



Proceedings

A monthly newsletter from McGraw-Hill



May 2013 Volume 4, Issue 10



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Dear Professor,

Summer fast approaches! Welcome to McGraw-Hill's May 2013 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 4, 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 2013 newsletter topics with the various McGraw-Hill business law textbooks.

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

1. A United Nations investigation regarding the legality of the United States drone program;
2. A homeowner's appeal to the Pennsylvania Supreme Court regarding failure of the home seller and the real estate agent to disclose that a murder-suicide had taken place in the home she purchased;
3. Proposed legislation in Arkansas to drug-test the unemployed as a pre-condition of receiving unemployment benefits;
4. Videos related to a) updated information regarding the 1996 death of 6-year-old beauty queen JonBenet Ramsey and b) the Tampa "shock jock" trial;
5. An "ethical dilemma" related to Apple Inc.'s termination of business with a Chinese manufacturer after a report said it had employed 74 underage workers; and
6. "Teaching tips" related to Article 1 ("U.N. Launches Drone Investigation into Legality of U.S. Program") and Article 2 ("Homebuyer Appeals to Pennsylvania Supreme Court on Her Home's Bloody Past").

I wish all of you a pleasant end to the spring semester, and a restful and enjoyable summer!

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Of Special Interest

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

- 1) A United Nations investigation regarding the legality of the United States drone program;
- 2) A homeowner's appeal to the Pennsylvania Supreme Court regarding failure of the home seller and the real estate agent to disclose that a murder-suicide had taken place in the home she purchased; and
- 3) Proposed legislation in Arkansas to drug-test the unemployed as a pre-condition of receiving unemployment benefits.

Hot Topics in Business Law

Article 1: "U.N. Launches Drone Investigation into Legality of U.S. Program"

http://www.huffingtonpost.com/2013/01/24/un-drone-investigation_n_2542809.html

According to the article, the United Nations opened a major new investigation recently into the United States' use of drones and targeted assassinations.

The U.N. investigation, led by special rapporteur on counterterrorism and human rights Ben Emmerson, is expected to focus on the legal justification for America's expansive drone program, which has largely remained secretive and unexamined.

"The exponential rise in the use of drone technology in a variety of military and non-military contexts represents a real challenge to the framework of established international law," Emmerson said in a statement released by his office.

"It is therefore imperative that appropriate legal and operational structures are urgently put in place to regulate its use in a manner that complies with the requirements of international law, including international human rights law, international humanitarian law (or the law of war as it used to be called), and international refugee law."

Human rights observers have long objected to the use of drones to target suspected terrorists because they often result in wider civilian deaths than administration officials have acknowledged.

But more practical concerns -- about the legality and efficacy of the program, as well as the White House's lack of transparency -- have also been growing.

The United States is by far the leading user of drones and unmanned vehicles for targeted assassinations, but it is not the only one. Drone use is expected to expand widely around the world -- China and Iran already are known to have the capability -- and there have been growing calls for the U.S. to clarify its own internal rules for the appropriate use of the technology.



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In a recent conference call organized by the Council on Foreign Relations this week, Dennis Blair, the former director of national intelligence under President Barack Obama, urged the administration to make more of its drone policies public.

"There's been far too little debate" about the tactic, Blair said in the call. "The United States is a democracy, we want our people to know how we use military force and that we use it in ways the United States is proud of."

The American Civil Liberties Union, which has been waging a years-long effort to compel the Obama administration to release its internal legal considerations, welcomed the U.N. investigation, and urged the U.S. to participate in it.

"Virtually no other country agrees with the U.S.'s claimed authority to secretly declare people enemies of the state and kill them and civilian bystanders far from any recognized battlefield," said Hina Shamsi, the director of the ACLU's National Security Project, in a statement. "To date, there has been an abysmal lack of transparency and no accountability for the U.S. government's ever-expanding targeted killing program."

Recently, the American Security Project released a new report examining the efficacy of drone strikes and raising questions about the strategy of using unmanned aerial vehicles for counterterrorism.

The report argues that the apparent tactical success of drones -- their ability to kill suspected terrorists without significant risk to American forces -- does not answer important questions about the strategic benefits of the program, or the broader strategic thinking behind it.

Discussion Questions

1. Is it ethical for the United States to use drones to engage in targeted assassinations of suspected terrorists? Explain your response.

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

2. As the article indicates, China and Iran already have drone capability. For the purpose of "serving by example" to China, Iran and any other country with drone capability, should the United States refrain from using drones? Why or why not?

