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Proceedings

A monthly newsletter from McGraw-Hill

August 2013 Volume 5, Issue 1

Mc Graw Hill Education

Contents

Dear Professor,

The 2013-2014 academic year fast approaches! Welcome to McGraw-Hill's August 2013 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 5, Issue 1 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the August 2013 newsletter topics with the various McGraw-Hill business law textbooks.

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

1. A rare Third Amendment case involving the occupation of a private residence by local police;

2. A defamation case involving an ex-Cincinnati Bengals cheerleader; and

3. A rape case involving a college fraternity, its national organization and a university as defendants.

4. Videos related to a) cyber-bullying and b) the alleged sterilization of California female prison inmates;

5. An "ethical dilemma" related to weight discrimination in employment; and

6. "Teaching tips" related to Article 1 ("Family Allegedly Forced from Home by Police Files Rare 3rd Amendment Suit") of the newsletter.

I wish all of you a most enjoyable and rewarding 2013-2014 academic year!

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Of Special Interest

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

1) A rare Third Amendment case involving the occupation of a private residence by local police;

2) A defamation case involving an ex-Cincinnati Bengals cheerleader; and

3) A rape case involving a college fraternity, its national organization and a university as defendants.

Hot Topics in Business Law

Article 1: "Family Allegedly Forced from Home by Police Files Rare 3rd Amendment Suit"

http://www.foxnews.com/politics/2013/07/08/family-booted-from-home-for-police-detail-suing-with-rare-use-third-amendment/

According to the article, a Nevada family is using a rare legal argument in a lawsuit claiming police tried to commandeer their homes for a surveillance operation and then arrested the homeowners for resisting -- invoking the Third Amendment, which bars soldiers from being "quartered" in a residence without permission.

The Mitchell family, in a lawsuit filed July 1, detailed the incident from July 10, 2011. According to the complaint, it all began when the Henderson city police called Anthony Mitchell that morning to say they needed his house to gain "tactical advantage" in a domestic violence investigation in the neighborhood.

The situation turned ugly when Mitchell refused repeated requests to leave and police smashed through the door, the 18-page complaint states.

Mitchell alleges the police, upon entering his home, forced him to the floor at gunpoint, then shot him and his "cowering" dog with a few rounds of pepper-spray pellets. Police then allegedly handcuffed and arrested Mitchell in connection with "obstructing a police officer" before occupying his home.

It did not end at Anthony Mitchell's house in suburban Las Vegas, the complaint continues. That same day, the officers also took over the home of Mitchell's parents, Linda and Michael Mitchell, who live in the same neighborhood and are named as plaintiffs.

The more compelling questions appear to focus on whether the Third Amendment strategy can work, considering the courts would have to consider the police officers as soldiers.

The amendment states: "No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

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"I'm confident the Mitchells have a good case," said Frank Cofer, a partner in the firm Cofer, Geller & Durham LLC representing the plaintiffs.

Cofer said what struck him about the case was the officers' use of military-style tactics.

"And after entering the houses, they drank water, ate food, enjoyed the air conditioning," he said. "That struck me as quartering."

The suit alleges that, at the parents' house, police lured Michael Mitchell from his home to a nearby "command center" by saying they needed him to get the neighbor involved in the domestic violence case to surrender. When officers began to backpedal, Mitchell eventually attempted to leave, which resulted in him being handcuffed and eventually charged with obstructing an officer.

Police then returned to Mitchells' house where they allegedly yanked wife Linda from the premises after she refused to let them in without a warrant.

She was not arrested, and police have dropped all charges against the family.

However, the Mitchells are still suing for an undisclosed sum, saying their rights as citizens were violated under the Third Amendment -- as well as the Fourth and 14th Amendments -- and that the incident resulted in physical injury, malicious destruction of property and "extreme emotional distress."

Anthony and Michael also had to pay a bond to secure their release, the suit alleges.

John Yoo, a professor at the University of California at Berkeley's law school, was not so sure about the family's argument. He said the Mitchells may have claims under other federal and state laws "but their chances are very, very low on the Third Amendment."

Yoo, a visiting scholar for the conservative-leaning American Enterprise Institute and former Justice Department official, said the most difficult challenge for them is that there were no "soldiers" in their house, before the court gets into the question of whether "quartering" occurred.

