



Proceedings

A monthly newsletter from McGraw-Hill

December 2011 Volume 3, Issue 5



The McGraw-Hill Companies

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Dear Professor,

The holiday season and the end of the fall semester are near! Welcome to McGraw-Hill's December 2011 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 3, Issue 5 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the December 2011 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 legal dispute between a groom and a photographer over wedding photographs;
2. United States Supreme Court review of the reliability of eyewitness testimony;
3. The cost of and associated legal liability for fatal automobile crashes.
4. Videos related to a) child discipline versus abuse; and b) parental negligence and a child's disappearance;
5. An "ethical dilemma" related to the ethics of gift-giving in government and in business; and
6. "Teaching tips" related to Article 1 ("Groom Sues Photographer, Demands New Wedding"); and Video 1 ("Texas Judge Confirms Video of Him Beating Daughter, Says 'I Lost My Temper'") of the newsletter.

Here's to a successful culmination of the fall semester!

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Of Special Interest

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

1) A legal dispute between a groom and a photographer over wedding photographs;

2) United States Supreme Court review of the reliability of eyewitness testimony; and

3) The cost of and associated legal liability for fatal automobile crashes .

Hot Topics in Business Law

Article 1: “Groom Sues Photographer, Demands New Wedding”

http://www.msnbc.msn.com/id/45144944/ns/us_news-life/#.TrKKq_SXudA

As the article indicates, of all the many things that make up a wedding, few are more important than the photographs.

Long after the last of the cake has grown stale and the tossed bouquet has wilted, the photos endure, stirring memories and providing vivid proof that the day of one’s dreams took place.

So it is not particularly surprising that one groom, disappointed with his wedding photos, decided to sue. The photographers had missed the last dance and the bouquet toss, the groom, Todd J. Remis of Manhattan, said.

But what is striking, said the studio that took the pictures, is that Mr. Remis’s wedding took place in 2003 and he waited six years to sue. And not only has Mr. Remis demanded to be repaid the \$4,100 cost of the photography, he also wants \$48,000 to recreate the entire wedding and fly the principals to New York so the celebration can be re-shot by another photographer.

Re-enacting the wedding may pose a particular challenge, the studio pointed out, because the couple divorced and the bride is believed to have moved back to her native Latvia.

Although Justice Doris Ling-Cohan of State Supreme Court in Manhattan dismissed most of the grounds for the lawsuit, like the “infliction of emotional distress,” she has allowed the case to proceed to determine whether there was indeed a breach of contract. But she displayed a good deal of amusement about the lawsuit’s purpose in an opinion in January that quoted lyrics from the Barbara Streisand classic “The Way We Were.”

“This is a case in which it appears that the ‘misty watercolor memories’ and the ‘scattered pictures of the smiles ... left behind’ at the wedding were more important than the real thing,” the judge wrote. “Although the marriage did not last, plaintiff’s fury over the quality of the photographs and video continued on.”



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Mr. Remis is suing H & H Photographers, a 65-year-old studio known fondly among thousands of former and current Bronx residents because it chronicled their weddings, bar mitzvahs and communions.

One of the two founders, Curt Fried, escaped Nazi-occupied Vienna in September 1939 as a 15-year-old and was drafted into the United States Army, where he learned to shoot pictures assisting cameramen along the legendary Burma Road supply line to China during World War II. Mr. Fried recalled that in the late 1940s, Arthur Fellig, the celebrated street photographer known as Weegee, twice sought work at the studio when he needed money, but was turned down because he did not own a suit.

In November 2003, Mr. Remis, an equity research analyst, and his fiancée, Milena Grzibovska, stepped into the H & H studio, which was then in Riverdale, met with Mr. Fried and signed a contract to have photographs and videotape taken of their wedding the next month — on December 28 — for \$4,100.

It was a small party, with fewer than 40 guests, at Castle on the Hudson in Tarrytown. Photographs show a cheerful bride and groom surrounded by delighted relatives, including Ms. Grzibovska's mother, Irina, and her sister Alina, who traveled from Latvia.

But a month after the wedding, when Mr. Remis returned to the studio to look over the proofs, he complained that the three-person crew had missed the last 15 minutes — the last dance and the bouquet toss. He noted in a deposition last July that the employees at H & H did not respond in a courtly fashion.

“I remember being yelled at more than I have ever been yelled at before,” Mr. Remis said. In his lawsuit, he also complained that the photographs were “unacceptable as to color, lighting, poses, positioning” and that a video, which he had expected to record the wedding's six hours, was only two hours long.

“I need to have the wedding recreated exactly as it was so that the remaining 15 percent of the wedding that was not shot can be shot,” he testified.

Mr. Fried, now 87, chuckles at this idea: “He wants to fly his ex-wife back and he doesn't even know where she lives.”

