



Proceedings

A monthly newsletter from McGraw-Hill Education



November 2016 Volume 8, Issue 4

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Dear Professor,

The holiday season is near! Welcome to McGraw-Hill Education's November 2016 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 8, Issue 4 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the November 2016 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. A Connecticut judge's dismissal of a lawsuit filed by the families of those killed in the Newtown Elementary School mass shooting against the maker of the Bushmaster assault-style rifle used in the massacre;
2. A jury verdict in the lawsuit filed by former assistant football coach Mike McQueary against Pennsylvania State University for alleged defamation and wrongful refusal to renew his contract due to his involvement in helping convict fellow assistant Jerry Sandusky of being a sexually violent predator;
3. A defamation lawsuit filed by a former University of Virginia dean against *Rolling Stone* magazine for its botched article about an alleged rape at the university;
4. Videos related to a) Wells Fargo CEO John Stumpf's decision to retire as a result of the bank's "fake account" scandal; and b) current North Carolina Governor Pat McCrory's recent statements regarding North Carolina House Bill 2 (the so-called "bathroom bill") ;
5. An "ethical dilemma" related to a possible retaliatory cyber-attack by the United States against Russia; and
6. "Teaching tips" related to Video 1 ("Wells Fargo CEO Stumpf Retires with \$134M") of the newsletter.

Happy November, everyone!

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Of Special Interest

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

1) A Connecticut judge's dismissal of a lawsuit filed by the families of those killed in the Newtown Elementary School mass shooting against the maker of the Bushmaster assault-style rifle used in the massacre;

2) A jury verdict in the lawsuit filed by former assistant football coach Mike McQueary against Pennsylvania State University for alleged defamation and wrongful refusal to renew his contract due to his involvement in helping convict fellow assistant Jerry Sandusky of being a sexually violent predator; and

3) A defamation lawsuit filed by a former University of Virginia dean against *Rolling Stone* magazine for its botched article about an alleged rape at the university.

Hot Topics in Business Law

Article 1: "Lawsuit Filed by Families of Newtown Shooting Victims Dismissed by Connecticut Judge"

<http://abcnews.go.com/US/lawsuit-filed-families-newtown-shooting-victims-dismissed-connecticut/story?id=42816161>

According to the article, a Connecticut judge dismissed a lawsuit filed by the families of those killed in the Newtown Elementary School mass shooting against the maker of the Bushmaster assault-style rifle Adam Lanza used in the massacre.

The defense for Remington Arms Company, LLC, argued the company was shielded from liability by a federal law known as The Protection of Lawful Commerce in Arms Act (PLCAA), which protects firearms manufacturers and dealers from being held liable when crimes have been committed with their products.

Jim Vogts, an attorney with Swanson, Martin & Bell, LLP, who defended Remington, said that the company "is pleased with the court's decision to strike the plaintiffs' complaint."

The lawsuit was filed by the families of 10 victims of the Sandy Hook mass shooting in January 2015. The defense will now have 15 days to attempt to make this decision final before the families can attempt to appeal it to the Supreme Court. That process could take roughly a month to complete.

Judge Barbara Bellis wrote in her ruling that the plaintiffs "seek damages for harms, including the deaths of the plaintiffs' decedents, that were caused solely by the criminal misuse of a weapon by Adam Lanza. Accordingly, this action falls squarely within the broad immunity provided by PLCAA."

Remington filed the motion to dismiss the case several months prior to this ruling.

Discussion Questions

1. What is the rationale for immunizing firearms manufacturers and dealers from being held liable when crimes have been committed with their products?



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From a judicial (legal) perspective, the rationale for immunizing firearms manufacturers and dealers from being held liable when crimes have been committed with their products is based on defenses to negligence and strict product liability theory; more particularly, 1) firearms manufacturers and dealers owe no duty to those injured or killed by the use of firearms; and 2) firearms used to injure or kill are not defective.

From a legislative perspective, the rationale is less than clear. As the article indicates, the Protection of Lawful Commerce in Arms Act (PLCAA) provides “blanket protection” to firearms manufacturers and dealers from being held liable when crimes have been committed with their products—it does not allow courts to consider each case on a factual (case-by-case) basis. In your author’s opinion, for either good or for bad, the PLCAA is the direct result of intensive congressional lobbying by firearms manufacturers and dealers for such blanket protection.