"Local police on law enforcement missions are not soldiers," he said. But "Nevada should compensate the Mitchells' for the temporary use of their home and for any damages caused in the operation."

Among those named in the suit are the city of Henderson, the city police department, the police chief, five officers and the North Las Vegas Police Department.

The suit also alleges both police departments "developed and maintained policies and/or customs exhibiting deliberate indifference to the constitutional rights of United States citizens, which caused the violations of the plaintiffs' rights."

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Discussion Questions

1. Describe the Third Amendment to the United States Constitution.

The language of the Third Amendment to the United States Constitutions is as follows:

"No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

In essence, the Third Amendment protects a homeowner's property and privacy rights, and proscribes the government's unreasonable intrusion upon such property and privacy rights.

2. In your reasoned opinion, do the plaintiffs have a viable Third Amendment claim in this case? Why or why not?

Although this is an opinion question, formulating such an opinion depends on whether the Third Amendment is interpreted specifically or generally. Notice that the Third Amendment's language specifically proscribes soldiers' unreasonable intrusion upon a homeowner's property and privacy rights. Police officers are not soldiers. Interpreted generally, one might assume that our founding fathers drafted the Third Amendment to prevent governmental intrusion upon property and privacy rights, regardless of whether the governmental representative is a solider or a police officer. Read specifically, the plaintiffs might not have a viable Third Amendment claim in this case; read generally, they very well might have a viable claim.

3. Assess Professor John Woo's opinion regarding the Third Amendment's applicability to this case.

Please refer to the response to Article 1, Discussion Question Number 2 above. In Woo's opinion, local police on law enforcement missions are not soldiers; therefore, the Third Amendment claim is weak. Woo apparently interprets the Third Amendment language narrowly, meaning that it only proscribes soldiers' unreasonable intrusion upon a homeowner's property and privacy rights.

Article 2: "Ex-Bengals Cheerleader Sues Gossip Website, Founder over Lewd Posts"

http://abcnews.go.com/US/retrial-begins-bengals-cheerleaders-libel-suit-gossip-website/story?id=19607925#.UdtAWjuNrng

According to the article, a former Cincinnati Bengals cheerleader and teacher who admitted to sexually abusing one of her former students is back in federal court in Covington, Kentucky to face off against a gossip website she alleges defamed her.

Sarah Jones, 27, is suing the Scottsdale, Arizona-based website TheDirty.com and its founder Hooman Karamian, who goes by the alias Nik Richie, over a pair of anonymous posts from 2009 that

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said she had sex with every Bengals player while she was a cheerleader for the team and had two sexually transmitted diseases.

Jones is seeking $11 million in damages, claiming the posts were not true and caused emotional distress.

The first trial in January ended in a hung jury. U.S. District Court for the Eastern District of Kentucky Judge William Bertelsman set a retrial date for July 8.

The posts were unrelated to Jones' relationship with her former student Cody York, whom she met when she was his ninth grade teacher at Dixie Heights High School in Edgewood, Kentucky. He was 17 when they started having sex.

She pleaded guilty to sexual abuse charges in October 2012. She was sentenced to five years probation and can never apply for a teaching position again.

She resigned from both her high school teaching position and from the Bengals cheerleading squad in late 2011.

She and York announced their engagement on her Facebook page in June.

Richie's attorney, David Gingras, said Jones' allegations that the site harmed her reputation were not in line with her attention-seeking behavior after the posts gained traction on TheDirty.com.

"She went out of her way to draw additional attention to herself," he said. "That's typically not what you see people doing when they claim that something was false about them. If you were damaged, you wouldn't want it repeated."

Gingras said Jones "Streisand-ed" herself on purpose, referring to what's come to be known as "the Streisand effect," a term coined after people became curious about what Barbara Streisand's home looked like after she sued a photographer for taking aerial shots of it.

While Gingras filed a motion in April that Richie's website should be protected by the Communications Decency Act, which protects website publishers from legal responsibility for posting content that comes from third parties, the judge ruled it would not apply, he said. Jones' attorney, Eric Deters, said he disagrees.

"First off, [Richie is] the editor. He actually admits he decides what gets posted. So nothing is posted without his knowledge of it," Deters said.

