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A monthly newsletter from McGraw-Hill Education **November 2018** Volume 10, Issue 4

Dear Professor,

Happy Thanksgiving, everyone! Welcome to McGraw-Hill Education's November 2018 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, 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 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. Retailer Sears' recent filing for Chapter 11 bankruptcy;

2. An ongoing copyright infringement lawsuit involving the iconic 1960s rock group Led Zeppelin;

3. A potential unilateral contract involving President Donald Trump and United States Senator Elizabeth Warren;

4. Videos related to an affirmative action lawsuit involving Harvard University;

5. An "ethical dilemma" related to the termination of "Temporary Protected Status" for thousands of legal immigrants; and

6. "Teaching tips" related to Article 2 ("Led Zeppelin Ordered to Go Back on Trial in 'Stairway to Heaven' Copyright Lawsuit") of the newsletter.

I wish all of you a wonderful fall season!

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Hot Topics in Business Law

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

1) Retailer Sears' recent filing for Chapter 11 bankruptcy;

2) An ongoing copyright infringement lawsuit involving the iconic 1960s rock group Led Zeppelin; and

3) A potential unilateral contract involving President Donald Trump and United States Senator Elizabeth Warren.

Article 1: "Sears, the Store That Changed America, Declares Bankruptcy"

https://www.cnn.com/2018/10/15/business/sears-bankruptcy/index.html

According to the article, Sears, the once-dominant retail chain that changed how Americans shopped and lived, has filed for bankruptcy.

The 132-year-old company has been struggling for several years and is drowning in debt. The final straw was a $134 million debt payment due Monday that it could not afford.

Sears Holdings, the parent company of Sears and Kmart, is among dozens of prominent retailers to declare bankruptcy in the era of Amazon.

The filing in federal bankruptcy court in New York came recently. The company issued a statement saying it intends to stay in business, keeping open stores that are profitable, along with the Sears and Kmart websites.

As of the filing, about 700 stores remained open and the company employed 68,000 workers. That's down from 1,000 stores with 89,000 employees that it had as recently as February.

But Sears said that it's looking for a buyer for a large number of its remaining stores, and it will close at least 142 stores near the end of this year. That's in addition to the 46 store closings already planned for next month. The company did not rule out additional store closings as the bankruptcy process proceeds.

Eddie Lampert, the company's chairman and largest shareholder, gave up the title of CEO. The company will now be run by three of the company's top executives.

For years, Lampert has claimed the company was making progress to end its years of ongoing losses.

"While we have made progress, the plan has yet to deliver the results we have desired," Lampert said in a statement Monday. He said the bankruptcy process would allow the company to shed debt and costs and "become a profitable and more competitive retailer."

Although retailers typically file for bankruptcy with the intention of staying in business, many end up going bust after filing. In recent years, Toys "R"

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Us, RadioShack and Sports Authority have followed that path to the graveyard.

The upcoming holiday season will be a particular challenge for Sears. It will need to do better than last year. While other traditional retailers enjoyed strong holiday sales, Sears and Kmart both reported sharp drops.

Sears fell out of shoppers' favor over the past decades as online stores and big box rivals, including Walmart (WMT) and Home Depot (HD), beat Sears on price and convenience.

But many of Sears' problems were self-inflicted. Its management tried to compete by closing stores and cutting costs. It slashed spending on advertising and it failed to invest in the upkeep and modernization of its outlets. Sears and Kmart stores grew barren and rundown.

Sales declined. Losses piled up in the billions of dollars. Debt mounted, and the company's cash reserves disappeared. Sears sold many of its most valuable assets, including its massive real estate footprint, to raise the cash it needed to survive. According to the bankruptcy filing, the company was losing about $125,000 a month.

It ditched Lands End in 2014. Three years later, Sears dumped the Craftsman brand, which it had sold exclusively. The company has been looking for a buyer for its Kenmore brand of appliances for years. The only acquirer it could find was Lampert, who offered $400 million for Kenmore through his hedge fund. The Sears board never accepted the offer.

By last month, Sears' market value had fallen below $100 million, less than quarter of the value of Kenmore itself.

The retailer's problems have mounted in recent years. Sears warned investors last year there was "substantial doubt" it would be able to stay in business. It has lost $11.7 billion since 2010, its last profitable year. Sales have plunged 60% since then. The company shuttered more than 2,800 stores over the past 13 years.

With the writing on the wall that a bankruptcy was imminent, suppliers demanded Sears pay cash up front for the items in its stores, putting it at an even greater competitive disadvantage with other retailers.

Whirlpool, (WHR) which had started in business more than a century ago selling its appliances at Sears, pulled its various brands out of Sears and Kmart stores last year. Once the dominant appliance retailer in the country, Sears accounted for only 3% of Whirlpool's sales worldwide in 2017.

In September, Lampert proposed that Sears restructure its finances without filing bankruptcy. But he warned that the company was running out of cash. The company's stock quickly fell below $1 a share for the first time in its history.

Creditors opted instead to try their hand in bankruptcy court. Without a deal and with $134 million in debt payments due Monday, Sears filed for Chapter 11 bankruptcy protection.

Sears was once the nation's largest retailer and its largest employer. In its heyday, it was both the Walmart and Amazon of its time.

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Formed in 1886 by railroad station agent Richard Sears, the company started as a watch business in North Redwood, Minnesota. Sears moved to Chicago in 1887, and he hired watchmaker Alvah Roebuck as his partner. The first Sears Roebuck catalog, which sold watches and jewelry, was printed in 1896.

The Sears catalog was the way many Americans first started to buy mass-produced goods. That was an enormous shift for people who lived on farms and in small towns and made many of the goods they needed on their own, including clothes and furniture.