2. On what legal basis did Judge Barbara Bellis dismiss the plaintiffs’ lawsuit?

As Judge Bellis wrote in her ruling, the plaintiffs “seek damages for harms, including the deaths of the plaintiffs’ decedents, that were caused solely by the criminal misuse of a weapon by Adam Lanza. Accordingly, this action falls squarely within the broad immunity provided by PLCAA.” Regardless of whether Judge Bellis felt the law was sound, she applied it based on its clear mandate of immunity for firearms manufacturers and dealers.

3. From a legal perspective, what must occur before firearms manufacturers and dealers can be held liable when crimes have been committed with their products?

Before firearms manufacturers and dealers can be held liable when crimes have been committed with their products, the United States Congress would either have to abrogate or modify the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA is clear in its wording—firearms and dealers currently have blanket immunity when crimes have been committed with their products.

Article 2: “Mike McQueary Is Awarded \$7.3 Million in Penn State Defamation Case”

<http://www.nytimes.com/2016/10/28/sports/ncaafotball/mike-mcqueary-penn-state-verdict.html? r=0>

According to the article, a Pennsylvania jury, in a defamation case against Penn State University, recently awarded \$7.3 million to Mike McQueary, the former assistant football coach who in 2001 told Coach Joe Paterno that he had witnessed Jerry Sandusky sexually abusing a child in the locker room shower.

The jury, which deliberated for about four hours, found that Penn State had defamed McQueary with a statement in 2011 defending its former athletic director and vice president against a charge of perjury related to what McQueary said he had told them about Sandusky, a longtime defensive coordinator at Penn State.



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Judge Thomas Gavin, who presided in the case, still has to rule on McQueary's accusation that Penn State retaliated against him after he testified at Sandusky's 2012 trial. McQueary was not allowed to coach at Penn State's first game after Paterno was fired in connection with the scandal, in 2011, and McQueary's contract was not renewed.

Even before the ruling, the scandal had already cost Penn State well over \$100 million in N.C.A.A. penalties, legal fees and settlements to victims of Sandusky's sexual abuse. Sandusky was convicted in 2012 of sexually abusing 10 boys and was sentenced to 30 to 60 years in prison.

McQueary testified to a grand jury in 2010 that in 2001 he told Paterno, and later Athletic Director Tim Curley and the university vice president Gary Schultz, that he had witnessed the abuse. The testimony helped prosecutors eventually charge Sandusky, who is now 72.

The Pennsylvania attorney general subsequently charged Curley and Schultz with perjury after they told a grand jury that McQueary did not tell them Sandusky had committed something as serious as sexual abuse. The perjury charge was dismissed, but Schultz, Curley and Graham B. Spanier, the former university president, still face criminal charges of failure to report suspected child abuse and endangering the welfare of children.

McQueary, testifying at a hearing a month after the scandal came to light in 2011, provided the first public account of his reporting the abuse to Paterno.

At the time he witnessed the abuse, McQueary, who was a backup quarterback for Penn State in the mid-1990s, was a graduate assistant.

McQueary's testimony in December 2011 helped show that Paterno, one of the most successful and beloved coaches in college football history, had heard that Sandusky had abused a boy at least a decade before Sandusky's behavior became publicly known. Court documents released this summer showed that Paterno heard such an allegation as early as 1976.

Discussion Questions

1. Define defamation.

Defamation is either a) a false statement made about someone that damages the person's reputation or b) a bad faith opinion expressed about someone for the sole or predominant purpose of damaging that person's reputation that in fact results in damage to the person's reputation.

2. As the article, indicates, Judge Thomas Gavin, who presided in the case, still has to rule on McQueary's accusation that Penn State retaliated against him after he testified at Sandusky's 2012 trial. Why is Judge Gavin's ruling on retaliation significant in this case?



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Mike McQueary's lawsuit against Pennsylvania State University includes the allegation that the university retaliated against him for testifying at Jerry Sandusky's 2012 trial. A whistleblower lawsuit is litigation filed by an individual who seeks to recover damages due to the defendant's retaliation against that person for reporting the defendant to the appropriate authorities for violating the law. On both state and federal levels, whistleblowers are legally protected against retaliation, and have the right to recover damages from a defendant who did in fact retaliate against the whistleblower. Judge Gavin's ruling on retaliation is significant in this case since it can ultimately affect the legal remedies (including monetary amounts) the court awards Mr. McQueary.

