently describes a Patent Troll as an NPE that asserts low quality patents and initiates abusive litigation practices against companies that are making products.

Another common nomenclature is patent assertion entities (PAEs). Whether an entity is making products should not reflect whether it is a Patent Troll. Consider the case of a university, conducting research and licensing technology, they hardly fall under such a category.

U.S. public policy behind granting patents is to encourage and reward “the guy

in his garage” for the invention. So, is monetizing intellectual property (IP) wrong? Absolutely not, Ambwani says, “there is nothing wrong with an inventor monetizing their patent, as long as it’s a quality patent.” Where the process breaks down is early in the life cycle of a patent, at the U.S. Patent and Trademark Office (USPTO), when it is granted. In his observation, the USPTO has issued a lot of patents that should never have been granted. These are the low quality, over broad, indefensible patents that are currently at the center of NPE litigation.



According to the 2014 patent litigation study issued by Pricewaterhouse Coopers, the number of patents granted in 2013 reached almost 300,000, an increase of 7% over 2012, while the number of patent cases filed grew by 25%, to almost 6,500 cases. The White House reported that suits brought by PAEs tripled within two years, 2011-2013, rising from 29% of all infringement suits to 62%.

Ambwani reports that the strong increase in NPE activity over the last 10 years seems to be slowing as recent changes by the Leahy-Smith America Invents Act AIA are taking effect. He says, “That does not mean we will see a decrease in the total number of patent lawsuits, but we will likely see more lawsuits made by fewer NPEs as they move to monetize larger and higher quality portfolios. So far this year we have seen a 10% decrease compared to last year.”

In our next article we’ll interview a spokesperson from the USPTO and get their insight into the effects of AIA on patent litigation.

About Unified Patents: Unified monitors patent litigation activity in broad areas of technology, investigates prior art, and challenges low quality patents in the U.S. Patent and Trademark Office through ex-parte reexaminations and inter partes review.

# YELP MAY BE LEVERAGING YOUR REVIEWS FOR ADVERTISING DOLLARS – AND THEY’RE GETTING AWAY WITH IT

By Hannah Yang  
Business Editor

The Ninth Circuit decided that it is not extortion if Yelp manipulates reviews to induce small business owners to purchase advertisements.



The suit was brought by four small-business owners against the popular online review site alleging violations of California’s Unfair Competition Law (“UCL”), civil extortion, and attempted civil extortion. The district court dismissed the lawsuit for failure to state a claim, leading to this appeal in the Ninth Circuit.

A quick summary of the plaintiff’s claims: Yelp’s sales representatives made attempts to sell advertisement placements to these small businesses, the businesses did not want to purchase said placements, in a short matter of time, positive reviews disappeared from the businesses’ Yelp page, and negative reviews appeared, thereby decreasing the businesses’ overall ratings. As a result, the plaintiffs claimed they felt “threatened” by Yelp’s actions, experienced reputational harm, and in

certain instances, a decrease in revenue.

In the opinion (*Levitt v. Yelp! Inc.*, 2014 WL 4290615) penned by Judge Berzon, the panel of judges focused on whether the plaintiffs’ claims were sufficient for an extortion cause of action. The UCL prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200. The plaintiffs claimed Yelp’s practice of manipulating user-generated reviews of their business, and Yelp’s own authoring of negative reviews to induce the plaintiffs to purchase advertising amounted to extortion and was, therefore, an unlawful business practice.

The court carefully discussed the definition of “extortion,” ultimately recognizing that extortion is “an exceedingly narrow concept as applied to fundamentally economic behavior.” Extortion is the “obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” 18 U.S.C. § 1951(b) (2). After discussing the interpretation of “wrongful,” the court stated that to state a claim of economic extortion (as in the present case), a plaintiff “must demonstrate that he had a pre-existing right to be free from the threatened harm, or that the defendant had no right to seek payment for the service offered.”

The business owners did not plead facts to support a “pre-existing right to be free from the threatened harm,” specifically, the right “to have positive reviews appear on Yelp’s website,” the absence of which caused them harm. The court states that by “withholding the benefit of these positive reviews, Yelp is withholding a benefit that Yelp makes possible and maintains,” but “does not have an obligation to do so.” Under the court’s current legal analysis, the plaintiff’s claim for extortion must fail. In so holding, Yelp’s alleged manipulation of reviews is not

wrongful within the meaning of the statute (a “wrongful use of force or fear”). The plaintiffs did not otherwise allege other possible wrongful acts under different legal theories.

