



# Proceedings

A monthly newsletter from McGraw-Hill

May 2011 Volume 2, Issue 10



The McGraw-Hill Companies

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## Dear Professor,

The end of the semester is near! Welcome to McGraw-Hill's May 2011 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 2, Issue 10 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the May 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. The extent of criminal liability for driving while intoxicated;
2. Tennessee's attempt to outlaw Shariah law;
3. The potential liability of American Media, Inc. for its alleged defamation of celebrity Katie Holmes;
4. Videos related to a) the United States Supreme Court's recent ruling concerning demonstrations of the Westboro Baptist Church at soldier's funerals; and b) the United States' first confirmed support of the International Criminal Court;
5. An "Ethical Dilemma" related to employer compliance with the Equal Pay Act of 1963; and
6. "Teaching Tips" related to Video 2 "U.S. Supports War Crimes Tribunal for First Time" and the Ethical Dilemma "Women Gaining in Education But Stalled on Pay, Federal Report Finds" of the newsletter.

I wish you a refreshing and renewing summer break!

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## Of Special Interest

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

- 1) The extent of criminal liability for driving while intoxicated;
- 2) Tennessee's attempt to outlaw Shariah law; and
- 3) The potential liability of American Media, Inc. for its alleged defamation of celebrity Katie Holmes.

## Hot Topics in Business Law

### Article 1: "Former Doctor Convicted in DWI Crash That Killed Carolina Ballerina"

[http://www.aolnews.com/2011/03/02/ex-doctor-raymond-cook-convicted-in-dwi-death-of-carolina-baller/?icid=main|main5|dl1|sec3\\_in|k2|47696](http://www.aolnews.com/2011/03/02/ex-doctor-raymond-cook-convicted-in-dwi-death-of-carolina-baller/?icid=main|main5|dl1|sec3_in|k2|47696)

A former North Carolina doctor has been sentenced to at least three years in prison for causing the 2009 drunken driving crash that killed 20-year-old ballerina Elena Bright Shapiro.

Raymond Cook, once a prominent plastic surgeon, was found guilty of involuntary manslaughter, felony death by motor vehicle and driving while impaired. A judge sentenced him for involuntary manslaughter because Cook could be sentenced for only one of the charges under North Carolina law. He could spend up to 4 1/2 years in prison.

Cook was legally drunk on Sept. 11, 2009, when he drove his Mercedes at more than 80 mph in a 45-mph zone and slammed into Shapiro's Hyundai at an intersection in Raleigh, N.C. Shapiro, a Carolina Ballet apprentice, died at the hospital.

Prosecutors said the hospital found Cook's blood-alcohol content to be 0.24, three times the legal limit, on the night of the accident, The News and Observer reported. The defense challenged that reading and said police measured Cook's blood-alcohol content as 0.19, more than twice the legal limit.

The Wake County jury was only two votes away Tuesday from convicting Cook of second-degree murder. But defense lawyers argued that Cook, who gave up his medical license a week after the crash, was not acting with malice.

After the trial, one juror told reporters she believed Cook deserved life in prison. "He knowingly sped through an intersection with a very high chance that he would take a life. So, we felt like second-degree murder was very appropriate," juror Wendy Smith told WRAL.

The emotional trial included video footage of Shapiro on stage dancing and pleas from the dancer's family to put Cook behind bars for the maximum



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amount of time.

"Dr. Cook consciously got into that car drunk, sped 90 miles an hour down a residential road, putting Lord knows how many other people in harm's way, until he killed Elena," Annie Bright, Shapiro's aunt, told the courtroom Tuesday before Cook's sentencing, according to ABC/WTVD. "To me that's no different than standing in front of her and shooting her with a gun."

But Shapiro's mother, Brantly Bright Shapiro, said no sentence would bring her daughter back. "We don't get Elena back. We don't get any kind of better rest at night because of somebody going to jail for a longer or shorter period of time," she said, according to NBC's "Today" show.

## Discussion Questions

1. Is an involuntary manslaughter conviction appropriate in this case? Why or why not?

*This question will likely spark a heated debate among students, with some students favoring the involuntary manslaughter conviction, and others arguing for a second-degree murder conviction. Murder is generally defined as the intentional taking of the life of another human being. First-degree murder involves premeditation and deliberation, while second-degree murder does not. Manslaughter (which can be sub-categorized as voluntary and involuntary manslaughter) is defined as the death of another person resulting from the defendant's gross negligence or extreme recklessness. Some jurisdictions (like North Carolina) allow for a second-degree murder conviction in outrageous cases of gross negligence or extreme recklessness, so the court could have convicted the defendant of second-degree murder in this case.*

2. Is a second-degree murder conviction appropriate in this case? Why or why not?

*The facts of this case do support an involuntary manslaughter conviction, but again, the court could have convicted the defendant of second-degree murder.*

3. Why did the prosecutor not try the defendant for first-degree murder? Would a first-degree murder conviction be appropriate in this case? Why or why not?

