Introduction to Lawyering
Fall 2019

FEDERAL COURT STRUCTURE AND AUTHORITY:
UNITED STATES V. JOBS

**Learning Outcomes:**
- Ability to describe the structure of the federal court system and the weight of various federal court decisions
- An understanding of the legal terminology common to all cases

Where appropriate, I inserted comments in blue on how I used this exercise at its various stages. The version of the hypothetical provided to the students do not include my comments. This hypothetical and the questions accompanying it can also be adapted in various ways to suit the desired outcomes of the lesson.

A. **Trial Court**

1. A grand jury convened by the United States Attorney’s Office for the Northern District of New York indicted Jacob Jobs for violating a federal crime. The criminal prosecution, entitled United States v. Jobs, was assigned to the Honorable David Williams, Chief Judge of the United States District Court for the Northern District of New York.

2. The Federal Bureau of Investigation subsequently arrested Mr. Jobs. The FBI agents searched the contents of Mr. Jobs’s smartphone. The smartphone was not protected by any password, and the FBI agents accessed the contents of the smartphone without any difficulty.

3. During the pretrial phase of the litigation, Mr. Jobs made a motion to exclude the smartphone evidence from trial, arguing that the search of his smartphone violated the Fourth Amendment because he had a reasonable expectation of privacy in the contents of his smartphone. Assume that whether persons have a reasonable expectation of privacy in the content of their smartphones is an issue of first impression in the United States.

4. Judge Williams denied Mr. Jobs’ motion in a written decision. The written decision stated that persons have a reasonable expectation of privacy in the contents of their smartphones if and only if they demonstrate reasonable steps to ensure their privacy, such as password-protecting the phone. That pretrial ruling further stated that because Mr. Jobs’s smartphone was not password protected, he did not have a reasonable expectation of privacy the contents of his smartphone, and thus, the evidence was admissible.

The first poll question, which may be phrased in various ways, assesses whether students understand that the decisions of trial courts are binding on the parties to the case only. After I display the answer and the students’ responses, I appoint a student as district judge in the Northern District to emphasize that another district judge may reach a different ruling. Because one of the answer choices implicates a state court, I also use this opportunity to emphasize that decisions of the federal district courts and federal courts of appeals are not binding on state courts and that the decisions of the United States Supreme Court are binding on state courts on
federal matters only. I then emphasize this principle of federalism throughout the exercise.

5. The trial then started. Mr. Jobs’s defense attorneys, during the prosecution’s direct examination of the FBI agents who searched Mr. Jobs’ phone, made oral objections to the prosecution’s use of the smartphone evidence. Judge Williams overruled those objections. The Court did not issue any written decisions or rulings during the trial. The prosecution’s evidence consisted solely on the contents of the smartphone.

6. A jury convicted Mr. Jobs on September 15, 2019.

I use this opportunity to teach the terms “judgment” and “verdict.”

7. Mr. Jobs appealed, arguing that Judge Williams committed reversible error in admitting the smartphone evidence.

B. Intermediate Appellate Court

8. Relying on Judge Williams’s rationale, the conviction was affirmed by the United States Court of Appeals for the Second Circuit on March 5, 2020, in a majority opinion written by Judge Bosley in which Judge Keller also joined.

9. In addition to joining the majority opinion, Judge Keller also wrote a concurring opinion, stating that she would have gone further by ruling that persons do not have a reasonable expectation of privacy in the contents of their smartphone under any circumstances.

10. Finally, Judge Johnson wrote a dissenting opinion, arguing that persons have a reasonable expectation of privacy in the contents of the smartphones under all circumstances, and thus, the evidence should’ve been excluded, that the indictment should’ve been dismissed, and that the conviction should be overturned.

Although I had not intended on discussing the initial three-judge panel and en banc panels, some students began asking questions that led to a discussion about the panels anyway. One student asked what would’ve happened if a different district judge ruled differently than Judge Williams before the Second Circuit ruled, and what would happen if both district cases had been appealed. To me, this showed that the students were starting to think about how the court system works in practice. I’m not sure that I would’ve gotten this question had I not done the exercise in this way.

11. On March 19, 2020, the United States Court of Appeals for the Third Circuit, in United States v. Zuckerberg, unanimously held that people have a reasonable expectation of privacy in the content of their smartphones if they demonstrate reasonable steps to ensure their privacy. Judge Dredd’s opinion cited Judge Baez’s opinion in Jobs.

I introduce the Third Circuit to emphasize that the decisions of a circuit are only binding in that circuit, but that courts may use the decisions of another circuit as persuasive authority.
C. **Highest Appellate Court**

12. Mr. Jobs appealed the Second Circuit’s decision to the United States Supreme Court. The United States Supreme Court issued a *writ of certiorari* and told the parties in *Jobs v. United States* to brief the following question:

> Whether the defendants’ conviction should be reversed because the district court committed reversible error by admitting, at trial, evidence from the contents of defendants’ smartphone.

The case name was intentionally reversed. Many new law students assume that the name that appears on the left of the “v.” is the plaintiff. When reading United States Supreme Court cases, however, the petitioner’s name is on the left even though the petitioner might have been the defendant in the lower courts. Students must be taught early that merely reading the case name does not provide a sufficient understanding of all the parties and their postures. Later in the semester, I teach students that the name of the case itself may change throughout the litigation process.

13. In June 2020, Justice Ginsburg announced the judgment of the United States Supreme Court in *Jobs v. United States*. In a *plurality opinion* written by Justice Ginsburg, the Supreme Court affirmed the Second Circuit’s decision in *United States v. Jobs*. Justices Thomas, Breyer, and Alito joined the plurality opinion. The plurality opinion concluded that persons have a reasonable expectation of privacy in the content of their smartphones if and only if they demonstrate reasonable steps to ensure their privacy, like password-protecting the phone.

Introducing students to “plurality opinions” early in their legal education is important. Federal Civil Procedure is a required course in the first semester at the vast majority of law schools. One of the foundational cases relating to personal jurisdiction is *Burnham v. Superior Court of California*, 495 U.S. 604 (1990), which was a plurality opinion. Introducing this concept to students early will only strengthen their understanding of the cases they’ll inevitably read in their first semester of law school. I also take this opportunity to teach students to recognize a plurality opinion when they read “announced the judgment of the court,” and to recognize a majority opinion when they read “delivered the opinion of the court.”

14. Justice Kagan, in a *concurring opinion* joined by Chief Justice Roberts, voted to affirm the conviction, but they would have held that there is no reasonable expectation of privacy in smartphones under any circumstance.

15. Justice Gorsuch, in a *dissenting opinion* in which Justices Sotomayor and Kavanaugh joined, concluded that persons have a reasonable expectation of privacy regardless if they demonstrate reasonable steps to ensure their privacy, and thus, they would’ve reversed the conviction.