



Proceedings

A monthly newsletter from McGraw-Hill



November 2012 Volume 4, Issue 4



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Dear Professor,

Welcome to McGraw-Hill's November 2012 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 4, Issue 4 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the November 2012 newsletter topics with the various McGraw-Hill business law textbooks.

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

1. Whether the federal government is legally entitled to \$80 million worth of rare gold coins;
2. The Chicago teachers' strike;
3. Whether the federal government has the right to regulate, and therefore define, marriage;
4. Videos related to the 1995 O.J. Simpson double-murder trial;
5. An "ethical dilemma" related to whether the federal government has an ethical obligation to see to it that all Americans have health care insurance and proper access to health care; and
6. "Teaching tips" related to Article 3 ("Federalism Fight: 3 States Say Feds Can't 'Unmarry' Gay Couples"), Video 1 ("Ex-Prosecutor: O.J. Simpson Attorney Tampered with Glove") and Video 2 ("Who Done It?! O.J. Simpson's Legal Team Denies Glove Tampering Claims") of the newsletter.

I hope your fall semester is progressing nicely!

Jeffrey D. Penley, J.D.
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Of Special Interest

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

- 1) Whether the federal government is legally entitled to \$80 million worth of rare gold coins;
- 2) The Chicago teachers' strike; and
- 3) Whether the federal government has the right to regulate, and therefore define, marriage.

Hot Topics in Business Law

Article 1: "Judge Says 10 Rare Gold Coins Worth \$80 Million Belong to Uncle Sam"

<http://abcnews.go.com/Business/judge-10-rare-gold-coins-worth-80-million/story?id=17159793#.UE1bGrJIS7L>

According to the article, a judge recently ruled that 10 rare gold coins worth \$80 million belonged to the U.S. government, not a family that had sued the U.S. Treasury, saying it had illegally seized them.

The 1933 Saint-Gaudens double eagle coin was originally valued at \$20, but one owned by King Farouk of Egypt sold for as much as \$7.5 million at a Sotheby's auction in 2002.

After the U.S. abandoned the gold standard, most of the 445,500 double eagles that the Philadelphia Mint had struck were melted into gold bars.

However, a Philadelphia Mint cashier had managed to give or sell some of them to a local coin dealer, Israel Switt.

In 2003, Switt's family, his daughter, Joan Langbord, and two grandsons, drilled opened a safety deposit box that had belonged to him and found the 10 coins.

When the Langbords gave the coins to the Philadelphia Mint for authentication, the government seized them without compensating the family.

The Langbords sued, saying the coins belonged to them.

In 2011, a jury decided that the coins belonged to the government, but the family appealed.

Recently, Judge Legrome Davis of the Eastern District Court of Pennsylvania, affirmed that decision, saying "the coins in question were not lawfully removed from the United States Mint."

Barry Berke, an attorney for the Langbords, said, "This is a case that raises many novel legal questions, including the limits on the government's power to



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confiscate property. The Langbord family will be filing an appeal and looks forward to addressing these important issues before the 3rd Circuit."

The family said in its suit that in another seizure of the 1933 double eagle, the government split the proceeds with the owner after the coin sold for \$7.59 million in 2002.

Discussion Questions

1. How is personal property properly transferred from one party to another, so that the recipient can rightfully claim ownership of the personal property?

Personal property ownership can be transferred from one party to another either for consideration (value), or by gift. Consideration can constitute money or any other property of value, a promise, the performance of an act, or forbearance (refraining from doing something one otherwise has the legal right to do). Transfer of personal property by gift requires donor intent, delivery of the property from the donor to the donee, and acceptance of the property by the donee.

2. Based on the facts presented in this article, did the Langbord family legally acquire ownership of the coins?

There is no evidence in the article to indicate that the Philadelphia Mint cashier had the authority, express or implied, to transfer ownership of the coins to Israel Switt. Accordingly, the Langbord family (Switt's heirs) did not legally acquire ownership of the coins. In your author's opinion, the court ruled correctly in determining that the coins in question are owned by the United States government.

3. Does this case involve the government's "confiscation" of property, as Mr. Berke, the attorney for the Langbord family, contends?

In your author's opinion, the word "confiscation" is misused in the context of the case. To "confiscate" means to take or seize someone's property with authority, or to take someone's property as a penalty and give it to the public treasury. The government asserted its legal right to ownership of the coins, and the court agreed, concluding that the coins were not the Langbords' property; accordingly, the government did not "confiscate" the Langbords' property.