The court went on to dismiss the claims that Yelp had authored negative reviews of the small businesses as a result of their refusal to purchase advertisements. Here, the plaintiffs failed to plead sufficient facts to demonstrate that it was plausible that Yelp employees wrote the negative reviews posted to their Yelp page. The court suggested instead that those negative reviews could have been authored by competitors, or a disgruntled customer using an alias, or an angry neighbor.

The court emphasized, “we are not holding that no cause of action exists that would cover conduct such as that alleged, if adequately pled.” However, in this case, the facts pled did not plausibly support the presented legal theory and was dismissed without reaching the merits.

In this time of widely available free press, Yelp’s influence is not to be underestimated. Undoubtedly still one of the most accessed review websites available, Yelp’s system has survived (so far). It would be unfortunate if Yelp actually leveraged users reviews for sales of advertisement from small businesses, however, the “threatening” acts of removal of positive reviews, and posting of negative reviews apparently is within Yelp’s power to do so. A word to the wise for consumers and small business owners alike: explore alternative ways of getting recommendations, before hastily jumping to Yelp. Be mindful of the behind-the-scenes practices of these review sites, make thoughtful criticisms and responses, and understand that this platform is also a business and has their needs in mind over yours.

# WHAT CAN PRIVACY BREACHES TEACH US?

By **Sona Makker**  
Privacy Editor

I was drawn into the field of privacy through an unexpected occurrence. In 2010 Google used a photograph of me, standing in front of the San Francisco Ferry Building in its promotional video for its first social networking product, Google Buzz. I knew that this photograph was hosted on [www.flickr.com](http://www.flickr.com) (because the photographer posted it there) however, I was very surprised to see it in an advertisement without giving Google, or anyone else for that matter, permission to use it. The morning of the Google Buzz launch I clicked the YouTube link and saw that the video already had 500,000 views. There I was, front and center for an advertisement for the homepage of the Internet. At first, I (regrettably) felt like an Internet celebrity, however, as the view count went up, I started to feel uneasy about my image being used without my permission. This occurrence piqued my interest in law, and I began researching copyright law and the enforceability of privacy policies as contracts. When I consulted experts in the field regarding potential options for recourse, they all asked me the same question: "Have you been harmed?" That question compelled me to examine how, and whether, privacy violations constitute legal harm. Four years later, this question still remains relevant as courts grapple with thorny Article III standing issues in privacy litigation and most recently, with liability issues related to cloud computing.

Over Labor Day weekend some of the world's biggest celebrities found themselves in the middle of a privacy debacle. Hackers accessed and posted online, nude photos of dozens of celebrities (mostly all women) who took these pictures for their private use on their iPhones. I doubt that these celebrities knew that Apple's

default iCloud settings automatically back up copies of photos taken with an iPhone to remote servers. Who is liable when an iCloud account is hacked? The terms and conditions of iCloud state that "Apple does not represent or guarantee that the service will be free from loss, corruption, attack, viruses, interference, hacking, or other security intrusions." Don't we expect cloud providers to protect their customers?



Plaintiffs may be able argue that, at minimum, a company has a duty to disclose that its security practices are not on par with industry standards. In a recent class-action suit against tech-giant Adobe for claims of restitution following a massive data breach in 2013, Judge Lucy Koh refused to dismiss the case and criticized Adobe for violating its obligation to warn customers of its subpar security systems: "It is one thing to have a poor reputation for security in general, but that does not mean that Adobe's specific security shortcomings were widely known," she wrote.

In light of these recent breaches tech-writers have

begun to publish more and more informative pieces educating people about the importance of checking and changing their privacy settings. Forbes' Kasmir Hill writes: "As we put more and more sensitive information into the hands of tech companies, we need them to make it easier for us to protect it. The celebs exposed by the recent hack of their iClouds would have appreciated a 'check-up' from Apple reminding them that their photos get backed up to the iCloud, that their location information is included by default in the metadata of their photos, and the status of their two-factor authentication."