*The facts of this case do not support a first-degree murder conviction, since the defendant was not acting with the premeditated, deliberate intent to take the life of a human being.*

## **Article 2: "Tennessee Considers Bill That Makes Following Shariah A Felony"**

[http://www.huffingtonpost.com/2011/03/02/tennessee-considers-bill-following-shariah-felony\\_n\\_830101.html](http://www.huffingtonpost.com/2011/03/02/tennessee-considers-bill-following-shariah-felony_n_830101.html)



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Tennessee is considering making it a felony to follow some versions of the Islamic code known as Shariah, the most severe measure yet put forth by a national movement whose members believe extremist Muslims want Shariah to supersede the Constitution.

The bill – drawn up by conservatives with ties to opponents of a planned Islamic center two blocks from New York City's ground zero and efforts to expand a mosque 30 miles southeast of Nashville – would face steep constitutional hurdles if enacted.

Nevertheless, it represents the boldest legislative attempt yet to limit how Muslims worship.

Muslim groups fear the measure would outlaw central tenets of Islam, such as praying five times a day toward Mecca, abstaining from alcohol or fasting for Ramadan.

"This is an anti-Muslim bill that makes it illegal to be a Muslim in the state of Tennessee," said Remziya Suleyman, policy coordinator for the Tennessee Immigrant and Refugee Rights Coalition, which was among several civil rights and interfaith groups that held a news conference Tuesday to oppose the proposal.

Nadeem Siddiqi, a 35-year-old American Muslim entrepreneur who drove about 160 miles from Knoxville to attend the event, said Shariah governs his life.

As written, he said the proposal is "overly broad" and "basically includes all Muslims and all their practices as being illegal."

"Shariah is how I know how to fast in the month of Ramadan; how I wash before my prayers," he said. "It also directs me in how much charity I need to give to the poor. It orders me to be honest and fair in my business dealings."

The bill's sponsor, Republican Sen. Bill Ketron of Murfreesboro, said the proposal exempts the peaceful practice of Islam but seeks to condemn those "who take Shariah law to the other extreme." He said it would give state and local law enforcement officials "a powerful counterterrorism tool."

Ketron, who has successfully pushed through bills tightening restrictions on illegal immigrants, said he expects the Shariah measure will become law. He said he doesn't have a problem with Muslims and is open to talking with them about their concerns.

"My daughter went to the prom with a Muslim," Ketron said. "I want to hear from them."

For now, supporters of the measure are working to bolster it against any constitutional challenges, which may be an impossible task, said First Amendment Center scholar Charles Haynes, who called it a "really distorted understanding of Shariah law."



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"The legislation would clearly be unconstitutional," he said. "Trying to separate out different parts of Islamic law for condemnation is nonsensical. Shariah law, like all religious law, is interpreted in a great many different ways."

Shariah is a set of core principles that most Muslims recognize as well as a series of rulings from religious scholars. It covers many areas of life and different sects have different versions of the code they follow.

At least 13 states have bills pending that would bar judges from considering Shariah in legal decisions, according to the National Conference of State Legislatures, but none of those proposals is as strict as what Tennessee is weighing.

If the law is passed in Tennessee, it could face a legal challenge. The law passed in November by Oklahoma voters banning the use of Shariah law in state courtrooms was blocked by a federal judge pending the resolution of a lawsuit calling it unconstitutional.

Ketron said he and House Speaker Pro Tempore Judd Matheny, R-Tulahoma, were given the bill by the Tennessee Eagle Forum.

Eagle Forum state President Bobbie Patray said it was drafted by David Yerushalmi, an Arizona-based attorney who runs the Society of Americans for National Existence, a nonprofit that claims following Shariah is treasonous.

Yerushalmi has written for years in conservative media about what he calls the danger of Shariah and its central role in Islam. He has represented Pamela Geller, who leads the group Stop Islamization of America and is one of the most vocal critics of a planned Islamic center two blocks from New York City's ground zero.

Yerushalmi also represented Stop The Madrassa, a group that opposed a public school in Brooklyn established to teach Arabic language, culture and history. He is one of the contributors to the report "Shariah: The Threat To America" by the Center for Security Policy, a think tank led by Frank Gaffney, a former deputy assistant secretary of defense in the Reagan administration.

