THE BINGHAMTON LAW QUARTERLY

Vol. 3, Issue I

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Letter from the Editor

Dear Readers,

Welcome to the third issue of the Binghamton Law Quarterly. Though the Quarterly is a relatively new publication, we are proud to say that we are becoming a permanent staple on campus for students interested in the law to have a platform to discuss current legal issues in corporate, international, labor, maritime, and criminal fields, among many others.

In addition to our commitment to accurate and informational discussion of legal corpora, we are excited to work with the Philosophy, Politics, and Law department, the Harpur Law Council, and the Pre-Law office to continue efficiently publishing issues and recruiting student writers, editors, and graphic designers, as well as hosting events. On April 14th, we are thrilled to co-host a Legal Writing Seminar with a Binghamton alum and current attorney at law. In the future, we hope to recruit keynote speakers to host seminars and roundtables to benefit pre-law students in every field.

We are also happy to start a new tradition within the Law Quarterly of accepting articles from community members, attorneys, and alumni. This issue, we are honored to include an article about Veterans' Law by Attorney at Law Thomas Kniffen.

For all readers, pre-law or not, I welcome you to the content inside and hope that you can take away a better understanding of the law and its effects on the world around you. We are always on the lookout for talented writers, editors, and designers to help make the journal the best it can possibly be. With our third issue published, we are proud of what we have accomplished, and excited about the future of our publication.

Sincerely,
Alexandra Kiosse
Chief Editor

FEDERAL JURISPRUDENCE AND RIGHTS OF MILITARY VETERANS

Thomas Kniffen, Attorney at Law

Thomas Kniffen is an Attorney at Law, a veteran of military service with the United States Air Force, and a student auditing Introductory French I and II at Binghamton University. As a Judge Advocate and military lawyer,Tom served tours in Saudi Arabia during the first Gulf War in 1990, and in the Pentagon as a first responder September 11, 2001-March 2002. He is a graduate of Boston College, earned his Juris Doctor degree from The John Marshall Law School in Chicago and Masters of Law degree from American University [Washington University College of Law]. Tom is licensed to practice law in New York and Pennsylvania.

Retiring from the U.S. Department of Veterans Affairs [VA] in 2015, where he represented the Federal Government in the United States Court of Appeals for Veterans Claims and Federal Circuit, Tom now represents veterans of military service and their dependents in these two courts. These veterans and their dependents seek disability compensation benefits from VA.

VA Disability Compensation is a tax-free monetary benefit paid to Veterans with disabilities that result from a disease or injury incurred or aggravated during active military service. Compensation may also be paid for disabilities that occur after service that are considered related or secondary to disabilities occurring in service and for disabilities presumed to be related to circumstances of military service, even though they may occur post-service. A disability can apply to physical conditions, such as a chronic knee condition, as well as a mental health conditions, such as post-traumatic stress disorder (PTSD). Generally, the degrees of disability specified impact the amount of monthly payment, and are set up and intended to compensate for average losses in earning capacity that result from illness or injury incurred during active service.

As of December 2017, the actual monthly dollar amounts range from $136.24 to $3,394.16, the specific amount is dependent upon numerous factors such as the percentage degree of disability, the number of parents or dependents, and the combinations of percentage degrees of disability when more than one is present.

Dependency and Indemnity Compensation (DIC) is a tax free monetary benefit generally payable to a surviving spouse, child, or parent of Service-members who died while on active duty, active duty for training, inactive duty training, or survivors of Veterans who died from their service-connected disabilities.

Special Monthly Compensation (SMC) is an additional tax-free benefit that is available to Veterans, their spouses, and parents. For Veterans, SMC is a higher rate of compensation paid on account of unique and special circumstances, for example the need of aid and attendance by another person or a specific disability, such as loss of use of one hand or leg. For spouses, SMC is typically categorized as aid and attendance and is paid based on the need of aid and attendance by another person.

VA provides additional Compensation Benefits that pertain to housing, housing adaptation, automobile, automobile adaptation, and clothing allowance.

Regarding Basic Eligibility Requirements: a claimant must show service in the Uniformed Services on active duty, active duty for training, inactive duty training, must have been discharged under other than dishonorable conditions, and the Veteran must be at least 10% disabled by an injury or disease that was incurred in or aggravated during active duty, active duty for training, or inactive duty training.

Note: If the Veteran was on inactive duty for training, the disability must have resulted from injury, heart attack, or stroke.

The following evidence must be presented by the veteran: (1) Medical evidence of a current physical or mental disability, and (2) evidence of a relationship between the Veteran’s disability and an injury, disease, or event in military service. Also, medical records or medical opinions are required to establish this relationship.

