OFFICE MEMORANDUM

DATE: March 11, 2019

TO: David Satola

FROM: Jake Skebba

SUBJECT: **AI Ethics and Governance Overview**

INTRODUCTION

With the advent of self-driving cars, computer-assisted medical diagnoses, predictive policing, and many other applications, artificial intelligence (AI) has already spread throughout the modern economy.[1] Analysts predict it will continue to spread rapidly in the coming years, projecting that it will increase global GDP by over 14% by 2030, an increase equivalent to over $15 trillion.[2] AI also has significant promise for sustainable development and the public welfare, social sector actors effectively harness its potential.[3]

There are, however, numerous barriers to realizing AI's full potential as well as risks that accompany its further proliferation. Acknowledging this, over 25 countries have at least started the process of developing national AI strategies.[4] These strategies vary in their exact coverage, but most address topics like innovation policy, research and talent development, investment, and so on.[5] Some explicitly address ethical issues as

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[1] *See, e.g.,* MIRJANA STANKOVIC ET AL., EXPLORING LEGAL, ETHICAL AND POLICY IMPLICATIONS OF ARTIFICIAL INTELLIGENCE 7 (2017); JAMES W. DEMPSEY & GRAHAM RAVDIN, ARTIFICIAL INTELLIGENCE: AN INTRODUCTION TO THE LEGAL, POLICY AND ETHICAL ISSUES FOR CONSIDERATION BY THE WORLD BANK 1 (2018).

[2] PWC, SIZING THE PRIZE: WHAT'S THE REAL VALUE OF AI FOR YOUR BUSINESS AND HOW CAN YOU CAPITALISE? 6 (2017). The 14% figure refers to anticipated growth by 2030 using 2017 global GDP as a baseline. *See id.*

[3] For examples of specific use cases beneficial to development and the social good, see MICHAEL CHUI ET AL., NOTES FROM THE AI FRONTIER: APPLYING AI FOR SOCIAL GOOD 5–7 (2018); STANKOVIC ET AL., *supra* note 1 at 7.

[4] *See* Tim Dutton, *An Overview of National AI Strategies*, MEDIUM (Jun. 28, 2018), https://medium.com/politics-ai/an-overview-of-national-ai-strategies-2a70ec6edfd.

[5] *See id.*

well,[6] though none of them have the force of regulation. In fact, the current lack of regulation and formal governance structures for AI development across the world was presumably one of the factors that led to the inclusion of ethics issues in several of these national strategies in the first place. It has also led some in the business community to call for business leaders to concern themselves more with AI ethical considerations, as the absence of government regulation leaves it up to businesses themselves to prevent and remedy harm when necessary.[7]

The current lack of regulation should not be surprising. Not only are many of the technologies in need of regulation relatively young, artificial intelligence is notoriously difficult to define. A useful definition of artificial intelligence needs to address drastic differences in complexity as well as the problem that ideas of what constitutes artificial intelligence tend to change over time.[8] Furthermore, AI applications operate in a variety of different sectors that "all have their own histories, regulatory frameworks, and hazards."[9] The difficulty in even defining artificial intelligence makes broad, general regulation, or even articulation of ethical best practices, difficult to do well.

Solutions offered for this problem generally involve somehow breaking it into more manageable pieces. With respect to regulation, for example, governments can take a sector-specific approach that focuses on the use of artificial intelligence in a specific context rather than the technology itself.[10] Ethical best practices often need to be developed in a similarly specific manner, since applications often require case-by-case analysis to determine the likely risks that will accompany them and to ensure that associated benefits are likely to outweigh those risks.[11]

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[6] *See id.*

[7] Thomas H. Davenport and Vivek Katyal, *Every Leader's Guide to the Ethics of AI*, MIT SLOAN MANAGEMENT R. (Dec. 6, 2018), https://sloanreview.mit.edu/article/every-leaders-guide-to-the-ethics-of-ai/.

[8] For example, is a handheld calculator artificial intelligence? ONE HUNDRED YEAR STUDY ON ARTIFICIAL INTELLIGENCE, ARTIFICIAL INTELLIGENCE AND LIFE IN 2030: REPORT OF THE 2015 STUDY PANEL 12 (2016) [hereinafter "AI 100"]. The 2015 Study Panel discusses the "AI paradox" as well, whereby applications once considered to fall within the category of artificial intelligence lose that designation as people acclimate to them and newer technologies emerge. *Id.*

[9] MEREDITH WHITTAKER ET AL., AI NOW REPORT 2018 4 (2018).

[10] *Id.*

[11] The European Commission's High-Level Expert Group on Artificial Intelligence, for example, explicitly acknowledges that "a tailored approach is needed given AI's context-specificity." HIGH-LEVEL EXPERT GROUP ON ARTIFICIAL INTELLIGENCE, DRAFT ETHICS GUIDELINES FOR TRUSTWORTHY AI 3 (2018) [hereinafter "EU HLEG"]. Google approaches this issue with a sort of balancing test, claiming that they

This need for context-specificity makes highly detailed analysis of AI ethics and governance difficult since sweeping generalizations are likely to have many exceptions. Accordingly, this memorandum will explain the consensus on AI ethics and governance at a general level, to the extent that such a consensus exists. Part I will discuss broad ethical principles for AI development. Part II will discuss identified risks associated with artificial intelligence as well as barriers preventing the full realization of AI's potential for social good. Part III will briefly discuss the fault lines in the literature on AI ethics and governance best practices. Finally, this memorandum will conclude by briefly discussing limitations of artificial intelligence that in turn limit the expectations those concerned with ethics and governance can reasonably hold.

I. BROAD ETHICAL PRINCIPLES FOR GOVERNING ARTIFICIAL INTELLIGENCE

Although specific language and categorization schemes tend to vary, there appears to be broad agreement in the literature regarding the general ethical principles as applied to AI. In general, a governance framework should ensure accountability, transparency, and fairness.[12] It should likewise be inclusive and human-centered, it should promote sustainable growth and the social good.[13] Artificial intelligence should also be accurate and protect individual privacy,[14] and it should be safe and reliable.[15]

While these are all laudable goals for which it is relatively easy to obtain widespread agreement, they also suffer from vagueness and a resulting inability to provide specific guidance. This problem is perhaps understandable given the broad nature of the field of artificial intelligence.[16] Some have suggested using international human rights law as at least a starting point for developing ethical guidelines to remedy this

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will not develop any technology likely to do more harm than good. Sundar Pichai, *AI at Google: Our Principles*, GOOGLE (Jun. 7, 2018), https://blog.google/technology/ai/ai-principles/.

[12] *See, e.g.,* EU HLEG, *supra* note 11, at 14.

[13] *See, e.g., OECD Moves Forward on Developing Guidelines for Artificial Intelligence (AI)*, OECD (Feb. 20, 2019), http://www.oecd.org/going-digital/ai/oecd-moves-forward-on-developing-guidelines-for-artificial-intelligence.htm.

[14] *See, e.g.,* INSTITUTE OF BUSINESS ETHICS, BUSINESS ETHICS AND ARTIFICIAL INTELLIGENCE 2–3 (2018).

[15] *See, e.g.,* EU HLEG, *supra* note 11, at 17–18.

[16] *See* discussion *infra* p. 2.

shortcoming.[17] In keeping with that proposal, several AI ethics documents explicitly derive their principles from human rights law.[18]

These principles' generality may also offer some advantages, however. Their generality derives at least in part from the fact that they are formulated more as standards than rules, and this formulation likely makes them more adaptable in the face of a rapidly evolving technological landscape.[19] Accordingly, they are, at least in theory, resistant to being rendered obsolete by new technology, an advantage in such a cutting-edge field.

II. THE RISKS OF ARTIFICIAL INTELLIGENCE

The need for general ethical principles did not develop in a vacuum. The literature has also identified numerous AI-related risks, which create the need for ethical principles and a governance framework in the first place. The broad nature of artificial intelligence makes detailed discussion of risks difficult as well, since applications vary in the concerns they raise. Furthermore, different AI applications present risks to different degrees. For example, inaccuracy may be a risk for both an application that recommends songs to add to a playlist based on a user's previously expressed preferences as well as an application that identifies cancerous regions in brain scans. Despite inaccuracy being a risk in both cases, the risk in the latter is undoubtedly more serious than the risk in the former.

While the use of artificial intelligence implicates a wide variety of risks, which are often use-case specific, the risks, or at least a significant subset of them, can nevertheless be discussed in general terms. As with the previously discussed ethics

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[17] *See, e.g.,* Karen Hao, *Establishing an AI Code of Ethics will be Harder than People Think*, MIT TECHNOLOGY R. (Oct. 21, 2018), https://www.technologyreview.com/s/612318/establishing-an-ai-code-of-ethics-will-be-harder-than-people-think/; MARK LATONERO, GOVERNING ARTIFICIAL INTELLIGENCE: UPHOLDING HUMAN RIGHTS AND DIGNITY (2018).

[18] *See, e.g.,* AMNESTY INTERNATIONAL & ACCESS NOW, THE TORONTO DECLARATION: PROTECTING THE RIGHT TO EQUALITY AND NON-DISCRIMINATION IN MACHINE LEARNING SYSTEMS (2018); EU HLEG, *supra* note 11, at 5–7.

[19] *See, e.g.,* Hans-Bernd Schäfer, *Rules Versus Standards in Developing Countries: The Case for Clear and Precise Legal Norms on Eminent Domain Power* (Univ. of Hamburg Working Paper), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3222805 ("Rules are cheaper to administer and require fewer highly trained civil servants than standards but may become sticky and dysfunctional over time if technical or social condition change [sic]."). For a general discussion of the categorization of legal norms into rules and standards, see Louis Kaplow, *Rules Versus Standards: An Economic Analysis,* 42 DUKE L.J. 557 (1992). It is also worth noting that advances in artificial intelligence itself, as well as communications technology, may eventually allow for the development of legal norms that further blur the distinction between rules and standards, providing the benefits while avoiding the pitfalls of both. Anthony J. Casey & Anthony Niblett, *The Death of Rules and Standards,* 92 IND. L.J. 1401 (2017).

principles, different authors tend to use varying terms and categorization schemes. However, categorizing risks as follows provides a good starting point for a wide-ranging discussion: (1) bias and discrimination; (2) privacy and autonomy; (3) misuse and abuse; (4) social impact; (5) aggravating factors, such as inaccuracy and opacity; and (6) failure to realize potential benefits.[20]

Risks associated with bias and discrimination are frequently discussed in the AI ethics literature. AI applications may continue existing discriminatory practices, and the associated gains in efficiency may even exacerbate such practices.[21] Unfortunately, AI developers need not be biased themselves to create biased applications,[22] as AI applications can learn bias merely from the data sets on which they are trained if the data itself reflects bias.[23]

AI also presents several risks related to individual privacy and autonomy. AI is already enabling countries including China, the United States, and Venezuela to conduct various forms of surveillance on a larger scale, raising civil rights concerns.[24] AI's voracious appetite for data also raises personal data privacy concerns,[25] and developers often test their programs "in the wild," making it difficult, if not impossible, to obtain meaningful consent from those whose data is collected.[26] Furthermore, AI has the potential to alter human behavior by allowing for manipulation of users, threatening user autonomy.[27]

Manipulation may also fall into another category of risk: misuse and abuse. Misuse could include the negligent use of artificial intelligence that threatens people's

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[20] These categories are adapted from CHUI ET AL., *supra* note 3, at 35.

[21] *E.g.,* STANKOVIC ET AL., *supra* note 1, at 30.

[22] *Id.* at 30–31.

[23] *E.g.,* CHUI ET AL., *supra* note 3, at 39.

[24] WHITTAKER ET AL., *supra* note 9, at 12–15.

[25] *E.g.,* CHUI ET AL., *supra* note 3, at 39.

[26] WHITTAKER ET AL., *supra* note 9, at 8.

[27] *See, e.g.,* EU HLEG, *supra* note 11, at 16–17. Some technology already manipulates users to the extent that it is designed to be addictive. *See, e.g.,* STANKOVIC, *supra* note 1, at 14.

physical safety.[28] It also includes situations in which human operators lose control over AI applications.[29] Abuse could include everything from gerrymandering[30] to widespread due process and civil rights violations by government actors,[31] as well as exploitation of lax cybersecurity by malicious third parties.[32]

The threat of malicious use or exploitation may in fact be exacerbated by the efficiency artificial intelligence provides. As artificial intelligence allows smaller actors to more directly compete with larger organizations, it may disrupt the balance of power between governments and organized crime, terrorism groups, or other organizations with a general interest in circumventing public oversight. Alternatively, artificial intelligence may allow the government to more effectively suppress such organizations. The ethics literature does not appear to address the question of which sort of organizations artificial intelligence may help the most, leaving the question of how artificial intelligence may disrupt the balance of power open for further research.

In addition to disrupting the balance of power, the increasing use of artificial intelligence poses various other social risks. It is already clear that artificial intelligence has the potential to disrupt the labor market. This could include workforce displacement,[33] though artificial intelligence also creates new jobs, so the net effect on labor is not yet clear.[34] This new work may result in a "hidden workforce" supporting AI applications, however, that may not enjoy the same protections as workers do in older occupations.[35]

Artificial intelligence also stresses existing laws, policies, and social relations. For example, legal questions include to whom liability attaches when artificial intelligence

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[28] For example, there is concern that autonomous weapons systems "may malfunction in unpredictable ways and kill innocent people." Pallab Ghosh, *Call to Ban Killer Robots in Wars*, BBC (Feb. 15, 2019), https://www.bbc.com/news/science-environment-47259889.

[29] *See, e.g.,* STANKOVIC ET AL., *supra* note 1, at 30.

[30] *See, e.g.,* AI 100, *supra* note 8, at 48.

[31] *See, e.g.,* WHITTAKER ET AL., *supra* note 9, at 15–24.

[32] This could involve using AI to circumvent cybersecurity as well as circumventing the cybersecurity of others' AI applications for nefarious purposes (which are not mutually exclusive). *See, e.g.,* CHUI, *supra* note 3, at 35.

[33] STANKOVIC ET AL., *supra* note 1, at 12–13.

[34] DEMPSEY & RAVDIN, *supra* note 1, at 25–26.

[35] WHITTAKER ET AL., *supra* note 9, at 34–36.

causes harm,[36] whether AI applications can be legal agents,[37] who owns intellectual property created by AI,[38] and who, if anyone, should be held responsible when AI commits an act that would be a crime if done by a human,[39] among others.[40] There is also the question of how societies dependent mostly on payroll taxes will deal with shrinking tax bases if an increasing share of productive work is done by machines that do not earn wages.[41] Finally, it is becoming clear that artificial intelligence may even change how humans interact with each other, suggesting that its use may disrupt social relations not mediated by law.[42]

The foregoing discussion of AI-related risks is of course not comprehensive, but it provides a good overview of the types of concerns often discussed in the AI ethics literature. The literature also often discusses what are probably best characterized as causes or contributing factors of many of the risks described above: inaccuracy and opacity. Inaccuracy can be a problem by resulting in persistent bias if systematic[43] or general unfairness and arbitrariness if not. It may also simply leave people open to harm through misallocation of resources (e.g., by predicting that a famine will not occur where one does and predicting that one will occur where one does not).

Opacity may be an issue when it is important to understand how an application reaches a decision, often out of concerns regarding due process or where there is high need for human oversight. Explainability is often touted as the solution to the problem of opacity,[44] which means that an application can provide justification for how it reached a

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[36] *E.g.,* DEMPSEY & RAVDIN, *supra* note 1, at 7; AI 100, *supra* note 8, at 47.

[37] *E.g.,* AI 100, *supra* note 8, at 47.

[38] *E.g.,* DEMPSEY & RAVDIN, *supra* note 1, at 13; STANKOVIC ET AL., *supra* note 1, at 19–22.

[39] *E.g.,* STANKOVIC ET AL., *supra* note 1, at 27.

[40] See DEMPSEY & RAVDIN, *supra* note 1, at 7–21 for a wider-ranging sampling of AI-related legal issues.

[41] *E.g.,* AI 100, *supra* note 8, at 47.

[42] *See* Nicholas A. Christakis, *How AI Will Rewire Us*, THE ATLANTIC (Apr. 2019), https://www.theatlantic.com/amp/article/583204/.

[43] *E.g.,* INSTITUTE OF BUSINESS ETHICS, *supra* note 14, at 2.

[44] *See id.* at 3. The EU Commission High-Level Expert Group recommends transparency not only in technology (i.e., explainability), but also in business models. EU HLEG, *supra* note 11, at 8–10.

decision. Of course, since different applications raise different concerns to different degrees, this need for explainability may also vary.[45]

Finally, there is the risk that artificial intelligence will fail to live up to its potential to increase public welfare. Barriers to the use of AI for pro-social purposes include shortages in AI talent and difficulties with last-mile implementation, particularly in the social sector.[46] Difficulties gaining access to data further inhibit AI-driven development in the social sector,[47] and when those certain actors maintain tight control over data, inefficient monopolies may also develop.[48] The use of proprietary hardware and a lack of open standards may also contribute to the development of monopolies.[49] Accordingly, competition regulation and oversight are needed to ensure the development of an efficient, healthy AI ecosystem.[50] Finally, AI that fails to adequately follow good ethical principles and mitigate risks may inspire public distrust, hampering adoption.[51]

III. FAULT LINES IN THE BEST PRACTICES LITERATURE

While identifying AI-related risks and articulating ethical principles is generally uncontroversial, there is robust discussion on a few points regarding best practices for mitigating risks and upholding principles. While not a comprehensive list of debated topics within the AI ethics community, the following topics generate substantial discussion and will be addressed in this memorandum: (1) the respective roles of regulation and ethical codes; (2) explainable AI (XAI); and (3) the respective use of technical and non-technical solutions to identified problems.

Government regulation and less formal governance structures based on ethics are not necessarily mutually exclusive,[52] but there is nevertheless a debate to be had on the

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[45] CHUI ET AL., *supra* note 3, at 35, 38.

[46] *Id.* at 33.

[47] *Id.* at 31.

[48] SIDEWALK LABS, DIGITAL GOVERNANCE PROPOSALS FOR DSAP CONSULTATION (2018).

[49] *Id.*

[50] *See, e.g,* MINISTRY OF ECONOMIC AFFAIRS AND EMPLOYMENT OF FINLAND, WORK IN THE AGE OF ARTIFICIAL INTELLIGENCE: FOUR PERSPECTIVES ON THE ECONOMY, EMPLOYMENT, SKILLS AND ETHICS 19 (2018).

[51] EU HLEG, *supra* note 11, at 1.

[52] The EU Commission's High-Level Expert Group explicitly states their proposed guidelines are not intended to supplant government regulation. *Id.* at 2.

proper balance between the two. Overzealous regulation may stifle innovation, preventing AI from reaching its full potential as a driver of social good,[53] but the "soft law" of ethical codes is difficult to enforce and may be insufficiently protective of the public interest.[54] Furthermore, to the extent regulation is desirable, it can be difficult to proactively regulate artificial intelligence because regulation tends to lag technical developments.[55] Soft law, however, often provides a basis for establishing best practices even in a rapidly evolving technological landscape, which can then later be formalized as regulation.[56]

Of course, the debate between ethical codes and government regulation is not unique to the artificial intelligence field. However, artificial intelligence may represent an economic paradigm shift large enough to necessitate a corresponding governance paradigm shift. Modern regulation is largely a creation of the 20th century administrative state, which coevolved with an economy in which businesses generally employed top-down, command and control organizational models.[57] Modern technology may be changing the economy in such a manner that the current regulatory framework is no longer optimal. Accordingly, exploration of other regulatory models may be in order.[58]

Explainable AI (XAI), sometimes also referred to as interpretable AI, is often proposed as a solution for transparency-related issues,[59] though there is some debate over the extent to which AI can be both useful and explainable. It is not only difficult to get AI to explain its thought process in a human-comprehensible manner, but it may not even be desirable.[60] One of the primary advantages of using AI is that it is able to develop highly

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[53] CHUI ET AL., *supra* note 3, at 41.

[54] WHITTAKER ET AL., *supra* note 9, at 29–32.

[55] Gary Marchant, *"Soft Law" Governance of Artificial Intelligence*, AI PULSE (Jan. 25, 2019), https://aipulse.org/soft-law-governance-of-artificial-intelligence/.

[56] *Id.*

[57] *See generally* GILLIAN K. HADFIELD, RULES FOR A FLAT WORLD (2016).

[58] Some alternative models have already been proposed. For example, Gillian Hadfield has proposed a sort of mandatory certification regime in which government notice-and-comment rulemaking is replaced by government establishment of standards that are enforced by private regulators, allowing for market-based competition in regulation itself. *Id.* Specific regulations may themselves be established by artificial intelligence in accordance with the established standards. *See supra* note 19.

[59] *See supra* notes 44–45 and accompanying text.

[60] Cassie Kozyrkov, *Explainable AI Won't Deliver. Here's Why.*, HACKER NOON (Nov. 16, 2018), https://hackernoon.com/explainable-ai-wont-deliver-here-s-why-6738f54216be.

complicated solutions that may not be comprehensible to humans even when explained.[61] Accordingly, demanding that AI only use human-comprehensible models in all cases may compromise performance.[62] Refusing to use AI on the basis that it cannot explain itself does not necessarily prevent the harm of arbitrary decision making anyway, as humans often cannot adequately and accurately explain their own decisions either.[63] Instead, rigorous testing may provide a better basis for trust.[64] In any case, XAI is currently an active area of research.[65]

Finally, while there are both technical and non-technical solutions proposed for many of the problems associated with AI, there is debate over when each type of solution is appropriate.[66] Simply instructing an application to disregard a protected trait (such as race), for example, is usually insufficient to prevent bias, as the application may then instead base its decision on closely correlated, but facially neutral, data points (such as zip code).[67] This simply changes the form of discrimination from disparate treatment to disparate impact.