Last year Gaffney testified at a court hearing on the Islamic Center of Murfreesboro. The hearing was intended only to determine if local officials violated the state's open meetings law in approving the site plan, but the mosque's foes used the opportunity to argue it was part of a plot to expand Shariah law in the U.S.

Yerushalmi said the legislation in Tennessee is clear about who's being targeted.

"The legislation simply states that Shariah that follows the law of jihad, which calls for the violent overthrow of the Tennessee and U.S. government, is the Shariah that is at issue," he said.

Sarah Thompson, a spokeswoman for the Islamic Society of North America, disagreed.



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"The way that it's worded makes the assumption that any practice of Islam is a practice of terrorism," she said. "And that's a dangerous line to walk. It excludes the millions of Muslims that are practicing peaceably from the ability to do so."

Republican Gov. Bill Haslam said he plans to meet with the bill's sponsors to find out more about the proposal, but said he wants to ensure "that we're doing things that are welcoming people to Tennessee that are legally here."

## Discussion Questions

1. As the article indicates, at least thirteen (13) states have bills pending that would bar judges from considering Shariah law in legal decisions. Comment on the legal and/or ethical propriety of these bills.

*In your author's opinion, the attempt to bar judicial consideration of Shariah law is more a political maneuver than it is a substantive legal one. State judges are obliged to follow state law (as well as federal law where applicable), and judges know that if there is ever a conflict between state law and Shariah law, state law prevails.*

2. Comment on the propriety or impropriety of the proposed Tennessee law.

*Again, the question here is whether the law is being proposed purely for political reasons, or whether the law would have any substantive legal value. Judges are duty-bound to follow state and federal law, "period!"*

3. In your reasoned opinion, are there any legitimate constitutional challenges to the proposed Tennessee law? If so, what are those challenges?

*If those who adhere to Shariah law are not violating local, state, or federal law, they have the right to practice it as part of their First Amendment (to the United States Constitution) "free exercise" right. In your author's opinion, a wholesale invalidation of Shariah law, regardless of whether it violates local, state, and/or federal law, would violate the First Amendment's "free exercise" provision.*

## **Article 3: "Katie Holmes Suing Tabloid For Defamation"**

<http://ca.news.yahoo.com/katie-holmes-suing-tabloid-defamation-20110301-135528-215.html>

Katie Holmes is fighting back after a tabloid suggested that she's a drug addict.

"Today, Katie Holmes filed a lawsuit in federal court in Los Angeles for libel against American Media, Inc., publisher of Star Magazine. The lawsuit alleges that Ms. Holmes was defamed by the tabloid, which recently published an article falsely suggesting that she is a drug addict," the actress' rep said in a statement to Access Hollywood .



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"The story in Star Magazine is totally and unequivocally false," the statement continued. "Ms. Holmes was forced to file this lawsuit to vindicate her reputation after American Media refused to retract its vicious lies about her."

Holmes also spoke out about the recent story, calling it "outrageous."

"Of all the fabricated stories that continue to be published about me, this instance is beyond the pale," the 32-year-old actress said in a statement. "The publisher knew this outrageous story was false and printed it anyway to sell magazines."

The actress' lawyer, Bert Fields, also issued a statement to Access, saying, "Star Magazine's malicious claims about Katie are untrue, unethical and unlawful. Not only do they cruelly defame Katie, they play a cheap trick on the public, making ridiculously false claims on the cover unsupported by anything inside. Someone should bring a class action to get all buyers their money back."

In Star's January 31, 2011 cover story, the tabloid alleged that Holmes uses an "e-meter," which they reported gives users a "feeling of euphoria" through an electrical charge and compared it to the effects of heroin.

Star Magazine's publisher, American Media, told Access that they stand behind their story.

"Star fully stands behind the editorial integrity of what we have published concerning Ms Holmes' controversial use of the Scientology 'e-meter.' The physical effect of the e-meter on its users is a matter of significant public concern and we plan to vigorously defend the suit filed by Ms. Holmes," an American Media rep said in a statement to Access. "Many ex scientologists have testified that the e-meter sessions have mood elevating effects. The cover and the inside article discuss these effects. Our attorneys look forward to deposing Ms. Holmes about her experiences with Scientology and the e-meter, and expect that the case will be promptly dismissed by the court."

## Discussion Questions

1. Define defamation, and describe the defenses available to a defendant in a defamation action.

*Defamation consists of false words or opinions given in bad faith that damage the plaintiff's reputation in the community. There are two (2) types of defamation: slander and libel. Slander is oral defamation, while libel is written defamation.*

*There are two (2) defenses to a defamation action. The first defense is the truth—Factual assertions about another person do not constitute defamation. The second defense is a good faith opinion—So long as the defendant has given a good-faith opinion about the plaintiff, the defendant is not liable for defamation.*



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2. Based on the information provided, does Katie Holmes have a legitimate cause of action in this case? In your reasoned opinion, what are her prospects of recovery?