Under certain circumstances, VA may conclude that certain current disabilities were caused by service,

even if there is no specific evidence proving this in the Veteran's particular claim. The cause of a disability is presumed for the following Veterans who have certain diseases. In general the following veterans benefit from this type of determination: (1) Former prisoners of war; (2) Veterans who have certain chronic or tropical diseases that become evident within a specific period of time after discharge from service; (3) Veterans who were exposed to ionizing radiation, mustard gas, or Lewisite while in service; (4) Veterans who were exposed to certain herbicides, such as by serving in Vietnam: and (5) Veterans who served in Southwest Asia during the Gulf War.

Veterans do possess the right to appeal an adverse decision made by VA. A Veteran or dependent, who is dissatisfied with the decision of VA in connection with an application to VA for VA Disability Compensation Benefits, is permitted to request VA to re-examine the claim based upon evidence that the Veteran or dependent submits, which is asserted to be new and material to the filed claim. If VA, however, also denies this claim, the Veteran or dependent may appeal the decision of VA.

Veterans or dependents have one full year to decide whether they wish to file an appeal of a VA claims decision, with the Board of Veterans Appeals [BVA]. The document by which an appeal is filed is called a Notice of Disagreement, or NOD. The Board conducts a de novo (new) review of the entire case meaning, without deference to the VA decision, by looking at an evidentiary record that likely has changed from the time of the initial decision.

The United States Court of Appeals for Veterans Claims [CAVC] provides judicial review of the final decisions by BVA. The Court reviews the BVA decision, the written record, and the briefs of the parties. The appeals process starts when a Notice of Appeal (NOA) is filed with the CAVC Clerk. The NOA must be received by the Clerk within 120 days after the BVA decision.

United States Court of Appeals for the Federal Circuit reviews appeals of decisions of CAVC.

APPLE LAWSUITS

Tara Andryshak

Have you ever noticed that your iPhone slows down as soon as a newer model is released? Most Apple consumers noticed this, and blamed the company for the slowdown. However, these customer's solution to the problem was to buy the iPhone model that was just released. This is because it seemed to be the only option available and recommended to Apple users when their phones slowed down. Due to this, Apple's sales increased dramatically. Consumers bought the new expensive iPhone, when instead, they could have purchased a cheap battery to fix the iPhone they already own.

In December 2017, Apple revealed in a statement that they were in fact responsible for the slowing down of older models -the SE, 6, 6S, and 7- as soon as a newer one was released. This was in response to a Reddit post questioning the speed of older iPhones. The post brought to light that older iPhones did not perform as well as they had when first purchased, in fact, they performed significantly slower. When the Reddit user replaced his battery, they realized the speed of their phone appeared brand new. This post received over a thousand comments by angry Apple consumers, which caused the post to go viral. It is this post that ultimately led to the lawsuits (1).

However, Apple rejected the idea that this is done to increase their sales, which is what the commenters were accusing. Rather, they claimed that the lithium-ion battery in iPhones decreases over time due to charging cycles, which can result in the total shutdown of the phone. Apple held that by installing new software onto older iPhones through iOS updates the decreasing of battery life can be prevented. However, this comes with this the negative effect of the "slowdown of the average .response times by the system" (2). The company stood by their process and stated they will continue to use it with future products since it keeps the phones operating.

Apple stated that instead of purchasing a new phone, consumers could have just bought a new battery, which would make their phone run as if it were brand new. However, iPhone users around the world claim that they were never told about these batteries and were always told by Apple employees that they needed to purchase a new phone when theirs grew slow. Apple called this a misunderstanding, and reduced the price of a new battery from the original price of seventy-nine dollars to twenty-nine dollars.

Class-action lawsuits have been issued in multiples states in the United States, including California, Illinois, and New York. These lawsuits exist on the basis that Apple's actions led consumers to wrongly believe they needed to purchase a newer, more expensive iPhone, when instead, they could have just replaced the battery. Users claim that when visiting the Apple store about their slowed phones, no employee ever recommended purchasing a cheap battery, resulting in purchasing a very expensive, new phone. Consumers are claiming that Apple never received consent from them to slow down their phones, therefore the company is breaching an implied contract. When purchasing an iPhone, users expect Apple to not interfere with their phones usage or value. However, Apple has been affecting phones usage and value by decreasing the speed to save the battery (3). Apple failed to disclose this at the time the parties entered an agreement. Two individuals from Los Angeles claim that their phones slowing down "caused them to suffer, and continue to suffer, economic damages and other harm for which they are entitled to compensation" (4) The compensation they are referring to includes the replacement of their phone and compensation for the value they lost. Another individual in California accused Apple of "fraud through concealment and unfair business

processes” (3).

