

LAW IN THE NEWS

CLASS ACTIVITIES*

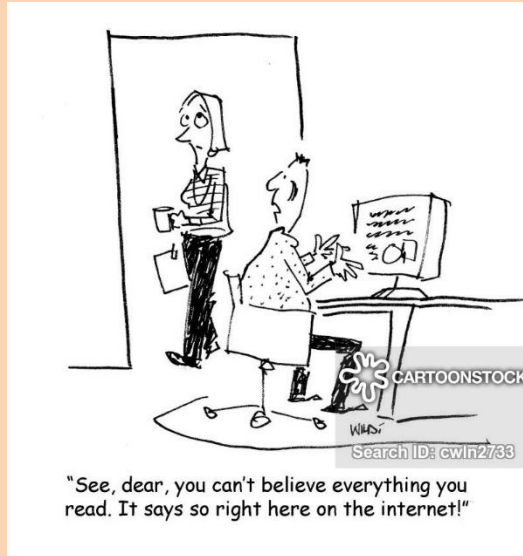
Class 1: Jan. 7

Introduction

Discussion questions:

- Do you read the news? Why or why not?
- If so, what news outlets do you read? Do you read online or newspapers?
- What sources of news do you usually trust? What sources do you rarely trust? Why?
- What kind of news are you interested in? What news do you follow?
- Do you watch the news on TV? Online?
- Discuss the following cartoons





Class 2: Jan. 9 Sex Trafficking

Jeffrey Epstein: The financier charged with sex trafficking

16 November 2019

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Media caption Geoffrey Berman: "If you believe you are a victim of this man... we want to hear from you."

"I'm not a sexual predator, I'm an 'offender,'" Jeffrey Epstein told the New York Post in 2011.

"It's the difference between a murderer and a person who steals a bagel."

Epstein died in a New York prison cell on 10 August as he awaited, without the chance of bail, his trial on sex trafficking charges.

It came more than a decade after his conviction for soliciting prostitution from a minor, for which he was registered as a sex offender.

This time, he was accused of running a "vast network" of underage girls for sex. He pleaded not

guilty.

The 66-year-old in the past socialised with Prince Andrew, President Donald Trump and former President Bill Clinton.

But who was Jeffrey Epstein?

'Terrific guy'

Born and raised in New York, Epstein taught maths and physics in the city at the private Dalton School in the mid 1970s. He had studied physics and maths himself at university, although he never graduated.

A father of one of his students is said to have been so impressed that he put Epstein in touch with a senior partner at the Wall Street investment bank Bear Stearns.

He was a partner there within four years. By 1982, he had created his own firm - J Epstein and Co.

The company managed assets of clients worth more than \$1bn (£800m) and was an instant success. Epstein soon began spending his fortune - including on a mansion in Florida, a ranch in New Mexico, and reputedly the largest private home in New York - and socialising with celebrities, artists and politicians.

"I've known Jeff for 15 years. Terrific guy," Donald Trump told New York magazine for a profile on Epstein in 2002. "He's a lot of fun to be with. It is even said that he likes beautiful women as much as I do, and many of them are on the younger side.

"No doubt about it - Jeffrey enjoys his social life."

In 2002, Epstein flew former President Bill Clinton and the actors Kevin Spacey and Chris Tucker to Africa on a customized private jet. He made an unsuccessful bid to buy New York

magazine with then film producer Harvey Weinstein in 2003 - the same year he made a \$30m donation to Harvard University.

But he also strove to keep his life private, reportedly shunning society events and dinners in restaurants.

He dated women like Miss Sweden winner Eva Andersson Dubin and Ghislaine Maxwell, daughter of publisher Robert Maxwell, although he never married.

Rosa Monckton, the former CEO of Tiffany & Co, told Vanity Fair for a 2003 article that Epstein was "very enigmatic" and "a classic iceberg".

"You think you know him and then you peel off another ring of the onion skin and there's something else extraordinary underneath," she said. "What you see is not what you get."

Conviction and plea deal

In 2005, the parents of a 14-year-old girl told police in Florida that Epstein had molested their daughter at his Palm Beach home. A police search of the property found photos of girls throughout the house.

The Miami Herald reports that his abuse of underage girls dated back years.

"This was not a 'he said, she said' situation," Palm Beach Police Chief Michael Reiter told the newspaper. "This was 50-something 'shes' and one 'he' - and the 'shes' all basically told the same story."

"He has never been secretive about the girls," columnist Michael Wolff told New York magazine for a 2007 profile piece, as the case against Epstein moved through the courts.

"At one point, when his troubles began, he was talking to me and said, 'What can I say, I like young girls.' I said, 'Maybe you should say, 'I like young women.'"

However, prosecutors forged a deal with the hedge fund manager in 2008.

He avoided federal charges - which could have seen him face life in prison - and instead received an 18-month prison sentence, during which he was able to go on "work release" to his office for 12 hours a day, six days a week. He was released on probation after 13 months.

The Miami Herald says that the federal prosecutor Alexander Acosta - who was Secretary of Labour in the Trump administration - struck a plea agreement hiding the extent of his crimes and ending an FBI investigation into whether there were more victims or more powerful people who took part. The paper described it as the "deal of the century".

Mr Acosta resigned in July 2019 over the scandal, though he defended his actions as guaranteeing at last some jail time for Epstein.

Since 2008 Epstein had been listed as a level three on the New York sex offenders register. It is a lifelong designation meaning he was at a high risk of reoffending.

But Epstein maintained his properties and his assets after his conviction.

In December 2010, Prince Andrew, the third child of the Queen, was pictured in New York's Central Park with Epstein, drawing controversy.

In a BBC interview in November 2019, the prince, who had known Epstein since 1999, said he had gone to New York to break off their friendship. He said he regretted staying at the financier's house while he was there, and that he had "let the side down" by doing so.

An Epstein accuser, Virginia Roberts - now Virginia Giuffre - would later allege that she was made to have sex with Prince Andrew in the early 2000s when she was 17.

Prince Andrew categorically denied having sex with her and said he has no recollection of a

photo of the pair being taken together in London.

Epstein was arrested in New York on 6 July 2019 after flying back from Paris on his private jet.

Prosecutors were reportedly seeking the forfeiture of his New York mansion, where some of his alleged crimes occurred.

Epstein always denied any wrongdoing, and pleaded not guilty to the charges against him.

After being denied bail by the court, he was being held in New York's Metropolitan Correctional Center. He was taken to hospital briefly in July for what was widely reported to be injuries to his neck - which neither prison officials or his lawyers would officially comment on.

At his last court appearance on 31 July, it became clear that he would spend a year in prison, with a trial no earlier than summer 2020. Prosecutors said they wanted no delay, and bringing the trial quickly was in the public interest.

Now, Epstein will never face the trial at all.

Wag the Dog

- 1) What does the title mean?
- 2) Who is Mr. Fix-it? What does he do?
- 3) What is the significance of the producer's house being bigger than the White House?
What message does that relay?
- 4) Explain the significance of "We remember the slogans, but we don't remember the war," in terms of media's effectiveness.
- 5) Explain the significance of "Of course there's a war; I'm seeing it on TV!" in terms of media's effectiveness.

- 6) Do you think politicians manufacture/manipulate news? Think of other examples from the United States or other countries where it may be presumed that news was manufactured with a political purpose.

Class 3 Jan 14: Infidelity and the Law

Choose a legal event, case, or theme that is in the news now and that you think may develop throughout this semester. You will have to present about this event every other class.

Article

His ex-wife cheated on him. He sued the other man for \$750,000 — and won.

Lateshia Beachum

The Washington Post Oct. 5, 19

A woman's paramour has been ordered to pay \$750,000 in damages to her ex-husband.

On Aug. 19, a Pitt County, N.C., Superior Court judge decided that Greg Jernigan must pay Robert Kevin Howard for sleeping with his wife, according to court records.

"I filed the case because I felt it's very important that people understand that the sanctity of marriage is important, especially in this day and age when people question everyone's morals, people question everyone's viability as a person," he told WITN. "And the state backed me up on it."

North Carolina and seven other states still have laws that allow for a scorned spouse to sue their partner's lover.

These "heart balm" torts, which allow for legal action to be taken for missed affections, are a complicated matter to family law experts in North Carolina.

What are homewrecker laws?

Howard sued his wife's lover for alienation of affection and criminal conversation, according to court records.

These “heart balm” or “homewrecker” laws, which date back to at least the 18th century, allow for someone to sue for damages incurred when a third party breaks up a happy home.

Alienation of affection, also known as the “mother-in-law” tort, doesn’t have anything to do with sex, North Carolina-based family law attorney Ashley-Nicole Russell said.

As an example, she said a person could sue their mother-in-law if the mother-in-law was successful in persuading her child to divorce their spouse.

Criminal conversation is the act of having sex with someone’s spouse, she said.

The adultery law has an odd name because of old English common law, said Cynthia Mills, Howard’s attorney.

“It was impolite in society to talk openly about sex,” she said. “Impolite conversations” was another way to say having sex.

Alienation of affection and criminal conversation are often filed by brokenhearted plaintiffs such as Howard, who told WITN that he still has a lot of scars from the situation.

How the couple split

Howard had no idea how much Jernigan would change his life when they first met in December 2016 when Jernigan rode in a limo with him to a New Year’s Eve party at a local Hilton hotel, according to court records.

The two men hung around each other in the presence of Howard’s wife. Jernigan even had meals with Howard in his home with his wife and children, according to court documents.

“We shared stories [and] we talked about personal lives,” Howard told WITN.

Howard and his now-ex-wife, Julie George Howard (now Julie Kendall George), were married for 12 years, and they have two children together. There was some “genuine love and affection” between the married couple, court records state.

George did not respond to requests for comment.

Howard and George had been happily married until George met Jernigan, then a first-year teacher, in 2016. The local school district had assigned her to be his mentor around August or September that year, according to court documents.

The relationship between the two was at first professional before turning more personal.

Romantic gears shifted between Jernigan and George around January 2017, and they consummated their relationship around late March or early April that year. George would text and call her lover over a Tracfone he had given her so that Howard wouldn’t find out, according

to court documents.

The lawsuit Howard filed said George and Jernigan would rendezvous at Jernigan's apartment and that they had even met in downtown restaurants where friends and associates could see on more than one occasion.

George and Howard had started marriage counseling in March 2017 as well, something Jernigan knew about, according to records.

When Howard confronted his wife about the affair in April 2017, she confessed, saying that Jernigan had said all the right things to her and that sex with him was a mistake, according to court documents. They stayed together until June 23, 2017, and were divorced on Sept. 25, 2018. Howard filed his lawsuit on Aug. 1, 2017, and Jernigan was served two days later, according to court records.

Problems with the law

Exactly how Howard will be able to collect the judgment and the amount of time cases like his take have some attorneys questioning the laws' necessity.

Kellie Chappell-Gonzalez, a founding attorney at Capital to Coast NC Law Group, noted that cases like Howard's cost time and money, which could have long-term consequences.

"Once you file this case and talk about your child's mother or father or whoever it was that cheated on you, it becomes public record and your kids can see that," she said, noting that she often stresses the significance of these filings to her clients. "One of these days, your kids are going to get a copy of this."

Russell, who said she often refers clients to others after she extensively outlines the pros and cons, called the laws a "form of legalized extortion" that is scarring children.

"Most practicing attorneys think that this is corrupt," she said, adding that she thinks most matters around divorce can be settled. "It's not something that we're proud of in the state of North Carolina."

The majority of cases like Howard's are settled, but it depends on a variety of factors as to whether a lawyer will take up a case, said Anastasia Cowan, senior associate attorney at Arnold & Smith Law Firm.

The discovery phase, filing depositions and hiring private investigators can add up for clients and emotionally drain them.

Mills, who declined to reveal her fee in the Howard case, said the average settlement in these

cases is about \$50,000 to \$90,000. Howard's case, however, wasn't the highest judgment she has seen. She once saw a judgment of \$5.9 million in 2010 for a similar case, she said.

Her contemporaries estimate that Howard probably spent between \$10,000 and \$75,000 in attorney fees alone over the two years and that it is unlikely he will pocket the judgment amount.

That wasn't the purpose of Howard's lawsuit, Mills said.

"My client will probably not see any of this money," she said. "It was a moral victory for him."

Jernigan represented himself in the case, and he probably should have taken the matter more seriously, Chappell-Gonzalez said.

He faces liens on any property he has, and his credit could be negatively affected. He could, however, appeal the decision, and if the appeal court overturns the judgment, it could set a precedent, Russell said.

Mills and Howard haven't tried to execute the judgment for now, but the judgment is valid for 10 years, Mills said. If Jernigan were to come into money or property within that time, the door to collect will be open.

Howard is trying to move on, Mills said.

"I would say that he's accepted the situation," she said. "He is, through therapy, in a good place now."

Discussion questions

- 1) What is the article about? Summarize its content.
- 2) What are the legal issues?
- 3) What is a scorned spouse?
- 4) What are "heart balm" torts? What are the legal elements/requirements of these torts?
- 5) What is your opinion on the case? Do you agree that a scorned spouse should be compensated from the person who sleeps with his/her spouse?
- 6) If the defendant hired you to prepare the appeal, what would be your main legal arguments?
- 7) This is a US case. Do an online search and find out what the laws are in Canada.
- 8) Do an online search and find other articles on this topic. Discuss the content, the legal issue/s involved, and your opinion.

Classes 4 & 5 Jan 16 & 21 Over-criminalization

Presentations

- 1) What is over-criminalization? Why does it happen?
- 2) Do an online search of other articles dealing with cases that can be considered over-criminalization. Discuss the content, legal issues, and your opinion.
- 3) Do an online search of cases dealing with the de minimis defence in Canada. Discuss them.
- 4) Do an online search of cases dealing with the de minimis defence in Canada. Discuss them.

Canadian woman arrested for not holding escalator handrail awarded \$20G in damages

By Nicole Darrah | Fox News

A Canadian woman who was arrested for not holding on to an escalator handrail has been awarded \$20,000 in damages by the nation's Supreme Court.

Bela Kosoian was riding an escalator at the Montmorency Montreal Metro station in Laval, Quebec, in 2009 when an officer stopped her because she wasn't holding on to a handrail, as she was looking through her purse. A sign that stated "caution" and "hold handrail" was located near the escalator.

The officer told her to hold on to the handrail during her ride down the escalator, and the officer stopped her once she got to the bottom. He asked her to follow him and she refused, "because she didn't think she had done anything wrong," and also refused to give her identification, according to the case brief posted online.

Kosoian was subsequently detained and when she was released, she was given one \$100 ticket for disobeying the sign, and a \$320 fine for obstructing an inspection worker.

She was acquitted of the infractions in 2012, and she sued Montreal's transit authority, the city, and one of the officers for \$45,000, CBC News reported. In 2015, the lawsuit was rejected in Quebec court, and again in 2017 by the Quebec Court of Appeal, which said Kosoian was the "author of her own misfortune."

Bela Kosoian was arrested in 2009 for not holding onto an escalator handrail. The Supreme Court of Canada ruled last week there was no such law requiring that. (iStock)

But the Supreme Court "unanimously disagreed," and said the sign in the Metro station that said to hold on to the handrail "was a warning" and not a law. They found the officer "was wrong to stop and search her for breaking a law that didn't exist."

"A reasonable police officer should have known that people didn't have to hold handrails. Or at least they should have had some doubt," the court ruling stated, adding, "Even if Ms. Kosoian didn't act in the best way, she had no legal obligation to hold the handrail."

The decision continued: "This case was about civil liability for doing something wrong. In a free and democratic society, police officers can't interfere with people's freedoms except where the law says so. They have to know the law and act within it."

The court ruled Kosoian be paid \$20,000 in damages in Canadian dollars, or roughly \$15,000 in USD.

Kosoian said she was pleased that the judge "recognized the rule of law," telling the CBC she felt it was important to take her case to the Supreme Court of Canada.

"I knew that I didn't do anything wrong. It was the principle of it," she said. "I knew, I knew, I knew."

Discussion questions

- 1) What is the content of the article?
- 2) What are the legal issues?
- 3) Do you agree with the police? Why or why not?
- 4) Do you agree with the decision of the Supreme Court? Why or why not?
- 5) Read the case: Kosoian v. Société de transport de Montréal available at <https://www.scc-csc.ca/case-dossier/cb/2019/38012-eng.aspx>. Are there any relevant facts or issues not discussed in the news article?

