



Proceedings

A monthly newsletter from McGraw-Hill Education



March 2018 Volume 9, Issue 8

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Dear Professor,

Spring is near! Welcome to McGraw-Hill Education's March 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 8 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the March 2018 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. Airbnb's decision to remain a "closely-held" company;
2. Recent developments regarding the death of actress Natalie Wood;
3. A recent court decision regarding Florida's procedure for restoring the voting rights of felons;
4. Videos related to a) recent developments in a wrongful death lawsuit against comedian and actor Jim Carrey and b) sentencing in the "Slender Man" stabbing case;
5. An "ethical dilemma" related to the controversy surrounding Volkswagen's diesel tests on monkeys; and
6. "Teaching tips" related to the "Ethical Dilemma" ("Volkswagen Suspends Top Lobbyist amid Inquiry into Diesel Tests on Monkeys") of the newsletter.

I wish you an abundance of sunshine in the upcoming spring season!

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Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) Airbnb's decision to remain a "closely-held" company;
- 2) Recent developments regarding the death of actress Natalie Wood; and
- 3) A recent court decision regarding Florida's procedure for restoring the voting rights of felons.

Hot Topics in Business Law

Article 1: "Airbnb Says It Won't Go Public This Year As Top Exec Departs"

<http://money.cnn.com/2018/02/01/technology/airbnb-no-2018-ipo/index.html>

According to the article, Airbnb will not go public this year.

Airbnb's CEO Brian Chesky set the record straight while announcing the departure of the company's chief financial officer Laurence Tosi in a recent blog post.

The news follows a report from tech news site The Information that alleged tensions between Chesky and Tosi, who had been at the company for two and a half years.

Chesky, who has previously hinted at a 2018 public offering, made a definitive statement about an IPO in the post.

"We are not going public in 2018," he wrote. "Our primary focus is becoming a 21st-century company and advancing our mission. We're working on getting ready to go public and we will make decisions about going public on our own timetable."

Airbnb, the short-term rental company valued at \$31 billion, is the second most valuable U.S. startup in the world behind Uber.

Airbnb and Uber both are currently operating without CFOs. The CEOs of both companies have expressed that they will not go public this year.

In addition to the IPO update, Chesky announced the elevation of Airbnb's Belinda Johnson into a new role: chief operating officer.

Johnson previously served as the company's chief business affairs and legal officer. Her role at the company has been likened to that of Facebook COO Sheryl Sandberg, or the "woman behind the man who runs Airbnb," as one article about Johnson put it.



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"Belinda and I often approach things differently, and this is one of the reasons we've worked so well together over the years," Chesky wrote. "I learn from her every day, and I'm a better leader because she is my partner."

Last week, Airbnb announced that outgoing American Express CEO Kenneth Chenault will join the company's board. Chenault recently joined the board of Facebook, as well.

Discussion Questions

1. What does it mean for a company to "go public?" What is an initial public offering?

A company that decides to "go public" is determined to issue securities (stock) for outside investor purchase. The company will no longer be "closely held," meaning that the company will no longer be owned exclusively by its incorporators.

An initial public offering represents the first publicly traded stock issued by the company.

2. Discuss the advantage(s) of a company going public.

The decision to go public can result in a major infusion of capital (cash) for a company, particularly if the company's stock is in great demand.

3. Discuss the disadvantage(s) of a company going public.

Once a company decides to trade its stock publicly, it is subject to scrutiny by federal and state authorities, particularly the United States Securities and Exchange Commission (SEC).

Article 2: "Natalie Wood's Husband Robert Wagner Now 'Person of Interest' in Her Death"

https://www.huffingtonpost.com/entry/robert-wagner-natalie-wood-death_us_5a73652be4b0905433b2413b?ncid=inblnkushpmg00000009

According to the article, Los Angeles County Sheriff's investigators say Robert Wagner is "more of a person of interest" in the death of actress Natalie Wood, who died nearly 40 years ago under mysterious circumstances.

"As we've investigated the case over the last six years, I think he's more of a person of interest now," Lt. John Corina the media. "I mean, we now know that he was the last person to be with Natalie before she disappeared."

