

# Let's be Reasonable

by Alfred Adask

Over the past three years, the AntiShyster has explored the differences between courts of law and courts of equity. These differences are dramatic but virtually invisible. There are three reasons for our inability to distinguish the difference between courts of law and equity:

- The purpose of a court of law is to determine *legal* (not equitable) rights. Legal rights flow from *legal* title. If you lack (or fail to present) evidence that you have legal title to the property or claim you're making to the court, you necessarily have no legal rights in that case, and there is nothing for a court of law to decide. I.e., without legal title, you can't have legal rights. Since a court of law only determines questions of legal rights, if you don't have any, you have no standing in law, no issue that can be determined by a court of law, and therefore your case will be heard in equity.

- Trial court judges are empowered to hear your case in *either* law or equity. The judge will hear your case according to *your* status and legal capacity. I.e., do you have (or show evidence of) *legal* title to the property or claim at issue? If not, your case will be automatically heard in equity.

- For most of American history, suits tried at law or in equity were easily distinguished since each system operated with distinctly different forms and procedures. For example, the forms and procedures used in equity could not work in law. Thus, as soon as someone sent you paperwork on a lawsuit, you could tell instantly from the form whether the lawsuit would be tried in law or equity and adjust your legal strategy accordingly.

However, in 1938 the great white father in Washington decided to favor us by combining the forms and procedures of law and equity into a single "universal" form and procedure. The express purpose for this unification was to save us from the trouble of having to learn two forms and procedures.

Although this justification sounds nice, I suspect it was done intentionally to deceive the American people into mistaking courts of equity for courts of law.

This deception depends on the public (and most lawyers) assuming that since the forms and procedures of law and equity were combined, that law and equity were combined.

Not so. Law and equity still exist as two mutually exclusive

jurisdictions. Because we don't understand the fundamental difference between law and equity (the forms and procedures no longer signal which kind of court we're in), we walk into court thinking it's a court of *law* if which we enjoy legal rights – when, in fact, we are being unwittingly tried in a court of *equity* where we enjoy trivial privileges rather than unalienable Rights.

## Little things mean a lot

OK, so what difference does it make whether we're tried in law or equity?

The difference is enormous. In a court of law, not only the litigants but also the *judge* is bound by the relevant law.

However, if a court of equity, the judge is intentionally free to ignore the law. Instead, an equity court judge rules primarily according to his own "conscience" and thus becomes the "law" in a particular case. The potential for abuse of discretion by a equity judge is obvious in theory and reported regularly in fact.

Historically, courts of equity were created to deal with problems of justice where no law applied, where litigants lacked standing (legal title and thus le-

gal rights) necessary to reach a court of law, or even where the law in a particular case was unreasonably harsh.

For example, suppose a law reads that anyone driving his car in a school zone who hits and kills a child shall be imprisoned for the balance of his natural life. But suppose a small, unseen child darts out into the street from between two parked cars and is hit by a driver going 10 MPH. Anyone looking at the tragedy can see the driver wasn't negligent, and more, it would've been virtually impossible for the driver to see the child and stop. Should that driver spend the rest of his life in prison?

According to the law, Yes. If the man is tried in law, in a court of law, he will be convicted and imprisoned. The judge has no choice and is bound by law to convict, even if the defendant is the judge's only son.

But if the defendant's case is heard in a court of equity, the judge can rule the man is innocent and free him from the threat of imprisonment.

My point is that while courts of law are absolutely bound to follow the law, courts of equity are only bound to follow the judge's conscience. Although courts of equity generally "follow" the law, they are specifically exempted from absolute obedience to virtually all laws.

As a result, in a court of equity all of your legal arguments are just so much white noise. The judge will listen to your list of legal precedents, but he has no obligation to obey them. Equity has been generally characterized as rule by man, not law.

You can tell the equity judge all the relevant case law that supports your position, but if the judge doesn't like the color of your eyes, your legal arguments may be interesting, but they aren't binding on that judge. You'll lose and leave the court of

equity in bitterness (if not handcuffs) swearing that the judge is a treasonous s.o.b..

But you'd be wrong. Even if the judge is deceptive, the primary cause of your trouble is that you do not understand the difference between law and equity and are therefore unable to ensure that your case is heard in law rather than equity.