Mr. Fried said Mr. Remis left the studio in 2004 with 400 proofs — essentially small photographs used for selecting a few dozen photographs for the album; Mr. Remis claims “the office kept everything.” But a 2004 magazine published by Mr. Remis's alma mater, Bowdoin College, which is also online, displays a photograph of the bride and groom in a feature on alumni weddings. Mr. Fried said it was a photograph his firm took.



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The couple separated around 2008 and their divorce, which Mr. Remis contends was amicable, was finalized in 2010. Mr. Remis sued in 2009, just before the statute of limitation was about to expire, according to Mr. Fried.

Mr. Remis testified that he wanted photographs of the wedding, even if it ended in divorce and even if Mr. Fried contended he already had them.

“It was unfortunate in its circumstances,” he said, “but we are very much happy with the wedding event and we would like to have it documented for eternity, for us and our families.”

Mr. Fried retired in 2004 and turned his half of the business over to his son Dan, who now operates the studio with Lawrence Gillet, a son of the other founder, from a loft in Irvington, in Westchester County.

Dan Fried said that the costs of defending the lawsuit had already matched the amount sought by Mr. Remis and that it was hurting his business’s bottom line. He said the case was “an abuse of the legal system.”

Mr. Remis’s lawyer works for Goodwin Procter, where Mr. Remis’s father, Shepard M. Remis, is a litigation partner. The younger Mr. Remis has testified that he is paying his lawyer himself. Curt and Dan Fried are paying their lawyer, Peter Wessel, themselves, they said, and the costs — \$50,000 — the time the suit has taken and the distress have taken a toll.

“I had a good life, thank God,” Curt Fried said, “and at the end of my life this hits me in the face.”

Discussion Questions

1. As the article indicates, Justice Doris Ling-Cohan of State Supreme Court in Manhattan dismissed most of the grounds for the lawsuit, including an “infliction of emotional distress” claim. In your reasoned opinion, do the facts indicate infliction of emotional distress? Should the judge have allowed a jury to decide the legitimacy of the infliction of emotional distress claim?

In order for Justice Ling-Cohan to dismiss the infliction of emotional distress claim, she must be convinced that the pleadings and associated facts do not demonstrate a legitimate claim for emotional distress. There are two (2) types of emotional distress claims recognized under tort law: 1) intentional infliction of emotional distress; and 2) negligent infliction of emotional distress. Since there is no evidence of intent to harm in this case, the inquiry must focus on whether the case demonstrates negligence resulting in emotional distress. Negligence represents the failure to do what a reasonable person would do under the same or similar circumstances. If the photographer did not follow industry standard or customary professional practice in this case, the photographer arguably failed to do what a reasonable photographer would have done. In order to recover for damages based on negligence, however, the damages must be reasonably foreseeable, and this is perhaps why Justice Ling-Cohan dismissed the emotional distress claim—namely, due to the



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contention that it would not be foreseeable that the groom would need to reconvene the involved parties and stage the wedding, after the marriage's dissolution, in order to capture the appropriate photographs!

2. In your opinion, do the facts demonstrate the photographer's breach of contract?

Although student opinions will likely vary in response to this question, the key to a determination of breach of contract in this case is whether the photographer failed to follow industry standard and customary practices in capturing the wedding on film.

3. If the photographer in fact breached the contract, what would be the appropriate amount of damages?

In order to recover in a breach of contract action, the plaintiff must prove not only breach, but also resulting damages. As discussed previously, it seems absurd to request as damages an amount of money necessary to reconvene the bride and groom for a "Kodak moment" of a dissolved marriage!

Article 2: "Supreme Court Examines Reliability of Eyewitness Testimony"

<http://www.usatoday.com/news/washington/judicial/story/2011-11-02/supreme-court-eyewitness-testimony-reliability/51049540/1>

According to the article, United States Supreme Court justices recently challenged the notion that testimony from arguably unreliable eyewitnesses should be specially scrutinized at trial because of how it can lead to wrongful convictions.

"Why is unreliable eyewitness identification any different from unreliable anything else" introduced at trial, Justice Antonin Scalia asked during arguments in a New Hampshire case.

"Eyewitness identification evidence is unique," responded lawyer Richard Guerriero. He represents a man whose theft conviction was based partly on the report of a woman who said she watched him out her apartment window. Guerriero called mistaken IDs "the leading cause of miscarriages of justice."

Justice Elena Kagan said jailhouse informants could also create an especially "unreliable" category.

"I understand you have very good empirical evidence which should lead us all to wonder about the reliability of eyewitness testimony," she said. "I'm just suggesting that eyewitness testimony is not the only kind of testimony which people can do studies on and find that it's more unreliable than you think."



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Longstanding national concerns about the trustworthiness of eyewitness accounts formed the backdrop of this dispute. The American Psychological Association, which has entered the case on the defendant's side, says, "Controlled experiments as well as studies of actual identifications have consistently found that the rate of incorrect identifications is approximately 33 percent."

Supreme Court cases dating to the 1960s have similarly stressed that eyewitness identifications are particularly untrustworthy and can lead to tainted jury verdicts and injustice. The question is what safeguards for due process of law and fairness are necessary.

