

Boston University

OpenBU

<http://open.bu.edu>

Pre-Professional Advising

BU Pre-Law Review

2012

Boston University Pre-Law Review: Volume XXII, Issue 1, Fall 2012

<https://hdl.handle.net/2144/13116>

"Downloaded from OpenBU. Boston University's institutional repository."



Boston University

Pre-Law Review

Volume XXII Issue 1
Fall 2012

Table of Contents

<i>Cracks in the Great Firewall of China</i> By James Miller	4
<i>Color War: Louboutin v. YSL</i> By Melissa Morel	7
<i>Antitrust Cases Against Google Complicated, Unlikely to Succeed</i> By Hannah Fikar	9
<i>Modern Jury Selection: Science and Search Engines</i> By Kristyn Hansen	12
<i>Lunar Law: Property Ownership on the Moon</i> By Dustin Vandenberg	14
<i>NYC Sugary Drink Ban: Obesity Solution or Infringement of Rights?</i> By Toni Ann Booras	16
<i>Prisoner Rights and the 8th Amendment</i> By Seema Shah	18
<i>Rising Sea Levels Threaten State Sovereignty</i> By Stella Sy	20
<i>The Debate on Nullification</i> By Rama Attreya	22
<i>Chicago Teachers Union Strike Illegal Under Illinois Law</i> By Rebecca Simonson	25
<i>U.S. Companies Suffer from Intellectual Property Infringement</i> By Amalia Carusone	27
<i>To be Paid or Not to be Paid? That is the Legal Question for College Athletes</i> By Ryan Miller	29
<i>Food for Thought: An Examination of the GMO Labeling Debate</i> By Alaina Wartman	31
<i>Is "ObamaCare" Constitutional?</i> By Sydney C. Fondots	33
<i>When Censorship Matters: Problematizing the 1st Amendment</i> By Monsura Sirajee	35
<i>The Scopes Monkey Trial and the Evolution Debate Today</i> By Janki Viroja	38
<i>Video Embedding: Is it Legal?</i> By Merissa Pico	40
<i>Voter ID Laws: Are They Necessary?</i> By Harsh Gupta	42

Executive Board

Gianna Walton
President • Editor-in-Chief

Daniel Gregorio
Vice-President • Layout Editor

Elyssa Sternberg
Treasurer • Layout Editor

Catherine Simon
Secretary • Copy Editor

Advisors

Dean Edward Stern
Rita Callahan Ralston

Constitution

The Boston University Pre-Law Review is a student run publication open to all Boston University undergraduates. The organization was founded in 1991 and has evolved since then. From its inception, the PLR has served the Boston University community by fostering awareness of pre-law issues, highlighting the resources available for students preparing for law school, and providing commentary on major issues facing the law and the legal profession.

Each semester, the staff and writers of the Pre-Law Review create a 150+ copy publication that addresses these issues. This publication is distributed through the Boston University Pre-Law Advising Office to currently enrolled pre-law students. It is also included in the materials that entering pre-law students receive upon registration as well as the information packets that are circulated during many of the pre-law presentations on campus.

The organization consists of approximately twenty members from throughout Boston University. The staff spans a variety of majors, schools, and class years, as no specific academic or experiential requirements are necessary to work on the PLR. All that is expected of members is an interest in learning more about the law and a commitment to furthering the publication's objectives by contributing one article per semester or assisting in the other aspects of the publication.

Cracks in the Great Firewall of China

By: James Miller

In the wake of violent and massive protests, against the crude US film, *The Innocence of Muslims*, all throughout the Muslim world, many countries in the United Nations have begun to rethink the limits of free speech online. On September 28, 2012 the U.N. Human Rights Council in Geneva passed a non-binding resolution asking governments “to counter the dissemination of ideas based on racial superiority or hatred.”¹ The resolution, however, is unlikely to pass on the floor of the General Assembly as members of the Security Council have denounced actions to curtail free speech;² and in July 2012, the U.N. passed “Resolution L13 -The Promotion, Protection and Enjoyment of Human Rights on the Internet.”³

Resolution L13 acts in three ways. First, it looks back among previous resolutions, such as HRC 12/16, which affirm their validity as resolutions to be consulted concerning digital free speech. Second, it urges “the same rights people have offline must also be protected online.”⁴ Finally, it asks assenting nations to develop “special procedures,” which will “promote and facilitate access to the Internet” recognizing “the Internet can be an important tool for development and for exercising human right.”⁵ All 47 member countries unanimously passed the Resolution, including the People’s Republic of China.

China, which has been strongly criticized in the

past for its censorship record, is edging toward more free speech in the digital realm. In 1994, China opened its doors to the Internet, albeit under strict supervision.⁶ Since then China has seen the most rapid growth of Internet users of any country and today boasts 389 million Internet users, about one-third of its total population.⁷ This rise is particularly interesting given China’s past efforts to restrict Internet access. Since 1998 the country has been relentless in its efforts to impose state-run censorship, spending \$700 million on the “Golden Shield Project,” a project the Western Media deemed “The Great Firewall of China.”⁸ The shield was created to allow the government complete control of what comes in and goes out of the Internet in China. However, in recent years it appears the wall has sprung a few leaks.

Since the inception of the “Great Firewall” the Chinese government has been engaged in a constant battle with major international web behemoths like Google, Facebook, and Twitter; despite such efforts, citizens continually outsmart the wall and develop new ways to circumvent the censorship. However, for each new advance the government is quick to create a whitewashed alternative: Twitter’s is WeiBo, Facebook’s is RenRen, and Google’s is Baidu.⁹ Each of these domestic alternatives draws more users than their international counter-part, a noteworthy development as China has

(Continued on page 5)

(Continued from page 4)

more Internet users than any other country. The disparity in users appeared to be a challenge to Google, which set up operations in China in 2005. Google sought to battle Baidu for search engine supremacy in the Middle Kingdom through initially caving into demands to censor searches. After a 2010 hacking scheme the Chinese government orchestrated, Google relocated its Chinese headquarters to Hong Kong, a Special Administrative Region (SAR), which enjoys more freedom.¹⁰ Google subsequently let up on its self-imposed censorship winning praises from citizens and international free-speech advocates; though it still only controls 16.6 percent of the search market to Baidu's 78.5 percent.¹¹

Although the Chinese government has a commanding grip on Internet censorship, citizens are still finding ways to exercise digital free speech. In recent months, the government has shut down commenting on various websites, blocked Facebook and Youtube, and offered its own version of Google Drive. These censorship actions have been met with stern backlash from Internet users who are using microblogs as a way to vent frustration and demand change.¹² By far the most popular microblogging website in China is Weibo, which boasts 324 million users.¹³

Created in 2009, Weibo has become one of the primary tools for citizens not only to criticize the government, but to create dialogue with them. In 2011 a

major State Council, the highest ranking decision making body in China, began to research the effects of microblogging on the citizenry; and while observing the special ability to create conversation once unattainable, the Council also made the startling proposition that officials should "make more efforts to ensure transparency in government affairs."¹⁴ Since then, Weibo has assisted citizens in removing corrupt officials, boycotting pollution, and most recently in participating in the Bo Xilai controversy.¹⁵ In each of these circumstances users furiously responded to the corruption and tragedy of events they knew were not right, and almost without fail the government shut down or deleted comments for days. However, it is becoming more and more clear to state officials, like State media editor Hu Xijin, "The Internet has changed the way lots of people think and work," and Weibo "definitely won't obey the government's management 100 percent."¹⁶

The government in China is becoming more understanding of the desires of their citizenry each day. As microbloggers voice anger in 140 characters or less, the government has responded by signing off on Resolution L13. For now the ruling Communist Party is easing off its strict control of speech and allowing more personal freedoms, a belief that is enshrined in China's current 1982 constitution. In a phrase nearly analogous to the American 1st Amendment, the Chinese constitution says, "Citizens of the People's Republic of China

(Continued on page 6)

(Continued from page 5)

enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”¹⁷ As more cracks develop in the “Great Firewall” it seems inevitable the government will one day release its hold on digital free speech, it is only a matter of when.

(Endnotes)

¹ Associated Press. “Different models on free speech as U.N. debates resolution curbing ethnic, religious hatred.” The Washington Post. 28 Sep. 2012. Web. 06 Oct. 2012.

² Ibid.

³ Zeldin, Wendy. “U.N. Human Rights Council: First Resolution on Internet Free Speech.” The Library of Congress.

⁴ Ibid.

⁵ U.N. Human Rights Council. “Resolution L13 – The Promotion, Protection and Enjoyment of Human Rights on the Internet.” Geneva. 06 July 2012. Web. <<http://geneva.usmission.gov/2012/07/05/Internet-resolution/>>

⁶ Ministry of Education (China). “Evolution of Internet in China.” China and Education Research Network. 01 Jan. 2001. Web. 06 Oct. 2012.

⁷ Central Intelligence Agency. “The World Factbook: Internet Users.” CIA World Factbook. Oct. 2012. Web. 06 Oct. 2012 < <https://www.cia.gov/library/publications/the-world-factbook/fields/2153.html#ch>>

⁸ August, Oliver. “The Great Firewall: China’s Misguided — and Futile — Attempt to Control What Happens Online.” Wired Magazine. 23 Oct. 2007. Web. 07 Oct. 2012. < http://www.wired.com/politics/security/magazine/15-11/ff_chinafirewall?currentPage=all>

⁹ Chao, Loretta. “In China Facebook Alternatives Thrive.” The Wall Street Journal. 01 Feb. 2012. Web. 07 Oct. 2012. < <http://online.wsj.com/article/SB10001424052970203920204577196844115602530.html>>

¹⁰ Cha, Arianna Eunjung. “Google China cyberattack part of vast espionage campaign, experts say.” The Washington Post. 14 Jan. 2010. Web. 07 Oct. 2012. <<http://www.washingtonpost.com/wp-dyn/content/article/2010/01/13/AR2010011300359.html>>

¹¹ Einhorn, Bruce. “Apple vs. Google: Starkly Different China Experiences.” BusinessWeek. 12 June 2012. Web. 07 Oct. 2012. <<http://www.businessweek.com/articles/2012-06-12/apple-and-google-are-having-very-different-china-experiences#r=lr-fs>>

¹² Hewitt, Duncan. “Weibo brings change to China.” BBC News. 31 July 2012. Web. 07 Oct. 2012. <<http://www.bbc.co.uk/news/magazine-18887804>>

¹³ Ibid.

¹⁴ Bristow, Michael. “Can microblogs change China’s rulers?” BBC News. 7 Aug. 2012. Web. 07 Oct. 2012. <<http://www.bbc.com/news/world-asia-pacific-14422581>>

¹⁵ Hewitt, Duncan. “Weibo brings change to China.” BBC News. 31 July 2012. Web. 07 Oct. 2012. <<http://www.bbc.co.uk/news/magazine-18887804>>

¹⁶ Ibid.

¹⁷ Constitution of the People’s Republic of China (1982). Web. <http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372964.htm>

By: Melissa Morel

Trademarking and the fashion industry have rarely crossed paths in the past, as it is nearly impossible for fashion designers to claim rights to creativity and ideas. Fashion designers, especially in the couture world, are as protective over their designs and products as an artist would be over their art. However, because inspiration and creative flow are such fluid concepts, designers have no way of proving ideas belong to their specific brand.¹ Yet, the improbability of establishing a product as their staple does not deter particular designers from attempting to trademark the particular execution of an idea.

French designer Christian Louboutin has produced luxury accessories and shoes, each valued at around 1000£ (\$1,600), since 1992.² Since then, Louboutin has ensured that his costly couture footwear line is known for its red sole. However, the red sole under each Louboutin shoe is not just any shade of red; it is designed as “China Red,” now identified by the public as Louboutin’s red. Striving to be known for his red bottoms, Christian Louboutin proceeded to do what is normally expected in the business world, yet is much more difficult in the high fashion world: obtain a trademark. In 2008, Louboutin registered for a patent with the U.S. Patent and Trademark Office, where he obtained a registration stating, “the mark consists of a lacquered red sole on footwear” for women’s high-fashion footwear only.³ Louboutin’s goal with the strategic wording of the trademark application was to prevent other high

fashion designers from using the color red on any shoe’s sole. However, the only basis for Louboutin’s trademark is the indication of a “lacquered” red sole, implying that a sole that has “a protective coating consisting of a resin and cellulose ester that has been dissolved in a volatile solvent”. By denoting the specific process of “lacquering,” Louboutin has been able to prevent other designers in the “women’s high-fashion footwear” world from replicating the “lacquered red sole” that has come to identify Christian Louboutin shoes.