Although some students might contend that a United States decision to refrain from using drones would be an excellent illustration of "serving by example," the question remains whether China or Iran would be influenced at all by such a decision. Certainly, if the United States uses drones to engage in targeted assassinations of suspected terrorists, China and Iran can claim they have a comparable right.



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3. Suppose the United Nations should determine (based on its investigation) that the United States use of drones to engage in targeted assassinations of suspected terrorists is illegal. Would this determination have binding effect on the United States? Could the United Nations effectively compel the United States to “cease and desist” from using drone technology? Explain your response.

One should question whether a United Nations determination that the use of drones to engage in targeted assassinations of suspected terrorists is illegal would have any actual effect on the United States. The United Nations was opposed to the United States decision to wage war in Iraq, but regardless, the United States made the decision to intervene. The United Nations has little or no actual power, especially in terms of large countries like the United States, so it could not effectively compel the United State to “cease and desist” from using drone technology. At best, a United Nations determination that the use of drones to engage in targeted assassinations of suspected terrorists is illegal would be merely persuasive authority to the United States.

Article 2: "Homebuyer Appeals to Pennsylvania Supreme Court on Her Home's Bloody Past"

<http://abcnews.go.com/Business/homebuyer-appeals-pa-supreme-court-homes-bloody-past/story?id=18317135>

According to the article, a Pennsylvania woman has appealed to the state Supreme Court in her suit against a home seller and real estate agent who failed to disclose that a murder-suicide had taken place in the home she purchased.

When Janet Milliken, 59, moved from California after her husband died, she had hoped to start a new life with her two teenage children in Pennsylvania near her family.

She bought a home in Thornton, Pennsylvania for \$610,000 in June 2007. She learned a few weeks after she moved in from a next-door neighbor that a murder-suicide had occurred the year before in her home.

She sued the seller and the real estate agent for fraud and misrepresentation, saying they made a "deliberate choice not to disclose the home's recent past," according to a court document.

The trial judge granted summary judgment in favor of the defendants, saying state law does not require agents to disclose such events.

Then in December 2012, a panel of the state appeals court affirmed that decision, though with a nearly split decision.

The matter dates back to February 11 2006, when a previous homeowner, Konstantinos Koumboulis, allegedly shot and killed his wife, then shot himself in the master bedroom.



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Joseph and Kathleen Jacono had bought the home October 31, 2006, knowing of the murder-suicide, for \$450,000. They later sold it to Milliken, who wants the transaction rescinded and her money back.

Filing a petition to the Supreme Court of Pennsylvania last week with the hope of arguing the case further, the attorney for Milliken, Tim Rayne, said they "hope to have Pennsylvania recognize that having a horrific event occur within a property can be just as damaging and troubling to a future homeowner as a physical defect, or perhaps even more so."

"Having a gunshot murder-suicide committed within the home is much more devastating than having a small leak concealed by the previous homeowner," Rayne said. "Physical defects can be fixed. Troubling events that could and did occur in this home could never go away."

Rayne said sellers should be required to disclose troubling events "at least for some period of time." Abraham Reich, the attorney for the Jaconos and their agent with Re/Max, said, "The majority, en banc (full-court) opinion of the Superior Court was well reasoned and consistent with years of industry practice in Pennsylvania."

"While the issue is interesting, the number of times it comes up does not warrant Supreme Court review," Reich said. "The Superior Court opinion provides guidance for any real estate transaction in the future and puts to rest the uncertainty of whether a seller has a duty to disclose a murder-suicide or any other type 'psychological damage.' In my opinion, the result is a good one."

Rayne said Milliken, 59, was "disturbed" when she learned of her home's history from a neighbor. "As she was struggling what and if to tell the kids," he said, her children's friends visited the home for Halloween and told the children about the murder-suicide.

"They were very upset upon learning about it and disturbed about the whole situation," Rayne said.

"They were dealing with the death of a father and husband and wanted to move closer to family, and then this happened to them," he said. "It was a tragedy all around."

Rayne said Milliken and her children are still living in the home. He said they would prefer to move out of the home but can't afford to do so without selling it.

"They feel that if they sold it, through good conscience they would have to disclose," Rayne said, "so it would negatively impact the value."

Discussion Questions

1. As the article indicates, Mrs. Milliken is suing Joseph and Kathleen Jacono (the sellers) for "fraud and misrepresentation" in terms of their "deliberate choice not to disclose the home's...past." Legally, how can non-disclosure constitute fraud and misrepresentation?