These lawsuits are not just coming from inside the United States, however. Apple has had class action lawsuits filed against them from all around the world. In Israel, users are “accusing [Apple] of a breach of duty toward customers by failing to disclose that software updates would slow the performance of older phones” (3). A criminal lawsuit has been brought up against Apple in France for violating a 2015 law which prohibits “the practice of planned obsolescence, which is defined by the use of techniques by which the person responsible for the marketing of a product aims to deliberately reduce the duration to increase the replacement rate” (5). The activist group in France that is suing Apple claims that the company deliberately reduced the lifespan of iPhones to increase their sales and revenue, which goes against the law (6). The maximum prison sentence for this would be two years for head Apple employees, in addition to a fine of thirty-thousand euros, and five-percent of Apple’s annual turnover (6).

These lawsuits, which total to over twenty, can have grave impacts for Apple. Already, many Apple users have begun to switch over to other smartphone companies, such as Samsung, due to their outrage over this revelation. If lost by Apple, these lawsuits total to over a trillion dollars, and even years in prison in France.

Many of the lawsuits Apple faces demand that the company compensate all iPhone users who experienced any sort of slowdown with their phone. This would mean Apple would have to compensate nearly all their customers, since most own(ed) the iPhone SE and newer. The lawsuits also demand that Apple offer free battery replacements rather than just reducing the price, as well as provide a full refund to any customer who was advised to purchase a new phone rather than a new battery (1). This could all prove very detrimental to the company, which as it stands now, is one of the largest in the world.

TRUMP'S TRAVEL BAN

Magdalena Kusz

Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!

"The New Colossus" by Emma Lazarus

Inscribed in the Statue of Liberty to commemorate the welcoming nature of America, the iconic poem by Emma Lazarus has been a depiction of toleration the nation has long believed in when dealing with immigrants… until recently. In late January of 2017, President Trump signed an order called "Protecting the Nation From Foreign Terrorist Entry into the United States," that bars the entrance of refugees for 120 days while also contemplating a new system meant to further restrict admissions of refugees and other individuals. He claimed the goal of restricting individuals from majority-Muslim countries into entering the United States was to screen out "radical Islamic terrorists," while at the same time giving priority to Christian refugees to enter the States.

The ban called for the halt of people from seven majority-Muslim countries – Iraq, Iran, Syria, Yemen, Sudan, Libya and Somalia, as well as two non-majority-Muslim countries, North Korea and Venezuela.While the restrictions vary in detail based on the individual's country of origin, the main effect of the order would be a prohibition of emigration on a permanent basis, as well as the barring of working, studying, and even vacationing in the United States. The order did give some authority to states and localities to determine if refugees would be allowed to settle in their area.

Even though members of the Trump administration called the ban a "substantial victory for the safety and security of the American people," others disagreed about its effectiveness. Throughout 2017, the order was found unconstitutional by judges on numerous grounds, thus it has not yet been fully implemented. "We conclude that the Proclamation conflicts with the statutory framework of the INA [Immigration and Nationality Act] by indefinitely nullifying Congress's considered judgments on matters of immigration," the 9th Circuit panel explained. The court further wrote that, "[i]t cannot be in the public interest that a portion of this country be made to live in fear," thus addressing the direct impact the ban would have on Muslims.

Changes were made to Trump's original order in an effort to make it more lenient on people from Muslim nations, however arguments still continue over whether the order is in violation of the constitutional guarantee against religious discrimination. Additionally, the president's order has been found to go beyond the executive power to control the flow of immigration. Other judges contended that the permanent nature of the ban went against the Immigration and Nationality Act laid out by Congress. Further examples of the ban's unconstitutionality originate from the President's lack of "finding"—rather than simply stating—that travel from the listed countries would harm the United States because until now, the administration has presented no evidence linking an individual's nationality to their perceived level of threat. All these complications continue to be a matter of debate for judges to consider before making the final decision regarding the order's legality.

THE FIRING OF JAMES COMEY: IS IT OBSTRUCTION?

Matthew Slater

There have been two cases in which the U.S. president has been accused of committing obstruction of justice. In 1998, Bill Clinton was found guilty of obstruction due to evidence found in the Monica Lewinsky affair. Prior to Clinton, in 1974, Richard Nixon illegally withheld tapes pertaining to the Watergate scandal. When a president is accused of obstruction of justice, the prospect of impeachment usually follows in stride. Recently, there have been numerous calls in the media to bring forward the conversation of obstruction about our current president due to recent events. Notably, a campaign funded by California billionaire Tom Steyer aptly named “Need To Impeach” has been running television ads claiming the president has committed an obstruction of justice. Many articles and movements, including “Need to Impeach,” mention alleged obstruction of justice committed by the president as grounds for a vote to impeach Donald Trump.