Prominent fashion house Yves Saint Laurent recently featured monochromatic shoes in their 2011 Cruise Line, and Louboutin hurriedly reacted by filing a lawsuit in April 2011, as the Cruise Line included red shoes with red soles. In *Christian Louboutin et al v. Yves Saint Laurent America, Inc., No. 11-3303*, Louboutin sought an injunction to prevent YSL from selling women’s shoes that are all red—including the soles—in the United States.⁴ YSL counterclaimed that it has produced a series of monochromatic shoes in the past, including red, long before the existence of Louboutin and his trademark. Judge Victor Marrero of the United States District Court in the Southern District of New York rejected Louboutin’s efforts to prevent Yves Saint Laurent from selling a red shoe with a red sole in its monochrome line, saying Louboutin’s claim, if upheld, would “cast a red cloud over the whole industry, cramping what other designers could do

(Continued on page 8)

(Continued from page 7)

while allowing Louboutin to paint with a full palette.”⁵

Displeased with the outcome of the ruling, Louboutin’s representation appealed the decision of the case on the basis that it was inconsistent with a U.S. Supreme Court case ruling.⁶ In 1995, the U.S. Supreme Court granted Qualitex Co. the exclusive right to use a particular green for its dry-cleaning pads.⁷ U.S. Second Circuit Court of Appeals used the Qualitex Co. case as a precedent and Louboutin was able to maintain ownership of the lacquered red sole (established in trademark), although the brand could not prevent YSL from selling their monochromatic red shoe in the U.S. market, which was the initial purpose of the lawsuit. The U.S. Second Circuit Court of Appeals ruled that Louboutin had protection over the “lacquered red soles” as long as the outer portion of the shoe was distinctly different from the sole. “We hold that the lacquered red outsole, as applied to a shoe with an ‘upper’ of a different color, has ‘come to identify and distinguish’ the Louboutin brand and is therefore a distinctive symbol that qualifies for trademark protection,” U.S. Circuit Judge José A. Cabranes wrote in a 31-page opinion.⁸

“The instant association of color with a brand is a lucrative opportunity which adds value to the brand. However, achieving this recognition and being able to protect the color through trademark registration is not easy. There are high barriers to entry, and as we have seen in the Louboutin case, success will not provide

blanket protection in relation to a particular color or shade.”⁹ The outcome of *Louboutin S.A. v. Yves Saint Laurent America Holding, Inc.* is as controversial to the fashion industry as the case itself. Not only did Louboutin earn the right to claim “lacquered red soles” when the upper portion of the shoe is unique and different from the sole through its previously registered trademark, but YSL also retained the right to market and produce their monochromatic line, including the all-red shoe. Whether or not any type of color trademarking should be permissible in the fashion world, Louboutin has clearly changed companies’ abilities to obtain legal control over their staple products or designs.

(Endnotes)

¹ Sparkes, M. (2012, September 7). Louboutin wins trademark case over red-soled shoes; Fashion designer Christian Louboutin has won trademark protection for his distinctive red-soled shoes, preventing competitors from following in his footsteps. Telegraph. Retrieved from LexisNexis Academic database. (Accession No. WEBDTNS)

² Bray, C. Red-Soled Shoes Win Appeal --- Court Ruling Falls Short of Keeping Christian Louboutin Competitor YSL’s Line Off Store Shelves. Wall Street Journal, B10.

³ Casabona, L. LEGAL BRIEFS. WWD: Women Wear Daily, 195(32), 23-23.

⁴ Bray, C. “Red-Soled Shoes Win Appeal --- Court Ruling Falls Short of Keeping Christian Louboutin Competitor YSL’s Line Off Store Shelves.” Wall Street

(Continued on page 43)

Antitrust Cases Against Google Complicated, Unlikely to Succeed

By: Hannah Fikar

Google currently faces several allegations of exploiting its status as the Internet's leading search engine to profit at the expense of its users.¹ Accusers claim Google displays results or advertisements from sources that agree with the company's opinions on certain matters and unfairly promotes its own services over other potentially more relevant ones.² Investigations into these charges are underway in Europe, India, and the United States.

In Europe, Competition Commissioner Joaquin Almunia brought formal charges against Google regarding its dominance in online advertising.³ In America, the Federal Trade Commission continues to focus its investigation into whether Google promotes its own agenda ahead of its users' interests.⁴ The FTC already looked into creating a team of lawyers to fight against Google in court.⁵ In addition, six individual states raised their own questions about Google's practices.⁶ Similar concerns arose in India, where the Competition Commission of India may move beyond search results and advertising to investigate other parts of Google's enterprise. They allege Google "violated local rules on foreign-exchange transactions" and did not "remove Web content that Indian authorities deem objectionable."⁷

Understanding the extent of these accusations requires a working knowledge of the methods Google

employs to produce its search results and display its advertisements. During a search, users enter keywords pertaining to an item, service, or term. Google sells these words to potential advertisers or sources at an auction through the company's program AdWords, which generates most of Google's revenue.⁸ Each keyword goes to auction repeatedly, and the highest bidder's link receives a better spot on the page.⁹ This process results in many of the questions raised about Google's practices because it could allow less relevant websites with more money to receive better placement on the page with other search results, which increases Google's profits while reducing the searcher's experience.

However, not every source or advertisement pays to appear on the search result page. Google determines which relevant websites appear on the left side of the result page, where a user looks for links about the keywords he or she entered at the beginning of the search.¹⁰ However, the links a user sees do not always fit the context of his or her search; a user may search for an older source in hopes of finding a specific link, but a newer and less relevant source may receive a better spot on the page because the company believes it better fits the search criteria.¹¹ This type of bias harms the consumer and produces the most controversy in Google's practices.¹² In addition, if a user

(Continued on page 10)

(Continued from page 9)

misspells a keyword or includes unwarranted punctuation in the search, the results could differ from those of the intended search. This process, known as "hard coding," produces results based strictly on the keywords and can generate links to other less relevant websites.¹³

For any of the potential discrimination cases to develop into legitimate charges of monopolization, Google would need to reveal the algorithms it uses to generate results to verify the fairness of its practices. The company claims revealing their methods would hinder more innovative advancements in the company as well as allow for hackers to potentially enter the system.¹⁴ Google also argues leaving certain sites off of its results qualifies as freedom of expression. The company's statements have already been upheld in at least two different courts.¹⁵

Given the precedence of other cases against Google in addition to the difficulty of proving guilt in these types of cases, moving forward with an antitrust case against the company proves complicated. In practice, Google uses the same basic algorithms as other search engines to produce search results. This system falls in line with competitive business practices and does not explicitly violate any antitrust regulations.¹⁶ While Google may use some of the same methods as other search engines, it chooses not to reveal others – a tactic which qualifies as business strategy.¹⁷ In addition, failing to disclose any methods does not insinuate anything

about the company's guilt or innocence in the situation.¹⁸

To hold Google legally accountable, its accusers must prove the company's practices "harm the competitive process and thereby harm consumers..." according to the 2001 ruling in *United States v. Microsoft Corp.*¹⁹ Regardless of the company's liability, the user still benefits in one manner or another from the search results in spite of any payment Google receives from the source.²⁰ The case, if it proceeds to court, remains difficult to prosecute because of the company's vast size and the fast-paced nature of its industry.²¹ However, any legal action would most likely result in Google settling outside of court while regulators continue to seek more direct concessions from the company to ensure its practices do not harm consumers or the competitive process.²²

(Endnotes)

¹ Geitner, Paul. "Google Moves Toward Settlement of European Antitrust Investigation." Editorial. *The New York Times* 25 July 2012: B3. *Nytimes.com*. The New York Times Company, 24 July 2012. Web. 17 Sept. 2012. <http://www.nytimes.com/2012/07/25/technology/eu-nears-settlement-of-google-antitrust-investigation.html?_r=0>.

² Ibid.

³ Ibid.

⁴ Forden, Sara. "FTC Said Poised to Finish Google Antitrust Probe in Weeks." *Bloomberg*. Bloomberg L.P., 30 Aug. 2012. Web. 19 Sept. 2012. <<http://www.bloomberg.com/news/2012-08-30/ftc-said-poised-to-finish-google-antitrust-probe-in-weeks.html>>.

(Continued from page 10)

⁵ Lohr, Steve. "Drafting Antitrust Case, F.T.C. Raises Pressure on Google." *Nytimes.com*. The New York Times Company, 12 Oct. 12. Web. 23 Oct. 2012. <http://www.nytimes.com/2012/10/13/technology/ftc-staff-prepares-antitrust-case-against-google-over-search.html?pagewanted=all&_r=0>.

⁶ Ibid.

⁷ Sharma, Alom, and R. Jai Krishna. "Google Ad Business Faces Antitrust Inquiry in India." *The Wall Street Journal*. Dow & Jones Company, 7 May 2012. Web. 1 Oct. 2012. <<http://online.wsj.com/article/SB10001424052702304363104577389280326071526.html>>.

⁸ Ibid.

⁹ Manne, Geoffrey A., and Joshua D. Wright. "Google and the Limits of Antitrust: The Case Against the Case Against Google." *Harvard Journal of Law & Public Policy* 34 (2011): 171-244. Print. 201.

¹⁰ Ibid., 192.

¹¹ Ibid., 193.

¹² Ibid., 199-201.

¹³ Edelman, Benjamin. "Bias in Search Results?: Diagnosis and Response." *The Indian Journal of Law and Technology* 7 (2011): 16-32. Print. 23.

¹⁴ Ibid., 26.

¹⁵ Ibid., 25.

¹⁶ Manne, Geoffrey A., and Joshua D. Wright. "Google and the Limits of Antitrust: The Case Against the Case Against Google." *Harvard Journal of Law & Public Policy* 34 (2011): 171-244. Print. 243.

¹⁷ Ibid., 243.

¹⁸ Ibid., 243.

¹⁹ Ibid., 215.

²⁰ Ibid., 244.

²¹ Lohr, Steve. "Drafting Antitrust Case, F.T.C. Raises Pressure on Google." *Nytimes.com*. The New York Times Company, 12 Oct. 12. Web. 23 Oct. 2012. <http://www.nytimes.com/2012/10/13/technology/ftc-staff-prepares-antitrust-case-against-google-over-search.html?pagewanted=all&_r=0>.

²² Ibid.

Modern Jury Selection: Science and Search Engines

By: Kristyn Hansen

Major litigation is a high stakes game of chance, often prompting attorneys to rely on more than a strong case, but also to hire a top paid trial consultant to help establish an edge in their favor. Among the laundry list of services these trial consultant experts provide, is the process of scientific jury selection (SJS), the procedure by which social science techniques and rapid research are applied to selecting a desirable jury.¹

Although the melding of courtroom and research laboratory that makes up SJS has been around for nearly three decades,² it remains to be seen through case studies whether these techniques produce any significant results. Can one party really predict and construct a jury that will result in a verdict in their favor? If so, would this not undermine the focal point of American justice, the trial-by jury?

The process begins with the voir dire, the jury selection procedure. There are two ways jurors can be eliminated from a potential panel: a challenge for cause or a peremptory challenge. Typically there are no restrictions on how many jurors an attorney's challenge for cause can dismiss; this means the attorney can dismiss a juror if it is demonstrated the prospective juror is too biased to render a fair verdict. When attorneys cannot fully demonstrate jurors' bias, but still wishes to exclude them from the jury, they can use one of their limited peremptory challenges. Ultimately, selecting a jury requires strategy on behalf of the attorney, often with the help of a consultant.

Proponents of SJS argue applying scientific methodology can allow consultants to predict which types of individuals will be supportive of one party or another. If true, this allows an attorney to more effectively utilize peremptory challenges.

Contrary to public misconceptions, SJS is not about mind reading or head shrinking; after all, consultants are scientists, not magicians. The standard techniques behind SJS are survey methods^{4, 5} which involve taking a random sample of a population and asking it to rate arguments based on their persuasiveness. Consultants ask survey respondents about their perceptions of case characteristics and the parties involved as well as background information pertaining to the respondents themselves. Consultants use this data to create demographics, much like someone in marketing or advertising. Attorneys then seek out prospective jurors who fall into the demographic most receptive to their side.

In other instances, consultants and attorneys will vet potential jurors using online search engines or social media websites, compiling rough data on the individuals into spreadsheets rather than using survey methods on the general population. Reuters Legal has appropriately termed this new trend in jury selection "voir Google."⁶ These searches, though simple and slapdash, can offer unabashed insights into a prospective juror's private life.

(Continued on page 13)

(Continued from page 12)

So even if scientific jury selection is not exactly hocus-pocus, is it ethical? There is still some debate. In 2010, for example, a judge from a courthouse in Morris County New Jersey⁷ demanded a plaintiff attorney in a medical malpractice suit cease his Google searching of potential jurors during the selection process. When the outcome of the case found in favor of the defense, the plaintiff attorney turned to the appellate court, which found the initial judge's prohibiting web searches during voir dire was unreasonable.⁸ Because the online searches were not disruptive and the defense had equal access to the Internet in the courtroom, the playing field was level. Essentially, as long as both parties have equal opportunities when selecting jury members, whether it means conducting a rudimentary online search or hiring a consultant, scientific jury selection seems acceptable.

Even if it is acceptable to use trial consulting and modernized jury selection techniques, is it effective? Jury consulting has grown to become a multimillion-dollar-per-year industry, playing a role in cases such as the O.J Simpson murder trial, Martha Stewart's insider trading trial, and the first Rodney King trial.¹⁰ Clearly, the effectiveness of jury selection depends on a number of other case factors. Furthermore, considering the price tag on top trial consultants, it is likely whatever party is hiring a consultant probably would not skimp on bargain-basement legal representation. In other words, cases that involve highly skilled attorneys will be the ones

to hire highly paid consultants, so it may not necessarily be the consulting that ultimately leads to the desirable verdict. Despite the questionable reliability of its outcomes, it looks as though the modern jury selection tactics of using consultants is a lasting component of today's legal system.

