

## NOTES

### INTRODUCTION FROM THE EDITORS OF VOLUME 84

The U.S. Court of Appeals for the Second Circuit has always held special significance for the *Fordham Law Review*'s student members. It is, after all, a court of immense national significance that sits just a few stops away on the A train from our Lincoln Center campus. More profoundly, however, service on the Second Circuit represents what is possible for members of our journal. Ennobled by the examples of Fordham Law School and *Fordham Law Review* alumni Judge Irving Kaufman, Judge William Mulligan, Judge Joseph McLaughlin, and, most recently, Judge Denny Chin, the student members of the *Fordham Law Review* strive to impact our profession at its highest levels. Long before Judge Mulligan, Judge McLaughlin, and Judge Chin were elevated to the Second Circuit, they served as student editors of the *Fordham Law Review*.<sup>1</sup> For each of them, an integral part of their service was editing student work, and Judge Chin even published a student comment of his own.<sup>2</sup>

It is thus with great pleasure and pride that four current students on the *Fordham Law Review* join this intellectual lineage by contributing the notes described below. Each note was written for this commemorative issue, and each tackles recent controversies from within the court that our journal's leading luminaries have called home.

First, in *Supervised Release, Sex-Offender Treatment Programs, and Substantive Due Process*, Max B. Bernstein considers appellate review of conditions of supervised release that infringe on constitutionally protected liberty interests. In working to resolve this critical issue, then-Judge Sonia Sotomayor, writing for the Second Circuit, held that any infringement of constitutionally protected liberty interests should be reviewed under strict scrutiny. Applying her test, Bernstein argues that mandated penile plethysmography testing, an intrusive physiological procedure, should be eliminated as a condition of supervised release.

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1. When Judge Kaufman graduated in 1931, the *Fordham Law Review* had not yet resumed publication after suspending it in 1917 following the United States's entry into World War I. Robert M. Hanlon, Jr., *A History of Fordham Law School*, 49 *FORDHAM L. REV.*, at xvii, xxii (1980). Judge Mulligan served as the Business Manager for Volume 11 (1941–42), Judge McLaughlin served as the Editor-in-Chief for Volume 27 (1958–59), and Judge Chin served as the Managing Editor for Volume 46 (1977–78).

2. Denny Chin, Comment, *Aliens' Right to Work: State and Federal Discrimination*, 45 *FORDHAM L. REV.* 835 (1977).

Next, in *Bank Liability Under the Antiterrorism Act: The Mental State Requirement Under § 2333(a)*, Olivia G. Chalos explores the current circuit split over the state of mind requirements to sustain civil liability under § 2333(a) of the Antiterrorism Act (ATA). In particular, she focuses on the rise in claims brought against financial institutions and the Second Circuit's opinion in *Weiss v. National Westminster Bank*,<sup>3</sup> which clarified the scienter requirement for claims against a bank alleging that it provided material support to a terrorist organization in violation of the ATA.

Third, in *Shining the Light a Little Brighter: Should Item 303 Serve as a Basis for Liability Under Rule 10b-5?*, Lauren M. Mastronardi examines whether a violation of Item 303 of Regulation S-K can serve as a basis for liability under Rule 10b-5. The Ninth Circuit has held that such violations cannot result in 10b-5 liability. In *Stratte-McClure v. Morgan Stanley*,<sup>4</sup> however, the Second Circuit critiqued this reasoning, explaining why such liability, although not inevitable, is certainly possible.

Finally, in *Insta-Appropriation: Finding Boundaries for the Second Circuit's Fair Use Doctrine After Campbell*, Anna Schuler analyzes the application of copyright's fair use factors to digital appropriation art. The Second Circuit, Schuler explains, has played an integral role in developing the current fair use analysis for digital appropriation art and will continue to play a critical role in refining its boundaries.

The *Fordham Law Review* is honored to publish this special edition commemorating the Second Circuit's 125th anniversary. Our journal looks forward to deepening its already rich relationship with this very special court and to continuing to cultivate young legal minds, like the four authors noted above, who one day may join its judicial roster.

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3. 768 F.3d 202 (2d Cir. 2014).

4. 776 F.3d 94 (2d Cir. 2015).