“Donald Trump has brought us to the brink of nuclear war, obstructed justice, and taken money from foreign governments. We need to impeach this dangerous president.” -Tom Steyer

Whatever an individual’s political dispositions may be, it is important to understand exactly what is considered obstruction of justice, and the evidence that is needed to prove it. In a time when people receive news from a wide variety of mediums, going straight to the source and reading the law can be helpful in making educated conclusions. Only then is it possible to come to an unbiased judgment as to whether or not someone, specifically our president, is in fact guilty of a charge.

“Obstruction of justice is defined in the omnibus clause of 18 U.S.C. § 1503, which provides that "whoever corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be guilty of an offense." Persons are charged under this statute based on allegations that a defendant intended to interfere with an official proceeding, by partaking in actions such as destroying evidence, or interfering with the duties of jurors or court officers.

A person obstructs justice when they have a specific intent to obstruct or interfere with a judicial proceeding. For a person to be convicted of obstructing justice, they must not only have the specific intent to obstruct the proceeding, but the person must know (1) that a proceeding was actually pending at the time; and (2) there must be a nexus between the defendant’s endeavor to obstruct justice and the proceeding, and the defendant must have knowledge of this nexus. (§ 1503 applies only to federal judicial proceedings).
- Cornell Law Legal Information Institute

Knowing this definition of obstruction of justice, we can analyze the most convincing argument for Impeachment: The firing of former FBI director James Comey on May 9th, 2017.

During the time leading up to his firing Comey was investigating the former National Security Advisor, Michael Flynn, for his undisclosed connections to Russia, specifically through payments he received from foreign companies. He had also allegedly lied to the Vice President about these connections. It is widely publicized that before Comey was fired, Donald Trump was quoted saying to him, “I hope you can see your way clear to letting this go, to letting Flynn go.” This statement was in reference to the mounting evidence against Flynn proving he had lied to Vice President Mike Pence about his contacts with Russian operatives. (Flynn has since plead guilty to lying to the FBI after being indicted by the special counsel Robert Mueller III).

The fact that Trump implored Comey to drop the investigation and then subsequently fired him when it was apparent the investigation would proceed is the key event many believe constitutes obstruction of justice, as the president’s actions are viewed as impeding a federal investigation.

In response to cries for impeachment due to the Comey firing, respected law professor Alan Dershowitz explained in an interview on FOX,

"I think if Congress ever were to charge him with obstruction of justice for exercising his constitutional authority under Article II, we'd have a constitutional crisis," Mr. Dershowitz said. "You cannot charge a president with obstruction of justice for exercising his constitutional power to fire Comey and to tell the Justice Department who to investigate and who not to investigate."

While Dershowitz's statement is correct, the president did have the constitutional power to fire Comey, it is important to look upon his twitter account for further evidence related to the investigation.

"I had to fire General Flynn because he lied to the Vice President and the FBI. He has pled guilty to those lies. It is a shame because his actions during the transition were lawful. There was nothing to hide!"- @realDonaldTrump, 9:14 AM - 2 Dec 2017.

The president's account tweeted this comment in the hopes of further distancing Trump from the now disgraced Michael Flynn. Consequently, many people interpreted this information as him admitting to have known that Flynn had lied to the Vice President, as well as the FBI.

If this these series of events prove to be correct, and the president did know of Flynn's dishonesty, the case for obstruction of justice could be very strong. He knowingly attempted to impede a federal investigation by asking Comey to let Flynn off the hook, and then fired him when he did not.

In an odd turn of events, Trump's lawyer John Dowd later took credit for writing this tweet, though many dispute this admission as trying to cover for the presidents admission of guilt. It is not likely that the president's counsel had access to his Twitter account and decided to publish the very Trump sounding explanation of firing Flynn.

Special prosecutor Robert Mueller has recently expressed that he would like to interview the President at some time in the future, signaling the investigation may be coming to a close. Trump has teased he would be open to testifying under oath in remarks to the press and on his twitter account, though many doubt his lawyers would allow it given his track record of speaking "off the cuff."

Putting all of these facts together, there is no clear verdict to be made at this time. The only way to confirm obstruction would be if the president agrees to be questioned under oath about exactly how this series of events leading up to Comey's firing took place. Only then could the public make a judgment and Congress take all the facts into consideration. Furthermore, the fact that Congress has a republican majority makes it exceedingly unlikely any motion for impeachment would happen. While the evidence may seem to point to an obstruction, due to the lack of certainty the president's position is safe for now...