3. In your reasoned opinion, is the \$7.3 million verdict appropriate in this case? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, there is not enough information provided in the article to determine whether the \$7.3 million verdict is just. Obviously, since this case involved alleged defamation, a considerable portion of the verdict is likely based on the jury's determination that Mike McQueary's reputation has suffered considerably due to the defamatory statements. Ultimately, whether the verdict amount is appropriate is now for the judge (and, most likely, the appellate courts) to decide.

Article 3: "Rolling Stone" on Trial over Discredited Campus Rape Story

<http://www.usatoday.com/story/news/nation/2016/10/16/rolling-stone-trial-over-discredited-campus-rape-story/92197484/>

According to the article, a defamation lawsuit filed by a former University of Virginia dean against *Rolling Stone* magazine for its botched article about an alleged gang rape at the Charlottesville school is set for trial.

Nicole Eramo was the associate dean of students who counseled "Jackie," an otherwise unidentified student whose tale of sexual brutality in a fraternity house set off a nationwide firestorm when the magazine published the article in November 2014. Eramo is suing the magazine for almost \$8 million, saying *A Rape on Campus* cast her as the "chief villain."

Lawyers for Eramo have included Jackie on their witness list.

The gripping article detailed Jackie's claim that she was at a fraternity party on September 28, 2012, when she was lured upstairs, raped and beaten by several men over a three-hour period. The fraternity immediately challenged the article's claims, which quickly drew intense media scrutiny followed by skepticism.

Charlottesville police investigated and found no evidence of rape. The magazine commissioned the Columbia University Graduate School of Journalism to study the way the article was handled. That 13,000-word report — 4,000 words longer than the article itself — found a systematic failure by the magazine, starting with relying too heavily on a single source: Jackie.



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The report also said the magazine, not Jackie, was to blame for the botched piece.

The magazine issued an apology in December 2014 for its failures in reporting and editing. The story was fully retracted four months later.

Eramo's lawsuit claims writer Sabrina Rubin Erdely and the magazine sought "to weave a narrative that depicted the University of Virginia as an institution that is indifferent to rape on campus, and more concerned with protecting its reputation than with assisting victims of sexual assault."

The lawsuit says *Rolling Stone* falsely accused Eramo of being instrumental in persuading Jackie not to report the rape and discouraging Jackie from sharing her story with others or telling police. Eramo still works for the university, but no longer as a dean of students. She spoke with the media last week, saying *Rolling Stone* depicted her as insensitive to students who were sexual assault victims.

"They made it look like I used the trust of, yeah, women to cover up rapes," Eramo said. "And that was so far from anything I would ever do. It was just unbelievable to me."

The magazine issued a statement accusing Eramo's lawyers of "attempting to shift the focus of her lawsuit in the media to *Rolling Stone's* reporting errors." The statement pointed to a U.S. Education Department investigation of the university's practices — an investigation that found a "mixed record of responding to reports of sexual harassment and sexual violence."

Rolling Stone said the depiction of Eramo in its ill-fated article "was balanced and described the challenges of her role."

Eramo's lawsuit also has drawn the ire of the National Organization for Women. In an open letter to university President Teresa Sullivan in January, NOW said demands made by Eramo's lawyers for detailed information from Jackie amounted to "re-victimization."

"It is exactly this kind of victim blaming and shaming that fosters rape culture, re-victimizes those brave enough to have come forward, and silences countless other victims," the letter said.

Discussion Questions

1. The First Amendment to the United States Constitution states that "Congress shall make no law...abridging the freedom of...the press." What is the justification for constitutionally protecting the press?

In constitutionally protecting the freedom of the press, our Founding Fathers professed their belief that a functioning press is essential to the preservation and advancement of our democracy.



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Freedom of the press is closely related to freedom of speech, another right preserved in the First Amendment to the United States Constitution.

2. In what way(s) does Nicole Eramo claim that *Rolling Stone* magazine defamed her?

As the article indicates, the lawsuit alleges that Rolling Stone falsely accused Nicole Eramo (then the University of Virginia's dean of students) of being instrumental in persuading "Jackie" (an otherwise unidentified student who claimed to have been sexually assaulted at a University of Virginia fraternity house) not to report the rape and discouraging Jackie from sharing her story with others or telling police.

3. Assuming that Nicole Eramo's allegations against *Rolling Stone* are true, is the magazine nevertheless free from liability due to the First Amendment to the United States Constitution? Why or why not?

