This page was exported from - The Rutgers Law Record
Export date: Wed Nov 11 13:20:28 2026 / +0000 GMT

Current Issue - Volume 51

Copyright Law'LAW AND ECONOMICS OF COPYRIGHT IN CORPORATE INNOVATION AND WELFARE ENHANCEMENT*Mizuki Hashiguchi*51 Rutgers L. Rec. 187 (2024) | WestLaw | LexisNexis **I. INTRODUCTION**

?A COPYRIGHT WILL PROTECT YOU FROM PIRATES. And make you a fortune. If you have a PLAY, SKETCH, PHOTO, ACT, SONG or BOOK that is worth anything, you should copyright it. Don't take chances when you can secure our services at small cost . . . .?1 This is an excerpt from an advertisement in 1906 by Columbia Copyright & Patent Co. Inc.2 Economic principles of wealth maximization3, risk aversion4, and cost-benefit analysis5 emanate from this advertisement urging creators to seek copyright protection.

Copyright protects original works of creative expression.6 Copyright owners have the exclusive right to reproduce, publicly perform, or display the copyrighted work, create derivative works from the copyrighted work, and distribute copies of the copyrighted work.7 Edwin C. Hettinger reports that most copyrights are owned by institutions including corporations.8 Without copyright protection, many companies are threatened by competitors who copy the companies' creative works at low cost and sell the copies at reduced prices.9

Economic principles underlie the legal protection of copyright and corporations' strategic plans for innovation. More than a century after Columbia Copyright & Patent Company's advertisement in 1906, with the advent of novel technologies, analysis in law and economics remains vital in the evaluation of copyright policies for public welfare and corporate initiatives for innovation.

This article first analyzes concepts of law and economics in the welfare justification of copyright **(I)**. This article then applies this examination to critique the United States Supreme Court's adjudication of a corporation's initiative to provide the public with copyrighted audiovisual content through innovative technology **(II)**.

1 Advertisement for Columbia Copyright & Patent Company from The New York Clipper, Nov. 3, 1906, Library of Congress, United States of America, https://www.loc.gov/exhibits/bobhope/vaude.html#obj036 (last visited Mar. 29, 2024).

2 Id.

3 Richard A. Posner, Utilitarianism, Economics, and Legal Theory, 8 J. LEGAL STUDS. 103, 119 (1979).

4 8.1 Risk Aversion and the Allocation of Risk, HARV. UNIV., https://cyber.harvard.edu/bridge/LawEconomics/risk.htm (last visited Mar. 29, 2024).

5 PWC, UNDERSTANDING THE COSTS AND BENEFITS OF INTRODUCING A ?FAIR USE' EXCEPTION 14-15 (2016).

6 Edwin C. Hettinger, Justifying Intellectual Property, 18 PHIL. & PUB. AFF. 31, 32 (1989).

7 Id. at 34.

8 See id. at 46.

9 Id. at 47; see also Audio and Video First Sale Doctrine: Hearings on H.R. 1027, H.R. 1029, and S. 32 Before the Subcomm. of Cts., C.L. & the Admin. of Just. of the H. Comm. on the Judiciary, 98th Cong. 720 (1985) (referencing section titled ?Tough to Get Compensation,? discussing movie-producing corporations' difficulty in obtaining compensation in the face of individuals and entities who copy movies on cassettes at low cost).

View the Entire Article **Critical Race Theory**'CRITICAL RACE THEORY EXPLAINED; BOOK REVIEW OF VICTOR RAY, ON CRITICAL RACE THEORY: WHY IT MATTERS AND WHY YOU SHOULD CARE (RANDOM HOUSE (2022) 209 PP.) *André LeDuc*51 Rutgers L. Rec. 171 (2024) | WestLaw | LexisNexis **I. INTRODUCTION**

Victor Ray's new book, On Critical Race Theory, offers non-specialists the best available introduction to critical race theory. Before its publication, the standard introductions have been the classic works by legal scholars Kimberlé Crenshaw and by Richard Delgado.1 They were largely intended for legal theorists and academics; they had become somewhat dated, on the one hand, by the burgeoning application of the insights of critical race theory outside the law, and by the increasing controversy about critical race theory in the broader political and public discourse. Ray, a sociologist and an advocate of critical race theory, expressly tries to fill this gap, both explaining the expanding scope of critical race theory and defending it against its critics. Ray writes clearly and precisely about sometimes complex arguments. As a result, Critical Race Theory performs these two missions admirably.