DAZED AND CONFUSED ABOUT "LEGAL" MARIJUANA?

Melissa Esposito

Marijuana has been legalized for recreational usage in 8 states, and for medicinal purposes in 29. Despite it's legalization in states, marijuana is still classified as a Schedule I drug under the Controlled Substances Act, which means that its usage may lead to a high level of psychological or physical addiction, and that its usage is of no medical value. Other drugs in this category include heroin, LSD, MDMA, and bath salts. Schedule I classification means that a drug cannot be legalized and cannot be prescribed by a doctor. For this reason, marijuana remains illegal in all 50 states at the federal level. (Reinhart, 2018).

So, which is it? Is marijuana legal or illegal? In the United States Constitution, the 10th Amendment grants states the power to decide on anything not explicitly enumerated in The Constitution. So, drug policy is in the hands of the states which is why certain states have been able to legalize it for recreational and medicinal purposes. However, The Constitution also contains the Supremacy Clause, which states that federal law is the supreme law of the land. In cases where federal law and state law conflict, federal law must be upheld. So, if you look at marijuana policy as viewed by the Supremacy Clause, marijuana is still illegal everywhere, despite states' ratification. This clause was upheld in court in the Gonzalez v. Raich case, in which it was decided that the federal government does have the authority to prohibit marijuana usage for all purposes (Americans for Safe Access, 2018).

If marijuana is illegal everywhere, how is that "legal" marijuana has grown to become a multi-million dollar industry in the states that have legalized it? The decision in Gonzalez v. Raich stated that although marijuana can be prohibited by the federal government, it did not state that the laws allowing marijuana in certain states are unconstitutional. So, discretion is left up to the federal government. At any time, if the federal government decided to, civil forfeiture laws allow the feds to seize all assets involved in running and operating a marijuana business on the ground that it is an illegal criminal enterprise at the federal level.

Thus far, federal discretion has been to not interfere with the marijuana businesses that are operating in accordance with state laws. If it's illegal on the federal level, why has this been the Department of Justice's decision? For this, we look toward the Cole Memorandum, the Rohrabacher-Farr amendment, and the Supreme Court's Anti-Commandeering Doctrine. The Cole Memorandum, released in 2013 and named after Deputy Attorney General James Cole, stated that state-legal marijuana was not a priority for the Department of Justice, except for certain cases which are listed in the memorandum. Marijuana businesses could face interference by the Department of Justice if they were to engage in, or promote activities that the Cole Memorandum enumerated as priorities of the Department of Justice. Some of these activities include: trafficking to minors, using marijuana to cover other illegal drug trafficking, drugged driving, and usage on federal property (Americans for Safe Access, 2018). It is important to note however, that this policy of non-enforcement does not equate to freedom from discipline, or immunity from federal law. Rather, the Department of Justice continues to pursue cases that implicate the priorities set forth in the Cole Memorandum, but does not go out of their way to do so if businesses are in compliance with state law.

The Cole Memorandum was limited in its protection of the marijuana industry in that it did not have any provisions about civil monetary penalties, civil forfeitures, or regulatory sanctions, only about criminal prosecutions. This meant that ancillary businesses that in anyway aided marijuana businesses could have been implicated in certain areas of the law. For example, a landlord or vendor for a state-legal marijuana business or company can be prosecuted as a principal, a co-conspirator, or an aider and abettor. The same goes for lawyers who give legal advice, accountants, consultants and any other professional involved in aiding the overall business operation. Additionally, because profits generated from the

marijuana industry are not accepted by most banks the companies are forced to deal largely in cash. Accepting any sum of cash in excess of $10,000 from any known marijuana business can result in persecution under money laundering laws, a crime punishable by 10 years in prison (Reinhart, 2018). So, despite marijuana's legality under state-laws, the protections from criminal prosecution afforded by the Cole Memorandum still leave many legal hazards for those dealing in the marijuana industry.

The Rohrabacher-Farr Amendment limits federal interference in state legal marijuana businesses because it prohibits the Department of Justice from allocating funds at their discretion to interfere with states implementing their own state laws (Bomboy, 2017). This amendment led to the end of federal medical cannabis raids, arrests, criminal prosecutions, and civil asset forfeiture lawsuits, and additionally helped provide medical cannabis prisoners a way to help them petition their case (Americans for Safe Access, 2018). However, the Rohrabacher-Farr Amendment only prohibits the allocation of funds by the DOJ, not the actual interference in State law implementation. While it is unlikely, Congress could vote to allocate funds toward combating marijuana usage in states where it is legal, and then the Department of Justice would be allowed to interfere in state-legal marijuana businesses. So, state-legal marijuana is not entirely in the clear yet. The Supreme Court's Anti-Commandeering Doctrine also plays a role in allowing state-legal marijuana businesses to flourish. This doctrine states that federal agencies are not allowed to force local law enforcement agencies to uphold and enforce federal laws (Bomboy, 2017). While a state-legal marijuana business may be shielded from criminal prosecution at the discretion of the Department of Justice, ancillary service providers still face tremendous legal risks.