### Unbridled power?

At first, the enormous "discretion" enjoyed by equity court judges, seems to constitute almost unlimited judicial power. But that's not quite so. So far as I can tell, a judge sitting at equity can't reach a decision that is 1) shocking to the conscience; 2) tends to diminish public confidence in the system of administration of justice; and 3) is unreasonable.

I won't analyze the "shocking" and "public confidence" restrictions in this article. Instead, I will speculate on the prohibition against reaching a decision that is "unreasonable".

Anyone who's followed our courts' antics for long has noticed the repeated reliance on the terms "reasonable" and "unreasonable". Anything that can be shown to be "unreasonable" (even if technically consistent with the law) can be modified or rejected. On the other hand, that which is "reasonable" is worthy of serious consideration and likely to prevail.

Although the equity court's power is not bridled by law, it appears to be bridled by *reason*.

But what is "reason"?

Answer: Logic. Facts, syllogisms (If A, then B), evidence, maxims of law. Rational thought.

If you can present a compelling rational/ reasonable argument, the court of equity just might be bound to agree with you.

Implication: Courts of equity just might be a very hospitable

forum for those who are able to think, write and speak with an exceptional command of logic.

### Reason can overcome law

I suspect the following court order illustrates the power of reason (logic) in courts of equity. This order involves a California association that wants to grow and use its own marijuana. Some of its members have medical disabilities (like glaucoma or cancer) which can be treated or alleviated by using marijuana.

The law (statutes enacted by Congress) is pretty clear. The marijuana association can't grow their own, even for medical purposes unless an allowance is made through some administrative procedure.

Nevertheless, the marijuana association was able to present a logical, well-reasoned case backed by evidence and facts that at least those member with medical disabilities should be able to smoke some grass.

Remarkably, a U.S. District Court agreed.

The lesson seems to be that a court of equity, while not bound by law, is bound by reason, logic and evidence. I.e., if you can present a logical, well-documented argument to a judge sitting in equity - and if no *evidence* is offered by your adversary to refute your "reason" - the judge may even be forced to agree with your presentation.

If you can read between the lines of the following court order, I think you'll see the logical foundation that defeated the government's law.

I've added some bracketed text into the court orders to make them a little easier to understand, and highlighted and/or footnoted those terms in the orders that I suspect signal logical elements that were necessary to create a case so "reasonable" the court had to agree.



THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN  
DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,  
v.  
OAKLAND CANNABIS BUYERS' COOPERATIVE, et al.,  
Defendants.

No. C 00088 CRB

ORDER

Now before the Court is defendants' motion to modify the injunction issued on May 19, 1998, or in the alternative, to dissolve the injunction. After carefully considering the papers filed by the parties, and having had the benefit of oral argument, the motion to modify the injunction is GRANTED.

In *Unites States v Oakland Buyers' Cooperate*, 190 F.3 d 1109(9th Cir. 1999), the Ninth Circuit reversed the Court's order denying defendants' motion to modify the injunction and instructed the Court "to reconsider the [defendants'] request for a modification that would exempt from the injunction distribution to seriously ill individuals who need cannabis for medical purposes." *Id.* at 1115. In doing so, the [appellate] court held that this [trial] Court **must** consider the **public interest**,<sup>1</sup> and that the **evidence in the record**<sup>2</sup> "show[s] that the proposed amendment to the injunction clearly **related**<sup>3</sup> to a matter affecting the public interest." at 1114. **Significantly**, the Ninth Circuit also held that the government had not "identif[ied] any **interest** it may have in blocking the distribution of cannabis to those with medical **needs**, relying exclusively on its **general interest** in enforcing its statutes."<sup>4</sup> *Id.* The court noted that the government "has **offered no evidence to rebut OCBC's evidence** that cannabis is the **only** effective treatment for a large group of seriously ill individuals."<sup>5</sup> *Id.*

On remand the **government has still not offered any evidence** to rebut defendants' evidence that cannabis is medically **necessary**<sup>6</sup> for a group of seriously ill individuals. Instead, the government continues to press **arguments**<sup>7</sup> which the Ninth Circuit rejected, including the argument that the Court must find that enjoining the distribution of cannabis to seriously ill individuals is in the public interest because **Congress has prohibited** such **conduct** in favor of the **administrative** process regulating the approval and distribution of drugs. As a result of the government's **failure to offer any new evidence in opposition**<sup>7</sup> to defendants' motion, and in light of the Ninth Circuit's opinion, the Court **must** conclude that modifying the injunction as requested is in the **public interest**<sup>1</sup> and exercise its **equitable**<sup>8</sup> discretion to do so.