(Endnotes)

¹ Seltzer, Richard. "Scientific Jury Selection: Does it Work?" *Journal of Applied Social Psychology* 36,10 (2006): 2417-2435. Web. Accessed Oct 1, 2012.

² Lieberman, Joel D. "The Utility of Scientific Jury Selection: Still Murky After 30 Years." *Psychological Science*. 20.1 (2011): 48-52. Web. Accessed Sept 29, 2012.

³ *Ibid.*

⁴ *Ibid.*

⁵ Seltzer, Richard. "Scientific Jury Selection: Does it Work?" *Journal of Applied Social Psychology* 36.10 (2006): 2417-2435. Web. Accessed Oct 1, 2012.

⁶ "Google Transforms Jury Selection Process." *American Bar Association* (2011). Web. Accessed Sept 30, 2012.

⁷ *Carino v. Muenzen*, 13 A. 3d 363 (2011) 205 N.J. 96.

⁸ Brown, Evan. "Judge should have let lawyer Google potential jurors during jury selection." *Internet Cases: Law and Technology* (2011). Web. Accessed Oct 1, 2012.

⁹ *Ibid.*

¹⁰ Seltzer, Richard. "Scientific Jury Selection: Does it Work?" *Journal of Applied Social Psychology* 36,10 (2006): 2417-2435. Web. Accessed Oct 1, 2012.

Lunar Law: Property Ownership on the Moon

By: Dustin Vandenberg

The idea of space as “the common heritage of mankind” has existed for decades, exemplifying the final frontier as a place for cooperation among all men and women, rather than a land belonging to any one nation. But, a simple search for “lunar property” online can find multiple websites willing to sell acres of land on the moon at exorbitant rates.^{1,2,3} On top of that, these sites claim to have “legal backing” to their lunar property claims.⁴ But where does this supposed legal backing come from? Can someone really own the moon? The answer for these questions comes from the legal history of lunar property rights.

As the space race was reaching its peak in the 1960s, there were heightened concerns about nations claiming the moon as their own sovereign territory. In response to these concerns the 1967 Outer Space Treaty was drafted, mandating space as not subject to any nation’s sovereignty claims.⁵ It specifies “Outer Space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”⁶ This treaty legally established the idea of space as the “common heritage of mankind.” However, despite the clarity this law aimed to create, the law failed to mention private ownership of space.

Many have made the claim that while space is

not subject to national sovereignty claims, it may still be subject to private territorial claims.⁷ In fact, there is legal precedent for similar claims being used to justify exploitation of the deep-sea bed. The 1980 Deep Seabed Hard Mineral Resources Act established “an interim program to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens.”⁸ This exploration and commercial recovery is permitted despite the deep seabed being recognized as: “the common heritage of mankind.”⁹

Recognizing the possible loophole in the 1967 treaty’s wording, a second treaty, known as the Moon Treaty of 1979, was drafted to clarify the meaning of the original 1967 Outer Space Treaty. This new treaty specifically barred private property rights on the moon.¹⁰ However, only nine countries ratified the treaty, and the United States and Russia both rejected it.¹¹ Therefore, this treaty bears little to no weight in international law, which has left the legality of lunar property in limbo. Yet, despite the apparent lack of explicit restrictions on private property in space, scholars argue there is an implicit restriction on private property.¹²

Professor Jakhu from the Institute of Air and Space Law at McGill University argues: “The Treaty imposes international responsibility on States for national activities in space regardless of whether such

(Continued on page 15)

activities are carried out by governmental agencies or non-governmental entities.”¹³ Meaning the governments that signed onto this treaty have an obligation to prevent not only governmental use of celestial bodies, but also private use sanctioned by their government. In addition, Professor Jakhu argues: “The negotiating history of the Outer Space Treaty clearly shows that the intention of its drafters had been to fully ban appropriation in any manner or form.”¹⁴ So, the underlying principles behind the treaty were to ban all appropriation of space, and in international law the intentions of the treaty is as key of a factor as the wording.

There is no complete answer to the question of who owns the moon. The “lunar salesmen” have little legal ground to stand on when selling the land on the moon. However, there are not clearly defined agreements about lunar property rights for private parties. This lack of clarity leaves the door open for abusive behavior. We need to craft a solution that clarifies what property rights are granted on the moon, otherwise people will continue to exploit the empty space that our current laws create.

(Endnotes)

¹ Lunar Republic Society. “The Lunar Register.” The Lunar Register. N.p., n.d. Web. 24 Oct. 2012. <<http://www.lunarregistry.com/>>.

² The Lunar Embassy Staff. “Lunar Embassy World Headquarters.” The Lunar Embassy. N.p., n.d. Web. 24 Oct. 2012. <<http://www.lunarembassy.com/>>.

³ “Lunar Land Homepage.” Lunar Land. N.p., 2011.

Web. 24 Oct. 2012. <<http://www.lunarland.com/>>.

⁴ Lunar Republic Society. “Is It Legal to Own Property On the Moon?” The Lunar Register. N.p., n.d. Web. 24 Oct. 2012. <<http://lunarregistry.com/info/legal.shtml>>.

⁵ United States. State Department. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. N.p.: n.p., 1967. Web. 24 Oct. 2012. <<http://www.state.gov/www/global/arms/treaties/space1.html>>.

⁶ Ibid.

⁷ Gangale, T., and M. Dudley-Rowley. To Build Bifrost: Developing Space Property Rights and Infrastructure. American Institute of Aeronautics and Astronautics, n.d. Web. 24 Oct. 2012. <http://www.astro-sociology.com/Library/PDF/Submissions/To_Build_Bifrost.pdf>.

⁸ Congressional findings and declaration of purpose, 30 U.S.C. § 1401

⁹ Ibid.

¹⁰ United Nations. Committee on the Peaceful Uses of Outer Space. Moon Treaty. N.p.: n.p., 1979. Web. 24 Oct. 2012. <<http://www.oosa.unvienna.org/pdf/publications/STSPACE11E.pdf>>.

¹¹ Ibid.

¹² Jakhu, R. Advanced Methods of Cooperative Security Program at the Center for International and Security Studies at Maryland. University of Maryland, 2005. Web. 24 Oct. 2012. <<http://www.cissm.umd.edu/papers/files/jakhu.pdf>>.

¹³ Ibid.

¹⁴ Ibid.

NYC Sugary Drink Ban: Obesity Solution or Infringement of Rights?

By: Toni Ann Booras

On September 13, 2012, the New York City Board of Health approved a ban Mayor Bloomberg championed prohibiting restaurants, movie theaters, and street carts from selling sugary beverages in containers larger than sixteen ounces. The Board confirmed the ban by a vote of 8-0 with one abstention, but New Yorkers do not seem as enthusiastic about the restriction, with 60 percent of those surveyed disapproving of the decision set to take effect in March 2013.¹ The reason behind the ban was cited as an effort to curb the obesity crisis. More than half of New Yorkers are considered overweight or obese, and Dr. Thomas Farley, the city health commissioner, claims over half of this rise in obesity over the past three decades can be attributed to sugary beverages.²

Proponents of the ban claim the potential health benefits outweigh any concerns. Obesity has been shown to lead to increased risk for many illnesses, including heart disease and diabetes. The mission of the soft drink ban is to cut down on obesity, which Mayor Bloomberg hopes will decrease hospitalization for obesity related diseases, lowering medical bills and taking some of the burden off of busy hospitals. Whether placing restrictions on certain sugary drinks will actually have an effect on health, however, remains unclear. Dr.

Brian Wasnik, director of the Food and Brand Lab and professor of marketing at Cornell University, asserts the ban will never accomplish its objective, to stop people from consuming high-calorie beverages. "150 years of research in food economics tells us that people get what they want," he says: "Someone who buys a 32-ounce soft drink wants a 32-ounce soft drink. He or she will go to a place that offers fountain refills, or buy two."³

Opponents of the ban argue restricting only larger sizes of some unhealthy food items in certain venues will have little if any effect on health. The ban does not include diet sodas or beverages containing mostly milk or fruit juice. It also allows sugary drinks in containers larger than sixteen ounces to be sold in convenience or grocery stores. Some fear this is just the beginning of policies encouraging big government and the growth of the "nanny state." They worry banning soda is just the beginning of a number of government policies aimed at limiting personal choice. This brings up an important legal issue: to what extent should government be able to dictate how its citizens should live?

It is unclear how much control the government should have over people's everyday lives, especially when it comes to public health. John Cromer, a lawyer who represents food and beverage companies, believes

(Continued on page 17)

(Continued from page 16)

the ban is unlikely to be overturned, claiming “States, and cities for that matter, have wide authority to regulate public health—smoking bans are a good example, as are motorcycle helmet and car seatbelt requirements.”⁴ Eric Rimm, an associate professor at the Harvard School of Public Health, believes the ban is an important step for the benefit for future generations. Rimm does not believe the ban will solve the obesity crisis, but rather focuses on the long-term benefits of changing people’s attitudes about portion sizes. He claims, “I don’t think overnight it will impact obesity, but it’s something that we need to train the next generation, that the standard portion [of soda] is not 64, 32, or even 20 oz.”⁵

Still, many believe it is not the place of government to force citizens into a healthier lifestyle. Eliot Hoff, spokesmen for a group considering taking legal action against the ban, says: “We will continue to voice our opposition to this ban and fight for the right of New Yorkers to make their own choices. And we will stand with the business owners who will be hurt by these arbitrary limitations.”⁶ The legality of the ban will likely continue to be disputed until limits of government control are more clearly established.

(Endnotes)

¹ Grynbaum, Michael M. “Health Panel Approves Restriction on Sale of Large Sugary Drinks.” *The New York Times*. The New York Times, 14 Sept. 2012. Web. 06 Oct. 2012. <[http://www.nytimes.com/2012/09/14/nyregion/health-board-approves-bloombergs-soda-](http://www.nytimes.com/2012/09/14/nyregion/health-board-approves-bloombergs-soda-ban.html)

[ban.html](http://www.nytimes.com/2012/09/14/nyregion/health-board-approves-bloombergs-soda-ban.html)>.

² “Mayor Planning A Ban On Big Sizes Of Sugary Drinks.” *The New York Times*. The New York Times, 31 May 2012. Web. 06 Oct. 2012. <http://www.nytimes.com/2012/05/31/nyregion/bloomberg-plans-a-ban-on-large-sugared-drinks.html?_r=2>.

³ McKay, Betsy. “What Role Should Government Play in Combating Obesity?” *The Wall Street Journal*. The Wall Street Journal, 18 Sept. 2012. Web. 6 Oct. 2012. <<http://online.wsj.com/article/SB10000872396390444812704577609482961870876.html>>.

⁴ Koebler, Jason. “Experts: Courts Likely to Uphold New York Soda Ban.” *US News*. U.S. News & World Report, 14 Sept. 2012. Web. 06 Oct. 2012. <<http://www.usnews.com/news/articles/2012/09/14/experts-courts-likely-to-uphold-new-york-soda-ban>>.

⁵ Weintraub, Karen. “SUPERSIZE CRISIS: Heaping Plates of Pasta and Giant Cups of Sugary Drinks May Be Good Values for the Wallet, but Can Also Be a Health Hazard, Researchers Say.” *Boston Globe* [Boston] 25 June 2012: G12. *ProQuest Newspapers*. Web. 6 Oct. 2012. <<http://search.proquest.com.ezproxy.bu.edu/news/docview/1021953491/1399BC4E46066449B9F/12?accountid=9676>>.

⁶ Katz, Alex. “NYC Bans Big, Sugary Drinks at Restaurants.” *CNBC.com*. CNBC, 13 Sept. 2012. Web. 06 Oct. 2012. <<http://www.cnn.com/id/49024663>>.

Prisoner Rights and the 8th Amendment

By: Seema Shah

In 1992, Robert Kosilek was sentenced to life in prison, without parole, on the count of murdering his wife, Cheryl, at which point he changed his name to Michelle. To complete the transformation to a woman, Michelle has been asking the Massachusetts prison system for "sex change" surgery.

Recently, U.S. District Judge Mark Wolf in Boston ordered Kosilek receive taxpayer-funded sex change surgery. Judge Wolf argued his ruling was based off of the doctors at the Commonwealth's Department of Corrections who stated sex-reassignment surgery was "the only form of adequate medical care" for Kosilek. Furthermore, Judge Wolf stated his 126-page order was "unprecedented" and refusing to allow for surgery was clearly a violation of the 8th Amendment, which strictly prohibits any cruel and unusual punishment.¹

Specialists who have worked with Kosilek have diagnosed him with severe gender identity disorder, and since the year 2003, he has been receiving female hormone injections. Kosilek now lives in an all-male prison in Norfolk, Massachusetts. Prison officials have been resistant toward Kosilek receiving the sex change operation, stating they would be unable to provide Kosilek with proper security, which Judge Wolf described, was discriminatory.² Furthermore, many Massachusetts state legislators stood against using taxpayer funds to support the operation.