Although Rolling Stone magazine is entitled to the "freedom of the press" protection of the First Amendment to the United States Constitution, such a right is not without its limits. If a jury should determine that the magazine did in fact defame Ms. Eramo, defamation liability would take precedence over the magazine's freedom of the press right.



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Video Suggestions

Video 1: “Wells Fargo CEO Stumpf Retires with \$134M”

<http://www.usatoday.com/story/money/markets/2016/10/12/wells-fargo-ceo-retires-under-fire/91964778/>

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

“Wells Fargo CEO Stumpf Retires with \$134M”

According to the article, John Stumpf, the embattled CEO of Wells Fargo, unexpectedly retired from the company effective immediately.

Stumpf's move comes just weeks after he was grilled by two congressional panels over the way the bank handled an alleged scam where upwards of 2 million accounts were created by employees without the knowledge of customers. The accounts were allegedly opened so thousands of employees could meet aggressive sales goals set by management. Stumpf was widely criticized for the way he handled the questioning, pushing the blame to lower-level employees and not holding upper-level executives, including himself, responsible.

Stumpf, 63, is resigning as both CEO and chairman. He has been CEO since June 2007 and has worked for the company for 34 years. The fact that Stumpf, the company's top executive, was also the chairman of the board was another point brought up by lawmakers questioning why the bank didn't act sooner to deal with the widening scandal. The roles are split, now. The company's president and chief operating officer, Tim Sloan, 55, will replace Stumpf as CEO. Sloan was head of the Wells Fargo unit that made loans to large corporate customers and not directly tied to the alleged consumer banking fraud. Stephen Sanger, a former Yoplait USA president and member of the Wells Fargo board since 2003, was named as the board's non-executive chairman.

"I have decided it is best for the Company that I step aside. I know no better individual to lead this company forward than Tim Sloan," Stumpf said in a statement.



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While Stumpf doesn't receive a special retirement payout, executive-pay tracker Equilar estimates he'll walk with \$134.1 million. The package remains that large even after Stumpf last month agreed to a \$41 million clawback following a grilling he received from the Senate Banking Committee reprimanding him for not taking responsibility. He agreed to give up unvested stock, but still owns shares vested in previous years.

During his nearly four-hour testimony before the House Financial Services Committee last month, Stumpf was called upon several times to resign by representatives. Stumpf said at the hearing he wasn't planning to resign, and that remaining at the bank and seeing through the reforms was part of taking responsibility. He also indicated such decisions are up to the board.

While Stumpf walks with millions, the fraud has been much costlier for the bank's once-stellar reputation and for those who hold Wells Fargo stock. Investors have lost \$23.1 billion in market value as the shares have fallen nearly 10% from when the scandal broke. Wells Fargo was formerly the most valuable U.S. bank but has since fallen behind JP Morgan Chase.

"As one of millions of Americans who has a Wells Fargo account, I found the bank's conduct outrageous," says Carl Tobias, law professor at the University of Richmond. "The bad corporate behavior justifies what happened to him."

Discussion Questions

1. As the article indicates, before he retired, John Stumpf was both chief executive officer and chairman of the board of directors at Wells Fargo. In your reasoned opinion, is it appropriate for one individual to be both chief executive officer and chairperson of the board of directors at a corporation? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, a classic "conflict of interest" occurs when one individual is both chief executive officer and chairperson of the board of directors for a corporation. The board's obligation is charged with the responsibility of overseeing the corporation's employees and the corporation itself. How can this be done effectively if one person serves as both the "overseer" and the "overseen?"

2. As the article indicates, Wells Fargo's president and chief operating officer, Tim Sloan, 55, will replace John Stumpf as CEO. Sloan was head of the Wells Fargo unit that made loans to large corporate customers and not directly tied to the alleged consumer banking fraud. Also, Stephen Sanger, a former Yoplait USA president and member of the Wells Fargo board since 2003, was named as the board's non-executive chairman. Comment on the propriety of these appointments.

Tim Sloan, the new highest-ranking executive, was promoted from within the company. Wells Fargo certainly has the right to make such an appointment, but reasonable minds might differ in terms of whether real change in corporate culture can come about with such an appointment. The same could be said for Stephen Sanger's selection as chairperson of the board of directors, since he was also promoted from "within the ranks." Although promotion from within is often a good move, since it



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promotes and recognizes loyalty to the firm and a well-developed knowledge base unique to the company, external hiring is often preferred as a means to “shake up” corporate culture, something arguably very much needed in Wells Fargo’s situation.