New Hampshire Attorney General Michael Delaney, urging the court to uphold the theft conviction, said identification evidence should be specially reviewed by a judge only when police obtained the ID through an unnecessarily suggestive police method — for example, in photos shown to a witness. The federal government and 29 states are siding with New Hampshire, urging the high court to leave the question of eyewitness reliability generally to a jury.

The case arose after Barion Perry was identified by a woman watching from her window as a man peered into cars in a parking lot below, broke into one of them and took a stereo system.

A Nashua police officer who had been called to the scene stopped Perry when she saw him with a set of speakers. He said he had been there innocently and was "just moving them." When another officer asked the witness in the apartment for a description of the person who broke into the car, the woman said it was the man in the lot talking to the other officer.

Appealing Perry's theft conviction, Guerriero said due process of law required the trial judge to specially review the witness's identification because Perry was standing next to a police officer when she identified him, possibly suggesting that police considered him a suspect.

Guerriero argued that special review of testimony is necessary when an identification is made under any suggestive circumstances, even those unrelated to police conduct.

Due process concerns arise, Attorney General Delaney countered, if it looks like police officers are "essentially stacking the deck, putting their thumb on the scale and skewing the fact-finding process." He said police officers did not try to point the witness toward Perry.

Delaney noted in his brief that the witness was cross-examined at trial about the view from her fourth-floor apartment window and how it was partially blocked by a van, and that the jury nonetheless found Perry guilty.

Justice Stephen Breyer implied that no new judicial review should be required because judges already consider, before evidence is put to jurors, whether its relevance might be outweighed by the chance it would be misleading.



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Justice Anthony Kennedy told Guerriero, "I don't know what you want the police to do in this case." Kennedy said it might have been "improper police conduct" for police not to have asked the woman in the apartment who she saw in the lot below.

A ruling in the case of *Perry v. New Hampshire* is likely by the end of June when the justices usually recess for the summer.

Discussion Questions

1. In your opinion, is eyewitness testimony reliable proof of guilt? Why or why not?

Although student opinions will likely vary in response to this question, the reliability of eyewitness testimony depends on the circumstances surrounding the particular case, including the credibility and character of the subject eyewitness. The main point of the article is that eyewitness testimony is not infallible, and that perhaps judicial safeguards should be put into place to advise the jury accordingly.

2. If there are indeed reliability problems with eyewitness testimony, what (if any) safeguards for due process of law and fairness are necessary for a defendant charged with a crime and faced with conviction at least in part on the basis of eyewitness testimony?

Perhaps through standard jury instructions, the judge should advise the jury (prior to its verdict deliberation) that eyewitness testimony is not infallible. Ultimately, however, the evidentiary weight and credibility of eyewitness testimony is for the jury to determine.

3. As the article indicates, United States Supreme Court Justice Elena Kagan takes particular issue with jailhouse informants. Justice Kagan believes jailhouse informants could create an especially "unreliable" category of eyewitnesses to crimes. Do you share Justice Kagan's concerns regarding the reliability of jailhouse informants? Why or why not?

A jailhouse informant could have ulterior motives in terms of identifying a fellow inmate as having committed a crime. First and foremost, the jailhouse informant could expect favorable treatment in return for providing testimony favorable to the prosecution, and the informant might be willing to say whatever the prosecution wants him or her to say in return for such favorable treatment. Just like any other eyewitness, however, the evidentiary weight and credibility of jailhouse informant testimony is ultimately for the jury to determine.



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Article 3: "AAA: Fatal Motor Vehicle Crash Costs \$6 Million"

<http://www.usatoday.com/news/nation/story/2011-11-02/fatal-vehicle-crashes-cost-millions/51051030/1>

According to the article, the emotional toll for Americans who lose a friend or loved one in a motor vehicle crash has a steep financial counterpart — an average \$6 million per fatal accident, according to auto club AAA.

In a new report comparing the cost to the nation of motor vehicle crashes with that of traffic congestion, AAA analyzed the financial damage of traffic crashes in 99 urban areas. It concluded that the cost of crashes in those cities was more than three times that of congestion: \$299.5 billion compared with \$97.7 billion. The congestion costs include the price of gas wasted idling in traffic and loss of motorists' time.

The study, which used 2009 data, found that the average cost of an injury-only crash is \$126,000. AAA based its estimates on Federal Highway Administration data that place dollar values on 11 components: property damage; lost earnings; loss of household activities; medical costs; emergency services; travel delays; vocational rehabilitation; lost time at work; administrative costs; legal costs; and pain and lost quality of life.

The costs of fatal crashes and those causing serious injuries have risen sharply since 2005, the last time AAA did a comparable study; then, the cost of a traffic fatality was \$3.24 million, an injury crash \$68,170.

AAA's study is designed to push road safety to the forefront of the national debate over transportation priorities as Congress considers a long-term highway funding bill, says Chris Plaushin, AAA's director of federal relations.