Ray's book is a simple, almost journalistic, contribution to the defense of critical race theory. That's not a weakness; just such a work is what our public, political discourse requires. As Ray notes, his first draft was written in ?a three-month sprint.? (p. 125) The book should be judged on this basis, rather than as a more deliberative assessment of the theory and its limitations. From this perspective, it's hardly fair to call out omissions that a reviewer might find significant in what is intentionally and self-consciously only a survey of an expansive, multi-disciplinary project. Readers will undoubtedly find their own gaps. Ray's book offers a defense of critical race theory. It doesn't pause to expressly acknowledge any substantive or rhetorical overstatement by critical race theory's advocates. There are necessarily trade-offs in such an expedited publication schedule, both in the scope and the depth of the resulting product. In general, the pay-off in accessibility and timeliness that Critical Race Theory achieves more than outweighs these costs.

1 See generally RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION (2d ed. 2012); KIMBERLÉ CRENSHAW, CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (1996). View the Entire Article **BioDefense**'REINFORCING GLOBAL BIODEFENSE: THE CASE FOR AMENDING THE BIOLOGICAL WEAPONS CONVENTION TO ENHANCE INTERNATIONAL LAW AND LEGITIMACY*Ryan Houser*51 Rutgers L. Rec. 137 (2024) | WestLaw | LexisNexis **I. INTRODUCTION**

The COVID-19 pandemic brought the world to a standstill, infecting millions, and causing widespread economic and social disruption. The pandemic not only highlighted the importance of robust public health systems and emergency preparedness, but also brought to light the increasing threat of biological weapons. The potential for malevolent actors to use biological agents as weapons of mass destruction has been a concern for decades, but the COVID-19 pandemic has shown how devastating such an attack could be. Biological weapons involve the distribution of pathogens or poisons that can cause harm or death to living beings, including humans, animals, and plants.1 Biological weapons are extremely dangerous and can spread easily from person to person. If used intentionally, they could have catastrophic consequences, including global spread of diseases beyond national borders, food shortages, environmental disasters, economic devastation, and widespread panic and mistrust. The aftermath of such an event would not only result in loss of lives but also impact the entire global population with far-reaching effects. There is a fifty-one-year-old international treaty that established the prevention of biological weapon usage. ?In 1972, a historic attempt to create the world's first international legal regime banning the development and possession of an entire class of weapons of mass destruction culminated in the drafting of the Biological Weapons Convention (BWC).?2 The BWC ?reflects a comprehensive repudiation of the development, production, and stockpiling of biological weaponry.?3 Despite its symbolic importance as a norm creating treaty, the absence of verification and enforcement provisions has rendered it ?merely a paper agreement that could easily be circumvented.?4

The BWC is the cornerstone of the biological weapons disarmament regime, but the treaty is having difficulty keeping up with changing threats due to its decision-making process and geopolitics. Fundamentally flawed, the BWC is ?crippled by key compromises made by the great powers in pursuit of various self-interested security objectives in the context of the Cold War.?5 In November 2022, over two years after the widescale emergence of COVID-19, the international community met to review the BWC for the ninth time. In early 2022, the prospects for strengthening the BWC were the best they had been in years as China, Russia, and

the United States had articulated individual plans that reflected enough common ground to craft a workable compromise.6 This cautious optimism around the BWC's improvement prospects were spoiled by Russia's invasion of Ukraine in February of 2022. The illegal aggression of Russia undermined the rules-based international order that the BWC is intertwined with. As part of the invasion, Russia also deliberately fabricated allegations levied against Ukraine, the United States, and other partners7 which ?stigmatizes and politicizes biosafety, biosecurity, and cooperative public health and life sciences research to the detriment of not just Ukraine, but global health security overall.?8 Efforts to misrepresent or undermine legitimate biosafety and biosecurity research and capacity building weaken the BWC and undermine international cooperation for peaceful purposes.