Wood, who starred in "West Side Story" and "Rebel Without a Cause," was found dead in the water in 1981, near Santa Catalina Island off the coast of California. She had gone on a yachting weekend



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with Wagner, as well as Christopher Walken, who at the time was starring with the actress in the movie “Brainstorm,” and Dennis Davern, the boat’s captain.

Wood’s death was originally ruled an accident, but the case was reopened in 2011. The coroner changed her cause of death to “drowning and other undetermined factors” the following year.

Detectives who spoke to the media said an autopsy report indicated there were a number of bruises on Wood’s body that appeared to have been fresh at the time of death.

“She looked like a victim of an assault,” Los Angeles County Sheriff’s Department Detective Ralph Hernandez said, noting that the marks made “it suspicious enough to make us think that something happened.”

Investigators said Wagner — who was married to Wood twice, first from 1957 to 1962, and again from 1972 until her death — has been uncooperative since they reopened the case.

“I haven’t seen him tell the details that match all the other witnesses in this case,” Corina said of Wagner. “I think he’s constantly changed his story a little bit. And his version of events just don’t add up.”

Walken, however, has spoken with investigators.

Wagner wrote in his 2008 memoir, *Pieces of My Heart*, that “nobody knows” how Wood died. There was a lot of drinking that night, he wrote. He said he and Walken also got into a fight about Wood’s career path.

“I picked up a wine bottle, slammed it on the table and broke it into pieces,” he wrote.

As to how Wood ended up in the water, Wagner said: “There are only two possibilities: either she was trying to get away from the argument, or she was trying to tie the dinghy. But the bottom line is that nobody knows exactly what happened.”

Discussion Questions

1. As the article indicates, Natalie Wood died in 1981, almost four decades ago. Is there a statute of limitations period to charge and convict someone for murder? If not, should there be?

A statute of limitations period effectively limits the time in which a prosecutor or plaintiff can pursue a cause of action against a defendant. There is no statute of limitations period for murder. In terms of whether there should be such a limitation, student opinions may vary.

2. In the event that Robert Wagner is charged with murder in the death of Natalie Wood, discuss the relative strength (or weakness) of the prosecution’s case.



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In your author's opinion, it would be very difficult for the prosecution in this case to prove guilt beyond reasonable doubt. Not only has it been almost forty years since Ms. Wood's death, but any case against Robert Wagner would be based on circumstantial evidence without the benefit of an eyewitness.

3. As the article indicates, investigators claim that Robert Wagner has been uncooperative since the Los Angeles Sheriff's Department reopened the case in 2011. From a legal standpoint, is such non-cooperation evidence of guilt? Why or why not?

The defendant's lack of cooperation with the prosecution is not evidence of guilt. In a criminal case, due process ensures that the defendant is not required to assist the prosecution in proving its case.

Article 3: "Florida's Scheme for Restoring Felons' Voting Rights Rule Unconstitutional"

<https://www.usatoday.com/story/news/politics/2018/02/01/floridas-voter-restoration-process-ruled-unconstitutional/1088913001/>

According to the article, in a landmark ruling with far-reaching implications, U.S. District Judge Mark Walker has found Florida's scheme for restoring the voting rights of felons unconstitutional.

Walker, in a 43-page order issued recently, found that Florida "automatically disenfranchises" any individual who has been convicted of a felony and wishes to vote.

"Florida strips the right to vote from every man and woman who commits a felony," Walker wrote. "To vote again, disenfranchised citizens must kowtow before a panel of high-level government officials over which Florida's governor has absolute veto authority. No standards guide the panel. Its members alone must be satisfied that these citizens deserve restoration."

The ruling came as part of a lawsuit brought by James Michael Hand and eight other former felons who completed their sentences, including probation, but were not deemed eligible to vote.

"In Florida, elected, partisan officials have extraordinary authority to grant or withhold the right to vote from hundreds of thousands of people without any constraints, guidelines or standards. The question now is whether such a system passes constitutional muster. It does not," Walker wrote in his ruling.

Walker took aim at Governor Rick Scott, whom the nine plaintiffs sued along with Florida's Executive Clemency Board. The board consists of the governor, the attorney general, the chief financial officer and the agriculture commissioner.

"'We can do whatever we want,' the governor said at one clemency hearing," Walker wrote. "One need not search long to find alarming illustrations of this scheme in action."