Sears' stores helped reshape America, drawing shoppers away from the traditional Main Street merchants. Sears brought people into malls, contributing to the suburbanization of America in the post-World War II era. Its Kenmore appliances introduced many American homes to labor-saving devices that changed family dynamics. Its Craftsman tools and their lifetime guarantees were a mainstay of middle-class America.

Sears truly changed America.

But long before the rise of Amazon and online shopping, Sears was struggling to keep up with Americans' changing shopping habits. Big box retailers such as Walmart beat it on both price and merchandise selection.

In 1999, it was booted out of the Dow Jones Industrial Average, where it had been for 75 years. Big box rival Home Depot took its place.

Sears and Kmart merged to form Sears Holdings in 2005. At the time, they had 3,500 US stores between them. They have fewer than 900 today.

In July, Sears closed its last store in Chicago, once its hometown. In August, the company announced another 46 store closings. The company had 89,000 employees as of February. That's down from 317,000 US employees in early 2006, soon after the merger.

Discussion Questions

1. What is Chapter 11 bankruptcy?

Chapter 11 bankruptcy is reorganization bankruptcy for a business. In Chapter 11, the business continues to exist as an ongoing concern. The purpose of Chapter 11 bankruptcy is to make business debts more manageable. The Chapter 11 debt-restructuring plan is subject to approval by the bankruptcy court, which must take into consideration the interests of both debtor and creditors in determining whether to approve the plan.

2. How does a business qualify for Chapter 11 bankruptcy protection?

In order to qualify for Chapter 11 bankruptcy protection, a business must demonstrate to the court that it is generally unable to pay its debts as they come due. A business could be technically solvent in the "balance sheet" sense and yet still qualify for Chapter 11 bankruptcy protection.

3. What is Chapter 7 bankruptcy, and how might it relate to Sears' financial situation?

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Chapter 7 is liquidation bankruptcy, available to both individuals and businesses. A business that receives Chapter 7 bankruptcy protection ceases to exist as an ongoing concern—the assets of the business are liquidated, and the proceeds used to at least partially satisfy the interests of creditors.

With regard to Sears' financial situation, Chapter 11 bankruptcy may not be successful for the company. Even with the implementation of a Chapter 11 debt-restructuring plan, Sears may still find itself unable to pay its debts as they come due. In that case, upon Sears' request (or the request of creditors through a process known as involuntary Chapter 7 bankruptcy), the court may convert Sears' Chapter 11 bankruptcy into Chapter 7 bankruptcy. Such a conversion would represent the ultimate demise of this venerable company.

Article 2: "Led Zeppelin Ordered to Go Back on Trial in 'Stairway to Heaven' Copyright Lawsuit"

https://www.nbcnews.com/pop-culture/music/led-zeppelin-ordered-go-back-trial-stairway-heaven-copyright-lawsuit-n914831

According to the article, Led Zeppelin must go back on trial in a lawsuit that accuses the legendary rock band of ripping off the intro to its rock anthem "Stairway to Heaven" from a little-known 1960s instrumental, a federal appeals court ordered recently.

The 9th Circuit Court of Appeals in San Francisco overturned a 2016 jury verdict that found that the British band did not steal any original music from "Taurus," a 1968 track by the Los Angeles band Spirit.

"Taurus" was written by the late Spirit guitarist Randy Wolfe, better known as Randy California, whose trust brought the copyright infringement lawsuit.

Michael Skidmore, the trustee for Wolfe, has said Led Zeppelin lead vocalist Robert Plant and guitarist Jimmy Page may have been inspired to write 1971's "Stairway" after hearing Spirit perform "Taurus" while the bands toured together in 1968 and 1969. Skidmore has claimed Wolfe never got any credit.

The defendants have said Wolfe was a songwriter for hire who did not have a copyright claim, and that the opening of "Stairway" — a descending chromatic four-chord progression — is a common musical convention that did not deserve copyright protection.

The jury in the 2016 trial found that the two songs were not substantially similar.

But the federal appeals court panel that overturned the 2016 ruling held that parts of the jury instructions in that trial were erroneous and prejudicial. The appeals court also found that the U.S. district court that decided the first trial abused its discretion by not allowing recordings of "Taurus" to be played during the proceedings.

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Discussion Questions

1. What is a copyright?

A copyright is a form of intellectual property. More specifically, it is the right of exclusivity given to the creator of a literary or an artistic work. The right of exclusivity means that the copyright holder controls the dissemination and use of the copyrighted work.

2. What legal protection does the owner of a copyright have?

As indicated in response to Article 2, Discussion Question 1 above, a copyright is the right of exclusivity given to the creator of a literary or an artistic work. The right of exclusivity means that the copyright holder controls the dissemination and use of the copyrighted work. According to federal copyright law, for an individual, the duration of the copyright protection for an individual is the life of the creator plus 70 years; for a business, the protection lasts for 95 years from first publication or 120 years from creation, whichever is shorter.

After the applicable period of copyright protection expires, the copyrighted work becomes part of the public domain, meaning that others can use it freely without the creator's permission or consent.

3. As the article indicates, the ninth circuit court of appeals found that the U.S. district court that decided the first trial abused its discretion by not allowing recordings of "Taurus" to be played during the proceedings. Comment on the propriety of the U.S. district courts refusal to allow recordings of "Taurus" to be played during the trial.

This is an opinion question, so student responses may vary. In your author's opinion, playing recordings of "Taurus" would have been crucial to the jury's determination as to whether Led Zeppelin's "Stairway to Heaven" was so substantially similar to "Taurus" that it violated the "right of exclusivity protection" afforded to a copyright holder.

Article 3: "Trump Says 'Who Cares" After Warren Takes DNA Test, Denies $1 Million Offer"

https://www.cnn.com/2018/10/15/politics/donald-trump-elizabeth-warren-dna-1-million/index.html

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

According to the article, President Donald Trump claims he "didn't say" that he would pay $1 million to Democratic Sen. Elizabeth Warren for taking DNA test to review her Native American heritage, after she released the results of one recently.