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Fraud is generally defined as 1) a false statement of fact; 2) made with knowledge of its falsity or reckless indifference as to the truth or falsity of the statement; 3) made with the intent that the listener rely on the false statement; 4) with the effect that the listener does rely on the false statement; and 5) the listener is harmed (either physically, economically, or both). As a general rule, non-disclosure can only constitute fraud and misrepresentation only if there is an affirmative, legal duty to disclose. For example, many states require an automobile dealer to disclose that a vehicle it has available for sale has in its history been returned pursuant to the state's "lemon law." In such a situation, non-disclosure would constitute fraud and misrepresentation.

2. As the article indicates, the trial court judge granted summary judgment in favor of the defendant sellers, saying state law does not require agents to disclose such events. Further, the state intermediate appeals court affirmed the trial court judge's decision. With a procedural history favoring the defendants, on what legal grounds would/could the plaintiff appeal to the Pennsylvania Supreme Court?

Admittedly, the plaintiff has an "uphill battle" in terms of prevailing at the Pennsylvania Supreme Court level. Since Pennsylvania state law does not require agents to disclose such events, the plaintiff is attempting to establish new judicial precedent at the Supreme Court level. If the Supreme Court should find in favor of the plaintiff, its decision would be binding authority on all Pennsylvania courts addressing similar cases in the future.

3. Legally, should a seller be required to disclose a home's "stigmatized past?" Why or why not?

This is an opinion question, so student responses will likely vary. Obviously, a seller would not choose to disclose his or her home's prior history involving murder/suicide, since this might make it difficult or impossible to sell the home to a prospective buyer. A buyer would likely favor such a law, since a home purchase is such a substantial investment, and since a future home sale with such a history might be difficult or impossible.

Article 3: "Drug Testing Unemployment Bill Pops Up In Arkansas"

http://www.huffingtonpost.com/2013/01/28/drug-testing-arkansas-unemployment_n_2567630.html

According to the article, Arkansas lawmakers are debating a proposal to make unemployed people pee in cups to prove they are not on drugs in order to qualify for benefits.

State Senator Jeremy Hutchinson told the media he sponsored the bill after hearing repeatedly from local businesses that job applicants were flunking drug tests. He wants the state to test people before they receive compensation and again after they've been on unemployment several weeks.



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"It's a random drug test, so it won't be testing everybody who walks through," Hutchinson said. "By accepting unemployment benefits they're agreeing to waive their rights and be subject to a random drug test."

Despite having heard many anecdotes, hard data illustrating the problem are hard to come by, and Hutchinson said he had none.

"It may not be a widespread problem, but I don't think there's any doubt there are people on unemployment who continue to use drugs," Hutchinson said.

Randy Zook, president of the Arkansas Chamber of Commerce, confirmed that Arkansas businesses see lots of job applicants fail drug tests and would appreciate a government response. Nationally, surveys usually show that unemployed people are twice as likely as working people to use drugs, but Zook said there's not much data on drug use among Arkansas' unemployment claimants.

"I just have a bale of anecdotes," Zook said. "People gripe...that people fail the drug tests."

The pattern of similar gripes resulting in legislation has played out in more than a dozen states over the past several years (the bills come in addition to the even-more-numerous proposals to drug test welfare recipients). The business community complains about job applicants failing drug tests, and then lawmakers say workers receiving unemployment compensation ought to be able to prove they are clean.

While states are allowed to deny benefits to a worker who loses her job for a drug-related reason, federal law has not allowed states to require otherwise eligible unemployment claimants to be clean in order to receive benefits. The regulations will soon change, however, to reflect a February 2012 law that said states could require testing for people seeking work in occupations that routinely test workers. The U.S. Labor Department has said it will issue new regulations later this year.

"They're pretty slow to get these new rules out," Zook said.

Hutchinson said he would make sure his law complied with the forthcoming regulations. If the Labor Department deems a state's unemployment laws "out of conformity" with federal law, it can take away tax credits from state businesses, effectively resulting in a huge business tax hike.

Elizabeth Lower-Basch of the Center for Law and Social Policy, a Washington, D.C.-based think tank, said schemes to drug test the poor and jobless are part of an effort to stigmatize low-income people.

"It's all part of the same pattern of stigmatizing people and blaming them for facing hard times," Lower-Basch said, "rather than recognizing that we're still in a slow recovery and that many people are struggling through no fault of their own."



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Lower-Basch said people ought to keep in mind the differences between welfare and unemployment applicants. The unemployed qualify for benefits if they'd worked for a significant time period and lost their jobs through no fault of their own, whereas the former usually qualify by being poor and needing to feed their children.

Arkansas State Senator Stephanie Flowers, employing a common tactic used by Democrats in response to Republican drug testing bills, introduced an amendment to make lawmakers take drug tests, too.