Several mathematical measures of fairness have been developed as technical solutions to this problem, but they do not fully eliminate bias.[68] For example, artificial intelligence, even when optimizing mathematical measures of fairness, overestimates the risk of rearrest for women compared to men.[69] A solution to this problem, it turns out, is simply to consider gender despite it being a protected trait.[70] However, it is difficult to

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[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.* Rigorous testing itself is noncontroversial—even sources that promote XAI also often promote rigorous testing. *See, e.g.,* INSTITUTE OF BUSINESS ETHICS, *supra* note 14, at 5. The question is whether XAI is necessary or desirable or if rigorous testing alone is sufficient to ensure good performance.

[65] *See, e.g.,* EXPLAINABLE ARTIFICIAL INTELLIGENCE, https://www.darpa.mil/program/explainable-artificial-intelligence (last visited Mar. 11, 2019).

[66] Use of one type of solution does not necessarily preclude use of the other. The EU Commission's High-Level Expert Group, for example, recommends employing both types. EU HLEG, *supra* note 11, at 19–24.

[67] *E.g.,* AI 100, *supra* note 8, at 46.

[68] WHITTAKER ET AL., *supra* note 9, at 24–27.

[69] *Id.*

[70] *Id.*

develop a technical standard to determine when protected traits should be considered and when they should not. Accordingly, the non-technical solution in this case may be to promote diversity and inclusion in hiring and oversight so that diverse groups of humans may make those judgments instead.[71]

In other cases, however, technical solutions alone may work well. For example, Google recommends on-device processing, anonymization, and minimizing the handling of sensitive data as means of protecting user privacy.[72] If those tactics are successful in protecting user privacy, non-technical solutions may not be necessary.

CONCLUSION

Artificial intelligence presents both significant opportunities as well as significant risks. The wide scope of technology that falls under the umbrella of artificial intelligence makes developing a comprehensive ethics and governance framework difficult, however. While the scope of artificial intelligence presents an issue for anyone seeking to contribute to an AI ethics and governance framework, it is worth remembering that the scope is ultimately limited. AI ethics and governance policies should therefore be developed with those limitations in mind.

First, artificial intelligence can only work with the data it is given. In some cases, the data may be scrubbed of biases to prevent those biases from being replicated by the AI application. In other cases, eliminating bias in the data may prove more difficult. For example, in the case previously discussed regarding gender disparities in pretrial risk assessment, the algorithm in question predicted rearrest rate rather than the true recidivism rate.[73] It is understandable that developers would write AI to predict rearrest rate since the true recidivism rate is much more difficult, if not impossible, to accurately measure. The fact remains, however, that rearrest rate is an imperfect proxy and that any disparity between the rearrest rate the true recidivism rate would be replicated by the AI.

Similarly, it is important to note that making decisions in general involves some form of discrimination. Issues generally arise when decisions are made based on unfair bases, but choosing upon which factors it is acceptable to discriminate is not an easy task. In fact, it may be an impossible task to do objectively. Fairness is ultimately a question of human values, and conceptions of what is unfair can vary by culture.[74] Accordingly, one

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[71] *Id.*

[72] RESPONSIBLE AI PRACTICES, https://ai.google/education/responsible-ai-practices?category=general (last visited Jan. 18, 2019).

[73] *See supra* notes 67–70 and accompanying text.

[74] Pichai, *supra* note 11.

can probably not expect AI to be universally fair when there is no universal definition of fair.[75]

Finally, an analysis involving a sort of balancing test is well-suited to AI ethics given the presence of both risks and benefits to varying degrees.[76] Determining that the benefits outweigh the risks, however, does not mean that the risks are eliminated. There will undoubtedly be times that artificial intelligence causes harm, which the law and ethical codes will need to address. That does not, however, necessarily mean that artificial intelligence should not be employed.

Despite these shortcomings, AI nevertheless has the potential to significantly advance the public welfare. An ethical governance structure is important, but it is likewise important to not let it make the perfect the enemy of the good and prevent realization of the social benefits artificial intelligence has to offer. An inability to eliminate discrimination does not mean that artificial intelligence cannot provide a way to lessen discrimination, for example, and so the benchmark for measuring AI performance should be whether it is an improvement over the status quo.

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[75] This is probably why some scholars would like to tie AI ethics to human rights law, which is putatively universal. *See supra* notes 17–18 and accompanying text.

[76] *See supra* notes 10–11 and accompanying text.

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March 1, 2022

The Honorable John D. Bates
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Dear Senior Judge Bates:

I am a third-year law student at the LSU, Paul M. Hebert Law Center where I am a Junior Associate on the *Louisiana Law Review* and a Graduate Editor on the *Journal of Civil Law Studies*. I write to express my interest in being considered for the position of Term Law Clerk in your chambers for the term of August 30, 2022 to August 30, 2023. As a student with a passion for legal writing and research, I would be both honored and thrilled to begin my legal career in your chambers.

My experience both during my undergraduate and law school studies, as well as my legal work experiences, have taught me that I am well-suited and well-equipped for a judicial clerkship. As a first-year law student, I learned to refine my research, writing, and analytical skills and adapt them to a legal framework through memorandum and appellate brief writing. I have since been fortunate enough to apply and hone these skills through my judicial and law firm legal work experiences; this semester I am working as a student mediator within the Small Claims Division in the Baton Rouge City Court to further apply these skills. These work experiences have exposed me to the various civil claims and procedures and provided me with a better understanding of local, state, and federal laws. I am confident that these experiences will allow me to meaningfully contribute to the work of the United States District Court for the District of District of Columbia, while also learning and building upon the necessary skills of effective lawyering.

Included for your review is a copy of my resume, law school transcript, references, and a writing sample. Please feel free to contact me with any questions or concerns. You may reach me at macypspencer@gmail.com or 757-404-3436. Thank you for your time, and I look forward to hearing from you to further discuss my qualifications and to learn more about this opportunity.

Respectfully,

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- Junior Associate, *Louisiana Law Review* Volume 82
- Graduate Editor, *Journal of Civil Law Studies*
- Paul M. Hebert Scholar Award
- Dean's Scholar Award
- University of Essex Study Abroad Program
- Treasurer, Women Law Student Association
- Student Bar Association Mentoring Program
- Judge Paul Landry Scholarship Recipient
- Ben R. Miller Sr. Scholarship Recipient
- McGlinchey, Stafford Endowed Scholarship Recipient
- LSU Dean's Scholarship Non Resident Recipient
- Law Class of 1974 Scholarship Recipient

Old Dominion University, Norfolk, VA
Bachelor of Science, Political Science/Minor in International Studies, May 2019
GPA: 3.78

- Perry's Honors College Graduate
- Dean's List
- Standards Board, Kappa Delta Sorority
- Pi Sigma Alpha
- ODU Monarch Scholarship Recipient
- Cranmer/Skinner Scholarship Recipient
- Herbert Altschul Scholarship Recipient
- Barnes Political Science Scholarship Recipient

EXPERIENCE

Civil Mediation Clinic, Baton Rouge, LA
Student Mediator, January 2022 – May 2022

- Co-mediated disputes filed in the Baton Rouge City Court Small Claims Division; observed mediations; and participated in simulations to practice mediation techniques

Simon, Peragine, Smith & Redfearn, New Orleans, LA
Law Clerk, June 2021 – August 2021

- Researched and drafted legal memoranda regarding insurance defense, construction law, and real estate & development contracts; and attended mediations, depositions, and witness interviews

Taylor, Wellons, Politz & Duhe, Baton Rouge, LA
Law Clerk, May 2021 – June 2021

- Drafted motions to consolidate, demand letters, and engagement letters; researched and drafted legal memoranda regarding insurance defense and workers' compensation claims; and attended mediations, depositions, hearings, and witness interviews

United States District Court, Middle District of Louisiana
Judicial Intern for the Honorable Judge Wilder-Doomes, January 2021 – May 2021

- Researched case law and drafted legal memoranda; analyzed pre-trial motions; and observed pre-trial hearings and settlement conferences

Richard Bowling Elementary School, Norfolk, VA
America Reads Tutor, January 2017 – May 2019

New Dominion Pictures, Suffolk, VA
Production Assistant, June 2015 – August 2017

SKILLS & INTERESTS

Westlaw, LexisNexis, Bloomberg, and HeinOnline
Snowboarding, Skydiving, and Traveling

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BATON ROUGE, LOUISIANA 70803

OFFICIAL TRANSCRIPT

MACY P SPENCER BIRTHDATE: 04/12
xxx-xx-9142

DEGREES AWARDED:

05/2019 BS
OLD DOMINION UNIVERSITY

CRSE	COURSE TITLE	SEC	GR	HRC	HRE	QPTS	PROF	CRS RNK
LOUISIANA STATE UNIVERSITY								
FALL SEM 2019 L 1 JDCL								
5001	CONTRACTS	1	3.6	3.0	3.0	10.8	LOCKRIDGE, LEE	11/ 67 T
5003	TORTS	1	3.3	3.0	3.0	9.9	GALLIGAN, T	24/ 67 T
5007	BASIC CIVIL PROC I	4	3.2	2.0	2.0	6.4	LAMONICA, P RAY	10/ 34 T
5009	CRIMINAL LAW	1	2.9	3.0	3.0	8.7	AVALOS, L	40/ 67 T
5015	LEGAL TRADITIONS & SY	4	3.5	3.0	3.0	10.5	VICENTE, L	6/ 36 T
5021	LEGAL RESEARCH & WRIT	6	3.7	2.0	2.0	7.4	THOMPSON, HEIDI	
			SEMESTER			16.0	16.0 53.7	3.356
SEC RNK 13/ 67			LSU SYSTEM			16.0	16.0 53.7	3.356
CLS RNK 44/203 TIE			CUMULATIVE			16.0	16.0 53.7	3.356
LOUISIANA STATE UNIVERSITY								
SPRING SEM 2020 L 1 JDCL								
5002	OBLIGATIONS	1	P		3.0		VICENTE, L	
5006	CIVIL LAW PROPERTY	1	P		3.0		CARROLL, ANDREA	
5008	CONSTITUTIONAL LAW I	1	P		3.0		DEVLIN, JOHN	
5010	ADMIN CRIMINAL JUSTIC	1	P		3.0		SULLIVAN, SCOTT	
5017	BASIC CIVIL PROC II	4	P		2.0		LAMONICA, P RAY	
5022	LEGAL RESEARCH & WRIT	6	P		2.0		THOMPSON, HEIDI	
			SEMESTER				16.0	
			LSU SYSTEM			16.0	32.0 53.7	3.356
			CUMULATIVE			16.0	32.0 53.7	3.356

SPRING 2020 WAS DISRUPTED BY THE COVID-19 PANDEMIC.
PASS-NO CREDIT GRADING WAS MANDATORY, EXCLUDING JOURNAL
PAPERS. STUDENTS WERE NOT RANKED.

LOUISIANA STATE UNIVERSITY								
SUMMER SEM 2020 L 2 JDCL								
5605	EVIDENCE	1	3.1	3.0	3.0	9.3	THOMAS, M S	
5610	ADVANCED LEGAL RESEAR	1	3.8	2.0	2.0	7.6	SLOAN, AMY	
			SEMESTER			5.0	5.0 16.9	3.380
			LSU SYSTEM			21.0	37.0 70.6	3.361
			CUMULATIVE			21.0	37.0 70.6	3.361
LOUISIANA STATE UNIVERSITY								
FALL SEM 2020 L 2 JDCL								
5204	SALES & REAL ESTATE T	1	3.8	3.0	3.0	11.4	LONEGRASS, M	4/ 78 T
5300	BUS ASSOCIATIONS I	1	3.7	3.0	3.0	11.1	SAUTTER, C	8/ 83 T
5450	SPORTS LAW	1	3.9	2.0	2.0	7.8	BARTON, ROBERT	2/ 42 T
5708	MERGERS AND ACQUISITI	1	3.2	2.0	2.0	6.4	SAUTTER, C	19/ 40 T
5721	LEGAL PROFESSION, THE	1	3.6	2.0	2.0	7.2	SMITH, GREG	11/ 75 T
			SEMESTER			12.0	12.0 43.9	3.658
			LSU SYSTEM			33.0	49.0 114.5	3.469
CLS RNK 24/203			CUMULATIVE			33.0	49.0 114.5	3.469

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LOUISIANA STATE UNIVERSITY AND A & M COLLEGE

BATON ROUGE, LOUISIANA 70803

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MACY P SPENCER xxx-xx-9142

CRSE	COURSE TITLE	SEC	GR	HRC	HRE	QPTS	PROF	CRS RNK
LOUISIANA STATE UNIVERSITY								
SPRING SEM 2021 L 2 JDCL								
5301	BUS ASSOCIATIONS II	1	3.7	3.0	3.0	11.1	SAUTTER, C	7/ 63 T
5305	CONTRACTS II	1	3.7	2.0	2.0	7.4	BOCKRATH,JOSEPH	5/ 50 T
5402	ADMINISTRATIVE LAW	1	3.3	3.0	3.0	9.9	BRYNER, N	27/ 83 T
5414	CLIMATE CHANGE LAW	1	3.7	3.0	3.0	11.1	RICHARDS, EDWAR	7/ 45 T
5615	MERGERS & ACQUISITION	5	P		1.0		CHURCH, JOHN	
6003	JUDICIAL FIELD PLACEM	1	HP		3.0		BROOKS, JEFFREY	

SEMESTER	11.0	15.0	39.5	3.590	
LSU SYSTEM	44.0	64.0	154.0	3.500	
CUMULATIVE	44.0	64.0	154.0	3.500	
CLS RNK 20/201					

LOUISIANA STATE UNIVERSITY
SUMMER SEM 2021 L 3 JDCL

RANK ONLY

SEMESTER				
LSU SYSTEM	44.0	64.0	154.0	3.500
CUMULATIVE	44.0	64.0	154.0	3.500
CLS RNK 20/197				

LOUISIANA STATE UNIVERSITY
FALL SEM 2021 L 3 JDCL

5890 LAW REVIEW JUNIOR ASS 1 IP 1.0 LONEGRASS, M

LAW PROGRAM EXCHANGE
CURRENTLY ENROLLED 1.0

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CRSE	COURSE TITLE	SEC	GR	HRC	HRE	QPTS	PROF	CRS RNK

AWARDS AND HONORS

JUDGE PAUL B. LANDRY, BEN R. MILLER SCH. 2019-2020
DEAN'S TUITION SCHOLARSHIP 2019-2020
DEAN'S TUITION SCHOLARSHIP 2020-2021
JUDGE PAUL B. LANDRY SCHOLARSHIP 2020-2021
LAW CLASS OF 1974 SCH. 2020-2021
LAW REVIEW JUNIOR ASSOCIATE 2021-2022

FALL SEM 2019
DEAN'S SCHOLAR AWARD

FALL SEM 2020
PAUL M. HEBERT SCHOLAR AWARD

SPRING SEM 2021
DEAN'S SCHOLAR AWARD

LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE 1860

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OFFICIAL TRANSCRIPT

LSU LAW CENTER TRANSCRIPT GUIDE

ABBREVIATIONS

CLS RNK.....CLASS RANKING (L1, L2, L3)
CRS RNK.....COURSE RANKING (ONLY FOR COURSES WITH 50 OR MORE STUDENTS; AFTER SUMMER 1993 RANK COURSES WITH 25 OR MORE STUDENTS; 'T' BY RANK INDICATES A TIE)
E.....EXCELLENT
F.....FAIL
GR.....GRADE
HP.....HIGH PASS
HRC.....HOURS CARRIED
HRE.....HOURS EARNED
IP.....IN PROGRESS
P.....PASS
PROF.....PROFESSOR
QPTS.....QUALITY POINTS
SEC.....SECTION NUMBER
SEC RNK.....SECTION RANKING (FIRST YEAR STUDENTS ONLY)
W.....WITHDRAWAL

ADDITIONAL NOTATIONS PRIOR TO 1987

90....PASS (PASS/FAIL COURSE: NO CREDIT CARRIED OR WEIGHTED POINTS)
91....FAIL (PASS/FAIL COURSE: NO CREDIT CARRIED OR WEIGHTED POINTS)
92....DEGREE ONLY (NO COURSE WORK TAKEN)
95....NON-CREDIT COURSE
96....PERMANENT INCOMPLETE (PI)
97....AUDIT ONLY (AU)
99....INCOMPLETE (I)

SUGGESTED SCALE CONVERSION TO LETTER GRADES
FOR STUDENTS ENTERED PRIOR TO AUGUST 2000

82-89.....A
76-81.....B
65-75.....C
55-64.....D
54 AND BELOW.....F

ALL GRADES BELOW 45 (INCLUDING 0) ARE AVERAGED AS A 45.

FOR STUDENTS ENTERING AS OF AUGUST 2000

4.0.....88-89	2.9.....77	1.8.....66
3.9.....87	2.8.....76	1.7.....65
3.8.....86	2.7.....75	1.6.....64
3.7.....85	2.6.....74	1.5.....63
3.6.....84	2.5.....73	*1.4.....62
3.5.....83	2.4.....72	*1.3.....61
3.4.....82	2.3.....71	*1.2.....60
3.3.....81	2.2.....70	*1.1.....59
3.2.....80	2.1.....69	*1.0.....55-58
3.1.....79	2.0.....68	*0.7.....45-54
3.0.....78	1.9.....67	

ALL GRADES BELOW 1.0 (INCLUDING 0) ARE AVERAGED AS A 0.7.

* EFFECTIVE FALL 2010

THE FACULTY ELIMINATED THE GRADES OF 0.7 TO 1.2. GRADES OF 1.3 AND 1.4 ARE FAILING GRADES RESULTING IN NO COURSE CREDIT AWARDED.

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LOUISIANA STATE UNIVERSITY and A & M COLLEGE

Transcript Guide

CREDITS
Credits are reported in semester hours and are based on the number of times a course meets per week during the regular semester.

GRADING SYSTEM 4.0
A+ = 4.3; A = 4.0; A- = 3.7
B+ = 3.3; B = 3.0; B- = 2.7
C+ = 2.3; C = 2.0; C- = 1.7
D+ = 1.3; D = 1.0; D- = 0.7
F = 0

YEAR CLASSIFICATION CODE

1	Freshman
2	Sophomore
3	Junior
4	Senior
5	Senior-5 year curriculum or Post-Baccalaureate Program
6	Master's Program
7	Doctoral Program

GRADES

A	Satisfactory
B	Satisfactory
C	Satisfactory
D	Passing But Unsatisfactory
F	Failure
P	Passing
I	Incomplete
IP	In Progress
S	Satisfactory (Thesis and Dissertation Research Courses)
U	Unsatisfactory (Thesis and Dissertation Research Courses)
AU	Audit
*WA	Withdrawal Passing
*WB	Withdrawal Passing
*WC	Withdrawal Passing
*WF	Withdrawal Failing
W	Withdrawal
NC	No Credit

*Beginning 1983 fall semester these grades no longer assigned.

COURSE NUMBERING SYSTEM

Course Level	Effective Sept. 1974	Prior to Sept. 1974
Undergraduate- Remedial	0001 – 0999	
Undergraduate- Freshman	1000 – 1999	1 – 49
Undergraduate- Sophomore	2000 – 2999	50 – 99
Undergraduate- Junior	3000 – 3999	100 – 199*
Undergraduate or Graduate- Senior or Graduate	4000 – 4999	100 – 199*
Graduate- Primary post-baccalaureate professional courses	5000 – 5999	100 – 199*
Graduate- Exclusively for teachers at the elementary, secondary and junior college levels	6000 – 6999	
Graduate- Graduate credit only	7000 – 7999	200 – 299
Graduate- Research courses exclusively for graduate students, primarily for students working toward the Master's Degree	8000 – 8999	300 – 399
Graduate- Research courses exclusively for advanced graduate students, primarily for students working toward the doctoral degree	9000 – 9999	400 – Above

*Graduate credit for selected courses only.

SUPPLEMENTARY INFORMATION
- Separate totals are maintained on students in nondegree programs. These include EXT (Extension); PASS (Program for Adult Special Students); PIP (Professional Improvement Program); PLUS (LSU 25+ Program); and, effective Fall 1987 (1S/1988), NMATL, NMATR, NMATX (Graduate nonmatriculating).
- Effective with the fall 1986 (1S/1987) semester, the School of Social Work falls under the jurisdiction of the Graduate School; all credit earned in social work is included in the graduate totals.
- Transfer credit course numbers with one digit and three asterisks reflect transfer equivalency based on course level only.
- Effective with the fall 2013 (1S/2014) semester, students became eligible for the Grade Exclusion Policy. The policy allows students to retake certain courses and to have the grades from the previous attempts removed from the calculation of the cumulative and LSU GPAs beginning in the semester courses were taken. Previous semesters' GPAs are not recalculated.
- Prior to the fall 2015 (1S/2016) semester, grades were awarded without plus and minus distinctions. The previous grading scale was: 4.0 (A=4; B=3; C=2; D=1; F=0).
- Unless specified, student is entitled to honorable dismissal.