"She can claim all she wants that something was said that was false. My client didn't write any of it. My client simply runs a website where people talk," said Gingras. "If Sarah changes the law and has website owners held responsible for other people's words, there's no Facebook.

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"We are basically doing what Mark Zuckerberg would do if someone sued him and said, 'Can you prove if the things someone wrote on their Facebook wall were true?'" he said. "That's the position we were put in."

Discussion Questions

1. Describe the tort of defamation.

The tort of defamation, a civil claim, applies to a situation where a false statement and/or a bad faith opinion communicated to a third party results in damage to the plaintiff's reputation. "Libel" is written defamation, while "slander" is oral defamation.

2. As the article indicates, the first trial in this case resulted in a hung jury. From both substantive and procedural perspectives, what are the legal effects of a hung jury?

From a substantive standpoint, a "hung jury" means that the jury cannot agree on the issue of liability (in a civil case) or guilt (in a criminal case); therefore, the jury cannot render a verdict. From a procedural standpoint, a hung jury means the plaintiff (in a civil case) or the prosecutor (in a criminal case) can continue to pursue an action against the defendant.

3. As the article indicates, Richie's attorney, David Gingras, said Jones' allegations that the site harmed her reputation were not in line with her attention-seeking behavior after the posts gained traction on TheDirty.com. In your reasoned opinion, even assuming Jones sought public attention to both herself and the case, should such behavior constitute a valid defense to defamation liability? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, Jones' pursuit of public attention should not be a valid defense to defamation liability. The court should focus on whether the gossip website "TheDirty.com" and its founder Hooman Karamian defamed Jones. What happened after the posts occurred is largely irrelevant to the question of whether the posts defamed Jones. By way of analogy, consider this question: Is an alleged rape victim's consensual sexual activity after the alleged rape relevant to the question of whether she was raped? In your author's opinion, the answer to this question is "no," since it is not evidence directly related to the question of whether the crime occurred.

Article 3: "Wesleyan Rape Victim Pushes Back Against Fraternity's Attempt to Reveal Her Name in Lawsuit"

http://www.huffingtonpost.com/2013/07/08/wesleyan-rape-victim-fraternity-lawsuit_n_3558955.html

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According to the article, attorneys for a woman who was raped at the Wesleyan University Beta Theta Pi house filed a motion in federal court recently that accused the fraternity of trying to intimidate the victim by forcing the court to reveal her identity.

The woman, identified only as Jane Doe in court documents, has proceeded anonymously to date in her civil lawsuit against the fraternity, its national organization and Wesleyan for her rape at the Beta house in October 2010.

The fraternity argued in a motion filed in U.S. District Court recently that Doe should not be granted anonymity while making what they characterize as defamatory statements against Beta, such as claiming in court filings the Wesleyan chapter in Middletown, Connecticut was known as a "rape factory" on campus.

Douglas Fierberg, Doe's attorney, described the move in a statement as a "brutish request by the fraternity."

"[The] motion has absolutely nothing to do with fairness and is really intended to intimidate Jane, and other rape survivors, from bringing civil suit in circumstances where, as here, the truth rightly shocks the normal conscience," Doe's attorneys wrote in a motion filed July 2.

As a freshman at Wesleyan, Doe was assaulted at the frat's Halloween party in 2010 by John O'Neill, who was neither a member of Beta nor a student at the university. O'Neill was convicted of lesser charges in June 2012 and sentenced to 15 months in prison. Doe has since left the school. Her lawsuit claims that the fraternity and university failed to protect her from the assault.

"Simply, this case is not one of those 'exceptional circumstances' requiring plaintiff's anonymity," Jeremy D. Platek, an attorney for the fraternity, said in a letter to Fierberg.

Doe needs anonymity, her attorneys claim, in part due to harassment she has faced since reporting her 2010 assault. The court filing goes on to contend that Wesleyan and Beta have a history of failing to protect women from sexual violence and subsequent harassment after they report the crimes. They cite another woman, referred to under the pseudonym "Mary," who reported being raped at the Beta house in the summer of 2006.

A male Wesleyan dean "pressured Mary into making an oral agreement to resolve her complaint," court papers say. The agreement "purportedly barred the rapist from being on campus after classes, having any contact with Mary, and participating in some senior activities." However, the accused student was not suspended or expelled from Wesleyan.