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"Who cares?" Trump said when asked about the DNA test. When pressed on the once-promised $1 million payment, Trump responded: "I didn't say that. You better read it again."

In fact, Trump did promise $1 million, during a July rally, but only if the test showed she was "an Indian."

At a rally in July, Trump said: "And we will say, 'I will give you a million dollars, paid for by Trump, to your favorite charity if you take the test and it shows you're an Indian ... we'll see what she does. I have a feeling she will say no but we will hold it for the debates."

Warren has released the results of a DNA analysis showing she has distant Native American ancestry in an apparent attempt to pre-empt further questions and attacks should she run for president in 2020.

Warren first faced scrutiny for her purported Native American heritage during her 2012 Senate race. But Trump has revived and amplified the controversy as he eyes Warren as a possible rival, frequently mocking her with the nickname "Pocahontas."

But Warren now has documentation to back up her family lore -- a analysis of her genetic data performed by Carlos Bustamante, a professor of genetics at Stanford and adviser to Ancestry and 23 and Me.

Bustamante's analysis places Warren's Native American ancestor between six and 10 generations ago, with the report estimating eight generations.

Discussion Questions

1. What is a unilateral contract?

A unilateral contract is a promise for an act. The promise represents the offer, and the act represents the acceptance. The only way to accept a unilateral contract is to perform the act called for in return for the promise. The promise represents consideration, and performance of the act represents return consideration

2. What is Senator Elizabeth Warren's best argument that a unilateral contract was formed between herself and President Donald Trump, and that he is therefore legally obligated to pay the $1 million pledge?

Although this is purely an academic exercise (Senator Warren would most likely never pursue litigation on such grounds), her best argument is that she accepted President Trump's offer to pay the $1 million dollars by releasing the results of a DNA analysis showing she has distant Native American ancestry.

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3. What is President Trump's best argument that no unilateral contract was formed between himself and Senator Warren, or that even if he made a legitimate offer, she did not sufficiently accept it?

President Trump's best argument is that Senator Warren's DNA testing does not demonstrate definitively that she is an "Indian" (Native American), since the analysis only indicates that she has distant Native American ancestry. He could also argue that his assertions were made merely in jest, but a jury would analyze such assertions through the lens of an objective standard, rather than based on what President Trump might have personally thought or believed when he made the assertions in July 2018.

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Video Suggestions

Video 1: "Is Harvard Fair? Historic Affirmative Action Trial Begins Monday"

https://www.cnn.com/2018/10/14/politics/harvard-affirmative-action-asian-americans/index.html

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

"Is Harvard Fair? Historic Affirmative Action Trial Begins Monday"

According to the article, a lawsuit against Harvard brought on behalf of Asian-American students who failed to gain admission goes to trial on Monday, October 15 in one of the most consequential race cases in decades, with affirmative action policies across the country at stake.

The lawsuit was crafted by conservative advocates who have long fought racial admissions practices that traditionally benefited African-American and Latino students. Their ultimate goal is to reverse the 1978 Supreme Court case that upheld admissions policies that consider the race of students for campus diversity.

Parties on both sides expect the Supreme Court to eventually resolve the issue. And with President Donald Trump's two appointees, Justices Neil Gorsuch and Brett Kavanaugh, the high court now has five conservative justices who may be inclined to reverse the landmark ruling.

The challengers are led by Edward Blum, a conservative activist who has devised a series of claims against racial policies, including an earlier affirmative action lawsuit on behalf of Abigail Fisher against the University of Texas and several challenges to the 1965 Voting Rights Act.

Justice Anthony Kennedy, the key vote in 2016 when the court last endorsed race-based admissions in the University of Texas case, was replaced by Kavanaugh earlier this month. Gorsuch succeeded the late Justice Antonin Scalia, who had opposed all affirmative action and criticized the University of Texas program, but died before that case was completed.

The Students for Fair Admissions group Blum founded when he filed the Harvard case in November 2014 contends the university engages in unlawful

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"racial balancing" as it boosts the chances of admissions for blacks and Hispanics and lowers the chances for Asian Americans.

Harvard's practices, the group says, are "the same kind of discrimination and stereotyping that it used to justify quotas on Jewish applicants in the 1920s and 1930s."

That assertion has deeply resonated with some Asian Americans who fear they are held to a higher standard than other applicants to prestigious universities. Yet Asian-American advocates, representing a wide swath of backgrounds and educational experiences, have come in on both sides of the case.

Some who back the lawsuit seek to end all consideration of race in admissions, while others, siding with Harvard, argue that universities should be able to consider race for campus diversity and that some Asian Americans, particularly those with ties to Southeast Asian countries, may have had fewer educational opportunities before applying to college.

The NAACP Legal Defense and Educational Fund filed a brief on behalf of 25 Harvard student and alumni organizations comprising blacks, Latinos, Native Americans, Asian Americans and whites. The Legal Defense Fund calls the lawsuit an effort "to sow racial division" and emphasizes the Supreme Court's repeated endorsement of the 1978 case Regents of the University of California v. Bakke.

Those subsequent rulings, however, turned on a single vote, either that of Kennedy or Justice Sandra Day O'Connor, who retired in 2006.

The Trump administration, which is separately scrutinizing of race-based admissions practices at Harvard through its Education and Justice departments based on a complaint from more than 60 Asian American groups, has backed Students for Fair Admissions.

Harvard, the country's oldest institution of higher education, denies that it engages in racial balancing or limits Asian-American admissions. It defends its longstanding effort for racial diversity as part of the education mission and says admissions officers undertake a "whole-person evaluation" that includes academics, extracurricular activities, talents and personal qualities, as well as socioeconomic background and race.

Since the case was first filed, both sides have mined similar statistical evidence and testimony but with sharply contrasting conclusions -- all of which will now be presented before US District Court Judge Allison Burroughs.