Woman Who Lied on Her Resume to Score Job with \$185K Salary

Sentenced to Year in Prison

Veronica Hilda Theriault, who also used a photo of Kate Upton as her LinkedIn profile picture, pleaded guilty to deception, dishonesty and abuse of public office

By Claudia Harmata December 05, 2019 11:27 AM

A woman was sentenced to at least one year in prison for falsifying her resume and references to obtain a high-paying job with the South Australian regional government.

On Tuesday, Veronica Hilda Theriault was sentenced to 25 months in jail with a non-parole period of 12 months after pleading guilty to deception, dishonesty and abuse of public office, according to the Australian Broadcasting Corporation and CNN.

Theriault had been a chief information officer within South Australia's Department of Premier and Cabinet, a position she obtained by lying on her resume and faking references in 2017. The position pays an annual salary of \$185,000 (\$270,000 Australian dollars).

After securing an interview using the fake resume, Theriault impersonated a reference named "Ms. Best," and gave herself "glowing feedback" during the reference check, ABC reported. She also had her brother, Alan Corkill, pose as a reference from Wotif, an accommodation booking company — though neither sibling had worked there, according to The Washington Post.

Theriault also used an image of supermodel Kate Upton as her profile photo on LinkedIn during the hiring process and helped her brother secure a government contract that earned him \$21,000.

Her employment with the DPC lasted only a month, during which she earned about \$33,000. The Post reported that Theriault was arrested in Sept. 2017, along with her brother.

In a statement to The Post, the DPC said Theriault "was appointed following a competitive selection process" but that they grew concerned about her "her capability and conduct" soon after she started work in August 2017. They also said that a "more vigorous pre-employment

screening requirements for senior roles” was implemented.

The DPC did not immediately respond to PEOPLE’s request for comment.

A lawyer for Theriault previously told the court that Theriault had stopped taking her medication for her bipolar disorder prior to committing the offenses. District Court Judge Michael Boylan, who delivered the sentence, said he considered her mental health in his decision. “This is serious offending — you fraudulently obtained employment for which you were paid a large salary and in the course of which you may have had access to sensitive material,” he said, according to ABC. Theriault’s lawyer did not immediately respond to PEOPLE’s request for comment.

The court also found that in addition to lying on her resume and references, Theriault falsified a pay slip to negotiate a higher salary and a doctor’s note that claimed she was fit to work.

However, she was not charged for these additional findings.

Discussion questions

- 1) What is the content of the article?
- 2) Why was the woman jailed? What crimes did she commit?
- 3) Is lying on your resume a crime in Canada? If so, what crime/s?
- 4) Do you think that lying on your resume should be a crime?
- 5) Why do people lie on their resumes?
- 6) Look for articles about lies on resumes that had or should have had legal consequences. Discuss them.
- 7) Look for some academic research on job discrimination and resumes.

Andrew Scheer Got Busted for a Pointless Resume Lie

“Insurance-gate” isn’t the only time the Conservative leader has been caught misrepresenting the truth.

For an election cycle often centred around party leaders’ personalities, the Conservatives’ haven’t managed to give Andrew Scheer much of one. This has prompted multiple outlets to ask who the man is and what makes him tick. Scheer likely welcomes efforts to get his message out

there, but got more than he bargained for this Saturday when the Globe and Mail published a profile that fact-checked his short non-political resume, specifically his time as “insurance broker.” That’s what his official party bio says he did before going into politics. Except the Globe said that Scheer never got a license to be an insurance broker. While it’s not on the same level as the Trudeau blackface scandal, it is a telling misrepresentation from a leader who’s been caught bending the truth more than once this campaign. Politicians often exaggerate, generalize, or take things out of context to brag about their record or to bash an opponent. But Scheer’s campaign has dialed up the volume and either made or amplified claims around wedge issues like refugees and drugs that either lack evidence or are demonstrably false.

A Survey of 1,003 People Shows Millennials Lie on Resumes 5 Times More Often Than Baby Boomers

Gen Z lies seven times more often.

By Minda Zetlin Co-author, The Geek Gap@MindaZetlin

How many Americans lie on their resumes? The surprising answer: Not that many. In an online survey of 1,003 people conducted for the personal finance site GOBankingRates, only 5 percent of respondents reported that they'd ever lied on a résumé.

But apparently, the younger you are, the likelier you are to be untruthful, at least when applying for a job. Eleven percent of Millennials said they had lied on their résumés, and 14 percent of Gen Z respondents said they'd done it. Only 2 percent of Baby Boomers said they'd ever lied on a résumé.

And they don't feel bad about it. While 54 percent of men and 42 percent of women who lied in all age groups felt guilty about doing so, only 27 percent of Millennials did. The difference may be changing attitudes about employment and employers. Based on this scathing piece from George Takei's site ComicSands, about what older generations don't get about today's job market, changing employment practices and attitudes about employers may be to blame.

Here are a few other findings:

1. Most people think they're more honest than everyone else.

The low percentage of people who lie on résumés would come as a shock to the people who took the survey. Twenty-eight percent of respondents said they thought more than half the population lies on their résumés, and another 40 percent believe some people lie on their résumés but less than half the population.

2. When people lie, they lie about work experience and/or dates.

Of those who admitted to lying on their résumés, 38 percent said they'd lied about their work experience and 31 percent said they'd lied about employment dates, usually to conceal a gap in their work history. Another 16 percent said they'd lied about their job title, and 15 percent said they'd lied about their references. Maybe they were assuming their prospective employer wouldn't check.

3. Most Millennials and Gen Z respondents say they'd do it again.

It would seem that most young people, who've lied on their résumés suffered no ill consequences. Fifty-five percent of Millennials who admitted to lying said they'd do it again. And 63 percent of Gen Z respondents said they'd lie again.

What exactly is a lie, anyway?

For the 31 percent of résumé liars who lied about their employment dates and the 16 percent who lied about their job title, there's not much ambiguity. If you say you left a job in the fall of 2018, and it was really the spring of 2017, that's a pretty clear falsehood. It's also clearly a lie if you say your job title was VP of sales when it was really account executive.

But when it comes to job skills, the most frequently lied-about element of a résumé, it can be a bit more difficult to draw the line between a lie and an exaggeration. If you claim to be "fluent in French" because you did really well in your high school French class, is that a lie or not?

HR experts say that an out-and-out untruth, such as claiming you worked at a company where you never did, is pretty rare. Whereas exaggerating job skills or making titles sound better than

they are is fairly common. That makes sense when you consider that many people think they're competing with other job applicants who are very likely to lie. They may figure that if everyone else is a liar, telling the truth would put them at an unfair disadvantage.

Classes 6 & 7. Jan 23 & 28 Legal Personality

COURT RULES ORANGUTAN HELD IN ARGENTINA ZOO IS 'NON-HUMAN PERSON' AND CAN BE FREED

BUENOS AIRES, Dec 21 (Reuters) - An orangutan held in an Argentine zoo can be freed and transferred to a sanctuary after a court recognized the ape as a "non-human person" unlawfully deprived of its freedom, local media reported on Sunday.

Animal rights campaigners filed a habeas corpus petition - a document more typically used to challenge the legality of a person's detention or imprisonment - in November on behalf of Sandra, a 29-year-old Sumatran orangutan at the Buenos Aires zoo.

In a landmark ruling that could pave the way for more lawsuits, the Association of Officials and Lawyers for Animal Rights (AFADA) argued the ape had sufficient cognitive functions and should not be treated as an object.

The court agreed Sandra, born into captivity in Germany before being transferred to Argentina two decades ago, deserved the basic rights of a "non-human person."

"This opens the way not only for other Great Apes, but also for other sentient beings which are unfairly and arbitrarily deprived of their liberty in zoos, circuses, water parks and scientific laboratories," the daily La Nacion newspaper quoted AFADA lawyer Paul Buompadre as saying.

Orangutan is a word from the Malay and Indonesian languages that means "forest man."

Sandra's case is not the first time activists have sought to use the habeas corpus writ to secure the release of wild animals from captivity.

A U.S. court this month tossed out a similar bid for the freedom of 'Tommy' the chimpanzee, privately owned in New York state, ruling the chimp was not a "person" entitled to the rights and protections afforded by habeas corpus.

In 2011, the animal rights group People for the Ethical Treatment of Animals (PETA) filed a lawsuit against marine park operator SeaWorld, alleging five wild-captured orca whales were treated like slaves. A San Diego court dismissed the case.

The Buenos Aires zoo has 10 working days to seek an appeal.

A spokesman for the zoo declined to comment to Reuters. The zoo's head of biology, Adrian Sestelo, told La Nacion that orangutans were by nature calm, solitary animals which come together only to mate and care for their young.

"When you don't know the biology of a species, to unjustifiably claim it suffers abuse, is stressed or depressed, is to make one of man's most common mistakes, which is to humanize animal behavior," Sestelo told the daily.

Discussion questions

- 1) What is the article about?
- 2) What is the legal rule that applies to this case?
- 3) Do you agree with the court's ruling? Why or why not?
- 4) Read the article "Should Trees Have Standing" by Christopher Stone. What is the main thesis of the article? Do you agree? Why or why not?
- 5) Discuss the Lake Eire Bill of Rights. What are the pros and cons?
- 6) Find other examples of natural objects that have some kind of standing or legal personality.

Class 8 Jan. 30: Sexual assault and media perception

Please read the following articles and discuss the questions in small groups:

Discussion questions

- 1) Who was Kobe Bryant?
- 2) How did he die? Who is responsible for his death and the death of the other passengers?
- 3) Discuss the sexual assault incident of 2003. What happened?
- 4) Why was the criminal case dropped? Do you think that the State should drop a case if the victim so wishes? Should the State continue with the prosecution of a sexual assault case against the wishes of the victim? What is the policy in Canada for the prosecution of sexual assault cases?
- 5) Discuss the tort settlement. Is it good policy to continue with the practice of monetary compensation as the sole outcome of tort cases? What are the consequences of this policy? In what other ways could tort cases be resolved? What other outcomes could these cases pursue?
- 6) What was the media treatment of Kobe Bryant's death?
- 7) What did Felicia Sonmez do? What was the reaction to her tweet?
- 8) Compare media treatment of Kobe Bryant's and Jeffrey Epstein's deaths and their sexual offence crimes. What do you attribute the differences to? What about media coverage of other celebrities' sexual offences? Why was Kobe Bryant treated differently? Who else was treated leniently for very serious sexual offences? Why?

Washington Post Reporter Suspended for Kobe Bryant Tweets Speaks Out

The newspaper lifted Felicia Sonmez's suspension after a widespread outcry that included many newsroom colleagues.

By Nick Visser, HuffPost US

The Washington Post reporter who was suspended after tweeting a story about the 2003 rape allegation against basketball star Kobe Bryant on the day he died called on the newspaper's executive editor to speak directly about the decision to punish her and explain how the paper planned to protect employees' safety going forward.

Felicia Sonmez, who was placed on administrative leave for the tweet and reprimanded for “hurting” the Post as an institution, said in a statement Tuesday that she wanted answers after the newspaper lifted her suspension following a media outcry. Sonmez initially said about 10,000 people had commented or emailed her “abuse and death threats” after she shared a link to a story without comment about the 2003 allegations against Bryant. Bryant and his 13-year-old daughter were among nine people killed Sunday in a helicopter crash in Calabasas, California.

When she reported the abuse to her editors, including Executive Editor Martin Baron and Managing Editor Tracy Grant, she was told to take the tweets down before being placed on paid leave.

“I believe that Washington Post readers and employees, including myself, deserve to hear directly from Marty Baron on the newspaper’s handling of this matter,” Sonmez said.

“Washington Post journalists endeavor to live up to the paper’s mission statement, which states, ‘The newspaper shall tell ALL the truth so far as it can learn it, concerning the important affairs of America and the world.’”

She added that Baron’s emails to her had only “sown confusion about the depth of management’s commitment to this goal.”

Felicia Sonmez



@feliciasozmez

Replying to @feliciasozmez

Washington Post journalists endeavor to live up to the paper’s mission statement, which states, “The newspaper shall tell ALL the truth so far as it can learn it, concerning the important affairs of America and the world.”

1,183

8:53 PM - Jan 28, 2020

Twitter Ads info and privacy

451 people are talking about this

Felicia Sonmez



@feliciasonmez

Replying to @feliciasonmez

My suspension, and @PostBaron's Jan. 26 email warning me that my tweets about a matter of public record were "hurting this institution," have unfortunately sown confusion about the depth of management's commitment to this goal.

1,446

8:54 PM - Jan 28, 2020

Twitter Ads info and privacy

789 people are talking about this

Grant released a statement on Tuesday noting the suspension had been lifted, but she stood by her characterization that the tweets were "ill-timed" even if they weren't in direct violation of the Post's social media policy. She did not offer an apology and, alongside other top editors, said the episode had raised the notion that the Post's social media guidelines "are in need of an update."

"We consistently urge restraint, which is particularly important when there are tragic deaths," Grant wrote. "We regret having spoken publicly about a personnel matter."

The statement didn't appear to appease those in the Post's newsroom, many of whom initially stood by Sonmez during her suspension (including the newspaper's own media reporter). The Washington Post Newspaper Guild, which represents about 1,000 employees, said Tuesday it was "disappointed" that Grant didn't offer an apology, noting it remained "concerned that The Post did not take swift action to provide her with protection and support."

Sonmez concluded her request of Baron on Tuesday by urging newsroom leaders to safeguard

reporters' ability to share information.

“I hope Washington Post newsroom leaders will not only prioritize their employees' safety in the face of threats of physical harm,” she wrote, “but also ensure that no journalist will be punished for speaking the truth.”

Kobe Bryant's Disturbing Rape Case: The DNA Evidence, the Accuser's Story, and the Half-Confession

The NBA legend has received a hero's sendoff during his final season. But there's one incident that will always taint Bryant's career.

Marlow Stern

Senior Entertainment Editor

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On April 13, Kobe Bean Bryant will don his Lakers jersey for the last time. And during this, his 20th and final NBA season, Bryant has received an extended valediction fit for a king, replete with celebrations, movie-star commercials, and unanimous praise from basketball stars past and present. His professional résumé is, of course, indisputable. Bryant is an 18-time All-Star, 12-time member of the All-Defensive team, and five-time NBA champion. He will go down as the second-best shooting guard in NBA history—behind His Airness—and one of the Top 20 players to ever set foot on the hardwood.

But when taking into account the entire breadth of Bryant's tenure in the spotlight, the personal and professional, there will always be one giant question mark, one disturbing episode that gives even the most ardent admirers of the Black Mamba considerable pause: the rape case.

The Kobe Bryant rape case has, in the annals of popular culture, been reduced to something of a

punchline due to the aftermath—namely, Bryant’s \$4 million, 8-carat purple diamond apology ring that he gifted to his wife, Vanessa. But what exactly transpired on the night of June 30, 2003, at the Lodge & Spa at Cordillera, in Colorado, may always be a mystery. Despite being charged with sexual assault and false imprisonment—facing life in prison—and tearfully confessing to committing adultery with his 19-year-old accuser, Bryant’s case never made it to trial. On Sept. 1, 2004, one week before opening statements were to be made, the case was dismissed after the accuser, who had been dragged through the mud for months by the media and Bryant’s defense team, informed the court that she would not testify. The woman had filed a separate civil suit against Bryant, and had agreed to dismissal of the sexual-assault charge against him provided the athlete issued the following apology to his accuser, which was read in court by Bryant’s attorney:

First, I want to apologize directly to the young woman involved in this incident. I want to apologize to her for my behavior that night and for the consequences she has suffered in the past year. Although this year has been incredibly difficult for me personally, I can only imagine the pain she has had to endure. I also want to apologize to her parents and family members, and to my family and friends and supporters, and to the citizens of Eagle, Colo. I also want to make it clear that I do not question the motives of this young woman. No money has been paid to this woman. She has agreed that this statement will not be used against me in the civil case. Although I truly believe this encounter between us was consensual, I recognize now that she did not and does not view this incident the same way I did. After months of reviewing discovery, listening to her attorney, and even her testimony in person, I now understand how she feels that she did not consent to this encounter. I issue this statement today fully aware that while one part of this case ends today, another remains. I understand that the civil case against me will go forward. That part of this case will be decided by and between the parties directly involved in the incident and will no longer be a financial or emotional drain on the citizens of the state of Colorado.