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Course Level: Undergraduate

Current Program
Major : Political Science
Minor : International Studies

Awarded: Bachelor of Science 11-MAY-2019
Primary
Major : Political Science
Minor : International Studies
Inst. Honors: Magna Cum Laude

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS R
INSTITUTION CREDIT:					
Fall 2015					
ARTH	121A	INTRO TO THE VISUAL ARTS	3.00	A	12.00
COMM	112R	INTRO-INTERPERS COMMUNICATION	3.00	A	12.00
ENGL	110C	ENGLISH COMPOSITION	3.00	A	12.00
POLS	100S	INTRO TO INTERNATIONL POLITICS	3.00	B	9.00
STAT	130M	ELEMENTARY STATISTICS	3.00	A	12.00
		Ehrs: 15.00 GPA-Hrs: 15.00 QPts:	57.00	GPA:	3.80
Dean's List					
Good Academic Standing					
Spring 2016					
ENGL	211C	ENGLISH COMPOSITION	3.00	A	12.00
HIST	104H	INTERPRETING THE AMERICAN PAST	3.00	A	12.00
POLS	101S	INTRO TO AMERICAN POLITICS	3.00	A	12.00
STEM	110T	TECHNOLOGY AND YOUR WORLD	3.00	A	12.00
WMST	201S	INTRODUCTION WOMEN'S STUDIES	3.00	A	12.00
		Ehrs: 15.00 GPA-Hrs: 15.00 QPts:	60.00	GPA:	4.00
Dean's List					
Good Academic Standing					
Fall 2016					
ENGL	112L	INTRODUCTION TO LITERATURE	3.00	A	12.00
GEOG	100S	CULTURAL GEOGRAPHY	3.00	A	12.00
OEAS	106N	INTRODUCTORY OCEANOGRAPHY	4.00	A	16.00
PHIL	227E	HONORS: WORLD RELIGIONS	3.00	B	9.00
POLS	311	VIRGINIA POLITICS & GOVERNMENT	3.00	A-	11.10
		Ehrs: 16.00 GPA-Hrs: 16.00 QPts:	60.10	GPA:	3.75
Dean's List					
Good Academic Standing					
Spring 2017					
ENGL	300	INTRO TO CREATIVE WRITING	3.00	B	9.00
PHYS	104N	MODERN ASTRONOMY	4.00	B-	10.80
POLS	102S	INTRO COMPARATIVE GOV/POLITICS	3.00	A	12.00

********** CONTINUED ON NEXT COLUMN **********

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS R
Institution Information continued:					
POLS	331	STATE AND LOCAL GOVERNMENT	3.00	W	0.00
WMST	304	CHICK FLICKS	3.00	A-	11.10
		Ehrs: 13.00 GPA-Hrs: 13.00 QPts:	42.90	GPA:	3.30
Good Academic Standing					
Fall 2017					
ECON	201S	PRINCIPLES OF MACROECONOMICS	3.00	A	12.00
POLS	301W	INTRODUCTION TO PUBLIC LAW	3.00	A	12.00
POLS	319	LOBBIES AND INTEREST GROUPS	3.00	A-	11.10
POLS	323	INTERNATL POLITICAL ECONOMY	3.00	B+	9.90
POLS	331	STATE AND LOCAL GOVERNMENT	3.00	A	12.00
		Ehrs: 15.00 GPA-Hrs: 15.00 QPts:	57.00	GPA:	3.80
Dean's List					
Good Academic Standing					
Spring 2018					
HIST	356	VIRGINIA HISTORY	3.00	A	12.00
POLS	308	RESEARCH DESIGN	3.00	A	12.00
POLS	414	POLITICS OF EDUCATION	3.00	A-	11.10
POLS	439	INTL RELAT OF AFRICAN STATES	3.00	A	12.00
POLS	442	20TH CENTURY DICTATORSHIPS	3.00	B+	9.90
		Ehrs: 15.00 GPA-Hrs: 15.00 QPts:	57.00	GPA:	3.80
Dean's List					
Good Academic Standing					
Fall 2018					
CRJS	215S	INTRODUCTION TO CRIMINOLOGY	3.00	A	12.00
CRJS	316	JUVENILE DELINQUENCY	3.00	A	12.00
GEOG	306T	HAZARDS: NATURAL & TECHNOLOGIC	3.00	A	12.00
HNRS	497	HONORS INDEPENDENT STUDY	3.00	A	12.00
POLS	418	QUANTITATIVE METHODS	3.00	A	12.00
		Ehrs: 15.00 GPA-Hrs: 15.00 QPts:	60.00	GPA:	4.00
Dean's List					
Good Academic Standing					
Spring 2019					
CRJS	340	WHITE-COLLAR CRIME	3.00	A-	11.10
CRJS	345	ORGANIZED CRIME	3.00	A-	11.10
HIST	360	AMERICAN MILITARY HISTORY	3.00	B+	9.90
HNRS	387	HONORS CIVIC LEARNING PROJECT	1.00	A	4.00
POLS	306	HN:JUDICIAL PROCESS & BEHAVIOR	3.00	A-	11.10
SOC	418	CRIME, SOCIETY AND THE MEDIA	3.00	A	12.00
		Ehrs: 16.00 GPA-Hrs: 16.00 QPts:	59.20	GPA:	3.70
Dean's List					
Good Academic Standing					

********** CONTINUED ON PAGE 2 **********

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OLD DOMINION UNIVERSITY

COURSE NUMBERING SYSTEM
Courses numbered 100-199 are primarily for Freshmen, 200-299 for Sophomores, 300-399 for Juniors, 400-499 for Seniors. Courses numbered 500 and higher are intended for Graduate students.

GRADES AFFECTING GPA
(Effective August 30, 1982)
A = 4 grade points (Superior)
B = 3 grade points (Good)
C = 2 grade points (Satisfactory)
D = 1 grade points (Passing)
F = 0 grade points (Failing)
WF = 0 grade points (Unofficial Withdrawal)

(Effective August 26, 1985)
A = 4.00 grade points
A- = 3.70 grade points
B+ = 3.30 grade points
B = 3.00 grade points
B- = 2.70 grade points
C+ = 2.30 grade points
C = 2.00 grade points
C- = 1.70 grade points*
D+ = 1.30 grade points*
D = 1.00 grade points*
D- = 0.70 grade points*
F = 0.00 grade points
WF = 0.00 grade points (Unofficial Withdrawal)
**Not assigned to graduate students*

GRADES NOT AFFECTING GPA
IB = International Baccalaureate Credit
AP = Advanced Placement Credit
CP = College-Level Examination Program (CLEP)
DP = University Departmental Examination
DN = Defense Activity for Non-Traditional Education Support (DANTES)
MP = Credit for Military Training and Education
TP = Transfer Credit
XP = Credit for Experiential Learning
F* = Failure (course taken on pass/fail basis)
I = Incomplete
II = Incomplete (not subject to time limit)
IP = Course In Progress
O = Audit (successful)
P = Pass (course taken on pass/fail basis)
Q = Progress but not proficiency
U = Unofficial Withdrawal (until August 1982)
W = Official Withdrawal
W& = Unsuccessful Audit
Z = Grade Not Reported by Instructor

LETTERS PRECEDING GRADES
T = Transfer Equivalent Credit for Graduate Students (excluded from GPA computations)
R = Adjusted Resident Credit (see next column)

SPECIAL NOTES
Symbols following grades and excluded from GPA computations:
/ = Course taken under Grade Forgiveness Policy
* = Degree credit course taken under Pass/Fail Option
& = Course taken under Audit Option
# = Quality points and credit hours excluded from GPA calcualtions
> = Non-degree course taken under Pass/Fail Option
I = Following quality points - repeat course included in GPA
A = Following quality points - excluded from earned hours, averaged into GPA

ADJUSTED RESIDENT CREDIT
The following policy was adopted on October 29, 1971: Credit from a previous period of study with the grade of "C" or better will be applied to the student's program after a year's absence and a qualifying semester. The previous record is not calculated into the grade point average. Record of all courses taken is included in this transcript.

HONORS
(Based on a minimum of 60 hours with 54 GPA hours at ODU)
(Prior to August 30, 1982)
CUM LAUDE 3.25-3.49 cumulative GPA
MAGNA CUM LAUDE 3.50-3.74 cumulative GPA
SUMMA CUM LAUDE 3.75-4.00 cumulative GPA

(Effective August 30, 1982)
CUM LAUDE 3.40-3.65 cumulative GPA
MAGNA CUM LAUDE 3.66-3.85 cumulative GPA
SUMMA CUM LAUDE 3.86-4.00 cumulative GPA

(Added, effective December 14, 2003)
GRADUATE WITH DISTINCTION 3.66-4.00 GPA and 45-59 graded hours at ODU

LeADERS
Please visit www.odu.edu/leaders for detailed program information.

MISCELLANEOUS
Summer 1964
During the 1964 summer session courses were offered in both the quarter and the semester system. The type of credit earned in indicated by a "Q" (quarter) or "S" (semester) following the course description.

September 1964
Changed from quarter to semester system. Changed from 3.00 to 4.00 grading system for undergraduates.

September 1, 1969
The institution was renamed Old Dominion University.

September 1972
Changed from 3.00 to 4.00 grading system for graduates.

Inquiries concerning student records should be addressed to the University Registrar, 1009 Alfred B. Rollins, Jr. Hall, Old Dominion University, Norfolk, VA 23529-0053.

Old Dominion University is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to award baccalaureate, master's, education specialist, and doctoral degrees.

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Macy Spencer

INTRODUCTION

The Constitution granted Congress the power to create laws to "promote the progress of science and useful arts" by giving authors exclusive rights to their works.[1] In 1790, the United States Copyright Act gave authors "exclusive rights in their maps, charts, and books."[2] The Copyright Act was amended in 1831 and extended copyright protections to authors of any musical composition.[3] The copyright laws attempt to strike a balance between protecting original works and stifling further creativity.[4] Although the purpose of these statutes is clear, ambiguity exists amongst jurisdictions as to how to apply these protections, especially when it comes to sampling sound recordings.[5]

Sampling is a controversial issue in both the music industry and copyright litigation.[6] Sampling is "the actual physical copying of sounds from an existing recording for use in a new recording, even if accomplished with slight modifications such as changes to pitch or tempo."[7] While some consider unlicensed sampling to be a standard practice, others find it to be synonymous with violating the Seventh Commandment.[8]

Sound recordings are one of the many works protected by the Copyright Act.[9] However, courts are splits as to the extent of protection awarded to creators of sound recordings.[10] In *Bridgeport Music, Incorporated v. Dimension Films*, the Sixth Circuit created a bright-line rule to

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[1] U.S. Const. Art. I, § 8. cl. 8.
[2] Tim Schaefer, *Sampling and The De Minimis Exception: Balancing the Competing Interests of Copyright Law in Sound Recordings*, 55 TULSA L. REV. 339, 341–42, 2020.
[3] *Id*. at 342.
[4] Bridgeport Music, Inc. v. Dimension Films, No. 02-6521, 2005 WL 4323, *10 (6th Cir. 2005).
[5] *See* VMG Salsoul, LLC v. Ciccone, No. 13-57104, 2016 WL 6895 *16, (9th Cir. 2016).
[6] *See VMG Salsoul*, 2016 WL 6895, at *16; Brief for Sony Bmg Music Entertainment et al. as Amici Curiae Support of Defendant-Appellee's Petition for Hearing En Banc, Southfield Music, Inc. et al. v. No Limit Films LLC, 2005 WL 6142263 (2005) (No. 02-6521), at *11–12.
[7] *VMG Salsoul*, 2016 WL 6895, at *5; *See* Newton v. Diamond, 388 F.3d 1189, 1192 (9th Cir. 2004).
[8] Grand Upright Music Limited v. Warner Brothers Records, Inc., 780 F.Supp. 182, *1097 (S.D.N.Y. 1991) (referring to the Seventh Commandment as "thou shalt not steal").
[9] Copyright Act, U.S.C. 17 § 102 (1976).
[10] *See VMG Salsoul*, 2016 WL 6895, at *16.

grant the creators of sound recordings the broadest protection and held that any unauthorized copying constitutes infringement, no matter how trivial.[11] Over a decade later, in *VMG Salsoul, LLC v. Ciccone*, the Ninth Circuit disagreed with the bright-line rule and created a circuit split to allow the de minimis exception to apply to the unauthorized sampling of sound recording.[12] However, the circuit split was created before the Ninth Circuit's decision because "almost every district court not bound by [the Sixth Circuit] decision has declined to apply *Bridgeport*'s rule.[13]

This Comment argues that the de minimis exception should apply to copyright infringement of sound recordings. Part I of this Comment presents the conflicting jurisprudence and explains how their statutory interpretation of the Copyright Act impacts the applicability of the de minimis exception to sound recording. Part II of this Comment analyzes the implications that will result in the record industry if the substantial similarity standard is eliminated. Part III of this Comment attempts to resolve this issue by exploring the purpose of the copyright protections and creating uniform rules across all jurisdictions.

I. Statutory Interpretation of the Copyright Act and Its Impact on the De Minimis Exception

The conflicting jurisprudence stems the Sixth Circuit and Ninth Circuit differing interpretations of sections 106 and 114(b).[14] Section 106 explicitly grants the owner of the copyright exclusive right to do several actions subject to sections 107 through 122.[15] Section 114(b) provides that the owner's rights in a sound recording copyright "do not extend to the making

[11] *VMG Salsoul*, 2016 WL 6895, at *10 (citing *Bridgeport*, 2005 WL 4323, at *12).
[12] *Id*. *16.
[13] *Id*.
[14] *See Bridgeport*, 2005 WL 4323, at *9–11; *VMG Salsoul*, 2016 WL 6895, at *11–15.
[15] Copyright Act, U.S.C. 17 § 106 (1976).

or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording."[16]

The Sixth Circuit relied on the term "entirely" in their statutory interpretation of §114(b).[17] Their interpretation focused on the comparison that the term "entirely" was not included in the Sound Recording Act of 1971, but Congress included it in the Copyright Act of 1976.[18] The addition of the word "entirely" granted the holder of the copyright the exclusive right to sample their own sound recordings but prohibited the protection of unlicensed samples from other artists.[19]

In rebutting the Sixth Circuit's interpretation, the Ninth Circuit argued that the Sixth Circuit ignored the statutory structure of the Copyright Act of 1976.[20] The Ninth Circuit began its analysis by reading § 102 which provides for the eight types of works that are protected by copyright laws.[21] The provision "treats sound recordings identically to all other types of protected works; nothing in the text suggests differential treatment."[22] The Ninth Circuit read § 106 in *pari materia* with § 114(b) because everything in § 106 is made "subject to sections 107 through 118."[23] Section 106 broadly sets forth the exclusive rights of the owners, and the subsequent provisions provide limitations or exceptions to those broad rights.[24] The language "do not extend" in § 114(b) imposes an express limitation on the rights of a copyright holder.[25] There is no indication that Congress intended to expand the rights of the copyright holder in a provision that was meant to limit their

[16] Copyright Act, U.S.C. 17 § 114(b) (1976).
[17] *Bridgeport*, 2005 WL 4323, at *10–11.
[18] *Id*. at *9–11.
[19] *Id*. at *11; Tim Schaefer, *Sampling and The De Minimis Exception: Balancing the Competing Interests of Copyright Law in Sound Recordings*, 55 TULSA L. REV. 339, 341–42, 2020.
[20] *VMG Salsoul*, 2016 WL 6895, at *14
[21] *Id*. at *11–12; Copyright Act, U.S.C. 17 § 102 (1976).
[22] *VMG Salsoul*, 2016 WL 6895, at *13–14.
[23] *Id*. at *13.
[24] *Id*. at *13 (citing H.R. Rep. No. 94-1476, at 61 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5674).
[25] *Id*.

rights.[26] Rather, it is more persuasive that "Congress intended to make clear that imitation of a recorded performance cannot be infringement so long as no actual copying is done."[27]

Reading the statute together as a whole, the Ninth Circuit's interpretation of the Copyright Act of 1976 is the more persuasive argument.[28] Congress intended to promote the arts by granting them broad protections in § 106; however, the language "subject to" indicates that Congress intended for the following sections, 107-118, to limit those broad protections.[29] Therefore, the structure of the Copyright Act reinforces that § 114(b) limits the rights of the copyright owners of sound recordings.[30] The impact of the statutory interpretation determines whether the de minimis exception applies to sound recordings.[31]

The de minimis exception is based on the legal maxim, *de minimis non curat lex*, which means "the law does not concern itself with trifles."[32] The de minimis exception plays a significant role in copyright law because the exception does not impose legal consequences on a violation of a right so trivial.[33] Even if someone copied a piece of a protected work, he would not have committed copyright infringement when the copying is so trivial that it does not constitute "substantial similarity."[34] Substantial similarity is a required element to satisfy copyright infringement. It requires that the copying is quantitatively and qualitatively sufficient to prove that infringement has occurred; this is known as "actionable copying."[35] Therefore, the copying must

[26] *Id*.
[27] *Id*. at *14.
[28] *See VMG Salsoul*, 2016 WL 6895, at *11–15.
[29] Copyright Act, U.S.C. 17 § 106 (1976).
[30] *VMG Salsoul*, 2016 WL 6895, at *13.
[31] *Id*.; *See Bridgeport*, 2005 WL 4323, at *9–11.
[32] Peyton Miller, *"Good Artists Borrow; Great Artists Steal": How the Fair Use Doctrine Can Bring Harmony to The Federal Circuits on Digital Music Sampling*, 96 N.C. L. REV. 1085, 1092, 2018; Ringgold v. Black Entertainment Television Inc., 126 F.3d 70, 74 (2d Cir. 1997).
[33] *Ringgold*, 126 F.3d at 74.
[34] *Id*.
[35] *Id*. at 74–75.

be actionable copying in order for the protected party to succeed on a copyright infringement claim.[36]

II. CONSEQUENCES OF ELIMINATING THE SUBSTANTIAL SIMILARITY STANDARD

Substantial similarity has been firmly established in the law.[37] However, the Sixth Circuit rejected the application of the substantial similarity standard in regard to sound recordings.[38] Rather, their solution required artists to "get a license or do not sample."[39] The court reasoned that their bright-line rule requiring licenses for sampling sound recordings would benefit the music industry's economy.[40] First, there would be an "ease of enforcement."[41] Courts would not have to deal with the "mental, musicological, and technological gymnastics" of the de minimis rule, but rather enforce any unlicensed sampling is copyright infringement.[42] Second, the market would control the price of sampling licenses, so it would be a reasonable price.[43] The record industry has the "ability and know-how to work out guidelines," including a fixed schedule of license fees. Last, paying for a license to sample a sound recording is cheaper than the litigation that may occur without the license.[44]

Although those reasons sound promising in theory, each one is flawed. There would not be an ease of enforcement because there is going to be difficulty developing these uniform rules that the court suggests.[45] The record industry does not have the ability to "work out guidelines" as

[36] *Id*.
[37] *VMG Salsoul*, 2016 WL 6895, at *10
[38] *Bridgeport*, 2005 WL 4323, at *11.
[39] *Id*.
[40] *Id*. at *12.
[41] *Id*. at *11.
[42] *Id*. at *12.
[43] *Id*. at *11.
[44] *Id*. at *14.
[45] Brief for Sony Bmg Music Entertainment et al. as Amici Curiae Support of Defendant-Appellee's Petition for Hearing En Banc, Southfield Music, Inc. et al. v. No Limit Films LLC, 2005 WL 6142263 (2005) (No. 02-6521), at *14.

easily as the court implies.[46] The *Bridgeport* court does not seem to consider the varying diverse needs between the thousands of artists, producers, and the record companies.[47] Despite the difficulty assessing needs, working out a "fixed schedule fee" has potential anti-trust concerns.[48] Furthermore, Congress established specific guidelines and "a fixed schedule of license fees" for other copyrighted works in the Copyright Act.[49] Yet, Congress did not set those specific guidelines for sound recordings.[50] Once again, it appears that the Sixth Circuit is speaking to what Congress *could decide* rather than what Congress *actually decided*.[51]

Last, the Sixth Circuit opines that paying for a license is cheaper than litigation.[52] Although that may be true, the court did not acknowledge the exorbitant amount of unpredictable liability its ruling places on record companies.[53] A sample is placed either by the producer or the artist, those who create the record.[54] Therefore, the record company that manufactures and distributes the finished product has little knowledge about sampling, especially if the sampling is de minimis.[55] However, *Bridgeport* created a strict liability standard in which the record company, unaware of the de minimis sample in their sound recording, must disgorge a portion of its profits.[56]

Therefore, it is better for the record industry to adopt the de minimis exception to the copyright infringement of sound recordings to avoid liability and uncertainty.[57] Congress may

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[46] *Id*.
[47] *Id*.
[48] *Id*.
[49] *Id.; See, e.g,* 17 U.S.C. § 115; 17 U.S.C. § 114(f).
[50] *See* 17 U.S.C. § 101–117; Brief for Sony Bmg Music Entertainment et al. as Amici Curiae Support of Defendant-Appellee's Petition for Hearing En Banc, Southfield Music, Inc. et al. v. No Limit Films LLC, 2005 WL 6142263 (2005) (No. 02-6521), at *14.
[51] *VMG Salsoul*, 2016 WL 6895, at *17.
[52] *Bridgeport*, 2005 WL 4323, at *12.
[53] Brief for Sony Bmg Music Entertainment et al. as Amici Curiae Support of Defendant-Appellee's Petition for Hearing En Banc, Southfield Music, Inc. et al. v. No Limit Films LLC, 2005 WL 6142263 (2005) (No. 02-6521), at *1–2.
[54] *Id*. at *10.
[55] *Id*.
[56] *Id*.
[57] *Id*.

create those uniform laws if Congress chooses to do so.[58] However, the burden is not on the record company like the Sixth Circuit suggests. Moreover, the de minimis exception does not take anything of value away from the artist of the original sound recording because only the sampling that is insignificant will be included.[59] Rather, the de minimis exception fosters creativity by allowing artists to sample other's sound recordings as long as the sample is only trivial.[60]

III. THE PURPOSE OF THE COPYRIGHT PROTECTIONS

The primary objective of copyright is to "promote the Progress of Science and useful Arts" by awarding the artists exclusive rights in their own works.[61] It is clear that originality is the "touchstone of copyright protections."[62] It a constitutionally mandated requirement for all works.[63] While original works are protected from copying, artists are encouraged to "build freely upon the ideas and information conveyed by a work."[64]

The conflicting interpretations of the de minimis exception stems from the improper analysis of the purpose of copyright protections.[65] The Sixth Circuit bases much of their analysis on the labors of the authors, known as the "sweat of the brow" doctrine.[66] The court focuses on the physical taking and how they are copying someone's work directly rather than reproducing those sound recordings in their own studio.[67] However, there are two flaws to the Sixth Circuit's analysis. First, in *Feist Publishing, Incorporated v. Rural Telephone Service Company, Incorporated*, the

[58] *Id*. at *14.
[59] *Ringgold*, 126 F.3d at 74.
[60] *Id*.
[61] U.S. Const. Art. I, § 8. cl. 8.
[62] Feist Publications, Inc. v. Rural Telephone Service Company, Inc., 111 S. Ct. 1282, 1288 (S. Ct. 1991).
[63] *Id*. (citing Patterson & Joyce, *Monopolizing the Law: The Scope of Copyright Protection for Law Reports and Statutory Compilations*, 36 UCLA L. Rev. 719, 763, n. 155 (1989)).
[64] *Id*. at 1290.
[65] *See Bridgeport*, 2005 WL 4323, at *11; *See VMG Salsoul*, 2016 WL 6895, at *10–11.
[66] *Bridgeport*, 2005 WL 4323, at *12.
[67] *Id*. at *11.