"It doesn't make sense to me that you would be suspicious of those people who are unemployed and not be suspicious of those people who are actually working and in public jobs," Flowers said. Hutchinson said he would have no problem with drug testing lawmakers if it helps pass his bill. He said he does not use drugs.

"I know of no one who would test positive (in the legislature)," Hutchinson said. "I don't think it's that big of an issue. I think it's probably a bit of a red herring."

Discussion Questions

1. Courts have routinely supported the right of employers to drug-test employees as a precondition of employment, as a condition of continued employment, and immediately after a work-related accident. Legally, is there any distinction between an employer's right to drug-test employees, and the government's right to drug-test individuals receiving unemployment benefits? Explain your response.

The Fourth Amendment to the United States Constitution states that "(t)he 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." The Fourth Amendment applies to government searches and seizures, while common law privacy rights apply to individuals.

2. Are states legally subject to the Fourth Amendment to the United States Constitution?

In Mapp v. Ohio, 367 U.S. 643 (1961), the United States Supreme Court ruled that the Fourth Amendment applies to the states by way of the Due Process Clause of the Fourteenth Amendment.

3. Should lawmakers be subjected to drug testing? Explain your response.

This is an opinion question, so student responses will likely vary. There is a strong argument to be made for drug testing of legislators, since they are intimately involved in the "nation's business" of lawmaking.



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Video Suggestions

Video 1: "Report: Grand Jury Had Sought Charges in JonBenet Case"

<http://www.usatoday.com/story/news/nation/2013/01/28/jonbenet-ramsey-grand-jury/1870927/>

Note: In addition to the video, please also see the following article, also from the above-referenced web site:

"Report: Grand Jury Had Sought Charges in JonBenet Case"

According to the article, a grand jury investigating the death of 6-year-old beauty queen JonBenet Ramsey voted to indict her parents 13 years ago, but the district attorney in Boulder, Colorado, refused to prosecute the case.

The bizarre circumstances surrounding JonBenet's death on Christmas night in 1996 drew media attention nationwide. Her strangled body was found in the basement during a second search of her Boulder home several hours after she was reported missing. A ransom note sought \$118,000, but apparently no effort to collect it took place.

The media cites multiple sources, including members of the 1999 grand jury, saying John and Patsy Ramsey would have faced charges of child abuse resulting in death, but District Attorney Alex Hunter declined to sign the indictment.

"I and my prosecution task force believe we do not have sufficient evidence to warrant a filing of charges against anyone," Hunter told reporters outside the Boulder County Justice Center on October 13, 1999. He did not mention the grand jury's vote.

Patsy Ramsey died of ovarian cancer in 2006. The Ramseys and their now-adult son Burke were exonerated in July 2008 by then-District Attorney Mary Lacy, based on updated analysis of DNA samples from JonBenet's clothing.

"Numerous prosecutors labeled her doing so as both unusual and questionable," according to the media.



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Some jurors — who spoke to the media on condition of anonymity — are not sold on the exoneration.

"We didn't know who did what," one juror is quoted as saying. "But we felt the adults in the house may have done something that they certainly could have prevented, or they could have helped her, and they didn't."

"It's still unresolved," another juror said. "Somebody did something pretty horrible that wasn't punished. ... I'm not saying that I am at peace. But I had sympathy with his (Hunter's) decision." Former Boulder first assistant district attorney Bill Wise was among those confirming the jury's vote.

"It names both of them, John and Patsy Ramsey," said Wise, who was Hunter's top assistant for 28 years but did not participate in the grand jury process. Wise says he agrees with Hunter's decision.

Boulder attorney Bryan Morgan, who represented John Ramsey, said there must have been "some very professional and brave people in Alex's office and perhaps elsewhere whose discipline and training prevented a gross miscarriage of justice."

Child abuse resulting in death, when charged as "knowingly or recklessly," is a felony carrying a potential sentence of four to 48 years in prison. The statute of limitations on that charge in Colorado is three years from the date of the crime.

Hunter, who left office in 2001 after 28 years as Boulder County's district attorney, declined to discuss the grand jury's actions with the Camera, but cited "the inviolate secrecy of the proceedings and the differing burdens of proof applicable to jurors and prosecutors."

Boulder Police Chief Mark Beckner also declined comment, citing "my oath of secrecy."

Denver criminal defense lawyer and legal analyst Dan Recht stressed to the media that the standard of proof for a grand jury to indict is a far lower threshold than what Hunter would have had to meet at trial.

"It couldn't be more different in a jury trial," Recht says. "So what Alex Hunter was thinking about was, 'But can I prove this beyond a reasonable doubt?' Because that's the burden that the prosecution has at a trial. So he seemingly decided, 'I am not going to be able to prove this child abuse resulting in death beyond a reasonable doubt to a jury.'"