There's no denying that it's a two-way street and that educating consumers can go a long way. Apple announced that it will be making changes and sending push notifications when someone tries to change the password for their iCloud account, upload their backed-up account data to a new device or log into their accounts for the first time from an unknown device. That's a start, but what about legal recourse? There has yet to be a successful lawsuit against a company for failing to impose strict-enough login credentials. Scholars and advocates in the privacy community believe that a lawsuit over a high-profile hack like this one may be just the thing to push Apple and other companies to take more active steps in protecting the people that are using these services every single day. Apple will of course, first rely on its terms and conditions, and then shift liability to the hackers who obtained the login credentials. "But Apple decides what those credentials can be," says Professor Fred Cate, who teaches information security law at Indiana University. Perhaps, it is in this design decision where an argument for negligence lies (pay attention in Advanced Torts all of you privacy certificate candidates!).

## NEW TENNESSEE LAW COULD CARVE OUT FETAL RIGHTS FOR OTHER STATES

By **Kyle Glass**  
Staff Writer

On July 6th Mallory Loyola gave birth to a baby girl in Monroe County, Tennessee. Two days following the birth, Ms. Loyola was arrested and charged with assault after she tested positive for methamphetamine and admitted to authorities that she had smoked methamphetamine several days before giving birth. This arrest is the first time a mother has been charged under a new Tennessee law which allows prosecutors to bring criminal charges against mothers who use narcotics during pregnancy. If convicted, perpetrators face fines and up to a year in jail. In order to avoid jail time, Loyola pleaded guilty and will enter a drug rehabilitation program. The matter of custody of her child will be resolved in a September hearing with the Department of Children's services.



The Tennessee law allowing criminal prosecution is the first of its kind and its effect should be the subject of much interest. Several other states view drug use during pregnancy as grounds for the revocation of custody but, until now, there have been no statutes providing criminal consequences. The new law was enacted to combat the problem known as Neonatal Abstinence Syndrome, a problem which arises when pregnant women use opiates such as heroin. As a result, babies can experience withdrawal symptoms soon after birth when the exposure to the opiates ceases. While this law is new and its full impact is yet

to be felt, questions regarding its effectiveness have already been presented. Some argue it is unfairly discriminates against racial and socioeconomic groups who are more likely to use narcotics. Others believe it is actually detrimental to newborn health because pregnant women who have used narcotics have a strong incentive to conceal their use. These measures include avoiding lifesaving medical treatment in the event of an overdose or consumption of a poisonous batch of substances. Such catastrophic events are more than conceivable even for women sensitive to their fetus's health due the highly addictive nature of opiates.

In addition to issues of its effectiveness, the new Tennessee law raises other questions regarding

women's reproductive and privacy rights. Since the Supreme Court decisions in *Roe* and *Planned Parenthood* women have the right to seek an abortion prior to the viability point during gestation. While the abortion issue, which balances a women's privacy interest against the state's interest in fetal life, is currently settled, fetal health after a woman has chosen to birth the baby remains a relatively novel issue for the courts. Specifically, litigation could determine how far states can go in telling women what they can and can't do during a pregnancy.

Moving forward, it will be interesting to see if other states follow or expand upon Tennessee's ground breaking law promoting fetal health. The Tennessee law is quite limited in that it only punishes for use of narcotics such as heroin or methamphetamine, which are illegal to use regardless of being pregnant.

It does not address other substances known to have a detrimental effect on an unborn fetus. While alcohol and tobacco are both legal substances, if used during pregnancy, they can cause serious medical problems for the newborn. States seeking to address problems such as Fetal Alcohol Syndrome may go beyond child custody hearings and prosecute women if such a condition results. This sort of regulation, however, would rightly face staunch opposition, given the equal protection and due process rights it would infringe upon. But, the negative effects of substance abuse during pregnancy create a strong motivator for states seeking to protect unborn life.

# NET NEUTRALITY

What is your relationship with the Internet? Are you ready for it to change? The Federal Communications Commission (FCC) released its Notice of Proposed Rulemaking (NPRM) on May 15, 2014, and is accepting comments from the public through Monday, September 15, 2014. If you want the Internet to remain an open platform, your comments are needed.

There are many topics that the NPRM addresses including accessibility, transparency, and opportunity for innovators. Of key concern is that Internet Service Providers (e.g. Comcast, AT&T, Verizon) are currently not regulated as common carriers and thus face no restrictions to discriminating against or blocking edge providers (e.g. YouTube, Amazon, Netflix) and end users (e.g. individuals users, the public). The danger is that Internet Service Providers (ISPs) are able to make paid prioritization arrangements. Think about how you pay for cable – different prices get you access to different packages or content. The Internet is headed in that same direction if Americans do not put a halt to it by exercising their right to comment on how the FCC regulates ISPs. If you are against “fast lanes” and “slow lanes,” then you are for net neutrality, or regulation of the Internet.