*The operative questions here are:*

- a. Does Katie Holmes use an "e-meter?"; and
- b. Does the use of an "e-meter" equate to drug addiction?

*If the answer to either question is "no," American Media has defamation liability exposure, since the company's assertions would be untrue (In terms of the "good faith" defense mentioned earlier, it is difficult to envision any jury concluding that American Media made these assertions in good faith!) Like so many other cases, this case (unless settled or otherwise resolved before litigation) will depend on the jury's determination of the facts.*

3. Publications like Star Magazine are often subject to defamation actions. In your reasoned opinion, why would such publications offer articles that expose them to such lawsuits? Do publishers of this type of material consider the prospects of defamation litigation part of the "costs of doing business?" Explain your response.

*In terms of the answer to these questions, follow the money! Publications like Star Magazine depend on sensational stories to make sales (and that is a fact!), and many publications like this "push the envelope" in order to entice readers to put the magazine in their buggies at checkout!*





## Video Suggestions

### Video 1: "Supreme Court Rules for Anti-Gay Church over Military Funeral Protests"

<http://www.cnn.com/2011/US/03/02/scotus.westboro.church/index.html?hpt=T1&iref=BN1>

Note: Before answering the three (3) Discussion Questions associated with this video, please review the following accompanying article:

#### **"Anti-Gay Church's Right to Protest at Military Funerals Is Upheld"**

A Kansas church that attracted nationwide attention for its angry, anti-gay protests at the funerals of U.S. military members has won its appeal at the Supreme Court, an issue testing the competing constitutional rights of free speech and privacy.

The justices, by an 8-1 vote, said Wednesday that members of Westboro Baptist Church had a right to promote what they call a broad-based message on public matters such as wars. The father of a fallen Marine had sued the small church, saying those protests amounted to targeted harassment and an intentional infliction of emotional distress.

"Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and -- as it did here -- inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker," Chief Justice John Roberts wrote for the majority.

At issue was a delicate test between the privacy rights of grieving families and the free speech rights of demonstrators, however disturbing and provocative their message. Several states have attempted to impose specific limits on when and where the church members can protest.

The church, led by pastor Fred Phelps, believes God is punishing the United States for "the sin of homosexuality" through events including soldiers' deaths. Members have traveled the country shouting at grieving families at



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funerals and displaying such signs as "Thank God for dead soldiers," "God blew up the troops" and "AIDS cures fags."

Westboro members had appeared outside the 2006 funeral for Lance Cpl. Matthew Snyder in Westminster, Maryland, outside Baltimore.

Snyder's family sued the church in 2007, alleging invasion of privacy, intentional infliction of emotional distress and civil conspiracy. A jury awarded the family \$2.9 million in compensatory damages plus \$8 million in punitive damages, which were later reduced to \$5 million.

The church appealed the case in 2008 to a federal appeals court, which reversed the judgments a year later, siding with the church's allegations that its First Amendment rights were violated.

Albert Snyder, Matthew's father, said his son was not gay and the protesters should not have been at the funeral.

"I was just shocked that any individual could do this to another human being," Snyder told CNN last fall. "I mean, it was inhuman."

In an afternoon news conference Wednesday, Snyder expressed surprise at the ruling.

"My first thought was that eight justices don't have the common sense that God gave a goat," he said. "We found out today that we can no longer bury our dead in this county with dignity."

He added, "What is this country coming to?"

Margie Phelps, a member of the Westboro clan and an attorney who argued the case before the high court, told CNN the ruling was "10 times better than I had hoped for."

"You can't use the subject that your feelings are hurt to trump public debate," she said. If that were the case, "where would we be?" She promised that with this ruling in hand, Westboro Baptist would conduct more such pickets.

Church members say their broader message is aimed at the unspecified actions of the military and those who serve in it. They believe U.S. soldiers deserve to die because they fight for a country that tolerates homosexuality.

Roberts in his opinion noted the Snyder family was not a "captive audience" to the protests that were conducted several hundred yards away.

"Westboro stayed well away from the memorial service," wrote Roberts. "Snyder could see no more than the tops of the signs when driving to the funeral. And there is no indication that the picketing itself in any way interfered with the funeral itself."



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Based on that the court concluded Snyder could not collect damages from Westboro.

But the chief justice showed little sympathy for the message Westboro promotes.

"Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. Westboro's funeral picketing is certainly hurtful and its contribution to public discourse may be negligible," he said. However, "As a nation we have chosen a different course -- to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

The ruling was a narrow one, dealing with the specific, unusual facts of this appeal. Such vocal protests at military funerals are almost entirely confined to this one small group. Roberts said on the free speech question, it was enough to rely on "limited principles that sweep no more broadly than the appropriate context of the instant case."

Only Justice Samuel Alito dissented. He said the church's "outrageous conduct caused petitioner great injury, and the court now compounds that injury by depriving petitioner of a judgment that acknowledges the wrong he suffered," he said. "In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims like petitioner."

The Supreme Court has never addressed the specific issue of laws designed to protect the "sanctity and dignity of memorial and funeral services," as well as the privacy of family and friends of the deceased. But the high court has recognized the state's interest in protecting people from unwanted protests or communications while in their homes.

The justices were being asked to address how far states and private entities like cemeteries and churches can go to justify picket-free zones and the use of "floating buffers" to silence or restrict the speech or movements of demonstrators exercising their constitutional rights in a funeral setting.

A majority of states across the nation have responded to the protests with varying levels of control over the Westboro church protesters. In Wednesday's case, 48 states and dozens of members of Congress filed an amicus brief in support of the Snyders.

John Ellsworth, chairman of Military Families United, said the military protects the First Amendment rights that members of Westboro Baptist use to protest.

"Gold Star families deserve the respect of a grateful nation, not hate from a group who chooses to demonstrate during the funeral of their loved one," he said. "My family has been on the receiving end of their hate and I assure all Gold Star families, this group is an anomaly and your sacrifice does not go without notice."

Church members told the court they have a duty to protest and picket at certain events, including funerals, to promote their religious message: "That God's promise of love and heaven for those who obey him in this life is counterbalanced by God's wrath and hell for those who do not obey him."



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The congregation is made up mostly of Fred Phelps and his family. The pastor has 13 children, and at least 54 grandchildren and seven great-grandchildren.

He described himself as an "old-time" gospel preacher in a CNN interview in 2006, saying, "You can't preach the Bible without preaching the hatred of God."

Church members have participated in several hundred protests across the country.

In 2009, the high court blocked Missouri's effort to enforce a specific law aimed at the Westboro church. Phelps, daughter Shirley Phelps-Roper and other church members had protested near the August 2005 funeral of a soldier in St. Joseph, Missouri. State lawmakers later passed the "Spc. Edward Lee Myers Law," criminalizing picketing "in front of or about" a funeral location or procession.

## Discussion Questions

1. Are you surprised by the 8-1 vote by the justices of the United States Supreme Court favoring Westboro Baptist Church? If so, why? If not, why not?

*In your author's opinion, the 8-1 vote does seem quite surprising, especially given the toxic, volatile content of Westboro Baptist Church's message, and the fact that courts have frequently imposed reasonable time, place and manner restrictions on controversial speech. Strong First Amendment free speech advocates may applaud the decision, but others may question whether there should be limitations to such speech.*

2. Do you support the United States Supreme Court's decision in this case? If so, why? If not, why not?

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

3. Respond to the following quote from United States Supreme Court Chief Justice John Roberts, who wrote for the majority in this case: "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and -- as it did here -- inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker."

*Student responses will likely vary in response to this quote. Clearly, the statement reflects Chief Justice Roberts' strong support of First Amendment free speech protection.*

## **Video 2: "US Supports War Crimes Tribunal for First Time"**

<http://abcnews.go.com/US/wireStory?id=13034373>



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Note: Before answering the three (3) Discussion Questions associated with this video, please review the following accompanying article:

## **"US Supports War Crimes Tribunal for First Time"**

The United Nations resolution imposing tough sanctions against Libya marked the first time that the United States has given its support to the International Criminal Court and signified a remarkable turnaround, though it includes a key exemption demanded by the Obama administration.

The resolution adopted unanimously by the Security Council on Saturday refers the actions of Moammar Gadhafi's regime since Feb. 15 to the court's prosecutor who announced recently that there is enough evidence of alleged crimes against humanity to warrant a full investigation. Prosecutor Luis Moreno-Ocampo is required to deliver an initial report to the council in two months.

"It's a historic vote by the United States government because it's the first time in a Security Council resolution the United States has voted affirmatively on the side of the International Criminal Court," said Richard Dicker, head of the International Justice Program at Human Rights Watch. "That's a positive step."

But the United States insisted on including a provision in the resolution to protect Americans from investigation or prosecution by the International Criminal Court, known as the ICC. It requires that any citizen of a country that hasn't joined the ICC be investigated or prosecuted in his home country — not by the ICC — for any alleged actions stemming from operations in Libya authorized by the Security Council.