Discussion Questions

1. As the article indicates, a grand jury voted to indict John and Patsy Ramsey for charges of child abuse resulting in death, but Boulder, Colorado District Attorney Alex Hunter declined to sign the indictment. In your opinion, should a district attorney be allowed to disregard a grand jury vote to indict a suspect in a criminal case? Explain your response.



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This is an opinion question, so student responses will likely vary. Traditionally, district attorneys have been given wide-ranging latitude in terms of whether to pursue charges against a criminal defendant.

2. As the article indicates, John and Patsy Ramsey and their now-adult son Burke were exonerated in July 2008 by then-District Attorney Mary Lacy based on updated analysis of DNA samples from JonBenet Ramsey's clothing, and numerous prosecutors labeled the exoneration as both “unusual and questionable.” Why would such an exoneration be “unusual and questionable?” If a criminal investigation should reveal evidence insufficient for an indictment, should a district attorney be required, as a matter of practice, procedure and/or law, to public exonerate a suspect? Explain your response.

The purpose of a public exoneration would be to “clean the slate,” at least to the greatest extent possible, in terms of the implication of a suspect in a criminal matter. District attorneys have been given wide-ranging latitude in terms of whether to publicly exonerate a defendant. Whether a district attorney should be required, as a matter of practice, procedure and/or law, to publicly exonerate a suspect is an opinion question, and student opinions will likely vary in response to this question.

3. What is the burden of proof a prosecutor must satisfy in order for a grand jury to issue a criminal indictment against a defendant? What is the burden of proof a prosecutor must satisfy in order for a trial jury to return a guilty verdict against a defendant?

In order to obtain a criminal indictment against a defendant, a prosecutor must prove by the “preponderance of the evidence” that the defendant committed the crime alleged. This burden of proof means that by the greater weight of the evidence (i.e., more likely than not), the defendant committed the crime.

In order to obtain a guilty verdict against a defendant, a prosecutor must prove beyond reasonable doubt that the defendant committed each and every element of the crime alleged. This burden of proof is much more substantial and difficult to obtain than proving by the “preponderance of the evidence” that the defendant committed the crime alleged.

Video 2: “Tampa Shock Jock Trial: Judge Denies Mistrial After Alleged DUI Honey Trap”

<http://abcnews.go.com/US/tampa-shock-jock-trial-judge-denies-mistrial-alleged/story?id=18333326#.UXRQb6KNrng>

Note: In addition to the video, please also see the following article, also from the above-referenced web site:



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“Tampa Shock Jock Trial: Judge Denies Mistrial After Alleged DUI Honey Trap”

According to the article, a Tampa Bay, Florida judge has denied a motion for a mistrial in a civil defamation case between two of the biggest radio names in the region after an attorney representing one of the DJs ended up behind bars for alleged DUI, in what his legal team called a setup.

Charles Campbell, the lead attorney representing radio personality Todd "MJ" Schnitt in his case against Bubba "The Love Sponge" Clem, was arrested recently outside Malio's Prime Steakhouse in Tampa. At the restaurant and bar he had met a paralegal named Melissa Personius, who works for Clem's legal team.

John Ellis, a member of Schnitt's legal team, says that Personius tricked Campbell into getting arrested.

"She lied to Mr. Campbell, or me, when we asked her where she worked," he said. "She bought him drinks. She specifically, we believe, asked him to move her car."

Campbell spent the night in a Hillsborough County jail before posting \$500 bond and being released recently. It's unclear whether he has entered a plea.

Both sides had sought a declaration of a mistrial. Schnitt's attorneys asked for a mistrial on the grounds that the jury might have been influenced by the publicity of Campbell's arrest. Clem's attorney also cited the amount of coverage of the arrest in seeking a mistrial.

The judge hearing the case denied the requests.

"Clem has to bear the risk," an attorney from Clem's team said. "We believe that there is no way to have a fair trial. It is the number one story in this community and has now made national news. This (bringing up the arrest in court) was done on purpose by the plaintiffs to declare a mistrial if they don't like the verdict."

Clem's attorneys requested that the jury be polled by the judge regarding the news surrounding Campbell.

Police testified in court that a member of Clem's defense team called them to have Campbell arrested for DUI.

Schnitt's lawyers say Clem's attorneys could have gotten a legal advantage because Campbell left his briefcase with important documents in the paralegal's car.

Personius said in court that she had not opened the briefcase while it was in her possession. She invoked her right to remain silent several times while on the stand, including when she was asked whether she was sent to the bar by her firm.



