

**TRAVEL LAW: THE U.S. SUPREME COURT RULES ON HOTEL
PRIVACY ISSUES**

REVISION #1

August 5, 2015

In our earlier article [see *Hotel guest records: Just how private are they?* ETN (12/10/2014)] we discussed hotel privacy issues raised in *Patel v. City of Los Angeles*, 738 F. 3d 1058 (9th Cir. 2013 En Banc) which involved a constitutional challenge to Los Angeles Municipal Code Section 41.49(3)(a) which provides, in part, that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection", provided that "[w]henever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business". A hotel operator's failure to make his or her guest records available for police inspection is a misdemeanor punishable by up to six months in jail or a \$1,000 fine".

The U.S. Supreme Court in a 5 to 4 opinion, *City of Los Angeles, California v. Patel*, 135 S. Ct. 2443 (June 22, 2015),

held "that Section 41.49(3) is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review". In another words Los Angeles police officers wishing to examine a hotel register must obtain a proper search warrant first. In this article we shall examine some of the arguments raised in the majority opinion written by Justice Sotomayor and the dissenting opinion of Justice Scalia.

Travel Law Update

New York City's Car Service Needs

In Dickerson & Cohen, *Taxis and Ride-Sharing: Meeting New York City's Car Service Needs*, www.newyorklawjournal.com (7/30/2015) it was noted that "New York City residents need many different forms of daily transportation services, including New York City taxis and those provided by Uber and other ride sharing companies...The existing car service industry in New York City consists of approximately 70,000 for-hire vehicles including black and livery cars; of these, some 26,000 are provided by Uber and of those, some 19,000 are Uber black cars or 'about 65 percent of vehicles in the black car industry'. In addition there are some 13,000 yellow taxis. Stated simply, all of these car service companies are needed to meet the ever increasing car

service transportation needs of New York City residents”.

Share Economy At Crossroads

In Ruiz, *Share Economy On Edge Over Worker Status*, www.law.com (7/11/2015) it was noted that “The sharing economy is at a crossroads. In the face of litigation and political pressure, many companies built on a labor force of independent contractors are considering whether to reclassify their workers as traditional employees, say lawyers advising Silicon Valley startups...That means young companies face a hard decision, said Silicon Legal Strategy partner (Mr. X). They don’t want to be hit with a lawsuit, but at the same times, creating an employee base means absorbing the costs of Social Security, Medicare and unemployment taxes, expenses and workers’ compensation”.

Uber Versus Big Labor

In Shackling the Sharing Economy, www.wsj.com (8/2/2015) it was noted that “Homejoy is part of a much larger and increasingly organized attack on sharing economy startups by plaintiffs attorneys, Big Labor...In the last year such companies as Uber, Lyft....have been slapped with lawsuits arguing that they have misclassified workers as ‘independent contractors’ which aren’t

covered by most by most federal and state labor regulations. The lawsuit demand backpay for overtime, workers compensation, unemployment insurance, unpaid meal breaks and business expenses". See *O'Connor v. Uber Technologies, Inc.*, 2015 WL 1069092 (N.D. Cal. 2015) (Uber drivers are presumptive employees; jury trial required).

Uber Valued At \$51 Billion

In Isaac & Wingfeild, *Microsoft Said to Invest Big Sum in Uber*, www.nytimes.com (7/31/2015) it was noted that "Microsoft has agreed to invest in Uber...as part of a funding round that values the ride-hailing company at around \$51 billion. If the deal is finalized, Microsoft's contribution (may be a) substantial amount of the financing, which totals about \$1 billion...A Microsoft spokesman declined comment. Microsoft's participation was earlier reported in The Wall Street Journal". See also Bernstein, *Muffled in the Hamptons, Uber Makes Some Noise*, www.nytimes.com (7/25/2015) and Bellafante, *Uber Makes Its Pain New Yorker's Problem*, www.nytimes.com (7/24/2015).

Uber Fined \$7.3 Million

In Miller, *Uber Fined \$7.3 Million for Reporting Lapses*,

www.therecorder.com (7/15/2015) it was noted that "A state regulatory judge on Wednesday smacked Uber Technologies, Inc. Subsidiary Rasier-AC LLC with a \$7.3 million fine for failing to report information, including safety-related incidents, as required under terms of its permit...In a 92-page decision (see Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, ALJ/POD-RIM/ar9 (7/15/2015), Administrative Law Judge Robert Mason III (of The Public Utilities Commission of the State of California) held Rasier in contempt for what he called Rasier's trivial and tardy responses to requirement that it detail how it served disabled customers, the zip codes where drivers accepted and declined rides and the cause of 'incidents' tied to problems with drivers".