"We wanted to raise the profile and raise the awareness," he says. "Right now, it's jobs, it's construction, it's economic growth that are being talked about. This is part of our effort to bang the drum about safety."

David Schrank, co-author of an annual analysis of congestion patterns in the USA, says it would be difficult to try to reduce either congestion or crashes without also working on the other.

"A lot of times, if you look at locations where you have congestion, you'll also find plenty of crashes occurring, and vice versa," says Schrank of the Texas Transportation Institute, a research arm of Texas A&M University. He says previous studies have found that 25%-40% of congestion results not from outmoded roads or heavy traffic but from crashes, weather events and objects in the roadway.

Motor vehicle crashes are the leading cause of death among people ages 5-34 in the USA.



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The per-person cost of crashes causing deaths or serious injuries varies among similar-sized cities: from \$2,016 in Miami-Fort Lauderdale to \$796 in San Francisco among large cities; from \$3,747 in Baton Rouge to \$618 in Colorado Springs among medium cities, and from \$2,787 in Beaumont-Port Arthur, Texas, to \$670 in Boulder, Colo., among small cities.

AAA makes recommendations to reduce the financial impact of crashes. Among them: more investment in proven safety measures such as cable barriers along medians to prevent crossover accidents, modernized roundabouts and rumble strips.

Discussion Questions

Note: Although the article focuses on the public policy implications of the financial costs of automobile accidents (for example, the federal and state governments investing more in highway safety measures such as cable median barriers, roundabouts and rumble strips in order to reduce the financial impact of crashes), the following questions relate to personal, parental and employer tort liability for damages resulting from automobile accidents.

1. In light of the tremendous costs associated with injury-only automobile accidents (on average, \$126,000) and fatal automobile accidents (on average, \$6 million), would you favor tort reform limiting a defendant's personal liability for negligence in an automobile accident case? Why or why not?

Although student opinions will vary in response to this question, the prospect of personal liability for a multi-million dollar verdict in an automobile accident case is staggering. In many instances, any automobile insurance the defendant has will not be sufficient to cover the entire amount of the verdict, and the defendant's personal assets will be subject to execution on the verdict.

Whether this personal exposure should result in tort reform capping personal liability for negligence should make for interesting classroom discussion.

2. In light of the financial impact data mentioned in the article and in Discussion Question Number 1 above, would you favor tort reform limiting parental liability for the negligence of a child driver (Under current tort law, if a parent allows a child to drive his or her car—a situation known as “permissive use” or “family purpose”—the parent is liable for injury or death caused by the negligence of his or her child in operating the automobile)? Why or why not?

Similar to the issue addressed in Discussion Question 1 above, parental liability for the negligence of a child driver is staggering; potentially, such liability could be financially ruinous for parents who simply wanted to provide an opportunity for their children to drive to and from school, their part-time jobs, the movies, etc.



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The law in this area is clear—If a parent allows his or her child to use a family car and the child negligently hurts or kills someone in an automobile accident, the parent is personally liable for any amount of the verdict not covered by insurance. Once the insurance coverage is exhausted, a parent’s personal assets can be seized to satisfy a judgment resulting from his or her child’s negligence.

As is the case in Discussion Question 1 above, whether this legal exposure should result in tort reform capping parental liability for their child’s negligence should make for interesting classroom discussion.

3. In light of the financial impact data mentioned in the article and in Discussion Question Number 1 above, would you favor tort reform limiting employer liability for the negligence of an employee driver (Under current tort law, if an employer allows an employee to drive a car in the “course and scope” of employment—a situation known as “respondeat superior,” or let the “master” answer)—the employer is liable for injury or death caused by the negligence of the employee in operating the automobile)? Why or why not?

Similar to the issues addressed in Discussion Questions 1 and 2 above, employer liability for the negligence of an employee is staggering; potentially, such liability could be financially ruinous for an employer who simply wanted to provide an opportunity for their employees to drive an automobile in the fulfillment of work responsibilities.

The law in this area is clear—Under the doctrine of respondeat superior, an employer is liable for the negligence of an employee committed in the “course and scope” of employment; i.e., if the negligent act was related to carrying out of work responsibilities. If an employer allows an employee to use a company vehicle (or the employee’s own vehicle, for that matter) in running a work-related task, contacting a customer, or performing any other work-related responsibility and the employee negligently hurts or kills someone in an automobile accident, the employer is liable for any amount of the verdict not covered by insurance. Once the insurance coverage is exhausted, the employer’s assets can be seized to satisfy a judgment resulting from his or her employee’s negligence.

As is the case in Discussion Questions 1 and 2 above, whether this legal exposure should result in tort reform capping employer liability for their employee’s negligence should make for interesting classroom discussion.



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Video Suggestions

Video 1: "Texas Judge Confirms Video of Him Beating Daughter, Says 'I Lost My Temper'"

Warning: This video contains graphic material.

http://www.cnn.com/2011/11/02/justice/texas-video-beating/?hpt=hp_t2

Please see the following, accompanying article at the above-referenced website:

A woman who launched a firestorm by posting a 2004 video of her father, a Texas judge, beating her on the Internet said recently that violence was a regular occurrence in her family home.