"Each party relies on its own expert reports to show the presence or absence of a negative effect of being Asian American on the likelihood of admission ... and claims that there is substantial -- or zero -- documentary and testimonial evidence of discriminatory intent," Burroughs said in an order last month rejecting requests from both sides to rule for each, respectively, before trial.

The case was brought under Title VI of the 1964 Civil Rights Act, prohibiting racial discrimination at private institutions that receive federal funds.

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Burroughs, a 2014 appointee of President Barack Obama, has said she expects the trial to last about three weeks. Both sides will offer opening statements on Monday, October 15.

Harvard could fill its entire freshman class with academic stars, based on the characteristics of many who apply.

For the undergraduate class of 2019, Harvard received more than 37,000 applications and offered spots to 2,003 students. (For the more recent class of 2022, 42,749 applied and 1,962 were offered a place.) Of those who applied for the class of 2019, Harvard said in a court filing, more than 8,000 of the US applicants had perfect GPAs, and more than 5,000 US applicants had a perfect math or verbal SAT score.

Yet, as happens at universities across the country, admissions officers look for applicants with a broad range of talents beyond academic scores and seek a mix of socioeconomic, geographic and racial backgrounds. At Harvard, prospective students are rated in several categories, including academic, extracurricular, athletic, teacher recommendation and personal assessments.

As part of the case, Harvard was forced to turn over 200,000 undergraduate admissions files from a six-year period. The files included students' grades, test scores and extracurricular activities; demographic and legacy information; and admissions officers' ratings.

Students for Fair Admissions' statistical expert asserted in preliminary findings that while Asian-American applicants are, as a group, stronger than applicants of other races in the academic and extracurricular categories, they receive the lowest "personal" ratings among racial groups.

That category can come down to such personality traits as "likability," and Students for Fair Admissions says the low Asian-American scores arise from "thinly veiled racial stereotype about Asian Americans."

Justice Department officials contend Harvard has failed to provide "meaningful criteria" to explain how its admissions offers weigh factors in a candidate's application. DOJ focused on Asian-American applicants' lower scores in the "personal rating," saying that may reveal Harvard's bias.

Harvard disputes such conclusions, and its expert, looking at the same data categories, found no negative effect of being Asian American on the likelihood of admissions and said that in some years it had a positive effect.

The details of what groups siding with Students for Fair Admissions call a "black box process" and the admissions officers' judgments are expected to be on display in upcoming weeks as witnesses from both sides are called.

Harvard's lawyers have insisted in filings that the Students for Fair Admissions' arguments stem from "deeply flawed" analyses that fail to take into account all the important factors that Harvard admissions officers consider. They also note that the percentage of Asian Americans in the entering classes has risen over the past decade.

Asian-American students make up nearly 23% of admitted students. African-Americans constitute about 15%, Latinos 12%. A category of all others, mainly white students, accounts for 50%.

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When now-retired Justice Kennedy cast the crucial decisive vote in 2016 to uphold a University of Texas program that considered applicants' race, among other factors, he remarked on the difficult balancing act for judges.

"A university is in large part defined by those intangible 'qualities which are incapable of objective measurement but which make for greatness,'" he wrote, referring to high court precedent. "Considerable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission."

"But still," Kennedy concluded, "it remains an enduring challenge to our Nation's education system to reconcile the pursuit of diversity with the constitutional promise of equal treatment and dignity."

Discussion Questions

1. Define affirmative action.

Affirmative action is an effort to remedy past practices of discrimination against a protected class of individuals by affording those individuals certain advantages in the admissions or hiring process.

2. In your reasoned opinion, what is the most substantial argument against affirmative action?

This is an opinion question, so student responses may vary, but the most common argument against affirmative action is that it results in reverse discrimination against an unprotected (non-minority) class of individuals.

3. In your reasoned opinion, should the law allow a university to have an admissions policy that considers the race of students for the purpose of promoting campus diversity? Why or why not?

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

Video 2: "My Unlikely Journey to Harvard Sheds Light on Race Lawsuit"

https://www.cnn.com/2018/10/14/opinions/harvard-admissions-race-lawsuit-opinion-lobo/index.html

Note: This opinion article was written by Daniel Lobo, a career education fellow and proctor at Harvard University. He is the founder of the Harvard College First-Generation Student Union and president of the First-Generation Harvard Alumni.

"My Unlikely Journey to Harvard Sheds Light on Race Lawsuit"

I grew up less than 30 minutes away from Harvard, but it might as well have been a world away. My world was small and static. Most of my friends were brown or poor like me, with some version of parents like mine -- blue-collar, hardworking immigrants. We went to the same after-school programs for "at-risk youth" and started looking for part-time jobs as soon as we turned 15 and a half.

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But there were two glaring differences between me and the majority of my community. First, I always loved school, even when I had to pretend publicly that I didn't. Second, I always believed that I was destined for a world beyond the one I was born into, even when life told me otherwise.

And, indeed, I ended up at Harvard College as an undergraduate.

Harvard College's mission is to educate its students through the process of "intellectual transformation," achieved in part through an environment where students "come from different walks of life and have evolving identities."

The fulfillment of this mission depends on a diverse student body. But Harvard's diversity is currently being threatened.

Students for Fair Admissions (SFFA), an organization that claims Harvard's admissions process discriminates against Asian-Americans, helmed by affirmative action foe Edward Blum, is suing Harvard University in an effort to stop the university from considering race as one of the many factors in a holistic application process. If Harvard is unable to consider race, the university will lose the ability to create a diverse environment that pushes all students to learn and grow immeasurably.

With an SAT score of 1950 out of 2400, I may not have had much to teach my peers about standardized testing. But as the son of poor, hard-working immigrants from Cape Verde off the coast of Africa and the first and only person in my family to attend college, I did have a lot to share with my peers about the inequity in our nation's public education system and the unbelievable luck it takes for a student like me to make it to a school like Harvard.