Dicker called this "carve-out" for nationals from countries that aren't parties to the ICC "troubling" though limited since it only deals with the current situation in Libya.

"If, for example, there is a no-fly zone established by the council, and the U.S. dropped bombs and accidentally killed 100 Libyan school children, that U.S. airman or those who ordered the attack would be subject to the jurisdiction exclusively of a U.S. court — not the ICC," Dicker told the AP on Tuesday.

A Western diplomat said Wednesday that the ICC referral was the most important measure in the resolution because it's designed to change the minds of people around Gadhafi who now know that the war crimes tribunal is beginning to investigate the situation and if they carry out instructions from the Libyan leaders to bomb, attack or use violence against the civilian population they will potentially be subject to international justice. The diplomat spoke on condition of anonymity because of the sensitivity of the issue.

The International Criminal Court, which began operating in 2002, was established after a long campaign to ensure that those responsible for the most heinous crimes could be brought to justice. Under the Rome treaty that established the tribunal, the court can step in only when countries are



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unwilling or unable to dispense justice themselves for genocide, crimes against humanity or war crimes.

Currently, 114 countries have ratified the Rome statute and are parties to the statute. Libya is not a party to the ICC and therefore the Security Council stepped in to refer Gadhafi's deadly crackdown on anti-government protesters to the tribunal.

The Security Council has referred only one other situation to the ICC — the conflict in Sudan's western Darfur region in late March 2005.

Then, the council vote was 11-0 with the United States abstaining along with Algeria, Brazil and China. The Bush administration agreed not to veto the resolution only after the council included controversial concessions which guaranteed that citizens of countries not party to the ICC working in Sudan would not be handed over to either the ICC or any other nation's courts if they commit crimes in Sudan.

The exemption in Saturday's resolution on Libya demanded by the U.S. is narrower, and diplomats said it was also strongly backed by other council nations that are not parties to the ICC. China and Russia, both permanent council members, as well as non-permanent members India and Lebanon have not joined the court.

Liechtenstein's U.N. Ambassador Christian Wenaweser, president of the Assembly of State Parties to the ICC, told a press conference Tuesday that the U.S. support for the court and its sponsorship of the resolution was "an important development."

Former U.S. President Bill Clinton signed the Rome treaty on Dec. 31, 2000, but President George W. Bush renounced the signature, citing fears that Americans would be unfairly prosecuted for political reasons.

"We have seen for several months that certainly the U.S. is looking for a more positive engagement with the ICC," Wenaweser said. "The U.S. is participating again in the work of the Assembly of States Parties very actively. So there have been changes before, but certainly this is a very important step — while I don't think this will lead to ratification anytime soon."

He called the exception barring investigation or prosecution of citizens from non-ICC countries a "very, very narrow provision."

U.S. Ambassador Susan Rice agreed, telling reporters Tuesday "we have thought it important that if we were going to for the first time affirmatively support such a resolution to make sure that it was clear the limitations as to who jurisdiction applied to."

She said criticism "that somehow this provides a pass for mercenaries I think is completely misplaced."



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"I don't think the International Criminal Court is going to spend its time and effort on foot soldiers that have been paid small amounts of money by Gadhafi," she said. "They're going to focus on the big fish."

France's U.N. Ambassador Gerard Araud told reporters after the vote that including the exception in the resolution "was a red line for the United States."

"It was a deal breaker," he said. "This is the reason why we accepted this unanimously."

Wenaweser and Jordan's U.N. ambassador, Prince Zeid al Hussein, who is leading the search to replace Ocampo after his term expires in June 2012, agreed that the council's referral of Libya was good for the court and will hopefully lead to new ratifications.

"Privately many ambassadors, ministers, will concede that eventually their countries will probably become state parties," Zeid told reporters recently. "It's only a matter of time as to when."

## Discussion Questions

1. Comment on the United States' support of the International Criminal Court (ICC). Do you approve or disapprove of the United States' support of the ICC?

*In its "War on Terror" since September 11, 2001, the United States has strongly opposed the International Criminal Court (ICC). The United States' recent "support" for the ICC appears to be "double-speak"—The United States "supports" the ICC, but it refuses to become a member nation, and refuses to allow any of its citizens to be tried in an ICC court.*

2. Are you surprised that the United States waited until 2011 before supporting the ICC? Why or why not?

*Student responses will vary in response to this question. Again, except for this recent development, the United States has flatly opposed the International Criminal Court.*

3. As the article indicates, the United States insisted on including an exemption in the United Nations resolution sanctioning Libya to protect Americans from investigation or prosecution by the ICC. It requires that any citizen of a country that hasn't joined the ICC be investigated or prosecuted in his or her home country — not by the ICC — for any alleged actions stemming from operations in Libya authorized by the Security Council. Comment on the propriety or impropriety of this exemption.