Supreme Court rejected the "sweat of the brow" doctrine.[68] Second, the copyright protections do not exist to reward the labor of authors, which is why the "sweat of the brow" test is inaccurate.[69] Rather, the "audience test" is the proper analysis to determine whether a sample constitutes copyright infringement.[70]

A. Upholding the Supreme Court's Ruling on the "Sweat of the Brow" Doctrine

The "sweat of the brow" doctrine is the notion that copyright protections were rewarded for the hard work and labor that went into the creation of the work rather than originality.[71] Courts that followed the "swear of the brow" doctrine precluded authors from relying on facts contained in prior works in order to save their own time and efforts.[72] In *Feist Publishing*, the Supreme Court rejected this doctrine and held that originality is the requirement.[73] Facts are discovered, not created.[74] Therefore, facts are not protected by copyright laws regardless of how much time or effort went in to compiling them.[75]

One of the Sixth Circuit's rationales for their bright-line rule was based on their opinion that sampling is not accidental.[76] Despite the Supreme Court's holding in *Feist Publishing*, the court focused on the labors and efforts of the original artist.[77] The Sixth Circuit argued that sampling is a physical taking rather than an intellectual one and held that "no further proof of that is necessary than the fact that the producer of the record or the artist on the record intentionally sampled."[78] Focusing on the labor and efforts of the original artist, the court argued that sampling

[68] *Feist*, 111 S. Ct. at 1289–90.
[69] *Id*. at *1292.
[70] *Ringgold*, 126 F.3d, 77–78.
[71] *Feist*, 111 S. Ct. at 1291.
[72] *Id*. at 1292.
[73] *Id*. at 1292–93.
[74] *Id*. at 1294.
[75] *Id*.
[76] *Bridgeport*, 2005 WL 4323, at *11.
[77] *Id*.
[78] *Feist*, 111 S. Ct. at 1292; *Bridgeport*, 2005 WL 4323 at *12.

should not be permitted because sampling is knowingly taking another's work to save money rather than paying another musician to recreate the sound recording in one's own studio.[79]

Scholars have correctly noted that *Feist Publishing* is distinguishable from *Bridgeport* because *Feist Publishing* involved a factual work, names and addresses compiled by another, while *Bridgeport* involved a creative work, part of a guitar solo in a sound recording.[80] However, the goal of copyright laws is to preserve the original artist's legally protected interest in the potential financial return from his original works, which derives from the public's appreciation of his efforts.[81] Therefore, the audience test is the more appropriate test to reach that goal than the "sweat of the brow" doctrine.[82]

B. Applying the Audience Test to Copyright Infringement of Sound Recordings

As previously stated, the substantial similarity standard requires that the copying is quantitatively and qualitatively sufficient to prove that infringement has occurred.[83] The quantitative analysis "concerns the amount of copyrighted work that is copied."[84] That analysis is not difficult to ascertain. However, the qualitative analysis is subjective, which is a more difficult to grasp.[85] Fortunately, courts have adopted the "audience test" to measure the qualitative significance of a sample.[86]

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[79] *Bridgeport*, 2005 WL 4323, at *11.
[80] Tim Schaefer, *Sampling and The De Minimis Exception: Balancing the Competing Interests of Copyright Law in Sound Recordings*, 55 TULSA L. REV. 339, 341–42, 2020.
[81] *VMG Salsoul*, 2016 WL 6895, at *11 (citing Sid & Marty Krofft Television Prods., Inc. v. McDonald's Corp., 562 F.2d 1157, 1164 (9th Cir. 1977)).
[82] Peyton Miller, *"Good Artists Borrow; Great Artists Steal": How the Fair Use Doctrine Can Bring Harmony to The Federal Circuits on Digital Music Sampling*, 96 N.C. L. REV. 1085, 1095–96, 2018.
[83] *Ringgold*, 126 F.3d at 74.
[84] *Id*.
[85] Peyton Miller, *"Good Artists Borrow; Great Artists Steal": How the Fair Use Doctrine Can Bring Harmony to The Federal Circuits on Digital Music Sampling*, 96 N.C. L. REV. 1085, 1094, 2018.
[86] *Id.*; *VMG Salsoul*, 2016 WL 6895, at *9; Newton v. Diamond, 388 F.3d 1189, 1193 (9th Cir. 2004).

The audience test is also known as the "average lay observer test."[87] The analysis turns on whether an average lay observer would recognize the alleged copy as being appropriated from another copyrighted work.[88] The reasoning behind adopting the audience test is because it is pertinent to the purpose of the copyright protections, to protect the artist's interest in the potential financial return from his original works.[89] The artist's financial earnings derive from the public's appreciation of his efforts, so the financial earnings of the artist will not be affected by the de minimis sampling of the copyrighted work if the audience cannot ascertain the similarity between the two pieces.[90] The audience test should be conducted by playing both of the works from beginning to end rather than comparing solely the sampled piece because playing both works all the way through gives a more accurate assessment of public's awareness of the similarities.[91]

IV. Conclusion

The de minimis exception should apply to copyright infringement of sound recordings. Despite the conflicting jurisprudence and conflicting statutory interpretation of the Copyright Act, the structure of the Copyright Act suggests that Congress intended for the de minimis exception to apply to sound recordings. The excessive liability the record industry will face if the de minimis is not applicable further suggests that Congress did not intend for sound recordings to be treated any differently from other copyrighted works. Last, the "audience test" is the proper analysis to determine whether a sample constitute copyright infringement because it aligns with the purpose of the statute to protect the financial interests of the artists.

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[87] Peyton Miller, *"Good Artists Borrow; Great Artists Steal": How the Fair Use Doctrine Can Bring Harmony to The Federal Circuits on Digital Music Sampling*, 96 N.C. L. Rev. 1085, 1094, 2018.
[88] *Ringgold*, 126 F.3d at 77–78.
[89] *VMG Salsoul*, 2016 WL 6895, at *11.
[90] *Id.*
[91] *Id.* at *9.

Applicant Details

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Date of JD/LLB	**May 10, 2022**
Class Rank	**50%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**International Moot Court Team**

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May 4, 2022

Senior Judge John D. Bates
United States District Court for the District of Columbia
333 Constitution Avenue N.W.
Washington, D.C. 20001

Dear Senior Judge Bates:

I am currently in my third and final year at the University of Maryland Francis King Carey School of Law. I interested in beginning my legal career as a law clerk in your chambers for the 2022-2023 term.

My application is strongly supported by my stellar research and writing abilities. In the Fall of 2021, I worked as a law clerk at the U.S. Department of Commerce, Commercial Law Development Program, on the Energy Transition Team. My main project involved extensive research that I later intertwined to create a 20-page written Green Bond guide for the Sri Lanka Sustainable Energy Authority. The guide went on to serve as the basis of a technical assistance program in Sri Lanka. Additionally, this past summer at Enterprise Community Partners I found relevant research on a variety of topics that were new to me. I then clearly communicated my analyses through written work, and orally to senior attorneys. Furthermore, as a student attorney in Maryland's Immigration Clinic I co-wrote a 25-page written brief based upon my case law and country conditions research. The brief was submitted to an Immigration Judge, and our client was granted asylum. Lastly, I have refined my writing and analytical skills as a competitor in the Willem C. Vis International Commercial Arbitration Moot this semester.

My prior work experience also required me to employ my analytical skills. It was crucial in both of my prior roles to analyze what was needed for each project to reach the desired outcome. Additionally, my work always included an element of problem-solving and knowing when to work alone or with my team. Lastly, both of my prior roles required me to stay very organized to accomplish a lot of tasks while being extremely detailed, to meet deadlines set by myself and my supervisor.

I welcome the opportunity to meet with you to discuss my potential contribution to your chambers for the 2022-2023 term. Thank you for your time, Senior Judge Bates.

Sincerely,
V. Isabelle Sturgill

V. Isabelle Sturgill
806 N Calvert St. Apt. 1 Baltimore, MD 21202 | 740-821-9549 | virginia.sturgill@umaryland.edu

EDUCATION

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GPA: 3.30
Certifications: Lexis+ Proficient Research Certification
Activities: Willem C. Vis International Commercial Arbitration Moot Oralist | SBA Executive Board Member | Peer Advisor | ABA International Law Section Student Representative |

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Activities: Legacy Intern | Order of Omega | Mortar Board | Delta Delta Delta, Vice President of Finance
Study Abroad: University of Saint Andrews: Scotland, UK

EXPERIENCE

U.S. Dept. of Commerce, Commercial Law Development Program | Washington D.C.
Energy Transition Team Law Clerk | September 2021 – December 2021
- Created a guide focused on the issuance of green bonds, that will serve as the basis of a technical assistance program for the Sri Lanka Sustainable Energy Authority.
- Created presentations on power transmission financing in Sub-Saharan Africa, that will serve as educational tools for technical assistance programs.

Enterprise Community Partners | Columbia, MD
Legal Intern | June 2021 – August 2021
- Managed title and survey work for real estate closings nationally
- Researched and analyzed numerous legal issues to incorporate into legal memoranda and litigation preparation
- Drafted and communicated legal research findings to relevant stakeholders at the organization

University of Maryland Carey School of Law Immigration Clinic | Baltimore, MD
Student Attorney | January 2021 – April 2021
- Collected and filed evidence for submission to the court
- Co-wrote and submitted various motions over the course of representation
- Researched case law and country conditions to co-write a 25-page brief for client's asylum claim
- Interviewed client and witnesses to create affidavits and declarations for client's submission to the court
- Prepared for and represented client in their asylum hearing, asylum was granted

The Office of the State's Attorney for Baltimore City | Baltimore, MD
Legal Intern, Narcotics Unit | June 2020 – July 2020
- Analyzed case facts to create indictment and grand jury summary
- Analyzed bodycam footage for potential Fourth Amendment Issues, incorporated into written work
- Researched Fourth amendment issues surrounding arrest, incorporated into written work

Shawnee Counseling Center | Portsmouth, OH
Marketing Director / Public Relations Coordinator | March 2019 – August 2019
- Implemented a marketing plan utilizing public outreach, open events, radio, newspaper, and social media for an all-male drug and alcohol rehabilitation center
- Facilitated public relations to benefit the counseling center and its clients

Smith's Pharmacy and Home Medical | Portsmouth, OH
Business Operations Coordinator | January 2019 – August 2019
- Developed and implemented marketing tactics across three pharmacies and a home medical business
- Assisted the COO with hiring and supervising various positions
- Created an intern program to host pharmacy students from local universities
- Created an employee appreciation program across all four businesses to boost morale

Columbus Bar Association | Columbus, OH

CLE Program Coordinator | August 2017 – January 2019
- Developed and implement continuing education for attorneys and other professionals
- Identified target groups to market topic specific continuing legal education programs to
- Responsible for the upkeep of the continuing legal education website, and online program platform

SP+ | Columbus, Ohio
Administrative Assistant | June 2017 – August 2017
- Assisted senior managers with planning and completing specialized projects
- Solved customer's requests while employing problem solving skills
- Reconciled monthly reports to reflect correct charges
- Managed accounts payable and accounts receivable payments

Cooking Matters | Delaware, Ohio
Coordinator Intern | August 2016 – May 2017
- Planned a series of 6 weekly classes to benefit "food insecure" individuals ages 14-70
- Held responsibility for administrative duties and logistics of the course
- Managed participant expectations and interests throughout the course

Human Connections | Bucerías, Mexico
Social Entrepreneurship and Sustainable Development Intern | December 2016 – January 2017
- Wrote a news article in English for publication to promote our client's business
- Collaborated with an interprofessional team to improve an entrepreneur's brand identity and consumer outreach practices in a sustainable way

SP+ | Columbus, Ohio
Operations Intern | June 2016 – August 2016
- Collaborated to create a training manual for future employee orientations
- Created and presented a service delivery model pertaining to the company
- Assisted senior managers with planning and completing specialized projects

Ohio Wesleyan University Admissions Office | Delaware, Ohio
Tour Guide | December 2016 – May 2017

Delta Delta Delta Fraternity | Delaware, Ohio
Vice President of Finance | August 2016 - January 2017

Smiths Pharmacy and Home Medical | Portsmouth, Ohio
Pharmacy Clerk | June 2012 - December 2016

Carpenter Lipps & Leland LLP | Columbus, Ohio
Extern | October 2017

Ohio Wesleyan University Registrar's Office | Delaware, Ohio
Legacy Intern | August 2015 - December 2015

Creative Foundations | Delaware, Ohio
Team Member | September 2014 - September 2015

Northwest Mutual | Columbus, Ohio
Extern | October 2014

COMMUNITY ACTIVITIES
- **Rotary International,** *Member,* February 2019 – August 2019
- **Youth Boxing Center,** *Board Member,* January 2019 – August 2019
    - Wrote a $17,000 grant for the youth center that was awarded.
- **Dress for Success,** *Volunteer,* August 2017 – January 2019
- **Legal Aid Society,** *Clinic Intake Volunteer,* August 2016 – January 2019
- **Southern Ohio Medical Center,** *Volunteer* May 2015 - August 2015

@00276572 Virginia I. Sturgill
Jan 12, 2022 09:13 pm

Display Transcript

This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

Note: In your SURFS record, you may see an I or an E in the Repeat column to the far right of the record. These notations are used in our database to denote Include or Exclude courses in your GPA calculation. Because SURFS is a direct reflection of the live database, we can not remove these notations from SURFS.

Please be aware that I in the SURFS Repeat column will not be printed on your transcript. I is used as a grade that will appear only to denote an Incomplete for a course. Similarly, E will not appear on your transcript either. Courses that are being excluded from your GPA will be marked with an R in the Repeat column on your transcript.

Institution Credit Transcript Totals Courses in Progress

Transcript Data

STUDENT INFORMATION

Name : Virginia I. Sturgill

Curriculum Information

Current Program
Juris Doctor
Program: Law Day
Major and Department: Law, Law
Major Concentration: Law Cardin Required

This is NOT an Official Transcript

DEGREES AWARDED

In Progress: Juris Doctor **Degree Date:**

Curriculum Information

Primary Degree
Major: Law
Major Concentration: Law Cardin Required

INSTITUTION CREDIT **-Top-**

Term: Fall 2019

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	506A	LW	CRIMINAL LAW	C+	3.000	6.99		
LAW	527A	LW	CIVIL PROCEDURE	B	4.000	12.00		
LAW	531A	LW	LEGAL ANALYSIS AND WRITING	B	3.000	9.00		
LAW	535A	LW	TORTS	A	4.000	16.00		
LAW	554A	LW	INTRO TO CONTRACTS	C+	2.000	4.66		

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	48.65	3.04
Cumulative:	16.000	16.000	16.000	16.000	48.65	3.04

Unofficial Transcript

Term: Spring 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	503C	LW	INTERNATIONAL LAW	P	3.000	0.00		
LAW	528A	LW	CON LAW I: GOVERNANCE	P	3.000	0.00		
LAW	534A	LW	PROPERTY	P	4.000	0.00		
LAW	550A	LW	INTRODUCTION TO LEGAL RESEARCH	B-	1.000	2.67		
LAW	551E	LW	WRITTEN AND ORAL ADVOCACY	P	2.000	0.00		
LAW	558A	LW	CONTRACTS II	P	3.000	0.00		

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	1.000	2.67	2.67
Cumulative:	32.000	32.000	32.000	17.000	51.32	3.02

Unofficial Transcript

Term: Fall 2020

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	529A	LW	CON LAW II: INDIVIDUAL RIGHTS	A-	3.000	11.01		
LAW	558D	LW	LEGAL PROFESSION	B	2.000	6.00		
LAW	572C	LW	BUSINESS ASSOCIATIONS	B+	3.000	9.99		
LAW	583R	LW	INTERNATIONAL ARBITRATION	CR	2.000	0.00		
LAW	595B	LW	IMMIGRATION LAW	B+	3.000	9.99		

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	11.000	36.99	3.36
Cumulative:	45.000	45.000	45.000	28.000	88.31	3.15

Unofficial Transcript

Term: Spring 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	504C	LW	INTERNATIONAL MOOT COURT	CR	2.000	0.00		I
LAW	506C	LW	INTERNATIONAL BUSINESS TRANS	B+	3.000	9.99		
LAW	525K	LW	IMMIGRATION CLINIC	A	7.000	28.00		
LAW	596Q	LW	ALR: EMERGENCY & CRISIS MGMT	B	1.000	3.00		

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	11.000	40.99	3.73
Cumulative:	58.000	58.000	58.000	39.000	129.30	3.32

Unofficial Transcript

Term: Summer 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	528S	LW	EXTERNSHIP / ASPER WORKSHOP	CR	1.000	0.00		
LAW	579B	LW	EXTERNSHIPS	CR	5.000	0.00		I

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	6.000	6.000	6.000	0.000	0.00	0.00
Cumulative:	64.000	64.000	64.000	39.000	129.30	3.32

Unofficial Transcript

Term: Fall 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	501F	LW	ADMINISTRATIVE LAW	B+	3.000	9.99		
LAW	504C	LW	INTERNATIONAL MOOT COURT	CR	2.000	0.00		I
LAW	533S	LW	BUS LAW EXTERNSHIP WORKSHOP	A	1.000	4.00		
LAW	562R	LW	INTL TAX: CROSS BORDER TRANS	B-	2.000	5.34		
LAW	579B	LW	EXTERNSHIPS	CR	4.000	0.00		I

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	12.000	12.000	12.000	6.000	19.33	3.22
Cumulative:	76.000	76.000	76.000	45.000	148.63	3.30

Unofficial Transcript

TRANSCRIPT TOTALS (SCHOOL OF LAW) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	76.000	76.000	76.000	45.000	148.63	3.30
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	76.000	76.000	76.000	45.000	148.63	3.30

Unofficial Transcript

COURSES IN PROGRESS -Top-

Term: Spring 2022

Subject	Course	Level	Title	Credit Hours	Start and End Dates
LAW	504C	LW	INTERNATIONAL MOOT COURT	2.000	
LAW	519D	LW	COMMERCIAL LAW: SECURED TRANS	3.000	
LAW	559B	LW	ELS: GLOBAL ENVIRONMENTAL LAW	3.000	
LAW	569S	LW	BAR EXAM PREPARATION COURSE	3.000	

Unofficial Transcript

Web Accessibility

RELEASE: 8.7.1

V. Isabelle Sturgill
806 N Calvert Street Apt.1 Baltimore, MD 21202
740-821-9549
virginia.sturgill@umaryland.edu

Below are segments of a brief I co-wrote with another student attorney in the Spring of 2021. The brief was submitted in support of our client's asylum claim to an Immigration Judge at the Department of Justice during my role as a student attorney in Maryland Carey's Immigration Clinic. For the protection of my former client, their name, ages, and home country have been substituted. Asylum was granted for my client.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF:	)	
Jane Doe	)	**File No.: A 000-000-000**
In removal proceedings	)	

RESPONDENT'S BRIEF IN SUPPORT OF APPLICATIONS FOR ASYLUM, WITHHOLDING OF REMOVAL, AND CAT RELIEF

2

A. Country Conditions in Genovia

I. Treatment of homosexuals in Genovia.

The conditions in Genovia are dangerous for LGBTI people because of culturally encouraged community and government persecution. This abuse is well-documented. The 2019 United States Department of State Human Rights Report notes that while there is no law in Genovia that prohibits sexual conduct between same-sex adults, relations between same-sex adults are treated as taboo. Exh. W, Department of State Genovia 2019 Human Rights Report ("DOS Rept. 2019.") p. 292. Law enforcement officials, government officials, religious leaders, and Genovian citizens target, harass, stigmatize, and subject LGBTI individuals to violence. *Id*. This violence includes: arbitrary detention, acts of physical violence, sexual abuse, and rape. *Id*. In some cases, LGBTI persons are forced by threats of violence to withdraw from schools and other public institutions, just as Ms. Doe did when she became an outcast due to her identification as lesbian. *Id*.; Exh. K, Resp.'s aff., ¶¶ 10, 11; Exh. L, CM Decl., ¶¶ 10, 11. Like Ms. Doe, children accused of being a witch are subject to exorcisms conducted by churches, where they are isolated and starved. *Id*. 288*; Id*. ¶¶ 7, 8; *Id*. ¶¶ 6, 7. Revivalist churches, like the one that subjected Ms. Doe to confinement and starvation, characterize LGBTI as people who choose to live contrary to the will of God. *Id.*

II. Treatment of lesbians in Genovia.

Lesbians in Genovia face additional persecution and punishment, such as "corrective" rape; documented by the 2016 and 2019 U.S. Department of State Human Rights Report. Exh. W, DOS Rept. 2019, p. 254. Corrective rape is rape conducted by straight men against lesbians to "correct" or "cure" their known homosexuality. Country Conditions expert, Melanie Nathan ("Expert Nathan"), notes that the Genovian government turns a blind eye to "corrective" rape and does not punish perpetrators. Exh. U, Expert Report of Melanie Nathan ("Nathan"), ¶ 85. This is because victims of "corrective" rape are considered to bring the rape upon themselves by

their criminal, satanic behavior of being gay. *Id*. ¶ 85. The practice of "corrective" rape is rife in Genovia and is often committed by Genovian policemen themselves. *Id*. ¶¶ 37, 85. Expert Nathan also notes that women who are lesbian are viewed as witches; and are subsequently pelted with stones and refused service at grocery stores and other establishments. This treatment results from the view that engaging with "witches" will result in being cursed. *Id*. ¶ 85.

