



# Proceedings

A monthly newsletter from McGraw-Hill



December 2013 Volume 5, Issue 5



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## Dear Professor,

The holiday season is upon us! Welcome to McGraw-Hill's December 2013 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 5, 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 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. The National Security Agency's (NSA's) controversial surveillance practices;
2. The New York Police Department's (NYPD's) controversial "stop-and-frisk" practices;
3. An Ohio man's trial for the murder of his hospitalized, seriously-ill wife;
4. Videos related to a) the constitutionality of prayer in government meetings; and b) growing income inequality in the United States;
5. An "ethical dilemma" related to law enforcement use of Facebook photographs for facial recognition of suspects; and
6. "Teaching tips" related to Article 2 ("N.Y. Stop-and-Frisk Reforms on Hold for New Year, New Mayor") of the newsletter.

I wish everyone a safe and enjoyable holiday season!

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## Of Special Interest

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

- 1) The National Security Agency's (NSA's) controversial surveillance practices;
- 2) The New York Police Department's (NYPD's) controversial "stop-and-frisk" practices; and
- 3) An Ohio man's trial for the murder of his hospitalized, seriously-ill wife.

## Hot Topics in Business Law

### Article 1: "Feinstein, Rogers Defend NSA but Differ on Whether Agency Needs to Change"

[http://www.cbsnews.com/8301-3460\\_162-57610583/feinstein-rogers-defend-nsa-but-differ-on-whether-agency-needs-to-change/](http://www.cbsnews.com/8301-3460_162-57610583/feinstein-rogers-defend-nsa-but-differ-on-whether-agency-needs-to-change/)

*Note: For further information regarding this issue, please see the three (3) related videos at the above-referenced web site.*

According to the article, the leaders of the House and Senate Intelligence Committees defended the National Security Agency recently, arguing that the agency has merely been following the directions given to them by political leaders to keep the country safe.

However, the two disagree on whether the scope of the agency's work should change going forward.

Senator Dianne Feinstein, the chairwoman of the Senate Intelligence Committee, called for a "review of the intelligence framework" to assess the priorities.

Feinstein explained that the agency's priorities -- counter terrorism, support of overseas military, prevention of nuclear counter-proliferation, hard targets and cyber spying -- are set by the administration, with input from the president, the National Security Council and other cabinet members. The president is already undertaking a review, which Feinstein said should include what information gets collected and what the criteria are for seeking that information.

But Representative Mike Rogers, Feinstein's counterpart at the head of the House Intelligence Committee, argued that the NSA is just doing what it takes to protect the U.S. against a wide range of threats, from intellectual property theft, attacks on financial institutions and the spread of al Qaeda.

"The question isn't how you reign in the NSA," Rogers said.

Instead, he said, the oversight committees should work to ensure whether they are following the law and protecting civil liberties.



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"It is the NSA, the CIA and others' charge to make that zero (deaths from terrorist attacks) happen here. Zero. That's our standard. And so, what we've asked them to do is go out and collect information that protects America," Rogers said. He said the agency's critics were "seized up by this hyper partisanship" and said President Obama was "like a deer caught in headlights" in dealing with the recent revelations about the NSA's work.

"I think there are going to be some best actor awards coming out of the White House this year," Rogers said of Mr. Obama. His frustration extended to European leaders - he said they should receive "best supporting actor awards" - who have expressed outrage at U.S. spying, even though they themselves are engaged in the same thing.

"Espionage is a French word, after all," Rogers said.

Feinstein has been more critical of reports that the United States monitored the communications of foreign leaders like German Chancellor Angela Merkel.

"I think where allies are close, tapping the private phones of theirs - particularly of the leader, the leader is what I'm talking about - has much more political liability than probably intelligence viability," she said, adding the program should be reexamined.

Mr. Obama has said he did not know about the surveillance on foreign leaders, which former NSA and CIA director Michael Hayden said was possible. Still, Hayden said that monitoring the "leadership intentions" of foreign heads of state has long been an intelligence priority, so "it's impossible for me to imagine that the NSC, the administration, the White House didn't know."

But the fact that they didn't tell the president about the spying was indicative of the fact that "this wasn't exceptional. This is what we were expected to do," Hayden said.

"I would just assume that almost all other nations in the world conduct espionage and what we do as a prudent measure is defend ourselves," he added.