On January 4th, 2018 Attorney General Jeff Sessions issued a memorandum of his own that rescinded the Cole Memorandum. The new memorandum states that marijuana is a dangerous drug and that marijuana activity is a serious crime. It urges investigative and prosecutorial discretion to be in accordance with federal law enforcement priorities, the severity of the crime, the deterrent effects that prosecution can potentially have, and the impact of marijuana crime in communities (Sessions, 2018). The new memorandum removes the safe harbor the Cole Memorandum once allowed marijuana businesses. It is vague about future efforts on behalf of federal law enforcement, with the intention of allowing US attorneys' offices to be able to bring about all cases that they feel necessary. Jeff Sessions believes that the federal law should be upheld despite what laws are passed by states. The memo has already been denounced by a few US attorneys, and senators in states that have already legalize medicinal and recreational marijuana usage. Overall, this memorandum creates more uncertainty about how the law will be interpreted. States like Nebraska, in which marijuana remains illegal, but borders a state where marijuana is legal, like Colorado, have seen a rise in marijuana sales, usage and related violence increase. States like these may feel the effects of this memo, as it gives prosecutors more power to prosecute legitimate objectives of the federal government, such as state-legal marijuana spillover into states where it remains illegal. (Gernstein and Lima, 2018)

MASS INCARCERATION DUE TO DRUG OFFENCES

Julianne Hynes

Of the countless problems in the United States, the issue of marijuana arrests due to systematic racism has lingered agelessly. The United States has equal prosecution under the law. However, African Americans are incarcerated five times more than people of European descent, with African Americans and Hispanics taking up 56% of prison populations, despite only taking up 32% of the United States population (according to the National Association for the Advancement of Colored People). When people who hold twisted perspectives work in the position of in the position of law enforcement, they can actively decide who should be prosecuted and who may go off with just a warning.

Even though people of all colors using marijuana about the same rate, African Americans are up to 4% more likely to be arrested for having possession of the drug, not even consuming it. The issue with this is the root of the Black Lives Matter movement- the racism that many police officers hold results in the unequal, and thus, unfair prosecution. This is the first step to systematic racism: a police officer taking the initiative to arrest a man. When a person of color is automatically associated with danger, wrongdoing, and mistrust, they are obviously more likely to be penalized for the same illegality as someone with lighter skin. Black Lives Matter is the fight against this mass ideology in pursuit of saving African American lives and improving them as well.

People of all color should be handled to the extent of their crime in the same fashion, rather than there being a sort of "scale" in which the police officer's opinion is also calculated into the decision of a person's arrest; and thus the determination of that person's future in going to court and possibly facing a sentence versus receiving nothing other than a verbal warning. On average, a black person is three times more likely than a white person to be killed by a police officer. These statistics of arrest for African Americans compared to that of white people prove blatant racism. Despite the same crime, and despite the drug not actually being proved dangerous, African Americans are penalized in a situation where a white person would get off with a warning by the officer.

Marijuana is not a dangerous substance. However,The Controlled Substances Act (CSA) (21 U.S.C. § 811) classifies marijuana as a schedule one drug, which indicates that it has no medical purposes and has the potential to be addictive. In this category is also heroin. To put things into perspective, in 2015 about 13,000 people overdosed in the United States alone on heroin. Marijuana, on the other hand, has only one reported overdose in 2015. Even then, the overdose is from the carbon monoxide poisoning from the plant...not even the drug itself. For the few states that have legalized marijuana, the results so far are good. In Colorado, for example, marijuana has been legal since 2014 under Amendment 64.

No one has yet to die from the herb, and it is taxed in such a way that the first $40 million raised annually go to the funding of public schools. Public schools, in return, help the public and the state as a whole. Washington, where it is legal too, is benefitting from the tax revenue of marijuana despite having somewhat strict laws in the purchasing of the drug. According to the Tribune, more than "60% of marijuana consumer taxes over the next two years is slated to go toward public health programs, including Medicaid, substance abuse prevention efforts and community health centers, according to the state Office of Financial Management." With a revision of the tax laws, even more funds could go to helping the state. Marijuana is does not kill people, nor does it hurt its local communities.