"It did happen regularly, for a period of time, and I could tell, because of the pattern, that things were escalating again," Hillary Adams, now 23, said. She said she left her video camera on her dresser recording and covered its light with a scarf in order to capture the video.

Her father, Aransas County, Texas, Court-At-Law Judge William Adams, faces a police investigation and a judicial probe after the graphic video surfaced of him striking his then-16-year-old daughter repeatedly while cursing at her and berating her.

William Adams was temporarily relieved of his duties, and a visiting judge will take over his caseload while the matter is being investigated, according to the office of Aransas County Administrative Judge Burt Mills.

In an interview outside his Rockport, Texas, home recently, Adams confirmed to a reporter that he was the man beating his daughter with a belt and a board on the video.

"She's mad because I've ordered her to bring the car back, in a nutshell, but yeah, that's me. I lost my temper," Adams told the station. "Her mother was there, she wasn't hurt ... it was a long time ago ... I really don't want to get into this right now because as you can see my life's been made very difficult over this child."



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Adams continued: "In my mind I have not done anything wrong other than discipline my child when she was caught stealing. I did lose my temper, I've apologized. It looks worse than it is."

Hillary Adams said her father was "making light of the situation."

"I just can't believe he would say something like he doesn't think it's a big deal."

Adams appeared recently on television with her mother, Hallie Adams. Although the older woman participated in the videotaped beating, Hillary Adams said she has since left the marriage because of the abuse and has apologized.

"We're very close now," she said when asked if she was angry at her mother. "When I showed her the video, she started crying, hasn't stopped apologizing, and I forgive her because she knows everything that happened."

Hallie Adams, asked how she could condone or participate in the incident, acknowledged, "It's chilling," but said. "My answer to you and to the world is something that I've been hiding for a very long time. It's a family secret, and that's addiction" on her husband's part. She did not elaborate, but said, "I lived in an environment of dysfunction and it steadily got worse." She said she left her husband when Hillary Adams was 6 months old and "he shamed me into going back."

"I was completely brainwashed and controlled," Hallie Adams said. "I did every single thing he did." Hillary Adams said she waited seven years to release the video because at the time it was shot, she was still a minor and living under her father's roof. She didn't know what might happen to herself, her mother or her younger sister, she said.

The 2004 beating occurred when her father was punishing her for using the Internet "to acquire music and games that were unavailable for legal purchase at the time," Hillary Adams wrote on the Internet posting. She said she released the video after being harassed by her father.

"It was the straw that broke the camel's back," she said. "It wasn't any huge happening or anything." She said she told her father she had the video, "and he didn't seem to think anything of it, and basically dared me to post it."

The video posting said, "Judge William Adams is not fit to be anywhere near the law system if he can't even exercise fit judgment as a parent himself. Do not allow this man to ever be re-elected again. His 'judgment' is a giant farce. Signed, Hillary Adams, his daughter."

Receiving an outpouring of support after posting the video has been like a form of therapy, she said.

"People are believing us now, instead of calling us liars like they have in the past," she said.

The video is punctuated by cracks of the man's belt and the girl's screams and cries.



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At one point, the man says to his near-hysterical daughter, "What happened to you, Hillary? Once you were an obedient, nice little girl. Now you lie, cheat and steal."

At another point in the 7 1/2-minute video, he yells at her, "You want to put some more computer games on? You want some more?"

"Are you happy?" he asks her. "Disobeying your parents? You don't deserve to f---ing be in this house."

He also berates the girl's mother for allowing a "f---ing computer" in the house.

The older woman also strikes the girl with a belt once, and near the end of the video instructs the girl not to "touch one other thing on the computer besides your schoolwork until you are given notice otherwise."

Hillary Adams "has had ataxic cerebral palsy from birth that led her to a passion for technology, which was strictly forbidden by her father's backwards views," according to the posting on the YouTube video.

Aransas County Attorney Richard Bianchi said his office has been overwhelmed with calls and e-mails, including some from overseas, since the video went viral on the Internet.

"Just a sad day. It's unfortunate for all the people in that video. It doesn't bode well for the image of our community or our judiciary or our legal community in Aransas County," Bianchi said.

William Adams is up for re-election in three years. He was elected to a four-year term last year.

Adams told the media that the conduct is "not as bad as it looks on tape." The judge said he had contacted judicial review officials in Austin and "more will come out" in the investigation.

Asked what he might mean, Hallie Adams said "I think that the story that's going to come out ... in his mind is that he's projected his problem onto me. For the entire four years since I've left the marriage, I've been abused and harassed through texts, e-mail." She said she told William Adams in June that she would not speak to him again, and "he has threatened to file for modification and take my younger daughter away from me."