Neither Feinstein nor Rogers had much sympathy for Edward Snowden, the former NSA contractor accused of stealing and leaking thousands of documents before fleeing to Moscow. A German lawmaker who met with Snowden said that he is interested in traveling to Germany to testify about U.S. spying.

The answer from Feinstein and Rogers: Neither the U.S. nor Germany should not give him clemency to investigate the NSA. Both said that if Snowden wanted to be a whistleblower about U.S. intelligence collection, he should have raised those concerns to U.S. authorities in a different fashion.

"He had an opportunity, if what he was a whistleblower, to pick up the phone and call the House Intelligence Committee, the Senate Intelligence Committee and say, 'Look, I have some information



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you ought to see,' and we would certainly see him," Feinstein said. "That didn't happen, and now he's done this enormous disservice to our country."

Rogers concurred. "He needs to come back and own up," he said. "We can have those conversations if he believes there are vulnerabilities in the system he'd like to disclose. You don't do it by committing a crime that puts soldiers' lives at risk in places like Afghanistan."

## Discussion Questions

1. Are you willing to compromise your constitutional right to privacy in your telephone conversations in return for the federal government's promise to make you safer? Why or why not?

*This is an opinion question, so student responses will likely vary in response to this question. Those who trust the government and law enforcement might be willing to make such a "trade," while those who distrust controlling authorities would not.*

2. In your reasoned opinion, should the United States government surreptitiously monitor the telephone conversations of leaders of our foreign allies like German Chancellor Angela Merkel? Why or why not?

*The argument for such monitoring is based on the notion that truly effective national intelligence-gathering means monitoring the activities of all governments, including those who claim to be United States allies. The argument against such monitoring is that engaging in such surreptitious activities might cause the United States to lose allies.*

3. Should former National Security Agency (NSA) contractor Edward Snowden have whistleblower protection for "leaking" NSA documents, assuming he believed the NSA was inappropriately exercising its powers? Why or why not?

*Edward Snowden is a "lightning rod" figure—some feel his actions were patriotic, while others believe he is a traitor to the United States. There is no whistleblower protection for a traitor, but there is such protection for an individual who believes the organization he works for is engaged in illegal and/or unethical practices.*

## **Article 2: "N.Y. Stop-And-Frisk Reforms on Hold for New Year, New Mayor"**

<http://www.npr.org/2013/11/03/242708428/appeals-court-blocks-stop-and-frisk-reforms>

According to the article, in New York City, the country's largest police force has been involved in a high-profile legal battle over its stop-and-frisk policy.



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Few policies of outgoing New York Mayor Michael Bloomberg have been as controversial as stop-and-frisk, the tactic New York police use to stop people on the streets without a search warrant.

The police department says it's been vital in catching criminals and reducing the city's crime rate. Critics dispute those claims and say the NYPD has disproportionately stopped, questioned, and frisked blacks and Latinos without probable cause.

In August, a federal judge ruled that the New York Police Department routinely violated the civil rights of thousands of blacks and Latinos.

Recently, however, the Second Circuit Court of Appeals put that ruling on hold and removed the judge from the case, saying she "ran afoul" of judicial conduct by failing to appear impartial.

Bloomberg said he was satisfied with the latest ruling, which puts a hold on plans for an independent monitor to oversee reforms.

"We don't want an outsider coming in who doesn't know anything about crime fighting, putting the lives of our police officers and the lives of the public on the line," Bloomberg said.

Now, reforms to the stop-and-frisk policy won't take place until the city's appeal is heard in court next year, with a new judge.

The ruling is a disappointment for Donna Lieberman, executive director of the New York Civil Liberties Union, which brought one of the lawsuits challenging the NYPD's stop-and-frisk tactics.

"It's a setback, undeniably," Lieberman says. "But it's really only a procedural ruling." Lieberman says her organization will appeal the ruling. So will the Center for Constitutional Rights, says attorney Sunita Patel.

"We're not going to stop fighting discriminatory policing practices," Patel says. Patel and Lieberman say they're also keeping their eyes on the political fate of one man — Bill de Blasio, the candidate who's way ahead in New York's mayor's race.

"I've been saying for a long time: We need to get to work at reforming stop-and-frisk and bringing police and communities together," De Blasio said. "And further delay is not going to help the city heal and move forward."