Russia failed to garner support for its allegations in UN Security Council meetings in March and May of 2022 and then in June, Russia invoked Article V of the BWC to force the treaty's 184 member states to hold a special consultation meeting. While Russia stood largely alone9 in the November 2022 UN Security Council meeting it forced, this process highlighted how legitimate processes in treaties and governmental bodies can be turned towards illegitimate ends.10 The BWC's durable framework, may be sunsetting soon after its 50th anniversary as it attempts to stay on top of a changing global landscape that includes rapidly evolving capabilities and new actors in the life sciences, as well as disinformation.11 The BWC is based on good faith implementation by state parties as there are no external monitoring measures or oversight of any kind. Compliance is based not on oversight, but the international legal principle of reciprocity and the threat of withdrawal from the Convention. International cooperation, solely based on good faith is likely a fleeting dream. The bad faith hijacking of the legitimate procedures outlined in the BWC by Russia in 2022, suggests that a true, binding cooperation pillar for the BWC may be needed. The concept of a cooperation pillar was first introduced in Article III of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT).12 The NPT pillar was based on the concept of ?atoms for peace,? which anticipated that nuclear technology would be crucial for energy production and a cooperative pillar could provide incentives for States that lacked such technology to join the NPT.13 The actions of Russia also call into question the legitimacy of international law and the legitimacy of international order, a foundational principle for the BWC and other international treaties which keep the world safe and secure. Arguments for legal reform to improve the BWC are not new, but in a world with eroding international law legitimacy and norms of good faith disappearing, there is a need to reevaluate the legal landscape of the BWC which has laid dormant for over a decade.

The 9th Review Conference, which ended in late 2022, was far from perfect, but it provided ?a glimmer of hope in an overall bleak international security environment.?14 This note calls for an amendment to the Biological Weapons Convention that leverages a cooperation pillar to ensure compliance with the treaty while subsequently enhancing the legitimacy of international law, building upon a slim inertia for positive change. Part I of this paper analyzes the historical context to the creation of the Biological Weapons Convention and the legislative features that frames its current structure. Part II investigates the scope of international law and legitimacy, historically and in the current climate. Section I of Part II analyzes the components of international legitimacy. Next the subpart will define the framework of analysis of international law legitimacy. Section II of Part II investigates the current conflicts of international legitimacy and international law. The final section of Part II will subsequently suggest the principles which can make international law more legitimate. Part III of the note will discuss international institutions and their role in instilling a cooperation pillar for the BWC. The final section of this note, Part IV, will suggest recommendations that will improve the BWC and make it more adaptable to the evolving threats both in the international law and relations space, but also in the rapidly changing landscape of biological threats.

1 Biological Weapons Convention, U.N. OFF. FOR DISARMAMENT AFFS., https://www.un.org/disarmament/biological-weapons/ (last visited Mar. 2, 2024).

2 Jack M. Beard, The Shortcomings of Indeterminacy in Arms Control Regimes: The Case of the Biological Weapons Convention, 101 AM. J. INT'L L. 271, 271 (2007).

3 Michael P. Scharf, Clear and Present Danger: Enforcing the International Ban on Biological and Chemical Weapons Through Sanctions, Use of Force, and Criminalization, 20 MICH. J. INT'L L. 477, 482 (1999).