Accordingly, the injunction issued on May 19, 1998 will be modified as follows:

The foregoing injunction does not apply to the distribution of cannabis by the Oakland Cannabis Buyers' Cooperative and Jeffrey Jones to patient-members who (1) **suffer** from a

<sup>1</sup> This tells us that the trial court must regard the "public interest" as a fundamental goal which cannot be ignored or overruled. Thus, all "reasonable" arguments might do well to identify the "public interest" in a particular case and prove that your argument serves that public interest.

<sup>2</sup> It's not enough to chat with the judge. The evidence supporting your reasonable arguments must be in writing and in the record.

<sup>3</sup> Again, it's important to structure the argument and evidence to reach the goal of public interest.

<sup>4</sup> This sentence indicates that government has a "general interest" in enforcing its statutes, but that the "needs" (in this case "medical needs") of individuals can take precedence over the government's general interests. However, government can apparently counter an individual's claim of "need" by presenting evidence of a (specific) government interest in denying the "need".

<sup>5</sup> This may be the key to the defendant's success: The government offered no evidence to refute the defendant's evidence (not mere argument or even law) that cannabis was the "only effective treatment".

<sup>6</sup> Apparently, government must allow that which is shown by evidence to be "necessary".

<sup>7</sup> As in footnote #5, it appears that government relied exclusively on arguments (which probably work in most cases where the defendant has not presented a "reasonable" defense) rather than actual evidence entered into the record to rebut the defendant's evidence. How many times have we seen "patriots" go to court to advance great constitutional arguments backed up with no evidence or facts? How many times have the arguments (without facts) lost? Here, the government has seemingly made the same mistake.

<sup>8</sup> The case is being heard in a court of equity.

serious **medical** condition,<sup>9</sup> (2) will suffer **imminent harm** if the patient-member does not have access to cannabis,<sup>10</sup> (3) **need** cannabis for the treatment of the patient-member's medical condition, or need cannabis to alleviate the medical condition symptoms associated with the medical condition,<sup>11</sup> and (4) have **no reasonable legal alternative**<sup>12</sup> to cannabis for the effective treatment or alleviation of the patient-member's legal medical condition or symptoms associated with the medical condition because the patient-member has **tried all other legal alternatives** to cannabis and the alternatives have been **ineffective** in treating or alleviating the patient-member's medical condition or symptoms associated with the medical condition, or the alternatives result in side effects which the patient-member cannot **reasonably** tolerate.

The Court DENIES defendants' motion to dissolve the injunction. Nothing in the Ninth Circuit's decision suggests that the Court should dissolve the injunction, especially in light of the above modification.

IT IS SO ORDERED.

Dated: July 17, 2000

CHARLES R. BREYER

UNITED STATES DISTRICT JUDGE

A subsequent court order enjoined the Oakland Cannabis Buyer's Cooperative from various acts associated with the "manufacture or distribution" of

<sup>9</sup> The terms "suffer" and "serious medical condition" indicates that part of the evidence is testimony by a licensed physician that verifies there is a medical condition and the patient is suffering.

<sup>10</sup> Item #2 is a syllogism – a logical relationship generally expressed as "if A, then B". In this case, the unrefuted syllogism indicates that "Suffering imminent harm is contrary to public policy," (major premise) and "If the patient-members don't receive cannabis, THEN they will suffer imminent harm." That deduction seems obvious. But there's also an implied deduction: If the judge won't allow patient-members to use cannabis, THEN the judge will be personally responsible for violating public policy (which seemingly precludes causing suffering).

<sup>11</sup> This seems to be another premise: The patient-members NEED cannabis to treat or alleviate the "medical condition" referenced in Item #1.

<sup>12</sup> "no reasonable alternative" closes the door on the argument that while illegal cannabis might be helpful, it's not necessary since there are other reasonable alternatives. Thus, it's cannabis or nothing to prevent "suffering imminent harm" and violating public policy.