Only through a process that takes a well-considered look beyond an applicant's test scores and GPA can Harvard achieve the intellectual transformations it was founded to create. Race is a critical aspect of a comprehensive application process because a diverse student body "helps to break down racial stereotypes, and enables students to better understand persons of different races," as retired Supreme Court Justice Anthony Kennedy has noted.

While I learned about economics and sociology in the classroom, so much of the intellectual transformation I experienced at Harvard came from talking to my peers about their backgrounds and experiences. If Harvard accepted students based only on their perfect GPAs and standardized test scores, would such a student body enhance the potential for collective intellectual transformation at Harvard College? My Harvard experience leads me to believe that the answer is no.

The exclusion of race will also hinder applicants, particularly applicants of color, from conveying the totality of who they are. As a leading institution, this shift in Harvard's admissions process would set a dangerous precedent for colleges across the country that will further encourage discrimination against students of color in the education system.

SFFA and Blum, demonstrate their utter lack of understanding of Harvard's mission through their failure to recognize that holistic admissions is about more than any one person's acceptance.

It is impossible for society to make equitable progress without reconciling existing race relations and the democratic values to which we aspire. In a country with such painful and deep racial divides,

doing this work requires us to learn from those whose worlds may seem completely different from our own. Diversity has the incredible power to reduce the distance between the disparate worlds of lived experience. In my lifetime, this work has never been more important.

One of my most salient moments from my time as an undergrad was an impromptu dinner that I had with an acquaintance who I'll call Zadie.

When I mentioned that I was hosting an open mic night for the First-Generation Student Union, a new student group I founded that semester, Zadie responded with confusion and surprise.

"Wait, your parents didn't go to college?" she asked.

"My parents didn't graduate from high school, actually," I said, sharing a fact that I had only just recently become comfortable saying aloud. And I'll never forget what she said next.

"My entire life has been set up for me to come to a school like Harvard. I can't imagine how I would have made it to Harvard if it hadn't been."

Like many of my peers, Zadie was the daughter of well-educated, extremely wealthy white parents. Her lived experiences meant that she had no exposure to the small and static world I come from. Consequently, she had a lot to learn about it. And I had a lot to learn about her and the world she comes from. In that moment, Zadie taught me that not every privileged person is apathetic to my world -- many of them are just oblivious to it. This moment was enabled by the process of holistic review, which is probably the only thing that would have brought our worlds together.

There are certainly many parts of American higher education that are broken and require greater public scrutiny and reform. Holistic admissions isn't one of them.

Discussion Questions

1. As the article indicates, Harvard College's mission is to educate its students through the process of "intellectual transformation," achieved in part through an environment where students "come from different walks of life and have evolving identities." In your reasoned opinion, does affirmative action assist Harvard in the fulfillment of its educational mission? Explain your response.

This is an opinion question, so student responses may vary. Aside from its main purpose of addressing and curing past practices of discrimination, affirmative action promotes the notion that diversity is inherently good, both from ethical and pragmatic perspectives, and assists in the achievement of organizational objectives.

2. Comment on Daniel Lobo's assertion that "(i)t is impossible for society to make equitable progress without reconciling existing race relations and the democratic values to which we aspire."

It will be interesting to entertain comments in response to Daniel Lobo's assertion. Remind students that equity means fairness, and that affirmative action is based, in large part, on fundamental notions of fairness. The "democratic values to which we aspire" relate to the notion that a true

democracy depends upon the involvement of everyone, without regard to race, gender, religion and other categorical constructs.

3. Does the video (and its accompanying article) change your views regarding affirmative action? Why or why not?

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

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Ethical Dilemma

This section of the newsletter addresses the termination of "Temporary Protected Status" for thousands of legal immigrants.

"Thousands of Legal Immigrants Face Daunting Decision after Their 'Temporary Protected Status' Ends"

https://www.usatoday.com/story/news/world/2018/10/15/trump-order-end-tps-leaves-legal-immigrants-daunting-decision/1272334002/

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

According to the article, Ronyde Christina Ponthieux, an 11-year-old U.S. citizen who lives in this South Florida suburb, spends most days alternating between two agonizing thoughts.

Some days, she ponders the possibility of her parents being forced to move back to their native Haiti and bringing her with them to a country she's never even visited.

"Just the thought of everything that's been going on – the earthquakes, Hurricane Irma, Hurricane Matthew, the cholera outbreak – it's scary. I speak French, I don't speak Creole," she said in perfect English. "It would be hard to adapt to the environment."

Other days, she feels frightened her parents might have to return to Haiti and leave her behind. "I would be living with a different family. I could even be in the (foster care) system. It blows my mind."

Ponthieux's parents wish their piano-playing sixth-grader wouldn't have to contemplate such thoughts, but that's the reality facing hundreds of thousands of families, all legal residents, that are now being ordered by the Trump administration to go back home.

Temporary Protected Status, or TPS, has allowed more than 317,000 foreigners to legally live and work in the U.S., many for more than two decades, as their countries recover from natural disasters and armed conflicts. Six countries, which represent 98 percent of the TPS population, have been cut from the program, each given a deadline to leave the U.S.

The first deadline, for Sudan, was scheduled to come up in just a few weeks. A federal judge's order last week to temporarily stop the administration from ending the program offers hope to some TPS holders, but no guarantee about their future. The Justice Department is appealing the ruling.

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That uncertainty has forced countless conversations within each family about their futures, especially what to do with their U.S.-born children, an estimated 273,000 U.S. citizens, according to the Center for Migration Studies. Those families now face three equally difficult options: stay in the U.S. together and become undocumented immigrants at risk of deportation, return home and leave their children behind, or return home as a family to a country their children have never known.

Ponthieux said that's an impossible decision for parents and children alike.