4 See Susan Wright, Prospects for Biological Disarmament in the 1990s, 2 TRANSNAT'L. L. & CONTEMP. PROBS. 453, 454 (1992); see also Nicholas A. Sims, The Diplomacy of Biological Disarmament: Vicissitudes of a Treaty in Force 1975-85, 84 AM. J. INT'L L. 984 (1988) (Sims concludes, ?Those who took the British initiative of 1968 [which included strong provisions for verification and complaint investigation] and watered it down into the Convention of 1972 gave the world biological disarmament on the cheap: a disarmament regime of minimal machinery which would cost next to nothing to sustain. It is now painfully evident that these short-term savings have been outweighed by the long-term costs of a regime lacking the means to sustain its credibility in the face of suspicious events which cannot be resolved one way or the other.?).

5 Beard, supra note 2, at 271.

6 Gregory D. Koblentz & Filippa Lentzos, A Plan B to Strengthen Biosafety and Biosecurity, THINKGLOBALHEALTH (Nov. 15, 2022), https://www.thinkglobalhealth.org/article/plan-b-strengthen-biosafety-and-biosecurity?utm_medium=social_owned&utm_source=tw_tgh.

7 Russia made spurious allegations that the United States and other NATO members are violating the treaty by developing biological weapons in Ukraine.

8 Ryan Houser et al., Understanding Biosafety and Biosecurity in Ukraine, 21 HEALTH SECURITY 70, 80 (2023).

9 Only China supported Russia's formal accusation that the United States was noncompliant with the BWC.

10 Yong-Bee Lim et al., Preparing for Twenty-First-Century Bioweapons, ISSUES SCI. & TECH. (Dec. 8, 2022); https://issues.org/bioweapons-biological-weapons-convention-bwc-ngos/.

11 Id.

12 James Revill & María Garzón Maceda, Options for Article of the Biological Weapons Convention, U.N. INST. FOR DISARMAMENT RSCH. (Feb. 3, 2022), https://unidir.org/publication/options-article-x-biological-weapons-convention/.

13 Id.

14 Una Jakob, The 9th Review Conference of the Biological Weapons Convention, PRIF BLOG (Feb. 7, 2023), https://blog.prif.org/2023/02/07/the-9th-review-conference-of-the-biological-weapons-convention/ (citing UN Secretary-General Antonio Guterres).

View the Entire Article **Free Speech**'Dumpster Fire': Free Speech and the Classroom*Jonathan Rawson*51 Rutgers L. Rec. 116 (2024) | WestLaw | LexisNexis **I. INTRODUCTION**

Even casual observers of American politics know that the fight for control over classrooms continues to rage as one of the most intense proxies of the broader culture war. Across college campuses, many activists make no bones about elevating certain values over the First Amendment, a phenomenon that collapses the boundaries of acceptable speech on campus.1 Although some on the political right have capitalized, rhetorically and politically, on the illiberal bent of this movement, Republican lawmakers have also sought to gain an edge in the struggle for young minds at the expense of the same constitutional safeguards.2 While this battle is hardly new, parents of school-age children today are rightly vexed by the torrent of outrage-producing headlines, and many are injecting themselves into political debates about education and becoming a force in local elections.3 Though there are a host of other reasons, perceived indoctrination has contributed to American parents' lack confidence in the public school system.4

This article will argue that the scope of students' free speech rights in high school and college classrooms should be expanded, especially ?high value? speech, or speech political in nature; and while this expansion surely will not serve as a panacea, it is both

constitutionally justifiable and functionally optimal. First, the article will consider underlying First Amendment theory applicable to the classroom setting, and how the current doctrine is ripe for development. Next, it will explore different compelled speech tests used by the Circuit Courts for determining if a student's First Amendment right has been violated, and argue for why a more protective test is necessary. The article will then consider the issue through the lens of public forum doctrine and argue that perhaps the classroom is the public forum for the student and thus should be treated as such. Finally, the article will contemplate two variations of a hypothetical, as a means of concretizing for the reader what the expanded right would look like in practice.