## ***GET THE FACTS! – You Can beat the IRS!!***

**The Factual Guide to the Constitution of the United States of America** This book contains the most complete, accurate, and useful material ever compiled into one source regarding the oldest Constitution in the world today. **\$25**

**Wayne Bentson Seminar** 2day "Willful failure to file seminar" which covers the leading FOIA requests in America today. 4 video, 9 audio with all corresponding paperwork. More success than all other IRS gurus put together. **\$200**

**Level I Seminar** Must have to control your IRS tax case! Teaches basic starting points on how to deal with IRS as an administrative agency and provides 60 FOIA requests you can do immediately. Designed to help you build your affirmative defense, substantive law. Manual, 3 videos, and 6 audio tapes. **\$150**

**Level II Seminar** Teaches you what to do with all the factual info you get back from IRS and how to use the info you have received through the FOIA requests to rebut their false presumptions. Build your evidence package that will exonerate you by using their documentation every single time. Also teaches you how to do more complex FOIA requests, so you can create rebuttal letters geared directly to you and no one else. Generic letters do not cut it! Manual, 3 videos, and 6 audio tapes. **\$175**

**Level III Seminar** Unbelievable amount of information! A manual, a CD-ROM containing over 54,000 pages and 2 videotapes! Learn to destroy any charge the IRS has against you. The CD bifurcates IRC sections: 6020b, 6321, 7201, 7203, 7206, and 7212 and gives the legislative history. Adobe searchable files on IRS, CFR, US Statutes at Large, and more, all concerning the IRS. MUCH MORE!! NOTE: It is not necessary to complete Levels I and II in order to use this Seminar **\$300**

VIP SALES Box 463 Owensville, Ohio 45160 (877) 879-2788 [www.irsdecoder.com](http://www.irsdecoder.com)

**Complete comprehensive literature list available!!**

# Seeking attorney to file amicus curiae with Supreme Court for case of Army Spc. Michael New

See website <http://www.mikenew.com> and contact Daniel New, Project Manager, via webmaster. Or contact direct: [ddnew@mikenew.com](mailto:ddnew@mikenew.com)

marijuana. However, that order also declared, "The foregoing injunction does not apply to the distribution of cannabis by the Oakland Cannabis Buyers' Cooperative and Jeffrey Jones to patient-members who" satisfy the four logical criteria listed in the previous order.

Point: Under particular circumstances, when sufficient evidence and reasoning is presented to a court, the court will order that seemingly illegal behavior be condoned.

That's a pretty remarkable tribute to the power of "reason" in courts of equity.

## Judges must be moral

The concept of reason is intimately tied to that of morality.

In the last two editions of the AntiShyster (Vol 9 No. 3 and Vol 10 No. 1), we explored the concept of morality and concluded that an "amoral" person was one who did not know the difference between right and wrong (or good and evil) while a "moral" person was someone who did understand that difference. We observed further that an "immoral" person was one who understood the difference between right and wrong, but intentionally chose to do wrong while a "righteous" (or rightful) person also understood the difference, but chose to do right.

We speculated that our court system presumes that virtually all Americans are "amoral" (don't

know the difference between right and wrong) and are therefore legally insane and incompetent to handle their own legal affairs. Only a handful of Americans (politicians, lawyers, judges and perhaps others with advanced professional degrees like doctors, etc.) are deemed to be moral. The relationship between being "moral" and being a judge is apparent since a person can't be expected to "judge" unless he understands the difference between right and wrong. Morality (knowing the difference between right and wrong) is the essential requirement for all judicial determinations and thus only a moral person can sit as a judge.

The 4th Edition of Black's Law Dictionary offers a clue to the relationship between "moral" and "reasonable":

"REASON. A faculty of mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions. . . . Also an inducement, motive, or ground for action . . . ."

Point: Reason is a means by which we distinguish (judge) between right and wrong. Thus, reason is at least an essential capacity for a "moral" person (one capable of *judging*). Arguably, "reasonable" and "moral" might even be synonymous.

Implication: A "judge" who is "unreasonable" (who does not respond to reasonable argu-

ments) is unfit to sit on the bench.

Implication: Evidence that a judge behaves unreasonably may be sufficient to impeach the judge from office. Moreover, evidence that the judge is persistently unreasonable (as evidenced by his decisions being repeatedly reversed by appellate courts) might even create a personal liability for the judge's employers.