"The best way to make America great again is to let my people stay," she said. "And my people are Haitians, Hondurans, Salvadorans, Nicaraguans. That's what makes America great, all these different people coming from different places with different cultures – everyone's learning something new, these ideas and different cultures can help build a better place."

The Department of Homeland Security argues that TPS has been wrongly extended for decades, violating the "temporary" intent of the program. In announcing each TPS cancellation, the Homeland Security secretary has said each country has sufficiently recovered from the catastrophic events that initially led to its TPS designation.

Emails between Washington and U.S. diplomats in each country have shown sharp disagreements over those conclusions, with many staffers on the ground saying conditions remain dire in the six countries losing TPS: El Salvador, Haiti, Honduras, Nicaragua, Nepal and Sudan.

Elba Concepcion Castillo Zepeda, a Nicaraguan grandmother who has lived and worked in the U.S. under TPS for nearly 20 years, agreed, saying she's terrified of being forced back to the Central American nation.

Castillo originally entered the U.S. on a tourist visa after receiving death threats because of her efforts to help the Contras, who were fighting to overthrow the socialist Sandinista regime. She fed the rebels, tended to them when they were injured, and even helped bury some Contra fighters in her tiny hometown of Susucayan. She said government-aligned forces responded by throwing bricks at her home, calling her out by name on local radio stations, and screaming that her body would be found in the street "with my mouth full of ants."

Then, Castillo watched as Hurricane Mitch decimated the country in 1998, destroying her family's small farm. She was granted TPS and has worked in Miami ever since, cleaning houses, caring for children, and, now, as an in-home caregiver to an elderly man with Alzheimer's.
She's tried, and failed, to secure political asylum. The man she cares for has tried, and failed, to get her a work visa. And now with Nicaragua's TPS expiring Jan. 5, Castillo is running out of time.

"What would I do there? At my age, there will be no jobs," said Castillo, 71, who lives with her daughter and two U.S. citizen grandchildren. "My life there is going to be dangerous. Anybody can kill me for not accepting the injustices of the government."

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Mazin Ahmed has even less time to make his decision.

The 20-year-old is studying human biology and biochemistry at the University of Southern Maine, the start of what he hopes will be a career as a pediatrician. But Ahmed, his mother, and his two siblings all have TPS and may be forced to return to Sudan before their November 2 deadline.

Ahmed, who hasn't lived in Sudan since he was a baby, said his mother is "definitely nervous" about the decision they'll have to make in the coming weeks. But rather than focus on the horrible decision they'll have to make, Ahmed said his family has chosen to put their energy toward finding a solution.

Ahmed has joined other TPS recipients to lobby Congress to pass a law to protect them. Other groups have been pursuing the legal route, filing lawsuits against the administration to preserve the program.

But with the administration showing no indication that they'll change their minds, Congress unable to accomplish anything immigration-related, Ahmed said their best remaining option is to look above.

"Our main focus is praying, staying strong, staying true to ourselves, and trying to make the best of our lives," he said.

Discussion Questions

1. Describe the “Temporary Protected Status” program.

As indicated in the article, the Temporary Protected Status (TPS) program has allowed more than 317,000 foreigners to legally live and work in the U.S., many for more than two decades, as their countries recover from natural disasters and armed conflicts.

2. The article indicates that individuals in the Temporary Protected Status program are parents to an estimated 273,000 children, and that those children are United States citizens. What qualifies these children to be citizens of the United States?

According to the Fourteenth Amendment to the United State Constitution, “All persons born…in the United States…are citizens of the United States. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States…”

3. As the article indicates, the Department of Homeland Security (DHS) argues that Temporary Protected Status has been wrongly extended for decades, violating the “temporary” intent of the program. In announcing each TPS cancellation, the Homeland Security secretary has said each country has sufficiently recovered from the catastrophic events that initially led to its TPS designation. Assess the validity of DHS’s argument, both from legal and ethical perspectives.

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As indicated in the article, the Department of Homeland Security's conclusions regarding this issue are subject to vigorous debate. Emails between Washington and U.S. diplomats in each country have shown sharp disagreements over those conclusions, with many staffers on the ground saying conditions remain dire in the six countries losing TPS: El Salvador, Haiti, Honduras, Nicaragua, Nepal and Sudan.

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This section of the newsletter will assist you in addressing Article 2 ("Led Zeppelin Ordered to Go Back on Trial in 'Stairway to Heaven' Copyright Lawsuit") of the newsletter.

http://catalogs.mhhe.com/mhhe/findRep.do

Teaching Tips

Teaching Tip 1 (Related to Article 2—"Led Zeppelin Ordered to Go Back on Trial in 'Stairway to Heaven' Copyright Lawsuit"): "Led Zeppelin Win in 'Stairway to Heaven' Trial"

For more comprehensive coverage of the jury trial decision in the Led Zeppelin copyright infringement case, please refer to the following article and its accompanying video:

"Led Zeppelin Win in 'Stairway to Heaven' Trial"

https://www.rollingstone.com/music/music-news/led-zeppelin-win-in-stairway-to-heaven-trial-70565/

According to the article, Led Zeppelin have won a copyright lawsuit that claimed they had plagiarized the music to their most celebrated song, "Stairway to Heaven." A Los Angeles jury determined Thursday that the lawyer representing the estate of late guitarist Randy Wolfe, who played with the group Spirit, did not prove that the hard rockers lifted the song's intro from Spirit's 1968 instrumental "Taurus."

"We are grateful for the jury's conscientious service and pleased that it has ruled in our favor, putting to rest questions about the origins of 'Stairway to Heaven' and confirming what we have known for 45 years," members Jimmy Page and Robert Plant said in a statement. " We appreciate our fans' support and look forward to putting this legal matter behind us."