Twelve years ago, Kosilek sued state officials for unjust treatment, and in 2005, sued again arguing the sex change surgery was a necessity.³ According to court documents, Kosilek has attempted to castrate himself and commit suicide on two different accounts. Because of this, Judge Wolf has stated Kosilek may in fact be given better treatment for his disorder than most lawful Americans.

Judge Wolf has been quoted stating: "It is unusual to treat a prisoner suffering severely from a gender identity disorder differently than the numerous inmates suffering from more familiar forms of mental illness."⁴ He continued to explain it is unfair for prison officials to deny Kosilek protection on the basis of gender identity crisis, as this is discriminatory behavior. Furthermore, he states it is unfair that much of the public has a misunderstanding of Kosilek's illness.

According to the 8th Amendment, all prisoners have the right to access adequate medical care, and Judge Wolf stated, "providing anything less was 'incompatible with the concept of humanity'."⁵ The Judge has ruled it is up to the discretion of the correction officials as to where the surgery will occur, by whom the surgery will be performed, and where Kosilek will be imprisoned post-operation. Kosilek's lawyer, Frances Cohen of Bingham McCutchen LLP, was quoted saying she was "pleased and gratified that we got such a

(Continued on page 19)

(Continued from page 18)

thoughtful and full decision from the chief judge.”⁶ ² Ibid.

In addition to winning the right to a state-funded sex change surgery, Kosilek is also eligible to have his legal fees paid for as well, which may amount to more than \$500,000. “Kosilek has prevailed on his claim that the defendant has violated his 8th Amendment rights and is continuing to do so. Therefore, he is eligible to be awarded his reasonable attorney’s fees and costs,” stated Wolf.⁷

Upon thorough analysis of Kosilek’s case as well as an assessment of Judge Wolf’s decision, what should be done with other prisoners like Kosilek in other states? Judge Wolf’s ruling raises many questions: How will inmates react to Kosilek’s sex change surgery? How can we be sure Kosilek’s motives in pursuing this operation are sincere and truly for his mental sanity? How do citizens of the state feel about their taxes going towards helping a convicted murderer?

Michelle Kosilek’s court case brings to mind many questions that may in fact go unanswered. However, it is certain the state of Massachusetts has hit a milestone that has many raising an eyebrow.

³ Lavoie, Denise. “Michelle Kosilek, Inmate Born as Robert Kosilek, Eligible for Legal Fees Reimbursement In Addition to Sex Change.” Huff Post Crime. The Huffington Post. 17 September 2012. http://www.huffingtonpost.com/2012/09/17/michelle-kosilek-inmate-robert-kosilek-legal-fees-sex-change_n_1890043.html

⁴ Palazzolo, Joe. “Judge Orders Sex-Change Operation for Prisoner.” Law Blog. The Wallstreet Journal. 4 September 2012. <http://blogs.wsj.com/law/search/kosilek%20/?s=kosilek+>

⁵ Ibid.

⁶ Ibid.

⁷ Lavoie, Denise. “Michelle Kosilek, Inmate Born as Robert Kosilek, Eligible for Legal Fees Reimbursement In Addition to Sex Change.” Huff Post Crime. The Huffington Post. 17 September 2012. http://www.huffingtonpost.com/2012/09/17/michelle-kosilek-inmate-robert-kosilek-legal-fees-sex-change_n_1890043.html

(Endnotes)

¹ Palazzolo, Joe. “Judge Orders Sex-Change Operation for Prisoner.” Law Blog. The Wallstreet Journal. 4 September 2012. <http://blogs.wsj.com/law/search/kosilek%20/?s=kosilek+>

Rising Sea Levels Threaten State Sovereignty

By: Stella Sy

Citizens of island states must escape to higher ground as rising sea levels due to global warming engulf their low-lying island homes. According to the Environmental Defense fund, as the years continue to pass, the temperature of the Earth continues to rise.¹ Scientists agree the emission of greenhouse gases affects the temperature on Earth's surface greatly. As Earth continues gradually heating, temperature increase correlates directly with the rise in sea level. Various islands, such as those in Polynesia, Micronesia, and Melanesia, suffer from this effect of global warming. Rising sea levels threaten the sovereignty of these island states as citizens have to abandon their sinking homes for either already inhabited lands or deserted islands.

Four objective criteria are necessary to determine statehood: a state must possess a defined territory, a permanent population, a government and a certain measure of independence.² The Maldives is an island already suffering from rising sea levels in the Indian Ocean. The Maldives consists of 1200 islands, many uninhabited or disappeared. One island in the Maldives relocated to another deserted island after the 2004 tsunami hit the nation.³ During this crisis, the government with aid from the Red Cross helped rebuild the city. For the whole process to be successful, financial investments and international cooperation are necessary to gain resources for the island to prosper and to fund prevention of global warming.

Every few years, newspapers release another ar-

ticle about a different sinking island. In 2007, rising sea levels began to threaten islands in the Pacific Ocean. The island of Tuvalu consists of only 10 square miles in which the "waves have washed over the island's main roads; coconut trees stand partly submerged; and small patches of cropland have been rendered unusable because of encroaching saltwater".⁴ Unlike the Maldives, the New Zealand government hires Tuvaluans every year to ensure that they will have jobs outside of their island. Unfortunately, the increase in sea levels threatens the other islands that do not receive government support. The Marshall Islands are an example of an area that continues to be vulnerable to rising sea level, but its government has not taken preventative measures.⁵ Although the states will disappear slowly, islands will be uninhabitable before the island completely sinks because of soil erosion. Most people on the islands desire to stay on the island for as long as possible, and they try to do so by building walls around the island, however, underdeveloped states, which most of the islands are, cannot afford it. Currently, almost all Pacific island nations have a defined area that is considered their ocean economic zone in which they can fish; however, if the island ceases to exist, any claim to territorial sea does as well.⁶ Although the islands' designated area shrinks as the island sinks, the Law of the Sea Treaty allows states to draw certain maritime boundaries permanently

(Continued on page 21)

through claims that the portion of the state's submerged land extends beyond 200 nautical miles. The main problem with sinking islands is citizens have to move into others' territories. To prevent this, the international governments seek *ex situ* conservation to preserve the culture and identity of the state that has been relocated. However, they would be a state without defined territory.

In 2012, rising temperatures have started the melting of sea ice in the Arctic Sea a decade sooner than expected.⁷ This melting increases the quantity of water on Earth, which threatens all shores of the world, not just island states. As global warming continues, the government will have to seek ways to relocate citizens to higher ground as the land continues to sink. However, islands do not have the ability to just relocate their citizens to higher ground, instead, they have to move them to other territories.

Human development mainly causes a rise in water levels. The more greenhouse gases people emit, the faster the temperature continues to increase. However, the islands tend not to be the largest contributing states to human development; rather, the main contributors are the larger states. Governments' regulation on energy will help to reduce the gradual increase in temperature as well as rising sea levels.

Disappearing island states require the help of the rest of world to provide land for their citizens. The gradual acceptance of Tuvaluans by the New Zealand government on the economic front allows Tuvaluans to slowly assimilate into the new area as water

engulfs their own land. The issue of how rising sea levels will affect state sovereignty is still being discussed today. There is no world-wide legal solution. (Endnotes)

¹ Global Warming Facts." *Environmental Defense Fund*. N.p., n.d. Web. 07 Oct. 2012. <<http://www.edf.org/climate/global-warming-facts>>.

² Choo, Kristin. "Washed Away: As Sea Levels Rise, Island Nations Look to the Law to Fend off Extinction." *Abajournal.com*. N.p., 1 Mar. 2012. Web. <http://www.abajournal.com/magazine/article/washed_away_as_sea_levels_rise_island_nations_look_to_the_law/>.

³ CNN. Cable News Network, n.d. Web. 07 Oct. 2012. < <http://edition.cnn.com/video/#/video/international/2010/08/02/wv.saving.maldives.cnn?iref=allsearch>>.

⁴ Adams, Jonathan. "Rising sea levels threaten small Pacific island nations." *NYtimes.com*. March 2007. <http://www.nytimes.com/2007/05/03/world/asia/03iht-pacific.2.5548184.html?pagewanted=all&_r=2&>

⁵ Ibid

⁶ Gronewold, Nathaniel. "Island Nations May Keep Some Sovereignty If Rising Seas Make Them Uninhabitable." *Nytimes.com*. New York Times, 25 May 2011. Web. <<http://www.nytimes.com/cwire/2011/05/25/25climatewire-island-nations-may-keep-some-sovereignty-if-63590.html?pagewanted=all>>.

⁷ Gerken, James. "Arctic Ice Melt, Sea Level Rise May Pose Imminent Threat To Island Nations, Climate Scientist Says." *The Huffington Post*. TheHuffingtonPost.com, 05 Oct. 2012. Web. 07 Oct. 2012. <http://www.huffingtonpost.com/2012/10/05/arctic-ice-melt-sea-level-rise_n_1942666.html>.

Boston University Pre-Law Review
The Debate on Nullification
By: Rama Attreya

Jury nullification has become a highly contested issue. On one hand, people such as Paul Butler, a former federal prosecutor, say jury nullification is “power to the people.”¹ On the other hand, some are wary of jury nullification. Wendy McElroy believes it is a double-edged sword; unfair laws can be punished, but just laws are also vulnerable.² This article presents opinions of both proponents and opponents of jury nullification to educate readers on the variety of perspectives existing today. It is our civic duty to serve as jurors. Therefore, current debates about the judicial system are important to the future of our lives and our country.

Jury nullification is a constitutional doctrine that allows juries to acquit defendants who are technically guilty, but do not deserve punishment.³ Paul Butler deems Americans should be aware of this “secret power.”⁴ He has a unique point of view that stems from his personal experience as a prosecutor who imprisoned many individuals for non-violent drug crimes. He wants jury nullification to end the “destructive” War on Drugs.⁵ According to Butler, nullification is harmless because it only goes one way: in favor of acquittals. If a jury finds someone guilty, and there is persuasive evidence otherwise, judges can overturn a jury’s conviction. Giving jurors more power to acquit is based on a constitutional principle: it is better to let the guilty go free than allow the innocent to be punished.⁶

Furthermore, Butler argues jury nullification should not be suppressed because it has positive roots in American history. The famous John Peter Zenger case of the Revolutionary era was one example when a

jury, despite Zenger conceding guilt, acquitted him because jurors felt British law was unfair. Juries also acquitted those who helped slaves get away, in spite of early Fugitive Slave Acts. However, Butler says due to incidents like these, in the 1800s, jury power was questioned. Powerful businesses were not fond of ordinary citizens wielding so much authority in the courtroom.⁷

In 1895, the Supreme Court ruled in *Sparf v. United States* while nullification is a “physical power” that jurors possess, they have no “moral right” to practice it.⁸ The Court then created a rule that is still in practice today; jurors have the power to nullify, but a defense attorney cannot tell them about it. They must learn about it outside the courtroom. Thus, Butler proposes jurors be educated about nullification, and practice it. This will reduce the number of people in jail.⁹ If jurors are stripped of this power, citizens may not receive fair trials.

In a FOX news article, Radley Balko cites two trials of Ed Rosenthal and Richard Paey. In both, juries felt they delivered an unfair verdict because they were unaware of their right. Jurors were disappointed the law gave them no other choice, but this is not true.¹⁰ Balko, another proponent of jury nullification, explains this power protects against unfair laws and against the undue application of well-intended laws. Judges tell jurors it is not their job to determine the fairness of a law, but only whether the defendant broke it. But Balko contends despite the 1895 case, in 1952 and 1972 the Court has determined nullification is a power that juries can exercise. Balko thinks people should serve on juries and voice their opinion when

(continued from page 22)

has been applied unfairly or is simply inherently bad. It is right, it is an obligation.¹¹

Proponents say jury nullification is a right because it is our history, and it protects citizens against unfair laws and abuses. Are there any downsides? The American Judicature Society (AJS) states elected legislators, not randomly selected jurors make the laws. Second, jury nullification would be inconsistent with the law's goal to treat similar cases in the same manner. Even with different jurors, and results would change based on opinions. Third, the system has worked well thus far without nullification; there is no need to change it.¹² McElroy agrees with the AJS. While there are positive examples of jury nullification there are negative ones as well. The two early trials of Ku Klux Klan member Byron De La Beckwith for the 1963 murder of African American civil rights activist Medger Evers are infamous. Despite compelling evidence, the trials ended with hung juries. Additionally, jury nullification also results in the acquittal of police officers who use excessive force.¹³

Jury nullification whether for good or bad opens a Pandora's door. Under the rule of law F.A. Hayek articulated, no person is above the law. The law should be well defined and stable rather than arbitrary. This protects the citizen from the shifting will of the elite who can act with impunity. If the purpose of the law is to provide a stable society, then jury nullification introduces a large element of uncertainty.¹⁴ But who is to say ambiguity means results? The Fully Informed Jury Association (FIJA) is primarily active in promoting juror rights and educating the public. For FIJA, jury nullification is not dangerous at all. In fact,

the jury exists to protect citizens against the government's tyrannical abuses of power. By refusing to convict, jurors can say "no" to government tyranny.¹⁵ So the question remains, will jury nullification complicate our society and produce a negative backlash? Or, will it enable us to reduce rising prison rates and apply the laws of our democratic society more justly?

