



# Proceedings

A monthly newsletter from McGraw-Hill



October 2013 Volume 5, Issue 3



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## Dear Professor,

The fall season is here! Welcome to McGraw-Hill's October 2013 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 5, Issue 3 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the October 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 proposed merger between American Airways and US Airways, and the United States Department of Justice's attempt to block the merger;
2. Yet another employee firing resulting from controversial activity involving the internet and the use of social media;
3. The recent conviction of a 79-Year-Old California man for decades-old killings;
4. Videos related to a) judicial approval of Kodak's Chapter 11 bankruptcy reorganization plan and b) conservative group Judicial Watch's claimed entitlement to photographs of Osama bin Laden's dead body;
5. An "ethical dilemma" related to the requested release of photographs of Osama bin Laden's dead body; and
6. "Teaching tips" related to Article 2 ("Daycare Workers Fired after Instagram Photos Mock Kids") and Video 1 ("Judge Approves Kodak's Bankruptcy Plan") of the newsletter.

Happy Halloween!

Jeffrey D. Penley, J.D.  
Catawba Valley Community College  
Hickory, North Carolina



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## Of Special Interest

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

1) A proposed merger between American Airways and US Airways, and the United States Department of Justice's attempt to block the merger;

2) Yet another employee firing resulting from controversial activity involving the internet and the use of social media; and

3) The recent conviction of a 79-Year-Old California man for decades-old killings.

## Hot Topics in Business Law

### Article 1: "U.S., Filing Suit, Moves to Block Airline Merger"

<http://dealbook.nytimes.com/2013/08/13/u-s-seeks-to-block-airline-merger/? r=0>

According to the article, after a decade of rapid consolidation in the nation's airline industry, the Justice Department filed a lawsuit recently to block the proposed merger between American Airlines and US Airways, which would create the world's largest airline.

The move, joined by attorneys general from six states and the District of Columbia, surprised industry officials, who had expected little resistance to the deal. But it underscored a newly aggressive approach by the Justice Department's antitrust division, which has been more closely scrutinizing proposed mergers as the economy recovers. In 2011, for example, it blocked the merger of AT&T and T-Mobile, and this year it forced Anheuser-Busch InBev to significantly alter the terms of its takeover of the brewer of Corona before approving it.

The airline industry, though, has had a nearly unfettered run of mergers in recent years, and the American-US Airways combination was seen as the capstone. In no small part, this consolidation of the industry into a handful of carriers had the support of regulators. Starting in 2008, the Justice Department approved the mergers of Delta Air Lines and Northwest, United Airlines and Continental, and Southwest and AirTran.

But antitrust regulators said these past mergers had in effect undermined the case for the American-US Airways combination. While those mergers helped the industry return to profitability and brought more stability, they also led to higher fares, regulators said. A union between American and US Airways would take the consolidation too far, the Justice Department said, hurting consumers and leading to substantially less competition and higher airfares and fees, and to less service to many airports.

"Today's action proves our determination to fight for the best interests of consumers by ensuring robust competition in the marketplace," said Eric H. Holder Jr., the United States attorney general.



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The decision to file a civil antitrust lawsuit in the United States District Court for the District of Columbia brought an unusually strong reaction from the airlines. In a joint statement, American and US Airways said they would mount a “vigorous and strong defense” of their plan.

“We believe that the D.O.J. is wrong in its assessment of our merger,” the airlines said. A combined American and US Airways, they said, would create more options for customers than either airline could offer on their own.

Doug Parker, chief executive of US Airways, who was planned to run the combined airlines, struck a defiant tone in a statement to employees, saying, “We will close the merger before year end.”

In arguing against the merger, the Justice Department said the vast majority of domestic airline routes were already highly concentrated. The merger, it said, would result in four airlines controlling more than 80 percent of the United States market for commercial air travel.

“We looked very carefully for six months at this deal, and we think it’s pretty messed up,” said William J. Baer, the assistant attorney general in charge of the department’s antitrust division. “It looks pretty bad for consumers.”

He told reporters that the merger could cost consumers “hundreds and hundreds of millions of dollars.”

He said regulators reached that conclusion after reviewing internal plans for the merger at US Airways and American and studying how much fares rose after the other giant mergers.

Asked if some type of compromise might still be possible, Mr. Baer said, “We think a full-stop injunction is the right course for the consumer.”

Mr. Baer said the combined airline’s pricing power would be apparent at Ronald Reagan National Airport near Washington, where it would have a monopoly on 63 percent of the nonstop routes.

JetBlue’s expansion at that airport in 2010 led to 30 percent cuts in some fares, he said. But JetBlue leases half of its takeoff and landing slots from American, which could cancel that deal if the merger occurred.