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Article 2: "In Chicago Strike, Teachers' Issues Not All at Stake"

<http://www.usatoday.com/news/nation/story/2012/09/9/chicago-teachers-to-strike-after-talks-fail/57720772/1>

According to the article, striking teachers marched in picket lines in September as parents chafed at the disruption and debate intensified over the implications for Democratic Mayor Rahm Emanuel and the future of public schools and public-sector unions.

About 26,000 teachers and support staff went on strike for the first time since 1987 after contract talks broke down. Among key issues: whether laid-off teachers get priority for openings and the weight of test scores in teacher evaluations.

"I do believe that we are down to the last few issues," Emanuel said at Maranatha Church, which is offering activities for displaced students. "This is, in my view, a strike of choice, and it's the wrong choice for our children."

"Stay at the table, finish it for our children," he said.

Emily Lee, 31, a mother of two public school students, had a message for striking teachers: "Get back to work. The city is broke; children are getting murdered in the streets and education is the answer."

Rob Heselton, a teacher at Jones College Prep for 12 years, said the important issues for him are "not as much salary" as class size, extra days and hours added to the school calendar this year and the way Emanuel handled those issues. "It was just the fact that it was forced on us," he said. "I don't want to be out here at all, but it's definitely worth fighting for."

Average teacher pay is \$76,000 a year. The school system has a \$665 million budget deficit. Teachers voted in June to authorize a strike if a new agreement could not be reached.

The stakes are high for Emanuel, who was elected in 2011. He promised to improve public schools in part by extending school days.

Dick Simpson, head of the political science department at the University of Illinois at Chicago, said a long strike could undermine Emanuel's reputation as a leader who can get things done. He also noted that unions are a major source of support for Emanuel's Democratic Party.

"The unions aren't the only game in town, they're not as strong as they used to be," Simpson said, "but if the mayor isn't able to reasonably settle the strike that will weaken him in that sector."

Robert Bruno, a University of Illinois at Chicago professor of labor relations who teaches a class on unions and politics, says a prolonged strike here could even affect President Obama's re-election



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effort. Because unions play key roles in getting out the vote in some states, he says, "it certainly doesn't serve the broader interests of the Democratic Party."

Republican presidential nominee Mitt Romney made the political implications clear. In a statement, he said teachers unions "have too often made plain that their interests conflict with those of our children" and noted that Vice President Biden last year told teachers union members not to doubt Obama's commitment to them.

Bruno also said the strike could be "a pivotal point" in the shift toward introducing competition to public schools and making them "function more like private businesses." If the teachers union here fails, he said, "then this movement simply continues and it's likely to get locked into place for a generation."

The dispute here also could affect the national debate over public-sector unions. Wisconsin Governor Scott Walker, a Republican, won a high-profile effort in 2011 to end collective bargaining for most public unions. Ohio voters last year repealed a Republican-backed law that restricted collective bargaining for public workers.

The Labor Department says 11.8% of wage and salary workers belonged to unions in 2011, down from 20.1% in 1983. Last year, 37% of public-sector workers were union members, compared with 6.9% of private-sector workers.

Chicago Public Schools kept 144 schools open from 8:30 a.m. to 12:30 p.m. for activities and meals, 59 churches that operate as havens were open to students. Parks and 76 public libraries offered activities. There are more than 350,000 students in the system. Police Superintendent Garry McCarthy said he would take officers off desk duty and deploy them to deal with protests and students who could be roaming the streets.

The mood among strikers and parents was more frustration than anger. Susan Hickey, a school social worker for 18 years who is on the bargaining team, said pay and health benefits are among remaining issues. "Chicago is a union town," she said. "The assault on unions has been horrible."

Frank Menzies, a teacher for 15 years at Jones College Prep., said "equity, fair labor practices and dignity" are at stake. "Money is not a big deal," he said.

Karen Stolzenberg, an art teacher for 25 years, agreed. Her classes average 32 students, making it "hard to build a relationship with students on a daily basis," she said. "None of us wanted this," she said. "I want to be in the classroom, but this is important."

Jeff Bell, 41, a commodities broker who has three children in Chicago schools, said he was disgusted with both sides of the dispute. "Who's thinking about the kids?" he asked. "Mine are at home instead of being where they should be -- in a classroom, learning. Fix this; get it resolved. Our kids are paying the price, and that's a real shame."



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Ann Chase, 30, whose daughter is a first-grader, said she was torn. "I think our teachers should be paid more, but I don't think a strike is the best way for them to get their message out," she said. "It mostly makes me sad that it had to come to this."