(Endnotes)

¹ Butler, Paul . "Jury Nullification: Power to the People." *Prison Legal News* [West Brattleboro] 1 Jan. 2012: n. pag. *Prison Legal News*. Web. 3 Oct. 2012.

² McElroy, Wendy . "Jury Nullification: Remedy or Danger?." *The Freeman Ideas On Liberty* 4 Jan. 2011: n. pag. *The Freeman Online*. Web. 3 Oct. 2011.

³ Butler, Paul . "Jury Nullification: Power to the People." *Prison Legal News* [West Brattleboro] 1 Jan. 2012: n. pag. *Prison Legal News*. Web. 3 Oct. 2012.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Balko, Radley . "Justice Often Served By Jury Nullification ." *Fox News - Breaking News Updates / Latest News Headlines / Photos & News Videos*. Fox News, 1 Aug. 2005. Web. 3 Oct. 2012. <<http://www.foxnews.com/story/0,2933,1>

¹¹ Ibid. Oct. 2011.

Chicago Teachers Union Strike Illegal Under Illinois Law

By: Rebecca Simonson

Educational equality is certainly not a new topic in American politics. For decades, people have discussed the unfair educational achievement gap among people from different races, regions, and socio-economic statuses. However, recently the talk about educational equality has shifted from discussing standards for equality among those being educated to discussing standards among the educators who are arguing they do not have proper working conditions. The Chicago Teacher's Union strike in September, in which 26,000 teachers walked out of schools over a contract that promised them a 17 percent raise over the next four years and stipulated student standardized test results should be a significant factor in teacher evaluations, exemplifies this trend.¹ This eight-day strike was poorly timed as it disrupted the beginning of the school year for more than 350,000 Chicago public school students and can ultimately be characterized as an illegal action.²

The state of Illinois recently legislated in the Illinois Public Labor Relations Act unions can go on strike only if they take issue with working conditions, such as unfair wages or benefits.³ However, the president of the union, Karen Lewis, admitted the rate in the proposed contract was "not far apart"⁴ from what the union wanted and Vice President Jesse Sharkey said, "what I would say about the economics of this thing is that that isn't the main issue."⁵ Instead

of focusing on issues about which they could legally collectively bargain, the teachers sought to increase their job security through demanding teachers who are laid-off have priority for rehiring, and standardized test scores have less of an impact on teacher evaluations.⁶

The legislation explicitly states "employers shall not be required to bargain over matters of inherent managerial policy, which shall include...the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees."⁷ By acknowledging the law, the union attempted to sidestep this issue while still setting its own terms for the strike, saying in a statement, "While new Illinois law prohibits us from striking over the recall of laid-off teachers and compensation for a longer school year, we do not intend to sign an agreement until these matters are addressed."⁸ Thus, with this statement, the union rendered its strike illegal as it implies the issues for which it can legally strike are not the leading cause of the walkout, and it is using the strike to collectively bargain for issues that are not legal ground for strike.

Under the Illinois Public Labor Relations Act, the strike could have also been deemed an illegal action because of a clause that says an injunction can be filed if "the strike constitutes a clear and present danger to the health and safety of the public."⁹ Many students

(Continued on page 25)

(Continued from page 24)

were left without a safe environment, especially in areas which have crime and gang issues, and other students were unable to eat school-provided lunches that are given to low-income students. In light of these facts, the union stated its priorities in the strike were over issues not legally covered. The decision to halt classes to stage a strike seems even more egregious.

The federal government will have an opportunity to weigh in on state laws requiring certain circumstances to be met for a union to legally go on strike. An appeals court in Chicago is holding hearings to discuss the legality of a Wisconsin law passed in March 2011 that only allowed for collective bargaining on wage increases no greater than the rate of inflation and eliminated bargaining rights for issues such as workplace safety and health benefits.¹⁰ In the downward trend of the power of unionized labor throughout the century, we will see with what collective bargaining powers the federal government will endow union workers as well as whether the Chicago Teachers Union strike will retroactively be viewed as an illegal action, or if the decision on the Wisconsin law will deem it illegal for states to have strict standards for walkouts.

(Endnotes)

¹ Davey, Monica, and Steven Yaccino. "Teachers Union in Chicago to Extend Strike Into 2nd Week." *New York Times* 09 16 2012, A1. Web. 26 Oct. 2012 <http://www.nytimes.com/2012/09/17/education/chicago-teachers-union-extendsstrike.html?pagewanted=all&_r=0>.

² Wian, Casey, Greg Botelho, Ted Rowlands, and Greg Morrison. "CNN U.S.." *CNN U.S.*. (2012): n. page. Web. 26 Oct. 2012. <<http://www.cnn.com/2012/09/10/us/illinois-chicago-teachersstrike/index.html>>.

³ ((5 ILCS 315/4) (from Ch. 48, par. 1604) Sec. 4.). 5 Illinois Compiled Statutes §48.4

⁴ "Press Release: CPS Fails To Negotiate Fair Contract To Prevent First Strike In 25 Years." *Chicago Teachers Union*. N.p., 09 2012. Web. Web. 18 Oct. 2012. <<http://www.ctunet.com/blog/cpsfails-to-negotiate-faircontract-to-prevent-first-labor-strike-in-25-years>>.

⁵ Guarino, Mark. "The Christian Science Monitor." *Christian Science Monitor*. (2012): n. page. Web. 26 Oct. 2012. <<http://www.csmonitor.com/USA/Education/2012/0912/Chicago-teachers-strikeIllegal-underIllinois-law>>.

⁶ Press Release: CPS Fails To Negotiate Fair Contract To Prevent First Strike In 25 Years." *Chicago Teachers Union*. N.p., 09 2012. Web. Web. 18 Oct. 2012. <<http://www.ctunet.com/blog/cpsfails-to-negotiate-faircontract-to-prevent-first-labor-strike-in-25-years>>.

⁷ ((5 ILCS 315/4) (from Ch. 48, par. 1604) Sec. 4.). 5 Illinois Compiled Statutes §48.4

⁸ Guarino, Mark. "The Christian Science Monitor." *Christian Science Monitor*. (2012): n. page. Web. 26 Oct. 2012. <<http://www.csmonitor.com/USA/Education/2012/0912/Chicago-teachers-strikeIllegal-underIllinois-law>>.

⁹ ((5 ILCS 315/18) (from Ch. 48, par. 1618) 5 Illinois Compiled Statutes §48.4

¹⁰ Bauer, Scott. "Huff Post Politics." *Huff Post Politics*. (2012): n. page. Web. 26 Oct. 2012. <http://www.huffingtonpost.com/2012/09/14/wisconsin-collective-bargaininglaw_n_1885601.html>.

U.S. Companies Suffer from Intellectual Property Infringement

By: Amalia Carusone

On October 8, 2012, the U.S. House Intelligence Committee accused two large government-run Chinese telecommunications companies, Huawei and ZTE, of stealing American companies' intellectual property through American computer systems to create similar companies in China.¹ These two media conglomerates have also seemingly been observing American activity through these hacks, such as monitoring the electrical grids that power large cities all over the country.² Although no hard evidence has yet been found to prove these two conglomerates guilty of stealing intellectual property, the consequences may be drastic for China if proven guilty. China's case raises questions about the legal repercussions (if the Chinese companies are proven guilty) and how it may disturb the delicate Sino-American economic and political relationship.

Intellectual property refers to intangible creations such as ideas and discoveries. Intellectual property includes words or phrases, designs, and artistic or musical works, all of which patents, copyrights, and trademarks can protect.³ In this new technological age, protecting intellectual property has become increasingly difficult among large companies. Because information is now stored digitally and is vulnerable to theft due to hacking, the "fundamental requirements that underlie any attempt to secure intellectual property" have changed as well as the laws that protect it.⁴ Intellectual property law grants the creator of the property complete ownership of the asset through intel-

lectual property rights, such as copyrights, trademarks, and patents.⁵ Once an intellectual property case reaches the trial stage and the defendant is proven guilty, the defendant must award "all the profits...as a result of infringement" to the owner in addition to paying large fines for infringement.⁶

In the case of Huawei and ZTE, the possibility of stolen intellectual property has been under the U.S. House Intelligence Committee's microscope for months. Recently, American communications companies have noticed "Chinese government agencies downloading software updates for programs they have never bought."⁷ The House Intelligence Committee released a report after a yearlong investigation of the companies, stating that the U.S. should avoid doing business with the companies due to security and legal risks.⁸ If the committee gathers enough evidence against the Chinese companies, the U.S. possesses the right to sue the companies and the Chinese government. If proven guilty, China would be banned from trade with the U.S. and would have to turn over any profits made, in addition to destroying any products created from the stolen software.⁹

Intellectual property cases have been rising over the past few years because of large companies' increased interest in protecting their digital software. Another case involving stolen software was recently resolved with Oracle Corp. and Google Inc.¹⁰ Oracle accused and sued Google for stealing their software and operating system. As in the case discussed earlier, Google was believed to have stolen this software to create its own products. During the trial, Oracle claimed

(Continued on page 27)

(Continued from page 26)

Google owed the company “hundreds of millions in damages.”¹¹

The case proceeded in two phases: the copyright phase and the patent phase. In the copyright phase, although the jury found that the Google-owned mobile platform Android had infringed on nine lines of Oracle’s Java coding, they disregarded the claims due to Google’s fair use defense.¹² In the U.S., the term fair use refers to the federal law that “copyrighted materials may be used without permission of the copyright owner.”¹³ In the patent phase, Google was accused of infringing on two patents and claimed non-infringement on each. The jury found Google innocent of infringement and therefore ruled non-infringement on all counts, leaving Google with no obligation to pay for damages.¹⁴

The Huawei and ZTE case is not the first intellectual property concern that a country has had while trading with China. It unfortunately has become a pattern among China’s trading partners, most of which conclude that China steals intellectual property “on an unprecedented scale.”¹⁵ If the U.S., or any other country participating in unfair trade with China, decided to sue Chinese companies and the government, the Chinese government would have to plead defenses similar to Google’s in order to receive the minimum repercussions.

(Endnotes)

¹¹Schmidt, Michael S. “US Panel Cites Risks in Chinese Equipment.” The New York Times. N.p., n.d. Web. 8 Oct. 2012.

¹²WIPO. “What Is Intellectual Property?” Wipo.int.

World Intellectual Property Organization, n.d. Web. <<http://www.wipo.int/about-ip/en/>>.

³ Investigating Intellectual Property Theft. Tech. Los Angeles: Setec Investigations, n.d. Setec Investigations. Web. <http://www.setecinvestigations.com/resources/whitepapers/Investigating_Intellectual_Property_Theft.pdf>.

⁴JISC Legal. “Intellectual Property Rights Overview.” JISC Legal (2007): n. pag. [Http://www.jisclegal.ac.uk/Portals/12/Documents/PDFs/IPROverview.pdf](http://www.jisclegal.ac.uk/Portals/12/Documents/PDFs/IPROverview.pdf). 25 Apr. 2007. Web.

⁵World Intellectual Property Organization Handbook: Policy, Law, and Use. Publication no. 489. 2nd ed. Geneva: WIPO, 2004. WIPO. Web.

Leonhardt, David. “The Real Problem with China.” The New York Times [Washington] 11 Jan. 2011: n. pag. Print.

⁶“Huawei and ZTE Pose Security Threat, Warns US Panel.” BBC News. N.p., 8 Oct. 2012. Web. <<http://www.bbc.co.uk/news/business-19867399>>.

⁷World Intellectual Property Organization Handbook: Policy, Law, and Use. Publication no. 489. 2nd ed. Geneva: WIPO, 2004. WIPO. Web.

⁸Hardy, Quentin. “Oracle vs. Google, Week One.” [Www.nytimes.com](http://www.nytimes.com). New York Times, 21 Apr. 2012. Web. <<http://bits.blogs.nytimes.com/2012/04/21/oracle-google-week-one/>>.

⁹“Developments in the *Google vs. Oracle* Legal Case.” The Associated Press. N.p., 31 May 2012. Web. <<http://finance.yahoo.com/news/developments-oracle-vs-google-legal-case-212239825--finance.html>>.

(Continued on page 38)

To be Paid or Not to Be Paid? That is the Legal Question for College Athletes

By: Ryan Miller

There has long been a debate regarding whether or not college athletes should be paid or allowed to receive any kind of benefits. As instances have arisen the past few years in college football regarding this issue, interest in the debate has been sparked even more. For example, in 2011, Miami University quarterback Jacory Harris was given a one-game suspension and ordered to repay meals, entertainment, and nightclub cover charges that he had received, since receiving these gratuities is against the NCAA's (National Collegiate Athletic Association) private regulations.¹ That same year, several Ohio State players were punished for trading memorabilia for tattoos. In total, the charges for both instances only came to around \$140 and \$100, respectively.² Though both acquisitions were minimal both proponents and opponents have raised legal concerns as to whether athletes should or should not be paid.