1 Commentators in the media demonstrate the controversy between the right and left on the topic. See Katy Steinmetz, The Fight Over Free Speech on Campus Isn't Just About Free Speech, TIME (Oct. 12, 2017, 6:54 AM), https://time.com/4979235/the-campus-culture-wars/; Bari Weiss, We Got Here Because of Cowardice. We Get Out With Courage?Say No to the Woke Revolution, COMMENTARY (Nov. 2021), https://www.commentary.org/articles/bari-weiss/resist-woke-revolution/ (?[I]n a war, the normal rules of the game must be suspended?); Ben Burgis, What the Left Keeps Getting Wrong About Free Speech, THE DAILY BEAST (Apr. 2, 2022, 4:09 AM), https://www.thedailybeast.com/what-the-left-keeps-getting-wrong-about-free-speech (After making the argument that free speech is a leftwing value, the author relents that he is unfortunately ?not surprised that some mainstream progressives make excuses for attempts to shut down events on college campuses that offend some students?).

2 See Pernell v. Fla. Bd. of Governors of the State Univ. Sys., 641 F.Supp.3d 1218, 1230 (N.D. Fla. 2022) (declaring the State's ?Individual Freedom Act,? formerly the ?Stop W.O.K.E.? Act, ?positively dystopian?); see also Sarah Schwartz & Eesha Pendharkar, Here's the Long List of Topics Republicans Want Banned From the Classroom, EDUCATIONWEEK, (Feb. 02, 2022), https://www.edweek.org/policy-politics/heres-the-long-list-of-topics-republicans-want-banned-from-the-classroom/2022/02.

3 See Henry Redman, Culture War Battles in Local School Boards Aren't Slowing Down, LA ILLUMINATOR (Mar. 29, 2022, 9:00 AM), https://lailluminator.com/2022/03/29/culture-war-battles-in-local-school-boards-arent-slowing-down/; Stephen Sawchuk, Why School Boards Are Now Hot Spots for Nasty Politics, EDUCATIONWEEK (July 29, 2021), https://www.edweek.org/leadership/why-school-boards-are-now-hot-spots-for-nasty-politics/2021/07; Anya Kamenetz, Why Education was a Top Voter Priority this Election, NPR (Nov. 4, 2021, 6:00 AM), https://www.npr.org/2021/11/04/1052101647/education-parents-election-virginia-republicans.

4 See Lydia Saad, Confidence in Public Schools Turns More Partisan, GALLUP (July 14, 2022), https://news.gallup.com/poll/394784/confidence-public-schools-turns-partisan.aspx (?Americans' confidence in U.S. public schools remains low, with 28% saying they have a great deal or quite a lot of confidence in the institution,? nearing the all-time low of 26% measured in 2014).

View the Entire Article **Federal Taxation**What a Decision on Affirmative Action Teaches About Taxation*Laura Snyder*51 Rutgers L. Rec. 102 (2023) | WestLaw | LexisNexis **I. INTRODUCTION**

The 2023 U.S. Supreme Court decision Students for Fair Admissions v. Harvard1 has been described as a ?landmark?2 decision with respect to affirmative action. The Court held that race-based admissions policies at two U.S. universities violated the Equal Protection Clause of the Fourteenth Amendment.3

At first glance, it may appear that Students has nothing to do with taxation. But closer examination reveals that Students is directly relevant to the U.S. nationality-based tax system.

This article: (II) situates the U.S. nationality-based tax system in the context of Fourteenth Amendment Equal Protection; and then (III) explains the relevance of Students for the U.S. nationality-based tax system.

1 Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181 (2023).

2 The Editorial Board, A Landmark for Racial Equality at the Supreme Court, Wall St. J. (June 29, 2023), https://www.wsj.com/articles/harvard-unc-students-for-fair-admissions-supreme-court-affirmative-action-john-roberts-clarence-thomas-racial-preferences-f8c998f6.