III. General human rights abuses and protester suppression are committed with impunity by the Genovian government regularly.

The government and law enforcement in Genovia consistently commits human rights abuses with impunity. Exh. W, DOS Rept. 2019, p. 254. Genovian law enforcement routinely arrests and detains persons arbitrarily, even though it is against Genovian law. *Id*. Additionally, Genovian law enforcement officers rape and sexually abuse women and girls throughout their arrest and detention. *Id*. p. 257. The Genovian government does not hold law enforcement officers accountable who commit human rights abuses. *Id*. 254. Lastly, it is documented that the Genovian government conducts arbitrary and unlawful killings. *Id*. 257. Ms. Doe was gang-raped by Genovian police, arbitrarily detained, starved and tortured, by Genovian state actors who broke the law. Exh. K, Resp.'s aff., ¶¶ 19-22; Exh. L, CM Decl., ¶¶ 16-20. A logical response to these experiences, Ms. Doe fears being killed by the Genovian government if deported. Exh. K, Resp.'s aff., ¶ 35.

The Genovian government often disrupts and suppresses protests and marches. Exh. W, DOS Rept. 2019, p. 273. Genovian law enforcement officers will often beat, arrest, or detain people who participate in protests and marches that criticize the Genovian government. Dispersing tactics and substantial force are also used against protesters by Genovian law enforcement officers. *Id*. The 2019 U.S. Department of State Report is consistent with Ms. Doe's

experience when she was 00, after the Freedom for Homosexuals March she attended. At the Freedom for Homosexuals March law enforcement officers were present, arrested protesters, and used smoke grenades on them. After law enforcement officials dispersed the march, they actively looked for Ms. Doe to arrest her. Once Genovian law enforcement officers found Ms. Doe, they gang-raped her in her home, detained her, and tortured her. Exh. K, Resp.'s aff., ¶¶ 18-22; Exh. L, CM Decl., ¶¶ 15-20.

Individuals in Genovia who are kept in detention centers are often not given access to family, legal counsel, or judicial authorities. Exh. W, DOS Rept. 2019, p. 259-60. It is required by law in Genovia that arrested individuals are allowed to contact their families or legal counsel, and that detainees must appear before a magistrate within 48 hours. *Id*. Authorities must inform the person arrested of their rights and the reason for their arrest. Genovian security officials have however, routinely violated all laws regarding detention, as they did when they detained Ms. Doe for eight days. *Id*.; Exh. K, Resp.'s aff., ¶¶ 21, 22. Ms. Doe did not have access to counsel nor her family, nor did she appear before a magistrate, nor was she informed of her rights or the reason for her arrest and detainment. *Id*.; *Id*. ¶¶ 21, 22.

B. Argument

I. Ms. Doe was persecuted by police on account of her political opinion.

Ms. Doe was also persecuted by Genovian police because of her belief that homosexuals should be free to live their lives without persecution and should be treated fairly in Genovia. "The behavior an applicant seeks to advance as political must be motivated by an ideal or conviction of sorts." *Saldarriaga v. Gonzales,* 402 F.3d 461, 466 (4th Cir. 2005). The political opinion must be grounded in principle, inspired by altruism, or intended to advance a cause. *Id.* at 467. Ms. Doe publicly expressed her opinion (that homosexuals should be treated fairly in

Genovia) by attending the Freedom for Homosexuals March in September of 2016.[1] Ms. Doe expressed her political opinion despite the persecution she had already experienced by family, friends, and religious leaders for being a lesbian woman. Ms. Doe's political opinion was therefore motivated by altruism, her sincere desire to create a better environment for LGBTI people in Genovia. Ms. Doe knew the great risk she was placing herself in by advancing this cause. In Ms. Doe's own words, she attended the Freedom for Homosexuals March because, "I wanted to go to make [Genovia] a free place for everyone, I was hoping a change could happen, we [gays] could be seen as human. I wanted us to be seen as a community and as human beings and not demons in Genovia." Exh. K, Resp.'s aff., ¶17. Ms. Doe was willing to put herself in severe danger, after already suffering so much, because she believed so strongly that she and other sexual minorities deserved the right to live in Genovia free of persecution.

After the Genovian policemen broke up the Freedom for Homosexuals March, they looked for Ms. Doe, and found her days later. Exh. L, CM Decl., ¶ 15. The police targeted Ms. Doe in-part because of her participation in the March, but also because she had a romantic relationship with a government official's daughter, whose parents sought to hurt Ms. Doe by sending the police to find her. *Id*. Exh. K, Resp.'s aff., ¶ 6, 23; Exh. N, NK Decl., ¶ 2; Exh. M, FK aff., ¶ 19. Once police found Ms. Doe, they "correctively-raped" her to remove the evil spirit (from being lesbian) and then detained her for eight days in inhumane conditions to punish her. Exh. K, Resp.'s aff. ¶¶ 19-22.

II. Jane Doe deserves a favorable exercise of discretion.

The last factor an applicant must prove is that they are deserving of a favorable exercise of discretion. 8 U.S.C. § 1229(a)(c)(4)(A)(ii). "Unless otherwise prohibited in § 208.13(c), an

[1] Inconsistent with I-589, I-589 states August.

immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under § 101(a)(42) of the Act." 8 CFR § 1208.14(a). In determining whether an applicant for asylum merits a favorable exercise of discretion, an immigration judge must consider the totality of the circumstances, balancing the fact that the applicant qualifies as a refugee, along with other positive factors, against any negative factors. *Zuh v. Mukasey,* 547 F.3d 504, 505-11 (4th Cir. 2008). "In the absence of any adverse factors, however, asylum should be granted in the exercise of discretion." *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). The denial of asylum on discretionary grounds is "exceedingly rare" requiring "egregious negative activity by the applicant" *Zuh*, 547 F.3d at 507-14 (reversing a denial based on a questionable credibility finding without considering any other factors.)

Jane Doe deserves a favorable grant of discretion. She is now a 00-year-old young woman who suffered through horrific instances of torture as a child. No one should have to suffer through the torture, starvation, detention, and rape that Ms. Doe did, but especially not at such a young age. Despite what Ms. Doe has been through, she has still persevered! When Ms. Doe came to the United States at age 00, she did not know any English, but quickly learned and graduated from high school at the age of 00. Ms. Doe is currently enrolled in college pursuing a degree in nursing. Ms. Doe aspires to become a pediatric nurse. Ms. Doe feels a special connection to suffering children and wants to be able to help them through difficult times in their lives. Ms. Doe also holds a steady job in addition to attending college. Ms. Doe has made a positive life for herself in the United States and is an active contributor to society. She has made friends, has family close by, hold a steady job, and attends college. Ms. Doe is free in the United States and is not afraid of being persecuted or targeted for her sexual orientation.

Applicant Details

First Name	**Derek**
Last Name	**Van Becelaere**
Citizenship Status	**U. S. Citizen**
Email Address	**dvanbecelaere@wustl.edu**
Address	**Address** Street **4036 Parker Ave.** City **St. Louis** State/Territory **Missouri** Zip **63116**
Contact Phone Number	**8165218631**

Applicant Education

BA/BS From	**University of Missouri**
Date of BA/BS	**May 2017**
JD/LLB From	**Washington University School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014**
Date of JD/LLB	**May 15, 2020**
Class Rank	**I am not ranked**
Law Review/ Journal	**Yes**
Journal(s)	**Washington University Jurisprudence Review**
Moot Court Experience	**No**

Bar Admission

Admission(s)	**Missouri**

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Specialized Work Experience	**Appellate**

Recommenders

Rocque, Tara
tarocque@wustl.edu
Broniec, Kelly
kelly.broniec@courts.mo.gov
5735929220

This applicant has certified that all data entered in this profile and any application documents are true and correct.

DEREK M. VAN BECELAERE
4036 Parker Ave., St. Louis, MO 63116 • dvanbecelaere@wustl.edu • (816) 521-8631

February 21, 2022

The Honorable John D. Bates
United States District Court, District of Columbia
E. Barrett Prettyman United States Courthouse
333 Constitution Ave. NW
Washington, D.C. 20001

Dear Judge Bates:

I am writing to express my interest clerking in your chambers starting in the Fall of 2022 or for your next available term. I graduated from Washington University School of Law in May 2020 and I am currently clerking for the Honorable Kelly C. Broniec on the Eastern District of the Missouri Court of Appeals until the end of July 2022. My current clerkship has been an extraordinary learning experience and I would love an opportunity to clerk in your chambers and learn more from you about practice in the federal courts.

Attached, please find my résumé, transcript, and writing sample. The following individuals have written me letters of recommendation and welcome inquiries in the meantime.

The Honorable Kelly C. Broniec
Missouri Court of Appeals, Eastern District
kelly.broniec@courts.mo.gov
(314) 539-4300

Professor Melissa A. Waters
Washington University School of Law
mawaters@wustl.edu
(314) 935-3458

Professor Tara A. Rocque
Washington University School of Law
tarocque@wustl.edu
(314) 935-6411

Please let me know if you have any questions or need anything more from me. Thank you for your consideration and I hope to hear from you soon.

Respectfully,

Derek M. Van Becelaere

Derek M. Van Becelaere

4036 Parker Ave., St. Louis, MO 63116 • dvanbecelaere@wustl.edu • (816) 521-8631

Education

Washington University School of Law St. Louis, MO
Juris Doctor, International & Comparative Law Certificate | GPA: 3.42 May 2020
- Honors: Global Public Interest Law Fellow, Dean's Service Award, Scholar in Law Award
- Activities: *Washington University Jurisprudence Review* Senior Editor, SBA Representative

Università degli Studi di Trento Trento, Italy
Law school semester abroad Aug. 2019–Dec. 2019
- Activities: *Trento Student Law Review* Visiting Editor, Biodiritto Editor
- Courses: Comparative Constitutional Law, Comparative Energy Law, History of Western Legal Tradition

University of Missouri Columbia, MO
Bachelor of Arts, History May 2017
- Honors: Kinder Institute on Constitutional Democracy Society of Fellows

Experience

Missouri Court of Appeals, Eastern District St. Louis, MO
Law Clerk for the Honorable Kelly C. Broniec Jan. 2021–Aug. 2022
- Research and analyze complex legal and administrative issues before the Court of Appeals.
- Draft, edit, and review published opinions and unpublished memoranda.
- Assist, advise, and collaborate with Judge Broniec and co-clerks and help train and oversee intern.

Washington University Interdisciplinary Environmental Clinic St. Louis, MO
Student Attorney Jan. 2020–May 2020
- Investigated, analyzed, and drafted a comment letter on proposed EPA coal ash permitting regulations.
- Collaborated with and presented to other students and faculty on the effects of the EPA's proposals.

United States Agency for International Development Remote
Virtual Student Federal Service Intern, U.S. Mission to the African Union Aug. 2019–May 2020
- Explored and assessed various Africa-related policy issues, in cooperation with other research assistants.
- Wrote memoranda advising senior members of the U.S. Mission to the African Union.

Office of the Missouri Attorney General Kansas City, MO
Rule 13 Legal Intern May 2019–Aug. 2019
- Researched and wrote in briefs submitted to the Missouri Court of Appeals and Supreme Court.
- Drafted pleadings, motions, and memoranda on complex legal issues.
- Argued on behalf of clients in court.

Whitney R. Harris World Law Institute St. Louis, MO
Research Assistant, Crimes Against Humanity Research Project Sept. 2018–May 2019
- Investigated and drafted material covering human rights and public international law issues.
- Examined and wrote on public international law, including the territorial principle and ICC procedures.
- Collaborated with Professor Leila Nadya Sadat and other research assistants on projects.

Legal Aid South Africa Durban, South Africa
Global Public Interest Law Fellow May 2018–Aug. 2018
- Researched and drafted appellate briefs submitted to the High Court of South Africa.
- Assessed case files to assist in developing trial strategies.
- Examined comparative issues in U.S. and South African law.

Bar Admissions, Affiliations, & Interests

- Missouri Bar (Sept. 2020), D.C. Bar (pending)
- International Relations Council
- History and current affairs, studying Italian, sports, travel

Washington University Unofficial Transcript for: **Derek Van Becelaere**
Student ID Number: 460799
Student Record data as of: 7/9/2020 1:27:01 AM

HOLDS - no records of this type found

DEGREES AWARDED

JURIS DOCTORIS May 15, 2020

MAJOR PROGRAMS

---------Semester---------				Prime	
Admitted	**Terminated**	**Status**	**Code**	**or Joint**	**Program**
FL2017	SP2020	Completed	LW0150	Prime	JURIS DOCTORIS
SP2020	SP2020	Completed	LW01C2	Joint	CERTIFICATE IN INTERNATIONAL AND COMPARATIVE LAW

ADVISORS - no records of this type found

SEMESTER COURSEWORK AND ACADEMIC ACTION

Note: Courses dropped with a status of 'D' will not appear on your transcript.
Courses dropped with a status of 'W' will appear on your transcript.

FL2017

				-----Grade-----						
Department	**Course**	**Sec**	**Units**	**Opt**	**Mid**	**Final**	**Dean**	**Dropped**	**WaitListed**	**Title**
W74 LAW	500D	06	0.0	C		CIP				Legal Research Methodologies I
W74 LAW	500K	06	2.0	C		3.52				Legal Practice I: Objective Analysis and Reasoning (Shields)
W74 LAW	501H	04	4.0	C		3.46				Contracts (Baker)
W74 LAW	502R	01	4.0	C		3.34				Criminal Law
W74 LAW	515D	01	4.0	C		3.22				Torts (Tamanaha)

Enrolled Units: 14.0 **Semester GPA:** 3.37 **Cumulative Units:** 14.0 **Cumulative GPA:** 3.37

SP2018

				-----Grade-----						
Department	**Course**	**Sec**	**Units**	**Opt**	**Mid**	**Final**	**Dean**	**Dropped**	**WaitListed**	**Title**
W74 LAW	500E	06	1.0	P		3.94				Legal Research Methodologies II
W74 LAW	500L	06	2.0	C		3.40				Legal Practice II: Advocacy (Shields)
W74 LAW	503G	04	1.0	P		CR				Negotiation (Tokarz)
W74 LAW	506	03	4.0	C		3.16				Civil Procedure (Levin)
W74 LAW	507H	01	4.0	C		3.34				Property
W74 LAW	520L	02	4.0	C		3.34				Constitutional Law I (Magarian)

Enrolled Units: 16.0 **Semester GPA:** 3.34 **Cumulative Units:** 30.0 **Cumulative GPA:** 3.35

FL2018

				-----Grade-----						
Department	**Course**	**Sec**	**Units**	**Opt**	**Mid**	**Final**	**Dean**	**Dropped**	**WaitListed**	**Title**
W74 LAW	538M	01	4.0	C		3.52				Corporations (Lambert)
W74 LAW	553B	01	3.0	C		3.34				International Law (Sadat)
W74 LAW	645B	01	3.0	C		3.28				Bankruptcy (Schermer/Woolverton)
W74 LAW	695	45	1.0	P		CR				Supervised Research
W74 LAW	725B	01	3.0	C		3.52				Foreign Relations Law of the United States (Waters)
W74 LAW	806B	01	1.0	P		P				International Negotiation & Dispute Resolution
W75 LAW	617S	01	1.0	P		CR				Jurisprudence Review

Enrolled Units: 16.0 **Semester GPA:** 3.42 **Cumulative Units:** 46.0 **Cumulative GPA:** 3.37

MSN 8010 NOTE:, Supervised Research (Prof. Sadat): Crimes Against Humanity Research Project **Transcript:** Yes **Expires** 12/31/2999

SP2019

				-----Grade-----						
Department	**Course**	**Sec**	**Units**	**Opt**	**Mid**	**Final**	**Dean**	**Dropped**	**WaitListed**	**Title**
W74 LAW	536B	01	3.0	C		3.46				Conflict of Laws (Waters)
W74 LAW	547G	01	3.0	C		3.34				Evidence (Burton/Ott/Sherry)
W74 LAW	619H	01	1.0	C		PW		W 0107		Law and Practice of the United Nations
W74 LAW	695	45	1.0	P		CR				Supervised Research

W74 LAW	806J	01	3.0	C	3.64	Financial Regulation: Law & Policy
W75 LAW	617S	01	1.0	P	CR	Jurisprudence Review
W76 LAW	790S	01	3.0	C	3.70	Advanced Topics in Foreign Relations Law Seminar (Waters)

Enrolled Units: 14.0 **Semester GPA:** 3.54 **Cumulative Units:** 60.0 **Cumulative GPA:** 3.41

MSN 8010 NOTE:, Supervised Research (Prof. Sadat): Crimes Against Humanity Research Project **Transcript:** Yes **Expires** 12/31/2999

FL2019

Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
				-----Grade-----						
W75 LAW	717S	01	1.0	P		CR				Jurisprudence Review

Enrolled Units: 1.0 **Semester GPA:** 0.00 **Cumulative Units:** 73.0 **Cumulative GPA:** 3.41

MSN 8010 NOTE:, Study Abroad (University of Trento): Comparative Energy Law; History of Western Legal Tradition; Comparative Constitutional Law **Transcript:** Yes **Expires** 12/31/2999

SP2020

Department	Course	Sec	Units	Opt	Mid	Final	Dean	Dropped	WaitListed	Title
				-----Grade-----						
W74 LAW	561D	02	2.0	C		CR				Lawyer Ethics (Rosen)
W74 LAW	612E	01	1.0	C		3.76				International Commercial Arbitration (Khan)
W74 LAW	641T	01	3.0	C		CR				Mediation Theory and Practice (Kuchta-Miller)
W74 LAW	704B	01	6.0	P		CR				Interdisciplinary Environmental Clinic
W74 LAW	806K	01	1.0	P		CR				The Law and Policy of the Rails-to-Trails Conservancy Movement
W75 LAW	717S	01	1.0	P		CR				Jurisprudence Review

Enrolled Units: 14.0 **Semester GPA:** 3.76 **Cumulative Units:** 87.0 **Cumulative GPA:** 3.42

MSN 0014 CERTIFICATE GRANTED:, Certificate in International and Comparative Law **Transcript:** Yes **Expires** 12/31/2999

MSN 0023 SPECIAL NOTE:, During the spring of 2020, a global pandemic required significant changes to coursework. Unusual enrollment patterns and grades may reflect the tumult of the time. **Transcript:** Yes **Expires** 12/31/2999

HON 0622 DEAN'S SERVICE AWARD **Transcript:** Yes **Expires** 12/31/2999

OTHER CREDITS

Semester	Dept	Course	SIS Title	Type	Units	AP	Design	Topics	Dean Code	Req. Met	Art Sci	Comments
						---------Units---------						
FL2019	W75	0008	Law School Elective		12.00							University of Trento

School: **Other Title:** **Original Grade:**

GPA SUMMARY

Semester	Semester Units Cr. Att.	Cr. Earn	P/F Att.	P/F Earn	Trans.	Grade Pts.	Cumulative Units Cr. Att.	Cr. Earn	P/F Att.	P/F Earn	Trans.	Units	Level Sem.	Level Cum.	Level
FL2017	14.0	14.0	0.0	0.0	0.0	47.1	14.0	14.0	0.0	0.0	0.0	14.0	3.37	3.37	2
SP2018	15.0	15.0	1.0	1.0	0.0	97.2	29.0	29.0	1.0	1.0	0.0	30.0	3.34	3.35	3
FL2018	13.0	13.0	3.0	3.0	0.0	141.7	42.0	42.0	4.0	4.0	0.0	46.0	3.42	3.37	4
SP2019	12.0	12.0	2.0	2.0	0.0	184.1	54.0	54.0	6.0	6.0	0.0	60.0	3.54	3.41	5
FL2019	0.0	0.0	1.0	1.0	12.0	184.1	54.0	54.0	7.0	7.0	12.0	73.0	0.00	3.41	6
SP2020	1.0	6.0	8.0	8.0	0.0	187.9	55.0	60.0	15.0	15.0	12.0	87.0	3.76	3.42	7

ENROLLMENT STATUS

Semester	Start	End	Enrollment Status	Level	Units	Status Change Date
FL2017	8/28/2017	12/20/2017	Full-Time Student	1	14.0	
SP2018	1/16/2018	5/9/2018	Full-Time Student	2	16.0	
FL2018	8/27/2018	12/19/2018	Full-Time Student	3	16.0	
SP2019	1/14/2019	5/8/2019	Full-Time Student	4	14.0	
FL2019	8/26/2019	12/18/2019	Full-Time Student	5	13.0	
SP2020	1/13/2020	5/6/2020	Full-Time Student	7	14.0	

DEMOGRAPHICS

Birthdate: 7/1/1994
Birth Place: Kansas City
Date of Death:
Gender: M
Marital Status:

Race: 6 - White (Non-Hispanic Origin)
Hispanic:
American Indian:

Semester of Entry:
Entry Status:
Anticipated Deg Dt: 0520
Std Expt Graduation:
Frozen Cohort:

Veteran Code:	**Asian:**	**Faculty/Staff Child:**
Locale:	**Black:**	**Alumni Code:**
U.S. Citizen: Y	**Hawaiian**	**Prof. School1:**
Country:	**Pacific:**	**Prof. School2:**
Visa Type:	**White:** Y	**Area of Interest:**
Nonresident Alien:	**Not Reported:**	**Area of Interest Code:**

ADMINISTRATIVE CODES - no records of this type found

HIGH SCHOOL - no records of this type found

PREVIOUS SCHOOLS

Name	State	Code	Type Code	Type	Degree	Degree Date	Disciple Code	GPA	GPA Type	Credit
University of Missouri-Columbia	MO	006875		BA	HISTORY	0517		351		

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WRITING SAMPLE

I drafted the following opinion while clerking for the Honorable Kelly C. Broniec of the Eastern District of the Missouri Court of Appeals. This opinion concerns the enforceability of delegation and arbitration clauses located within an employee handbook. Ultimately, the Court found both clauses invalid because the appellants' promises to delegate and arbitrate were illusory and did not provide valid consideration. This published opinion is cited as *Harris v. Volt Management Corp.*, 625 S.W.3d 468 (Mo. Ct. App. 2021). Judge Broniec has given me permission to use this opinion as my writing sample.