A Facebook posting attributed to Hallie Adams states: "I am praying for my daughters and me and my family to heal in all ways from emotional and physical abuse, for the current and continuing abuse of my children and me that has been ongoing to end -- starting now -- for my daughters to both finally be able to go to counseling both individually and as a family group with their dad's approval, encouragement, involvement and support, for him to finally make amends to all of us, talk openly with us, and take the first steps to letting our broken family heal."



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Asked whether she wants her father to lose his job, Hillary Adams said "I think wishing anybody to lose their job is not a really good thing to do," but "his being fit for the job, that's something I really can't say that he is."

She said she believes her father has been punished enough by the video being made public, "and I just think he really needs help and rehabilitation. We need to get him counseling or something."

Asked if she regretted posting it, she said, "I regret that some of my friends and some people close to me have kind of had trouble with this, and of course I regret that it's my own father. I'm having very mixed feelings about that, but at the same time so many people are telling me I did the right thing."

A person identifying herself as Hillary Adams, on a Twitter account using the same username as the video posting, said, "I'm not sure how much I should say, except that above all we need to help my father instead of condemning him."

Aransas County District Attorney Patrick Flanigan said authorities are looking at numerous factors, including the child's age and the statute of limitations.

The law is complex on which charges could be brought, he said, and which statutes may apply -- which is all speculation until the video is confirmed to be authentic.

"We're in a fact-finding situation now to determine what is true," he said. His office will look at how the law has changed in the past couple of years, as there could have been different laws in effect at the time.

The possibility of an alleged abuser holding a position of authority such as a judge "doesn't matter and shouldn't matter" in the investigation, District Attorney Flanigan said, adding, "It will be a normal review."

As a judge, Adams handles misdemeanor cases, including family-related and juvenile court issues, Flanigan said. Those cases rarely move to the criminal side or cross to his purview, he said.

"We want to get to the bottom of it ... regardless of who the person is," he said.

Police and the district attorney are taking the investigation seriously, Jayroe, the police chief, said.

Jayroe said his department has asked the Texas Department of Public Safety for assistance with an investigator. "It's the first time in 22 years we've asked for assistance," he said.



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Discussion Questions

1. In your reasoned opinion, is this case merely a case involving parental discipline of a child, or is it child abuse?

Present the question, and then get out of the way of student discussion. More conservative students will likely quote the old adage "Spare the rod and spoil the child," while more progressive/liberal students will likely conclude that the video clearly depicts child abuse.

2. In your reasoned opinion, is this an "assault and battery" case? Why or why not?

Assault is legally defined as the apprehension or fear of immediate and offensive bodily contact, while battery is defined as the actual offensive bodily contact itself. Whether parents should be allowed an exception to the application of these definitions is a hotly-contested subject.

3. As the video and the accompanying article indicate, the child's mother was present when the incident took place (in fact, she videotaped the incident). If the child's father should be held legally responsible for what happened, should the mother be held responsible as well? Why or why not?

If the answer to this question is "no," such an answer would be based on the argument that the mother had no control over her husband, and lived in an environment of fear that made it impossible for her to confront her husband. If the answer to this question is "yes," such an answer would be based on the argument that she aided and abetted her husband in the abuse (assault and battery) of their daughter.

Video 2: "Missing Baby's Mom: I Was Drunk"

<http://www.cnn.com/video/#/video/us/2011/10/17/hln-baby-lisa-mom-drunk.cnn>

Discussion Questions

1. As video indicates, the child's mother was drunk (by her own admission) when the child went missing. In light of this case, as well as scores of other cases like it, do you favor civil liability for ineffective parenting (For example, allowing a child or the child's estate to sue his or her parent if the parent's lack of proper care resulted in the child's injury or death?) Why or why not?

Student answers will likely vary in response to this question. When your author asks this question to students, many students are uncomfortable with the notion of a child suing his or her parent(s). Perhaps cases of gross parental negligence (as would arguably be the case here, if the child's mother was indeed intoxicated when her child went missing) would convince reasonable minds that child neglect does constitute a tort.



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2. In light of the fact that the child's mother was drunk (by her own admission) when the child went missing, should the mother be held criminally responsible? If so, on what basis?

If the mother is to be held criminally responsible in this case, it would be based on the theory of child neglect (unless the facts demonstrate murder or manslaughter, in which case the prosecutor would hold the parent responsible for the more serious criminal offense.)

3. Research Missouri state law regarding child neglect. What is the definition of child neglect in Missouri? Based on the facts demonstrated in this case, is this a *prima facie* ("at first look" or "on its face") case of child neglect?

According to Missouri law (Ann. Stat. Section 210.110), child neglect means the "failure to provide, by those responsible for the care, custody, and control of the child, proper or necessary support." This is a very broad definition, meaning that many scenarios could constitute child neglect. If the facts in this case are true, the mother's intoxication, rendering her incapable providing proper care for her child, could constitute child neglect.

For a summary of state-by-state child abuse and neglect laws, see the "Child Welfare Information Gateway" at http://www.childwelfare.gov/systemwide/laws_policies/statutes/define.pdf



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Of Special Interest

This section of the newsletter addresses the ethics of gift-giving in government and in business.