Mr. Baer, who took over in January, has demonstrated that he is not afraid of taking a fight to court, analysts said, as he did this year with the case in which the department charged that Apple colluded with publishers over e-book pricing. Last month, a federal judge agreed, ruling against Apple.

“They’ve shown that they are not going to be gun-shy about enforcing antitrust laws,” said Michael A. Carrier, a distinguished professor at Rutgers University law school.



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Joining the Justice Department in filing the suit were attorneys general from Texas and Arizona, where American and US Airways are based, as well as Florida, the District of Columbia, Pennsylvania, Tennessee and Virginia.

The last time the Justice Department challenged a merger was the proposed combination of United Airlines and US Airways in 2001. But the attacks of Sept. 11, 2001, sharply altered the financial stakes for the industry, pushing several carriers into bankruptcy — including Delta, United and Continental — and leading to about \$60 billion in losses for the industry in the following decade. American was the last of the major carriers to file for bankruptcy protection, in November 2011.

The Justice Department's announcement represents a significant setback for American's plans to exit bankruptcy. It amounts to a rebuttal to the position taken by a federal bankruptcy judge, who approved the merger as part of American's restructuring plan. What is more, all three labor groups representing American employees, including pilots, flight attendants and mechanics, backed the plan put forward by US Airways to merge the airlines.

In doing so, they opposed the initial plan championed by American managers to remain an independent carrier and emerge from bankruptcy alone. That plan, however, was viewed by most analysts as unrealistic given how big Delta and United have become since their respective mergers.

In laying out its case, the Justice Department quotes US Airways executives describing how consolidation had helped the industry raise fares. It also discusses how US Airways provides some low-fare competition through its Advantage Fares program, saying that other carriers, including American and Delta, routinely matched those lower fares.

The Justice Department also explained how American could exit bankruptcy as a "vigorous competitor" without the merger, saying it would have "strong incentives to grow to better compete with Delta and United." As an example, it cited the carrier's large new aircraft order and said that American's stand-alone plan called for increasing flights and destinations.

The decision surprised airline analysts.

"'Bizarre' is one word," said Robert Mann, an airline consultant and former executive, who characterized the Justice Department as "late to the game with concerns over airline industry consolidation."

A report by the Government Accountability Office in June found that the planned merger would reduce competition in a far larger number of airports than earlier airline mergers, including the one that fused United and Continental into the nation's current leader.

The Obama administration was heavily criticized in its first two years for seemingly failing to keep campaign promises of active antitrust enforcement. One of the antitrust division's first actions in



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2009 was to withdraw a Bush administration policy that favored caution by regulators and the development of safe harbors for companies that controlled a given market.

After that, however, the administration had to deal with the fallout from the financial crisis and the housing collapse, and significant antitrust action was delayed until the second half of the administration's first term, said Stacey Anne Mahoney, a partner at Bingham McCutchen in New York.

"The second Obama administration is building up some steam in terms of federal antitrust enforcement efforts," Ms. Mahoney said. Earlier this year, it had seven antitrust actions in litigation at the same time, the most ever, officials said.

## Discussion Questions

1. What legal foundation does the United States Department of Justice have for attempting to block the proposed merger between American Airlines and US Airways?

*The United States Department of Justice's legal foundation for attempting to block the proposed merger between American Airlines and US Airways is federal antitrust law, which seeks to preserve and promote competition by preventing monopolization (or near-monopolization) of a particular industry. The economic argument supporting federal antitrust law is that the preservation and promotion of competition results in greater consumer choice and lower product prices.*

2. As the article indicates, American Airlines is in bankruptcy proceedings, and a federal bankruptcy judge has approved the proposed merger as part of American's restructuring plan. Do you find it unusual that a United States Bankruptcy Court judge would approve American Airlines-US Airways merger, while the United States Department of Justice would oppose it? Why or why not?

*The apparent disagreement between the United States Bankruptcy Court and the United States Department of Justice is not surprising, given that the objectives of the two entities are different. The objective of the United States Bankruptcy Court is to do what it believes is best for the financial standing of American Airlines, while the objective of the United States Department of Justice is to enforce federal antitrust law.*

3. As the article indicates, all three labor groups representing American Airlines employees, including pilots, flight attendants and mechanics, have backed the plan put forward by US Airways to merge the airlines. Why would American Airlines employees approve the merger?

*Apparently, American Airlines pilots, flight attendants and mechanics believe that such a merger is in the best interests of their employer, and that the merger will affect them positively in terms of preservation of jobs and/or increased wages, salaries and employee benefits. From an economic standpoint, however, it is not a "given" that such positive effects will result from the merger, since mergers often result in downsizing and restructuring and the elimination of jobs. Further, with one*



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*less airline competing for pilots, flight attendants and mechanics, surviving airlines would likely have greater bargaining power in labor-management relations and the collective bargaining process.*

## Article 2: “Daycare Workers Fired after Instagram Photos Mock Kids”

<http://www.today.com/moms/daycare-workers-fired-after-instagram-photos-mock-kids-6C10960099>

According to the article, a Virginia mom says she feels betrayed after discovering photos of her 2-year-old son taken at daycare and posted online with comments that appear to make fun of the child.