For example, a municipality employed a judge who was known for his eccentric behavior and frequently reversed decisions. That municipality might be liable to litigants damaged by "unreasonable" decisions of that judge if it could be shown that the municipality knew or should have known from the judge's behavior and reversal record that he was unreasonable, amoral and incapable of distinguishing (judging) between right and wrong.

## "Never FEAR the IRS Again"

A 272 Page Defensive Handbook For Dealing With IRS

Learn how to stop levies, remove liens, abate penalties and interest, and understand Regulations

Only \$29.95 plus \$4.00 shipping & handling

M/C, VISA, AmEx and Discover: 888-321-2979

Visit our homepage at: [www.neverfearirs.com](http://www.neverfearirs.com)

Or E Mail us at: [sales@neverfearirs.com](mailto:sales@neverfearirs.com)

T. JEFFERSON PRESS  
10300 N. Central Expy # 530  
Dallas, TX 75231

Implication: Perhaps the judge in a court of equity MUST respond to reason. Thus, if you are capable of constructing a precisely reasoned argument – unless your adversary refutes your logic – the judge in equity may be forced to rule in your favor.

### Other applications?

I wouldn't bet that this "reasonable" strategy would absolutely work in any case in the casinos we call courts of equity, but who knows?

For example, suppose your state or community prohibited the possession of fire arms in certain locations or occupations. Could a precisely reasoned case backed by unrefuted evidence induce an equity court judge to grant you permission to "carry" despite the law?

How 'bout custody issues? Based on various presumptions, the equity courts routinely rule that the "best interests of the child" are served by virtually severing the child's relationship to the father. But what if a father were to provide extensive evidence that refuted the "best interest" presumptions by showing the high probability that the child will "suffer imminent harm" if the child is denied generous access to the father?

### Syllogistic warfare

I suspect the key to an effective *reasonable* argument may use of a syllogism of the sort seen in Criteria # 2 of the court's order: The patient member "will suffer imminent harm if the patient-member does not have access to cannabis".

As a simplistic illustration, suppose you motion a court to grant a continuance. You reference the local rule of court that allows you to make the motion,

and the court might say Yes and it might say No.

But note that merely citing the law concerning continuances is not precisely a "reasonable" argument. There is no express syllogism (If A, then B) – only a statement of facts.

But suppose you made the same motion and instead of merely listing the relevant rule on continuances, you back it up with a couple of facts (premises) entered into evidence and a syllogism that shows that IF the motion for continuance is not granted, THEN you will suffer some harm which is contrary to public policy.

The logic of your motion might run something like this:

1. Public policy requires that the costs of litigation be kept to a minimum (premise backed by evidence into court record).
2. Lost employment is a cost of litigation. (backed by evidence)
3. The defendant has an important employment opportunity on Tuesday, the day of the scheduled court hearing, which cannot be postponed. (backed by evidence)
4. Syllogism: **If** the case is heard on Tuesday, **then** the defendant will suffer the loss of a valuable job or employment opportunity.

5. The defendant would suffer no employment loss if the case were heard on Wednesday of following week with no inconvenience to the court or adversary (backed by evidence).

6. Therefore, defendant moves that the court grant a continuance the case scheduled for Tuesday until Wednesday of the following week.

That's a pretty clumsy chain of reasoning, but it's still a "reasonable" (logical) argument. Unless your premises (facts) and logic (syllogism) are refuted by your adversary, the court may be compelled to respond positively.

Because the equity judge is obligated to behave in a reasonable/ moral manner, I suspect that if you present a "reasonable" (logical) argument to him, you should at least increase the probability that he will rule in your favor. On the other hand, if your motions (or perhaps administrative notices) are presented without reason, logic and syllogism, the judge (or administrator) may see nothing "reasonable" (syllogistic) to consider and thus be empowered to rule strictly according to his own conscience.

I conclude that in courts of equity, the law itself can be overcome and defeated by a deft application of reason. ■

## You Can Learn The Law! Certified Paralegal Correspondence Course

Home study since 1979. Graduates receive Certified Paralegal status (Certification accepted in all 50 states)

Low cost Tuition \$895; Books \$650 - \$700. **No interest payment plan.** Two years to complete, average 8 - 10 months. Unlimited WESTLAW available to Students at reduced rate!

1-800-830-1333 [www.calparalegal.com](http://www.calparalegal.com)