Ethical Dilemma

“Lobbyists Can Skirt Ethics Reform, Says Abramoff”

http://www.cbsnews.com/8301-18560_162-57317459/lobbyists-can-skirt-ethics-reform-says-abramoff/?tag=broadcast

Note: For additional reference, also view the accompanying video at the above-referenced website.

According to the article and accompanying video, Congress passed new ethics reform laws soon after the stink began to rise from the biggest political corruption scandal in decades. But the man at the center of that scandal, ex-lobbyist and now ex-convict Jack Abramoff, says new rules don't work, because lobbyists can always find ways around them. "We're smarter than they are and we'll overcome it," he claims.

Though he says he now regrets using cash and gifts to buy influence in Congress - among the crimes that landed him in prison for over three years - could he still do the same thing today despite new ethics laws? "Yeah... the system hasn't been cleaned up at all," he says. "There's an arrogance on the part of lobbyists...that no matter what they come up with...we'll just find another way through."

The reforms are little more than window dressing says Abramoff, whose crimes resulted in charges brought against 20 congressional staffers, a congressman and several Bush administration officials.

"You can't take a congressman to lunch for \$25 and buy him a hamburger or steak...but you can take him to a fundraising lunch and not only buy him that steak, but give him \$25,000 extra and call it a fundraiser...same access...same interaction with that congressman," says Abramoff. "So the people who make the reforms are the people in the system."

Whether it's an expensive gift, a job, event tickets, vacations or straight cash, Abramoff calls it all bribery and says nearly all politicians are guilty of it. "I am talking about giving a gift to somebody who makes a decision on behalf of the public and at the end of the day that's really what bribery is," he says. "But it's done every day and it's still being done...There were very few members [of Congress] ...who didn't at some level, participate in that."



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Abramoff tells Stahl the number one weapon used to influence a member of Congress was the promise of a future, high-paying job to a member's top staffers. "Now the moment I said that to them or any of our staff said that to them, that was it. We owned them," he says. "And what does that mean? Every request...of our clients, everything that we want, they're going to do. Not only that, they're going to think of things we can't think of to do," Abramoff says.

Such tactics resulted in Abramoff's lobbying firm holding sway in the offices of about 100 congressional representatives, he says -- nothing to be proud of by this prince of payola's reckoning. "I would view that as a failure, because that leaves 335 offices that we didn't have strong influence in."

Note: Before addressing the following Discussion Questions, please see the video accompanying this article at the above-referenced website.

Discussion Questions

1. If the lack of ethics in Congress is a problem (as most Americans believe), what, within the province of the law, is the solution?

In your author's opinion, nothing other than the enactment and enforcement of stricter ethics laws limiting Congressional lobbying could solve this problem. The public has favored the enactment of such laws for years, but the United States Congress (which makes the law) refuses to enact and enforce such laws. This failure likely contributes to the incredibly low approval rating of Congress—in the single digits, according to some opinion polls.

2. In your opinion, which is worse—the lack of ethics in Congress, or the lack of ethics in business?

This is an opinion question, so student responses will likely vary. For those identifying either the lack of ethics in Congress or in business, there is a host of information available to support their conclusion.

3. If the lack of ethics in business is a problem (as most Americans believe), what is the solution?

In your author's opinion, two developments could solve this problem:

- a. The enactment and enforcement of stricter laws mandating ethical business practices; and*
- b. Self-policing by businesses in terms of the development and enforcement of their own internal code of ethics.*



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In terms of the enactment and enforcement of strict business ethics laws, there is progress in this area, with the Sarbanes-Oxley Act (mandating executive liability for the accuracy of their corporation's financial statements) being an excellent example. In terms of business self-policing through the creation and enforcement of their own internal code of ethics, many companies have chosen to "do the right thing" by including such expectations in their corporate mission statements and codes of conduct.



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Of Special Interest

This section of the newsletter will assist you in covering:

Article 1 ("Groom Sues Photographer, Demands New Wedding"); and

Video 1 ("Texas Judge Confirms Video of Him Beating Daughter, Says 'I Lost My Temper'").

Teaching Tips

Teaching Tip 1 (Related to Article 1): Chart: Statutes of Limitations in All 50 States (Six Years for Breach of Contract in New York)

As Article 1 indicates, the plaintiff sued the photographer just before the New York statute of limitations for breach of contract was set to expire. Use the following website, and its related information, to discuss with students the reasonableness of statutes of limitations periods in general, and the six-year statute of limitations period for breach of contract in New York:

<http://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html>

Teaching Tip 2 (Related to Video 1): Texas Assault and Battery Laws

Use the following website, including the information presented below, to discuss whether the video indicates mere child discipline, or child abuse (in the form of assault and battery):

<http://www.assaultandbattery.org/texas/>

Assault charges in Texas can range from a simple threat or argument, a fistfight or brawl, or a violent attack with a dangerous weapon.