De Blasio, a Democrat, has been a vocal opponent of the stop-and-frisk policy, unlike his Republican challenger Joe Lhota, who says he stands by the current mayor and the NYPD.

New York voters head to the polls soon, when they will choose Bloomberg's successor, and a key decider on the future of stop-and-frisk.



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## Discussion Questions

1. In your reasoned opinion, is the NYPD's "stop-and-frisk" policy constitutional? Explain your response.

*In your author's opinion, it would be difficult to conclude that the NYPD's "stop-and-frisk" policy is constitutional. Officers are allowed to perform a search incident to an arrest, but the NYPD's "stop-and-frisk" practice does not involve an arrest. Additionally, NYPD officers engaging in such practices do not even have evidence that would lead them to reasonably believe the persons subject to stop-and-frisk have engaged in criminal activity, or present a danger to law enforcement or the public.*

2. Are there legal concerns if the NYPD's "stop-and-frisk" policy has a disparate impact on blacks and Latinos? If so, what are those concerns?

*Civil rights laws address both disparate treatment (intentional) discrimination, as well as disparate impact (unintentional) discrimination. Even if a particular government practice does not carry with it a specific intent to discriminate, if the practice has the effect of discrimination on the basis of race, national origin or culture, it is discriminatory. There are legal concerns if the NYPD's "stop-and-frisk" policy has a disparate impact on blacks and Latinos.*

3. Would you be willing to be subject to the NYPD's "stop-and-frisk" policy in return for police assurance to make you safer? Why or why not?

*This is an opinion question, so student responses will likely vary in response to this question. Those who trust the government and law enforcement (and also who are not black or Latino) might be willing to make such a "trade," while those who distrust controlling authorities would not.*

### **Article 3: "Ohio Trial Set for Man in Wife's Hospital Killing"**

<http://news.yahoo.com/ohio-trial-set-man-wifes-hospital-killing-171122750.html>

According to the article, a man charged with fatally shooting his wife in her hospital bed killed her out of love and will tell jurors about the heartbreak he felt over her debilitated condition, his attorney said.

John Wise, of Massillon, Ohio, under house arrest since last year, goes on trial and will ask for the jury's understanding, not sympathy, attorney Paul Adamson said.

The 68-year-old Wise could face life in prison if convicted of aggravated murder.



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Police say Wise calmly walked into his 65-year-old wife's room at Akron General Medical Center and shot her on August 4, 2012. Barbara, his wife of 45 years, died the next morning.

A week earlier, she had suffered triple cerebral aneurysms that left her unable to speak.

More than a year later, Wise "is doing OK, but things are never going to be great for him," Adamson said during the final week of trial preparation.

"He's stable, but he's still grieving, I guess is the best way to describe him, for the loss of this life," he said.

Those who know Wise described him as a loving husband devastated by his wife's sudden medical emergency. Some called it a mercy killing by a loving husband.

But that legal defense is not an option in Ohio, and Adamson said he would argue an insanity defense based on severe depression.

"Our burden there is to establish that he was suffering from some severe mental disease or defect at the time he committed the offense, and as a result he didn't understand the wrongfulness of what he did," Adamson said.

"Now he did it out of love, but he wasn't thinking rationally when he did it."

Prosecutors declined to discuss any aspect of the case ahead of the trial.

Wise intends to testify but won't appeal to jurors for sympathy, Adamson said.

"We know there may be sympathy for him and there may be others who feel just the opposite. That's not the crux of our case," Adamson said.

Those subpoenaed to testify at the trial include the doctor who confronted Wise in the intensive care unit moments after the shooting.

"He said to me, 'Please tell me she's dead'," Dr. Michael A. Passero Jr. reported after the shooting. After checking the monitors, Passero said, "I said quietly, 'She's not dead.'"

Terry Henderson, a longtime steel plant co-worker of John Wise, said after the shooting that the couple had agreed they did not want to live out their years bedridden and disabled.

John Wise suffered from diabetes and nerve damage that made his hands and feet numb and had survived bladder cancer, according to Henderson.