3 Students for Fair Admissions, Inc., 600 U.S. at 220; see also U.S. Const. amend. XIV, § 1.

View the Entire Article **Constitutional Standing**Unwanted Opt-in Text Messages as a Basis for Constitutional Standing*Renee Marshina*51 Rutgers L. Rec. 79 (2023) | WestLaw | LexisNexis **I. INTRODUCTION**

A multi-circuit split has illuminated a new issue in constitutional law: whether receiving advertisements and promotions in the form of text messages may constitute an injury for the purposes of standing. A majority of the circuits have held that receipt of such text messages is sufficient to show injury, but the Eleventh Circuit has deviated from that pattern, holding that receipt of those text messages is insufficient to show injury.1 Because of the disparity in the circuit courts' holdings, a fact intensive analysis should be employed.2 The main statute in question is the Telephone Consumer Protection Act (TCPA), which was intended to protect individuals against invasive telemarketing calls.3 One of the aims of the TCPA is to balance the privacy rights of consumers, while also making room for ?legitimate telemarketing practices.?4 The recent circuit opinions regarding what types of communications that the TCPA covers have focused mainly on the former aim, while making little to no mention of the latter aim.5 This note suggests that the courts should give the second factor more weight when determining whether text messages constitute injury for the purposes of standing. While the importance of individual privacy rights cannot be understated, companies must be allowed some leeway in using technology to promote their goods and services, especially in situations where the consumer willingly provides a contact number, such as opt-in text messages from businesses. Furthermore, the courts should also take into consideration both the quantity of texts that the plaintiff has received and any action that the plaintiff has taken to stop the defendant from sending the text messages. If the plaintiff has voluntarily elected to receive such text messages, businesses should not be penalized for utilizing this channel of communication with consumers, especially given the aforementioned aims of the TCPA.

Part II of this note will discuss an overview of the TCPA, including its history and the plaintiff's burden in establishing standing under the TCPA. Part III will continue the discussion with an analysis of the current difficulties in applying the TCPA to various forms of communication, as well as how various circuit courts have used the TCPA in these situations. In Part III, this note will also argue that the circuits should consider both the quantity of the texts that the plaintiff has received and the plaintiff's own actions in receiving the initial text messages. Part IV discusses the current actions that the legislature and the FCC have taken to refine the TCPA.

1 See Salcedo v. Hanna, 936 F.3d 1162, 1173 (11th Cir. 2019).

2 Id.

3 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(7), 105 Stat. 2394, 2394.

4 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(9), 105 Stat. 2394, 2394.

5 See Cranor v. 5 Star Nutrition, L.L.C., 998 F.3d 686, 692 (5th Cir. 2021); see also Van Patten v. Vertical Fitness Grp., LLC, 847 F.3d 1037, 1040 (9th Cir. 2017).

View the Entire Article **Drunk Driving**You Drink, You Drive, You Pay: An Analysis of Victim Compensation Methods Across the United States in Light of the Increasing State Interest in Bentley's Law*Penelope M. Way*51 Rutgers L. Rec. 50 (2023) | WestLaw |

LexisNexis **I. INTRODUCTION**

The epidemic of drunk driving has reared its monstrous head across the nation's highways for years.1 Approximately thirty-two people die in drunk-driving crashes every day in the United States alone, amounting to the loss of a human life ?every 45 minutes.?2 Not only has drunk-driving had deleterious effects on the safety of those on our roadways, but it has been felt in the pockets of our government, costing the United States approximately ?$44 billion [dollars] annually.?3 States have responded to this growing crisis through legislation in a number of ways, spanning from the mandatory placement of ignition interlock device in the vehicles of DUI offenders to a conditional release from custody pending completion of a rehabilitation program.4

However, the families of deceased victims are often left to pick up the pieces on their own, usually with little assistance from state entities. For those who were dependent on the victim, such as young children, civil recourse is typically limited to wrongful death actions, funds obtained from a state Victim's Compensation Fund, or through court-ordered restitution to be paid by the convicted DUI offender. While no form of civil recovery can ever fully replace the loss of the victim, each of these forms of compensation carry with them a suite of issues for the families of DUI victims that generally render them unable to even come close to partial compensation.