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Walker wrote that in 2010, a white man, Steven Warner, cast an illegal ballot. Three years later, he sought the restoration of his voting rights before the state's Executive Clemency Board. Scott asked him at the time about his illegal voting. When the man said he voted for Scott, the governor laughed. A few seconds later, Scott granted the man his voting rights, Walker wrote.

"The question is whether the Clemency Board's limitless power over plaintiffs' vote restoration violates their First Amendment rights to free association and free expression. It does," Walker wrote. "This should not be a close question."

The Governor's Office responded to the order by noting that the Clemency Board has been in place for decades and overseen by multiple governors.

"The process is outlined in Florida's Constitution, and today's ruling departs from precedent set by the United States Supreme Court," said John Tupps, a spokesperson for Scott. "The Governor believes that convicted felons should show that they can lead a life free of crime and be accountable to their victims and our communities. While we are reviewing today's ruling, we will continue to defend this process in the court."

The Fair Elections Legal Network and Cohen, Milstein, Sellers & Toll, which has offices in Florida, filed the lawsuit in March on behalf of a proposed class of nearly 1.5 million former felons, according to a news release from the voting rights group and the law firm.

"Today a federal court said what so many Floridians have known for so long — that the state's arbitrary restoration process, which forces former felons to beg for their right to vote, violates the oldest and most basic principles of our democracy," said Jon Sherman, senior counsel for the Fair Elections Legal Network.

Tallahassee attorney Reggie Garcia, who represents felons who seek restoration of their rights, said any federal court ruling that interprets Florida's constitution and the application of clemency power and rules will increase awareness of the state's convicted felons.

"This is very timely with last week's decision by the Division of Elections to put Amendment 4, granting automatic voting rights to most felons, on the November 2018 ballot," he said.

Walker noted several instances "of former felons who professed political views amenable to the board's members, who then received voting rights, while those who expressed contrary political views to the board were denied those same rights."

He went on to say that "viewpoint discrimination is deeply antithetical to the constitution and our nation's longstanding values."



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Hand, a resident of Cutler Bay in South Florida, was convicted of a felony in state court and released from prison in 1986, according to court records. He completed his sentence in 2002 and later applied to get his voting rights back.

During a Clemency Board hearing in 2011, his application was denied. Scott cited his record of traffic tickets and said, “Congratulations on turning your life around. Congratulations on your business. In light of the significant issue — you know, traffic violations — and your inability to comply with the law in that manner, I’m going to deny you restoration of civil rights at this time,” court record state.

Walker also found the lack of time limits in processing and deciding vote restoration unconstitutional. He noted the Clemency Board “may defer restoration of rights for years or forever. Indefinite can-kicking is not some Floridian fairy tale like a line-less Space Mountain.

The board regularly invokes some unknown future date as the appropriate time to revisit a restoration denial.”

He cited one case in which Scott told a 54-year-old man he would have to wait 50 years before he could reapply for his voting rights to be restored. The judge also detailed the case of Virginia Kay Atkins. Ten years after her release from prison, Scott informed her he did not feel “comfortable” restoring her rights.

Walker's order notes that 154,000 citizens had their voting rights restored during the last four years of former Governor Charlie Crist's administration. He said that number plummeted to fewer than 3,000 people since Scott took office in 2011.

"The context of these numbers is not lost on the court," Walker wrote. "More than one-tenth of Florida's voting population — nearly 1.7 million as of 2016 — cannot vote because they have been decimated from the body politic. More than one in five of Florida's African American voting-age population cannot vote."

Walker did not offer a remedy but set a February 12 deadline for both sides to provide additional briefs on how to fix the unconstitutional “voter-restoration scheme.”

Discussion Questions

1. In your reasoned opinion, should convicted felons have voting rights? Why or why not?

This is an opinion question, so student responses will likely vary.

2. What is the specific legal basis for challenging Florida’s current framework for restoring the voting rights of convicted felons?



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As the article indicates, the specific legal basis for challenging Florida's current framework for restoring the voting rights of convicted felons is the First Amendment to the United States Constitution's guarantees of free association and free expression. As identified by United States District Judge Mark Walker, "(t)he question is whether the Clemency Board's limitless power over plaintiffs' vote restoration violates their First Amendment rights to free association and free expression."