OPINION

I. Introduction

Volt Management Corp., d/b/a Volt Workforce Solutions ("Volt"), and Volt Information Sciences, Inc. (collectively, "Appellants") appeal from the order of the Circuit Court of St. Louis County denying its motion to compel arbitration. Appellants raise two points on appeal. In their first point on appeal, Appellants argue that the circuit court erred in denying their motion to compel arbitration because the arbitration agreement contains a valid delegation provision mandating that the arbitrator has the exclusive authority to decide threshold issues of arbitrability. In their second point on appeal, Appellants alternatively argue that, even if the delegation provision does not apply, the circuit court still erred in denying their motion because a valid arbitration agreement exists between the parties.

We affirm.

II. Factual and Procedural Background

Volt provides staffing, outsourcing, and information technology infrastructure services to businesses worldwide. On or about April 18, 2017, Volt hired Jacqueline Harris ("Respondent") as an at-will employee. Volt provided Respondent with the Volt Workforce Solutions Employee Guide ("Employee Guide") sometime after hiring her. The Employee Guide provides employees with "general information about Volt's rules, policies, plans, procedures and practices concerning the terms and conditions" of their employment with Volt. The Employee Guide was prepared by Volt and specified that Volt reserved the unilateral right to change or rescind the current policies, practices, procedures, and benefits "at any time with reasonable notice where practicable at Volt's discretion."[1]

Page 24 of the Employee Guide, entitled "Travel expense policy | Arbitration," contains information on Volt's travel expense policy, as well as the arbitration agreement at the center of this case. The Arbitration section, in its entirety, provides as follows:

> Volt believes that alternative dispute resolution is the most efficient and mutually satisfactory means of resolving disputes between Volt and its employees.

[1] Volt uses slightly different language throughout the Employee Guide when reserving its right to make unilateral changes to its policies and more. However, these differences are immaterial. We will occasionally refer to this language as "reservation of rights language" throughout this opinion.

> Any dispute, controversy or claim which arises out of, involves, affects or relates in any way to your employment with Volt or a claimed breach of the employment relationship or the conditions of employment or the termination of employment, or in any way arising out of, involving, affecting or related to any assignment or termination of any assignment with any customer of Volt, and/or disputes, controversies or claims arising out of or related to the actions of Volt, Volt's employees or Volt's customer, or customer's employees under Federal, State and/or local laws shall be resolved by final and binding arbitration, pursuant to the Federal Arbitration Act, in accordance with the applicable rules of the American Arbitration Association (www.adr.org) in the state where you are employed by Volt. The arbitrator may be entitled to award reasonable attorneys' fees and costs to the prevailing party, in accordance with the law. The award shall be in writing, signed by the arbitrator, and shall provide the reasons for the award. Judgment upon the arbitrator's award may be filed in and enforced by any court having jurisdiction. This does not prevent you from filing a charge or claim with any governmental administrative agency as permitted by applicable law.
>
> Your continued employment with Volt is your agreement to the above provision requiring arbitration of any and all employment/assignment disputes.

The following page of the Employee Guide, entitled "Acknowledgement," contains a brief, one-page form for the employee to acknowledge receipt of the Employee Guide. The Acknowledgement has lines for the employee to sign and print his or her name and date, as well as a line for a Volt representative to print his or her name. The form reads as follows:

> I have received and reviewed my copy of the Volt Employee Guide and understand that:
>
> - This guide is intended to provide me with information about Volt's general policies.
> - I am employed at-will, which means that Volt and I each have the right to terminate the employment relationship at any time, with or without cause.
> - I must follow the policies described in this Guide, including Volt's policies prohibiting workplace discrimination and harassment.
> - A violation of any of the rules or policies of Volt or its clients may result in disciplinary action, up to the immediate termination of my assignment or employment by Volt.
> - Volt has the right to change, interpret or cancel any of its rules, policies, benefits, procedures or practices at Volt's discretion, upon reasonable notice where practicable.
> - Volt's policies may change from time to time; therefore, I agree to check with my Volt representative if I have a specific question about any Volt policy or practice.
>
> Except as otherwise stated, I agree to arbitrate any and all disputes related to my employment or assignment(s) with Volt, as discussed in this Guide.

In her affidavit filed in connection with Respondent's motion in opposition to the motion to compel arbitration, Respondent attested that she received and completed a standalone Acknowledgement form on April 18, 2017, *prior* to receiving a full copy of the Employee Guide. However, no Volt representative printed his or her name on the

same page. The record indicates that Respondent needed to return the signed Acknowledgement by April 20, 2017—before she received the Employee Guide, according to the affidavit.

On April 28, 2017, Volt assigned Respondent to work for bioMérieux, Inc., in Hazelwood, Missouri, on a temporary contract. While Respondent worked at bioMérieux, her coworkers began harassing her. The day after reporting the harassment to her supervisor, Respondent began receiving hostile and threatening text messages directed at her and her son. Respondent filed for orders of protection against two individuals she believes sent her the threatening messages on February 3, 2018. At least one of these individuals worked with Respondent. Once Respondent's supervisor learned about the pending orders, she informed Respondent that bioMérieux would terminate her employment if she did not cancel them. Respondent attempted to save her job by requesting a dismissal of the orders on February 14, 2018, but the St. Louis County Sheriff served the petitions later that day, leading to Respondent's firing.

Respondent filed suit against Appellants and bioMérieux on January 7, 2020, asserting claims for wrongful termination and retaliation against Appellants and bioMérieux, and alternative claims against Appellants and bioMérieux for violations of the Whistleblower Protection Act and civil conspiracy. She also brought an alternative claim for tortious interference with a business expectancy against bioMérieux alone. On the basis of the Arbitration section of the Employee Guide, Appellants then moved to compel arbitration of Respondent's claims on March 24, 2020 ("Motion to Compel"), which Respondent opposed. On August 18, 2020, the circuit court denied the Motion to Compel, highlighting a lack of consideration in the Employee Guide for the purported agreement to arbitrate.

This appeal follows.

III. Standard of Review

The denial of a motion to compel arbitration, absent any factual disputes between the parties, is reviewed *de novo*. *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432, 436 (Mo. banc 2020). The validity of a delegation provision—a separate agreement to arbitrate threshold questions of arbitrability—is a legal issue and similarly receives *de novo* review. *Id.* (citing *State ex rel. Newberry v. Jackson*, 575 S.W.3d 471, 474 (Mo. banc 2019)).

However, when the parties to a purported arbitration agreement dispute whether an agreement exists in the first place, a question of fact arises, and "the circuit court shall conduct an evidentiary hearing to determine

whether an arbitration agreement exists." *Id.* (citing § 435.355.1, RSMo. (2016)). Appellate review of such a determination is "analogous to that in a court-tried case." *Id.* "[I]n an appeal from a circuit court's order overruling a motion to compel arbitration when there is a dispute as to whether the arbitration agreement exists, the circuit court's judgment will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." *Id.* (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)).

In this case, Respondent disputes whether an agreement to arbitrate exists in the first place, arguing that the deferential standard of review under *Murphy v. Carron*, 546 S.W.2d 30 (Mo. banc 1976), should apply to the circuit court's decision. However, Respondent's most relevant arguments pertain to the illusory nature of the purported promises to arbitrate, not the existence of the agreement in the first place; therefore, our resolution of both of Appellants' points on appeal requires an interpretation of the terms of the Employee Guide containing the arbitration agreement, not review of any factual disputes.[2] "[A]rbitration is a matter of contract," *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67, 130 S. Ct. 2772, 2776, 177 L. Ed. 2d 403 (2010), and "contract interpretation is a question of law." *Theroff*, 591 S.W.3d at 436 (citing *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 44 (Mo. banc 2017). "[A] *de novo* standard of review is appropriate for appellate review of a denial of a motion to compel arbitration when a court must analyze the terms of an arbitration agreement." *Id.* Accordingly, we review this case *de novo* because we must analyze the terms of the Employee Guide, arbitration agreement, and delegation provision.

IV. Discussion

In their first point on appeal, Appellants argue that the circuit court erred in denying their motion to compel arbitration because their purported arbitration agreement with Respondent contains a valid delegation provision mandating that the arbitrator has the exclusive authority to decide threshold issues of interpretation, applicability, enforceability, and formation of the arbitration agreement. Appellants claim that they agreed upon a "clear and unmistakable" delegation provision that, severed from the rest of the arbitration agreement and considered by itself, is a bilateral contract supported by consideration. In their second point on appeal, Appellants argue alternatively that, even if the delegation clause is not enforceable, the circuit court nevertheless erred in

[2] The circuit court noted that it "would deny [Appellants'] Motion based on any of the arguments" they raised, but that "foremost in the Court's consideration … is the lack of consideration."

denying their Motion to Compel because offer, acceptance, and consideration were present to create a valid arbitration agreement and because Respondent's claims fall within the substantive scope of that agreement.

The Supreme Court of Missouri has held that "an employee handbook which was unilaterally prepared by an employer, and subject to change by the employer at any time, could not establish enforceable contractual rights." *Johnson v. Vatterott Educ. Ctrs., Inc.*, 410 S.W.3d 735, 738 (Mo. App. W.D. 2013) (citing *Johnson v. McDonnell Douglas Corp.,* 745 S.W.2d 661, 662 (Mo. banc 1988)); *accord McIntosh v. Tenet Health Sys. Hosps., Inc./Lutheran Med. Ctr.*, 48 S.W.3d 85, 89 (Mo. App. E.D. 2001). However, parties can create a valid arbitration agreement within an employee handbook by fulfilling the offer, acceptance, and consideration requirements applicable to all contracts, and by unambiguously agreeing that "binding arbitration will constitute the employee's exclusive remedy for employment-related disputes." *Johnson*, 410 S.W.3d at 738-39 (citing *McIntosh*, 48 S.W.3d at 87, 89, and *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 835 (8th Cir. 1997)).

A. Respondent's Specific Challenge to the Delegation Provision

A valid delegation provision within an arbitration agreement "gives an arbitrator authority to decide even the initial question whether the parties' dispute is subject to arbitration." *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 538, 202 L. Ed. 2d 536 (2019). Agreements to delegate issues of arbitrability to an arbitrator create "additional, antecedent agreement[s]" subject to the regular arbitration laws. *Rent-A-Ctr.*, 561 U.S. at 70. These provisions are subject to the "severability principle," meaning that the party opposing arbitration must challenge the delegation clause separately from the arbitration agreement itself. *New Prime*, 139 S. Ct. at 538. Thus, if a party wants to challenge a delegation provision, he or she must do so separately from the rest of the arbitration agreement. *Id.*; *Theroff*, 591 S.W.3d at 439. The challenge must directly and specifically address the delegation provision. *Esser v. Anheuser-Busch, LLC*, 567 S.W.3d 644, 650 (Mo. App. E.D. 2018), *transfer denied* March 5, 2019. The court must consider the delegation provision "standing alone" from the rest of the arbitration agreement. *Soars v. Easter Seals Midwest*, 563 S.W.3d 111, 117 (Mo. banc 2018).

Despite Appellants' objections, we find that Respondent sufficiently challenged the delegation provision. She dedicated nearly two pages of her sur-reply in opposition to the Motion to Compel, making specific arguments against the validity of the delegation clause, including the argument that "Volt could change the delegation clause at any time it wanted because it reserved the 'right to change, interpret or cancel any of its rules, policies, benefits,

procedures or practices….""[3] Appellants resist this notion, relying on *Soars v. Easter Seals Midwest*, 563 S.W.3d 111 (Mo. banc 2018), to contend that Respondent failed to separately challenge the delegation provision and that she directed her arguments at the arbitration agreement as a whole.

Appellants' arguments, however, are misguided. The Employee Guide itself does not contain the delegation provision Appellants seek to enforce. Rather, the Employee Guide incorporates the "applicable rules" of the American Arbitration Association ("AAA") by reference, and the AAA rules contain the delegation provision that Appellants seek to enforce. In this case, Respondent does not need to craft new arguments to separately challenge the delegation provision—she needs only to tailor those arguments to the delegation provision specifically. *See Esser*, 567 S.W.3d at 650 ("[Employer]'s argument that Respondent's challenge is insufficient because he asserted that both the DRP [Dispute Resolution Program] and the delegation provision were invalid and unenforceable for the same reasons is both meritless and illogical. The delegation provision was contained within the DRP itself, and was allegedly mailed to [Employee] just like the rest of the DRP. Logically, as [Employer] attempted to present both the DRP and the delegation provision to [Employee] in the same manner and in the same document, [Employee] would obviously assert the same validity and enforceability challenges to both the DRP and to the delegation provision in regards to whether either fulfills the essential elements of a contract."). Respondent has tailored her argument to specifically address the delegation provision. She has maintained that the reservation of rights language in the Employee Guide applies to the delegation provision and has crafted her argument to the delegation provision specifically, in addition to the arbitration agreement as a whole. Her challenge suffices.

We consider the delegation provision and arbitration agreement separately as required by Missouri law, *Soars*, 563 S.W.3d at 117, but because we find that Appellants made illusory promises as to both the arbitration agreement and delegation provision for the same reasons, we explain our reasoning for both in the section below.

B. Points I and II

As the party seeking to compel arbitration, Appellants have the burden of showing that a valid agreement exists. *Esser*, 567 S.W.3d at 651. "Generally[,] any silence or ambiguity concerning the scope of arbitrable issues

[3] Appellants first raised the delegation issue in their reply brief, which they filed just hours before the hearing on the Motion to Compel. The circuit court granted Respondent leave to file a sur-reply so that she would not be prejudiced as a result of Appellants' last-minute filing of their reply memorandum.

should be resolved in favor of arbitration." *Soars*, 563 S.W.3d at 114 (quoting *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 43 (Mo. banc 2017)). However, when considering whether a court or an arbitrator should decide threshold questions of arbitrability, there is generally a presumption against arbitrability. *Id.* (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944-45, 115 S. Ct. 1920, 131 L.Ed.2d 985 (1995)). Regarding delegation provisions, "[w]hen considering whether parties have intended to delegate threshold questions of arbitrability to an arbitrator, '[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is clea[r] and unmistakabl[e] evidence that they did so.'" *Esser*, 567 S.W.3d at 651 (first alteration added) (quoting *Pinkerton*, 531 S.W.3d at 43).

Appellants correctly point out that incorporating the relevant AAA rules by reference can provide this "clear and unmistakable" evidence of a delegation agreement. *Pinkerton*, 531 S.W.3d at 45. However, any such agreement still requires the presence of consideration. *Esser*, 567 S.W.3d at 649. "Consideration consists either of a promise (to do or refrain from doing something) or the transfer or giving up of something of value to the other party." *Id.* (quoting *Bowers v. Asbury St. Louis Lex, LLC*, 478 S.W.3d 423, 426 (Mo. App. E.D. 2015)). In *Baker v. Bristol Care, Inc.*, the Supreme Court of Missouri expressly recognized that a promise to arbitrate "is illusory when one party retains the unilateral right to amend the agreement and avoid its obligations." 450 S.W.3d 770, 776 (Mo. banc 2014). An illusory promise does not make valid consideration. *Id.* In this case, Appellants explicitly stated that the information in the Employee Guide "reflects current *policies, procedures, practices and benefits*." (Emphasis added). They then reserved the unilateral right to "change, interpret or cancel *any* of its rules, policies, benefits, procedures or practices at [their] discretion, upon reasonable notice where practicable"—including the arbitration agreement and delegation provision. (Emphasis added). This reservation renders Appellants' promises illusory and fails to bind them to either the delegation provision or arbitration agreement located within the Employee Guide. Therefore, the circuit court did not err in denying the Motion to Compel because both the delegation provision and the arbitration agreement lack consideration.

Appellants further argue that the parties' mutual promises to one another create consideration for the delegation provision and arbitration agreement.[4] "Where there is no consideration other than the parties' mutual

[4] In Missouri, "continued at-will employment is not valid consideration to create an enforceable contract," such as an arbitration agreement. *Baker*, 450 S.W.3d at 775.

promises, the agreement is commonly referred to as a bilateral contract." *Jimenez v. Cintas Corp.*, 475 S.W.3d 679, 685 (Mo. App. E.D. 2015). These promises, in a bilateral contract, require "mutuality of obligation," meaning that "an obligation rests upon each party to do or permit to be done something in consideration of the act or promise of the other; that is, *neither party is bound unless both are bound*." *Id.* at 686 (emphasis added) (quoting *Sumners v. Service Vending Co., Inc.*, 102 S.W.3d 37, 41 (Mo. App. S.D. 2003)).

Appellants' promises to Respondent, however, do not bind them to the delegation provision or arbitration agreement in their Employee Guide; therefore, Appellants cannot enforce either against Respondent. In their own words, Appellants explicitly retain an unfettered right to unilaterally modify any and all parts of their Employee Guide at any time and without notice, including the arbitration agreement and the delegation provision that they seek to enforce. Appellants reiterate that they retain this unilateral right throughout the Employee Guide, including on the very Acknowledgement page that they asked Respondent to sign. At any moment, Appellants could decide that they want to change the rules or even eliminate the delegation provision or the arbitration agreement entirely. *Cf. Soars*, 563 S.W.3d at 117 ("Because neither [party] retains any unilateral right to amend the delegation clause nor avoid its obligations, the delegation clause is bilateral in nature and consideration is present."). However, when one party "retains unilateral authority to amend the agreement retroactively, its promise to arbitrate is illusory and is not consideration." *Baker*, 450 S.W.3d at 776–77; *accord Esser*, 567 S.W.3d at 652. By retaining their unilateral right to modify the delegation provision at any time and without notice, Appellants' purported promise to Respondent is "fatally illusory." *Morrow v. Hallmark Cards, Inc.*, 273 S.W.3d 15, 30 (Mo. App. W.D. 2008) (Ahuja, J., concurring). The same rationale applies to the arbitration agreement in the Employee Guide more broadly.

Appellants argue that their use of "[e]xcept as otherwise stated" in the Acknowledgement exempts both the arbitration agreement and delegation provision from the reservation of rights language used throughout the Employee Guide. This argument does not hold water in light of Missouri case law regarding the interpretation of contracts. For example, "we read the terms of the contract together as a whole to determine the intention of the parties, giving each term its plain, ordinary, and usual meaning." *Jimenez*, 475 S.W.3d at 686. "[W]e attribute 'a reasonable meaning to all of the provisions of the agreement'" in doing so. *Id.* (quoting *Kohner Props., Inc. v. SPCP Grp. VI, LLC*, 408 S.W.3d 336, 342-43 (Mo. App. E.D. 2013)).