The accuser’s civil suit against Bryant was ultimately settled in March 2005, and terms of the settlement were undisclosed (the total amount civil juries in Colorado could award at the time was \$2.5 million). And the accuser, it should be noted, came from a wealthy family.

The Daily Beast has reviewed the legal and court documents of the Kobe Bryant rape case, including testimony from the accuser, then 19, and Bryant, then 24, which shed some light on what may have happened that night.

“Last night I was at work and I was sexually assaulted.” So begins the accuser’s version of the events that took place the night of June 30, 2003, according to the police transcript of an interview taken with her the following day by Det. Winters and Deputy Rich of the Eagle County Sheriff’s Office in Eagle, Colorado.

The accuser, who is white, said she arrived late to work at the Lodge & Spa at Cordillera, a resort in Edwards, Colorado—between Eagle and Vail—at around 2 p.m. on June 30. At around 4 p.m., she said she received a call from a travel agent checking in on a reservation for “Javier Rodriguez,” and the agent “divulged the information to me that it was actually Mr. Bryant. And that it was very important that we got him and his two companions a room. So, there were three rooms all together.” The other rooms were being held under the names “Joe Carlson” and “Mike Ortiz,” who were in Bryant’s entourage. The accuser, who worked at the front desk, was scheduled to be off at 7 p.m., but told officers she stayed later because “I was excited to meet Kobe Bryant,” and that she “was trying to make up the extra hours” that she missed by not getting to work on time (her work day was supposed to begin at 11 a.m.). “They showed up around 9:45, 10:00. I met Mr. Ortiz um, met Mr. Bryant and they asked me to escort him to his room,” she told police. When they got to the room, she says, Bryant made a request: “Mr. Bryant asked me, kinda in private if I would come back in 15 minutes and give him a tour of the hotel. And I said that I would.”

The accuser says she returned to his room around 10:30 p.m., and then showed Bryant the resort’s on-site facilities, including the spa, exercise, room, outdoor pool, and outdoor jacuzzi. She claims the tour portion was witnessed by Bob Pietrack, the bellman and a high-school friend of the accuser. Then, the two allegedly returned to Bryant’s room, sat down, and talked.

“We were talking and [Bryant] asked me to open the jacuzzi for him,” she told police. “I told

him that my shift was over and I was gonna go home. He proceeded to try and convince me to come back in 15 minutes, which I told him I would just so I could get out of there and then I was just gonna leave and not come back. Um, I stood up to leave, he stood up, asked me to give him a hug. I gave him a hug and he started kissing me and I let him kiss me. And the kissing continued then he took off his pants. And that's when I tried to back up and leave. And that's when he started to choke me."

Asked by police what she was thinking at the time, she responded, "I was thinking that his actions were getting physical, and that I wanted to get out of the room." She estimates the kissing lasted for five minutes, and that that part was consensual. What happened after, she says, was not. "He started, um, groping me, I guess I'd say," she told officers. "Putting his hands on me, grabbing my butt, my chest. Trying to lift up my skirt. Proceeded to take off his own pants. Trying to grab my hand and make me touch him."

"I told him once that I needed to leave," she added. "He didn't say anything. If he did [hear me] he didn't make any gestures or anything that would let me know that he did."

At this point, the accuser told police that Bryant began to get rough with her: "When he took off his pants that's when I started to kinda back up, and try to push his hands off me and that's when he started to choke me. He wasn't choking me enough that I couldn't breathe, just choking me to the point that I was scared."

Bryant then, she told police, began "grabbing and rubbing" her vagina over her panties. That lasted "two to three minutes, and during that time I was trying to uh, pull away." Then, she says, he grabbed her neck with both arms. She claims that she didn't say anything to him at this time, but he knew she was trying to leave "because I kept trying to back away and move towards the door."

According to the accuser, Bryant put his body between her and the door. "I try and walk to the side, and he would walk to the side with me. And that's when he started to put his hands on my neck," she said, adding, "He was groping me, I tried to leave, tried to break away, that's when he

grabbed my neck. And at that point I was just looking at him, didn't know what to do, didn't know what to say."

"Then he held me by my neck and physically forced me over to the side of the couch," she continued. "That's when he continually had one hand around my neck and with his other hand pushed me over to the side of the two chairs um, turned me around and bent me over and lifted up my skirt." She told police that "at that point I was just kinda scared and I said no a few times," adding she said no "when he lifted up my skirt" and again "when he took off my underwear."

When asked by police how she knew Bryant had heard her, she replied, "Because every time I said no he tightened his hold around me."

The accuser said that, with one arm still around her neck, Bryant "would lean his face real close to me and ask me questions." The question: "You're not gonna tell anybody right."

"I said no. And he didn't hear me or asked me to say it louder. Wanted me to turn around and look at him while I said it," she told police. She said that Bryant asked her the question "three or four" times, and her response every time was "no" because "I was scared that if I told him yes, I'm gonna tell somebody, I'm gonna get out of here now, that he would become more physical with me. Or try harder to keep me in there."

"And then," she said, "he lifted up my skirt, took off my underwear and, and came inside me." She continued: "That's when he kept coming inside me and then he leaned his face toward mine and asked me if I liked it when a guy came on my face, I said no. Then he was like what did you say. Grabbed and like tightened his hold on my neck, I said no. He said he was gonna do it anyway. And then at that point I got a little bit more aggressive with him and tried to release his hands from my neck. And he was still behind me and at that point he's still choking me, I was not trying as hard as I could of to get away, but I was still trying."

The penetration, she told police, lasted about “five minutes,” during which time she was crying, saying that the crying began “when he was coming inside, or started having sex with me.”

During the sex, Bryant reportedly said, “I like Vail, Colorado.”

“When I started to get a little bit more aggressive, tried harder to get away, that’s when he stopped,” she said. “I stood up and turned around and he forced me to stay in the room until I had calmed down a little bit. Made me fix my hair and wash my face.”

Afterward, she told officers that Bryant issued her a warning. “[This] is just between the two, the two of us nobody is gonna know about this, you’re not going to tell anybody. Not asking me just telling me.”

Bryant’s version of the events differed from the accuser’s. He was questioned by police at around 11:30 p.m. the day after the alleged sexual assault at the Lodge & Spa at Cordillera.

“Um, she showed me around the pool, showing me around, um, we went to my room, she showed me the back view where the bears come up to the window, and that’s about fucking it, we shot the shit and that was it,” Bryant told police. He then denied three times that anything had happened with the woman to police, and when informed that the accuser had made an allegation of sexual assault against him, told the officers, “Is there any way I can settle this whatever it is, I mean...?” asked Bryant. “If my wife, if my wife found out that anybody made any type of allegations against me, she would be infuriated.”

When police informed him that the accuser had submitted to a physical exam and they’d taken semen and blood evidence from her person, Bryant admitted that the two had sex. “Uh, this is what I need to know because uh, I did have sexual intercourse with her,” said Bryant, adding, “It was totally consensual.”

Bryant told the officers that when he and the accuser got back to the room, she showed him her back tattoo and then kissed him, and they began to kiss. When the officers asked Bryant whether she said no or resisted, Bryant replied, “OK. I’m thinking, I’m thinking, I’m thinking. (Pause.)

I'm trying to think of the conversation we had."

He admitted that he "held [the accuser] from the back" and that the sex lasted "about five minutes."

The officers then asked Bryant, "Did you ever ask her if you wanted, if you could cum in her face?" "Yes," Bryant replied, adding, "That's when she said no. That's when she said no. That's when she said no."

Bryant contended that the woman gave him oral sex for approximately "five seconds" prior to the sex, and that everything was "consensual."

At one point, when police described the accuser as "attractive," Bryant corrected them. "She wasn't that attractive," said Bryant. Then, when officers asked him about "finishing," he replied, "I didn't finish a fucking thing," adding, "I jerked off when she left." When asked by officers if he'd ever cheated on his wife before, Bryant replied, "Um, yes, with one other person. And she could actually testify I do that um, I do the same thing, I hold her from the back, I put my hands (inaudible)."

"Her name is Michelle," continued Bryant, adding she's a "frequent" partner of his.

Police then inform Bryant that the accuser "has a bruise on her neck," to which he replied, "Yeah I mean that's you know me and Michelle, that's what we, we do the same thing," said Bryant. When officers ask Bryant how often he has sex with "Michelle," he replies, "A lot. She'll tell you the same shit."

In a supplemental police report, Det. Winters described a strange encounter with Bryant in which he hurled a T-shirt containing semen into the officer's face. The accuser's name is redacted.

"During our conversation with Bryant, we asked him since he didn't ejaculate in [redacted] if he

ejaculated later. Bryant stated he did,” read Det. Winters’ report. “We asked Bryant where did he ejaculate. He stated he ejaculated onto a white T-shirt after [redacted] left. We asked Bryant if we could have that T-shirt. He agreed. I remember Detective Loya following Bryant into Bryant’s room and I followed them. I did not see where Bryant got the T-shirt from. However, Bryant stated that the T-shirt he was holding was the T-shirt he ejaculated into. He then threw the T-shirt at me. I told Bryant not to throw it at me because I would come pick it up in a safe location. I caught the T-shirt around the neck region. Bryant told me he didn’t ‘shoot it’ that far up. Meaning he didn’t ejaculate that far up the T-shirt.”

And in another supplemental report in Bryant’s case file, he chose to invoke Shaquille O’Neal’s name during the investigation—for reasons unclear.

According to the police report, while he was being questioned by the officers about the alleged sexual assault, Bryant said, “I should have done what Shaq does,” adding, “Shaq gives them money or buys them cars, he has already spent one million dollars.” The report added, “Kobe stated that Shaq does this to keep the girls quiet.”

On July 12, Bryant issued his first statement about the case to the Los Angeles Times, saying, “When everything comes clean, it will all be fine, you’ll see. But you guys know me, I shouldn’t have to say anything. You know I would never do something like that.” Four days later, he made his first public appearance since the allegations emerged, walking the red carpet with his wife Vanessa at the ESPY Awards at Hollywood’s Kodak Theatre. And on July 18, after he was formally charged with sexual assault and false imprisonment, Bryant held a news conference where, with his wife by his side, he contested the charges against him.

“I didn’t force her to do anything against her will. I’m innocent,” he said. “I sit here in front of you guys furious at myself, disgusted at myself for making a mistake of adultery.”

During the preliminary hearing, Det. Winters testified that the accuser had been examined the day after the alleged assault by Sexual Assault Nurse Examiners (SANE) at the Valley View Hospital in Glenwood Springs, Colorado.

“[The nurse] stated that there were several lacerations to the victim’s posterior fourchette or vaginal area, and two of those lacerations were approximately one centimeter in length,” testified Det. Winters. “And there were many, I believe, 2 millimeter lacerations. Too many to count... [The nurse] stated that the injuries were consistent with penetrating genital trauma. That it’s not consistent with consensual sex.”

Det. Winters further stated that the nurse told him the vaginal injuries had most likely occurred within “24 hours,” and that the accuser had “a small bruise on her left jaw line.” Also, that examiners had found “blood excretions” on Bryant’s T-shirt “to about the waistline.” The blood, testified Det. Winters, had “the same DNA profile as the victim in this case.”

Bryant’s defense team, on the other hand, brought up the accuser’s past sexual history. The accuser stated that she’d had consensual sex on June 27 or 28, and when the panties she wore to her medical exam the following day were tested, they found semen and a hair follicle that did not belong to Bryant. These were, for clarification purposes, a separate pair of panties she put on and wore to her exam—not the panties from the night in question, which were collected and tested separately—and the accuser claimed she’d accidentally put on a pair of dirty panties for the exam. Bryant’s defense team claimed that the vaginal trauma suffered by the accuser could have been from having “multiple partners” in a short time span, though Det. Winters had testified that a nurse told him the injuries had likely occurred in the past 24 hours.

Furthermore, Bryant’s defense team focused on how the accuser admitted she was “excited” to meet Bryant—allegedly requesting an autograph of him prior to the alleged sexual assault—and called the accuser’s mental state into question. Authorities claimed that Bryant’s accuser had been hospitalized four months prior to the alleged sexual assault, and when campus police arrived to her dormitory at the University of Northern Colorado, they determined she was “a danger to herself.” A former friend of the accuser’s, who said she’d lived with the woman before they had a falling out, told authorities that the accuser had tried to commit suicide twice before the alleged sexual assault by attempting to overdose on sleeping pills, reported the Associated Press.

We may never know what happened in that hotel room between Kobe Bryant and his accuser. But we do know that in the wake of the rape case, after losing endorsement campaigns with McDonald's and Nutella, and being benched by Nike, Bryant resumed his status as lucrative pitchman in July 2005, when Nike began using photos of the athlete for the first time since the assault allegation.

Of the decision to bring Bryant back into the fold, Nike spokesman Rodney Knox told USA Today, "Nike agrees with most NBA observers that Kobe ranks among the very best players in the NBA."

Fake News, Manufacturing Consent

Watch the film Manufacturing Consent from [YouTube](#) and the animated [documentary based on the book](#).

The mass media are drawn into a symbiotic relationship with powerful sources of information by economic necessity and reciprocity of interest. The media need a steady, reliable flow of the raw material of news. They have daily news demands and imperative news schedules that they must meet. They cannot afford to have reporters and cameras at all places where important stories may break. Economics dictates that they concentrate their resources where significant news often occurs, where important rumors and leaks abound, and where regular press conferences are held. The White House, the Pentagon, and the State Department, in Washington, D.C., are central nodes of such news activity. On a local basis, city hall and the police department are the subject of regular news "beats" for reporters. Business corporations and trade groups are also regular and credible purveyors of stories deemed newsworthy. These bureaucracies turn out a large volume of material that meets the demands of news organizations for reliable, scheduled flows. Mark Fishman calls this "the principle of bureaucratic affinity: only other bureaucracies can satisfy the input needs of a news bureaucracy." Government and corporate sources also have the great merit of being recognizable and credible by their status and prestige. This is important to the mass

media. As Fishman notes, Newsworkers are predisposed to treat bureaucratic accounts as factual because news personnel participate in upholding a normative order of authorized knowers in the society. Reporters operate with the attitude that officials ought to know what it is their job to know.... In particular, a newsworker will recognize an official's claim to knowledge not merely as a claim, but as a credible, competent piece of knowledge. This amounts to a moral division of labor; officials have and give the facts; reporters merely get them. Another reason for the heavy weight given to official sources is that the mass media claim to be "objective" dispensers of the news. Partly to maintain the image of objectivity, but also to protect themselves from criticisms of bias and the threat of libel suits, they need material that can be portrayed as presumptively accurate. This is also partly a matter of cost: taking information from sources that may be presumed credible reduces investigative expense, whereas material from sources that are not prima facie credible, or that will elicit criticism and threats, requires careful checking and costly research. [...] To consolidate their preeminent position as sources, government and business-news promoters go to great pains to make things easy for news organizations. They provide the media organizations with facilities in which to gather; they give journalists advance copies of speeches and forthcoming reports; they schedule press conferences at hours well-geared to news deadlines⁴ they write press releases in usable language; and they carefully organize their press conferences and "photo opportunity" sessions. It is the job of news officers "to meet the journalist's scheduled needs with material that their beat agency has generated at its own pace." In effect, the large bureaucracies of the powerful subsidize the mass media, and gain special access by their contribution to reducing the media's costs of acquiring the raw materials of, and producing, news. The large entities that provide this subsidy become "routine" news sources and have privileged access to the gates. Non-routine sources must struggle for access, and may be ignored by the arbitrary decision of the gatekeepers. It should also be noted that in the case of the largesse of the Pentagon and the State Department's Office of Public Diplomacy, the subsidy is at the taxpayers' expense, so that, in effect, the citizenry pays to be propagandized in the interest of powerful groups such as military contractors and other sponsors of state terrorism.

Discussion questions

- 1) Who is Noam Chomsky? Discuss his background and major works.
- 2) What is Chomsky's thesis?