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## Discussion Questions

1. Define murder.

*Murder is the unlawful taking of the life of another human being with malice aforethought.*

2. Should there be an exception to criminal liability for murder in a “mercy killing?” Why or why not?

*This is an opinion question, so student responses may vary. Those favoring mercy killings would argue that early termination of life is actually positive when a person’s illness is so serious that there is no quality of life.*

3. List three (3) reasons why “mercy killings” should be illegal.

*Reasons why “mercy killings” should be illegal include: (1) the inherent impropriety of taking the life of another human being (some might call this trying to “play God”); (2) the difficulty of determining whether the afflicted person’s illness is serious enough to “justify” an early death; and (3) the possibility of the afflicted person’s recovery.*





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## Video Suggestions

### Video 1: "What Role Should Religion Play in Public Meetings?"

<http://video.foxnews.com/v/2799146302001/>

*Note: For further information regarding the case referenced in the video, Town of Greece, N.Y. v. Galloway, please see the following web reference and article:*

### "Atheist to Get Her Day at the Supreme Court"

[http://religion.blogs.cnn.com/2013/11/01/supreme-court-to-review-church-state-dispute-over-public-prayers/?hpt=hp\\_t5](http://religion.blogs.cnn.com/2013/11/01/supreme-court-to-review-church-state-dispute-over-public-prayers/?hpt=hp_t5)

According to the article, Linda Stephens has lived in her upstate New York community for more than three decades and has long been active in civic affairs.

But as an atheist, those views have put her at the center of a personal, political, and legal fight that has reached the United States Supreme Court. The issue is public prayer at her local town board meetings, another contentious case over the intersection of faith and the civic arena.

The justices will hear arguments over whether Greece, New York, may continue sponsoring what it calls "inclusive" prayers at its open sessions, on government property.

Stephens and co-plaintiff Susan Galloway have challenged the policy, saying virtually all of those invited to offer legislative prayers over the years were Christians.

"It's very divisive when you bring government into religion," Stephens said.

"I don't believe in God, and Susan is Jewish, so to hear these ministers talk about Jesus and even have some of them who personally question our motives, it's just not appropriate."

The town of about 94,000 residents counters that after concerns from the two women and others, it sought diverse voices, including a Wiccan priestess, to



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offer invocations. Officials say they do not review the content of the remarks, nor censor any language.

"The faith of the prayer giver does not matter at all," said John Auberger, Greece's board supervisor, who began the practice shortly after taking office 1998. "We accept anyone who wants to come in and volunteer to give the prayer to open up our town meetings."

A federal appeals court in New York found the board's policy to be an unconstitutional violation of the Constitution's Establishment Clause, which forbids any government "endorsement" of religion.

Those judges said it had the effect of "affiliating the town with Christianity."

"To the extent that the state cannot make demands regarding the content of legislative prayers," said Judge Guido Calabresi, "municipalities have few means to forestall the prayer-giver who cannot resist the urge to proselytize. These difficulties may well prompt municipalities to pause and think carefully before adopting legislative prayer, but they are not grounds on which to preclude its practice."

Some legal experts say while the high court has allowed public prayers in general, it has not set boundaries on when they might become too sectarian in nature.

"The case involves a test between two different kinds of legal rules," said Thomas Goldstein, SCOTUSblog.com publisher and a leading Washington attorney.

"The Supreme Court has broadly approved legislative prayer without asking too many questions. But in other cases where the government is involved with religion, it has looked at lots of different circumstances. So we just don't know whether this court will be completely approving of legislative prayers in this instance."

The justices are now being asked to offer more firm guidelines over when and if such public prayers are constitutionally acceptable.

Galloway and Stephens say the elected board of the community outside Rochester almost always invited Christian clergy to open the meetings, usually with sectarian prayers. And they say they felt "marginalized" by the practice.

"When we tried to speak with the town, we were told basically if we didn't like the prayers, we didn't have to listen," said Stephens, "or could stand out in the hallway while they were going on."

Americans United for Separation of Church and State, the Washington-based group that is representing the two women, cited records showing that between 1999 and 2010, approximately two-thirds of the invocations contained the words "Jesus Christ," "Jesus," "Holy Spirit," or "Your Son."



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And the lawsuit claims that from 1999 through 2007, every meeting had a Christian-only invocation. Following the complaints from the plaintiffs, four other faiths were invited in 2008, including a Baha'i leader and a Jewish lay person.