While on the drug, a person may face euphoria. Some highs are good, but others may not be. For example, a person may sometimes feel anxious, overwhelmed, paranoid, or lethargic. Sometimes a person may feel happy and have a lot of laughter. These are the consequences of marijuana, these are the only acceptable repercussions.They should not face the consequences of systematic racism that is not dependant on a crime, but instead on a person's ethnicity.

UBER'S EU PROBLEM

Dylan Weber

On December 19th, the European Court of Justice, the European Union's highest court, dealt a significant blow to the popular ride-hailing service Uber. The decision rendered that Uber could no longer identify themselves solely as a digital company; rather they must be subjected to the rules and regulations that apply to public transportation.

Since its founding, Uber has been careful to stand with the digital marketplace— one that allows for a lighter burden when it comes to rules and regulations that govern such space. However, that all changed in the 28 member states (including the UK) of the EU on December 19th—when a case involving a complaint filed on behalf of a taxi service based in Barcelona, Spain officially set the new precedent. The Spanish taxi service, Elite Taxi, argued that Uber was gaining what they perceived to be an unfair advantage in the public transportation marketplace, in that the ride-hailing service did not have to adhere to the same rules and regulations various taxi services obeyed. Included in said complaint was that Uber recently began to use a service called "UberPop," which linked ride-seeking customers with non-professional drivers. That service has since been disbanded, and Uber now claims it only employs professional drivers in the majority of the European Union.

The ECJ determined that Uber "must be regarded as being inherently linked to a transport service." With such a decision being handed down, the 28 member states are now mandated to regulate the conditions under which Uber's services operate. Uber released a statement in response to the decision, arguing that since they had already been operating under public transportation rules and regulations in most European countries, the ruling would have little impact. Relishing in the outcome of the case, Elite Taxi reacted on Twitter, tweeting "Today, taxi drivers have beaten Goliath."

In a deeper breadth, the ECJ's decision could prove to be a benchmark applicable to countries' regulations of independent workers. Such workers represent as much as 30% of the working-age populations in both the United States and Europe. The worry to some is that, if indeed the ECJ's decision is utilized in other cases dealing with independent workers, the demographic will begin to shrink. Take the story of 24 year-old student Mohaan Biswas for example. The Londoner had been carrying food for technology start-up Deliveroo, a service that provides food delivery, when a car knocked him from his motorcycle and broke his foot. He had been working for the start-up as a way to make ends meet in an effort to finance his education as he sought a Masters' degree in Information and Technology. Despite his injury, Biswas decided to ride for Deliveroo again, as well as driving for Uber part-time, since Deliveroo had given him no sick leave and his insurance refused to cover the costs of the broken motorcycle.

The challenge for policymakers everywhere, as seen in Biswas's case, is the struggle to strike a balance between mandating specific labor protections and noting that mandating such protections will lead to increased costs within businesses and subsequently hinder innovation. The upcoming years will prove to be significant in the long-term future of sharing businesses—and if the European Court of Justice's decision in the Uber case can indeed set precedent in similar spaces, the way in which sharing businesses operate will have no other choice than to change.

PLAUSIBILITY STANDARDS AND THE LIMITATION OF ACCESS TO COURTS

Gordan Yang

The common phrase “I’ll sue you” is embedded in American popular culture. Most of the time it is taken lightly, and not perceived as a legitimate threat backed by a person prepared to go to court. This is perhaps a reflection of the difficulties in translating abstract justice to the expensive and time-consuming remedies offered by our already backed up judicial system. On the few occasions that we truly need to resort to formal legal action, it is reassuring that there is such a recourse open to us. On the other hand, a judicial system works efficiently when it effectively screens out cases that are trivial. That is what the ruling in Bell Atlantic Corp. v. Twombly (2007) sought to accomplish, and in Ashcroft v. Iqbal (2009) the screening process was made to be even stricter. These two Supreme Court cases are two of the most cited because of the effect they had on procedural law, and we will examine how exactly they did this.

The fundamental issues the two cases grapple with originates in the fact-conclusion debate. Nineteenth century legal code was reformed to simplify the outdated common-law system that employed formulaic, “hyper-technical” forms of action. By requiring "a plain and concise statement of the facts constituting each cause of action”, the plaintiff only had to allege verifiable facts in her complaint and left it to the court to apply the law.

One criticism of such an approach was made by Cook, who believed that pleading facts for legal purposes naturally involves using legal concepts and categories, and that there was no readily drawn distinction between statements of fact and conclusions of law (Bone, 862-863). The drafters of the Federal Civil Rules of Procedure (1938) took this into consideration, and wrote Rule 8(a) so that it simply requires no more than “a short and plain statement of the grounds for the court's jurisdiction”.