- 3) Discuss the excerpt posted above.
- 4) What is Chomsky's propaganda model in corporate mass media?
- 5) Has the internet changed Chomsky's thesis? Or does it still apply to today's world?
- 6) How well does Chomsky's framework apply to media-government relations in Canada?
And what about other countries?
- 7) What are the 5 filters of editorial bias? Look for examples online.
- 8) What is the main thesis of Edward Herman's book Corporate Control Corporate Power?
- 9) Find a news article or a TV news story. Analyze the news outlet and the article/story from Chomsky's propaganda model.

Fake news

Before Trump: the real history of fake news

Made-up facts and boastful dissimulators have been with us for hundreds of years but do you know your taradiddlers from your ultracrepidarians?

Steven Poole

Fri 22 Nov 2019 14.00 GMT

As the UK slouches towards yet another general election, the social media giants have adopted contrasting approaches to the problem of dishonest campaigning. Twitter has banned political ads altogether, while Facebook will serenely allow them to spread falsehoods. Indeed, it is often supposed that the age of Trump and Brexit heralds something new: the political supremacy of the lie absolute, the cynical fabrication, the bot-netted virality of fake news. But old words buried in the geological strata of the English language tell quite the opposite story, that made-up facts and boastful dissimulators have always been with us. To unearth and polish these fossils may act as some small consolation, while providing resources for expressive resistance to the ongoing omnishambles.

Last month, the European commission cautiously welcomed some self-assessment reports from

Facebook, Twitter, Google, Microsoft and Mozilla under the aegis of its Code of Practice on Disinformation, while noting sorrowfully that “large-scale automated propaganda and disinformation persist”. The word “disinformation” – probably derived from the Russian *dezinformacija* – stems from the earliest years of the cold war, and properly means sowing falsehoods among one’s enemies in order to confuse them about one’s own capabilities or intentions. But the more general term “misinformation” – spreading untruths – has been around since the late 16th century. Samuel Johnson, writing of the king of Prussia in 1756, said his subject “declares himself with great ardour against the use of torture, and by some misinformation charges the English that they still retain it”.

The age of post-truth stretches as far back as you care to look, there never having been a golden age of perfect transparency

The age of post-truth, indeed, stretches as far back as you care to look, there never having been a golden age of transparency. The ubiquity of fake news and scientific misinformation was already a serious problem for leading thinkers of the Renaissance. In his *Novum Organum* (1620), the natural philosopher Francis Bacon describes for the first time the psychological phenomenon that underlies so much of our modern worries about trust and truth – what would only much later be christened “confirmation bias”. Our minds, he notes, tend to lend more weight to “affirmative” (or positive) than to negative results, so a person is likely to “seize eagerly on any fact, however slender, that supports his theory; but will question, or conveniently ignore, the far stronger facts that overthrow it”. In the book, Bacon considers the factors that lead people’s thinking astray, which include wrong-headed notions accepted from bad philosophy and science, various “systems now in vogue” – and inaccurate language: “The ill and unfit choice of words wonderfully obstructs the understanding.”

Such obstruction of the understanding is often, of course, deliberate. A political leader might spread misinformation about foreigners in order to make himself look better by comparison. Other occupants of high office might become so habituated to telling falsehoods in matters both grave and trivial that they deserve the splendid old title of “taradiddler”. The noun “taradiddle”, for the lie itself, is attested from 1796, in Grose’s *Classical Dictionary of the Vulgar Tongue*, where it is defined as “a fib, or falsity” – perhaps from “diddle” meaning to cheat, with the

exclamation “tara!” bolted on to the front. In 1885 the English biologist Thomas Henry Huxley, known as “Darwin’s bulldog” for his championing of natural selection, wrote to a friend: “Everybody told us it would be very cold, and, as usual, everybody told taradiddles.”

Politicians may be apt to spread misinformation, too, if they like to discourse on subjects about which they have no expertise. This, of course, is a long-identified human flaw, for which the most satisfying word is “ultracrepidarian”: someone who opines beyond his expertise. It first appears in a letter by William Hazlitt, though an earlier version, “ultra-crepitast”, is recorded in 1640. The term might usefully be applied today to presidents who claim to “know more about drones than anybody”, as well as to all manner of media celebrities and low hacks.

A plausible manner and confidence in speech may lend weight to claims that are fake news – or, let us more nobly say, “factitious”. What is factitious is, oddly, not a fact. Both words derive ultimately from the Latin *facere*, to make or do, but while a fact (Latin *factum*) is something done, a factitious thing (Latin *facticius*) is something “of the made sort”, something manufactured or artificial – and so, in English, often deceptive, false or inauthentic. Perhaps, just as Stephen Colbert’s coinage “truthiness” means the quality of seeming but not really being true, we might employ “factitiousness” for the quality of seeming to have, but not really having, something to do with the facts.

Like Bacon’s *Novum Organum*, the word “factitious” (first recorded 1624) comes from a much earlier age of worries about the reliability of information. In 1646, the physician and philosopher Thomas Browne published his *Pseudodoxia Epidemica*, a title you might translate topically as “An Epidemic of Fake News”, concerning the “vulgar errors” and superstitions of the age. Among the rogue’s gallery of mischievous agents of misinformation portrayed are “Saltimbancoes, Quacksalvers, and Charlatans”. This is the first recorded use in English of the word “saltimbanco”, to mean “an itinerant charlatan who sold supposed medicines and remedies” (OED). The word derives from the Spanish *salinbanco*, which in turn comes from the Italian phrase *saltare in banco*: to jump on to a bench, as the travelling quack would do in the street to attract an audience. (Happily, *mountebank* means exactly the same thing, formed from the Italian *monta in banco*.)

The internet is the biggest imaginable bench for today's saltimbancoes to leap on to, in order to fish for their gudgeons

Saltimbancoes would not be so much of a problem if people were able to resist their false promises, but the fact that this is difficult was also a phenomenon discussed earnestly 400 years ago. A "gudgeon" is a little fish (*Gobio fluviatilis*), which is "of pleasant taste", so someone records in 1620, and which anglers often use for bait to catch larger fishes. It is not the cleverest of fish; indeed, remarks a 17th-century gentlemen's manual, gudgeons "are Fish of eager bite and soonest deceived". Which is why a "gudgeon", from the early modern era, could also be a credulous, gullible person. In Reginald Scott's important sceptical history of supposed black magic, *The Discoverie of Witchcraft* (1584), the author describes the practice of inserting needles into a wax figurine of someone you wish to harm, and judges: "They would do no harm, were it not to make fools, and catch gudgins." The same can be said of cults and quackeries to this day. Though the existence of the internet in principle ought to make it easier to refute disinformation, that is in practice hard to do when putting one's mouth to the firehose of digital lies every time one looks at a smartphone. Indeed the internet is really the biggest imaginable bench for today's saltimbancoes to leap on to, in order to fish for their gudgeons.

The online world, too, is a fertile breeding ground for zombie ideas: long-refuted notions – such as the Flat Earth conspiracy or the idea that the MMR vaccine causes autism – that are the living dead of intellectual exchange. But this is not a new phenomenon either, as witnessed by the history of the word "mumpsimus", in the sense of "a person who obstinately adheres to old ways in spite of clear evidence that they are wrong" (OED). The Renaissance scholar Erasmus tells the story of its origin like so: once upon a time, an illiterate English priest was scolded for having read "quod ore mumpsimus" in the Latin Mass when he should have said "quod ore sumpsimus" (literally, "what we have received by mouth"). The priest replied heroically: "I will not change my old mumpsimus for your new sumpsimus." And nor will all too many people today.

It might be no shame to fall victim to fallax, but people in thrall to a mumpsimus could be the 'sequacious' type in general

But it has long been recognised that it is not necessarily their fault, as evidenced by the useful old word "fallax", from 1530. Now, dictionaries will tell you that "fallax" is just an obsolete

form of the word “fallacy”, but the special sense of the former is of something either especially likely to mislead, or deliberately created to do so. In his 1656 dictionary, *Glossographia*, Thomas Blount defines a fallax as “a thing that’s apt to deceive”, and it is this sense of a powerful trap lurking in wait for the unwary that seems worth preserving, as long as the deliberate elevation of fallax by those in power continues.

It might be no shame to fall victim to fallax, but some people in thrall to one mumpsimus or another could well be the “sequacious” type in general: from 1653, an adjective for an unquestioning acolyte, a slavish adherent of some person or school of thought. It is derived from the Latin *sequāx*, a follower, and can also be used of biddable beasts, or tractable objects, though its psychological meaning seems still the most relevant. The poet and playwright James Thomson defined a philosopher as one opposed to the sequacious multitude in his “Summer: A Poem” (1730): “The vulgar stare; amazement is their joy, / And mystic faith, a fond sequacious herd! / But scrutinous Philosophy looks deep, / With piercing eye, into the latent cause; / Nor can she swallow what she does not see.”

As we brace for yet more Trump and Brexit in 2020, the identification of any modern collection of persons that might be thought to comprise a “sequacious herd” is here left as an exercise for the reader.

Steven Poole’s *A Word for Every Day of the Year* is published by Quercus

Discussion questions

- 1) What is fake news?
- 2) How do you know if something you read is true? Why should you care?
- 3) What is the origin of fake news?
- 4) Why is there fake news?
- 5) How does fake news spread?
- 6) How many viral posts — whether articles, videos or photographs — do you click on each week? How many on average do you share on social media?

- 7) How often do you check to make sure what you are sharing or commenting on is real?
How do you go about finding that out?
- 8) What was the role of fake news in the 2016 US Presidential Election?
- 9) What is post truth?
- 10) What is the connection between fake news and social media?
- 11) What are some initiatives to deal with fake news?
- 12) How can you tell fake news from real news?
- 13) Do an online search of articles that can be considered fake news.

Law Schools in the news

Please read the following articles and discuss the questions in small groups:

**Still seeking law school, Trinity Western drops sexual 'covenant' for students
National Post**

The move, TWU's president says, is to signal to the wider community, including potential students, that it does not discriminate against LGBTQ students or others

A Christian university in British Columbia that lost a Supreme Court battle to create an evangelical law school has dropped its controversial requirement for all students to sign a contract that forbids any sex outside heterosexual marriage.

Many observers, including some who intervened in the court case, saw this as a preliminary step toward a renewed push for an accredited law school. Trinity Western University, in Langley outside Vancouver, first announced plans to offer legal degrees in 2012, only to find itself locked in litigation with law societies in Ontario and B.C., which refused to accredit it.

The school's new motion, passed last week but only released Tuesday, reads: "In furtherance of our desire to maintain TWU as a thriving community of Christian believers that is inclusive of all students wishing to learn from a Christian viewpoint and underlying philosophy, the Community Covenant will no longer be mandatory as of the 2018-19 Academic year with

respect to admission of students to, or continuation of students at, the University.”

The decision removes the primary problem considered by the Supreme Court in its June decision, which was the mandatory nature of the “Community Covenant.” The court found the Law Society of Ontario’s refusal to accredit the school “represents a proportionate balance” between freedom of religion and the law society’s own statutory goals, which include “equal access to the legal profession, diversity within the bar, and preventing harm to LGBTQ law students.”

Ontario’s Ministry of the Attorney General on Tuesday directed questions on possible future law school accreditation to the Law Society of Ontario, which said it is “premature to speculate.”

Bob Kuhn, president of TWU, said the move is an effort to signal to the wider community, including potential students, that it does not discriminate against LGBTQ students or others. He said it was “not about the law school.

“It’s meant to say that nothing that’s been discussed over the past few years during the law school battle should make anyone feel unwelcome,” he said. He said the school felt all along that it was on the right side of the law, backed by an earlier Supreme Court precedent.

“The theological, biblically based definition of marriage (hasn’t) changed, in our perspective. That continues to be something we adhere to as a principle. It’s a question of application, and the application of that principle to students or prospective students.

“And (this policy change) is to clarify the fact that we will not discriminate ... no matter how that’s defined, with respect to LGBTQ (people) or people of other faiths. But that perspective has not necessarily been the one that’s been understood by much of the public, or in fact, perhaps, some students, who would otherwise find Trinity Western a very welcoming and inclusive place,” he said. “I think it’s long overdue,” said Cam Thiessen, who dropped out of

TWU's Masters program in biblical studies last year because it was too stressful an environment to study in.



He never actually signed the covenant because he objected to a school trying to control the sexual lives of its students, and the “blatant homophobia” of its language. “I just kind of ignored them,” he said. “No one came for me and I got my credits.” Thiessen, who now identifies as non-binary and bisexual, said it was frustrating to see so much money from donations being used to fund a legal battle that so many of its students regarded as unnecessary.

Richard Moon, a law professor at the University of Windsor and an expert on religious freedom, said he expects the law societies that declined to accredit TWU will now move to accredit, if asked again. But he noted that the sexual morality covenant was not the only source of constitutional trouble.

The Supreme Court only decided that it was not unreasonable for the law societies to refuse to accredit based on the mandatory morality covenant. There are other ways a Christian law school could discriminate, Moon said, especially in an educational market in which law school places are few and the demand is high.

The school was proposed as a place to make Christian lawyers from Christian students who do not feel comfortable in secular law schools. Preserving that status will require a way to “favour

Evangelical students and, in effect, disfavour non-Evangelicals,” Moon said, and even though non-Evangelicals are not a marginalized group, discriminating based on religious commitment raises similar problems as discriminating based on sexual orientation.

Brian Gover, president of the Advocates’ Society, said it was important for the Supreme Court to recognize the value of diversity, “especially among those aspiring to join the legal profession, who stand to be in practice for decades.”

“An environment where exclusion is considered acceptable does not equip aspiring lawyers to practice in a profession that’s designed to protect the public,” he said. Making the signing of a morality covenant voluntary does not resolve this problem, he said, in part because this is being asked of young people by an institution that “holds all the cards.”

“I question how voluntary it is,” he said.

Philip Horgan, president of the Catholic Civil Rights League, said he was happy with the news, but that it remains to be seen whether the Ontario government will approve a renewed push for accreditation.

He said the school has been at the “top tier” of other academic pursuits, and that as a school driven by Christian morality, is “fills a niche,” by assuring both students and fee-paying parents that their religious values can infuse their studies.

Dropping the covenant was clearly a compromise, though. He said his organization’s understanding of pluralism has been “put on its ear by the TWU decision ... The constitutional matrix of the country has been upset.”

“My sense is they’ve obviously taken stock and perceived that the benefit of a Christian law school outweighs the concerns of a communal shared enterprise,” he said.

“It is up to the individual religious community to make their decision on what happens at the

end of the court process,” said Barry Bussey, director of legal affairs for the Canadian Council of Christian Charities. But he argued that there has been a broader “legal revolution” against the place of religion in constitutional law. “The movement seems to be a retraction of religious accommodation,” he said.

Now that this one barrier has been removed, he said the key question for the future is whether the legal community can allow a Christian law school to exist.

“That’s going to be fascinating,” he said.

- To what extent should law schools be involved in the personal lives of students, if at all?
- What is your opinion of a covenant for students not to engage in premarital sexual intercourse? What could the pros and cons be of such a covenant?
- Should religion and legal education remain separate? Why? Why not?
- What are the advantages of receiving a legal education from a religious perspective? Disadvantages?

The Depressing Secret to Getting Good Law School Grades

Above the Law

Want some depressing law school news? Your chances of getting an A or A- in your first year of law school (of vital importance for a lot of prestigious opportunities like law review, clerkships and Biglaw) are improved if you look like your professor. According to a new study looking at law school grades, when the gender and race of a law prof matches that of the student the student is more likely to achieve top marks in the subject. So, white male students with a white male professor are, yet again, at an advantage. Great.

As reported by Law.com, the study (based on data from an anonymous private law school in the top 100 of the U.S. News & World Report ranking), was conducted by by Boise State University

professor Christopher Birdsall, American University professor Seth Gershenson and Virginia Tech University professor Raymond Zuniga and funded by AccessLex, and found that 1Ls were 3 percent less likely to get an A or A- when the class was taught by someone of the opposite sex. Students with law professors of a different race fared even worse — they were 10 percent less likely to receive an A or A-. The issue was compounded for female law students of color. In a year long classes of the same subject, having opposite-sex or different-race professor in the fall also had a negative impact on the student's spring grade. The only good(ish) news is that this demographic mismatch did not have an impact on a student's chances of getting a grade lower than a B-.