The plaintiffs say the Christian-only invocations resumed from January 2009 through June 2010. They claim those invited to the monthly meetings were selected by a city employee from a local guide that had no non-Christian faiths listed.

"Politics and religion simply don't mix, and they certainly don't mix in the local context of the Greece town council," said the Rev. Barry Lynn, AUSCS executive director.

"The town seems to take the position that because once or twice over a decade, it hears from someone of a different religion, that somehow is inclusive. It trivializes what's going here - a local government that should be willing and interested in participation of all its citizens, it wants those citizens to participate in an almost inevitably Christian prayer, in order to begin doing their business."

While the 2nd Circuit U.S. Court of Appeals in New York last year unanimously ruled against Greece's policy, other courts around the country have found such invocations - if inclusive and limited in scope - to be permissible.

Congress regularly opens its sessions with a prayer. Wednesday's invocation by House Chaplain the Rev. Patrick Conroy began: "Eternal God, we give you thanks for giving us another day. Once again, we come to ask wisdom, patience, peace, and understanding for the members of this people's House."

Nearly 120 members of Congress, mostly Republicans, along with several state attorneys general have filed supporting legal briefs backing the city. So has the Obama administration.

"The history of prayers offered in connection with legislative deliberation in this country makes clear that a legislative body need not affirmatively solicit a court-mandated variety of different religious faiths— from inside and outside the borders governed by the legislative body— in order to avoid running afoul of the Establishment Clause," said Justice Department lawyers' in their amicus brief.

The Alliance Defending Freedom, a legal ministry based in Scottsdale, Arizona, filed the lawsuit on behalf of the Greece Town Board, saying the Supreme Court has upheld the practice of government bodies "to acknowledge America's religious heritage and invoke divine guidance and blessings upon their work."

"A few people should not be able to extinguish the traditions of our nation merely because they heard something they didn't like," said Brett Harvey, an attorney for the group. "Because the authors of the Constitution invoked God's blessing on public proceedings, this tradition shouldn't suddenly be deemed unconstitutional."



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Stephens realizes the stakes are high for her community and for the law as a whole. But on a personal level, this legal fight has been tough.

"I've received something of a backlash, both Susan and me," the retired librarian said. "Threatening letters, some vandalism to my property, things like that. The prayers, and all the controversy, it makes you feel like an outcast, like we don't count in our town."

The case is Town of Greece, N.Y. v. Galloway. A ruling is expected by early summer.

## Discussion Questions

1. What constitutional provision arguably applies to this case?

*The First Amendment to the United States Constitution's Establishment Clause states that "Congress shall make no law respecting an establishment of religion..."*

2. Should it matter if virtually all of those invited over the years to offer legislative prayers at Greece, New York town board meetings were Christians, particularly in light of the Christian heritage of the United States?

*This is an opinion question so student responses will likely vary. Those who favor the Greece, New York board practice of consistently inviting Christians to offer prayers at meetings might argue that this simply honors the Christian heritage of the country. Opponents would likely argue that such a practice has the unconstitutional intent/effect of establishing a particular religion, Christianity, in violation of the First Amendment's Establishment Clause.*

3. In your reasoned opinion, has the town of Greece, New York violated the Establishment Clause of the First Amendment to the United States Constitution? Why or why not?

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

## Video 2: "The Most Unequal Place in America"

[http://www.cnn.com/2013/10/29/opinion/sutter-lake-providence-income-inequality/index.html?hpt=hp\\_t1](http://www.cnn.com/2013/10/29/opinion/sutter-lake-providence-income-inequality/index.html?hpt=hp_t1)

*Note: For further information regarding the issue addressed in the video, please see the extensive article also located at the above-referenced web site.*



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## Discussion Questions

1. Does the federal government have a constitutional obligation to address poverty in the United States? Explain your response.

*If the federal government has a constitutional obligation to address poverty in the United States, the obligation would derive from the Fourteenth Amendment to the United States Constitution's Equal Protection Clause, which guarantees people equal protection of the law. The argument here, a controversial one, is that poor people do not have the equal opportunity to enforce legal rights or hold other parties responsible for their wrongful actions.*

2. Does the federal government have an ethical obligation to address poverty in the United States?

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

3. Explain the positions of the Democratic and Republican parties regarding the issue of poverty in the United States.

*The Democratic Party generally believes that government has a responsibility to craft law to address income inequality in the United States, to provide for "the least among us." The Republican Party generally believes that if an individual is poor, it is his or her responsibility to take the initiative to address the problem through hard work in a "free market" economy.*



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## Of Special Interest

This section of the newsletter addresses the question of whether it is ethical for law enforcement to use Facebook photographs for facial recognition of suspects.