2. In light of the fact that John Stumpf will retire with \$134 million, has justice been served in this case? Why or why not?

This is an opinion question, so student responses may vary. Despite his departure, Stumpf still faces the possibility of civil and/or criminal liability for his alleged involvement in the “fake accounts” scandal.

Video 2: “Gov. McCrory: Caitlyn Jenner Must Use Men’s Public Facilities in NC”

<http://abcnews.go.com/Politics/nc-gov-pat-mccrory-relegates-caitlyn-jenner-mens/story?id=42748496>

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

“NC Gov. Pat McCrory Would Relegate Caitlyn Jenner to the Men's Room”

According to the article, Caitlyn Jenner will be required to use the men’s room at public facilities in North Carolina if she ever visits the Tar Heel State, Governor Pat McCrory said.

McCrory made the remark recently when responding to a question at the state’s gubernatorial debate, in which Democratic challenger Roy Cooper slammed the Republican governor for signing House Bill 2, dubbed the bathroom bill, which negates local anti-discrimination protections for LGBT people and bars people from using public bathrooms that don’t match the gender indicated on their birth certificate.

Jenner, who has become a leading advocate for transgender rights since coming out as a trans woman, came up during the heated discussion. When asked which restroom Jenner should be allowed to use, McCrory said, “In the private sector in North Carolina, she can go wherever the private sector wants her to, because we don’t want to be in the private business of the private sector.”

“If she’s going to a shower facility at UNC–Chapel Hill after running around the track, she’s going to use the men’s shower,” he said, referring to the University of North Carolina campus. Jenner did not immediately respond to the media’s request for comment.

Cooper, the state’s attorney general, avoided a direct answer when posed the same question, instead saying the state shouldn’t be involved in making that decision and local governments should be trusted to handle such issues.



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He vowed to repeal House Bill 2. The law has triggered a wave of cancellations in North Carolina, ranging from concerts and athletic events to plans by major corporations.

“We need a good jobs governor, not an HB2 governor,” Cooper said during the debate, at UNC-TV studios in Research Triangle Park.

Discussion Questions

1. Describe North Carolina House Bill 2 (HB2).

North Carolina House Bill 2 (HB2) is controversial legislation most known for requiring transgendered individuals to use the restroom corresponding to their gender at birth, rather than the gender with which they currently identify. The “bathroom law” portion of HB2 applies only to government-operated facilities.

HB2 contains other provisions that are less known to the public, perhaps due to the media’s failure to address the remaining portions of the law. HB2 eliminates an individual’s right to sue in state court for discrimination. It also forbids municipal and local governments from increasing the minimum wage.

2. As the article indicates, gubernatorial candidate Roy Cooper has vowed to repeal North Carolina House Bill 2 if he is elected governor. As governor, would he have the legal authority to repeal the law? Why or why not?

As governor, Roy Cooper would not have the right to strike down HB2. Change in the law would have to originate from either a) the North Carolina legislature’s repeal of it (although that is highly unlikely to occur if Republicans maintain control of the state legislature) or b) the United States Justice Department’s lawsuit against the State of North Carolina resulting in a federal court’s (most likely the United States Supreme Court’s) decision that HB 2 is an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The 14th Amendment holds that “(n)o state shall...deny to any person within its jurisdiction the equal protection of the laws.”

3. Comment on the propriety of North Carolina House Bill 2. In your reasoned opinion, is HB2 good law? Why or why not?

This is an opinion question, so student responses may vary. As mentioned in response to Video 2, Discussion Question Number 2, the crux of the United States Department of Justice’s lawsuit against the State of North Carolina is that HB2 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, denying the transgendered population “equal protection of the laws.” Historically, in order to justify discrimination against a certain category of individuals, the government must articulate a reasonable basis for so doing. During litigation, it will



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be the State of North Carolina's burden to prove that the "bathroom law" portion of HB2 constitutes a "reasonable classification."



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Of Special Interest

This section of the newsletter addresses a possible retaliatory cyber-attack by the United States against Russia.

Ethical Dilemma

“CIA Prepping for Possible Cyber Attack against Russia”

<http://www.nbcnews.com/news/us-news/cia-prepping-possible-cyber-strike-against-russia-n666636>

Note: In addition to the article, please see the accompanying video included at the above-referenced internet address.