Mary and her sister suffered harassment from the accused student's peers, according to court documents: "At one point, Mary learned of plans the rapist had to throw a party at the Beta House. She notified Wesleyan, and it intervened to prevent the party. The party was then purposely moved to the apartment *directly next door to Mary's*." (Italics added by Doe's attorneys)

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Doe's attorneys have also cited an essay by Joanna Bourain, titled "Wesleyan's Great, Unless You Get Raped," as further evidence the private university does not adequately respond to sexual misconduct.

"My client, Jane Doe, overcame fear, humiliation and pain to see the man who raped her prosecuted, and, then, to file suit against those who failed to protect her and others from rape at the Beta House," Fierberg said in a statement. "Jane, like other rape survivors, must not be forced by courts to expose her identity to the world as a crushing price for seeking justice."

Discussion Questions

1. In your reasoned opinion, should the plaintiff be allowed to proceed in anonymity with the pseudonym “Jane Doe,” or should she be forced to identify herself? Explain your response.

This is an opinion question, so student responses will likely vary. The strongest argument for the plaintiff’s anonymity is that it increases the likelihood that she will pursue her claim (The pronoun “she” is used because sexual victims are more likely to be female). The strongest argument against the plaintiff’s anonymity is that use of a pseudonym might increase the likelihood that she will pursue a frivolous (i.e., meritless) claim.

2. As the article indicates, the plaintiff was assaulted at Beta Theta Pi's Halloween party in 2010 by John O'Neill, who was neither a member of Beta nor a student at Wesleyan University. Should the fact that O’Neill was neither a member of Beta Theta Pi nor a student at the university immunize the fraternity, its national organization and/or Wesleyan from liability in this case? Why or why not?

The answer to this question depends upon whether Beta Theta Pi (the fraternity) and/or university had a reasonable duty of care to the plaintiff in terms reducing the likelihood of sexual assault. In your author’s opinion, it seems reasonable to assume the fraternity had at least a minimal duty of care to its guests, since the fraternity hosted the party at which the alleged sexual assault occurred. The claim is more difficult against Wesleyan University, but the fraternity is/was affiliated with the university. If the incident occurred on university property, the case against the university is even stronger.

3. In her complaint, the plaintiff alleged Beta Theta Pi was known as a "rape factory" on campus. In making such an allegation, did the plaintiff defame the fraternity? Why or why not?

Describing Beta Theta Pi as a “rape factory” is a bold move on the plaintiff’s behalf. As mentioned in response to Article 1, Discussion Question Number 1 above, the tort of defamation, a civil claim, applies to a situation where a false statement and/or a bad faith opinion communicated to a third party results in damage to the plaintiff’s (in this case, the fraternity’s) reputation. “Libel” is written defamation, while “slander” is oral defamation. “Jane Doe” and her attorney should be prepared to introduce substantive evidence supporting her claim that the fraternity merits such an incendiary label.

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Video Suggestions

Video 1: "Fired Hockey Coach Sued for Cyber Bullying"

http://on.aol.com/video/fired-hockey-coach-sued-for-cyber-bullying-517808880

Discussion Questions

1. Usually, cyber bullying is discussed in the context of young (i.e., under the age of 18) victims. Should adults be allowed to pursue cyber bullying claims? Explain your response.

This is an opinion question, so student responses will likely vary. In your author's opinion, cyber bullying does not just relate to plaintiffs with "thin skin" such as child victims—The terms carries with it allegations of defamation, emotional distress and invasion of privacy, all viable claims for adult victims, assuming the evidence supports such claims.

2. In his complaint, former Wilmette Hockey Association President Chuck Smith has alleged the torts of defamation, emotional distress and invasion of privacy. Describe these torts.

As discussed in response to Article 1, Discussion Question Number 1 above, the tort of defamation, a civil claim, applies to a situation where a false statement and/or a bad faith opinion communicated to a third party results in damage to the plaintiff's reputation. "Libel" is written defamation, while "slander" is oral defamation.

The torts of intentional and negligent infliction of emotional distress relate to situations where, as a direct result of the defendant's wrongful actions (either intentional actions in an intentional infliction of emotional distress claim or negligent actions in a negligent infliction of emotional distress claim), the plaintiff experiences emotional pain and suffering. A plaintiff can recover monetary damages in an emotional distress claim without proving corresponding physical injury.