One of the biggest question proponents put forward is whether college athletes qualify as employees. Robert and Amy McCormick, law professors at Michigan State University, argue that college athletes have more physical demands than any other employee at a university, and therefore could be considered employees based on the National Labor Relations Board's 2004 decision, which stated that Brown University's graduate assistants were considered students, and not employees (Brown University and International Union, 2004).^{3,4,5}

The common law presented three tests: whether one has the right to control a person's activities; whether that person is compensated; and whether that person is economically dependent on that compensation.⁶ According to the McCormicks, college athletes meet all three criteria because their coaches have a lot of control over what they do, their athletic scholarships act as compensation, and players are dependent on the funds from their scholarships for food, shelter, and schooling. If the student athletes are technically employees by law, then it would make sense that the colleges would need to pay them. McCormick and McCormick hold another factor in paying college athletes is because they often sustain bad injuries while playing, and have no financial ability or care to support them after college.⁷

While the National Football League has subsidized care for its former players that have been most seriously damaged, the NCAA has yet to implement any sort of similar care. As a result, if college football players get hurt while playing in school, they are then left with whatever education they can obtain while nursing serious injuries. In contrast, professional athletes who are seriously injured receive millions of dollars to care for themselves as well as other medical coverage. This discrepancy has led to numerous lawsuits against schools that behaved negligently towards the treatment of serious injuries. One of the lawsuits

(Continued on page 29)

(Continued from page 28)

was brought by Derek Owens, a former wide receiver for the University of Central Arkansas, along with three other plaintiffs who filed suit against the NCAA for negligence regarding awareness and treatment of brain injuries (*Arrington v. NCAA*, 2011).⁸ The class-action suit states, "The NCAA has engaged in a long-established pattern of negligence and inaction with respect to concussions and concussion-related maladies sustained by its student-athletes, all the while profiting immensely from those same student-athletes."⁹

However, there is also a strong case for not paying college athletes. There have been some court cases, like *NCAA v. Board of Regents of the University of Oklahoma*, that have ruled in favor of not paying college athletes.¹⁰ Although *NCAA v. Board of Regents* was primarily focused on the NCAA's agreement concerning television rights of games, it still had an effect on the issue at hand. As a result of the NCAA claiming to sell "amateur" competition, the U.S. Supreme Court noted that the amateurism was vital in maintaining an attractive product. Therefore, "In order to preserve the character and quality of the 'product', athletes must not be paid, must be required to attend class, and the like."¹¹ If it were not for the amateurism aspect of college athletics and the academic traditions that they encompass, they would be no different from lower professional sports, such as minor league baseball.

It seems that the debate regarding whether or not it makes sense logically or legally to allow col-

lege athletes to receive compensation will continue in the near future. Although the students put their futures on the line to play violent sports, the integrity of all college athletics could pay a price if this issue is not resolved.

(Endnotes)

¹Cohen, Ben. "The Case for Paying College Athletes." *The Wall Street Journal*. N.p., 16 Sept. 2011. Web. 29 Sept. 2012. <http://online.wsj.com/article/SB10001424053111904060604576572752351110850.html>>

²Ibid.

³McCormick, Robert, and Amy McCormick. "Michigan State Law Professors Say Div. I College Athletes Qualify as 'Employees'" *Diverse: Issues in Higher Education*. N.p., 23 June 2011. Web. 03 Oct. 2012. <<http://diverseeducation.com/article/16071/>>.

⁴The News Service. "04-004 (NLRB Decision)." 04-004 (NLRB Decision). *Brown University*, 15 July 2004. Web. 04 Oct. 2012. <http://brown.edu/Administration/News_Bureau/2004-05/04-004.html>.

⁵Brown University and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW AFL-CIO, Petitioner. Case 1-RC-21368. July 13, 2004.

⁶Ibid.

(Continued on page 43)

Food for Thought: An Examination of the GMO Labeling Debate

By: Alaina Wartman

Over the last century, bioengineers have discovered how to manipulate and mass produce genetically modified (GM) crops. Now they are confronting an even more challenging issue—establishing GM labeling laws in the United States legal system. Despite the hundred-year history of bioengineering, GM products only began entering American grocery stores and retailers en masse in the 1990s. These products brought not only cheaper food to people's pantries but also concerns regarding food safety and nutrition. In this unfamiliar territory, consumers, bioengineering corporations, and the legislature are debating what labeling, if any, should be utilized to signify certain products are genetically modified. Legally, the FDA only requires labels to denote if a food product is "adulterated" by additives or pesticides or if it is "misbranded" by a misleading product label or other promotional material.

The crux of this issue lies in FDA's definition of "misbranding." A central consideration when deeming a product misbranded is "the extent to which the labeling fails to reveal material information."¹ Although the FDA considers techniques to develop new plant varieties as "material information," it only requires labeling as such if the absence of information could pose health or environmental risks, mislead the consumer, or allow the consumer to wrong-

fully believe the food has properties that it does not.²

Proponents of mandatory GM labeling believe designating something as GM qualifies as material information since there may be health and environmental risks as well as consequences of constitutional infringement regarding religious rights. Supporters argue since there is lack of independent studies proving the safety of GM foods and environmental consequences, future health risks and environmental hazards cannot be sufficiently ruled out and should be communicated to consumers. In addition, since genes from an organism can be introduced to another organism, certain foods typically deemed permissible for dietary restrictions, such as Halal or Kosher, may no longer qualify as such if tainted with genes from a prohibited animal or plant. Thus, failing to use GM labels to denote such modifications can mislead consumers to believe a product conforms to standards that it truly does not—thereby limiting one's ability to exercise his constitutional right to freedom of religious practice.

Conversely, opponents of mandatory labeling interpret existing studies as sufficient to comply with the FDA's definition of "material information," and they believe mandatory labeling is not only extraneous but also would vitiate the American food supply chain and ultimately harm consumers. Opponents of

(Continued on page 31)

(Continued from page 30)

mandatory labeling believe in the validity of previously completed studies that proved no discernable difference between GM crops and original strains; therefore they believe if the two types are considered the same scientifically, they should be considered the same legally.³ They also deem issues surrounding consumer interest and knowledge of GM products as well as issues of religious concerns stem from matters of consumer demand. Since issues of consumer demand lie outside the authority of the FDA, the FDA has no right to regulate it.⁴ Furthermore, opponents argue this unnecessary labeling would excessively increase prices. Adding labels would not only increase labeling costs, but farmers would have to restructure farms to separate GM and non-GM crops during sowing, soil cultivation, harvest, transportation, and storage as well as increase equipment sterilizing expenses, which would force them to pass along these costs to the end consumer.

Despite the valid points each side raises, this debate will only intensify leading to up to California's November vote on Prop 37, which proposes requiring companies to label all foods containing GM ingredients as such, but also includes a handful of exceptions. As the country watches California set GM labeling precedents, industries ranging from grocery stores to farm equipment companies will be preparing for their own best and worst case scenarios. In such a legally, ethically, and economically complex

conundrum, the government and its constituencies will have to continue examining the use and labeling of GM's to ensure a stable and honest food supply.

(Endnotes)

¹ Bodiguel, L., & Cardwell, M. *The Regulation of Genetically Modified Organisms* 2010, 316.

² Ibid

³ Baram, M. S., & Bourrier, M. *Governing Risk in GM Agriculture* (Cambridge: Cambridge University Press 2011), 40.

⁴ Bodiguel, L., & Cardwell, M. *The Regulation of Genetically Modified Organisms* 2010, 316.

(Continued from page 23)

¹² "The Debate about Jury Nullification." *AJS [American Judicature Society] Promoting The Effective Administration of Justice*. American Judicature Society, n.d. Web. 3 Oct. 2012. <http://www.ajs.org/jc/juries/jc_powers_nullification_debate.asp>.

¹³ McElroy, Wendy . "Jury Nullification: Remedy or Danger?." *The Freeman Ideas On Liberty* 4 Jan. 2011: n. pag. *The Freeman Online*. Web. 3 Oct. 2011.

¹⁴ Ibid.

¹⁵ "Fully Informed Jury Association." *Fully Informed Jury Association*. Fully Informed Jury Association, n.d. Web. 3 Oct. 2012. <<http://fija.org>>

Is "ObamaCare" Constitutional?

By: Sydney C. Fondots

Since it was enacted in Congress in 2010, the Patient Protection and Affordable Care Act, also known as ObamaCare, has caused a myriad of controversy, mainly stemming from discontent amongst religious institutions, small businesses, and certain traditionally conservative states. The act is described by the Supreme Court as having the intent to "increase the number of Americans covered by health insurance and decrease the cost of health care."¹ Since the goal of the Act is so broad, the breadth of changes that it includes is expansive; therefore, not all of the content came under review by the Courts. The most significant components that were argued in the multiple suits filed first in Federal District Court, and finally in the Supreme Court, were whether the Anti-Injunction Act applied to the *National Federation of Independent Business v. Sebelius* case, the constitutionality of the individual mandate, and the expansion of Medicaid.² Before the case could even be argued, the Supreme Court had to determine whether the Anti-Injunction Act would prevent the case from moving forward. The Anti-Injunction act states that no suit that prevents the collection of a tax can be argued in court. First, the tax must be paid, and then it can be challenged in court for a refund. However, the majority decision, written by Chief Justice John Roberts, argued that since the act did not explicitly refer to the fine as

a tax, even though the fine would be paid to the IRS, the Anti-Injunction Act could not be applied to this case. Therefore, the case could be argued in the Court.³

The individual mandate in the Affordable Care Act was upheld by the Court. It required that all individuals obtain the "minimum essential" amount of healthcare coverage. Individuals who did not obtain insurance and businesses that did not provide coverage for their employees would be fined by the IRS, as previously mentioned.⁴ Previous decisions from Federal District Court, such as the *Association of American Physicians and Surgeons v. Sebelius* (2011), stated that the mandate could be maintained under the Commerce Clause and Necessary and Proper Clause, two clauses of the Constitution of the United States. However, the Court ultimately decided that this was not true because if individuals did not have health insurance in the past, they never engaged in the economic activity of purchasing it.^{5,6} If Congress enacted the mandate under the Commerce Clause, it would give them the power to "compel" their citizens to engage in certain behaviors, such as buying insurance. This would give the Federal government unreasonable power, according to Justice Robert's decision.⁷

The Court then considered the secondary argument of the Government on behalf of the individual mandate, which held that the government has power to

(Continued on page 33)

(Continued from page 32)

impose and collect taxes.⁸ Even though the fine imposed by the government on those who do not purchase insurance was not considered a tax for the purpose of the Anti-Injunction Act, the Court ultimately decided it was in fact a tax, since it was, according to Justice Roberts and the other Supreme Court justices, a reasonable amount of money collected by the IRS for a common good.⁹

The expansion of Medicaid in the Act was not upheld by the Court because the majority determined it would punish states that did not expand Medicaid by revoking the existing amount the states had.¹⁰ It would also give the Secretary of Health and Human Services the power to cut the state's budget by ten percent. According to precedent, such as *South Dakota v. Dole* (1987), if the Federal government pressures a state to act in a certain way by threatening to revoke existing grants, it is not acting within "this Nation's system of federalism."^{11,12} The rest of the act was maintained without the inclusion of the mandatory Medicaid expansion clause.¹³

On March 28th, The Supreme Court ruled in favor of upholding ObamaCare because ultimately, they saw it as an increase in taxes, and deemed most of the components under question, such as the individual mandate and the Anti-Injunction Act, constitutional.¹⁴ Reactions from both the Democrats and Republicans were evidently mixed. Most Republicans expressed disappointment, as exhibited by Congressman Kevin Brady's (R, Texas) remark that ObamaCare "has opened

the door to almost unlimited power by the federal government in the future." The Democrats, however, were praising the Court's decision. Nancy Pelosi, House Democratic Leader, (D, California), exalted that "This decision is a victory for the American people. With this ruling, Americans will benefit from critical patient protections, lower costs for the middle class, lower costs for the middle class, more coverage for families, and greater accountability for the insurance industry." Both parties expressed the desire to take action based on the Court's decision. The Republicans expressed eagerness to begin the appeals process, whereas the Democrats did not want to accept the act as it was passed, but rather attempt to improve and expand it. Therefore, some significant changes to the act might develop in the future.¹⁵

(Endnotes)

¹Liptak, Adam. "Justices, By 5-4, Uphold Health Care Law; Roberts in Majority; Victory for Obama. The New York Times. The New York Times, 29 June 2012. Web. 09 Oct. 2012.

²*National Federation of Independent Business v. Sebelius*, Secretary of Health and Human Services. 567 U.S. 7 (2012).

³Ibid.

⁴Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §2702, 124 Stat. 119, 318-319 (2010).

⁵*Association of American Physicians and Surgeons, Inc. v. Sebelius*, Case No. 1:10-cv-0499-ABJ (2011).

⁶*National Federation of Independent Business v. Se-*

(Continued on page 34)

(Continued from page 33)

belius, Secretary of Health and Human Services. 567 U.S. 7 (2012).

⁷Ibid.

⁸Liptak, Adam. "Justices, By 5-4, Uphold Health Care Law; Roberts in Majority; Victory for Obama." *The New York Times*. *The New York Times*, 29 June 2012. Web. 09 Oct. 2012.

⁹*National Federation of Independent Business v. Sebelius*, Secretary of Health and Human Services. 567 U.S. 7 (2012).