This Note will proceed in four parts. Part I of this Note will discuss the history of one piece of legislation challenging the current state of victim's compensation for fatal drunk driving collisions, known as ?Bentley's Law,?5 will lay out the requirements of bringing a successful claim under the law, and will explain how it differs from current forms of compensation. Next, Part II will briefly discuss the current state of victim compensation available for children of DUI victims in the states that have yet to adopt Bentley's Law. With this background, Part III will compare the shortcomings of these current avenues of compensation with the existing statutory requirements of Bentley's Law and will discuss how Bentley's Law will aid victims in ways other methods of victim compensation do not. Finally, due to the novelty of the law, Part IV will discuss questions raised on aspects of Bentley's Law and will examine how the legislation will be utilized in the judicial system.

1 The Drunk Driving Epidemic, ROBERT J. DEBRY & ASSOCS., https://robertdebry.com/drunk-driving-epidemic/ (last visited Jan. 15, 2023).

2 Drunk Driving, NHSTA, https://www.nhtsa.gov/risky-driving/drunk-driving (last visited Jan. 15, 2023).

3 Id.

4 See State Ignition Interlock Laws, NAT'L CONF. STATE LEGIS. (Sept. 24, 2021), https://www.ncsl.org/transportation/state-ignition-interlock-laws (?As of 2021, thirty states and the District of Columbia have implemented laws ?requiring all offenders, including first-time offenders, to install an IID.?); see also ALA. CODE § 32-5A-191(k) (2022) (requiring any person convicted of driving while under the influence to ?complete a DUI or substance abuse court referral program?); ARIZ. REV. STAT. ANN. § 28-1381(j) (2022) (allowing ?all but one day? of a DUI offender's sentence to be suspended if the offender agrees to participate in and successfully completes a ?court ordered alcohol or other drug screening, education or treatment program?).

5 In the first district to have adopted Bentley's Law, the Tennessee legislature has amended the law to be formally known as the ?Ethan's, Hailey's and Bentley's Law? to honor the children of Missouri couple Cordell Shawn Michael Williams and Lacey Williams as well as ?fallen Chattanooga Police Office Nicholas Galinger[,]? all three of whom were victims of drunk driving collisions. Tennessee Governor Bill Lee Signs Ethan's, Hailey's and Bentley's Law, MOTHERS AGAINST DRUNK DRIVING (July 7, 2022), https://madd.org/press-release/tennessee-governor-bill-lee-signs-ethans-haileys-and-bentleys-law. Because of its wide recognition in the media as ?Bentley's Law,? it will be addressed as such in this Note.

View the Entire Article **Remote Work**Case Study: Guiding Students and Employees to Recognize the Employer Risks of Employee

Video Zoom while Driving*Nanci K. Carr*51 Rutgers L. Rec. 13 (2023) | WestLaw | LexisNexis **I. INTRODUCTION**

?Police caught an idiot driver in the middle of a Zoom video call while behind the wheel as he made his way to work yesterday.?1 That is an inflammatory statement, but many might feel the same way. ?It beggars belief that a driver could think it's safe to have a Zoom call while being in control of a car,? commented RAC road safety spokesman Simon Williams.2 Police officers spotted the car and pulled it over, finding that the driver had only a provisional license and no insurance.3 While this story led only to head-shaking, it could have been so much worse.4 The leading cause of injury and death in the workplace, according to the National Safety Council, is motor vehicle collisions.5 Employers need to have policies in place prohibiting employee participation in video Zoom6 calls while driving or employers could end up liable for the resulting crash.7

1 Luke May, Virtual Insanity! Police Catch Idiot Driver Holding a ZOOM Video Call at the Wheel on his Way to Work, DAILY MAIL (Feb. 10, 2021), https://www.dailymail.co.uk/news/article-9244903/Driver-holds-ZOOM-video-call-driving-work.html.