The "[e]xcept as otherwise stated" clause cannot reasonably be read to exempt only the delegation clause or the arbitration agreement from Appellants' reservation of rights language, as Appellants suggest. At best, this language is ambiguous, and we would construe this against Appellants as the drafters of the Employee Guide. *See State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 811 (Mo. banc 2015) (noting that "it is a well-settled rule that if ambiguous, a contract will be construed against the drafter" (alterations omitted) (citation omitted)). However, we do not read this clause as ambiguous because it clearly refers to claims exempted from arbitration by applicable law. The Employee Guide's Workplace Complaint Procedure reads: "Using Volt's Workplace Complaint Procedure does not prohibit you from filing a complaint with your local, state or federal agency responsible for investigating discrimination, harassment or retaliation complaints." Even the Arbitration section of the Employee Guide says informs employees that it "does not prevent you from filing a charge or claim with any governmental administrative agency as permitted by applicable law." In Missouri, when "[t]he plain and clear terms … leave no doubt that [an employer] possessed the unilateral right to modify any and all of the terms of the [Employee] Handbook without notice … the purported promise made by [the employer] to follow the dispute resolution procedures in the Handbook is illusory." *Whitworth v. McBride & Son Homes, Inc.*, 344 S.W.3d 730, 742 (Mo. App. W.D. 2011). In this case, Appellants' reservation of rights language plainly applies to both the arbitration agreement and the delegation provision. This unilateral reservation of rights, in conjunction with the presumption against delegation, means that Appellants only made an illusory promise to delegate issues of arbitrability via the delegation provision. *Esser*, 567 S.W.3d at 652 ("While mutual promises to arbitrate are sufficient consideration, Missouri courts have found that reservations to unilaterally amend or modify arbitration agreements cause those promises to arbitrate to be illusory, and as such, cause those purported arbitration agreements to lack sufficient consideration to form a valid contract under Missouri law." (citing *Bowers*, 478 S.W.3d at 427)). The same rationale applies to the arbitration agreement more broadly, notwithstanding the general presumption favoring arbitration.

Appellants also mistakenly rely on *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832 (8th Cir. 1997), and *McIntosh v. Tenet Health Systems Hospitals, Inc./Lutheran Medical Center*, 48 S.W.3d 85 (Mo. App. E.D. 2001), to support their position, ignoring more relevant (and binding) Missouri law. *See, e.g.*, *Johnson*, 410 S.W.3d at 735 (holding that an arbitration agreement was subject to the general provisions of an employee handbook, which indicated that the handbook's contents were merely guidelines and were unilaterally modifiable by the employer at

any time). *McIntosh* does not deal with illusory consideration, and *Patterson* is entirely distinguishable. In *Patterson*, the Eighth Circuit found that the arbitration agreement was distinct enough from the rest of the employee handbook that it could be considered separately for two primary reasons. The first reason is that the following heading distinguished it from the rest of the handbook: "IMPORTANT! *Acknowledgment Form*." 13 F.3d at 835. Second, according to the Eighth Circuit, there was "a marked transition in language and tone from the paragraph preceding the arbitration clause to the arbitration clause itself," and therefore the reservation of rights language did not apply to the arbitration clause. *Id.* In this case, unlike *Patterson*, nothing distinguishes the arbitration section from the rest of the Employee Guide. The Arbitration section falls on the same page as the "Travel expense policy" section and is printed in the same font and size. The Arbitration section also uses identical language to the rest of the Employee Guide, including references to rights and laws, disclaimers of liability and responsibility, and an explanation of Appellants' preference for arbitration akin to how they explain other policies. Appellants even recognize that the delegation and arbitration agreements form part of the Employee Guide, with the Acknowledgement reading: "Except as otherwise stated, I agree to arbitrate any and all disputes related to my employment or assignment(s) with Volt, *as discussed in this Guide*." (Emphasis added). Nothing distinguishes either the arbitration agreement or the delegation provision, standing alone, from the reservation of rights language that applies to the Employee Guide as a whole. Therefore, Appellants' promises to arbitrate and to delegate are merely illusory, and each agreement lacks consideration.

In sum, Appellants retained the unilateral right to modify any and all parts of the Employee Guide without notice and at any time, which includes both the agreement to delegate and the agreement to arbitrate. This makes Appellants' promises illusory, such that they are not bound by them. Such illusory promises provide no valid consideration. *See Baker*, 450 S.W.3d at 776.

Points I and II are denied.

V. Conclusion

For the reasons stated above, we affirm the judgment of the circuit court.

Applicant Details

First Name	**David**
Last Name	**Wechsler**
Citizenship Status	**U. S. Citizen**
Email Address	**dew327@nyu.edu**
Address	**Address** Street **70 Morton Street** City **New York** State/Territory **New York** Zip **10014** Country **United States**
Contact Phone Number	**9175477737**

Applicant Education

BA/BS From	**Cornell University**
Date of BA/BS	**May 2017**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 19, 2021**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Annual Survey of American Law**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Samaha, Adam
adam.samaha@nyu.edu
212-998-2660

Katzmann, Gary
Gary_Katzmann@cit.uscourts.gov
212-264-2842

Kaufman, Brett
bkaufman@aclu.org
(212) 549-2603

This applicant has certified that all data entered in this profile and any application documents are true and correct.

May 12, 2022

The Honorable John Bates
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W., Room 4114
Washington, DC 20001

Dear Judge Bates:

I am a litigation associate at Paul, Weiss, and I write to apply for a clerkship in your chambers for the 2024 term. I have focused my legal studies on the intersection of law, technology, and civil liberties, working with the ACLU and Policing Project during law school. My goal is to utilize this education to ensure that technology be harnessed for the public good, and I believe clerking in your chambers would be great mentorship for such a career.

Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. My writing sample is a bench memorandum I wrote during my judicial internship at the U.S. Court of International Trade. My recommenders are Judge Gary Katzmann, ACLU Senior Staff Attorney Brett Kaufman, and Professor Adam Samaha. I was a judicial intern for Judge Katzmann, a clinical intern for Brett Kaufman, and a three-time student of Professor Samaha.

Thank you for your consideration.

Respectfully,

David Wechsler

DAVID WECHSLER
70 Morton Street, Apt. 1. New York, NY 10014
917-547-7737
david.wechsler@law.nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
J.D., *cum laude*, May 2021
Unofficial GPA: 3.65
Honors: *Ann Petluck Poses Memorial Prize* (designated by Dean for outstanding work in clinical course)
Annual Survey of American Law, Managing Editor
Activities: Suspension Representation Project, Advocate
Advanced Technology Law and Policy Clinic, Participant

CORNELL UNIVERSITY, Ithaca, NY
BS in Policy Analysis and Management, May 2017
Cumulative GPA: 3.94
Honors: Policy Analysis and Management Outstanding Senior
Activities: Teaching Assistant, Introduction to Policy Analysis
Cornell Daily Sun, Staff Writer

EXPERIENCE

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, New York, NY
Litigation Associate, October 2021-Present

POLICING PROJECT AT NYU LAW, New York, NY
Legal Fellow, August 2020-May 2021
Researched and presented on various legal and policy issues related to technology and policing, including facial recognition software, predictive policing, and gang databases.

GUNDERSON DETTMER STOUGH VILLENEUVE FRANKLIN & HACHIGIAN LLP, New York, NY
Summer Associate, Summer 2020 (Offer extended)
Rotated through the intellectual property and corporate groups.

AMERICAN CIVIL LIBERTIES UNION, New York, NY
Clinical Intern (Speech, Privacy, and Technology Project), August 2019-December 2019
Co-wrote litigation memo evaluating Fourth Amendment issues arising from law enforcement's use of a novel form of technology-enhanced surveillance.

THE HONORABLE GARY KATZMANN, U.S. COURT OF INTERNATIONAL TRADE, New York, NY
Judicial Intern, Summer 2019
Drafted questions for oral arguments, prepared bench memorandum, and aided in drafting opinion on case regarding an antidumping duty order as it relates to a consumer product. Provided feedback to clerks on draft opinions.

GOLDMAN, SACHS & CO, New York, NY
Investment Banking Division, Real Estate, Gaming and Lodging, June 2017-August 2018; **Intern**, Summer 2016

ADDITIONAL INFORMATION

Serve as mentor to high school student through iMentor program. New York State High School Golf Champion and NYC Marathon Finisher. Overly optimistic fan of New York sports teams (Mets / Jets / Knicks).

Name: David E Wechsler
Print Date: 07/02/2021
Student ID: N11255623
Institution ID: 002785
Page: 1 of 2

New York University
Beginning of School of Law Record

Degrees Awarded

Juris Doctor 05/19/2021
School of Law
Honors: cum laude
Major: Law

Fall 2018

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Jacob Victor			
Torts	LAW-LW 11275	4.0	B
Instructor: Christopher Jon Sprigman			
Procedure	LAW-LW 11650	5.0	B
Instructor: John Sexton			
Contracts	LAW-LW 11672	4.0	B+
Instructor: Kevin E Davis			
1L Reading Group	LAW-LW 12339	0.0	CR
Topic: Decision by Algorithm			
Instructor: Katherine J Strandburg			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2019

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Jacob Victor			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B+
Instructor: Adam M Samaha			
Criminal Law	LAW-LW 11147	4.0	A
Instructor: Rachel E Barkow			
1L Reading Group	LAW-LW 12339	0.0	CR
Topic: Decision by Algorithm			
Instructor: Katherine J Strandburg			
Survey of Intellectual Property	LAW-LW 12469	4.0	B
Instructor: Christopher Scott Hemphill			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2019

School of Law
Juris Doctor
Major: Law

Art Law	LAW-LW 10122	4.0	A-
Instructor: Amy M Adler			
Constitutional Law	LAW-LW 11702	4.0	A-
Instructor: Adam M Samaha			
Technology Law and Policy Clinic	LAW-LW 12148	3.0	A
Instructor: Brett Kaufman Jason Michael Schultz			
Technology Law and Policy Clinic Seminar	LAW-LW 12149	3.0	A
Instructor: Brett Kaufman Jason Michael Schultz			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	44.0	44.0

Spring 2020

School of Law
Juris Doctor
Major: Law

--
Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW.) courses were graded on a mandatory CREDIT/FAIL basis.
--

Negotiation	LAW-LW 11642	3.0	CR
Instructor: Dina R Jansenson			
Property	LAW-LW 11783	4.0	CR
Instructor: Shitong Qiao			
Income Taxation	LAW-LW 11994	4.0	CR
Instructor: Laurie L Malman			
Supreme Court Seminar	LAW-LW 12064	2.0	CR
Instructor: Troy A McKenzie Yaira Dubin Sina Kian			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	57.0	57.0

Fall 2020

School of Law
Juris Doctor
Major: Law

Criminal Procedure: Fourth and Fifth Amendments	LAW-LW 10395	4.0	A
Instructor: Stephen J Schulhofer			
First Amendment Seminar	LAW-LW 11824	2.0	A
Instructor: Burt Neuborne			
Fashion Law and Business	LAW-LW 12131	3.0	A
Instructor: Douglas Arthur Hand, Jr.			
Ethics in Government: Investigation and Enforcement	LAW-LW 12211	2.0	B+
Instructor: Ellen N Biben Linda Lacewell			
Constitutional Interpretation Seminar	LAW-LW 12253	2.0	A
Instructor: Adam M Samaha			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	70.0	70.0

Spring 2021

School of Law
Juris Doctor
Major: Law

Corporations	LAW-LW 10644	5.0	A
Instructor: Marcel Kahan			
Federal Courts and the Federal System	LAW-LW 11722	4.0	A
Instructor: Helen Hershkoff			
Advanced Technology Law and Policy Clinic	LAW-LW 12429	3.0	A
Instructor: Brett Kaufman Jason Michael Schultz			
Advanced Technology Law and Policy Clinic Seminar	LAW-LW 12430	2.0	A-
Instructor: Brett Kaufman Jason Michael Schultz			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	84.0	84.0

Staff Editor - Annual Survey of American Law 2019-2020
Managing Editor - Annual Survey of American Law 2020-2021
Ann Petluck Poses Memorial Prize

Unofficial

Name:	**David E Wechsler**
Print Date:	**07/02/2021**
Student ID:	**N11255623**
Institution ID:	**002785**
Page:	**2 of 2**

End of School of Law Record

Unofficial

David Wechsler
Cornell University
Cumulative GPA: 3.94

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Psychology		A	3	
Writing Seminar: Greek Mythology		A	3	
Intro to Policy Analysis		A+	4	
Entrepreneurship Speaker Series		A-	1	
Intro to Microeconomics		A	3	

Dean's List

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Empirical Research		A	3	
Writing Seminar: True Stories		A-	3	
Population and Public Policy		B+	3	
Intermediate Microeconomics		A-	4	

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Teaching Apprenticeship		A+	3	
Statistics for PAM Majors		A	4	
Intro to American Government and Politics		A	4	
Economics of the Public Sector		A	4	
Introduction to Sociology		A-	3	

Dean's List

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Environmental Psychology		CR	3	
Corporations, Shareholders, and Public Policy		A	3	
Cost-Benefit Analysis		B+	4	
Multiple Regression Analysis		A	4	
Empirical Research		A	3	

Dean's List

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS

Behavioral Public Policy		B+	3	
Empirical Research		A	3	
Financial Accounting Principles		A+	3	
Neighborhoods, Housing, and Urban Policy		A	3	
Introduction to Oceanography		A+	3	

Dean's List

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Czech Language		A-		
European Integration: How and Why		A-		
Ideas Behind Politics: Communism, Post-Communism, and Civil Society in Czech Republic				
Comprehending the Holocaust		A-		
Prague as a Living History		A		

This semester was at the Charles University in Prague as part of the Cornell Abroad program. The grades from this semester are not included in my Cornell cumulative GPA, per Cornell rules.

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law of Internet and E-Commerce		A	3	
Robot Ethics		A-	3	
Empirical Research		A	3	
Regulating Financial Institutions		A+	3	
Racial/Ethnic Identity Development		A	3	
Intro to Bio: Ecology and the Environment		A-	3	

Dean's List

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Empirical Research		A	3	
Mathematics and Politics		A-	3	
Economics of Risky Health Behaviors		A+	4	
Evolving Families and Challenges to Public Policy		A	3	
Adolescence and Youth Development		A	3	

Dean's List

My writing sample is an excerpt from a 2019 bench memorandum sent to the Honorable Judge Gary S. Katzmann during my judicial internship at the U.S. Court of International Trade. In the memorandum I recommend the scope of an antidumping duty order for corrosion resistant steel excludes a consumer product that incorporates such steel in its manufacturing process. I changed the names of the parties and deleted several footnotes for brevity. Judge Gary S. Katzmann has approved the use of this bench memorandum as a writing sample.

NATURE OF THE CASE

This case involves issues of proper scope interpretation. Plaintiff Company X ("Company X") imports finished pool kits and pool walls (collectively, "pool products") from Canada to the United States that are ready to construct into above ground pools with no further modification by customers. Company X requested a scope inquiry clarifying that its pool products, partially made from corrosion resistant steel ("CORES"), did not fall within the antidumping duty order for CORES from Italy and the People's Republic of China ("China"). After reviewing Company X's request, the U.S. Department of Commerce ("Commerce") determined that Company X's pool products were mixed-media items -- products that are merely combinations of subject and non-subject merchandise -- and no published guidance existed to overcome the presumption that mixed-media items fall within the scope of Commerce's Final Order ("Order"). Thus, Company X's products were subject to the antidumping duty. Company X now challenges the scope ruling of Commerce, arguing that the plain language of the Order does not cover downstream items like their pool products and a mixed-media analysis does not apply. Thus, they should not be subject to the antidumping duty order.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c). The standard of review in this action is set forth in 19 U.S.C. § 1516(a)(1)(B)(i): "[t]he court shall hold unlawful any determination, finding or conclusion [by Commerce] found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law." Substantial evidence includes "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951) (quoting Consol. Edison Co. of New York v. NLRB, 305 U.S. 197, 229 (1938)). In undertaking this analysis, the

court grants "'significant deference to Commerce's interpretation of a scope order.'" Mid Continent Nail Corp. v. United States, 725 F.3d 1295, 1300 (Fed Cir. 2013) ("Mid Continent") (quoting Global Commodity Group LLC v. United States, 709 F.2d 1134, 1138 (Fed Cir. 2013)). But to support its findings, Commerce must also "explain the standards that it applied and demonstrate a rational connection between the facts on the record and the conclusions drawn." Matsushita Elec. Indus. Co. v. United States, 750 F.2d 927, 933 (Fed. Cir. 1984).

BACKGROUND

A. Legal and Regulatory Framework of Scope Determinations Generally

"When participants in a domestic industry believe that competing foreign goods are being sold in the United States at less than their fair value, they may petition Commerce to impose antidumping duties on importers." Mid Continent, 725 F.3d at 1297–98 (citing 19 U.S.C. § 1673a(b)). If Commerce determines that "the subject merchandise is being, or is likely to be sold in the United States at less than its fair value," and the ITC determines a domestic industry is injured as a result, Commerce issues an antidumping duty order. See 19 U.S.C. § 1673d(a), (b). Once the order is issued, importers may ask for scope rulings, seeking to clarify the scope of the order as it relates to their particular product. See generally 19 C.F.R. § 351.225.

Commerce often must determine whether a product is included within the scope of an antidumping duty order because it necessarily writes scope language in general terms. See 19 C.F.R. § 351.225(a). Commerce's determinations concerning a particular product are made in accordance with its regulations. See 19 C.F.R. § 351.225. Although "Commerce is entitled to substantial deference with regard to its interpretation of its own antidumping duty orders," King Supply Co. v. United States, 674 F.3d 1343, 1348 (Fed Cir. 2012) (citing Tak Fat Trading Co. v. United States, 396 F.3d 1378, 1382 (Fed Cir. 2005)), "the question of whether the unambiguous

terms of a scope control the inquiry, or whether some ambiguity exists, is a question of law" that the court reviews de novo. Meridian Prods., LLC v. United States, 851 F.3d 1375, 1382 (Fed Cir. 2017) (citing Alleghany Bradford Corp. v. United States, 28 CIT __, __, 342 F. Supp. 2d 1172, 1183 (2004)). "The question of whether a product meets the unambiguous scope terms presents a question of fact reviewed for substantial evidence." Novosteel SA v. United States, 284 F.3d 1261, 1269 (Fed Cir. 2002)).

The framework for determining the scope of an order is set forth in the Department's regulations. See 19 C.F.R. § 351.225(k). The court has established that Commerce should engage in a three-step analysis to determine whether merchandise falls within the scope of an order, providing:

> First, Commerce examines the language of the order at issue. If the terms of the order are dispositive, then the order governs . . . Second, if the terms of the order are not dispositive, Commerce must then determine whether it can make a determination based upon the factors listed in 19 C.F.R. § 351.225(k)(1). . . . These factors are "the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations [of Commerce] (including prior scope determinations) and the Commission." 19 C.F.R. § 351.225(k)(1). . . . If a Section 351.225(k)(1) analysis is not dispositive, Commerce then applies the five "Diversified Products" criteria as specified in 19 C.F.R. § 351.225(k)(2).

Polites v. United States, 35 CIT __, __, 755 F. Supp. 2d 1352, 1354–55 (2011).

The Federal Circuit has held that for the plain meaning in a scope determination to be dispositive, it must be "supported by substantial evidence, considering the § 351.225(k)(1) criteria, in view of the record as a whole -- including evidence that [certain merchandise] was excluded from Commerce's and the Commission's investigations." A.L. Patterson, Inc. v. United States, 585 Fed. Appx. 778, 784 (Fed Cir. 2014) ("Patterson"). The Federal Circuit continued, "[e]ven when merchandise is facially covered by the literal language of the order, it may still be outside the scope if the order can reasonably be interpreted so as to exclude it." Id.

B. Legal Framework for Scope Rulings Involving Mixed-Media Items

Mixed-media items are items in which otherwise subject merchandise is packaged and imported together with non-subject merchandise. Whether a mixed-media item falls within the scope of an order is subject to a specialized analysis distinct from the traditional scope analysis discussed above. While the mixed-media analysis overlaps with a traditional scope analysis, it is used as the scope test only when Commerce must determine whether potentially subject-merchandise included within a mixed-media item is subject to an order. However, before Commerce engages in a "mixed-media" analysis, it must make a threshold inquiry: whether the item as imported in its assembled condition qualifies as a mixed-media item in the first instance. See Maclean Power, L.L.C. v. United States, 43 CIT __, __, 359 F. Supp. 3d 1367. The Federal Circuit defines "mixed-media" in the context of scope rulings as a set of products that are "merely a combination of subject and non-subject merchandise, and not a unique product." Walgreen Co. v. United States, 620 F.3d 1350 (Fed Cir. 2010). Helpful in this initial phase is evaluating whether the subject merchandise can be identified and utilized separately from the mixed-media item. Id. If this initial inquiry is satisfied, Commerce then engages in a two-step framework the Federal Circuit provided in Mid Continent governing Commerce's scope analysis of mixed-media items.[1]

C. Factual and Procedural History of the CORES Order

[1] First, Commerce determines whether the potentially subject merchandise included within the mixed-media item is within the literal terms of the antidumping duty order. Mid Continent, 725 F.3d at 1302. In the second step, if neither the text of the order nor its history "indicate [ ] that subject merchandise should be treated differently on the basis of its inclusion within a mixed-media item," then "a presumption arises that the included merchandise is subject to the order." Id. at 1304. The presumption that the mixed-media item is within the scope of the order applies unless Commerce identifies "published guidance issued prior to the date of the original antidumping order [ ] that provides a basis for interpreting the order contrary to its literal language." Id. at 1304

United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation ("Petitioners") filed antidumping and countervailing duty petitions on June 3, 2015 with Commerce and the ITC requesting the initiation of investigations with respect to imports of certain CORES products from China, the Republic of Korea, India, Italy, and Taiwan ("Petition"). See Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan: Determinations, 81 Fed. Reg. 47,177 (July 20, 2016) ("ITC Investigation"). On June 30, 2015, Commerce initiated the antidumping and countervailing duty investigations on CORES products from these areas, and on June 2, 2016, Commerce published determinations. Id. On July 15, 2016, the ITC issued a notice of its affirmative finding that an industry in the United States is materially injured by reason of imports of certain CORES products from China, India, Italy, Korea, and Taiwan. Id. On July 25, 2016, Commerce issued antidumping and countervailing duty orders on these products. Order, 81 Fed. Reg. at 48,391, 48,389, App. I. The scope of the Order covers, in pertinent part, "steel products, either clad, plated, or coated with corrosion resistant metals." Id.