## Ethical Dilemma

**“Could Law Enforcement Leverage Facebook to Identify You?”**

<http://abcnews.go.com/Business/law-enforcement-leverage-facebook-identify/story?id=20755123&singlePage=true>

According to the article, Facebook's privacy policies have always been the subject of debate among its users -- especially when they change, as they did this month for underage users. After all, when you're putting so much information online where anyone can see it, how upset can you be when the public sees it?

But what if "the public" is law enforcement, and their idea of fair use is uploading all your pictures into a vast database used to identify persons of interest in crimes? As a former member of the New Jersey Office of the Attorney General, I'm in favor of catching the bad guys -- just not at the expense of the privacy rights of every other American.

The feasibility of such a scenario, while common in television shows like "Blacklist," "NCIS" and even "Person of Interest," isn't a reality, yet -- but a new report by Martin Kaste at NPR shows that it might be possible, even in the near future. As he wrote, "Last year, Facebook bought Face.com, whose company's founders had published a paper titled 'Leveraging Billions of Faces to Overcome Performance Barriers in Unconstrained Face Recognition.'"

And while University of Washington computer expert Neeraj Kumar told Kaste that the technology doesn't yet exist to upload the billions of pictures on Facebook into a law enforcement database, there are plenty of databases available for their use that contain thousands of pictures. In fact, Kumar admitted that the biggest problem with facial recognition is matching poor-quality surveillance footage with the large database of pictures the police are allowed to utilize: mug shots.

But what if law enforcement was allowed to use a large database of pictures from multiple angles -- like the ones created when we "tag" Facebook photos? They could build what Kumar called "models," exponentially improving the accuracy of existing facial recognition.



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That is what was apparently behind the thinking in the state of Ohio, which recently grabbed all the photos from driver's licenses issued in the state and uploaded them into their facial recognition system. It was only after the system went live -- and after police used it 2,600 times -- that the Ohio Attorney General thought it might be a good idea to establish an advisory panel to help safeguard people's privacy.

The Ohio database threw new light on Senator Al Franken's concerns expressed during a hearing last year into the privacy concerns associated with facial recognition software. FBI deputy assistant director Jerome Pender testified that the FBI's database -- which didn't include pictures from sites like Facebook -- contained 12.8 million photographs, and Maneesha Mithal, the Associate Director of the Division of Privacy and Identity Protection at the Federal Trade Commission, promised the agency was "studying" the privacy concerns of facial recognition technologies for companies like Facebook, whose users add 2.5 billion photos a month to the service.

Facebook responded, saying that their encryption wouldn't allow third parties to access their photos database -- though, in 2013, their new "graph search" might do just that.

So what is the average Facebook user to do? All we privacy advocates can do is tell you to turn up your privacy controls only allowing friends to see your pictures, making sure you approve any photo tags before others can see them and limiting the photos you decide to post. But, of course, that makes things less convenient. And, based upon the tsunami of disclosures regarding NSA snooping, doing so may not prevent the government from accessing your photos anyway.

In an interview with the Smithsonian, one of the men behind the dystopian surveillance-state TV series "Person Of Interest" -- who is intimately aware of the potential vulnerabilities of participating in the surveillance culture -- talked about the trade-offs between what he knows to be smart security and what is increasing the normal level of connectedness online.

Greg Plageman, the executive producer on "Person of Interest," told the Smithsonian, "There's a bit of a scare, and we all react and say, wait a minute, do I need to be more privacy-conscious in terms of how I operate technology? And the truth is it's a huge pain. I've tried a couple of these web-surfing software (services), but it slows things down. Eventually, if you want to be a person that's connected, if you want to stay connected to your colleagues and your family, you realize that you have to surrender a certain amount of privacy."

"In terms of whether or not we're entering another era, it's difficult to say when you realize that the assault on privacy is both public and private now. It's Google, it's Facebook, it's what you voluntarily have surrendered," he said.