“I was hurt because I trusted them with Ethan,” Melissa Jordan of Newport News told NBC affiliate WAVY.com. The toddler has delayed speech development, she added.

“I was disgusted, and my feelings were hurt because they are making fun of Ethan because he isn't able to talk. They are making a joke out of him.”

Two workers have been fired after photos of children were allegedly taken at A Heavenly Haven Learning Center 2 in Newport News and posted on Instagram, WAVY.com reported.

One of the photos shows Ethan sitting in a highchair, looking sad. The picture was accompanied with the caption, “I’m sick of this [expletive]!!!”

“I don't know how long he's been in the highchair. He looks so pathetic and miserable. He looks so defeated in that picture,” Jordan told WAVY.com. “I pay them to humiliate my child?”

Another photo shows a second child juxtaposed with the image from a character from “Cars,” with the poster apparently comparing their teeth and smiles.

In a statement to the station, A Heavenly Haven said it was sorry for the incident.

“We would also like to take this time to publicly apologize to Ms. Jordan and her family. A Heavenly Haven's position on the actions of the employees involved zero tolerance, and the employee's [sic] have been terminated,” the statement reads.

“This incident, caused by an employee, does not reflect who we are as a childcare provider nor will it deter us from providing a safe and nurturing environment for our children.”

The daycare's manager and another employee have been let go, and Virginia's Department of Social Services is investigating, WAVY.com reported.



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## Discussion Questions

1. As the article indicates, two (2) workers at A Heavenly Haven have been fired as a result of the Instagram photograph postings of the child. As an employer, what legal theory supports A Heavenly Haven's decision to terminate the two (2) employees?

*The employment-at-will doctrine allows employers to fire employees for any reason, or for no reason at all. In a state like Virginia, which recognizes the employment-at-will doctrine, if employers can fire employees for no reason at all, they can certainly fire employees for a legitimate reason such as the one presented in this article.*

2. Based on your review of the facts set forth in the article, do the two (2) terminated employees have any legal defense justifying their reinstatement?

*The terminated employees do not have a legitimate legal defense justifying their reinstatement, given Virginia's support for the employment-at-will doctrine, and assuming their involvement in the events described. Although the daycare manager might try to argue that she was not involved in the social media postings of the children, that she did not direct or approve that her subordinates make such postings, and that she was not even aware of the postings until "after-the-fact," managers are ultimately accountable for the inappropriate activities of their subordinates engaged in during the course and scope of their employment.*

3. As the article indicates, A Heavenly Haven's manager was also terminated as a result of the incident. As an employer, what legal theory supports the daycare's decision to terminate the manager?

*If employers can fire employees for no reason at all, they can certainly fire employees for legitimate reasons. The "legitimate reason" in this case is managerial accountability for the inappropriate activities of his or her subordinates engaged in during the course and scope of their employment.*

### **Article 3: '79-Year-Old California Man Convicted of Decades-Old Killings'**

<http://www.foxnews.com/us/2013/08/21/7-year-old-calif-man-convicted-decades-old-killings/?test=latestnews>

According to the article, a former photographer was convicted recently of murdering four young California women decades ago after a two-month trial in which prosecutors called him a remorseless serial killer who preyed on young prostitutes.



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Jurors deliberated for about eight hours over two days in Marin County Superior Court before finding Joseph Naso, 79, guilty of slaying the four women with alliterative names: Roxene Roggasch in 1977, Carmen Colon in 1978, Pamela Parsons in 1993 and Tracy Tafoya in 1994. The jury of six men and six women will reconvene Sept. 4 to determine if Naso gets the death penalty.

Even if Naso is sentenced to death, it is unlikely he will be executed. There are 725 inmates already on California's Death Row and executions have been on hold since 2006, when a federal judge ordered an overhaul of California's execution protocol. It will take at least another year for prison officials to properly adopt the state's new single-drug execution method and have it cleared by the judge.

All the victims were found dumped in rural Northern California locations. Roggasch's body was found in Marin County and was the reason Naso's trial was held in the historical Marin Civic Center designed by noted architect Frank Lloyd Wright. Colon was found in Contra Costa County and the other two victims in Yuba County. Investigators believe Naso could be responsible for as many as six more murders and authorities are exploring Naso's connections to several unsolved murders.

Naso was arrested in 2010 after probation officers visiting his Reno, Nevada home in connection with an unrelated gun conviction discovered a macabre dwelling with incriminating evidence. Investigators found numerous photographs of nude women posed in unnatural positions who appeared dead or unconscious with mannequin parts and lingerie strewn about nearby.