3. As the article indicates, according to United States District Judge Mark Walker's ruling, "To vote again, disenfranchised citizens must kowtow before a panel of high-level government officials over which Florida's governor has absolute veto authority. ***No standards guide the panel (Emphasis added)***. Its members alone must be satisfied that these citizens deserve restoration." In your reasoned opinion, what (if any) specific standards should exist to better ensure that Florida's system for restoring the voting rights of convicted felons is legal, equitable and ethical?

This is an opinion question, so student responses will likely vary.



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Video Suggestions

Video 1: “Lawsuit against Jim Carrey from Ex-Girlfriend’s Family Dismissed”

<https://www.usatoday.com/story/life/people/2018/02/01/lawsuit-against-jim-carrey-ex-girlfriends-family-dismissed/1087667001/>

Note: In addition to the video, please also refer to the following article included at the above-referenced internet address:

“Lawsuit against Jim Carrey from Ex-Girlfriend’s Family Dismissed”

According to the article, Jim Carrey is no longer facing a lawsuit from the family of his late girlfriend, Cathriona White.

"The case against him has been dismissed," Carrey's attorney, Raymond Boucher, announced.

Carrey, 56, began dating makeup artist White, 30, in the summer of 2012 after they met on a film set. The Irish-born woman was found dead in a Sherman Oaks, California, home on September 28, 2015; the Los Angeles County coroner's office later ruled White took her own life by overdosing on prescription drugs, including Ambien, Propranolol and Percocet (oxycodone and acetaminophen).

The actor was a pallbearer at her funeral in Ireland.

In 2016, Carrey was hit with a wrongful death lawsuit from his late girlfriend's husband, Mark Burton, her mother, Brigid Sweetman, and their lawyer, Filippo Marchino, accusing him of illegally obtaining and giving her the powerful painkillers she used to kill herself in September 2015. They also alleged that Carrey gave White “three STDs without warning her.”

Carrey countersued, saying White had tried to extort him after the two broke up in early 2013 and that he made a "mistake" of settling a false STD claim with her to avoid mounting a public defense, which "is a very costly and painful process."

The Hollywood Reporter says that Carrey's attorney had recently asked the court to compel Burton to provide White's STD test results. Through discovery, Boucher concluded that a 2011 document showing White had clean test results prior to meeting Carrey was a forgery.



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Recently, he told the media the underlying case was voluntarily dismissed by the plaintiffs, removing the possibility of Carrey, 56, going to trial.

At the time of White's death, Carrey issued a statement calling her "a truly kind and delicate Irish flower, too sensitive for this soil, to whom loving and being loved was all that sparkled."

Discussion Questions

1. What is a "wrongful death" lawsuit?

A wrongful death lawsuit is a civil action in which the plaintiff seeks redress from the defendant for the defendant's intentional, extremely reckless, or grossly negligent acts that proximately resulted in the death of the victim.

2. According to the article, the plaintiffs voluntarily dismissed the wrongful death case against Jim Carrey. What is a voluntary dismissal? What is the legal effect of a voluntary dismissal?

A voluntary dismissal represents the plaintiff's decision to remove the case from civil litigation by withdrawing the complaint against the defendant. A voluntary dismissal can be either "with prejudice" or "without prejudice." If the voluntary dismissal is with prejudice, the plaintiff is forever barred from pursuing the cause of action against the defendant. If the voluntary dismissal is without prejudice, the plaintiff is typically allowed a period of time (for example, one year) to refile the cause of action against the defendant.

3. Based on the information provided in this article, are the plaintiffs in this case at risk for defamation liability because they have alleged that Jim Carrey gave Cathriona White "three (sexually transmitted diseases) without warning her?"

Defamation is defined as a defendant's false statement of fact or bad faith opinion asserted against the plaintiff that substantially and adversely affects the reputation of the plaintiff. In terms of whether the subject claim is defamatory, student opinions may vary. It is important to note that the party who asserts defamation has the burden of proof.