## Discussion Questions

1. What provision of the United States Constitution arguably applies to this case?





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*The Fourth Amendment to the United States Constitution states that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” From the language of the Fourth Amendment, courts have interpreted people to have a right to privacy against unwarranted, unreasonable intrusions into their persons, their belongings, and their lives.*

2. Would it be unethical for Facebook to cooperate with the federal government in terms of allowing the government access to its massive store of user photographs? Explain your response.

*This is an opinion question, so student responses will likely vary. Some students, especially those who trust government and law enforcement, might applaud Facebook working cooperatively with the federal government to identify criminals. Others, especially those who distrust government, might criticize Facebook for not protecting the privacy of its users and others depicted in the millions of photographs in its database.*

3. In your reasoned opinion, would it be unconstitutional for the federal government to use Facebook photographs for a law enforcement database without receiving permission from those depicted in and/or posting the photographs? Explain your response.

*This is an opinion question, so student responses will likely vary in response to this question. Those arguing that such a practice would be constitutional might argue that privacy concerns related to such a practice are outweighed by the advantage of more effective law enforcement. Those arguing that such a practice would be unconstitutional might emphasize the fact that the advantages of privacy can never be outweighed by the assurance of more effective law enforcement.*





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## Of Special Interest

This section of the newsletter will assist you in covering Article 2 ("N.Y. Stop-and-Frisk Reforms on Hold for New Year, New Mayor") of the newsletter.

## Teaching Tips

### Teaching Tip 1 (Related to Article 2--"N.Y. Stop-And-Frisk Reforms on Hold for New Year, New Mayor")

For further information regarding the contentious issue of New York City Police Department (NYPD) "stop-and-frisk" practices, please refer to the following supplementary article:

#### **"Stop-and-Frisk Fallout—Bloomberg Basks in Ruling, but Tactic Still Faces Changes if de Blasio Wins"**

<http://online.wsj.com/news/articles/SB10001424052702303618904579172140924987158>

According to the article, the decision by the Second U.S. Circuit Court of Appeals to block a federal monitor and other changes to New York City's stop-and-frisk policy will have little practical impact if Democrat Bill de Blasio is elected mayor next week, as public polls suggest will happen.

But the ruling has significant political ramifications, especially for Mayor Michael Bloomberg and Police Commissioner Raymond Kelly, whose reputations were tarnished when U.S. District Judge Shira Scheindlin ruled in August that they had overseen a practice that violated the constitutional rights of black and Latino men.

In the final debate before the November 5 election, mayoral candidates Bill de Blasio and Joe Lhota further explained their positions on stop and frisk, with de Blasio calling it "a valid police tactic when done constitutionally."

Republican mayoral nominee Joe Lhota said the "entire core" of Mr. de Blasio's campaign collapsed on Thursday after the Second Circuit halted the changes ordered by Judge Scheindlin. The appellate panel also removed Judge Scheindlin from the case, ruling her appearance of impartiality had been "compromised."

Mr. de Blasio confirmed that as mayor he would withdraw Mr. Bloomberg's appeal of Judge Scheindlin's ruling and immediately begin making changes to the tactic. "The remedies put forward by the judge were fair," said Mr. de Blasio.



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Darius Charney, a lawyer for the Center on Constitutional Rights who is representing plaintiffs involved in the case, said the appellate-court decision had no practical effect if Mr. de Blasio were elected.

"The only significant impact of the decision, from our perspective, is they embarrassed a very distinguished federal judge," Mr. Charney said.

Although on New Year's Day the NYPD will be under new management for the first time in 12 years, Mr. Bloomberg said Friday the appeals-court decision meant he would continue to run the police department during his final two months in office as he sees fit. More important, the decision presented the mayor and his police commissioner with a political victory in their waning days of power.

Mr. Bloomberg said he was "very satisfied" with the decision and believed it reflected a "high probability" the city's appeal of Judge Scheindlin's ruling would be successful.

Mr. Bloomberg said the NYPD's practices were in "conformity" with the law, and he poured water on the argument the department acted in an unconstitutional manner. The appeals court issued no judgment on the merits of the case.

"It is not unconstitutional until the courts have a final say," Mr. Bloomberg said. "Unless you take the appeal through the process, you really don't know."