2 Id. RAC is the UK motoring organization, similar to the AAA in the United States.

3 Id.

4 Id.

5 Frankenmuth Ins., Commercial Fleet and Delivery Drivers: 5 Tips to Prevent Distracted Driving, FMIN, (July 9, 2020), https://www.dailymail.co.uk/news/article-9244903/Driver-holds-ZOOM-video-call-driving-work.html.

6 While this article focuses on Zoom, the same applies to FaceTime, Skype, WebEx, Teams, or any similar platform. For example, on June 7, 2021, Apple announced new features for its FaceTime app to allow enhanced video calls, appearing to make it more competitive with Zoom. Press Release, Apple Inc., iOs15 brings new ways to stay connected and powerful features that help users focus, explore, and do more with on-device intelligence (June 7, 2021), available at https:/www.apple.com/newsroom/2021/06/ios-15-brings-powerful-new-features-to-stay-connected-focus-explore-and-more/ No such new features should be used while driving.

7 See Lisa Nagele-Piazza, Employers Can Be Liable For Distracted Driving, SHRM, (Oct. 29, 2018), https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/employers-can-be-liable-for-distracted-driving.aspx.

View the Entire Article

Interstate Compacts The Curious Incident of the Dog in the Nighttime: Interstate Compacts and Textual Silence*Sheldon H. Laskin* 51 Rutgers L. Rec. 1 (2023) | WestLaw | LexisNexis **I. INTRODUCTION**

"Scotland Yard Detective Gregory: Is there any other point to which you would wish to draw my attention?

Sherlock Holmes: To the curious incident of the dog in the night-time.

Gregory: The dog did nothing in the night-time.

Holmes: That was the curious incident.?1

On April 18, 2023, the United States Supreme Court ended the 70-year history of the Waterfront Compact of New York Harbor because of the silence of the dog in the night-time, specifically the absence of a compact provision either authorizing or barring a

member state's unilateral withdrawal. Instead, the Court used background common law principles of contract law to affirm New Jersey's right to unilaterally withdraw from the Compact. New York v. New Jersey, 143 S. Ct. 918 (2023).2

Most judges and lawyers are not as inductively brilliant as Sherlock Holmes. Nevertheless, it should have come as no surprise that the Court would resort to background common law principles to fill in gaps in a congressionally approved compact in a dispute between member states, because it has done so at least twice before, including in a case involving the identical states.3

This essay will examine how the Supreme Court has resolved disputes between member states arising under congressionally approved compacts when the compact is silent as to the controlling issue.

Part II will review how congressionally approved compacts are treated under our federal system of government.

Part III will examine how the Supreme Court treats statutory silence in general.

Part IV will examine how the Supreme Court has treated silence in congressionally approved compacts in disputes between member states.

Part V will offer a conclusion.

1 Sir Arthur Conan Doyle, The Adventure of Silver Blaze, THE MEMOIRS OF SHERLOCK HOLMES (1894).

2 The author has previously written about an earlier iteration of this case. Sheldon H. Laskin, The Nostalgia of Eternity: Interstate Compacts, Time, and Mortality, 49 RUTGERS L. REC. 25 (2021).

3 New Jersey v. New York, 523 U.S. 767 (1998) (common law of avulsion supports awarding New Jersey jurisdiction over filled portions of Ellis Island because Ellis Island Compact is silent as to filled land); Tarrant Regional Water District v. Herrmann, 569 U.S. 614 (2013) (common law principles support ruling that Red River Compact does not preempt Oklahoma's water use statutes because Compact is silent on whether member state may meet its water allocation under the Compact by drawing on water located in another member state).

View the Entire Article