*Although student responses to this prompt will vary, see your author's comment in response to Discussion Question 1 above.*



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A monthly newsletter from McGraw-Hill

May 2011 Volume 2, Issue 10



The McGraw-Hill Companies

## Of Special Interest

This section of the newsletter addresses the question of whether the mandate of the Equal Pay Act of 1963 has been fully realized in terms of outlawing pay discrimination against women.

## Ethical Dilemma

### "Women Gaining in Education But Stalled on Pay, Federal Report Finds"

<http://abcnews.go.com/Politics/white-house-releases-comprehensive-federal-report-status-american/story?id=13028897&page=2>

American women are making real gains, especially in college and graduate education, but they continue to lag behind men in pay, according to a report released recently by the White House that administration officials say will be used as a basis for policy changes.

The White House released the report, "Women in America: Indicators of Social and Economic Well-Being," to kick off Women's History Month. It was described as a "statistical portrait" showing how women are faring in the country today and how their roles have changed over time.

Administration officials acknowledged that there is nothing new to these reports -- compiled from reports that were already available to the public -- but said that the compilation of the findings shows something important for women and families that will influence the president's policies.

"The story is really looking at all of this together, to show how women's lives around children and family is changing," White House Senior Advisor Valerie Jarrett said on a conference call today with reporters.

She did not mention any specific policy changes that would be made, but said that the findings of the report will be addressed.

"It helps inform our policy decisions because we've got to realize that we've got to encourage women to go into higher-paying fields and be educating in a way that is going to lead to higher paying jobs," Jarrett said. "And so if you look at it in the totality, I think it will inform a wide variety of different policies and programs the federal government will initiate and continue, but it will be evidence-based."

The White House said the report serves as a guidepost to move forward, by enhancing the administration's understanding of how far women have come and what remains to be done.





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General Counsel and Senior Policy Advisor at the Office of Management and Budget Preeta Bansal said that they will pursue this "evidence based policy making" approach now with "an all government and all agency approach to address the special issues effecting women."

The administration said some of the key findings of the report were:

Women have not only caught up with men in college attendance but younger women are now more likely than younger men to have a college or a graduate degree. Women are also working more and the number of women and men in the labor force has nearly equalized in recent years. As women's work has increased, their earnings constitute a growing share of family income.

Gains in education and labor force involvement have not yet translated into wage and income equity. At all levels of education, women earned about 75 percent of what their male counterparts earned in 2009. In part because of these lower earnings and in part because unmarried and divorced women are the most likely to have responsibility for raising and supporting their children, women are more likely to be in poverty than men. These economic inequities are even more acute for women of color.

Women live longer than men but are more likely to face certain health problems, such as mobility impairments, arthritis, asthma, depression and obesity. Women are also less physically active than men. Women are less likely than men to suffer from heart disease or diabetes. One out of seven women age 18-64 has no usual source of health care and the share of women in that age range without health insurance has also increased.

Women are less likely than in the past to be the target of violent crimes, including homicide. But women are victims of certain crimes, such as intimate partner violence and stalking, at higher rates than men.

The report focused on five areas: people, families and income; education; unemployment; health; and crime and violence. The administration will be observing Women's History Month by highlighting a different section of the report each week.

The administration said that one reason for the persistence of the wage gap between men and women is that women are preparing themselves in lower-wage fields.

"That is a concern, and President Obama has done a number of things trying to increase interest in the so-called STEM areas -- science, technology, engineering and math, with regard to bring more women into those areas," Acting Deputy Secretary at the Department of Commerce Becky Blank said.

The findings show that there is still a significant difference in how married men and women spend their time outside of work. While men on average spend more time at work, they also spend more of their leisure time on sports.



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Women, on the other hand, spend more of their non-work hours on household cares.

"So if you add together market work and household work, women actually end up working more than men in terms of the sum of those," Blank said.

In a proclamation issued Monday in honor of Women's History Month, President Obama discussed some of the issues raised in the report.

"Today, women have reached heights their mothers and grandmothers might only have imagined. Women now comprise nearly half of our workforce and the majority of students in our colleges and universities," Obama wrote. "Despite our progress, too many women continue to be paid less than male workers, and women are significantly underrepresented in the science, technology, engineering, and mathematics (STEM) fields."