According to the article, the Obama administration is contemplating an unprecedented cyber covert action against Russia in retaliation for alleged Russian interference in the American presidential election, U.S. intelligence officials said.

Current and former officials with direct knowledge of the situation say the CIA has been asked to deliver options to the White House for a wide-ranging "clandestine" cyber operation designed to harass and "embarrass" the Kremlin leadership.

The sources did not elaborate on the exact measures the CIA was considering, but said the agency had already begun opening cyber doors, selecting targets and making other preparations for an operation. Former intelligence officers claim that the agency had gathered reams of documents that could expose unsavory tactics by Russian President Vladimir Putin.

Vice President Joe Biden said recently that "we're sending a message" to Putin and that "it will be at the time of our choosing, and under the circumstances that will have the greatest impact."

When asked if the American public will know a message was sent, the vice president replied, "Hope not."

Retired Admiral James Stavridis said that the U.S. should attack Russia's ability to censor its internal internet traffic and expose the financial dealings of Putin and his associates.

"It's well known that there's great deal of offshore money moved outside of Russia from oligarchs," he said. "It would be very embarrassing if that was revealed, and that would be a proportional response to what we've seen" in Russia's alleged hacks and leaks targeting U.S. public opinion.



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Sean Kanuck, who was until this spring the senior U.S. intelligence official responsible for analyzing Russian cyber capabilities, said not mounting a response would carry a cost.

"If you publicly accuse someone," he said, "and don't follow it up with a responsive action, that may weaken the credible threat of your response capability."

President Obama will ultimately have to decide whether he will authorize a CIA operation.

Officials said that for now there are divisions at the top of the administration about whether to proceed.

Two former CIA officers who worked on Russia said that there is a long history of the White House asking the CIA to come up with options for covert action against Russia, including cyber options — only to abandon the idea.

"We've always hesitated to use a lot of stuff we've had, but that's a political decision," one former officer said. "If someone has decided, 'We've had enough of the Russians,' there is a lot we can do. Step one is to remind them that two can play at this game and we have a lot of stuff. Step two, if you are looking to mess with their networks, we can do that, but then the issue becomes, they can do worse things to us in other places."

A second former officer, who helped run intelligence operations against Russia, said he was asked several times in recent years to work on covert action plans, but "none of the options were particularly good, nor did we think that any of them would be particularly effective," he said.

Putin is almost beyond embarrassing, he said, and anything the U.S. can do against, for example, Russian bank accounts, the Russian can do in response.

"Do you want to have Barack Obama bouncing checks?" he asked.

Former CIA deputy director Michael Morell expressed skepticism that the U.S. would go so far as to attack Russian networks.

"Physical attacks on networks is not something the U.S. wants to do because we don't want to set a precedent for other countries to do it as well, including against us," he said. "My own view is that our response shouldn't be covert -- it should be overt, for everybody to see."

The Obama administration is debating just that question, officials say — whether to respond to Russia via cyber means, or with traditional measures such as sanctions.



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The CIA's cyber operation is being prepared by a team within the CIA's Center for Cyber Intelligence, documents indicate. According to officials, the team has a staff of hundreds and a budget in the hundreds of millions, they say.

The covert action plan is designed to protect the U.S. election system and insure that Russian hackers can't interfere with the November vote, officials say. Another goal is to send a message to Russia that it has crossed a line, officials say.

While the National Security Agency is the center for American digital spying, the CIA is the lead agency for covert action and has its own cyber capabilities. It sometimes brings in the NSA and the Pentagon to help, officials say.

In earlier days, the CIA was behind efforts to use the internet to put pressure on Slobodan Milosevic in Serbia in 1999, and to pressure Iraqi leadership in 2003 to split off from Saddam Hussein.

According to documents leaked by Edward Snowden, the CIA requested \$685.4 million for computer network operations in 2013, compared to \$1 billion by the NSA.

Retired General Mike Hayden, who ran the CIA after leading the NSA, wrote this year: "We even had our own cyber force, the Information Operations Center (IOC), that former CIA director George Tenet launched and which had grown steadily under the next spy chief, Porter Goss, and me. The CIA didn't try to replicate or try to compete with NSA... the IOC was a lot like Marine Corps aviation while NSA was an awful lot like America's Air Force."