The reason behind the numbers? Something called the role model effect or stereotype threat. That's when students feel pressure to achieve past the perceived stereotypes of their identity group. This effect has been studied before, but only on the elementary, high school and undergraduate levels. Looking at the phenomenon in law schools is pretty new:

“These results provide novel evidence of the pervasiveness of role-model effects in elite settings and of the graduate-school education production function,” according to the paper, titled “Stereotype Threat, Role Models and Demographic Mismatch in an Elite Professional School Setting.” The perception has long been that at the elite law school level, the role model effect would no longer be detectable. But the study disproves that theory and shows just how important faculty diversity is for law students: “Student-instructor demographic mismatch continues to harm the academic performance of even elite law school students, whom we might falsely deem impervious to such threats, given that they are college graduates who successfully navigated the law school application process,” the authors wrote. While the difference in grades for students with demographically mismatched professors may seem small, it is still statistically significant and has a meaningful impact on the grades — and opportunities — of law students:

“While small in magnitude, recall that these are course-specific effects that might add up to nontrivial differences in cumulative GPA that preclude underrepresented students from prestigious internships or alter the class rankings in ways that affect initial job placements and starting salaries,” the paper reads. Once again we see that diversity is more than just an esoteric,

liberal goal — it has measurable, direct repercussions for law students and the legal profession as a whole:

“These results suggest that diversity in the legal profession, and the status of women and people of color in the legal profession, would be improved by increasing the diversity of law school faculty,” the paper reads. Hopefully, this data will support efforts to increase the diversity of law school faculties.

- What do you think about the results of the study? Do you think there should be more studies to prove this theory? Do you agree/disagree with it, based on your experiences as an undergraduate student?
- What can law schools do to remedy this potential problem?
- Do you think this problem applies only to Law Schools? Why or why not?
- Do an online search of similar studies in Higher Education.

Class 9 Feb. 4 Free Speech on Campus

A Yale student is pushing back against the culture on campus, arguing Monday that students are only being exposed to one set of ideas.

"Students need to be exposed to ideas that are uncomfortable to them to become better leaders. Yale is becoming saturated by a particular ideology and, when you become saturated by one ideology, it can stunt your intellectual and emotional growth," said Esteban Elizondo, lamenting that climate protesters disrupted last weekend's Harvard-Yale football game.

The Yale senior and research assistant told "Fox & Friends" host Ainsley Earhardt that he believes the problems are not rooted with professors and faculty, but with the "non-academic bureaucracy that is suffocating the university with its leftist agendas."

Elizondo said the protesters who stormed onto the field last Saturday have an "unwarranted sense

of moral superiority" and are being "empowered" by university leaders.

Writing in a New York Post op-ed, Elizondo agreed with the characterization of the protest as "the college-version of a toddler's meltdown," adding he is "constantly stunned by the childish behavior of my peers, who are voting-age adults attending what is supposedly one of the most prestigious colleges in America."

"This sense of immunity from the real world could be heard at last Saturday's protest, where some students shouted "My father is a lawyer!" to police officers trying to persuade them off the field. These protesters did not sound like people who have faced true hardship or even learned the basics of a proper argument. But then again, why would they? They were taught to avoid all that at Yale," he concluded in the piece.

Officials said 42 people were charged with disorderly conduct due to the protest, during which students and alumni from both schools occupied midfield during halftime. Some held signs demanding that Ivy League schools divest from the fossil fuel industry. Others had signs that raised issues about Puerto Rican debt and the treatment of the Uighurs of China.

- 1) What is the article about?
- 2) Do you agree with the author's main argument?
- 3) What are the legal rules on Free Speech in the United States?
- 4) What are the legal rules in Canada?
- 5) Is there free speech on campus? Are there any limits?
- 6) Is there self-censorship on campus?

Self-Censorship on Campus Is Bad for Science

Amid heightened tensions on college campuses, well-established scientific ideas are suddenly meeting with stiff political resistance.

MAY 28, 2019

Luana Maroja

Professor of biology at Williams College

I have taught evolution and genetics at Williams College for about a decade. For most of that

time, the only complaints I got from students were about grades. But that all changed after Donald Trump's election as president. At that moment, political tensions were running high on our campus. And well-established scientific ideas that I'd been teaching for years suddenly met with stiff ideological resistance.

The trouble began when we discussed the notion of heritability as it applies to human intelligence. (Heritability is the degree to which offspring genetically resemble their parents; the concept can apply not only to physical traits, but also to behavioral ones.) In a classroom discussion, I noted that researchers have measured a large average difference in IQ between the inhabitants of the United States and those of my home country, Brazil. I challenged the supposed intelligence differential between Americans and Brazilians. I asked students to think about the limitations of the data, which do not control for environmental differences, and explained that the raw numbers say nothing about whether observed differences are indeed "inborn"—that is, genetic.

There is, of course, a long history of charlatans who have cited dubious "science" as proof that certain racial and ethnic groups are genetically superior to others. My approach has been to teach students how to see through those efforts, by explaining how scientists understand heritability today, and by discussing how to interpret intelligence data—and how not to.

In class, though, some students argued instead that it is impossible to measure IQ in the first place, that IQ tests were invented to ostracize minority groups, or that IQ is not heritable at all. None of these arguments is true. In fact, IQ can certainly be measured, and it has some predictive value. While the score may not reflect satisfaction in life, it does correlate with academic success. And while IQ is very highly influenced by environmental differences, it also has a substantial heritable component; about 50 percent of the variation in measured intelligence among individuals in a population is based on variation in their genes. Even so, some students, without any evidence, started to deny the existence of heritability as a biological phenomenon.

Similar biological denialism exists about nearly any observed difference between human groups, including those between males and females. Unfortunately, students push back against these

phenomena not by using scientific arguments, but by employing an a priori moral commitment to equality, anti-racism, and anti-sexism. They resort to denialism to protect themselves from having to confront a worldview they reject—that certain differences between groups may be based partly on biology. This denialism manifests itself at times in classroom discussions and in emails in which students explain at length why I should not be teaching the topic.

To my surprise, some students even objected to other well-established biological concepts, such as “kin selection,” the idea that, when individuals take actions for the benefit of their offspring and siblings, they are indirectly perpetuating their own genes. Startled students, falling into what we call the “naturalistic fallacy”—the notion that what occurs in nature is good—thought I was actually endorsing Trump’s hiring of his family! Things have gone so far that, in my classes, I now feel compelled to issue a caveat: Just because a trait has evolved by natural selection does not mean that it is also morally desirable.

The duty of scientists is to study the world—including the human body and mind—as it is. Some of our students, however, are seeing only what they want to see and denying real-world phenomena that conflict with their ideology. Take, for example, the obvious biological differences between the sexes, not only in physical traits (men, on average, are clearly stronger and faster than women are), but also in aptitudes and preferences (boys generally prefer wheeled toys, and girls prefer plush toys, a preference that is also observed in baby monkeys!).

People expect an equal sex ratio across academic professions and sometimes ascribe the lack of such equality to bias. In the so-called STEM fields—science, technology, engineering, and mathematics—the relative paucity of women is frequently taken to reflect endemic sexism. While this is undoubtedly a factor, the effect of bias as opposed to other factors, such as differences in what male and female students prefer, requires detailed empirical study.

One set of data challenges the idea that bias is the only cause of sex-ratio differences in the STEM fields. The so-called gender-equality paradox involves the observation that, while women and men around the world perform equally well on standardized science tests, countries with the highest proportion of women in STEM are not the ones with the least discrimination or sexual

harassment, but those with the greatest gender inequality. Where women are free to choose their own path and do not have to worry about pay, they gravitate toward the humanities. Countries such as Norway and Finland have relatively few women in STEM fields, while countries such as Algeria and Indonesia have an ample supply. However, when one assumes that everyone is a blank slate, differences between what males and females do can be explained only by bias and harassment. The conclusion is obvious: All STEM fields are cesspools of sex discrimination. This is what happens when ideology replaces biology. It's become taboo to even mention the possibility that men and women might have different preferences.

Sadly, students do not seem to realize that their good intentions may lead them to resist learning scientific facts, and can even harm their own goal of helping women and ethnic minorities. The existence of any genetic differences between males and females, or between different ethnic groups, does not imply that we should treat members of those groups differently. Denying reality and pretending that differences do not exist—as if this were the only possible path toward equality—is dangerous. If you believe that moral equality relies on biological equality, this makes your moral views susceptible to future research that might reveal biological inequalities. Instead, equality and equal opportunity for all should be the default position, regardless of potential biological differences.

When students at Williams or anywhere else try to protect their worldview by denying scientific evidence, it is bound to affect what professors teach and how they teach it. Campus norms proscribe any discourse that might offend women, minorities, or anyone perceived as a victim of patriarchal white societies. However, this rule, no matter how well intentioned, is harming the very people it aims to protect. The argument favoring a certain amount of self-censorship is that it is necessary to protect minority students from feeling unsafe when they hear what they see as “hate speech.” However, by not talking about science that some find unsettling, we deny students opportunities for learning and for intellectual empowerment. How well can they argue their positions effectively unless they are seeing the world as it really is?

BRIAN MIER

The US and Lawfare: Meet the Latin American leaders under investigation

Welcome to Lawfare, a new blog by Robert Chesney, Jack Goldsmith, and myself. For those readers familiar with our prior writings, our subject will come as no surprise: We mean to devote this blog to that nebulous zone in which actions taken or contemplated to protect the nation interact with the nation's laws and legal institutions. We will, I am sure, construe this subject broadly to include subjects as far-flung as cybersecurity, Guantánamo habeas litigation, targeted killing, biosecurity, universal jurisdiction, the Alien Tort Statute, the state secrets privilege and countless other related and not-so-related matters. . . .

The name Lawfare refers both to the use of law as a weapon of conflict and, perhaps more importantly, to the depressing reality that America remains at war with itself over the law governing its warfare with others. This latter sense of the word—which is admittedly not its normal usage—binds together a great deal of our work over the years. It is our hope to provide an ongoing commentary on America's lawfare, even as we participate in many of its skirmishes.

Since the term "lawfare" is controversial in some circles, and subject to a variety of interpretations and uses, a bit more explanation about our understanding of the concept is in order. Going back to the 1950s, the term has frequently been used in contexts wholly unrelated to national security, ranging from divorce law to courtroom advocacy to colonialism to airfare for lawyers. But its most prominent usage today very much concerns national security. Its first use in this context, seems to have appeared in "Unrestricted Warfare," a military strategy book written in 1999 by two officers in the People's Liberation Army who used the term to refer to a nation's use of legalized international institutions to achieve strategic ends. More significantly, however,

the term “lawfare” was popularized in the modern parlance in an influential 2001 paper by then-Air Force Colonel (and later General) Charles Dunlap, who is now the Executive Director of Duke Law School’s Center on Law, Ethics and National Security. As Jack explained in his first post on this blog:

[General Dunlap’s] most influential idea . . . is “lawfare.” I don’t think he was the first to coin the term but he certainly popularized it and was the first to analyze it seriously. General Dunlap first used the term in a 2001 paper that came on the heels of the 1999 Kosovo campaign, in which both lawyers and public debates about the legality of the war figured prominently. “Is lawfare turning warfare into unfair?,” he asked, and his basic answer was “Maybe.” General Dunlap defined “lawfare” as the “use of law as a weapon of war,” which he described as “the newest feature of 21st century combat.” The paper gave many examples of relatively weak U.S. adversaries using legal principles dishonestly and strategically to “handcuff the United States” in an effort to “exploit our values to defeat us.” After cautioning against overreaction and insisting on the importance of adherence to the law of armed conflict, he concluded that “there is disturbing evidence that the rule of law is being hijacked into just another way of fighting (lawfare), to the detriment of humanitarian values as well as the law itself.” General Dunlap subsequently wrote many more essays about “lawfare,” and in part (I think) to rebut misinterpretations or misappropriations of his work, he expanded the definition of the term to mean “the strategy of using – or misusing – law as a substitute for traditional military means to achieve an operational objective.”

At the time we launched this blog, “lawfare” in some quarters carried solely negative connotations. That is, for many people the terms signified, for better or worse, only the misuse or distortion of legal forms, as distinct from the broader, value-neutral sense involved in General Dunlap’s expanded definition. Many people who sought to make international and domestic law a more significant constraint on the prosecution of armed conflicts thought of the term as kind of political slur that equated legal challenges to government policies as tools of America’s enemies. And some who viewed such efforts suspiciously used the term in precisely this fashion. For example, an advocacy group called The Lawfare Project—which is devoted “to identifying, analyzing, and facilitating a response to lawfare in all of its manifestations”—insists that lawfare

“is not something in which persons engage in the pursuit of justice, and must be defined as a negative phenomenon to have any real meaning.”

We do not regard the term as having only negative connotations. For one thing, it seemed to us that the term also resonated on a symbolic level--as Ben’s initial post suggested--with the simple fact that in the post-9/11 era, there have been innumerable sharply-contested legal debates relating to national security—a “war” over the content of national security law, as it were. In addition, Jack’s initial post went on to “offer two examples in which lawfare in the ‘a weapon of war’ sense captures an important reality that is in no way derogatory towards the rule of law”:

First, there is a war of sorts going on over the content and applicability of the laws of war to terrorist activities. It is a war in which battles take place across the ocean (the United States and Europe disagree, for example, whether there can be a war against terrorist groups, and whether terrorists can be detained without trial or be tried in military commissions); between proponents and opponents of the Goldstone Report; between the ICRC and government lawyers about the meaning and applicability of “direct participation in hostilities”; and among lawyers representing alleged terrorists, government lawyers, and judges in the D.C. Circuit. All of the combatants in this “war” believe they are fighting on behalf of the international rule of law, properly understood, and all use legal argument strategically to achieve this end.

Second, it is natural, I think, to see contemporary U.S. counterinsurgency (COIN) operations as an attractive form of lawfare – especially those aspects that involve the construction of legal institutions as a tool to defeat insurgents. The latest example is the brand new Rule of Law Field Force (ROLFF) in Afghanistan, commanded by the redoubtable General Mark Martins. The basic idea of ROLFF is to revive governance and rule of law functions in the Pashtun south where the insurgency is strongest during the “hold” phase of COIN operations (i.e., just after an area has been cleared of insurgents). General Martins, his soldiers, and their Afghan partners are literally fighting to bring ordinary Afghans criminal justice capacity, dispute resolution services, and anti-corruption institutions, all with the aim of promoting the legitimacy of the Afghan government and defeating the insurgency. If that’s not “using law as a weapon of war” I don’t know what is. . . .

General Martins himself elaborated on his understanding of the term on this blog [here](#) and [here](#) and [here](#) and especially [here](#) and [here](#). He concluded, with Jack, that he was, in fact, engaged in lawfare:

This is affirmative lawfare in Afghanistan: a conscious and concerted reliance upon law to defeat those inside and outside of government who scorn it. Surely, it must be waged as part of a comprehensive COIN campaign and must be focused upon the building and protection of those key rule of law nodes and institutions—formal and informal—upon which the authorities’ legitimacy depends. Great care must also be taken to preserve the initiative of the individual troops who continue to shoulder the most dangerous and significant burdens of this decentralized conflict. But if prosecuted effectively within these ground rules, it may well prove decisive.

Many others are continuing to explore the lawfare concept in all its manifestations as well, as demonstrated by an excellent 2010 issue of the Case Western Reserve Journal of International Law (titled “Lawfare!”) that contains almost two dozen articles on the topic from various perspectives (including the latest views from General Dunlap himself). This blog will continue to address the topic explicitly as well, as occasions arise. More often, however, our focus has been and will continue to be directed to the merits of the underlying legal and policy debates themselves—the “Hard National Security Choices” that also form part of our title.

Discussion questions

- 1) What is lawfare?
- 2) What is its connection to national security?
- 3) What is the origin of the term?
- 4) Discuss the current impeachment inquiry in the United States. Is this an example of lawfare? Why or why not? What about the Russian investigation?
- 5) Why does it occur? Who organizes lawfare activities in the United States?

Lawfare in Latin America

In his academic paper, “The uncomfortable truths and double standards of bribery enforcement,” legal scholar Mike Koehler shows how the US government selectively uses the Foreign Corrupt Practices Act (FCPA) to advance its own objectives. According to Koehler uncomfortable truths related to US use of the FCPA include:

(i) how the U.S. government actively participated in bribery; (ii) how the highest levels of the U.S. government knowingly engaged in and supported private bribery; (iii) how the identity of the alleged bribe payer influenced the U.S. government’s enforcement of bribery laws; (iv) the subtle difference between U.S. government and private sector attempts to influence foreign government action; and (v) how the U.S. government employs overblown and inconsistent rhetoric regarding bribery enforcement.