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Clem's attorney said that there is no need for a mistrial in the case, which centers around allegedly offensive and defamatory comments Clem made about Schnitt and his wife.

"I ask for a retraction of that, because he (Schnitt's attorney) knows he has no evidence to suggest that my law firm or I have any involvement in this," he said of the setup allegation.

An attorney on Campbell's side suggested it all would be hammered out in court.

"We have a high level of respect for the judicial system, and believe it's in the best interest of all parties to address any issues related to this case in the courtroom," said J. Todd Timmerman, a partner at Campbell's firm.

While leaving the court, Clem expressed his disappointment in the turn of events.

"It's like a 'South Park' episode," he said. "Quite frankly, I'm getting a little tired of it."

Discussion Questions

1. Why would the plaintiff seek a mistrial in this case?

As the article indicates, the plaintiff is concerned about the amount of publicity associated with the trial and the possibility that such publicity might adversely affect the trial (in other words, adversely affect the plaintiff's prospects of prevailing at trial.)

2. Why would the defendant seek a mistrial in this case?

As the article indicates, the defendant is concerned about the amount of publicity associated with the trial and the possibility that such publicity might adversely affect the trial (in other words, adversely affect the defendant's prospects of prevailing at trial.)

3. Assume the allegations of attorney John Ellis, a member of plaintiff Todd Schnitt's legal team, are correct; namely, that defense team paralegal Melissa Personius tricked plaintiff's lead attorney Campbell into getting arrested for DUI by lying to Campbell about where she worked, buying him alcoholic drinks, and by asking him to move her car (at which point he was arrested by the police.) Do Personius' statements and actions constitute "legal entrapment?" If so, what would be the legal effect of Campbell's entrapment on his prosecution for DUI? If not, why not?

Even assuming that attorney John Ellis' allegations are true (i.e., that defense team paralegal Melissa Personius tricked plaintiff's lead attorney Campbell into getting arrested for DUI by lying to Campbell about where she worked, buying him alcoholic drinks, and by asking him to move her car), this does not constitute legal entrapment. Legal entrapment would involve a government official enticing a defendant to commit an illegal act to the point where the defendant commits a wrong he or



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she would not have otherwise committed. In this case, Melissa Personius was not a government official; therefore, legal entrapment is not a valid defense.



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Of Special Interest

This section addresses Apple Inc.'s termination of business with a Chinese manufacturer after a report said it had employed 74 underage workers

Ethical Dilemma

“Apple Drops Chinese Supplier for Using Underage Labor”

<http://abcnews.go.com/Technology/apple-drops-chinese-manufacturer-report-underage-labor/story?id=18314095>

According to the article, Apple has stopped doing business with a Chinese manufacturer after a report said it had employed 74 underage workers.

Apple's Supplier Responsibility Report, which was released recently by the company, reveals that Guangdong Real Faith Pingzhou Electronics was employing workers under the age of 16.

"Our auditors were dismayed to discover 74 cases of workers under age 16 — a core violation of our Code of Conduct. As a result, we terminated our business relationship with PZ," the company says in the report.

Apple has now lost its spot as the most valuable publicly traded company, one year after it first firmly overtook ExxonMobil. Even though it announced a record number of iPhone and iPad sales in its last quarter earnings, its stock price has fallen over 12 percent.

Apple says it is working hard to improve labor conditions at the factories of its Chinese contractors. It said it also discovered that one of the region's labor agencies had conspired with the manufacturer, providing children to them and helping forge age-verification documents. Apple said in its report that it alerted the provincial government, which fined the agency and suspended its business license.

"The children were returned to their families, and PZ was required to pay expenses to facilitate their successful return," Apple says in the report.

In an interview with Bloomberg, Apple's Senior Vice President of Operations, Jeff Williams, said child labor was being used more than companies care to admit. "Most companies, they either don't report on it at all, or they say they look for it and found none, or they obscure the data in some way," Williams told Bloomberg. "If they're not finding it, they're not looking hard enough."



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ABC News' Bill Weir visited the factory of Apple's Foxconn supplier last year and did not see any underage workers. "But while we looked hard for the kind of underage and maimed workers we've read so much about, we mostly found people who face their days through soul-crushing boredom and deep fatigue," Weir wrote about his visit.

In the 37-page Supplier Responsibility Progress Report, which can be viewed here, Apple said there had been a 72 percent increase in facility audits. According to the report, Apple achieved an average of 92 percent compliance with the goal, for now, of a maximum 60-hour work week.