"At Warner Music Group, supporting our artists and protecting their creative freedom is paramount," the band's record label added in a statement. "We are pleased that the jury found in favor of Led Zeppelin, reaffirming the true origins of 'Stairway to Heaven.' Led Zeppelin is one of the greatest bands in history, and Jimmy Page and Robert Plant are peerless songwriters who created many of rock's most influential and enduring songs."

The lawsuit stemmed from a 2014 filing alleging that because Led Zeppelin had appeared on the same bill as Spirit in the early stage of their career, they would have been aware of the song "Taurus" and would have subsequently copied it. The track – penned by Wolfe as Randy California – appeared on Spirit's 1968 self-titled debut and contains two minutes and 38 seconds' worth of cinematic, psych-folk mysticism. The track features an acoustic guitar line playing a pensive melody that transforms into a

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descending chromatic pattern. A lawyer representing California's estate, now repped by British former music journalist Michael Skidmore, claimed that Led Zeppelin's trippy, acoustic guitar intro to "Stairway" had borrowed heavily from "Taurus."

The trial quickly became a colorful, contentious battle between the two sides from the start. Attorney Francis Malofiy, who represented Skidmore, carried a briefcase that resembled a Fender amp and played fast and loose with courtroom protocol. He attempted to play videos that weren't admitted into evidence (a possible basis for mistrial), conducted exasperating testimony that both the judge and defense found objection-worthy (the judge yelled "sustained" at one point before the defense could even object) and referred to Jimmy Page as the "alleged songwriter" of "Stairway."

"You're wasting a lot of time," the judge told Malofiy at a point where the lawyer was attempting to claim that the *Mary Poppins* song "Chim Chim Cheree" was a possible influence on Page. In his closing statement, Malofiy said that the case was about giving credit where it's due, blasted Page and Plant's "selective memory" during testimony and reminded the jury that he needed to prove his case by only "51 percent" in order to win.

The jury was not legally allowed to hear the original recordings of "Stairway to Heaven" and "Taurus" in determining their verdict. Instead, they heard an expert perform both songs based on the original sheet music.

Led Zeppelin attorney Peter Anderson kept a cooler demeanor. He argued that the Wolfe Trust did not own the copyright to the song (a claim the judge shot down) and that the musical characteristics Malofiy claimed Zeppelin copied were musical traditions that date back at least to the 1600s and appeared in songs like the Beatles' "Michelle."

In testimony, Page was charming, witty, candid and sarcastic, offering rejoinders to Malofiy's observations (when the lawyer said Page discovered he had the ability to play guitar in his youth, Page said, "Well, yeah.") Both Page and Plant testified they did not remember ever hearing "Taurus." Anderson made an ugly misstep during cross-examination with Skidmore when he accused Wolfe's mother as having an "illegitimate son" that was cut out of royalties. He also brought in a musicologist as a witness who spoke too academically and compared "Stairway" to the obscure "To Catch a Shad" by the Modern Folk Quartet.

Anderson closed his arguments by saying that Malofiy had not proved the case and that Spirit's music "would not even be remembered." It marked the end of a particularly combative trial. Before the judge called for the jury to deliberate, he asked of the attorneys, "Any other catfights?"

Bloomberg reported in April that if Wolfe's estate had won, they would have been entitled to a share of "Stairway to Heaven" revenue for only the three years before the lawsuit was filed, due to copyright law. The estate would also have been entitled to royalties going forward.

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Malofiy filed his original complaint against Led Zeppelin, on behalf of the Randy Craig Wolfe Trust, in May 2014. He stylized section headers in the font the group used on its untitled fourth album – home to "Stairway to Heaven" – and claimed that Led Zeppelin had become influenced by Wolfe and Spirit's performances after sharing a bill with them. Led Zeppelin would perform on the same bill as Spirit that year, at a gig where Malofiy claimed Spirit played "Taurus," and again in 1969.

In his "Preamble," the lawyer asserted that Led Zeppelin began performing Spirit's "Fresh-Garbage" – a track on the same record as "Taurus" – at concerts, and that Page and Plant composed "Stairway to Heaven" a year after touring with Spirit. Malofiy also included a chart of Led Zeppelin songs he claimed infringed upon other songwriters' works. He claimed that Led Zeppelin had knowingly and willfully infringed on "Taurus" with "Stairway to Heaven."

But in a 1991 interview not mentioned in the complaint, Wolfe described Led Zeppelin's members as fans of Spirit in the late Sixties and that "if they wanted to use ['Taurus'], that's fine. … I'll let [Led Zeppelin] have the beginning of 'Taurus' for their song without a lawsuit." Malofiy later said he believed that statement was "out of context."

In 1996, the year before his death, Wolfe told an interviewer he felt "Stairway" was a "ripoff" of "Taurus." Malofiy used the following statement in the complaint: "The guys made millions of bucks on it and never said, 'Thank you,' never said, 'Can we pay you some money for it?'" Wolfe said. "It's kind of a sore point with me. Maybe someday their conscience will make them do something about it. I don't know. There are funny business dealings between record companies, managers, publishers and artists. But when artists do it to other artists, there's no excuse for that. I'm mad!"

Wolfe drowned in 1997 while rescuing his son from a rip current in Hawaii, according to *Bloomberg*. His mother established the trust in his name, which purchases musical instruments for public schools. After she died in 2009, she passed it along to the suit's plaintiff, Michael Skidmore, who had assisted her in managing the trust. After teaming with Malofiy, he sued for copyright infringement in various forms and for "falsification of rock & roll history" (Wolfe's alleged right of attribution). He sought the defendants' profits, various forms of damages (including "exemplary damages to set an example for others") and an injunction on selling the recording and attorney's fees, among other "claims for relief."

Malofiy told *Bloomberg* he felt the lawsuit was worth around $40 million.

"This is ridiculous," Jimmy Page said of the lawsuit that month. "I have no further comment on the subject."