Mr. Kelly described Judge Scheindlin's decision as "grossly unfair," saying it "unfairly blemished" the NYPD mostly for "sheer political purposes."

"Maybe this clears up some of that," Mr. Kelly said, referring to the appeals court ruling. "We'll see."

In her ruling, Judge Scheindlin wrote that the city acted with "deliberate indifference" toward the NYPD's practice of conducting "unconstitutional" stop and frisks. The city adopted a policy of "indirect racial profiling" that resulted in the "disproportionate and discriminatory" stopping of millions of black and Hispanic men, she wrote.

The judge appointed a federal monitor, Peter Zimroth, a former Manhattan chief assistant district attorney, to develop changes to the NYPD's policies, training and supervision of stop and frisk. The appeals court decision now prevents Mr. Zimroth from moving forward.

The plaintiffs' attorneys and city officials have met with the federal monitor. Another meeting was scheduled for Monday, but that will be postponed.

Attorneys for the plaintiffs in two stop-and-frisk lawsuits said they likely would ask all of the Second Circuit judges from the region—which stretches from Vermont to New York—to convene a review



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of the recent decision, which was made by their colleagues. The Second Circuit annually receives thousands of such requests and grants on average about one, according to a court clerk.

"This would be by any measure an extraordinary thing for them to take up but this is an extraordinary case and controversy," said Christopher Dunn, associate legal director for the New York Civil Liberties Union, whose organization is representing plaintiffs in one of the cases the appellate court stayed.

Mr. Lhota and his top surrogate, former Mayor Rudolph Giuliani, called on Mr. de Blasio to apologize to the NYPD for his opposition to stop and frisk.

"This has been the whole rationale for his campaign; this is how he defeated all the other people," said Mr. Giuliani, who referred to Mr. de Blasio's primary victory. "The court of appeals has just basically said to him: 'That is a bunch of malarkey.' And we know it's a bunch of malarkey."

Mr. Giuliani added, "People could die as a result of backing off stop and frisk."

Mr. de Blasio said he believed he could make the city safer in the long run if the stop-and-frisk tactic was fixed along with the relationship between the NYPD and the community.

"As for Mr. Giuliani," Mr. de Blasio said, "I'm not looking to him for advice on police-community relations."

## **Teaching Tip 2 (Related to Article 2--"N.Y. Stop-And-Frisk Reforms on Hold for New Year, New Mayor")**

For further information regarding the contentious issue of New York City Police Department (NYPD) "stop-and-frisk" practices, see the video at the following web site (also referenced in "Teaching Tip 1" above), presenting an excerpt from the final debate between New York City mayoral candidates Bill de Blasio and Joe Lhota before the November 5, 2013 election:

**"Stop-and-Frisk Fallout—Bloomberg Basks in Ruling, but Tactic Still Faces Changes if de Blasio Wins"**

<http://online.wsj.com/news/articles/SB10001424052702303618904579172140924987158>



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	<b>Hot Topics</b>	<b>Video Suggestions</b>	<b>Ethical Dilemma</b>	<b>Teaching Tips</b>
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 5 and 7	Chapters 2 and 5	Chapters 2 and 5	Chapter 5
<b>Kubasek et al., Dynamic Business Law: Summarized Cases</b>	Chapters 5 and 7	Chapters 2 and 5	Chapters 2 and 5	Chapter 5
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 4 and 5	Chapters 1 and 4	Chapters 1 and 4	Chapter 4
<b>Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 3 and 5	Chapters 3 and 4	Chapters 3 and 4	Chapter 3
<b>Barnes et al., Law for Business</b>	Chapters 4 and 5	Chapters 3 and 4	Chapters 3 and 4	Chapter 4
<b>Brown et al., Business Law with UCC Applications</b>	Chapters 2 and 5	Chapters 1 and 2	Chapters 1 and 2	Chapter 2
<b>Reed et al., The Legal and Regulatory Environment of Business</b>	Chapters 6 and 13	Chapters 2 and 6	Chapters 2 and 6	Chapter 6
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 4 and 5	Chapters 2 and 5	Chapters 2 and 5	Chapter 5
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 2 and 22	Chapters 2 and 5	Chapters 2 and 5	Chapter 2
<b>Bennett-Alexander &amp; Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society</b>	Chapters 1 and 8	Chapter 1	Chapter 1	Chapter 1



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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)
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