Video 2: "Morgan Geysler Makes Tearful Apology; Is Handed Max Sentence in Slender Man Stabbing"

<https://www.cbsnews.com/news/morgan-geyser-makes-tearful-apology-is-handed-max-sentence-in-slender-man-stabbing/>

Note: In addition to the video, please also refer to the following article included at the above-referenced internet address:



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“Morgan Geysler Makes Tearful Apology: Is Handed Max Sentence in Slender Man Stabbing”

According to the article, a Wisconsin girl inspired by fictional horror character Slender Man to try to kill a classmate made a tearful apology before she was sentenced recently to spend 40 years in a mental institution.

Judge Michael Bohren granted the maximum penalty that prosecutors had sought for Morgan Geysler for stabbing Payton Leutner in suburban Milwaukee in 2014. He discounted Geysler's youth - she was just 12 - at the time of the attack.

"What we can't forget is this was an attempted murder," Bohren said. He said he believed Geysler remained a risk to hurt herself and others, and called it "an issue of community protection."

Geysler, now 15, spoke briefly before she was sentenced. She broke down in tears, apologizing to the girl she stabbed.

"I just want to let Bella and her family know I'm sorry," Geysler said, using a nickname for Leutner. "I never meant this to happen. And I hope that she's doing well."

Geysler and another girl, Anissa Weier, admitted that they lured Leutner into some woods near a suburban Milwaukee park. Geysler stabbed Leutner 19 times while Weier urged her on, according to investigators. Leutner was left for dead but she crawled out of the woods and got help from a passing bicyclist.

All three girls were 12 at the time.

Geysler and Weier said they carried out the attack to curry favor with Slender Man, a fictional online horror character typified by spidery limbs and a blank white face.

Doctors who evaluated Geysler provided conflicting opinions at Thursday's sentencing hearing in Waukesha County Circuit Court about the type of institutional care Geysler needs and the severity of her continued hallucinations.

Prosecutors wanted Geysler to spend the maximum 40 years in a mental hospital. To make their case, they presented testimony from a doctor who said Geysler reported still hearing voices from someone named "Maggie" as recently as September.

Dr. Brooke Lundbohm acknowledged that Geysler has made significant progress over the last three years, but said she emphatically believes she is still a danger to herself and others.

"This is not a close call," she said.



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Geyser's attorneys advocated for her to be moved to a less restrictive facility with children her age and the possibility of being able to be on outings with supervision if she is well enough.

Two doctors called by the defense said Geyser no longer exhibits psychotic symptoms.

"I believe at the present time she is no more dangerous than any adolescent her age," said Dr. Kenneth Robbins.

The hearing lasted most of the afternoon and included victim impact statements.

Geyser pleaded guilty to attempted first-degree intentional homicide in October in a deal with prosecutors to avoid prison.

Weier was sentenced to 25 years in a mental hospital in December. She had pleaded guilty in August to being a party to attempted second-degree intentional homicide, but she claimed she was not responsible for her actions because she was mentally ill. In September, a jury agreed.

Geyser's attorneys have argued in court documents that she suffers from schizophrenia and psychotic spectrum disorder, making her prone to delusions and paranoid beliefs.

A psychiatrist hired by her attorneys previously testified that Geyser believed she could communicate telepathically with Slender Man and could see and hear other fictional characters, including unicorns and characters from the Harry Potter and Teenage Mutant Ninja Turtles series. She also believed she had "Vulcan mind control."

Slender Man started with an online post in 2009, as a mysterious specter whose image people edit into everyday scenes of children at play. He is typically depicted as a spidery figure in a black suit with a featureless white face.

Discussion Questions

1. Define attempted murder.

An attempt is defined by law as a substantial step toward the commission of an intended crime. Accordingly, attempted murder is defined as a substantial step toward the unlawful taking of the life of another human being with malice aforethought. Any attempt is fact-specific—its proof would be based on the facts and circumstances of a particular case.

2. As the article indicates, Morgan Geyser was sentenced to spend 40 years in a mental institution, the maximum penalty that prosecutors had sought for her for stabbing Payton Leutner. In your reasoned opinion, is this sentence appropriate? Why or why not?

This is an opinion question, so student responses may vary.



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3. What is a victim impact statement?

According to the National Center for Victims of Crime:

“The purpose of victim impact statements is to allow crime victims, during the decision-making process on sentencing or parole, to describe to the court or parole board the impact of the crime. A judge may use information from these statements to help determine an offender's sentence; a parole board may use such information to help decide whether to grant a parole and what conditions to impose in releasing an offender. A few states allow victim impact information to be introduced at bail, pre-trial release, or plea bargain hearings.”