Note: Since this article was published, the Chicago teachers' strike was resolved. For an article addressing the resolution of the strike, please refer to the following:

"Union Vote Ends Strike by Teachers in Chicago"

<http://online.wsj.com/article/SB10000872396390443816804578004652048007358.html>

According to the article, hundreds of thousands of students in Chicago headed back to class after the teachers union ended a seven-day strike that spotlighted the intensifying national debate over how teachers are evaluated, hired and fired.

Chicago teachers' union officials voted to end a strike that had halted classes for 350,000 students in the nation's third-largest school district. The vote by the union's governing body came days after the city and the teachers union reached a tentative deal on a three-year contract.

The draft agreement for the first time links teacher evaluations to student test scores, giving city officials what they say is a more rigorous system to identify the worst-performing teachers—and fire them if they don't improve. And the deal would let the city lay off teachers based on performance, rather than simply based on how long they have served.

But it still would give preference to tenured teachers in that process, and Mayor Rahm Emanuel had to agree to conditions that make it hard to fire some teachers who receive weak evaluations, and to limit some of the power of school principals to choose their staff. The union failed to gain new concessions they sought on issues like reducing class sizes.

Mr. Emanuel called the outcome "an honest compromise" and trumpeted its incorporation of a longer school day—although that took effect at the start of this school year under a recent state law. "This contract is a break with past practices and brings a fundamental change that benefits our children," he said.

Union officials didn't predict certain passage of the contract by members, but union President Karen Lewis defended the deal. "There is no such thing as a contract that would make all of us happy," she said. "But the other issue is, do we stay on strike forever until every little thing that we want is capable of being gotten?"

An "overwhelming" majority of the union governing body's approximately 800 members, known as delegates, approved an end to the strike, Ms. Lewis said.



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Chicago's teachers strike—the first in a major urban center since Detroit's in 2006—has focused on issues at the heart of debates over education policy, including the use of test scores to evaluate teachers and fire poor performers, and job guarantees for laid-off educators in urban districts hemorrhaging students. The battle over those issues has grown increasingly intense in recent years, thanks in part to the embrace of such initiatives by a group of Democratic mayors, such as Mr. Emanuel, seeking new ways to address long-standing urban-education problems while also grappling with budgetary woes.

Both advocates of school overhauls and labor leaders nationwide have been watching the Chicago fight, and perceptions of its outcome could strengthen the hand of like-minded politicians or embolden unions to take a more defiant stand.

The U.S. Conference of Mayors, headed by Philadelphia Mayor Michael Nutter, a Democrat, praised Mr. Emanuel in a statement, saying he negotiated a "historic" agreement that "mayors across the nation will be following."

Some aspects of the tentative Chicago deal don't go as far as recent deals done in other big cities. It gives the city less room than a deal in Washington, D.C., in 2009 to move out struggling teachers, and it doesn't match a Denver contract signed in 2004 when it comes to awarding raises, in part, based on performance.

"This is what happens in a negotiation—you sometimes have to split the baby," said Kate Walsh, president of the National Council on Teacher Quality, an advocacy group that pushes for better teacher evaluations. "There are some clear wins for kids, but there are also some notable setbacks." Shay Porter, a teacher at Hendricks Academy and a union delegate, said he was happy to be going back to the classroom—but also gratified with the outcome of the strike. "We reunited the labor movement," he said, and "we got most of what we wanted."

Mr. Emanuel, former chief of staff to President Barack Obama, has earned a reputation for driving hard bargains, and several factors seemed to favor him going into the contract fight. He won election last year without the support of the teachers union so wasn't beholden to it for political support. The state legislature last year pushed through measures that helped his agenda by making it tougher for Chicago teachers to strike and giving the mayor the power to lengthen the school day. And he boasted solid public support: a Chicago Tribune/WGN-TV poll in May showed 52% of Chicago voters saying they approved of Mr. Emanuel's job performance, while 29% disapproved and 20% had no opinion.

But Mr. Emanuel also faced a teachers union whose resolve he appears to have underestimated. Ms. Lewis rallied union members around resentment over what they said was unfair blame for education ills they believed are caused by poverty and poor policies. Teachers are also frustrated by the increasing reliance on student test scores to evaluate them and schools.



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The contract, a copy of which was viewed by The Wall Street Journal, calls for a 3% raise the first year and 2% raises the next two years. The two sides can agree to extend the contract to a fourth year with a 3% raise. Mr. Emanuel had wanted to replace the "step and lane" raises that teachers get for years of service and extra credentials with merit pay. But the union blocked that. District officials say the total pay increases in the deal would average 4.4% annually over four years, and cost an additional \$295 million for a district that faces an estimated \$1 billion deficit in 2015-16.