Led Zeppelin would later allege that the Trust did not even own the copyright to the song. They claimed that Wolfe's son, whom he saved at the time of his death, did, though the judge in the trial nullified that argument.

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The suit quickly became a *cause célèbre* in the music industry, as it is the most high-profile copyright case to follow the estate of Marvin Gaye's victory over Robin Thicke in the "Blurred Lines" lawsuit last year. In that case, Thicke and Pharrell Williams were ordered to pay $7.4 million (later reduced to $5.3 million) to the Gayes after a jury ruled that the song infringed on the vibe of Gaye's "Got to Give It Up." Lawyer Donald S. Passman told *The New York Times* that the Gaye ruling was "aberrational" and would not have any long-term effects.

It was determined in April of this year that the case would go to trial. Led Zeppelin's lawyer had asked U.S. District Court Judge Gary Klausner to rule in their favor without a trial in February, but the judge decided the songs were similar enough to warrant one. Although he wrote that Malofiy had not convinced him of Led Zeppelin's alleged infringement, the judge said that the "similarities [between the songs] transcend this core structure" and that what would remain is a "subjective assessment of the 'concept and feel' of two works."

What would occur over the coming months would become an epic story all its own.
Malofiy said at the time that any kind of settlement on behalf of Led Zeppelin would be a "nonstarter." But later that month, he told *Bloomberg* he'd take a settlement of a dollar and a songwriting credit. The band did not take him up on the offer.

Page and Plant filed declarations to the court in March, before Klausner decided the suit should go to trial, in which they described how they wrote the song. Page wrote that while "Stairway" opened with "descending chromatic lines," as did "Taurus," he'd been aware of that melodic style dating back at least to 1960. Moreover, he stated that he never heard the song until 2014 when Malofiy filed his complaint. "I am very good at remembering music and am absolutely certain that I never heard 'Taurus' until 2014," he wrote. He also wrote that he did not recall ever seeing Spirit live.

Page has always maintained in interviews that he wrote the song from piecing together his own melodic ideas. "I'd been fooling around with my acoustic guitar and came up with different sections, which I married together," he once told *Guitar World*. "But what I wanted was something that would have drums come in at the middle and then build to a huge crescendo. … So I had the structure of it."

Interestingly, in his declaration, Page wrote that he discovered a copy of the *Spirit* LP in his record collection in preparation for the trial. "[I] do not know how or when it got there," he wrote. "It may well have been left by a guest. I doubt it was there for long, since I never noticed it before. But again I know I did not hear 'Taurus' until 2014."

Plant, too, wrote that he believed he never heard "Taurus" before the lawsuit. "I do not now and have never owned a Spirit record album," he wrote.

In April, Judge Klausner rejected all of Malofiy's expert witnesses because they had prepared opinions based on sound recordings that weren't admissible under copyright law. He also barred recordings of some songs that the attorney wished to present, saying that recordings of songs had to be made from existing sheet music. The judge gave Malofiy time to find more witnesses.

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The judge also ruled that anything regarding Led Zeppelin's alleged plagiarism in the past would not be allowed before a jury. Rumors about the group's drug and alcohol use would not be allowed either; Malofiy had hoped to claim that the band's substance abuse damaged the songwriters' memories.

In May, Led Zeppelin accused Malofiy of attempting to "taint the jury pool" by claiming that the band's members would not appear in court. Page and Plant always intended to appear in court, the lawyers claimed. "[Malofiy's] ongoing efforts to try this case in the press should be rejected," they said in a motion.

Earlier this month, Malofiy filed a motion to make Plant, Page and Jones appear in court on the first day of the proceedings, making it so that if they didn't, they wouldn't be allowed to testify. Judge Klausner denied the motion.

The day before the trial was to begin, Malofiy filed a motion claiming that one of Led Zeppelin's experts, musicologist Lawrence Ferrara, had engaged in a conflict of interest by working with the group. Previously, he'd provided comparative analysis of "Taurus" and "Stairway" to the publisher of "Taurus," with whom Malofiy says he had conspired with to undermine the lawsuit. Ultimately, the judge allowed Ferrara to testify, signaling the beginning of what would become a turbulent trial.

In 1975, Page told *Rolling Stone* he felt "Stairway" "crystalized the essence of the band." "It had everything there and showed the band at its best … as a band, as a unit," he said. "We were careful never to release it as a single. It was a milestone for us. Every musician wants to do something of lasting quality, something which will hold up for a long time and I guess we did it with 'Stairway.'"

Teaching Tip 2 (Related to Article 2—"Led Zeppelin Ordered to Go Back on Trial in 'Stairway to Heaven' Copyright Lawsuit"): "Did Led Zeppelin Steal Stairway to Heaven's Opening Notes?"

For an excellent video addressing the Led Zeppelin copyright infringement lawsuit, please refer to the following internet address:

https://www.youtube.com/watch?v=JT64JH-Vh98

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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
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Bennett-Alexander & Hartman, Employment Law for Business	N/A	Chapter 5	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 12, 13, and 32	Chapter 43	Chapters 2 and 42	Chapter 12
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 8, 9, and 19	Chapter 24	Chapter 24	Chapter 8
Liuzzo, Essentials of Business Law	Chapters 7, 8, 21 and 28	Chapter 33	Chapter 2	Chapter 28
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 8, 9, and 30	Chapter 51	Chapters 4 and 51	Chapter 8
McAdams et al., Law, Business & Society	Chapters 6, 15 and 16	Chapter 13	Chapters 2 and 12	Chapter 16
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 6, 20 and 24	Chapter 12	Chapter 5	Chapter 24
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 6, 8, and 11	Chapter 20	Chapters 2 and 21	Chapter 11
Sukys, Brown, Business Law with UCC Applications	Chapters 7, 21, and 33	Chapter 23	Chapters 1 and 23	Chapter 33

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