For further information regarding victim impact statements, please see the following internet address:

<http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-impact-statements>



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Of Special Interest

This section of the newsletter addresses the controversy surrounding Volkswagen's diesel tests on monkeys.

Ethical Dilemma

“Volkswagen Suspends Top Lobbyist amid Inquiry into Diesel Tests on Monkeys”

<https://www.nytimes.com/2018/01/30/business/energy-environment/german-carmakers-diesel-monkeys.html>

According to the article, Volkswagen suspended its chief lobbyist recently amid a growing furor over experiments on monkeys that were meant to promote the virtues of diesel-powered vehicles, but now threaten to further undermine the German car industry and to increase political instability in Berlin.

Thomas Steg, the suspended Volkswagen executive, is a former aide to Chancellor Angela Merkel of Germany. The widening controversy about the monkey research, detailed by The New York Times last week, highlighted what critics have called the overly cozy relationship between the country's carmakers and the government.

Germany has often balked at efforts to tighten regulations on auto emissions and to improve enforcement, and the latest uproar has put Ms. Merkel on the defensive as she struggles to form a coalition government after winning a narrow plurality in elections late last year.

Adding to the political fallout, the European Commission declared recently that Germany and eight other countries had not done enough to combat dismal air quality. The commission said it planned to pursue legal action against the nine countries at the European Union's highest court for their chronic failure to enforce air quality standards.

Ms. Merkel, through her spokesperson, was among the political leaders and auto industry executives who in recent days condemned the experiments at a lab in Albuquerque, in which monkeys were exposed to diesel exhaust. The project was financed by German carmakers, who wanted to show that diesel cars were less of a threat to human health than groups such as the World Health Organization have claimed.

A separate project financed by the carmakers subjected human volunteers in Germany to doses of nitrogen dioxide, one of diesel's most noxious byproducts.



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Environmental groups and other critics of Volkswagen said the suspension of Mr. Steg, whose formal title at Volkswagen is head of external relations and sustainability, made him a sacrificial lamb meant to insulate the company's top managers from consequences.

These critics drew parallels with the Volkswagen emissions scandal, in which the company initially said that a small number of rogue engineers were responsible for installing software intended to dupe regulators. German prosecutors have since identified dozens of suspects.

"They are again playing the game where the subordinates were the culprits," said Christian Strenger, a former member of a commission that wrote Germany's rules on corporate governance. Mr. Strenger is among the people suing Volkswagen for violating its legal obligations to shareholders.

Karmenu Vella, the European commissioner responsible for environmental matters, met with ministers from the nine offending countries in Brussels recently and said afterward that they had failed to present credible plans for reducing pollution.

Mr. Vella said 400,000 people in the European Union died prematurely each year as a result of air pollution from all sources "because of a massive, widespread failure to address the problem." He expressed frustration that "a sense of urgency is not always evident across member states."

The experiments that preceded Mr. Steg's suspension were conducted at a laboratory in Albuquerque for the European Research Group on Environment and Health in the Transport Sector, known by its German initials, E.U.G.T.

Although ostensibly independent, the organization was financed entirely by Volkswagen, Daimler and BMW. (Bosch, a major German auto parts supplier, had been a member but dropped out in 2013.) In recent days, the three carmakers have repudiated the work of the group, which folded last year.

Yet all three were represented on the organization's five-person board of directors, and all three contributed money to the group. The research on monkeys had a budget of more than \$700,000, and was just one of the organization's numerous projects.

Another study financed by the group subjected 25 volunteers to low doses of nitrogen dioxide. The research, conducted in 2015, was authorized by an ethics commission at the RWTH Aachen University in Aachen, Germany, where it took place.

Nonetheless, images of humans being exposed to gas in airtight chambers raised uncomfortable associations with Germany's Nazi past.

The experiments on monkeys at the Lovelace Respiratory Research Institute in Albuquerque — carried out in 2014, a year before Volkswagen was caught using software to cloak excess diesel emissions — involved exposing a group of the animals to exhaust from a late-model diesel



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Volkswagen; a second group of monkeys was exposed to exhaust from an older Ford diesel pickup truck.