The deal calls for student performance on tests to make up 25% of teachers evaluations—which previously have been based on principals' observations—this year and next, and to make up 30% in year three—in line with state law. That figure would rise to 35% in the fourth year—marking a victory for Mr. Emanuel.

Under the deal, teachers would be ranked into four categories. Those in the lowest tier, "unsatisfactory," could be fired in 90 working days if they don't improve—although they can appeal their evaluations. Teachers in the second-to-lowest category, "developing," would be moved to the "unsatisfactory" ranking after two years unless they gain at least one point annually on the evaluations, which have a 100-to-400-point scale.

A pilot study conducted last year in about 100 schools showed that about 2% of teachers fell into the lowest rating, and 28% into "developing." Ms. Lewis said as many as 6,000 teachers could face dismissal under the city's initial contract offer.

Tim Daly, president of the New Teacher Project, which supports tougher evaluations to improve teacher effectiveness, called the provision "twisted" and said it allows a teacher to "stagnate at a mediocre" level forever. "This policy makes no sense if you are trying to reassure parents that the district can consistently hold a high standard on teacher quality," he said.

The proposal also institutes a new policy that, for the first time, would base layoffs partly on performance. If layoffs occur, teachers rated "unsatisfactory" would be the first to go. Non-tenured teachers would be laid off next, even if they had a better rating than a tenured teacher.

The union also would win a provision that gives teachers displaced from closed schools first dibs on jobs at the schools where their students move—provided those teachers are ranked in the top two categories. The union has said as many as 100 of the city's 681 campuses could be shut for low-performance and under-enrollment, though the city won't confirm that figure. Since at least the mid-1990s, Chicago principals have not had to choose from a pool of laid-off teachers—a prerogative Mr. Emanuel vowed to protect.

Raul Galvan, who has a 10-year-old son in Chicago public schools, said it was "about time" the strike ended. While many parents have been solidly behind striking teachers, he is frustrated teachers asked for raises in tough budget times and unhappy the city "gave up so much."

"My son has been out of school for seven days—not much to be happy about," he said.



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Discussion Questions

1. In your reasoned opinion, do the issues presented in this dispute (teacher pay, class size, extra days and hours added to the school calendar, whether laid-off teachers get priority for openings, and the weight of test scores in teacher evaluations) merit a teachers' strike, considering that children and their families might be adversely affected by the "down time" in the public school system? Why or why not?

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

2. Should public employees have the right to strike? Why or why not?

This is an opinion question, so student responses will likely vary. Do emphasize to students that without the right to strike, employees lose a great deal of bargaining power, since the right to strike is arguably the most powerful employee "weapon" in the context of labor-management negotiations.

3. The article quotes United States Labor Department statistics that 11.8% of wage and salary workers belonged to unions in 2011, down from 20.1% in 1983. The article also notes that 37% of public-sector workers were union members, compared with 6.9% of private-sector workers. Do these statistics surprise you? Explain your response.

This question involves subjective responses on the part of students.

Article 3: "Federalism Fight: 3 States Say Feds Can't 'Unmarry' Gay Couples"

http://www.msnbc.msn.com/id/48957124/ns/us_news-christian_science_monitor/#

According to the article, three states where members of the clergy and justices of the peace today marry gay couples argued recently that it's a violation of states' rights for the federal government to then "unmarry" those people under the 1996 Defense of Marriage Act (DOMA).

In an amicus brief to a New York case involving a lesbian widow, Vermont, Connecticut, and New York argue that the federal government had no right, despite the federal designation of marriage as being between a man and a woman, to demand \$350,000 in estate taxes when Edie Windsor's partner died. That would not have happened under a marital tax deduction that lets other married couples pass their assets to their spouse without penalty.

The three states who filed amicus briefs argue that states regulate marriage and family relationships and that Congress doesn't have constitutional authority to interfere with that license at any level. Several federal and state judges have struck down parts of DOMA, but it was only earlier this year that a federal appeals court in Boston, called it discriminatory regarding partner benefits, saying the



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law “fails the test” when looking at its “disparate impact on minority interests and federalism concerns.”

The First Circuit panel, however, did not rule on the most controversial aspect of the law, and perhaps its ultimate federalist test: Whether gay marriages are legal, or reciprocal, in states that have laws against the practice.

Meanwhile, the fight between Congress and the Obama administration over how to defend DOMA has added more questions about how far Congress is willing to go to exert its will on the states.