¹⁰Bernstein, Nina. "Hospitals Worry Over Cut in Fund for Uninsured." *The New York Times*. *The New York Times*, 27 July 2012. Web. 9 Oct. 2012.

South Dakota v. Dole, 483 U.S. 203, 211.

¹¹*National Federation of Independent Business v. Sebelius*, Secretary of Health and Human Services. 567 U.S. 7 (2012).

¹²Ibid.

¹³Ibid.

¹⁴Hughes, Siobhan, and Corey Boles. "Reactions to Supreme Court Health Decision." *WSJ.com*. Web. 25 Oct. 2012.

When Censorship Matters: Problematizing the 1st Amendment

By: Monsura Sirajee

An obscure 14-minute trailer of a film mocking the Muslim Prophet Muhammad garnered international attention in September 2012 after violent demonstrations protesting the film's contents were staged around the world. Several commentators in the United States, including President Barack Obama in a speech addressed to the United Nations, responded with a two-fold message—stressing a strong defense of freedom of speech, while also distancing the government from the contents of the video. Obama and others pointed out that in a world linked by countless social media websites like Facebook, YouTube, and Twitter, it is impossible to control even the vilest forms of expression.

The response of American commentators raises a number of questions regarding the power of the 1st Amendment's prohibition on the abridgment of free speech. In his address to the U.N., Obama, underscoring the salience of the 1st Amendment, stated, "Americans have fought and died around the globe to protect the right of all people to express their views—even views that we disagree with."¹ Although many believe this is the appropriate or even obvious response to calls for banning the anti-Muhammad video on YouTube, several pundits question the self-evident, universalized portrayal of the First Amendment.

One such pundit is Eric Andrew Posner, a

(Continued on page 35)

(Continued from page 34)

professor at the University of Chicago law, who created an internet sensation with an article published in *Slate Magazine* entitled "The World Doesn't Love the 1st Amendment." Posner argues that American reverence for the 1st Amendment is not only a relatively recent development within the American political landscape, but also is not a universally recognized value. He points out "even other Western nations take a more circumspect position on freedom of expression than we do, realizing that often free speech must yield to other values and the need for order."² German law, for example, prohibits "Volksverhetzung" or "incitement of popular hatred" which may be "punishable if against segments of the population and in a manner that is capable of disturbing the public peace."³

One does not need to look across the Atlantic, however, to see that the meaning of the right to free speech is often contested even within the United States. Posner points out that conservatives and liberals within the U.S., for example, have appropriated the right to free speech in vastly different and disputed ways to suit their interests. In the 1960s, liberals looked to the courts to protect the speech of political dissenters. Now the tables seem to have turned as conservatives now look to the 1st Amendment to protect "unregulated campaign speech, unregulated commercial speech, and limited government."⁴ In recent years and in an ironic twist to the progressive narrative, liberal attitude toward free

expression has been less welcoming.⁵ Liberal support of enactment of hate-crime laws, which forces the 1st Amendment to be read more narrowly, is proof of this. As Posner puts it, the 1st Amendment for liberals is "like a dear old uncle who enacted heroic deeds in his youth but on occasion says embarrassing things about taboo subjects in his decline."⁶

Another important consideration in the case of the 2012 anti-Muhammad video is the fact that YouTube is not an open forum. Google, for example, employs a sex-detecting algorithm to block pornography.⁷ Furthermore, Google's policy reserves the right to ban a long list of inappropriate content, including: "animal abuse, drug abuse, under-age drinking and smoking, bomb-making, graphic or gratuitous violence, gross-out videos, hate speech, predatory behavior, stalking, threats, harassment, intimidation, invading privacy, revealing other people's personal information, inciting others to commit violent acts, and spam."⁸ Despite this policy, when the White House asked Google to reconsider blocking the video from YouTube in the United States as they had in several South Asian and Middle Eastern countries, Google would not comply.⁹ Google spokespersons stated they believed their decision was consistent with a 2007 policy for controversial content in which the company would take into account not just laws and its own policies, but also cultural norms.¹⁰ Despite this justification, in his New Re-

(Continued on page 36)

(Continued from page 35)

public article "When Censorship Makes Sense: How YouTube Should Police Hate Speech," Columbia Law School Professor Tim Wu argues that YouTube should have a better content-removal process based on "responsible community input," similar to a system used by Wikipedia whereby a group of experts and the larger community work together. Although Wu recognizes this system might also have its flaws, he hopes that YouTube can move towards a system that is "more responsive to the different sensitivities of different parts of the world."¹¹

By showing these alternative responses to the anti-Muhammad video, this article seeks to problematize our presumptions about the 1st Amendment's protection of speech. Clearly, free speech has never been an absolute right even within the United States. Supreme Court Justice Oliver Wendell Holmes, Jr.'s oft-paraphrased statement regarding the impermissibility of falsely yelling "fire in a crowded theater" is seen as the paradigmatic limitation to the right of free speech. However, based on several responses to this event, particularly Obama's address to the U.N., the prevailing conception appears to be that free speech is an unconditional, universally accepted value. However, as Posner writes, "Americans have not always been so paralyzed by constitutional symbolism."¹² By understanding and engaging with our history, we can take a more critical view at our presumptions surrounding the 1st Amendment. (Endnotes)

Wall Street Journal. 25 September 2012.

²Posner, Eric. "The World Doesn't Love the First Amendment: The Vile Anti-Muslim Video Shows that the U.S. Overvalues Free Speech." *Slate: The Slate Group*, 25 September 2012. Web. 8 October 2012

³"Criminal Code: Sedition 130" 7 October 2012. <http://dejure.org/gesetze/StGB/130.html>

⁴Posner, "The World Doesn't Love the First Amendment."

⁵Ibid.

⁶Ibid.

⁷Wu, Tim. "When Censorship Makes Sense: How YouTube Should Police Hate Speech." *The New Republic*, 18 September 2012.

⁸Ibid.

⁹Cain Miller, Claire. "Google has no plans to rethink video status." *New York Times*. 14 September 2012.

¹⁰Ibid.

¹¹Wu, Tim. "When Censorship Makes Sense: How YouTube Should Police Hate Speech." *The New Republic*, 18 September 2012.

¹²Posner, "The World Doesn't Love the First Amendment."

¹"Full text of Obama's remarks to United Nations," *The*

The Scopes Monkey Trial and the Evolution Debate Today

By: Janki Viroja

With the passage of the new Tennessee “monkey bill,” the old debate between teaching evolution and teaching creationism is resurfacing. In 1925 it was the Scopes Monkey Trial that held the focus of the state of Tennessee, and now in 2012, it is this new legislation that allows schools to “teach the controversy surrounding politically charged topics in science.”¹ Many argue that the “monkey bill” is a medium by which religion can be promoted.² In the future, there may be lawsuits that arise as a result of the legislation because parents of students may strongly oppose what can be perceived as an underlying motive.³

Back in 2004 in Dover, Pennsylvania the school board was made up of a majority of “intelligent design” supporters.⁴ “Intelligent design” (ID) is a branch of creationism, which holds the belief that the origin of the universe was from a supreme being. The Dover Area School Board of 2004 and 2005 declared the biology curriculum include “intelligent design.”⁵ Judge John Jones ruled the teaching of “intelligent design” to be unconstitutional.⁶ He also made a statement regarding “intelligent design”: “The overwhelming evidence at trial established that ID is a religious view, a mere re-labeling of creationism, and not a scientific theory.”⁷

The case in Dover, Pennsylvania was not the first time the debate between teaching evolution and teaching creationism/intelligent design was brought in

front of the law. In the 1920s, a high school biology teacher, John Scopes, was accused of teaching evolution.⁸ At the time, many people were of the belief that it should be illegal to teach evolution.⁹ This high-profile case came to be known as the Scopes Monkey Trial.

The supporters of evolution were considered “modernists,” whereas the opponents were known as “traditionalists.”¹⁰ John Scopes, a modernist, was tried in Dayton, Tennessee in 1925.¹¹ Scopes faced a difficult battle when he challenged the constitutionality of the Butler Act, which declared teaching the evolution of man in public schools a misdemeanor.¹²

At the end of the proceedings, Clarence Darrow, the head of the defense team, requested the jury to come forth with a guilty verdict so that the case could be appealed.¹³ Darrow was granted his request; however, instead of being appealed, the case was eventually just dismissed by the Tennessee Supreme Court.¹⁴

Questions regarding teaching evolution in public schools remained unanswered after the conclusion of the Scopes Monkey Trial. Whether evolution is a valid theory or not, whether creationism/intelligent design are appropriate to incorporate in curricula or not, are matters that continue the debate between modernists and traditionalists.

People questioned public schools teaching creationism because the United States was founded

(Continued on page 38)

(Continued from page 37)

upon the principle of the separation of church and state. Then why is it that the debate causes a tremendous uproar? As much as it may be emphasized that the nation is not affiliated with a specific religion, it is important to bear in mind that the values upon which the United States was established were Protestant.¹⁵ It was Protestant ideals that governed much of the early United States; therefore, religious beliefs play a large underlying part in terms of deciding laws for the country.

The hidden religious basis may be one way of explaining the roots of the evolution debate. To this day, evolution remains a topic that must be approached with a disclaimer. Will the law ever tip one way or the other? As the journey of the evolution debate progresses, the answers will unfold themselves. (Endnotes)

¹Thompson, Helen. "Tennessee 'monkey bill' becomes law." *Nature News*. Web. 22 Oct. 2012. <<http://www.nature.com/news/tennessee-monkey-bill-becomes-law-1.10423>>.

²Ibid.

³Ibid.

⁴Jurmain, Robert, Lynn Kilgore, Wenda Trevathan, and Russell L. Ciochon. *Introduction to Physical Anthropology*. Australia: Wadsworth Cengage Learning, 2012. Print.

⁵Ibid.

⁶Marris, Emma. "Evolution wins Pennsylvania trial." *BioEd Online*. Baylor College of Medicine. Web. 7 Oct. 2012. <<http://www.bioedonline.org/news/news.cfm?art=2248>>.

⁷Ibid.

⁸Linder, Douglas O. "State v. John Scopes ('The Monkey Trial')." UMKC School of Law. Web. 7 Oct. 2012. <<http://law2.umkc.edu/faculty/projects/ftrials/scopes/evolut.htm>>.

⁹Ibid.

¹⁰Ibid.

¹¹Ibid.

¹²"State of Tennessee v. Scopes." American Civil Liberties Union. Web. 29 Oct. 2012. <<http://www.aclu.org/religion-belief/state-tennessee-v-scopes>>.

¹³Ibid.

¹⁴Ibid.

¹⁵Ibid.

(Continued from page 27)

¹⁰"Fair Use." Merriam Webster. N.p., n.d. Web.

Lowensohn, Josh. "Jury Clears Google on Infringing Oracle Patents." *ZD Net*. N.p., 23 May 2012. Web. <<http://www.zdnet.com/blog/btl/jury-clears-google-of-infringing-on-oracle-patents/77897>>.

¹¹Riley, Michael, and Ashley Vance. "Inside the Chinese Boom in Corporate Espionage." *Bloomberg Businessweek*. Bloomberg L.P., 15 Mar. 2012. Web. <<http://www.businessweek.com/printer/articles/68772-inside-the-chinese-boom-in-corporate-espionage>>.

Video Embedding: Is it Legal?

By: Merissa Pico

In its recent decision on *Flava Works, Inc. v. Gunter, et al* (2012), the U.S. Seventh Circuit Court of Appeals ruled that video embedding is not illegal.¹ The court held that “video embedding” is different from video uploading, hosting, and streaming.”² The recent ruling on *Flava Works, Inc. v. Gunter, et al* (2012) sets the precedent for video embedding and infringement. Video embedding is not covered in the Digital Millennium Copyright Act of 1998.³ The Digital Millennium Copyright Act prohibits the reproduction, distribution, and performance of a copyrighted work.⁴

Flava, a producer of pornography videos for which users must pay an upfront fee in order to gain site access, claimed that myVidster.com, owned by Marques Rondale Gunter, has hurt their sales due to the sharing of Flava’s videos on myVidster.⁵ MyVidster is a social media video site where users can share videos already uploaded on the Internet with their friends by “bookmarking” them, or embedding the video code onto myVidster’s website.⁶ According to Circuit Judge Richard Posner’s decision, “Upon receiving the bookmark myVidster automatically requests the video’s “embed code” from the server that hosts (that is, stores) the video...Armed with that code, myVidster creates a web page that makes the video appear to be on myVidster’s site.”⁷

The court ruled, however, that the evidence was too remote to connect what myVidster did with

the loss of sales of Flava. This is in part because myVidster has more than a million videos on its site, yet only 300 are Flava’s.⁸ Additionally, Flava’s videos appear on many other sites as well. The judge ruled that there was no evidence to suggest that Flava’s damages were directly related to myVidster.⁹

In broader terms, though, the *Flava Works, Inc. v. Gunter, et al* (2012) ruling defined video embedding and set it apart from video uploading, hosting and streaming. It is important to recognize that myVidster does not stream videos. Videos that users upload go directly to a server; when videos are accessed, then, they come directly from that server. MyVidster simply provides a border around videos and suggests related videos, just like YouTube.¹⁰ Essentially, myVidster was only a facilitator in the process because the videos were embedded, not uploaded, on their site. MyVidster did not contribute to the performance of copyrighted videos, and therefore did not infringe upon performance of copyrighted work.¹¹ In addition, it was not a market for pirated works, because nothing was being sold.¹² Finally, myVidster did not suggest videos for financial incentive. The fact that myVidster was not making a profit off of Flava’s videos is evidence that they were not in violation of copyright.¹³

Similarly, the court ruled that viewers of the copyrighted material were not copyright infringers.