After breathing diluted exhaust for four hours, the monkeys were examined for signs of lung inflammation or other ill effects. The research did not kill the monkeys, but it was unclear what happened to them after the experiments were completed.

Results of the research had not been published by the time the E.U.G.T. disbanded last year. Matthias Müller, Volkswagen's chief executive, said in a statement recently that the company is conducting a thorough investigation of the research "and will draw all the necessary consequences."

Discussion Questions

1. In your reasoned opinion, is animal research inherently unethical? Why or why not? What if such research is conducted specifically for the benefit of human beings?

These are opinion questions, so student responses will likely vary.

2. As the article indicates, Volkswagen's animal research purportedly occurred in Albuquerque, New Mexico. In your opinion, are United States regulatory authorities partially responsible in this case for not discovering such research? Explain your response.

This is an opinion question, so student responses may vary. Generally, due to governmental immunity, regulatory authorities are not legally responsible for failing to lend proper oversight. The real issue here is whether the failure of regulatory authorities to discover such research in a timely manner constitutes an ethical breach. In your author's opinion, predominant, if not exclusive, responsibility rests with Volkswagen.

3. Comment on the following quote (referenced in the article) from Christian Strenger, former member of a commission that wrote Germany's rules on corporate governance: "They (Volkswagen) are again playing the game where the subordinates were the culprits." Should subordinate culpability be a legitimate defense for corporate executives? Why or why not?

Although this is an opinion question, the legal trend is to hold principals responsible for the wrongful actions of their subordinates if the principal either knew or should have known of the violations, and if such violations occurred during the course and scope of the subordinate's work.



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Of Special Interest

This section of the newsletter will assist you in addressing the "Ethical Dilemma" ("Volkswagen Suspends Top Lobbyist amid Inquiry into Diesel Tests on Monkeys") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to the Ethical Dilemma—"Volkswagen Suspends Top Lobbyist amid Inquiry into Diesel Tests on Monkeys"): "German University Hospital Defends Auto Firms' Nitrogen Dioxide Test Ethics"

For further information regarding Volkswagen's alleged nitrogen dioxide tests on monkeys, please refer to the following article:

"German University Hospital Defends Auto Firms' Nitrogen Dioxide Test Ethics"

<http://www.dw.com/en/german-university-hospital-defends-auto-firms-nitrogen-dioxide-test-ethics/a-42353001>

According to the article, no experiments on animals or humans can take place in Germany without a go from an authorized ethics committee. Dr. Thomas Kraus from Aachen University Hospital says this was the case in the most recent NO₂ scandal.

The European Research Group on Environment and Health in the Transport Sector (EUGT) "did not impinge in any way on the nitrogen dioxide (NO₂) research it commissioned Aachen University Hospital to do," Professor Thomas Kraus from the hospital told the German press agency DPA recently.

The EUGT is a now defunct organization that was funded by German carmakers Volkswagen, Daimler and BMW plus partsmaker Bosch, thus raising questions of possible conflicts of interest.

In 2013, 25 healthy volunteers were exposed to NO₂ pollution for three hours, Kraus said. "None of them had any negative health effects," he went on, adding that the tests were meant to measure the impact of pollutants in the workplace.

Since 2010, an annual average of 40 micrograms NO₂ per cubic meter of air must not be exceeded, according to EU regulations. Nonetheless, professional drivers and people who live or work on busy roads are particularly prone to suffer from heavy nitrogen oxide pollution, according to Kraus.

The ethics committee of Aachen University Hospital – a self-regulating body – consists of physicians, a lawyer with qualifications as a judge, a



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pharmacist, an ethicist and a patient representative. Most are employees of the university.

This kind of composition for university ethics committees is normal, Professor Bert Heinrichs, from the Institute for Science and Ethics at the University of Bonn, told DW. "The commission was completely independent in arriving at its decisions, in particular from those that financed the research," he said.

"Ethics committees can impose their own conditions and refuse to do research, so there is no immediate dependency," he said. "To the best of my knowledge, these commissions are very conscientious. The system of German ethics committees has proved itself in recent decades and is really a good and recognized one," Heinrichs said.

In the case of these experiments, however, an air pollutant but no medically active substance was used on the subjects. "That makes the case a bit more complicated and it is therefore not comparable with a drug-compatibility study," Heinrichs said.