It’s common knowledge that the CIA gave away bags of money to government officials in Afghanistan. So why would the US Department of Justice (DOJ), the US Securities and Exchange Commission (SEC) and the FBI be so worried about corruption in Latin America that the US government would prioritize the issue in the 2017 National Security Strategy? In Brazil, where a joint investigation between the SEC, FBI and DOJ with the federal police and public prosecutors office has resulted in one (indirect) impeachment and the probable imprisonment of ex-President Lula, who lifted 36 million people above the poverty line, for reforms to an apartment the prosecutors have been unable to prove he ever owned or set foot in, people are beginning to wonder if Odebrecht Construction Company is being used as a Trojan Horse by the US government to commit lawfare attacks against politicians who are not fully aligned with their geopolitical objectives. As the US government lines its pockets with fines collected during Lava Jato (\$210 million from Odebrecht and Braskem alone), I would like to take a look at which Latin American leaders have been arrested or accused and speculate as to why the US government may not consider them to be allies.

Michelle Bachelet – Ex-President of Chile

1200px-Portrait_Michelle_Bachelet

Legal Status: Plea bargain testimony by a corrupt businessman in exchange for sentence reduction results in charges against Bachelet for receiving illegal campaign contributions from OAS construction company.

Why the US doesn't like her: A lifelong Socialist, she was arrested and tortured by US trained military officers during the US-supported neofascist Augusto Pinochet dictatorship. Pinochet's officers also tortured her father to death. Furthermore, her government worked to undo the US-supported neoliberal policies of her predecessor by, among other things, instituting a welfare system and significantly increasing education spending. In January 2018 it was revealed that, mirroring tactics used by the Nixon administration to destabilize the Chilean economy before the coup of 1973, the World Bank deliberately lowered its investment rating for Chile during Bachelet's second term, "for political reasons" causing a 40% drop in foreign investment.

Lula da Silva – Ex-President of Brazil

20160311002351

Legal status: On the verge of going to jail for 12 years through the Lava Jato investigation based on one plea bargain testimony from a corrupt Odebrecht businessman who had his sentence reduced after agreeing to change his testimony to implicate Lula.

Why the US doesn't like him: Refusal to fully privatize the mixed capital Petrobras petroleum company. Keynesian protectionist policies for Brazilian industry. High minimum wages. Attempts to strengthen the BRICS, including moves to abandon the US dollar in petroleum trade with Iran. Most importantly, despite the corruption charges which most Brazilians believe to be fabrication, he is still the leading candidate in the 2018 presidential elections. The US does not want him back in power.

Dilma Rousseff – Ex-President of Brazil

Dilma_Rousseff_-_foto_oficial_2011-01-09_2_(cropped)

Legal Status: Widely and erroneously associated with Lava Jato corruption in the Anglo media, she was impeached and later declared innocent for a bookkeeping infraction called “fiscal peddling” which was legalized by Congress one week after she left office.

Why the US doesn't like her: She publicly criticized the Obama administration for spying on her and, shortly afterwards, negotiated a deal for fighter jets with Sweden's SAAB instead of Boeing. The deal included technology transfer, which Boeing refused to do, so that Embraer could start building them in Brazil and exporting to its neighbours. After the 2016 coup, US puppet ruler Michel Temer announced plans to sell Embraer to Boeing.

Jorge Glas – Vice President of Ecuador

jorgeglas

Legal Status: Arrested in October 2017 as part of the Lava Jato investigation for allegedly receiving bribes, based on the plea bargain of corrupt Odebrecht executive José Conceição Santos, who received a reduced sentence and partial asset retention in exchange for his testimony.

Why the US doesn't like him: He was a target because he was part of a socialist government that the US has been trying to overthrow since 2010. Ecuador is one of Venezuela's most important and vocal allies. Could the US have done this to prevent him from running for president?

Ollanta Humala – Ex-President of Peru

President-Ollanta-Humala1

Legal status: Arrested through Lava Jato investigation for alleged illegal campaign donations from Odebrecht in 2011, when he was elected against right wing populist candidate Keiko Fujimori.

Why didn't the US like him: Humala enthusiastically supported the South American integration project, UNASUR, which regularly criticizes imperialist US policy in Venezuela and other countries in the region

Alexandro Toledo – Ex President of Peru

alejandro-toledo

Legal status: convicted of taking bribes based on plea bargain testimony, he is currently a fugitive of justice.

Why the US doesn't like him: As president, Toledo brokered a bilateral free trade deal with the United States, but was also an enthusiastic participant in Mercosur, the trade block that made bi-regional deals with the European Union, is regularly criticized in the US business community and was victim of US espionage. Was he not conservative enough for the objectives of US hegemony?

Mauricio Funes – Ex-President of El Salvador

Mauricio-Funes2

Legal Status: Accused of money laundering by Lava Jato investigators, based entirely on plea bargains. He is currently living in exile in Nicaragua.

Why the US doesn't like him: He is a member of the FNLM. During the 1980s, US-armed and supported right wing military forces killed 60,000 members and supporters of the FNLM and committed countless cases of torture and rape. The fact that they managed to take power through democratic elections is a thorn in the side of neocons like Otto Reich, who managed to continue influence on the State Department during the Obama years, most notably on issues related to the coup in Honduras.

Ricardo Martinelli – Ex-President of Panama

ricardo-martinelli-berrocal-panama-presidente_LPRIMA20160927_0067_33

Legal Status: Arrested in Florida for spying in 2017, two of his sons are accused of receiving bribes from the Odebrecht construction company.

Why the US doesn't like him: Although not known for his center-left policies, Martinelli is a former friend and business associate of Donald Trump's, and he has been implicated in the Panama Papers scandal. Could he know too much about Donald Trump's crooked business deals?

Cristina Kirchner – Ex-President of Argentina

crisrina-fernandez copy

Legal Status: In the only anti corruption investigation mentioned in this article that is not, at least publicly, being conducted in tandem with the US, Cristina Kirchner is currently under lawfare attack by US-backed neoliberal president Mauricio Macri, who is relying exclusively on plea bargain testimony to accuse her of corruption in public contracting in Patagonia. Although not officially connected to the Lava Jato investigation, her lawyer recently resigned citing harassment and bullying of her family, lawfare tactics that have been used by US-trained Brazilian Lava Jato prosecuting judge Sergio Moro against Lula's attorneys.

Why the US doesn't like her: Kirchner implemented Keynesian macroeconomic policies to stimulate internal production and consumption, renationalized the water system and other utilities that were privatized under her neoliberal predecessors and was a faithful ally to Cuba, Venezuela, Bolivia and Ecuador, four governments that the US has a vested interest in overthrowing.

Who is the US not prosecuting?

Mauricio Macri – President of Argentina

President-Mauricio Macri

Upon taking office in 2015, Mauricio Macri immediately went to work undoing Kirshner's social welfare programs, privatizing state industries and implementing deep austerity policies, to the applause of the Obama administration and the Anglo media. Nevertheless, he has been embroiled in corruption scandals for years. One example is that Panama Papers documents implicate him laundering \$10 million in the Bahamas. In 2016, Diago Martinez, one of the investigators, complained that the Brazilian public prosecutors office was refusing to help in the investigation.

Michel Temer – President of Brazil

Brazil's acting President Michel Temer arrives to speak in Planalto presidential palace in Brasilia, Brazil, Thursday, May 12, 2016, after the Senate voted to suspend President Dilma Rousseff pending an impeachment trial. In his first words to Brazilians as acting president, the former vice president said his priority will be reviving Latin America's largest economy. (AP Photo/Felipe Dana)

Upon illegally taking office in 2016, Michel Temer immediately began selling off Brazil's patrimony to American companies and issued a decree to provide R\$1 Trillion in tax breaks to oil companies such as Chevron and Exxon, who have started taking over Brazil's offshore oil reserves. Temer has been involved in many corruption scandals during his political careers. Most recently, the Supreme Court heard accusations that he was involved in corruption, obstruction of justice and running an organized crime group which received R\$587 million in bribes. In a move that surprised few, the Brazilian Supreme Court, which has some of its own judges tied up in corruption scandals of their own, dismissed the charges.

If, as academics such as Mike Koelher assert, the US government has a double standard when it comes to support for foreign corruption investigations, it is clear that in the case of Latin

America, corrupt leaders who follow Washington Consensus guidelines get a free pass while leaders who don't fully align with American interests find themselves victims of lawfare.

Discussion questions

Choose one of the targets of lawfare in Latin America. Discuss their backgrounds and what happened to them. Discuss why you think they are/were lawfare targets.

Class 11 Feb. 11 Test



Class 13 Feb. 25 Surveillance and Privacy Rights

US government files civil lawsuit against Snowden over publication of memoir

Suit contends whistleblower published Permanent Record 'in violation of non-disclosure agreements' with both CIA and NSA Tom McCarthy in New York and David Smith in Washington Tue 17 Sep 2019 20.22 BST First published on Tue 17 Sep 2019 19.04 BST

The US government on Tuesday filed a civil lawsuit against Edward Snowden, a former CIA employee and National Security Agency (NSA) whistleblower, over the publication this week of his memoir. Snowden, the suit contends, "published a book entitled Permanent Record in violation of the non-disclosure agreements he signed with both CIA and NSA". The lawsuit alleges that Snowden published without submitting the book to the agencies for pre-publication review, "in violation of his express obligations under the agreements he signed". Additionally,

the suit argues that Snowden has given public speeches on intelligence-related matters, “also in violation of his non-disclosure agreements”. Although it does not seek to block publication, the suit aims to recover all proceeds earned. Assistant attorney general Jody Hunt of the justice department’s civil division said in a statement: “Edward Snowden has violated an obligation he undertook to the United States when he signed agreements as part of his employment by the CIA and as an NSA contractor. “The United States’ ability to protect sensitive national security information depends on employees’ and contractors’ compliance with their non-disclosure agreements, including their pre-publication review obligations.”

In response, Snowden, 36, tweeted a link to his book on Amazon: “The government of the United States has just announced a lawsuit over my memoir, which was just released today worldwide. This is the book the government does not want you to read.” In 2013, Snowden leaked top secret documents on global surveillance programmes run by American and British spy agencies to media outlets. The Guardian and the Washington Post shared a Pulitzer prize for the story. At the time, Donald Trump, who had not yet begun a political career in earnest, described Snowden a “traitor” who gave “serious information to China and Russia” and who “should be executed”. Snowden now lives in Moscow. In an interview with the Guardian to mark the publication of his book, he discussed a life spent communicating with supporters in the US by computer. He said he had detected a softening in public hostility. “We live in a better, freer and safer world because of the revelations of mass surveillance,” he said.

Snowden also said he was reconciled to life in exile. He married his partner, Lindsay Mills, in a Russian courthouse two years ago. If the US government gets its way, they might not enjoy the proceeds of his work. In a statement, the eastern district of Virginia said: “The United States’ lawsuit does not seek to stop or restrict the publication or distribution of Permanent Record. “Rather, under well-established supreme court precedent ... the government seeks to recover all proceeds earned by Snowden because of his failure to submit his publication for pre-publication review in violation of his alleged contractual and fiduciary obligations.” The lawsuit also names as nominal defendants corporate entities involved in publishing Snowden’s book. The US is suing the publisher, Henry Holt, solely to ensure no funds are transferred to Snowden, or at his direction, while the court resolves the claims. “Intelligence information should protect our nation, not provide personal profit,” said G Zachary Terwilliger, the US attorney for the eastern district of Virginia. “This lawsuit will ensure that Edward Snowden receives no monetary benefits from breaching the trust placed in him.” The lawsuit is separate from the criminal charges brought against Snowden, whom the government has accused of violating the Espionage Act.

In his Guardian interview, he neither confirmed nor denied a detail from Oliver Stone’s 2016 film Snowden, a dramatisation of his story which showed him, played by Joseph Gordon-Levitt, smuggling secrets on a memory card stuck to a Rubik’s cube. “A Rubik’s cube can be very

useful and functions as a distraction device and also functions as a concealment device,” he said. He also discussed life as an NSA contractor, saying that in 21st century intelligence agencies, “there are no James Bonds”.

Reviewing Snowden’s book, which also contains excerpts from a diary kept by Mills, the Guardian head of investigations, Nick Hopkins, wrote: “His account of the experiences that led him to take momentous decisions, along with the details he gives of his family background, serve as a robust defence against accusations that he is a traitor. “It also offers a reminder that his disclosures of mass surveillance and bulk collection of personal information are as relevant now as they were in 2013. More so, he argues, given that private companies have become the new data behemoths.” The government lawsuit was condemned by the American Civil Liberties Union. Ben Wizner, director of its speech, privacy, and technology project and a lawyer for Snowden, said: “This book contains no government secrets that have not been previously published by respected news organisations. “Had Mr Snowden believed that the government would review his book in good faith, he would have submitted it for review. But the government continues to insist that facts that are known and discussed throughout the world are still somehow classified.”

Jesselyn Radack, a lawyer who represents whistleblowers, drew a parallel with WikiLeaks founder Julian Assange, tweeting: “In both [cases] we’re seeing a toxic new trend of [the justice department] going after PUBLISHERS.” The government may rest its case on the precedent of Frank Snepp, a former CIA analyst who in 1977 published a book, Decent Interval, about the agency’s role in the Vietnam war. The government sued him for breach of contract and a federal court imposed a “constructive trust” on proceeds from the book, later reimposed by the supreme court. Francis Boyle, an international law professor at the University of Illinois College of Law who believes Snowden performed a vital public service, said: “I don’t think he should be penalised for it financially but, regrettably, that’s the Snepp case and now the supreme court is even more rightwing, so I think he will lose his proceeds.”

Discussion questions

- 1) What is the state of surveillance? How does it work? Give examples.
- 2) Who is Edward Snowden? What did he do?
- 3) What is the article about? What is the lawsuit about? Do you think it is fair? Why or why not?
- 4) What was Snowden’s response to the lawsuit?
- 5) Discuss the criminal charges brought against Snowden under the US Espionage Act.

- 6) Do an online search of the book “Permanent Record”. What is it about? What is the tunnel metaphor? Why do you think the book is entitled “Permanent Record”?
- 7) Do an online search of actions taken by government and corporations that may be considered an abuse of privacy.
- 8) What is California Consumer Privacy Act? Why is it important? How has Europe regulated consumer privacy? What about Canada?

California Consumer Privacy Act (CCPA): What you need to know to be compliant

California's new privacy law, AB 375, might not burden security as much as the GDPR, but details are subject to change.

In late June, 2018, California passed a consumer privacy act, AB 375, that could have more repercussions on U.S. companies than the European Union’s General Data Protection Regulation (GDPR) that went into effect this past spring. The California law doesn't have some of GDPR's most onerous requirements, such as the narrow 72-hour window in which a company must report a breach. In other respects, however, it goes even farther. The California Consumer Privacy Act (CCPA) takes a broader view than the GDPR of what constitutes private data. The challenge for security, then, is to locate and secure that private data.

What is the CCPA?

AB 375 allows any California consumer to demand to see all the information a company has saved on them, as well as a full list of all the third parties that data is shared with. In addition, the California law allows consumers to sue companies if the privacy guidelines are violated, even if there is no breach.

Which companies does the CCPA affect?

All companies that serve California residents and have at least \$25 million in annual revenue must comply with the law. In addition, companies of any size that have personal data on at least 50,000 people or that collect more than half of their revenues from the

sale of personal data, also fall under the law. Companies don't have to be based in California or have a physical presence there to fall under the law. They don't even have to be based in the United States. An amendment made in April exempts "insurance institutions, agents, and support organizations" as they are already subject to similar regulations under California's Insurance Information and Privacy Protection Act (IIPPA).

When does my company need to comply with the CCPA?

The law goes into effect on January 1, 2020. As a practical matter, companies need to have their data tracking systems in place by the start of 2019, since it gives consumers the right to request all the data a company has collected on them over the previous 12 months. That's a very tight timeframe.

What happens if my company is not in compliance with the CCPA?