## Discussion Questions

1. Describe the ethics supporting equal pay for equal work.

*The ethical justification for equal pay for equal work is clear—A woman who produces identical output compared to a man should be paid the same—Anything else would constitute gender discrimination in violation of the Equal Pay Act of 1963, and Title VII of the Civil Rights Act of 1964.*

2. The Equal Pay Act of 1963 has mandated equal pay for equal work (when comparing male workers to female workers) for forty-seven (47) years. Given the fact that the Equal Pay Act has been a matter of federal law for almost one-half of one century, why do women still face a "75 cents on the dollar" pay gap?

*Student opinions will likely vary in response to this question. Some students may feel that the pay discrepancy is evidence of endemic, continuing discrimination, while others may argue that the pay gap is caused by other factors, such as a mother putting her career "on hold" for several years to raise her children.*

3. Overall, do you consider this article encouraging or discouraging? Explain your response.

*Student opinions will vary in response to this question.*



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## Of Special Interest

This section of the newsletter will assist you in covering the following topics presented earlier in this newsletter:

- 1) Video 2 (U.S. Supports War Crimes Tribunal for First Time"); and
- 2) The Ethical Dilemma ("Women Gaining in Education But Stalled on Pay, Federal Report Finds")

## Teaching Tips

### Teaching Tip 1 (Related to Video 2: "U.S. Supports War Crimes Tribunal for First Time")

Note: Please refer to the following web address to access the International Criminal Court Website:

<http://www.icc-cpi.int/Menus/ICC?lan=en-GB>

### Teaching Tip 2 (Related to Ethical Dilemma: "Women Gaining in Education But Stalled on Pay, Federal Report Finds")

Note: For an excellent summary of the Equal Pay Act of 1963, please see the following website, as well as the pertinent provisions of the Act included below:

<http://www.employmentlawfirms.com/resources/employment/discrimination/what-the-equal-pay-act>

The Equal Pay Act of 1963 (Act) is a federal law that prohibits any wage disparity based on sex. Signed into law on June 10, 1963, the law amended the Fair Labor Standards Act. A cause of action under the Act must be brought within two years that the cause of action accrued.

### Equal Pay Act

The relevant language of the Act provides:

"No employer having employees subject to any provisions of this section (section 206 of title 29 of the United States Code) shall discriminate within any establishment...between employees on the basis of sex by paying wages to employees...at a rate less than the rate at which he pays wages to employees of the opposite sex...for equal work on jobs(,) the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which



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measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex."

## **Congressional Purpose of Act**

Congress passed the Act because it determined that wage differentials based on sex:

- 1) depresses wages and living standards for employees necessary for their health and efficiency;
- 2) prevents the maximum utilization of the available labor resources;
- 3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
- 4) burdens commerce and the free flow of goods in commerce; and
- 5) constitutes an unfair method of competition.

## **Prima Facie Case**

To establish a prima facie case under the Act, an employee must show that:

- 1) different wages are paid to employees of the opposite sex;
- 2) the employees perform substantially equal work on jobs requiring equal skill, effort and responsibility; and
- 3) the jobs are performed under similar working conditions.

## **Statute of Limitations**

SEC. 255 (Section 6)

Any cause of action under the Fair Labor Standards Act of 1938 (including the Equal Pay Act) may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued.

## **Penalties**

SEC. 216 (Section 16)



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Anyone who willfully violates the provisions of this title, including the Equal Pay Act, upon conviction shall be subject to the following:

Fines and imprisonment - Any person who willfully violates any of the provisions of section 215 (section 15) of this title shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection;

Damages; and

Payment of wages and compensation.



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

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 5, 7 and 8	Chapters 5 and 6	Chapter 43	Chapters 6 and 43
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 2, 4 and 5	Chapters 1 and 4	Chapter 24	Chapters 1 and 24
<b>Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition</b>	Chapters 3, 5 and 6	Chapters 1 and 3	Chapter 51	Chapters 1 and 51
<b>Barnes et al., Law for Business, 10th Edition</b>	Chapters 4, 5 and 6	Chapters 1, 2 and 4	Chapter 25	Chapters 1, 2 and 25
<b>Brown et al., Business Law with UCC Applications Student Edition, 12th Edition</b>	Chapters 2, 5 and 6	Chapters 2 and 43	Chapter 35	Chapters 35 and 43
<b>Reed et al., The Legal and Regulatory Environment of Business, 15th Edition</b>	Chapters 6, 10 and 12	Chapters 6 and 13	Chapter 20	Chapters 13 and 20
<b>McAdams et al., Law, Business &amp; Society, 9th Edition</b>	Chapters 4, 5 and 7	Chapters 5 and 16	Chapter 13	Chapters 13 and 16
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 2, 9 and 22	Chapters 2 and 25	Chapter 12	Chapters 12 and 25

## 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)