(Continued on page 40)

(Continued from page 39)

Posner made the following analogy, “His bypassing Flava’s pay wall by viewing the uploaded copy is equivalent to stealing a copyrighted book from a bookstore and reading it. That is a bad thing to do (in either case) but it is not copyright infringement. The infringer is the customer of Flava who copied Flava’s copyrighted video by uploading it to the Internet.”¹⁴

The court defined “uploaders” as direct infringers, viewers and bookmarkers as secondary infringers, and myVidster as a tertiary infringer.¹⁵ As of now, secondary and tertiary infringers are not covered in the Digital Millennium Copyright Act, which is the most current media law.

It has been ruled that myVidster is not in violation of copyright under the Digital Millennium Copyright Act (1998); however, this ruling stems from the fact that there is simply no law that prohibits such a thing as video embedding. Media law has yet to speak on the subject of video embedding in the circumstances of direct and contributory infringement. Until Congress catches up with the rapidly developing technology, the *Flava Works, Inc. v. Gunter, et al* (2012) ruling holds precedent. (Endnotes)

¹ *Flava Works, Inc. v. Gunter, et al*, 11-3190 F. 3d (7th Cir. 2012).

²Ibid.

³Online Copyright Infringement Liability Limitation Act Sec. 202 §512 (1998).

⁴Ibid.

⁵Masnack, Mike. “Judge Posner: Embedding Infringing Videos Is Not Copyright Infringement, And Neither Is Watching Them.” Techdirt.com. TechDirt, 03 Aug. 2012. Web. 05 Oct. 2012. <<http://www.techdirt.com/articles/20120803/05165019928/judge-posner-embedding-infringing-videos-is-not-copyright-infringement-neither-is-watching-them.shtml>>.

⁶*Flava Works, Inc. v. Gunter, et al*, 10 C 6517 F. 3d (7th Cir. 2012).

⁷Ibid.

⁸Ibid.

⁹Ibid

¹⁰Ibid.

¹¹Ibid.

¹²Ibid.

¹³Online Copyright Infringement Liability Limitation Act Sec. 202 §512 (1998).

¹⁴*Flava Works, Inc. v. Gunter, et al*, 11-3190 F. 3d (7th Cir. 2012).

¹⁵Ibid.

Voter ID Laws: Are They Necessary?

By: Harsh Gupta

Voter ID laws, regulations that require citizens to show a form of identification in order to receive a ballot to vote in an election, have become a serious point of contention in the 2012 presidential race. Proponents of such laws hold that the laws are needed to combat voter fraud; however, the argument against them is not only that Voter ID laws unfairly disenfranchise voters, but also that in-person voter fraud is practically non-existent.

Thirty states, including the swing states of Ohio, Virginia, Florida, and Indiana, have enacted Voter ID laws. Four states, Indiana, Kansas, Tennessee, and Georgia, enforce strict photo identification requirements, meaning voters must present photo ID at polling places or, if they fail to show photo ID while they are voting, must follow-up with election officials after the election.¹ The types of strict photo ID enforced include passports, driver licenses, or state identification cards for non-drivers issued by the respective states' Department of Motor Vehicles.² Six states, Michigan, South Dakota, Idaho, Louisiana, New Hampshire, and Florida, have less strict photo requirements, meaning voters at polling places can either show photo identification or meet other state-specific requirements, such as answering personal questions correctly or being vouched for by another voter or poll workers who have a voter ID.³

Opponents of the law contend that these laws disproportionately affect elderly, minority, and low-income groups that tend to vote Democratic. Obtain-

ing a photo ID can be costly and burdensome, with even states that offer free IDs requiring documents such as a birth certificate that can cost up to \$25. According to a study from NYU's Brennan Center, 11 percent of voting-age citizens lack necessary photo ID while many people in rural areas have trouble accessing ID offices.⁴ The same report cites the cause of the recent Voter ID laws as primarily Republican gains in the 2010 midterms, which turned voter ID laws into a "major legislative priority."⁵ Aside from Rhode Island, all voter ID legislation has been introduced by Republican-majority legislatures.⁶

Republican figures have been the primary advocates of these kinds of laws.⁷ For instance, Mike Turzai, majority leader of the Pennsylvania House of Representatives, recently praised the state's legislative accomplishments at a Republican State Committee meeting last month. "Voter ID, which is gonna allow Governor Romney to win the state of Pennsylvania, done," Turzai said.⁸ A representative for Turzai, Steve Miskin, told media outlets that Turzai was "mischaracterized" by the press.⁹ "For the first time in many years, you're going to have a relatively level playing field in the presidential elections as the result of these new laws," Miskin said. "With all things equal, a Republican presidential nominee in Pennsylvania has a chance."¹⁰

Recent figures from the Pennsylvania Department of State and the Department of Transportation

(Continued on page 42)

(Continued from page 41)

show that as many as 758,000 people, about nine percent of the state's 8.2 million registered voters, currently do not have the proper photo identification.¹¹ However, in the Oct. 2 ruling, *Applewhite v. The Commonwealth of Pennsylvania* (2012), Commonwealth Court Judge Robert Simpson blocked the voter ID requirement. He wrote that he was "not still convinced" that voters yet to obtain photo ID would not be disenfranchised because of the new law.¹² He blocked it from taking effect, but only for the upcoming November 6 election. Additionally, the judge's ruling still permits Pennsylvania election officials to request photo ID from registered voters this election, but does not prevent anyone from casting a regular ballot if they're unable to produce one.¹³

In Wisconsin, a voter identification requirement has been declared to be in violation of the state constitution, and the case is not likely to reach the appeals court in time for the upcoming election.¹⁴ Some southern states, like Texas and South Carolina, must clear any voting law changes with the Department of Justice under the Voting Rights Act of 1965. The department has rejected their identification requirements as discriminatory, and Texas has been challenging that ruling in federal court in Washington (*State of Texas v. Eric H. Holder, Jr.*, 2012).^{15,16}

What's more, opponents contend that the necessity for such voter ID legislation may be exaggerated. An analysis by News21, a national investigative reporting project, identified ten voter impersonation cases out of 2,068 alleged election fraud cases since 2000—or one out

of every 15 million prospective voters.¹⁷ Richard L. Hasen, a law professor at the University of California, Irvine, and a specialist in election law, said that even if there is election fraud, "It invariably involves election officials taking steps to change election results or it involves absentee ballots, actions which voter ID laws cannot prevent." (Endnotes)

¹Gaskins, Keesha. "The Challenge of Obtaining Voter Identification: Executive Summary." *The Challenge of Obtaining Voter Identification*. Brennan Center For Justice, 17 July 2012. Web. 20 Oct. 2012.

²Ibid.

³"Voter Identification Requirements." *Voter ID: State Requirements*. National Conference of State Legislatures, 2012. Web. 06 Oct. 2012.

⁴Wieser, Wendy R., and Lawrence Norden. *Voting Law Changes in 2012*. Rep. Brennan Center For Justice, 2012. Web. 7 Oct. 2012.

⁵Ibid.

⁶Ibid.

⁷Ries, Benjamin. "Voter ID Laws: Election Strategy in Disguise." *InsideVandy*. Vanderbilt University, 29 Oct. 2012. Web. 29 Oct. 2012.

⁸Cernetich, Kelly. "Turzai: Voter ID Law Means Romney Can Win PA." *Turzai: Voter ID Law Means Romney Can Win in PA*. PoliticsPA, 25 June 2012. Web. 07 Oct. 2012.

⁹Ibid.

¹⁰Ibid.

¹¹Khan, Natasha. "Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed." *Who Can Vote? News 21*, 2012. Web. 06 Oct. 2012.

(Continued on page 43)

(Continued from page 42)

⁶ Maher, Kris. "State Judge Blocks Voter-ID Legislation." *The Wall Street Journal*. Dow Jones & Company, Inc., 2 Oct. 2012. Web. 20 Oct. 2012.

⁷ Applewhite v. The Commonwealth of Pennsylvania. Pa., No. 71 MAP 2012. (2012). Retrieved from PA-Courts.us. Public database.

⁸ WI Supreme Court Takes Pass for Now on Voter ID." *WXOW News 19*. N.p., 2012. Web. 07 Oct. 2012.

⁹ State of Texas v. Eric H. Holder, Jr., 12-cv-128 U.S. 1 (2012).

¹⁰ "Texas Voter ID Law Rejected As 'Discriminatory' By Federal Court." *CBS Houston*. Associated Press, 30 Aug. 2012. Web. 20 Oct. 2012.

¹¹ Khan, Natasha. "Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed." *Who Can Vote? News 21*, 2012. Web. 06 Oct. 2012.

¹² Feeny, Lauren. "Election Expert Richard Hasen on Voter Fraud and Disenfranchisement." *Moyers & Company*. Public Affairs Television, Inc., 25 Sept. 2012. Web. 20 Oct. 2012.

(Continued from page 29)

¹³ George, Vescey. "College Athletes Move Concussion Into the Courtroom." *The New York Times* (29 Nov. 2011): n. page. *Nytimes.com*. Web. 30 Sep. 2012. <http://www.nytimes.com/2011/11/30/sports/ncaafootball/college-players-move-concussions-issue-into-the-courtroom.html?pagewanted=all&_r=0#>.

¹⁴ *Adrian Arrington, on behalf of himself and all other similarly situated v. National Collegiate Athletic Association, and NCAA Football* (2011).

¹⁵ Ibid

¹⁰ *NCAA v. Board of Regents of the University of Oklahoma*, 468 U.S. 85 (1984)

¹¹ Ibid

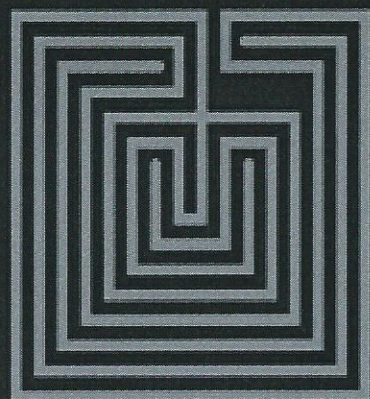
(Continued from page 8)

⁵ Ibid

⁷ Bray, C. "Red-Soled Shoes Win Appeal --- Court Ruling Falls Short of Keeping Christian Louboutin Competitor YSL's Line Off Store Shelves." *Wall Street Journal*, B10.

⁸ Sparkes, M. Louboutin wins trademark case over red-soled shoes; Fashion designer Christian Louboutin has won trademark protection for his distinctive red-soled shoes, preventing competitors from following in his footsteps. *Telegraph*. Retrieved from LexisNexis Academic database. (Accession No. WEBDTNS

⁹ Elliott, H. "Both Sides Claim Victory In *YSL v. Louboutin* Shoe Case." *Forbes*, 5-5. *Bus Louboutin Shoe Case*." *Forbes*, 5-5. *Business Source Complete* database. (Accession No. 79893950)



blueprint
lsat preparation

www.blueprintprep.com

WRITE FOR THE

Boston University Pre-Law Review

Engage yourself early on in the legal profession

Broaden your knowledge base, practice your legal research skills,
and network with other like-minded individuals

**DISCOVER YOUR PARTICULAR INTERESTS
AND GET PUBLISHED!**

Find your voice and develop your own legal perspective

**For more information,
please email us at plr@bu.edu**



TEST PREP AND
ADMISSIONS

The proven leader in LSAT prep.

Personalized Learning	Proven Track Record	High score guaranteed or you money back
<ul style="list-style-type: none"> ✓ Greatest number of course options ✓ Adaptive learning technology (Smart Reports™) ✓ Flexibility to make up any missed class 	<ul style="list-style-type: none"> ✓ 40+ years of expertise teaching the LSAT ✓ Top-rated faculty—by students ✓ Kaplan accepts fewer than 1 in 6 applicants to teach the LSAT 	<ul style="list-style-type: none"> ✓ More people get into law school with a Kaplan LSAT course than with all other major courses combined†

1-800-KAP-TEST | kaplanLSAT.com

*LSAT is a registered trademark of the Law School Admission Council, Inc. **Conditions and restrictions apply. For complete guarantee eligibility requirements, visit kaptest.com/hsg. The Higher Score Guarantee applies only to Kaplan courses taken and completed within the United States, Puerto Rico, Canada, Mexico, the United Kingdom, and France. †People refers to adults who took the LSAT and a course to prepare for it, were accepted into law school and participated in the survey. The Harris Interactive® online study for Kaplan was conducted between December 6th and 21st, 2007 among 149 US adults who applied to and were admitted into law school, of whom 125 took the LSAT and a course to prepare for it. 10LSAT0126