Companies have 30 days to comply with the law once regulators notify them of a violation. If the issue isn't resolved, there's a fine of up to \$7,500 per record. "If you think about how many records are affected in a breach, it really increases very quickly," says Debra Farber, senior director for privacy strategy at BigID. Since the bill was put together and passed in just a week, it will probably see some amendments, she adds. "Things like the fine amounts are likely to change." There's also another potential financial risk, Farber says. "The bill provides for an individual's right to sue, for the first time " she says. "And it allows class action lawsuits for damages." Again, there's a 30-day window that starts when the consumers give written notice to a company that they believe their privacy rights have been violated. "If it's not cured, and the attorney general declines to prosecute, then they can bring a class action suit," Farber says. "And it's not just around breaches." For example, the law specifies that companies must have a clearly visible footer on websites offering consumers the option to opt out of data sharing. If that footer is missing, consumers can sue. They can also sue if they can't find out how their information has been collected or get copies of that information. "It can be around anything," Farber says. The law assigns specific penalties should unauthorized access

occur, whether through a breach, exfiltration, theft, or “disclosure as a result of the business’ violation of the duty to implement and maintain reasonable security procedures and practices,” As currently written, AB 375 allows for penalties of \$100 to \$750 per consumer per incident, or actual damages, whichever is greater. "Add in all the other breach related costs -- IT response, forensics and recovery, legal, notification, and so on - - and this could push a breach into the realm of an existential threat to many businesses," says Chris Prevost, head of runtime security solutions architecture at Imperva. In general, if a company took the steps needed to comply with the GDPR, then it's most of the way there for the California Consumer Privacy Act. At least, it's closer than if it isn't ready for GDPR, says Eric Dieterich, data privacy practice leader at Focal Point Data Risk, LLC. "Some multinationals made changes for their European markets, but maybe didn't roll it out to U.S.-based activities, so there might be a scoping change," he says.

What data does the CCPA cover?

The California law takes a broader approach to what constitutes sensitive data than the GDPR. For example, olfactory information is covered, as well as browsing history and records of a visitor's interactions with a website or application. Here’s what AB 375 considers “personal information”:

Identifiers such as a real name, alias, postal address, unique personal identifier, online identifier IP address, email address, account name, Social Security number, driver’s license number, passport number, or other similar identifiers

Characteristics of protected classifications under California or federal law

Commercial information including records of personal property, products or services purchased, obtained or considered, or other purchasing or consuming histories or tendencies

Biometric information

Internet or other electronic network activity information including, but not limited to,

browsing history, search history and information regarding a consumer's interaction with a website, application or advertisement

Geolocation data

Audio, electronic, visual, thermal, olfactory or similar information

Professional or employment-related information

Education information, defined as information that is not publicly available personally identifiable information (PII) as defined in the Family Educational Rights and Privacy Act (20 U.S.C. section 1232g, 34 C.F.R. Part 99)

Inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities and aptitudes

An amendment, AB 874, currently awaiting the governor's signature would exempt publicly available, deidentified and aggregate consumer information from being classified as PII. Publicly available information is defined as data available and maintained from government records.

The CCPA originally covered employee as well as consumer data. An amendment passed in April, however, exempts employee data from the regulation. Another amendment, AB 25, partially exempts personal information collected from job applicants, owners, directors, officers, medical staff, and contractors. This exemption would expire on January 1, 2021. AB 25 was awaiting the governor's signature at this writing.

What are the key privacy provisions in the CCPA?

Companies must allow consumers to choose not to have their data shared with third parties. That means that companies will now have to be able to separate the data they collect according to the users' privacy choices. In addition, while a company cannot

refuse users equal service, it can offer incentives to users who provide personal information. "This provision might be subject to change, but as stated today, it gives you the ability to offer discounts to people who are willing to have their data shared or sold to third parties," says Dieterich. "Traditionally, systems aren't designed so that your pricing structure might change depending on your privacy choices. That's a new concept that has very technical implications." Another major difference with GDPR is that the California law allows customers much greater access to their records, says Subra Ramesh, SVP of products at Dataguise. A California consumer has the right to find out what information a company collects about them. Most companies are going to have trouble pulling that information together. "First, the amount of data they collect is already massive and continues to grow, often in the hundreds to thousands worth of terabytes, and with enterprise-level organizations processing petabytes of data," he says. That data is contained in multiple storage platforms, in different file times. "Most file search tools lack the ability to search across the modern file repository ecosystems so prevalent today," says Aaron Ganek, CEO of Cloudtenna. "Cross-silo file management is a major challenge. It is difficult to understand context for each file if they are scattered inside different repositories." Plus, compliance issues are associated with pulling together data, he says. "Legacy enterprise tools struggle to observe the disparate permissions and security models, violating the very laws and regulations they're being used to satisfy."

Then there's the time limit. "After the access request, a company has 45 days to provide them a comprehensive report about what type of information they have, was it sold, and to whom, and if it was sold to third parties over the past 12 months, it must give the names and addresses of the third parties the data is sold to," says John Tsopanis, privacy product manager at 1touch.io. "You can't do that in Europe." Since the rule covers the previous 12 months of records, companies have to start complying six months from now, he says. Then, on January 1, 2020, every company has to disclose every other company they sell data to. "It will change the privacy landscape in America forever," Tsopanis says.

What does the CCPA mean for security?

AB 375 is light on requirements around security and breach response when compared to the GDPR. As stated earlier, the law does define penalties for companies that expose consumer data due to a breach or security lapse. It also allows courts to offer “injunctive or declaratory relief,” or “any other relief the court deems proper.” Businesses are not required to report breaches under AB 375, and consumers must file complaints before fines are possible. The best course of action for security, then, is to know what data AB 375 defines as private data and take steps to secure it. Again, any organization that complies with the GDPR likely does not need to take further action to comply with AB 375 in terms of securing data. The AB 375 requirements around tracking, accessing, and storing data mean security teams will need to work closely with database administrators, says Terry Ray, senior vice president and fellow at Imperva, a cybersecurity vendor. Any tools selected to help deal with AB 375 will not only need to have full visibility into data stored across the entire heterogeneous corporate environment, but also ensure that access to this data is properly secured. “Lastly, they will need these tools to cooperate with the new consumer portal by sharing specific consumer data with the verifiable consumer requesting it,” he says. If the data is stored with cloud providers, the problem just gets worse. For example, employees might set up a file-sharing account to keep track of marketing or sales contacts. “It’s not surprising the large tech companies like Google and Facebook opposed the bill,” says Kevin Bocek, VP of security strategy and threat intelligence at Venafi. “Controlling the privacy and personal information that flows between machines is incredibly difficult, and a major challenge for all businesses.”

A work in progress

The bill was put together in just seven days because legislators wanted to avoid a ballot initiative to pass an even stricter law that was opposed by many tech companies. “Right now, many of the provisions and definitions conflict with one another,” says Andy Dale, general counsel and VP of global privacy at SessionM. “The law becomes effective in 2020, so expect amendments between now and implementation -- but the core tenets and

rights are likely to remain." One problematic area is whether a company can charge consumers different prices based on their privacy settings. For example, many companies have an option where a consumer can upgrade to a paid tier where they don't see any ads. Here, the law as currently written is a little bit contradictory. "If the consumer exercises his rights under the regulation, businesses cannot provide a different level or quality of product, goods or services to the consumer," says Pravin Kothari, CEO of CipherCloud. "On the other side of the coin, according to the regulation, businesses are not prohibited from charging a consumer a different price or rate, or from providing a different level or quality of goods or services to the consumer, if that difference is reasonably related to the value provided to the consumer by the consumer's data." It looks like California is trying to define a framework where consumers can get paid for sharing their data, Kothari says. "In this area the legislation is a bit visionary," he says. "We'll see in practice how this actually works out."

Class 14 March 10 Censorship

Hachette cancels plan to publish Woody Allen memoir

Staff at Hachette's New York office walked out in protest

'The decision to cancel Mr Allen's book was a difficult one'

Martin Pengelly in New York

Hachette has dropped plans to publish a memoir by Woody Allen, the Oscar-winning film director who has been accused of sexually abusing his daughter. "We take our relationships with authors very seriously, and do not cancel books lightly," the publishing company said in a statement.

The decision to kill Allen's book deal came on the heels of a staff walkout at Hachette's New York office and calls of solidarity from staffers at Little, Brown and Grand Central Publishing, both imprints of Hachette. Dylan Farrow on Friday welcomed news of the cancellation and thanked staff members at the three publishing groups for standing with her and her brother, Ronan Farrow, a journalist whose work has documented alleged sexual abuse by powerful men

and fuelled the #MeToo movement and whose work has been published by Hachette.

This week, Hachette announced publication of Allen's memoir, *Apropos of Nothing*, scheduled for April. That prompted blowback from both Dylan and Ronan, who quickly condemned the news on social media. Ronan Farrow condemns his publisher over Woody Allen memoir

"The biggest complaint," a Hachette staff member speaking on condition of anonymity told *Refinery 29*, "is that we feel strongly about everyone's right to tell their own story, but we don't agree with giving Woody Allen a platform with which to tell it that includes distribution, marketing, publicity. "I think we feel he does not deserve a platform, that by publishing him we are in some way validating his story."

Senior figures at Hachette, including Ronan Farrow's editor, voiced their support. The employee added: "A few people who I would say work with the parties involved met up and discussed and talked person to person and passed out papers. We had a town hall meeting with our CEO and our publisher. After we were able to raise our questions with them in a public forum, we grabbed our things and walked out." The employee did not think the company would change course but on Friday, it did. Hachette "will return all rights to the author", its statement said.

"The decision to cancel Mr Allen's book was a difficult one. At HBG we take our relationships with authors very seriously, and do not cancel books lightly. We have published and will continue to publish many challenging books.

Hachette said it was committed to "making sure every day in our work that different voices and conflicting points of views can be heard" but also "offering a stimulating, supportive and open work environment for all our staff".

Allen, 84, denies the accusations by his daughter Dylan Farrow, which were the subject of two investigations. The director was never charged.

Allen rose to fame as a stand-up comedian and comic writer and has made films for more than 50 years. He reportedly came close to publishing a memoir in 2003, reaching a deal with Penguin before changing his mind. Hachette said it made its deal with Allen last year. Hachette published Ronan Farrow's *Catch and Kill*, an account of his work on #MeToo stories including the case against the Hollywood mogul Harvey Weinstein, who was convicted of rape in New York last month.

In a statement in response to news of his father's deal, Farrow said he was "disappointed" his publisher had "concealed the decision from me and its own employees while we were working on *Catch and Kill* – a book about how powerful men, including Woody Allen, avoid accountability for sexual abuse".

This year, Macmillan will publish a debut novel by Dylan Farrow. In her own statement on the decision to publish her father's memoir, she said it was "deeply upsetting to me personally and an utter betrayal of my brother whose brave reporting, capitalised on by Hachette, gave voice to numerous survivors of sexual assault by powerful men."

On Friday, Hachette concluded: "Over the past few days, HBG leadership had extensive conversations with our staff and others. "After listening, we came to the conclusion that moving forward with publication would not be feasible for HBG."

Ronan Farrow condemns his publisher over Woody Allen memoir

Writer known for #MeToo investigations – whose sister says Allen abused her – suggests he can no longer work with Hachette

André Wheeler

Ronan Farrow said Hachette's decision 'shows a lack of ethics and compassion for victims of sexual abuse'. Photograph: Chris Pizzello/Invision/AP

Ronan Farrow has distanced himself from the publisher of his latest book after the company announced plans to publish a memoir by his father, Woody Allen, saying the move "shows a lack of ethics and compassion for victims of sexual abuse". The journalist, best known for his groundbreaking investigations into claims of sexual abuse and misconduct against powerful men, issued a scathing statement in response to Hachette's announcement on Monday that it would release Allen's memoir, *Apropos of Nothing*, on 7 April.

Ronan Farrow's sister, Dylan Farrow, has repeatedly alleged Allen sexually abused her as a child, allegations that Allen has strongly denied. *Catch and Kill* was released by Hachette in October and tracked the reporting process behind allegations against Matt Lauer, Harvey Weinstein and Leslie Moonves.

Ronan's statement read: "I was disappointed to learn through press reports that Hachette, my publisher, acquired Woody Allen's memoir after other major publishers refused to do so and concealed the decision from me and its own employees while we were working on *Catch and Kill* – a book about how powerful men, including Woody Allen, avoid accountability for sexual abuse." Ronan suggested that he would no longer work with Hachette, saying: "I've also told Hachette that a publisher that would conduct itself in this way is one I can't work with in good conscience."

Stephen King attacks axing of Woody Allen book

Writer 'uneasy' over US publisher's decision to drop director's memoir

Edward Helmore

Sun 8 Mar 2020 08.10 GMT

Woody Allen's memoir, *Apropos of Nothing*, was dropped by Hachette after a staff walkout.

Author Stephen King has hit out at publisher Hachette over its decision to drop publication of Woody Allen's memoir after a protest from his son, the author Ronan Farrow, prompted a walkout of staff at the publishing group's New York office last Thursday.

"The Hachette decision to drop the Woody Allen book makes me very uneasy," King, the horror writer, said on Twitter. "It's not him; I don't give a damn about Mr. Allen. It's who gets muzzled next that worries me."

In Britain, Hachette's decision was branded "worrying for writers and for readers" by Jo Glanville, the former director of writers' group English PEN and award-winning editor of *Index on Censorship*.

"I am always afraid when a mob, however small and well-read, exercises power without any accountability, process or redress. That frightens me much more than the prospect of Woody Allen's autobiography hitting the bookstores," she writes in the *Observer* online this weekend.

The row over the dropping of the film director's book is a new twist in an already complex situation that has seen the Allen family split over claims that the director molested Mia Farrow's adopted daughter, Dylan Farrow. Allen, 84, has always denied the allegations. In the wake of Harvey Weinstein's rape conviction last month, it has also been presented as a test of the power of the #MeToo movement, which has embraced Ronan Farrow as a hero after his groundbreaking investigations into claims of sexual abuse and misconduct by powerful men.

Last Monday, after Hachette announced its intention to release *Apropos of Nothing* in April, the journalist issued a stinging indictment of the publisher, accusing it of duplicity because one of its imprints, Little, Brown, had published *Catch and Kill*, his Pulitzer prize-winning account of investigating the Weinstein scandal, while another, Grand Central Publishing, was planning to bring out his father's autobiography.

Discussion questions

- 1) Who is Woody Allen?
- 2) What was he accused of? What were the judicial outcomes?
- 3) Who is Ron Farrow? What was his role in the MeToo movement?
- 4) What is Woody Allen's book about?
- 5) Why was his book cancelled?
- 6) What happened to his film A Rainy Day in New York produced by Amazon?
- 7) What is private censorship? How does it differ from state censorship? Should social media companies police and censor speech pursuant to their own terms of service agreements?
- 8) What is self-censorship? Does it happen frequently?
- 9) Is Hachette's decision to cancel the book censorship? Why or why not?
- 10) The French and Spanish language versions of the book will be published? Do you think that France, Spain, and Latin American countries have different free speech standards than the US, Canada, Australia, and the UK?
- 11) What did Stephen King say about the book cancellation? Do you agree? Why or why not?
- 12) Collin Jones argued that "the censorship of Allen's book is a perfect example of how group think has now gained prominent influence over the gatekeepers. If enough people vandalize colleges over invited speakers, then those colleges are going to avoid controversial voices from speaking on their campus. The same goes for book publishers, where they will cancel books based on a group of people expressing their discontent with the book being published." Do you agree with this argument? Why or why not?
- 13) Discuss the US First Amendment and the freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication in Canada. What are the main differences? What are some the exceptions in Canada?

Victims and the Me Too Movement

Roman Polanski attacks 'absurd' abuse accusations on eve of Venice premiere

Director portrayed as persecuted victim of 'neo-feminist McCarthyism' in interview for latest film *An Officer and a Spy*

Lanre Bakare in Venice

Thu 29 Aug 2019 16.21 BST Last modified on Fri 30 Aug 2019 00.20 BST

The figure of Roman Polanski hung once again over the Venice film festival on its second day after he released press notes for his new film that sought to discredit several women who claim he sexually abused them as minors, and suggested that he has been persecuted since the late 1960s, when the press insinuated he was a satanist after the murder, by members of the Manson Family, of his second wife, Sharon Tate. In the press notes for his new film *An Officer and a Spy*, about the antisemitic Dreyfus affair – which has its premiere on Friday – the 86-year-old Chinatown director is portrayed as a persecuted victim of “neo-feminist McCarthyism” in an interview with the French polemicist Pascal Bruckner. The author compares Polanski’s current treatment to what the director endured as “a Jew who was hunted during the war and a film-maker persecuted by the Stalinists in Poland”.