The House Bipartisan Legal Advisory Group (BLAG), led by Speaker John Boehner (R), has taken over defending the law after President Obama said his administration would not – a refusal that DOMA defenders have written is an “unprecedented deviation from the historical norm.” At the same time, 145 House Democrats have signed an amicus brief in support of Ms. Windsor, the New York widow.

So is the constitutional rationale for DOMA fading? Many Americans clearly don’t think so. But even those who wrote the law say a major problem is how the law, in practice, weighs the powers of the federal government against the rights of the states.

The author of DOMA, former Representative Bob Barr of Georgia, repudiated the law in 2009, saying that federalism provisions that he and his Republican colleagues put into the law to keep it from being used as a cudgel have largely failed.

The problem, he claims, is that it created “one-way federalism” since DOMA “protects only those states that don’t want to accept a same-sex marriage granted by another state.”

The National Conference of State Legislatures says 38 states have passed legislation barring same-sex marriages while six states, including the three involved in the New York case, currently allow such unions. Washington and Maryland also passed gay marriage laws, but they have not yet taken effect.

Pressure is rising on the US Supreme Court to settle the issue.

Discussion Questions

1. In your reasoned opinion, what is the best constitutional argument in favor of states’ rights to regulate marriage?

This is an opinion question, so student responses may vary, but many responses will likely include federalism concerns. In terms of “states’ rights,” the Tenth Amendment to the United States Constitution asserts that “(t)he powers not delegated to the United States by the Constitution, nor



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prohibited by it to the States, are reserved to the States, respectively, or to the people.” Nowhere in the United States Constitution is the federal government expressly accorded the right to regulate (define) marriage. Traditionally, states have regulated marriage.

2. In your reasoned opinion, what is the best constitutional argument in favor of the federal government’s right to regulate marriage (specifically in terms of the 1996 Defense of Marriage Act?)

This is an opinion question, so student responses may vary, but many responses will likely include the Supremacy Clause to the United States Constitution (Article VI, Section 2), which provides that the “Constitution, and the Laws of the United States ... shall be the supreme Law of the Land.”

3. Should the United States Supreme Court hear and resolve this dispute? Why or why not?

In your author’s opinion, this is an ideal case for the United States Supreme Court to hear and resolve, since it involves a constitutional “clash of power” between the states and the federal government.



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Video Suggestions

Video 1: "Ex-Prosecutor: O.J. Simpson Attorney Tampered with Glove"

<http://www.youtube.com/watch?v=WbQv3jeKHCE>

Supporting article:

"Ex-Prosecutor Claims O.J. Simpson Attorney Tampered with Glove"

<http://usnews.nbcnews.com/news/2012/09/08/13740872-ex-prosecutor-claims-oj-simpson-attorney-tampered-with-glove?lite>

According to the article, nearly 17 years after O.J. Simpson walked away from his murder trial a free man, a prosecutor at the center of the case has alleged that the lead defense lawyer tampered with a crucial piece of evidence.

Former Los Angeles deputy district attorney Christopher Darden recently accused Simpson defense lawyer, the late Johnnie Cochran, of "manipulating" one of the infamous gloves that the prosecution said linked Simpson to the grisly double murder of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman.

After Simpson struggled to fit the gloves on his hands -- in one of the defining moments of the racially charged trial that captivated the nation -- Cochran famously admonished the jury, "If it doesn't fit, you must acquit."

Recently, during a panel discussion about the trial at Pace Law School in New York City, Darden, a member of the prosecution team, declared: "I think Johnnie tore the lining. There were some additional tears in the lining so that O.J.'s fingers couldn't go all the way up into the glove."

Darden said in a follow-up interview that he noticed that when Simpson was trying on a glove for the jury its structure appeared to have changed. "A bailiff told me the defense had it during the lunch hour."

He said he wasn't specifically accusing anyone, adding: "It's been my suspicion for a long time that the lining has been manipulated."



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He said he had previously voiced similar concerns in TV interviews, but could not recall the details. Darden's incendiary charge surprised key participants in the trial and related legal action.

Harvard Law Professor Alan Dershowitz, who was a member of Simpson's defense team, and Paul Callan, who represented Nicole Brown Simpson's estate in a successful civil trial against Simpson, said it was the first time they had ever heard the allegation.

Dershowitz called the claim that the defense had an opportunity to tamper with the gloves "a total fabrication" and said "the defense doesn't get access to evidence except under controlled circumstances."

"Having made the greatest legal blunder of the 20th Century," Dershowitz said of Darden, "he's trying to blame it on the dead man."

Darden's remarks came after Dershowitz, a fellow panelist, called Darden's decision to have Simpson try on the glove for the first time before the jury "the most stupid thing" a prosecutor could have done.