3. Based on your viewing of the video, does the plaintiff Chuck Smith have a viable claim against the defendant Bob Melton? Why or why not?

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This is an opinion question, so student responses will likely vary. Answering this question depends on whether the fact-finder determines that 1) Melton actually posted the comments online; and 2) if so, whether such comments were actually defamatory, resulted in Smith's emotional distress, and/or represented an unreasonable invasion of Smith's privacy.

Video 2: "California Prison Doctors Illegally Sterilize Female Inmates"

http://video.msnbc.msn.com/all-in-/52425830#52425830

Note: In addition to the above-referenced video, please see the related article below:

"Female Inmates Sterilized in California Prisons without Approval"

http://www.nbcbayarea.com/news/california/Female-Inmates-Sterilized-in-California-Prisons-Without-Approval-214634341.html

According to the article, doctors under contract with the California Department of Corrections and Rehabilitation sterilized nearly 150 female inmates from 2006 to 2010 without required state approvals, The Center for Investigative Reporting has found.

At least 148 women received tubal ligations in violation of prison rules during those five years – and there are perhaps 100 more dating back to the late 1990s, according to state documents and interviews.

From 1997 to 2010, the state paid doctors $147,460 to perform the procedure, according to a database of contracted medical services for state prisoners.

The women were signed up for the surgery while they were pregnant and housed at either the California Institution for Women in Corona or Valley State Prison for Women in Chowchilla, which is now a men's prison.

Former inmates and prisoner advocates maintain that prison medical staff coerced the women, targeting those deemed likely to return to prison in the future.

Crystal Nguyen, a former Valley State Prison inmate who worked in the prison's infirmary during 2007, said she often overheard medical staff asking inmates who had served multiple prison terms to agree to be sterilized.

"I was like, 'Oh my God, that's not right,' " Nguyen, 28, said. "Do they think they're animals, and they don't want them to breed anymore?"

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One former Valley State inmate who gave birth to a son in October 2006 said the institution's OB-GYN, Dr. James Heinrich, repeatedly pressured her to agree to a tubal ligation.

"As soon as he found out that I had five kids, he suggested that I look into getting it done. The closer I got to my due date, the more he talked about it," said Christina Cordero, 34, who spent two years in prison for auto theft. "He made me feel like a bad mother if I didn't do it."

Cordero, released in 2008 and now living in Upland, California agreed, but she says, "Today, I wish I would have never had it done."

The allegations echo those made nearly a half-century ago, when forced sterilizations of prisoners, the mentally ill and the poor were commonplace in California. State lawmakers officially banned such practices in 1979.

Heinrich said he provided an important service to poor women who faced health risks in future pregnancies because of past cesarean sections. The 69-year-old Bay Area physician denied pressuring anyone and expressed surprise that local contract doctors had charged for the surgeries. He described the $147,460 total as minimal.

"Over a 10-year period, that isn't a huge amount of money," Heinrich said, "compared to what you save in welfare paying for these unwanted children – as they procreated more."

The top medical manager at Valley State Prison from 2005 to 2008 characterized the surgeries as an empowerment issue for female inmates, providing them the same options as women on the outside. Daun Martin, a licensed psychologist, also claimed that some pregnant women, particularly those on drugs or who were homeless, would commit crimes so they could return to prison for better health care.

"Do I criticize those women for manipulating the system because they're pregnant? Absolutely not," Martin, 73, said. "But I don't think it should happen. And I'd like to find ways to decrease that."

Martin denied approving the surgeries, but at least 60 tubal ligations were done at Valley State while Martin was in charge, according to the state contracts database.

Federal and state laws ban inmate sterilizations if federal funds are used, reflecting concerns that prisoners might feel pressured to comply. California used state funds instead, but since 1994, the procedure has required approval from top medical officials in Sacramento on a case-by-case basis.

Yet no tubal ligation requests have come before the health care committee responsible for approving such restricted surgeries, said Dr. Ricki Barnett, who tracks medical services and costs for the California Prison Health Care Receivership Corp.

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The receiver has overseen medical care in all 33 of the state's prisons since 2006, when U.S. District Judge Thelton Henderson ruled that the system's health care violated the constitutional ban on cruel and unusual punishment.