Please consider submitting a comment this week and advocating for keeping the Internet open and accessible to all so that ISPs may not monopolize the Internet and discriminate against or block edge providers and end users.

Notice of Proposed Rulemaking: <http://www.fcc.gov/document/protecting-and-promoting-open-internet-nprm>

### Submit Comments to the Proposed Rules Online:

Instructions: <http://www.fcc.gov/guides/how-comment>

Proceedings: <http://www.fcc.gov/comments>

Submission Page: <http://apps.fcc.gov/ecfs/upload/display?z=g4u38>

View Comments Already Submitted: [http://apps.fcc.gov/ecfs/comment\\_search/input?z=r95gv](http://apps.fcc.gov/ecfs/comment_search/input?z=r95gv)

## BCS DEAD, BUT SO ARE PLAYOFF HOPES FOR SOME

By Jackson Morgus  
Sports Editor

It is as true as it is clichéd. College football is about tradition. Unfortunately one of the long and storied traditions of college football is that of a champion in a way that makes absolutely no sense. For now, the tradition of nonsense appears not to be going anywhere.

Not long ago, there were two types of people in college football: people okay with the Bowl Championship Series system, and people endowed with a brain and the ability to reason. Now, the system that everyone agreed was broken has been replaced, but with one that when implemented may seem just as broken, and is likely to leave at least a fifth of the nation dissatisfied.

The BCS, which used a number of polls and metrics to choose two teams for the National Championship game is gone and has been replaced by a two-round, four-team playoff that will be chosen by a committee of thirteen current and former coaches, athletic directors, conference commissioners, and, for some reason, Condoleezza Rice (I'm not saying she won't do a good job, I'm just not sure how she ended up there, but I digress).

This is an improvement, but it could have easily been much better. The main problem stems from the fact that the playoff system comes on the heels of a decade plus of realignment which saw the number of “major” conferences (likely the ones considered for the playoff) drop from six to five.

So now, college football has moved to five power conferences. The same year they went to a FOUR team playoff. They went to a more inclusive system while making sure that one power conference champion is left out of the playoff. Foot, meet bullet.

This may not be an issue in a given year. There may be four conference winners that go 12-0/11-1, and one left out at 8-4, an easy decision. If that's the case, the system will be said to have “worked,” and you probably won't hear much about it. The first year that the committee has to choose between two seemingly similar conference champions, or has to consider a second team from a strong conference, though, chaos will no doubt ensue.



“PLAYOFFS?!?”

Last year, for instance, at the end of the season, Florida State, Auburn, Alabama and Michigan State were one through four, with Baylor and Stanford at five and six. That means a four team playoff without a team from the Pac-12, perhaps the second strongest conference, or the Big 12. Either that, or an Alabama team that lost one game on a 109 last second field goal, to the number two team in the nation, would be left out. How would that go over in ‘Roll Tide’ country?

Already rumored (though steadfastly denied), the logical solution is an eight team playoff allowing for a clean three round tournament, with the five conference

champions included. The committee then seeds the teams and determines three at large bids for the best non-conference-champions.

The committee insists that they don't want to take meaning away from the regular season. A look at College Basketball justifies this. At the same time, expanding the playoff to eight teams carries exactly zero chance of such an effect. To say that it will dilute the regular season shows an ignorance of what college football is, and what it means culturally.

College football is an embedded part of these schools' and conferences' culture and pride. Games need not have national championship implications to be profoundly meaningful to the fan bases involved. For evidence of this, look no further than mid-majors across the country. For years, even undefeated seasons carried little hope of a national championship opportunity, yet the passion and excitement endure. College football games exist in a larger sphere of the National Title picture, sure, but they also exist as events unto themselves. When a season consists of just twelve games, scarcity and passion will keep the college football season as meaningful as ever with an eight team playoff.

Apart from that, in the context of an eight team playoff, a conference loss will be no less meaningful with a playoff berth going to the conference champion. With just three at large games, and a team's non-conference schedule set long before they know if they will get an automatic bid, the incentive to schedule and win strong non-conference games is also unblemished.

The BCS is gone, and that's great. The new system though, is one with an obvious flaw. In a way, that's perfect for the institution of college football, which continues to specialize in tradition, rivalry, excitement, and giving those who care about it something more to complain about.