Dershowitz said that if Darden had evidence that there had been tampering, he would have had an ethical obligation to report the alleged misconduct. He also questioned why Darden hadn't filed a grievance with the state bar association. Darden responded by saying that this would have been a "whiny-little-snitch approach to life" and that was not what he believed in because it didn't change anything.

The event was part of a "Trials and Errors" series, co-sponsored by Pace Law School and the Forum on Law, Culture & Society at Fordham Law, that examines America's most controversial cases. Also on the panel were Goldman's father, Fred Goldman, and his sister, Kim Goldman.

Derek Sells, the managing partner of Cochran's old law firm, The Cochran Firm, did not respond to requests for comment. A call to Cochran's daughter, Tiffany Cochran Edwards, who is a communications director for the firm, was not immediately returned. Cochran died in 2005 from a brain tumor at age 67.

Simpson was acquitted in the double murder case despite what prosecutors described as a "mountain of evidence" against him. The evidence included a blood-soaked glove found on Simpson's estate and a matching one found at the scene of the murder.

Questions about the lining of the gloves emerged during the 1995 trial, but they did not involve allegations of tampering by defense lawyers.

Three other members of Simpson's defense team, Robert Shapiro, Barry Scheck and F. Lee Bailey, did not immediately return requests for comment. Robert Kardashian, who also represented Simpson, is deceased.



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A civil jury in 1997 found Simpson liable for the deaths and ordered him to pay \$33.5 million in damages to the murder victims' families. Simpson is currently serving up to 33 years in prison for a 2007 armed robbery in which he claimed he was trying to recover his own sports memorabilia.

Discussion Questions

1. In light of Christopher Darden's allegations, should the Orange County, California District Attorney's office seek to re-try O.J. Simpson for the double murder of Nicole Brown Simpson and Ronald Goldman? Why or why not?

The Orange County, California District Attorney is constitutionally prohibited from re-trying O.J. Simpson for the double murder of Nicole Brown Simpson and Ronald Goldman. The Fifth Amendment to the United States Constitution's "double jeopardy" clause states that "(n)o person shall...be subject for the same offence to be twice put in jeopardy of life or limb." After a defendant has been acquitted in a criminal trial, as O.J. Simpson was in the famous 1995 case, the defendant cannot be retried for the same set of facts and circumstances arising out of the original case.

2. Attorney Alan Dershowitz was part of O.J. Simpson's "dream team" in the 1995 double murder case. Evaluate: a) Dershowitz's assertion that if Darden had evidence that there had been glove tampering, Darden had an ethical obligation to report the alleged misconduct; and b) Dershowitz's question as to why Darden hadn't filed an associated grievance with the state bar association. Also evaluate Darden's response to Dershowitz's aforementioned comments, claiming that reporting such misconduct would have been a "whiny-little-snitch approach to life," and that reporting such misconduct was not what he believed in because "it (wouldn't) change anything (about the case)."

Mr. Dershowitz makes some interesting comments regarding Darden's actions in the case. Dershowitz is correct in his contention that if Darden had evidence that there had been glove tampering, he had an ethical obligation to report the alleged misconduct and file an associated grievance with the state bar association. Darden's comments seem to dismiss the importance of this ethical obligation.

3. In your reasoned opinion, was justice served in the O.J. Simpson 1995 double-murder case? Why or why not?

This is an opinion question, so student responses may vary.



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Video 2: "Who Done It?! OJ Simpson's Legal Team Denies Glove Tampering Claims"

<http://globalgrind.com/news/attorney-oj-simpsons-legal-team-defense-deny-rebut-takes-back-glove-tampering-claims-details>

Supporting article:

"Member of O.J. Simpson Legal Team Rebuts Glove Tampering Claims"

<http://usnews.nbcnews.com/news/2012/09/09/13757320-member-of-oj-simpson-legal-team-rebuts-glove-tampering-claims?lite>

According to the article, a member of O.J. Simpson's defense team has rebuffed claims that lead defense attorney Johnnie Cochran tampered with a key piece of evidence in order to help Simpson walk away from his Los Angeles murder trial a free man 17 years ago.

Former Los Angeles Deputy District Attorney Christopher Darden recently accused Simpson's defense lawyer, the late Johnnie Cochran, of "manipulating" one of the infamous gloves that the prosecution said linked Simpson to the grisly double murder of his former wife Nicole Brown Simpson and her friend Ronald Goldman.

After Simpson struggled to fit the gloves on his hands -- in one of the defining moments of the racially charged trial that captivated the nation -- Cochran famously admonished the jury, "If it doesn't fit, you must acquit."