The receiver's office was aware that sterilizations were happening, records show.

In September 2008, the prisoner rights group Justice Now received a written response to questions about the treatment of pregnant inmates from Tim Rougeux, then the receiver's chief operating officer. The letter acknowledged that the two prisons offered sterilization surgery to women.

But nothing changed until 2010, after the Oakland-based organization filed a public records request and complained to the office of state Sen. Carol Liu, D-Glendale. Liu was the chairwoman of the Select Committee on Women and Children in the Criminal Justice System.

Barnett said the receiver's top medical officer asked her to research the matter. After analyzing medical and cost records, Barnett met in 2010 with officials at both women's prisons and contract health professionals affiliated with nearby hospitals.

The 16-year-old restriction on tubal ligations seemed to be news to them, Barnett recalled. And, she said, none of the doctors thought they needed permission to perform the surgery on inmates.

"Everybody was operating on the fact that this was a perfectly reasonable thing to do," she said.

Martin, the Valley State Prison medical manager, said she and her staff had discovered the procedure was restricted five years earlier. Someone had complained about the sterilization of an inmate, Martin recalled. That prompted Martin to research the prison's medical rules.

Martin said she and Heinrich began to look for ways around the restrictions. Both believed the rules were unfair to women.

"I'm sure that on a couple of occasions, (Heinrich) brought an issue to me saying, 'Mary Smith is having a medical emergency' kind of thing, 'and we ought to have a tubal ligation. She's got six kids. Can we do it?' " Martin said. "And I said, 'Well, if you document it as a medical emergency, perhaps.'"

Heinrich said he offered tubal ligations only to pregnant inmates with a history of at least three C-sections. Additional pregnancies would be dangerous for these women, Heinrich said, because scar tissue inside the uterus could tear.

Former inmates tell a different story.

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Michelle Anderson, who gave birth in December 2006 while at Valley State, said she'd had one prior C-section. Anderson, 44, repeatedly was asked to agree to be sterilized, she said, and was not told what risk factors led to the requests. She refused.

Nikki Montano also had had one C-section before she landed at Valley State in 2008, pregnant and battling drug addiction.

Montano, 42, was serving time after pleading guilty to burglary, forgery and receiving stolen property. The mother of seven children, she said neither Heinrich nor the medical staff told her why she needed a tubal ligation.

"I figured that's just what happens in prison – that that is the best kind of doctor you're going get," Montano said. "He never told me nothing about nothing."

Montano eagerly agreed to the surgery and said she still considers it a positive in her life.

Dr. Carolyn Sufrin, an OB-GYN at San Francisco General Hospital who teaches at UC San Francisco, said it is not common practice to offer tubal ligations to women who have had one C-section. She confirmed that having multiple C-sections increases the risk of complications, but even then, she said, it's more appropriate to offer women reversible means of birth control.

Lawsuits, a U.S. Supreme Court ruling and public outrage over eugenics and similar sterilization abuses in Alabama and New York spawned new requirements in the 1970s for doctors to fully inform patients.

Since then, it has been illegal to pressure anyone to be sterilized or ask for consent during labor or childbirth.

Yet, Kimberly Jeffrey says she was pressured by a doctor while sedated and strapped to a surgical table for a C-section in 2010, during a stint at Valley State for a parole violation. Jeffrey, 43, was horrified, she said, and resisted.

"He said, 'So we are going to be doing this tubal ligation, right?' " Jeffrey said. "I am like, 'Tubal ligation? What are you talking about? I do not want any procedure. I just want to have my baby.' I went into a straight panic."

Jeffrey produced copies of her official prison and hospital medical files. Those records show Jeffrey rejected a tubal ligation offer during a December 2009 prenatal checkup at Heinrich's office. A medical report from Jeffrey's C-section a month later noted that she again refused a tubal ligation request made after she arrived at Madera Community Hospital.

At no time did anyone explain to her any medical justifications for tubal ligation, Jeffrey said.

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That experience still haunts Jeffrey, who lives in San Francisco with her 3-year-old son, Noel. She speaks to groups seeking to improve conditions for female prisoners and has lobbied legislators in Sacramento.