Under Texas law, you can be charged with assault resulting from an incident with no physical contact.

Acts of Assault

An act of assault can be one of three things:

1. Intentionally, knowingly, or recklessly causing bodily injury to another person.
2. Intentionally or knowingly threatening someone with bodily injury.
3. Intentionally or knowingly causing physical contact in a manner considered offensive or provocative.

Reasonable Fear



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For a threat to rise to the level of a criminal assault, the threat has to put the person in reasonable fear of injury.

Assault Arrests

For the police to arrest you on the spot on an assault charge, they have to actually witness the act. If the police are not there to witness the assault, then they can write you a complaint (citation) or notice to appear in court, or they can seek an arrest warrant from a judge.

The exception to this is with domestic assault or domestic violence accusations, in which case the police in Texas are authorized to arrest you and remove you from the premises.

Texas Simple Assault – Laws & Penalties

A **simple assault** that results in minor injuries is usually a **Class A misdemeanor** under Texas law. A class A misdemeanor carries penalties of fines of up to \$4000, and up to 1 year in jail.

A **simple assault** that only involved threatening or touching is usually a **Class C misdemeanor** under Texas law. A class C misdemeanor carries a penalty of fines of up to \$500.

However, a threatening assault against an elderly person would be a Class A misdemeanor, or against a sports official/referee/umpire would be a Class B misdemeanor.

Other Assault Penalty Enhancement Factors

A simple assault can become a **3rd degree felony assault** if

- a. it is committed against a public servant or government official.
- b. it is committed against a security guard or emergency services worker
- c. it is committed against a family member or person with whom you have a domestic relationship, and you have a previous **domestic violence** or domestic assault conviction.

A third degree felony offense carries a maximum penalty of 10 years in prison, and a \$10,000 fine.

Texas Aggravated Assault Laws (Assault with a Weapon)

An assault is considered an aggravated assault if 1) serious injury is caused, or 2) a weapon is used in committing the assault.

Aggravated assault is most often a 2nd degree felony, with possible penalties of 2-20 years in prison, and fines of up to \$10,000.



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Aggravated Assault Penalty Enhancement Factors:

If you commit an aggravated assault against someone with whom you have a domestic relationship, or against a public official, police officer, emergency worker, security guard, witness, or informant, the charge becomes a 1st degree felony, with penalties of 5 years to life in prison.



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Chapter Key for McGraw-Hill/Irwin Business Law Texts

| | Hot Topics | Video Suggestions | Hypothetical or Ethical Dilemmas | Teaching Tips |
|--|--------------------------|--------------------|----------------------------------|-----------------------|
| Kubasek et al., Dynamic Business Law | Chapters 7, 8, 13 and 20 | Chapters 7 and 8 | Chapter 2 | Chapters 7, 13 and 20 |
| Kubasek et al., Dynamic Business Law: The Essentials | Chapters 2, 5, 7 and 12 | Chapters 2 and 5 | Chapter 2 | Chapters 2, 7 and 12 |
| Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition | Chapters 5, 7, 9 and 18 | Chapters 5 and 7 | Chapter 4 | Chapters 5, 9 and 18 |
| Barnes et al., Law for Business, 11th Edition | Chapters 5, 7, 9 and 18 | Chapters 5 and 7 | Chapter 3 | Chapters 5, 9 and 18 |
| Brown et al., Business Law with UCC Applications Student Edition, 12th Edition | Chapters 5, 6, 7 and 15 | Chapters 5 and 6 | Chapter 1 | Chapters 5, 7 and 15 |
| Reed et al., The Legal and Regulatory Environment of Business, 15th Edition | Chapters 8, 9, 10 and 12 | Chapters 10 and 12 | Chapter 2 | Chapters 8, 9 and 12 |
| McAdams et al., Law, Business & Society, 9th Edition | Chapters 4, 6, and 7 | Chapters 4 and 7 | Chapter 2 | Chapters 4 and 6 |
| Melvin, The Legal Environment of Business: A Managerial Approach | Chapters 6, 7, 9 and 22 | Chapters 9 and 22 | Chapter 5 | Chapters 6, 7 and 22 |
| Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society | Chapters 1, 5 and 6 | Chapters 1 and 6 | Chapter 1 | Chapters 1 and 5 |



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This Newsletter Supports the Following Business Law Texts

- Barnes et al., Law for Business, 10th Edition, 2009© (007352493X)
- Brown et al., Business Law with UCC Applications Student Edition, 12th Edition, 2009© (0073524948)
- Kubasek et al., Dynamic Business Law, 2009© (0073524913)
- Kubasek et al., Dynamic Business Law: The Essentials, 2010© (0073377686)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition, 2010© (0073377643)
- McAdams et al., Law, Business & Society, 9th Edition, 2009© (0073377651)
- Reed et al., The Legal and Regulatory Environment of Business, 15th Edition, 2010© (007337766X)
- Melvin, The Legal Environment of Business: A Managerial Approach, 2011© (0073377694)