Apple vowed last year to improve working conditions at its manufacturing facilities in China, vowing to work specifically on reducing working hours for Chinese workers. In March 2012, the Fair Labor Association released a report on the poor conditions at Apple's Foxconn supplier. The organization gave a long list of recommendations to Apple and Foxconn, and both Apple and Foxconn agreed to follow them.

In August 2012, the FLA said that that Foxconn had completed 280 action items on time or ahead of schedule. By July 1, 2013, Foxconn has promised to reduce workers' hours to 49 hours per week and stabilize pay -- though the limit is rarely enforced because workers often want to work overtime and make ends meet.

Apple announced in December that it would begin to make some of its Mac computers in America in 2013.

Discussion Questions

1. Does Apple Inc. have an ethical obligation to monitor the labor practices of its foreign-based suppliers, even though Apple does not own those suppliers or the production facilities in which they operate? Explain your response.

This is an opinion question, so student responses will likely vary. Arguably, Apple has an ethical obligation to monitor the labor practices of its foreign-based suppliers, even though Apple does not own its suppliers or the production facilities in which they operate. Even without ownership, Apple would have considerable "clout" over its suppliers, since suppliers would have every incentive to maintain their business relationships with a company as imminent as Apple.

2. Does the United States government have an ethical obligation to monitor labor practices in China? Should the United States negotiate fair labor practices in its trade agreement(s) with China? Why or why not?

This is an opinion question, so student responses will likely vary. Arguably, the United States has an ethical obligation to negotiate fair labor practices in its trade agreement(s) with China.

3. Does the Chinese government have an ethical obligation to its citizen-workers to ensure fair labor practices in China? Explain your response.



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



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Of Special Interest

This section of the newsletter will assist you in covering Article 1 ("U.N. Launches Drone Investigation into Legality of U.S. Program") and Article 2 ("Homebuyer Appeals to Pennsylvania Supreme Court on Her Home's Bloody Past") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1-"U.N. Launches Drone Investigation into Legality of U.S. Program"): United Nations Website

Note: For research in preparation for discussing Article 1, refer students to the following United Nations web site:

<http://www.un.org/en/>:

Teaching Tip 2 (Related to Article 2-"Homebuyer Appeals to Pennsylvania Supreme Court on Her Home's Bloody Past"): "3 BR, Hot Tub, 3 Murders: How Homicide Homes Hold Their Secrets"

For an excellent supplementary article regarding "stigmatized properties" and legal disclosure requirements, refer students to the following article:

"3 BR, Hot Tub, 3 Murders: How Homicide Homes Hold Their Secrets"

<http://www.nbcnews.com/business/3-br-hot-tub-3-murders-how-homicide-homes-hold-846521?streamSlug=businessmain>

According to the article, days after closing on his dream home – a brick colonial near the Washington, D.C., school he was toiling to save – principal Brian Betts learned of his property's ghastly past.

Inside the house, 11 months earlier, an intruder had shot and killed a 9-year-old girl and her father. Horrified, Betts demanded the transaction be rescinded. When that effort failed, he invited two ministers to pray over his new place. Then Betts tried to paint over the grim history, refinishing the woodwork and refurbishing the kitchen.

Seven years later, in April 2010, a robber shot and killed Betts in his bedroom.

"In Maryland, there's no obligation on Realtors to disclose that a murder took place at a home, much less two murders – and subsequently three," said Rene Sandler, an attorney for Betts' family. "Brian was just getting to know his neighbors when one told him he was surprised someone bought the house



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given what had happened. Brian was absolutely shocked. His Realtor never said anything.”

Last February, the same house sold again, this time at almost \$200,000 below asking price.

Welcome to a macabre corner of American real estate, a legally gray, emotionally black sector governed by a mishmash of varying state laws that dictate whether agents must divulge that bad things went down in what the National Association of Realtors calls “stigmatized properties.” Only two states, Alaska and South Dakota, mandate that sellers’ agents reveal whether a homicide or suicide occurred at a listed home within the previous 12 months, according to NAR spokesman Walter Molony. In Connecticut, Delaware, New Hampshire, North Dakota and Oklahoma, if a prospective buyer asks about past bloodshed, real estate agents must truthfully answer the question.

“In most states, a seller isn’t required to voluntarily disclose nonstructural issues such as homicides on the property,” said Holden Lewis, a real estate expert at Bankrate.com, a consumer finance service. For example, he noted that Minnesota law says “the seller doesn’t have to disclose that the property was the location of a suicide, death or ‘perceived paranormal activity.’ ”

In Maryland, where Betts was shot to death, agents must inform buyers only about “material facts they know or should know,” said Chuck Kasky, vice president of legal affairs for the Maryland Association of Realtors. When it comes to Maryland properties, he added, a murder is “not a material fact.”