State prison officials "are the real repeat offenders," Jeffrey added. "They repeatedly offended me by denying me my right to dignity and humanity."

Discussion Questions

1. Critically assess the video and its accompanying article. Does the information presented in the video and/or article conclusively establish that female inmates in California prisons were sterilized without approval, as the articles' headline suggests?

This is an opinion question, so student responses will likely vary. In your author's opinion, despite the Center for Investigative Reporting's allegation that doctors under contract with the California Department of Corrections and Rehabilitation illegally sterilized nearly 150 female inmates from 2006 to 2010, such an allegation is not definitively proven by evidence presented in the video or its accompanying article. Answering this question depends, in large part, on whether 1) female inmates consented to sterilization or were instead subject to "undue pressure" (for further elaboration on the concept of "undue pressure," se the response to Video 2, Discussion Question Number 2 below; and 2) the sterilization procedures performed required (and received) advance California state government approval, or were instead performed as the result of a bona fide "medical emergency."

2. As the article indicates, since the 1970s it has been illegal to pressure anyone to be sterilized. From a legal and/or ethical standpoint, what would constitute "undue pressure?"

"Undue pressure" relates to a situation where a victim is forced into making a decision without true freedom of choice. In essence, the victim is so dominated in an "undue pressure" situation that he/she feels compelled to make a decision in compliance with the dominating party's wishes.

3. According to the article, Valley State Prison OB-GYN Dr. James Heinrich described the $147,460 amount spent on female inmate sterilizations from 1997-2010 as minimal: "...(T)hat is not a huge amount of money, compared to what you save in welfare paying for...unwanted children as they (the female inmates) procreated more." From a professional, legal and ethical standpoint, assess Dr. Heinrich's statement.

Student responses will likely vary as to Dr. Heinrich's professional, legal and ethical credibility in light of the above statement, but in your author's opinion, in his role as a medical professional, Dr. Heinrich should not be expressing a public policy opinion based on cost-benefit analysis of inmate sterilization; rather, Dr. Heinrich should focus on performing medical procedures consistent with his patient's wishes (based on informed consent), the Hippocratic Oath, and applicable state and/or federal law.

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Of Special Interest

This section of the newsletter addresses the ethical question of whether an employer should be allowed to discriminate against an employee on the basis of the employee's weight.

Ethical Dilemma

Ethical Dilemma: "Brooklyn Man Sues Former Employer for Weight Discrimination"

http://abcnews.go.com/blogs/business/2013/06/brooklyn-man-sues-former-employer-for-weight-discrimination/

According to the article, a Brooklyn man has sued his former employer for firing him because of his weight.

A lawsuit, filed June 19 in the Kings County Supreme Court, maintains that Jerry Greenberg, the owner of the art framing store Frame it in Brooklyn, Inc., withdrew an offer of employment to Seth Bogdanove because he was too overweight.

Bogdanove worked at Frame it in Brooklyn from 1994 to 2008, according to court documents. He said he did not want to discuss why he left the store, but emphasized that his decision had nothing to do with medical issues.

After he left, he took adult education classes at the School of Visual Arts and opened a digital archiving and restoration service in 2009, Bogdanove said.

In December 2012, Greenberg e-mailed Bogdanove and asked him to return, Bogdanove said. He added that he agreed and was set to start in January 2013. But when he arrived at Frame it in Brooklyn, he said, Greenberg told him he was no longer welcome.

According to the court documents, Greenberg allegedly told Bogdanove, "Oh, my god, what happened to you, you got so fat!"

Bogdanove said Greenberg handed him $5 to reimburse him for transportation costs and has not spoken to him since.

According to the lawsuit, Bogdanove suffers from obesity partially because of medications he has to take. He said he had the medical conditions for seven years while he worked with Greenberg. He was obese when he left in 2008, but subsequently put on approximately 70 pounds.

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"I decided to sue him because he told me I was too fat to work for him and it hurt my feelings and made me feel like less of a person," said Bogdanove.

Greenberg said he had considered giving Bogdanove freelance work but he looked ill when he showed up.

Bogdanove denied looking ill.

"I had no problem going up the stairs, nor was I sweating," he said.