"I would quote a Russian proverb," said Admiral Stavridis, "which is, 'Probe with bayonets. When you hit mush, proceed. When you hit steel withdraw.' I think unless we stand up to this kind of cyber-attack from Russia, we'll only see more and more of it in the future."

Discussion Questions

1. In your reasoned opinion, is a United States "cyber-attack" against Russia warranted/justifiable? Why or why not?

This is an opinion question, so student responses may vary. If Russian has indeed interfered with the United States presidential election, such meddling would be virtually unprecedented in United States history. In terms of whether United States retaliation against Russia would be advisable from a foreign policy perspective, please refer to the response to Ethical Dilemma Discussion Question Number 2.

2. In your reasoned opinion, is a United States "cyber-attack" against Russia wise from a foreign policy standpoint? Why or why not?



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This is an opinion question, so student responses will likely vary. In your author's opinion, it would be risky foreign policy decision for the United States to engage in such a retaliatory gesture, risking responsive retaliation by Russia and negative fallout in the global community. The United States must determine whether such a foreign policy measure would be worth the risk.

3. As the article indicates, the Obama administration is currently debating whether to respond to Russia via cyber means, or with traditional measures such as sanctions. In your reasoned opinion, would traditional measures (such as sanctions) be a wiser foreign policy decision? Why or why not?

This is an opinion question, so student responses will likely vary. In your author's opinion, traditional retaliatory measures such as sanctions are fraught with risk as well, including the threat of a "trade war" with Russia. As indicated in response to Ethical Dilemma Discussion Question Number 2 above, the United States must determine whether such a foreign policy measure would be worth the risk.



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Of Special Interest

This section of the newsletter will assist you in addressing Video 1 ("Wells Fargo CEO Stumpf Retires with \$134M") of the newsletter.

Teaching Tips

Teaching Tip 1: "Ex-Wells Fargo Worker: Intimidation Included No Bathroom Breaks"

<http://money.cnn.com/2016/10/11/investing/wells-fargo-intimidation-bathroom-breaks/>

According to the article, harassment, intimidation, even bathroom breaks denied. That's some of the "unconscionable behavior" a former Wells Fargo worker drove five hours to confront a bank executive about.

Nathan Todd Davis said at a California State Assembly hearing on the Wells Fargo fake account scandal that he filed 50 ethics complaints during his decade of working at Wells Fargo -- but nothing was ever done.

"I've been harassed, intimidated, written up and denied bathroom breaks," said Davis, who drove 350 miles from his home in Lodi, California, to speak at the hearing.

The former Wells Fargo worker directed his complaints to David Galasso, a senior Wells Fargo executive who was filling in at the hearing for CEO John Stumpf.

"The sales culture of Wells Fargo needs to be picked apart," he said, standing at the podium but looking to his right to address Galasso. Davis estimated that almost two-thirds of Wells Fargo employees "cheat the system" due to unreasonable sales pressure.

After a decade at Wells Fargo, Davis said he was fired in June 2016 for being "90 seconds late to work." The real problem, he said, was that he never "made it to management because I don't cheat."

Galasso, who serves as Wells Fargo's head of community banking in Northern and Central California, did not address Davis' comments directly.

Wells Fargo declined to comment on the individual allegations, but said in a statement that it tries to make every employee "feel valued, rewarded and recognized."



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The allegations by Davis echo ones made by other former and current Wells Fargo employees. After regulators accused Wells Fargo of creating as many as 2 million unauthorized accounts, workers reached out to lay the blame on the bank's unrealistic sales goals that led many to cheat. Other former Wells Fargo workers believe they were retaliated against after they called the ethics line. The Labor Department has since said it's reviewing whistleblower retaliation complaints against Wells Fargo.

Teaching Tip 2: “What the Wells Fargo Fake Accounts Scandal Says About Flaws at the SEC”

<http://fortune.com/2016/10/18/wells-fargo-sec-john-stumpf/>

Note: This is an opinion piece written by Eleanor Bloxham, CEO of The Value Alliance, an independent board education and advisory firm. She is the author of two books on corporate governance and valuation.

According to the article, while all eyes have been on Wells Fargo in the wake of the bank's fake accounts scandal, there is another, not so apparent culprit at the heart of the crisis: the U.S. Securities and Exchange Commission.