“Most of the people who harass me do not know me and know nothing about the case,” Polanski answers when asked how he would “survive the present-day neo-feminist McCarthyism”. “My work is not therapy,” he says. “However, I must admit that I am familiar with many of the workings of the apparatus of persecution shown in the film, and that has clearly inspired me.” Bruckner – whose novel *Bitter Moon* was made into a film by Polanski starring Hugh Grant and Kristin Scott Thomas – also discusses the murder of Sharon Tate by the Manson Family in 1969, which the director believes triggered the start of his “persecution”. “The press got hold of the tragedy and, unsure of how to deal with it, covered it in the most despicable way,” he says, “implying, among other things, that I was one of the people responsible for her murder, against a background of satanism.” Polanski also attempted to discredit accusations by a number of women who said that the director abused them when they were under the age of 18, calling them “absurd stories by women I have never seen before in my life who accuse me of things which supposedly happened more than half a century ago”.

“Don’t you want to fight back?,” Bruckner asks. “What for? It’s like tilting at windmills,” responds Polanski.

Polanski also says that a miscarriage of justice such as the one in *An Officer and a Spy*, which is

about the Dreyfus affair that scandalised France at the turn of the 20th century, could happen again today. “All the ingredients are there for it to happen,” he says. “False accusations, lousy court proceedings, corrupt judges, and above all ‘social media’ that convict and condemn without a fair trial or a right of appeal.” Luca Barbareschi, a producer of *An Officer and a Spy*, threatened to pull the film after comments made by the president of the Venice Film Festival on the first day of the festival. She said she would not attend the gala dinner for Polanski, although she agreed with the film being shown. Some media outlets reported that she would not watch the film at all.

Roman Polanski Responds To Recent Rape Accusation; Says Harvey Weinstein Tried To Sabotage ‘The Pianist’

Roman Polanski has responded to recent allegations of rape against him by French photographer Valentine Monnier, saying, “I obviously have no recollection of what she is talking about because it is false. ... I absolutely deny it.” Monnier last month accused the Oscar-winning director of raping her at his Swiss chalet in 1975. Since then, Polanski’s latest film, *An Officer and a Spy*, has been released in France, generating a strong \$10M in box office — but also protests and calls for a boycott.

In an interview with *Paris Match* published today — Polanski, who has been living in France since fleeing the U.S. in 1978 before sentencing after pleading guilty to having sex with 13-year-old Samantha Geimer — also was asked about Harvey Weinstein and the origins of the #MeToo movement.

Polanski said he had no ties to Weinstein, whom he had met a handful of times, and was “very surprised by the avalanche of accusations” against the producer that surfaced two years ago. However, he suggested that it is Weinstein who was responsible for renewed interest in the original case involving Polanski. He told *Paris Match*, “I know that in 2003, Weinstein panicked when *The Pianist* won two BAFTAs, including Best Film. Weinstein, who had two films nominated at the Oscars, launched a campaign to stop the same thing happening in Hollywood. It was he who dug up the [then] 26-year-old story with Samantha and which was no longer of interest to anyone. His press attaché was the first person to call me a ‘child rapist.’ The paradox is that *The Pianist* didn’t win the Best Picture Oscar, a prize that goes to the producer, but I won Best Director.”

Paris Match asked: Does Polanski consider himself a victim? “For years, people have been trying to make me a monster. I have gotten used to the calumny, my skin has thickened and hardened like a shell. But for my children, for Emmanuelle [Seigner, Polanski’s wife], it is appalling. It’s for them that I express myself. For me, I don’t even hope any longer to change the course of

things. They suffer enormously; they receive insults and threats on social media. ... Of course I am responsible. In 1977, I made a mistake, and it is my family that pays the price almost a half a century later. The media has thrown itself on me with unheard violence. They seize on each new false accusation, even the absurd and unsubstantiated because it allows them to revive this subject. It's like a curse, and I can't do anything about it."

In the interview, Polanski also revisits the original case, saying, "Only Samantha and I know what happened that day. ... Whatever I did, in whatever manner it was, it is profoundly regrettable. I have said it numerous times; I have written it to Samantha, with whom I stay in contact, and she knows. She and her family have suffered because of me, and despite me it continues. Every time there is a new lie about me, it brings her up. ... She has written several times to the prosecutor to explain that the trauma caused by the media circus is well worse than what I made her suffer."

Asked if he thinks his own films have inspired certain reactions, Polanski recounts that about 20 years ago, a woman contacted him saying that she was his daughter with wife Sharon Tate, and had been saved by the Manson Family assassins who killed the pregnant Tate on August 9, 1969. Explains Polanski, "It's delirium — she was born two years after Sharon died."

Discussion questions

- 1) What are the articles about?
- 2) Do a web search of Roman Polanski. What is he accused of?
- 3) What happened in the court case in Los Angeles? What about the extradition cases?
- 4) What does he mean by "false accusations, lousy court proceedings, corrupt judges, and above all 'social media' that convict and condemn without a fair trial or a right of appeal"?
- 5) What does Polanski mean by "victim of 'neo-feminist McCarthyism'"?
- 6) Based on your research about Polanski, do you believe him when he says that these are "absurd stories by women I have never seen before in my life who accuse me of things which supposedly happened more than half a century ago"? Why or why not?
- 7) What is the film *An Officer and a Spy* about?

Coronavirus

Discussion questions

1. What is coronavirus (COVID-19)?
2. What is a pandemic?
3. What is the World Health Organization? What does it do? Does it have the power to impose measures and sanctions?
4. What measures did the US adopt yesterday? Can these measure be effective? Why or why not?
5. Is banning travel constitutional in the US? What did the courts rule in previous travel ban cases in the US?
6. What is overbreadth? Are these measures examples of overbreadth?
7. What is Canada/Ontario doing? What should Canada and Ontario do in your opinion? What about AU?
8. Would travel bans be constitutional in Canada?
9. What has been Italy's approach to combat the pandemic? What do you think of these measures?
10. Some countries have adopted mandatory self-isolation? Is this practical? Is it effective?
11. Do an online search of measures adopted in other countries to combat the coronavirus pandemic.

Class 17 March 10 Aviation and International Law

Watch the following video

<https://www.iata.org/en/policy/consumer-pax-rights/unruly-passengers/>

- 1) What is an unruly passenger? Why does this happen? What are the effects of alcohol when flying?
- 2) What are the main aspects of the Tokyo Convention?
- 3) What are the main aspects of the Montreal Protocol?
- 4) What are IATA's set of core principles?

- 5) Do an online search of articles about unruly passengers in air transportation. Show videos about unruly passengers in the aviation industry?
- 6) Do an online search of articles about incidents on cruise ships.

Classes 15 & 16 March 3 & 5

Classes 18 & 19 March 12 & 17 Intellectual Property

Intellectual property

Ohio State University wants to trademark the word 'The'

By Allen Kim, CNN

Updated 1629 GMT (0029 HKT) August 15, 2019

(CNN)The Ohio State University is attempting to trademark the word "the," according to an application with the US Patent and Trademark Office.

Application No. 88571984 was filed Thursday, and the school seeks to use the word "the" mainly on t-shirts, baseball caps and hats.

The application was discovered by Josh Gerben, a trademark lawyer.

"This application has issues out of the gate," Gerben said in a video posted to Twitter. "In order for a trademark to be registered for a brand of clothing, the trademark must be used in a trademark fashion. In other words, it has to be used on tagging or labeling for the products. In this case, just putting the word 'the' on the front of a hat or on the front of a shirt is not sufficient trademark use."

Gerben says he expects that the initial application will be refused by the US Patent and Trademark Office, but the school has a chance to fix it and get it right.

"This only would apply for usage of 'The' in ways that clearly signify association with Ohio State and its brand, like for example a scarlet and grey T-shirt with 'The' on the front," Chris Davey,

senior associate vice president of university communications for the Ohio State University, wrote in an email.

The school has also filed for trademarks for the names of football coaches Urban Meyer and Woody Hayes for use on clothing, toy figurines and bobblehead dolls.

Founded in 1870, the school was originally called the Ohio Agricultural and Mechanical College. It officially became The Ohio State University in 1878.

- 1) What is the content of the article?
- 2) Why did Ohio State University want to trademark the word “it”?
- 3) What is the legal rule for the trademark of names?
- 4) Look for articles about trademark and copyright of other every day terms and marks. Discuss them.

Jeff Koons Ordered to Pay Damages for Plagiarism by French Court

By Helen Holmes • 12/24/19 9:24am

Not for the first time, Jeff Koons has been ordered to dole out financial compensation due to a ruling that the super-artist plagiarized another artist’s work. In 2018, a French judge found Koons guilty of ripping off an advertising campaign for the clothing brand Naf Naf for a sculpture entitled *Fait d’Hiver*, and Koons was ordered to pay the original creator of the campaign \$153,000. On December 21, news broke that a Paris appeals court had upheld a ruling from 2017 that determined that Jeff Koons LLC and the Parisian Pompidou Centre must pay \$22,000 to the family of Jean-Francois Bauret, the artist whose photograph Koons copied to make his 1988 porcelain sculpture *Naked*. Bauret’s original image is called *Enfants*, and it was also distributed as a postcard in 1975.

As part of the ruling, the Paris court also determined that the continued use of an image of the statue that Koons was including on his website would be banned in France. Bauret’s original image and Koons’s statue both depict two pale-skinned and naked children, standing close together and gazing downward. Where Bauret’s original image is in black and white, Koons’s

statue is rendered in color and with porcelain, and it clocks in at a little more than three feet tall. Koons has built his career on bombastic artistic moves that have frequently included playing with the line between appropriation and plagiarism, but his way of going about things has a particular shamelessness that gives him something of a villain vibe within the art world. For example, the Naf Naf ad that Koons was found to have copied and the eventual artwork that Koons made based on the campaign both had the same name, almost as if Koons wasn't even trying to hide where he got the idea from. Even with the financial slaps on the wrist he's received, the artist isn't likely to stop blurring the boundaries between artistic inspiration and theft, and that's a dangerous precedent to set.

Jeff Koons found guilty of plagiarism over multi-million-pound sculpture



Jeff Koons has been found guilty of plagiarism by a French court for copying a French advertising campaign for his work *Fait D'Hiver* CREDIT: RALPH ORLOWSKI/GETTY IMAGES EUROPE

Henry Samuel, PARIS

8 NOVEMBER 2018 • 8:22PM

Follow

The American artist Jeff Koons has been found guilty of plagiarising an iconic French clothing advertisement for one of his celebrated sculptures, *Fait d'Hiver*.

Advertising creative director Franck Davidovici had sued Mr Koons, among the world's most bankable living artists, for copyright infringement, saying he had produced what his lawyer called a “servile copy” of a famous advertising campaign he ran in 1985 for French clothing brand Naf-Naf.

The clothing campaign showed a young girl lying in snow, apparently the victim of an avalanche, being nosed by a pig with a barrel of rum under its neck in reference to the famous Saint Bernard rescue dogs. Naf-Naf is the name of one of the three little pigs that made the most resilient house out of bricks.

Mr Koon's 1988 artwork, which was bought by the Prada Foundation for around \$3.7 million (£2.8m) at Christie's in New York in 2007, bore a striking resemblance to the Davidovici work down to the woman's facial expression and hairstyle and the cask hanging from the pig's neck.

The two even share the same name of *Fait d'Hiver* - a play on the French terms “winter” and “news in brief”. The court ordered Mr Koons, his business, and the Pompidou museum - which had exhibited the work in 2014 - to pay Mr Davidovici a total of €135,000 (£118,000) in compensation.



Franck Davidovici's original advert for Naf Naf, which he says American artist Jeff Koons plagiarised for his work *Fait d'Hiver* CREDIT: TELEGRAPH

Jeff Koons LLC was also fined €11,000 for reproducing the pig on the artist's website, while the Flammarion publishing firm was fined €2,000 for selling a book which contained the work.

But the court did not order the sculpture's seizure, as demanded by the plaintiff. This was not the first time Mr Koons has been found guilty of forgery.

Last year, a Paris court ordered the American artist's limited company, Jeff Koons LLC,

to pay the heirs of late French photographer Jean-François Bauret €40,000, saying his Naked sculpture had been copied from a 1975 postcard picture taken by Mr Bauret called Enfants.



American artist Jeff Koons CREDIT: ANTHONY WALLACE/AFP
The artist is no stranger to controversy in Paris.

Earlier this year, Françoise Nyssen, the French culture minister, announced that a sculpture of a giant bunch of tulips Mr Koons gave the city in remembrance of the 2015 Paris terror attacks victims would not be installed in front of the capital's Museum of Modern Art and the Palais de Tokyo, after outcry.

But the work sparked a row with 23 figures from France's art and culture world denouncing the choice of a prime, central location for the huge structure.

After months of dithering, last month, Paris town hall said that the sculpture would no doubt be installed in the municipal gardens of the of the Beaux-Arts museum in the Petit Palais, opposite the Grand Palais by the Champs-Élysées.

Discussion questions

- 1) What are the articles about?
- 2) Who is Jeff Koons? Discuss his work.
- 3) What are the legal rules dealing with Intellectual Property and art?
- 4) In your opinion, is this plagiarism? Why or why not?

Class 20 March 19: Test



Class 21, March 24 Torts

Number 10: A man sues Starkist Tuna because its cans have the American Heart Association's Heart Checkmark logo. He claims the logo tricks people into thinking their tuna is healthier than other brands.

Number 9: A woman sues Canada Dry Ginger Ale for fooling customers because the soda doesn't contain real ginger ... even though the ingredients are listed on every can.

Number 8: Two customers sue McDonald's for \$5 million because they wanted a DISCOUNT for their burgers after asking for no cheese! That's enough to buy over 1.3 million Quarter Pounders.

Number 7: Paradise-obsessed customers sue Kona Brewery because they thought ALL their beer was brewed ONLY in Hawaii, even though the packaging clearly lists its brewing locations in boring, old Oregon and New Hampshire.

Number 6: A jury awarded a tow truck driver \$5.2 million after he claimed he was injured by battery acid clearing an accident. His medical records show he told doctors it was just fire ant bites.

Number 5: A French waiter in Canada sued his employer after being fired for his rude and disrespectful attitude. He says rudeness is a trait of his culture, and he is being discriminated against.

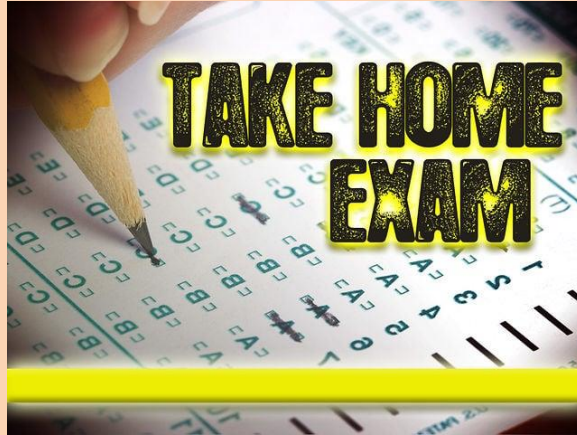
Number 4: A lonely 69-year old Dutch man claims his age makes him less desirable on Tinder. He's suing to legally change his age to 49. This will make him more attractive to younger women.

Number 3: A hangry woman sued Tootsie Roll Industries claiming Junior Mints boxes have almost as much air as candy, even though the amount of candy is listed on the packaging.

Number 2: The makers of Kind Snack Bars are being sued for putting "chemical-sounding terms like ascorbic acid" in their bars, which is literally another name for vitamin C.

Number 1: Trial lawyers sued coffee companies under California's Prop. 65 law. Now your daily fix could come with a warning label—just like all your other hazardous vices.

Class 22 March 26 Distribution of final take-home



Class 23 March 31 Review

Class 24, April 2: Submission of final take-home

*** TRIGGER WARNINGS**

Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content. Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course are those of the authors and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.