Note: For further insight regarding the issue of weight discrimination in employment, please see the following article:

"Public Opinion about Laws to Prohibit Weight Discrimination in the United States"

http://onlinelibrary.wiley.com/doi/10.1038/oby.2010.126/full

Discussion Questions

1. Does federal law prohibit employment discrimination on the basis of excessive weight?

Current federal law does not prohibit employment discrimination on the basis of excessive weight. The Civil Rights Act of 1964 only prohibits employment discrimination on the basis of: 1) gender; 2) race; 3) culture; 4) national origin; and 5) religion. Other federal laws enacted since The Civil Rights Act of 1964 prohibit specific types of employment discrimination such as pregnancy discrimination (The Pregnancy Discrimination Act of 1978), disability discrimination (The Americans with Disabilities Act of 1990), etc., but no federal law currently prohibits employment discrimination on the basis of excessive weight. In terms of the aforementioned Americans with Disabilities Act of 1990 (the "ADA,") obesity is not generally considered a disability within its protective ambit.

2. Does New York state law prohibit employment discrimination on the basis of excessive weight?

Despite the fact that New York is widely considered as one of the most progressive (i.e., "liberal") states in the United States, New York state law does not currently prohibit employment discrimination on the basis of excessive weight.

3. Since Bogdanove had no guaranteed employment contract for a term (i.e., a designated period of time), should not Greenberg be allowed to terminate him "at will" (even if the termination occurred on Bogdanove's initial day of re-employment?)

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Given the fact that current federal and state law does not prohibit employment discrimination on the basis of excessive weight, and given the fact that Bogdanove did not have a guaranteed contract for a specific length of time, the employment at will doctrine would technically apply to this case. The employment at will doctrine gives an employer the right to both hire and fire at will, for any reason or for no reason at all, so long as any reason proferred does not violate federal or state anti-discrimination law. With that being said, students should still consider the ethical implications of refusing to hire someone (or firing someone) for being overweight, even if that person could be (or is) a productive employee.

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Of Special Interest

This section of the newsletter will assist you in covering Article 1 ("Family Allegedly Forced from Home by Police Files Rare Third Amendment Suit") of the newsletter.

Teaching Tips

Consider using the following articles to lend further insight into the Third Amendment to the United States Constitution:

Teaching Tip 1: "The Third Amendment and the Issue of the Maintenance of Standing Armies: A Legal History"

http://www.saf.org/lawreviews/fieldsandhardy2.html

Teaching Tip 2: "Is the Third Amendment Obsolete?"

http://scholar.valpo.edu/cgi/viewcontent.cgi?article=2134&context=vulr

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Mc Graw Hill Education

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

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 3, 5 and 8	Chapters 7 and 8	Chapters 2, 42 and 43	Chapter 5
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 3, 5 and 8	Chapters 7 and 8	Chapters 2, 42 and 43	Chapter 5
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 2, 4 and 6	Chapters 5 and 6	Chapters 1 and 24	Chapter 4
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 2, 3 and 6	Chapters 5 and 6	Chapters 4 and 51	Chapter 3
Barnes et al., Law for Business	Chapters 2, 4 and 6	Chapters 5 and 6	Chapters 3 and 25	Chapter 4
Brown et al., Business Law with UCC Applications	Chapters 2, 3 and 6	Chapters 5 and 6	Chapters 1 and 23	Chapter 2
Reed et al., The Legal and Regulatory Environment of Business	Chapters 4, 6 and 10	Chapters 10 and 13	Chapters 2 and 21	Chapter 6
McAdams et al., Law, Business & Society	Chapters 4, 5 and 7	Chapters 4 and 7	Chapters 2, 12 and 13	Chapter 5
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 3 and 9	Chapters 9 and 22	Chapters 5, 11 and 12	Chapter 2
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 3, 6 and Appendix A	Chapters 1 and 6	Chapters 1 and 11	Chapter 1 and Appendix A

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This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 11th Edition 2012© (0073377716)
Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
Kubasek et al., Dynamic Business Law, 2nd Edition 2012© (0073377678)
Kubasek et al., Dynamic Business Law: The Essentials, 2nd Edition 2013© (0073524972)
Kubasek et al., Dynamic Business Law: Summarized Cases, 1st Edition 2013© (0078023777)
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 15th Edition 2013© (0073377643)
McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)
Melvin, The Legal Environment of Business: A Managerial Approach 2011© (0073377694)