The reason some agents are reluctant to mention such former horrors? Money, of course. Many buyers would be uneasy if not queasy about living in a space where a life – or several lives – ended in a disturbing way, even if the tragedy happened years before.

Such “psychologically impacted homes” languish longer on the market than comparable properties and sell for about 3 percent less, according to a study authored in 2000 by two professors at Wright State University in Dayton, Ohio. Their peer-reviewed paper, based on an examination of 102 “stigmatized” homes in Ohio, was published in the *Journal of Real Estate Practice and Education*. Those 102 homes took, on average, 45 percent longer to sell than comparable properties without grisly pedigrees, said one of the authors, James Larsen, a finance professor.

But a homicide home’s value dip can be even steeper if it’s located in a rural area where violent crime is less common and neighborly gossip echoes for generations, contends Bennie Waller, a professor of finance and real estate at Longwood University in the central Virginia town of Farmville, population 8,200.

“There’s a country song (by Miranda Lambert) that says, ‘Everybody dies famous in a small town.’ In a town this size, it’s an informal communications network, and things get around pretty quickly – even without cable,” said Waller, who has studied the real estate impacts on two local homes where killers took lives.



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In 2009, four people – two parents, their daughter and the daughter’s friend – were bludgeoned to death in a home not far from Longwood’s campus. The 20-year-old murderer, an aspiring rapper who later pleaded guilty, knew the daughter. Before the crimes, the home was tax assessed at \$240,000. Later, it was auctioned to an investor for \$104,000 but it remains on the market, unoccupied, due to the emotional scars left by the homicides, Waller said.

At another house next to the school – “a fantastic property” with a swimming pool, Waller said, Robert Bruce shot and killed his wife in 1991. Locals still refer to the residence as “the Bruce house.” That place is tax assessed at \$200,000 but was similarly sold at auction for about \$90,000. It, too, remains empty.

“My wife and I actually looked at (buying) it,” Waller said. They jointly decided not to make an offer.

“I’m a finance-real estate guy so I looked at it from an investment perspective. My wife is my wife,” Waller said.

If it were to come down in price, Waller said he would reconsider buying it.

"I don't care what people say," he said. "But it would probably be an investment rather than a property we would live in. Because college kids don't give a damn (about its gory past). I could put six kids in there, (rent it) and make money."

While those two infamous Farmville homes remain available, Brian Betts’ family had preferred that his two-story, three-bedroom house in Silver Spring, Md., simply vanish after his death.

“The family’s wishes were to essentially have it bulldozed for whoever was going to acquire that property to just start anew,” said Sandler, the family’s attorney. However, the principal's estate still owed money to the bank for the home's mortgage.

Despite good schools nearby and its locale in an upscale neighborhood popular with federal workers, “it sat on the market for a very, very long time,” Sandler said. “And (in time) the house went to foreclosure.”

Fannie Mae acquired the property, and in May 2011, it was listed for \$515,000. It sold in February for \$330,000, according to Zillow.com. The family believes that buyer knew about the property’s history.

“Two things really bothered Brian about the purchase. He was an educator, an educator who truly made a difference in kids’ lives – I mean something for the movies,” Sandler said. “Knowing that a child was murdered in that house, much less a child and her dad, really impacted him.



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“But then you have the piece where it was just intentionally not disclosed,” she added. “This was a Realtor that Brian was on friendly terms with, not somebody he just picked at random. So that level of deception, if you will, was very unsettling.”



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

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 5, 6 and 49	Chapters 3 and 7	Chapter 2	Chapters 6 and 49
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5, 6 and 49	Chapters 3 and 7	Chapter 2	Chapters 6 and 49
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 1, 4 and 7	Chapters 2 and 5	Chapter 1	Chapters 1 and 7
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3 and 24	Chapters 2 and 5	Chapter 4	Chapter 24
Barnes et al., Law for Business	Chapters 4 and 34	Chapters 2 and 5	Chapter 3	Chapter 34
Brown et al., Business Law with UCC Applications	Chapters 2, 30 and 34	Chapters 3 and 5	Chapter 1	Chapters 30 and 34
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6, 7 and 12	Chapters 4 and 13	Chapter 2	Chapters 7 and 12
McAdams et al., Law, Business & Society	Chapters 5 and 16	Chapter 4	Chapter 2	Chapter 16
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 23 and 25	Chapters 4 and 22	Chapter 5	Chapters 23 and 25
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 7 and 17	Chapters 3 and 8	Chapter 1	Chapters 7 and 17



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This Newsletter Supports the Following Business Law Texts:

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