Recently, attorney Shawn Holley said:

"As members of the defense team, Carl Douglas and I were present in court on the day that Chris Darden asked O.J. Simpson to try on the glove ... Mr. Darden's self-serving assertion that Johnnie Cochran tampered with the glove -- or any piece of evidence -- is false, malicious and slanderous ... Almost 20 years later, it seems Mr. Darden is still trying to exculpate himself from one of the biggest blunders in the history of jurisprudence."

During a recent panel discussion about the trial at Pace Law School in New York City, Darden, a member of the prosecution team, declared: "I think Johnnie tore the lining. There were some additional tears in the lining so that O.J.'s fingers couldn't go all the way up into the glove."

Darden said in a follow-up interview that he noticed that when Simpson was trying on a glove for the jury its structure appeared to have changed. "A bailiff told me the defense had it during the lunch hour." He said he wasn't specifically accusing anyone, adding: "It's been my suspicion for a long time that the lining has been manipulated."

He said he had previously voiced similar concerns in TV interviews, but could not recall the details.



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Darden's charge surprised key participants in the trial and related legal action. Harvard Law Professor Alan Dershowitz, who was a member of Simpson's defense team, and Paul Callan, who represented Nicole Brown Simpson's estate in a successful civil trial against Simpson, said it was the first time they had ever heard the allegation.

A civil jury in 1997 found Simpson liable for the deaths and ordered him to pay \$33.5 million in damages to the murder victims' families. Simpson, the former National Football League star and Hollywood actor, is currently serving up to 33 years in prison for a 2007 armed robbery in which he claimed he was trying to recover his own sports memorabilia

Dershowitz called the claim that the defense had an opportunity to tamper with the gloves "a total fabrication" and said "the defense doesn't get access to evidence except under controlled circumstances."

Dershowitz said in a follow-up email that he "was certain" in this case that the defense team did not have access to the glove before it was tried on by Simpson in open court.

"Having made the greatest legal blunder of the 20th century," Dershowitz said of Darden, "he's trying to blame it on the dead man."

Discussion Questions

1. Does Christopher Darden's allegation that O.J. Simpson's defense team had possession of the glove during lunch hour sound unusual to you? Why or why not?

In your author's opinion, Darden's allegation does sound unusual, since defense attorneys are not accorded exclusive possession of prosecutorial evidence, either before or during trial. The possibility that the evidence would be compromised in some way, either intentionally or unintentionally, is simply too great. As Alan Dershowitz, a member of Simpson's defense team, has indicated, "the defense doesn't get access to evidence except under controlled circumstances."

2. Do you agree with attorney Shawn Holley that in his assertion that defense attorney Johnnie Cochran tampered with the glove, Christopher Darden slandered Mr. Cochran? Why or why not?

Slander, the oral version of defamation, involves either a false statement of fact or a bad faith opinion that damages the victim's reputation. Darden would be hard-pressed to establish the truthfulness of his assertion, and it would be difficult for him to successfully argue that he made such an assertion based on a good faith opinion. However, it is unlikely that Mr. Cochran's estate (Cochran died in 2005) could successfully bring an action against Mr. Darden for slander. As a general rule, only a living person can be defamed.



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3. In your reasoned opinion, did Alan Dershowitz slander or otherwise defame Christopher Darden when he claimed that Darden made the “greatest legal blunder of the 20th century” in terms of the way Darden prosecuted the O.J. Simpson double-murder case? Why or why not?

Since this is essentially an opinion-based statement, Dershowitz can argue he has the right to assert such an opinion in good faith. As an attorney with decades of experience, Dershowitz is arguably well-qualified to determine what constitutes a legal “blunder!”



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Of Special Interest

This section addresses the question of whether the federal government has an ethical obligation to see to it that all Americans have health care insurance and proper access to health care.

Ethical Dilemma

“Mitt Romney ‘Not Getting Rid of All of Health Care Reform’”

<http://abcnews.go.com/Politics/mitt-romney-rid-health-care-reform/story?id=17197463#.UE1firJIS7I>

According to the article, Mitt Romney recently raised some eyebrows when he said, "I'm not getting rid of all of healthcare reform."

That sounded quite different from the mantra he has repeated for months, that he would "repeal Obamacare."

Though the Romney campaign quickly said there has been no change in position, it's clear that despite the rhetoric, the Republican nominee would keep some of the popular elements of President Obama's healthcare reform act.

"Well, I'm not getting rid of all of healthcare reform," Romney said. "Of course there are a number of things that I like in healthcare reform that I'm going to put in place," he said. "One is to make sure that those with pre-existing conditions can get coverage."