D. Factual and Procedural History of this Case

The products under consideration in Company X's scope ruling request are finished pool products made of steel and non-steel components. While subject CORES from China and Italy is used to produce part of Company X's pool products, the steel undergoes further processing and manufacturing in Canada. Pl.'s Br. at 2. Company X explains that, as a result of its Canadian manufacturing, the steel satisfies the requisite tariff shift from subheading 7210.70 (flat-rolled products of steel) to 9506.99.550 (swimming pools and parts thereof) and thus is a Canadian origin product for customs purposes. Id. Company X's pools are imported as a finished goods kit. Id. at 3. When imported (in multiple boxes due to size constraints), the pools have all the parts

necessary to be assembled into an above ground pool. Pl.'s Br. at 2; Def.'s Br. at 5. Each pool is packaged together and exported on the same U.S. Customs and Border Protection ("CBP") form 7501. Id.

***

On November 28, 2017, Company X filed a scope ruling request with Commerce to determine whether its finished pool products are subject to the Order. On May 10, 2018, Commerce issued a scope ruling to Company X stating that its pool products fell within the scope of the Order. Commerce reasoned that its practice for evaluating products in which potentially subject merchandise is included in a larger product is governed by the Federal Circuit's decision in Mid Continent and that the inclusion of CORES in Company X's pools did not bring it outside the scope of the Order. See Final Scope Ruling. Plaintiff Company X filed a complaint against the United States ("the Government") challenging Commerce's final scope determination on July 16, 2018.

DISCUSSION

I. Company X's Pool Products Do Not Fit Within the Plain Language of the Scope of the Order

a. The Scope of the Order Does Not Cover Downstream Products

Company X argues that the Department's Final Scope Ruling failed to consider the plain language of the Order in applying the antidumping duty for CORES from China and Italy on its finished pools and finished pool walls because the pool products were neither specifically included nor reasonably interpreted to be included under the Order, as required by Duferco Steel, Inc. v. United States ("Scope orders may be interpreted as including subject merchandise only if they

contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it."). 296 F.3d 1087, 1089 (Fed. Cir. 2002)). Pl.'s Br. at 10. Thus, Commerce's determination was not based upon substantial evidence or otherwise in accordance with law. Id.

Company X draws a parallel to A.L. Patterson, Inc. v. United States, 585 Fed. Appx. 779 (Fed. Cir. 2014), arguing that fully finished end-products, like its pools and pool walls, were never intended to be included by the Petitioners as part of the scope of the investigation. Pl.'s Br. at 16. In Patterson, the Federal Circuit considered whether the scope of an order includes merchandise facially covered by the terms of the antidumping order, but which had not been a part of the underlying investigation. The court ultimately rejected Commerce's determination that steel *coil* rods imported from China fell within the scope of an antidumping order on steel rods because coil rods were a distinct product in a different domestic industry than the steel *threaded* rods the ITC investigated. Id. Instead, evidence showed that Patterson's coil rods were physically distinguishable from the steel threaded rods that were the focus of the original petition, the petition neither mentioned coil rods nor any of the uses of coil rods, no domestic producers of coil rods were included in the description of the domestic threaded rod industry, and there was no evidence that at the time of the petition coil rods were interchangeable with threaded rods or intended to be subject to the duties. Id.

Company X points out that like in Patterson, there is nothing in the record of the original investigation that demonstrates that fully finished end-products were intended to be included by Petitioners as part of the scope of the investigation. Pl.'s Br. at 16. This argument is persuasive when examining the language of the Order. While the Order thoroughly details the chemical content of the subject merchandise and intended uses, nowhere does it state that the scope covers

finished products such as cars, appliances or pools. In Patterson, review of the record as a whole included evidence that coil rods were excluded from the ITC and Commerce's investigations. Patterson, 585 Fed Appx. at 784. Because no evidence showed that when the petition was filed it intended to include or mention coil rods, the record did not support a finding that they were covered by the Order. Similarly, Company X argues that because the record here evinces no evidence of consideration of downstream products within the Petition filed with Commerce or the ITC investigation, they are reasonably interpreted to be excluded from the scope of the Order. Pl.'s Br. at 17. Company X's argument is buttressed by the producers of CORES filing the Petition, not domestic producers of above ground pools. As Company X highlights, the entities affected by the purported dumping are those who produce the raw input of CORES, not finished products. Pl.'s Reply at 11–12. Furthermore, the ITC questionnaires for the preliminary phase of the original investigation only collected pricing data for mill sheet products, not downstream items. See ITC Investigation. Thus, Commerce's determination that Company X's product fell within the scope of the Order is not supported by substantial evidence.

The Government tries to distinguish Patterson by pointing out that in this case, the CORES used in Company X's finished pool products is specifically covered by the Order, whereas in Patterson no part of the coil rod was under the Order. The Government contends that because the CORES components fall within the plain language of the scope of the Order, considering other sources in determining the plain meaning of the Order is inconsistent with Mid Continent's guidance that Commerce should consider the (k)(1) sources as part of the first step of a mixed-media analysis only if it identifies an ambiguity in an Order's plain language. Def.'s Br. at 17. Here, as the Government argues, Company X's pools fall directly within the language of the Order, because Company X's pool walls undergo the "further processing" that the Order encompasses.

Def.'s Br. at 18 (citing the Order: "Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/ or slitting or any other processing that would not otherwise remove the merchandise from the scope of the Order"). But the Government does not explain why the pool walls were merely processed as opposed to substantially transformed, as Company X argues. Instead, they simply state that "the further processing Company X's CORE[S] components undergo is not to such an extent that the CORE[S] becomes physically distinguishable as a separate product or is transformed into a different product, like the steel threaded rods in Patterson." Def.'s Br. at 18. However, in Patterson the coil rods were not considered separate from the scope of the Order because of their physical attributes, but instead because it was a distinct product occupying a different market from the thread rods. So too here are the pool walls a distinct product. Thus, the Government's argument that the "processing" Company X's CORES undergoes keeps it within the scope of the Order is unavailing.

Furthermore, Company X demonstrates that downstream products were never considered as part of the ITC's injury analysis despite 19 U.S.C. § 1673 requiring an injury determination prior to the imposition of antidumping duties. Instead, the ITC's injury investigations were focused on pricing data for CORES and other raw inputs, not fully finished products like Company X's pools and pool walls. See Company X's Initial Scope Request, P.R. 1, at 9; P.R. 4, at Att. 7. Nowhere in the Government's brief does it address the critical requirements of an injury determination. Company X persuasively argues that allowing Commerce to include downstream products would "frustrate the purpose of the antidumping laws because it would allow Commerce to assess antidumping duties on products intentionally omitted from the ITC's injury investigation." Pl.'s Reply at 15 (quoting Wheatland Tube Co. v. United States, 161 F.3d 1365, 1371 (Fed. Cir. 1998)).

While one could imagine an argument that domestic producers of CORES are injured by the use of CORES from China and Italy as an input for Company X's pools, the Government does not consider this possibility, nor did Commerce address it. Instead, its briefing to this court is devoid of any evidence on the record of injury to a domestic industry or sales at less than fair value. Thus, Commerce's decision is not in accordance with the law.

Finally, Company X compares the minimal manufacturing process required for CORES to the elaborate process its pools necessarily go through as evidence that the pools are not subject to the Order. Pl.'s Br. at 17. While such a difference is not dispositive, it is further evidence that the Order did not consider fully finished downstream products within its scope. Furthermore, as with the injury determination, the Government fails to address these differences. See generally Def.'s Br.

The Government further contends that the Petition and ITC Final Determination specifically discussed the use of CORES in many applications, including construction applications similar to Company X's use (CORES is used "in the manufacture of automobile bodies, in appliances, and in commercial and residential buildings and other construction applications."). Final Scope Ruling. Thus, the Government argues Commerce reasonably determined that the (k)(1) sources indicate that it was contemplated during the investigations that CORES would continue to be subject merchandise if included within larger products like Company X's finished pool products. Def.'s Br. at 15–16. However, the Government relies on no authority for the proposition that discussing end-uses of products includes those end-uses within the scope of the order. Without such authority, the passing references to the type of finished products produced from subject CORES cannot be interpreted as proof that the parties contemplated that finished products would be subject to the scope of the Order. Furthermore, accepting such an argument may lead to absurd

and perverse outcomes. If the court were to adopt Commerce's interpretation of the Order to include all downstream products, then an array of finished consumer products which includes CORES inputs would be covered by the Order. Such products covered would include automobile bodies, automobiles and trucks, appliances, industrial equipment, and more. Surely this result is not what Commerce intended when drafting the Order.

***

d. The Government Does Not Explain Why Company X's Products Are Mixed-Media Products, Subject to the Mid Continent Analysis

The Government's main argument relies on Mid Continent, 725 F.3d 1295 and states that as a mixed-media item, Company X's pools fall under the scope of the Order based on the two-step framework laid out by the Federal Circuit. Def.'s Br. at 21–22. In Mid Continent, the court considered whether subject merchandise (nails) packaged and imported with non-subject merchandise (assorted household tools) as a part of a mixed-media tool kit was subject to an antidumping order that in terms covered the nails. The court held that the nails remained within the scope of the order yet noted "Commerce has historically treated the answer to this question as depending on whether the mixed-media item is treated as a single, unitary item, or a mere aggregation of separate items." Id. at 1298. In this case, Commerce did not take the initial step of proving that the pool walls are not unique products. Mixed-media items, as defined by Walgreen Co. v. United States, are a set of products that are "merely a combination of subject and non-subject merchandise, and not a unique product." 620 F.3d 1350, 1355 (Fed. Cir) (emphasis added). Walgreen dealt with whether the packaging of tissue paper in gift bag sets took the tissue paper out of the scope of the Final Order for cut-to-length sheets of tissue paper. Id. The Walgreen court emphasized the tissue paper retained its individual character despite being packaged with the rest

of the gift bag sets in holding that the gift sets were not unique products and the tissue paper was subject to the order. Id. at 1357. Such an analysis makes intuitive sense. When a product subject to an antidumping duty order retains its individual character, the underlying purpose behind the order is not defeated. Here, however, the Government never determines Company X's products are "merely a combination of subject and non-subject merchandise" before applying Mid Continent.

Company X brings to our attention a case this court recently decided -- Maclean Power -- which dealt with a similar issue. 43 CIT __, __, 359 F. Supp. 3d 1367 ("Maclean"). In Maclean, this court determined that helical spring lock washers ("HSLW") incorporated within pole line hardware fell outside the scope of the HSLW order. Id. In so doing, this court warned that "Commerce put the cart before the horse" and held that "[b]efore applying the various guidance in Mid Continent, Commerce was first required to address the pole line hardware in its assembled condition." Maclean Power 43 CIT __, __, 359 F. Supp. 3d at 1372, N.3. The court distinguished the HSLW from the nails in Mid Continent by noting:

> "[A] tool box retains its essential character when it excludes nails, as do the nails by themselves. But the HSLWs at issue here are not alleged to be imported for use in anything other than the pole line hardware. The pole line hardware cannot perform their intended functions without the HSLWs, or the remainder of their components functioning together."

Id. at 1373.

Thus, just as the HSLW lost its essential function when incorporated into the pole line hardware, so too does the subject CORES when incorporated into Company X's pool products. Even if Commerce's Mid Continent analysis was sufficient to show that Company X's product fell within the order, its determination was still not in accordance with law because it did not address whether its product was a mixed-media item or unique product in the first place. Company X also

demonstrates that Commerce's past precedent includes finding that subject merchandise incorporated into a larger product constitutes non-subject merchandise, see e.g., Final Scope Determination Regarding Refrigerant Distributor Assemblies Manufactured and Imported by Danfoss LLC (Nov. 10, 2016) (holding that the order covers pipe and tube, but does not extend to further manufactured composite goods consisting of copper pipe and tube combined with other non-copper pipe and tube elements). Such a ruling provides further evidence that downstream products, distinct from mixed-media items, do not fall within the Order.

In its brief, the Government does not discuss the "unique product" distinction anywhere. By simply jumping into the mixed-media analysis, the Government fails to explain why Company X's pools should be considered a mixed-media item or grapple with the precedent laid down in Walgreen or Maclean. In this case, the record evidence shows that Company X's pools and pool walls are single unitary items, not mixed-media goods consisting of independently packaged items sold together as a set. Thus, by failing to consider the record as a whole before applying Mid Continent, Commerce's Final Scope Ruling was unsupported by substantial evidence in the underlying record.

Applicant Details

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Applicant Education

BA/BS From	**Washington University in St. Louis**
Date of BA/BS	**May 2015**
JD/LLB From	**Columbia University School of Law** **http://www.law.columbia.edu**
Date of JD/LLB	**May 15, 2020**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Columbia Human Rights Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Frederick Douglass Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Specialized Work Experience	**Appellate, Habeas, Prison Litigation**

Recommenders

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References

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Relationship: I took Torts with Professor Liebman during my 1L Fall and Law and Legal Institutions of China with Professor Liebman during my 1L Spring.

Bernard Harcourt
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Relationship: I took Legal Methods with Professor Harcourt during my 1L Fall and Abolition Practicum with Professor Harcourt during my 3L Fall. I worked with him on a capital habeas petition during my 3L Fall and 3L Spring.

Jennifer Danis
Staff Attorney, Sabin Center for Climate Change Law, Columbia Law School
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Relationship: Professor Danis was my clinical supervisor in the Environmental Law Clinic during my 2L Spring and 3L Fall.

This applicant has certified that all data entered in this profile and any application documents are true and correct.

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April 18, 2022

The Honorable John D. Bates
United States District Court
District of Columbia
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue NW
Washington, D.C. 20001

Dear Judge Bates:

I am a Fellow and Counsel at the Brennan Center for Justice and a Class of 2020 graduate of Columbia Law School. I am writing to apply for the Rules Law Clerk position in your chambers.

I have long-term career interests in legal academia, and I enjoy challenging questions of legal procedure, making this position particularly appealing to me. My voting rights and election law work at the Brennan Center regularly exposes me to interesting and varied questions of civil procedure that arise when litigating cases against the condensed timeline of an upcoming election. My Brennan Center work also focuses heavily on empirical research about state and federal legislation, which I believe would make me a strong asset to the Standing Committee.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from Professors Benjamin Liebman (212 854-0678, bliebm@law.columbia.edu), Bernard Harcourt (212 854-1997, bernard.harcourt@columbia.edu), and Jennifer Danis (212 854-4585, jdanis@law.columbia.edu).

Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully,

William Wilder

WILLIAM WILDER

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EDUCATION

Columbia Law School, New York, NY
J.D., May 2020

Honors:	Simon H. Rifkind Prize (Best Overall Performance in the First-Year Moot Court Program)
	James Kent Scholar (Outstanding Academic Achievement)
	Parker School Recognition of Achievement in International and Comparative Law
	National Champion, Frederick Douglass Moot Court Competition
Activities:	Editor-in-Chief, *Columbia Human Rights Law Review*
	American Constitution Society
	Student Public Interest Network

Washington University in St. Louis, St. Louis, MO
B.A. in Political Science, May 2015

Honors:	Danforth Scholar (four-year merit-based scholarship)
	W. Alfred Hayes Award (Outstanding Student-Athlete Leadership)
Activities:	President, Varsity Crew Team
	Residential Advisor

EXPERIENCE

Brennan Center for Justice, New York, NY
Singer Fellow June 2020–Present
Legal Intern January 2020–May 2020
Draft complaints, amicus briefs, motions, and legal memos as part of team litigating high-stakes, complex voting rights cases in state and federal court across the country. Assist with preparation for trials, motion hearings, appellate arguments, and depositions. Track and analyze state voting legislation to produce regular report about national trends in state legislatures. Brief federal policymakers about threats to voting rights at the state level. Produce testimony and analysis for congressional hearings about voting rights and election issues.

Social Justice Practicum, New York, NY
Research Assistant and Student Advocate August 2019–June 2020
Worked with team on wrongful conviction capital habeas case in Alabama. Conducted fact research and client interviews. Drafted legal memos regarding *Batson* challenges, *Brady* issues, and prosecutorial misconduct. Drafted sections of federal habeas petition. Helped plan communications for clemency campaigns.

Southern Poverty Law Center, Montgomery, AL
Summer Law Clerk, Criminal Justice Reform Project May 2019–August 2019
Drafted briefs and motions in a complex prison condition class action involving 15 state correctional facilities. Reviewed video footage and document production to monitor compliance with court order regarding solitary confinement in state prisons. Interviewed clients and witnesses in state prisons across Alabama. Tracked and analyzed sentencing reform legislation pending before state legislatures.

Columbia Law School Environmental Law Clinic, New York, NY
Student Advocate, Energy Policy Team January 2019–May 2019
Strategized with legal and policy team to produce an advocacy plan to reform New Jersey's environmental permitting regime. Briefed New Jersey policymakers and clients about potential legal pathways to incorporate climate change goals into public utility regulations.

Washington Lawyers' Committee for Civil Rights and Urban Affairs, Washington, D.C.
Summer Law Clerk, Prisoners' Rights Project May 2018–August 2018
Drafted legal memos about prison litigation issues pending before federal appellate courts. Interviewed clients in local jails and federal prisons as part of a series of fact investigations into prison healthcare. Counseled clients through Prison Litigation Reform Act grievance processes.

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CLS TRANSCRIPT (Unofficial)

10/25/2020 19:28:42

Program: Juris Doctor

William P Wilder

Spring 2020

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

Course ID	Course Name	Instructor(s)	Points	Final Grade
J6002-30	Art Of The Profile		3.0	P
L6655-2	Human Rights Law Review Editorial Board		1.0	CR
L8106-1	S. Law and Regulation of Social Media	Butterfield, Toby; Falkenberg, Kai	2.0	CR
L6685-1	Serv-Unpaid Faculty Research Assistant	Harcourt, Bernard E.	2.0	CR
L6292-1	State and Local Government Law	Briffault, Richard	3.0	CR

Total Registered Points: 11.0

Total Earned Points: 11.0

Fall 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L8419-1	Abolition: A Social Justice Practicum	Harcourt, Bernard E.; Hoag, Alexis	3.0	A
L9357-1	Advanced Environmental Law Clinic	Danis, Jennifer; Lloyd, Edward	2.0	A
L8452-1	Energy Regulation	Gerrard, Michael	2.0	A
L6425-1	Federal Courts	Metzger, Gillian	4.0	B+
L6655-2	Human Rights Law Review Editorial Board		1.0	CR
L6274-2	Professional Responsibility	Fox, Michael Louis	2.0	B+

Total Registered Points: 14.0

Total Earned Points: 14.0

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Spring 2019

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6223-1	Comparative Constitutional Law	Greene, Jamal	3.0	B+
L6231-1	Corporations	Goshen, Zohar	4.0	A-
L9257-1	Environmental Law Clinic [Minor Writing Credit - Earned]	Danis, Jennifer; Lloyd, Edward	7.0	A
L6655-1	Human Rights Law Review		0.0	CR
L6683-1	Supervised Research Paper	Liebman, Lance	1.0	A

Total Registered Points: 15.0

Total Earned Points: 15.0

Fall 2018

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6204-1	Administrative Law	Mashaw, Jerry L.	4.0	A
L6276-1	Human Rights	Cleveland, Sarah; Clooney, Amal	3.0	A
L6655-1	Human Rights Law Review		0.0	CR
L6474-1	Law of the Political Process	Briffault, Richard	3.0	A
L6675-1	Major Writing Credit	Liebman, Lance	0.0	CR
L8155-1	S. Civil Rights Lawyering in the Modern Era: Theory and Practice	Perez, Myrna	2.0	A
L6683-1	Supervised Research Paper	Liebman, Lance	2.0	A

Total Registered Points: 14.0

Total Earned Points: 14.0

Spring 2018

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6133-2	Constitutional Law	Barenberg, Mark	4.0	B
L6108-2	Criminal Law	Scott, Elizabeth	3.0	B+
L6667-1	Frederick Douglass Moot Court	Strauss, Ilene; Yusuf, Temitope K.	0.0	CR
L6271-1	Law and Legal Institutions in China	Liebman, Benjamin L.	3.0	B+
L6121-24	Legal Practice Workshop II	Yusuf, Temitope K.	1.0	P
L6116-2	Property	Liebman, Lance	4.0	A

Total Registered Points: 15.0

Total Earned Points: 15.0

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