"Of course, the doctor is a doctor and thus committed to the well-being of the patient, but in this specific situation he appears as a researcher – as a scientist. It is very important that he makes that clear to the subject."

"The Aachen ethics committee would have had good reasons to accept the research project, but it was unusual that an environmental toxin would be tested on a human, even if a threat was very unlikely. Human trials are usually about drug trials. Of course, one wonders, was it really worth it?" Heinrichs asked.

Teaching Tip 2 (Related to the Ethical Dilemma—“Volkswagen Suspends Top Lobbyist amid Inquiry into Diesel Tests on Monkeys”): “VW, BMW and Daimler Denounce Toxic Diesel Fume Tests on Monkeys”

For further information regarding German automobile manufacturers’ alleged nitrogen dioxide tests on humans, please refer to the following article:

“VW, BMW and Daimler Denounce Toxic Diesel Fume Tests on Monkeys”

<http://www.dw.com/en/vw-bmw-and-daimler-denounce-toxic-diesel-fume-tests-on-monkeys/a-42339027>

According to the article, German carmakers have condemned experiments they paid for that exposed monkeys to toxic diesel fumes. VW also apologized for a lack of judgment in a further case connected to the Dieseltgate emissions scandal.



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German carmakers used the European Research Group on Environment and Health in the Transport Sector (EUGT) to commission a study with the aim of defending the use of diesel, according to a recent report in *The New York Times*.

Volkswagen, Daimler and BMW provided all of the funding for the EUGT, which was established in Berlin in 2007 and disbanded in June 2017.

The Lovelace Respiratory Research Institute (LRRI) in the US state of New Mexico was commissioned by the EUGT to design an experiment in which 10 monkeys squatted in airtight chambers, inhaling fumes from a diesel VW Beetle as cartoons were shown on a screen, according to *The Times*. The car used in the experiment was equipped with illegal cheating software, according to the report.

The EUGT research started in 2014 and was designed to counter a 2012 decision by the World Health Organization to classify diesel exhaust as a carcinogen, *The New York Times* reported.

"Volkswagen Group explicitly distances itself from all forms of animal cruelty. Animal testing contradicts our own ethical standards," VW said in a statement issued recently. "We ask forgiveness for this bad behavior and for the poor judgment of some individuals.

"We are convinced that the scientific methods chosen at the time were wrong," VW added. "It would have been better to forgo such a test from the very beginning."

The findings of the study, which ended last year, have not been published, VW said. The state of Lower Saxony, a major VW shareholder, issued a statement demanding full disclosure about the tests and assurances they never happen again.

"Letting 10 monkeys breathe in car emissions for hours to prove that there has been a reduction in the amount of poisonous emissions is horrid and absurd," state Premier Stephan Weil said. BMW said it did not carry out experiments involving animals and had taken no direct role in the study. "The BMW Group in no way influenced the design or methodology of studies carried out on behalf of the EUGT," the Bavarian automaker said in a statement.

Daimler, which owns the Mercedes-Benz brand, distanced itself from the study and said it was carrying out a review to find out how the experiment had been commissioned.

"Daimler does not tolerate or support unethical treatment of animals," the Stuttgart carmaker said. Such an experiment was abhorrent and superfluous, it added.



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	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
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Kubasek et al., Dynamic Business Law	Chapters 5, 7 and 41	Chapters 7 and 9	Chapter 2	Chapter 2
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 5, 6 and 23	Chapters 6 and 7	Chapter 2	Chapter 2
Liuzzo, Essentials of Business Law	Chapters 3, 5 and 31	Chapters 3 and 5	Chapter 2	Chapter 2
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 5 and 45	Chapters 5 and 7	Chapter 4	Chapter 4
McAdams et al., Law, Business & Society	Chapters 4, 5 and 9	Chapters 4 and 7	Chapter 2	Chapter 2
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 16 and 22	Chapters 9 and 22	Chapter 5	Chapter 5
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 6, 13 and 17	Chapters 10 and 13	Chapter 2	Chapter 2
Sukys, Brown, Business Law with UCC Applications	Chapters 2, 5 and 28	Chapters 2 and 5	Chapter 1	Chapter 1



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