Under SEC Chair Mary Jo White's watch, the agency has failed to enforce disclosure requirements at Wells Fargo and elsewhere at a time when trust in big business has hit historic lows.

The SEC's corporate disclosure rules exist to forewarn investors about major issues that could affect a company's well-being. Yet investors and the public were surprised last month by the alleged widespread multi-year Wells Fargo fraud.

The SEC had many opportunities to step in to make sure investors learned about Wells Fargo's problems much sooner. Instead, the opposite happened. In early 2014, the agency allowed Wells Fargo and another major bank to exclude shareholder proposals from New York's comptroller that would have provided investors with information on which employees were “capable of exposing them to major losses” because of their “bonus incentives.” As a result, Wells Fargo investors never even had a chance to vote on the measure, despite the Los Angeles Times' Wells Fargo investigation two months earlier that had revealed “forged client signatures” and “incentive pay linked to sales.”

Under White's watch, the SEC has been soft in enforcing disclosure requirements related to risky compensation, which were issued after the 2008 financial crisis. Any member of the SEC staff who had reviewed Wells Fargo's 2013 annual pay report would likely have seen that Wells Fargo CEO John Stumpf and his four top lieutenants' multi-million dollar paychecks included large stock awards as well as annual bonuses tied to sales measures. This should have been viewed as a red flag that Wells Fargo had risky compensation practices — and the board should have described those risks in its annual investor filings.



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Regulators knew following the financial crisis that using sales measures to determine bank bonuses created risky behaviors and advised against them. And paying executives in stock has been a major risk concern since Enron and WorldCom. Dick Fuld, CEO of Lehman Brothers, who oversaw that bank's collapse in the financial crisis, was the poster child for taking risky actions to goose the stock price. At the Wells Fargo Senate hearing last month, Senator Elizabeth Warren told Stumpf that he had pumped up Wells Fargo's stock price by touting the bank's sales culture.

The SEC has also been loath to tangle with the external auditors, the CEOs and the CFOs, who sign off on company's financial statements. According to a New York Times report, Wells Fargo had fake accounts as far back as 2005. So for an extended time (how long exactly is unclear), Wells Fargo did not know (nor did the board's audit committee know) whether accounts and income on its books were valid or not. If that is not a material control weakness that should be disclosed (in other words, an operational deficiency, which could cause reported numbers to be wrong), what would be?

The SEC has not just failed by omission. Against investor wishes, White has personally advocated for changes to disclosure rules at all U.S. public companies, which include eliminating important executive compensation information from investors' voting materials.

If we are to prevent another Wells Fargo-type fiasco, we must do more than focus on one company's management, as important as that may be. We must also look at the broken regulatory systems that enabled it.



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Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 6, 7 and 20	Chapters 4 and 5	Chapter 3	Chapter 5
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 8, 9 and 10	Chapters 5 and 7	Chapter 2	Chapter 7
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 8, 9 and 10	Chapters 5 and 7	Chapter 2	Chapter 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapter 7	Chapters 5 and 6	Chapter 2	Chapter 6
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 6, 7 and 20	Chapters 3 and 5	Chapter 4	Chapter 5
McAdams et al., Law, Business & Society	Chapter 7	Chapters 4 and 5	Chapter 2	Chapter 4
Melvin, The Legal Environment of Business: A Managerial Approach	Chapter 10	Chapters 2 and 23	Chapter 5	Chapter 23
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapter 10	Chapters 6 and 13	Chapter 2	Chapter 13
Sukys, Brown, Business Law with UCC Applications	Chapters 6 and 15	Chapters 2 and 5	Chapter 1	Chapter 5



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- Barnes et al., Law for Business, 12th Edition 2015© (0078023815) – New edition coming January 2017
- Bennett-Alexander et al., Employment Law for Business, 8th Edition 2015© (0078023793)
- Kubasek et al., Dynamic Business Law, 3rd Edition 2015© (0078023785) – New edition coming January 2017
- Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
- Kubasek et al., Dynamic Business Law: The Essentials, 3rd Edition 2016© (007802384X)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 16th Edition 2016© (0077733711)
- McAdams et al., Law, Business & Society, 11th Edition 2015© (0078023866)
- Melvin, The Legal Environment of Business: A Managerial Approach, 2nd edition 2015© (0078023807) – New edition coming January 2017
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 17th Edition 2016© (0078023858)
- Sukys, Brown, Business Law with UCC Applications 14th Edition 2017© (0077733738)