Japan Changes Travel Consumer Law

In *Japan changes consumer law to help international travel*, www.eturbonews.com (8/5/2015) it was noted that "JATA, the Japanese Association of Travel Agents, has just issued new guidelines for operators working in the Japanese market. They constitute a relaxation of some of the most stringent consumer laws in the world. Japanese consumers have been buying their holidays under regulations drafted in the 1990's. These gave

travellers an extraordinary degree of freedom and protection. They were able to delay formal confirmation of bookings until 30 days prior to departure, with no penalty for cancellation...They were also entitled to lavish compensation if the product they bought differed in any respect from that which they booked...The law had been passed to protect Japanese customers from being misled". See Dickerson, *Travel Law*, Chapter 5 (2015) for a discussion of travel consumer protection laws in the United States.

Travel Law Article: The Patel Decision

Historical Background

The *Patel Decision*, involving the constitutionality of a 116-year old Los Angeles, California ordinance, has much to do with the perceived nature of hotels and their place in our society. The historical background of American hotels is discussed in *Travel Law*, Law Journal Press (2015) at Chapter 4.

In Levander & Guterl, *Are Hotels Dangerous?*, www.nyimes.com (7/2/2015) it is stated "According to the historian A.K. Sandoval-Strausz, the author of 'Hotel: An American History', hotelkeepers have long struggled to control and purify the experience of an overnight stay, a struggle that pitted them

against a veritable horde of 'adulterers, seducers and prostitutes', 'burglars and confidence men' who gravitated to the hotel because of the anonymity and temporary cover it provides.

In the 1890s, the Pinkerton detective agency distributed 'wanted' posters at hotel front desks, to be placed on top of the handwritten ledger. The posters...helped hotelkeepers survey their clientele, ensuring that no criminals were in their rooms...As the 20th century opened and Americans grew ever more transient, hotels became a centerpiece for concern about vice crimes...The opportunity for crimes, perpetrated by or against the hotel guest, was not entirely illusory...The Los Angeles ordinance at issue in the *Patel* case, along with others like it around the country, came out of a nationwide anti-vice campaign, a campaign rooted in concern about seedier hotels, their rooms rentable by the hour available for quick hookups and hits.

"A hotel's private rooms are not its only, or even its most, dangerous spaces. Since the 1820s and 30s, when grand hotels like the Astor House in New York, the National Hotel in Washington and the Tremont Hotel in Boston emerged on the urban scene, hotel lobbies have been the place of chance encounters and planned assignations, places where high-end prostitutes went trolling for affluent businessmen and identity theft in the form of pickpockets was rife".

The Patel Majority Decision

The majority in the *Patel* decision stated, in part, "Turning to the merits of the particular claim before us we hold that Section 41.49(3) is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review...Here we assumed that the searches authorized by Section 41.49 serve a 'special need' other than conducting criminal investigations. They ensure compliance with the record-keeping requirement, which in turn deters criminals from operating on the hotels' premises...A hotel owner who refuses to give an officer access to his or her registry can be arrested on the spot. The Court has held that business owners cannot reasonably be put to this kind of choice...Absent an opportunity for precompliance review, the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests. Even if a hotel has been searched 10 times a day, every day, for three months, without any violation being found, the operator can only refuse to comply with an officer's demand to turn over the registry at his or her own peril. To be clear, we hold only that a hotel owner must be afforded the opportunity to have a neutral descisionmaker review an officer's demand to search the registry before he or she faces penalties for failing to comply".

The Scalia Dissent

Justice Scalia, writing for the dissent in *Patel*, stated “Los Angeles, like many jurisdictions across the country, has a law that requires motels, hotels and other places of overnight accommodations...to keep a register containing specified information about their guests...The purpose of this recordkeeping requirement is to deter criminal conduct, on the theory that criminals will be unwilling to carry on illicit activities in motel rooms if they must provide identifying information at check-in. Because this deterrent effect will only be accomplished if motels actually do require guests to provide the required information, the ordinance also authorizes police to conduct random spot checks of motels’ guest registers...The ordinance limits these spot checks to the four corners of the register and does not authorize police to enter any nonpublic area of the motel...”

Site For Criminal Activity

“ The parties do not dispute the governmental interests at stake. Motels not only provide housing to vulnerable transient populations, they are also a particularly attractive site for criminal activity ranging from drug dealing and prostitution to

human trafficking. Offering privacy and anonymity on the cheap, they have been employed as prisons for migrants smuggled across the border and held for ransom, see Sanchez, *Immigrant Smugglers Become More Ruthless*, Washington Post, June 28, 2004, p. A3...and rendezvous sites where child sex workers meet their clients on threat of violence from their procurers...Because I believe that such a limited inspection of a guest register is eminently reasonable under the circumstances presented, I dissent”.

Justice Dickerson has been writing about *Travel Law* for 39 years including his annually updated law books, *Travel Law*, Law Journal Press (2015) and *Litigating International Torts in U.S. Courts*, Thomson Reuters WestLaw (2015), and over 350 legal articles many of which are available at www.nycourts.gov/courts/9jd/taxcertatd.shtml. For additional travel law news and developments, especially, in the member states of the EU see www.IFTTA.org