Until Bell Atlantic Corp. v. Twombly, Conley v. Gibson (1957) interpreted Rule 8(a) as: a case should not be dismissed at the pleading stage "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief” (Colleen, 405). The standard approach at that time was notice pleading, where the sole function of a complaint was to give fair notice to the defendant of what the dispute was generally about (Bone, 853). After Twombly, pleading standards were heightened so that meritless claims would be screened out by a plausibility test and cases were no longer heard if it was merely possible that the alleged had committed a crime. The majority in Twombly shared the concerns of the nineteenth century reformers clearly shown through their use of language, which required plaintiffs present "more than conclusions” and not just a “formulaic recitation of the elements of a cause of action". Still, Twombly emphasized that a case should not be dismissed on the basis of low likelihood of trial success or improbable alleged facts. It "simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement” (Bone, 875). In contrast, Iqbal rejects weak cases due to its two-pronged test.

In Ashcroft v. Iqbal, a complaint was brought against former Attorney General Ashcroft and FBI Director Mueller by Iqbal, alleging that he was designated as a person of “special interest” based on his race, religion, and national origin and detained for these reasons as a result of their policies. Although it is plausible that the defendants had targeted him based on those factors, the Court found a more plausible, legal basis for the complained of conduct: the high priority of law enforcement in the wake of the attacks of September 11 and his potential connection to terrorists. In other words, had the plaintiff brought more convincing evidence to prove intentional discrimination, the case might have gone on to discovery.

The first prong brings back the debate on the distinction between facts and conclusions. The two are only different in degrees of factual specificity, and allegations are conclusions when they state facts at

too high a level of generality (Bone, 868). Iqbal did not clarify on this issue, but only made it worse. The first prong separates the complaint so that each allegation is taken individually, and trial success can only be predicted by considering the case as a whole. That is why Justice Souter, who wrote the opinion for Twombly, dissented in Iqbal, stating that its “key allegations are actually quite specific when read in the context of the complaint as a whole” (Bone, 861). Twombly wasn’t dismissed on grounds of trial success, but Iqbal was as, shown in the statement "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (Bone, 875). In other words, the plaintiff has to have enough evidence to convince the court that the defendant may be liable, and not just enough to go onto discovery.

The two-prong approach is especially problematic for cases that require private information from the defendant(s) i.e. anti-trust and civil rights cases, and puts the plaintiff in a dilemma. The plaintiff must allege more detail before discovery, but the details he must allege are very difficult to obtain without discovery.This is contrary to one of the fundamental values of the federal procedural system, which is that potentially valid complaints should not be thrown out because the plaintiffs cannot allege all of the relevant facts prior to discovery (Colleen, 406). Only after a judge has separated facts from conclusions can he decide if the remaining facts are plausible.

This is done through the second prong which is divided into a “checklist” approach which essentially checks if there is enough factual content, and the “common-sense” approach which asks the judge to draw reasonable inferences and decide based on judicial experience. In a follow-up article I try to apply the second-prong of the plausibility test through machine learning.

There have been several observations of the deviation of district court rulings from the Supreme Court’s decision in Iqbal and the empirical effects Iqbal had on lower courts in the period immediately after it was passed. The two-pronged test was applied in less than half of the cases sampled, but it was applied more than the first prong. The common-sense approach was far preferred to the checklist approach, which suggests that the judge prefers to intuit if there is any wrongdoing (Colleen, 432). A possible (and optimistic) explanation for the district courts’ behavior is that it is unreasonable to expect plaintiffs to provide much more than an unadorned accusation when they don’t have access to the requisite information prior to discovery (Colleen 427-428). Hence, they chose not to apply the two-prongs since they were given this option (Colleen, 415). Although the opinion in Iqbal could have been better formulated, at least it allows lower courts this level of flexibility.

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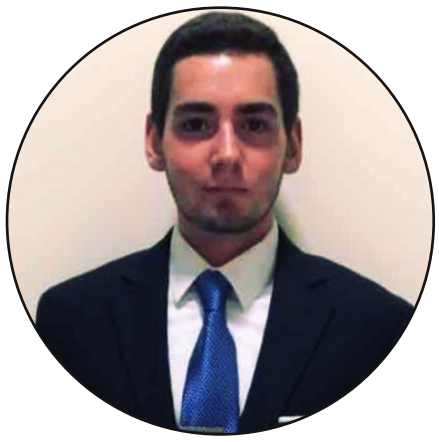

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