Romney added that he would like families to be able to insure members, including children, for an indefinite period.

But those elements, even though they sound a lot like parts of the president's plan, would only be implemented after the Affordable Care Act is repealed, according to the Romney campaign.

While campaigning in Florida, the President attacked Romney's plans for healthcare.

"Their basic idea is that since government can't do everything, it should do almost nothing," Obama said at a rally in Orlando. "If you can't afford health insurance, hope you don't get sick."

The president used the battleground state of Florida, with its large population of seniors, to renew his attack on the Romney-Ryan plan for Medicare.



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Even before his speech, the president had breakfast with two retired couples.

"Their voucher plan for Medicare would bankrupt Medicare," Obama later told the 3,000 supporters who attended the rally.

Armed with a new report from the left leaning think tank, the Center for American Progress, the president claimed the Romney plan will cost retiring seniors thousands of dollars for insurance coverage.

"No American should have to spend their golden years at the mercy of the insurance companies," he said.

The report claims a retiring senior in 2023 would pay nearly \$60,000 in additional fees for insurance coverage.

Discussion Questions

1. The most frequently-asserted argument against the Affordable Care Act (also known as "Obamacare") is that it is unconstitutional, specifically in the sense that it exceeds the federal government's Commerce Clause powers. If, as its opponents claim, the Affordable Care Act is unconstitutional, how would mandating coverage for pre-existing conditions and requiring insurance companies to cover children under their parents' policies (the provisions of "Obamacare" that Governor Romney purportedly favors) be constitutional? Explain your response.

This inquiry should make for very interesting classroom discussion! In your author's opinion, the Affordable Care Act either passes constitutional muster, or it does not. Either the federal government can exercise regulatory authority over health care, or it cannot. In terms of whether the federal government can constitutionally regulate health care, one cannot "pick and choose" favorable and unfavorable provisions of the Act.

2. Does the federal government have an ethical obligation to see to it that all Americans have access to affordable, quality health care? Why or why not?

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

3. If your answer to Discussion Question 2 is "yes," would the federal government's ethical obligation be better fulfilled by providing "single-payer, universal" health care, rather than merely mandating that all Americans carry health care insurance (the main "thrust" of "Obamacare")? Explain your response.

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 3 (“Federalism Fight: 3 States Say Feds Can’t ‘Unmarry’ Gay Couples”), Video 1 (“Ex-Prosecutor: O.J. Simpson Attorney Tampered with Glove”) and Video 2 (“Who Done It?! O.J. Simpson’s Legal Team Denies Glove Tampering Claims”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 3—“Federalism Fight: 3 States Say Feds Can’t ‘Unmarry’ Gay Couples”):

“Defining Marriage: Defense of Marriage Acts and Same-Sex Marriage Laws”

The following website provides an excellent state-by-state presentation and summary of “defense of marriage acts” and same-sex marriage laws:

<http://www.ncsl.org/issues-research/human-services/same-sex-marriage-overview.aspx>

Teaching Tip 2 (Related to Video 1—“Ex-Prosecutor: O.J. Simpson Attorney Tampered with Glove” and Video 2—“Who Done It?! O.J. Simpson’s Legal Team Denies Glove Tampering Claims”):

“Famous American Trials—The O.J. Simpson Trial—1995”

The following website provides an excellent account of the so-called “trial of the century,” the 1995 O.J. Simpson double-murder trial:

<http://law2.umkc.edu/faculty/projects/ftrials/Simpson/simpson.htm>



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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, 42 and 48	Chapter 7	Chapter 2	Chapters 5 and 7
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5, 42 and 48	Chapter 7	Chapter 2	Chapters 5 and 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4, 7 and 24	Chapter 5	Chapter 1	Chapters 4 and 5
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 23 and 51	Chapter 5	Chapter 4	Chapters 3 and 5
Barnes et al., Law for Business	Chapters 4, 25 and 33	Chapter 5	Chapter 3	Chapters 4 and 5
Brown et al., Business Law with UCC Applications	Chapters 2, 24 and 29	Chapter 5	Chapter 1	Chapters 2 and 5
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6, 7 and 22	Chapter 13	Chapter 2	Chapters 6 and 13
McAdams et al., Law, Business & Society	Chapters 5, 14 and 16	Chapter 4	Chapter 2	Chapters 4 and 5
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 11 and 23	Chapter 22	Chapter 5	Chapters 2 and 22
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1, 7 and 12	Chapter 8	Chapter 1	Chapters 1 and 8



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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)