Investigators said they also found a "List of 10" that Naso had scrawled with descriptions of 10 women, including references prosecutors believe described the four victims he was charged with killing.

Prosecutors said Naso drugged and photographed his unconscious victims then strangled them and disposed of their naked bodies.

Naso acted as his own attorney and told jurors during his closing arguments that he often hired prostitutes to photograph in exotic poses and enjoyed off-beat art. But he insisted he was no killer.

Nonetheless, the balding Naso, who often seemed befuddled and repeated himself during his rambling closing arguments, struggled to explain away some of the most persuasive evidence against him.

Naso's DNA was found on the pantyhose Roggasch was wearing when her body was found. His ex-wife's DNA was found on pantyhose wrapped around Roggasch's neck.

Naso told the jury that the evidence only showed he had had sex with Roggasch. He said there was no proof that he killed her and that prosecutors had no way of knowing who put the pantyhose around her neck.





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Legal analysts said that Naso made a mistake representing himself, even if he boasted at one point that "I think I'm doing quite well" during his closing arguments.

"He's bright," said attorney Brian Kanel, who watched some of the trial. "But not that bright." Another legal observer agreed.

Steven Clark, a former prosecutor now in private practice, said a good defense attorney would have hired a DNA expert to at least try to throw some doubt on how the evidence was gathered, stored and processed to undermine the prosecution's strongest argument.

"The prosecution did have a challenging case because it happened so long ago," Clark said.

"Why Mr. Naso chose to focus on the things he focused on is beyond me. I'm not sure what his plan was."

## Discussion Questions

1. Although prosecution for most crimes is limited by a statute of limitations period, there is no statute of limitations for murder. In your reasoned opinion, should there be? Why or why not?

*Since this is an opinion-based question, student responses may vary. In your author's opinion, since murder is arguably the most serious crime, there should not be a statute of limitations for prosecution for murder.*

2. Should the fact that Joseph Naso is seventy-nine (79) years old affect whether he is sentenced to death? Explain your response.

*Since this is an opinion-based question, student responses may vary. Depending on the jurisdiction in which a defendant is tried, as well as the judge and jury involved in the case, the defendant's age at the time of conviction could be a mitigating factor resulting in life imprisonment, rather than imposition of the death penalty.*

3. As the article indicates, Joseph Naso was allowed to represent himself. Should a defendant be allowed to represent himself in a criminal case, particularly in a case where the punishment might result in life imprisonment or the death penalty? Why or why not?

*As the famous saying goes, "A defendant who chooses to represent himself has a fool for a client!" Despite how ill-advised such a decision might be, however, a defendant does have the right to self-representation. If the defendant does choose self-representation, the presiding judge has the right to request that a defense attorney sit in on the case should the defendant decide otherwise during the course of the trial.*

## Video Suggestions

### Video 1: “Judge Approves Kodak’s Bankruptcy Plan”

Note: Please refer to the second video presented at the following web address:

<http://www.usatoday.com/story/money/business/2013/08/20/kodak-bankruptcy-plan-approved/2678397/>

Note: In addition to the video, please refer to the following associated article, also located at the above-referenced web site:

### “Judge Approves Kodak’s Bankruptcy Plan”

According to the article, nineteen months after a late-night bankruptcy filing, Eastman Kodak Co. is all but done with one of the most traumatic periods of its history.

A U.S. Bankruptcy Court judge Tuesday approved the company's Chapter 11 bankruptcy reorganization plan.

For Kodak, this is a watershed moment, as judicial approval of its bankruptcy reorganization plan means no hurdles remain before Kodak can actually end its bankruptcy and resume operations as essentially a new company. The company has said that through the cost cutting and restricting it has undertaken during bankruptcy, it now sees a future as a growing and profitable firm focused solely on different aspects of printing.

In a prepared statement, Kodak CEO Antonio M. Perez called the decision a critically important step in the bankruptcy process. "Next, we move on to emergence as a technology leader serving large and growing commercial imaging markets — such as commercial printing, packaging, functional printing and professional services — with a leaner structure and a stronger balance sheet.

"There are additional transactional steps ahead as we complete our Chapter 11 restructuring," Perez said in the statement, "but with the court's decision today, our emergence is now imminent."

But for many of the people who became collateral damage in the bankruptcy, such as Kodak creditors, retirees and shareholders, judicial approval of the company's reorganization plan was not a cause for celebration.



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"Many are losing their retirement benefits," U.S. Bankruptcy Court Judge Allan Gropper said as he approved Kodak's turnaround plan. "Many are finding their recovery as a creditor is just a minute fraction of what their debt is from Kodak. (Kodak's) decline and bankruptcy is a tragedy of American economic life."

Kodak tentatively hopes to exit bankruptcy September 3. "Closing is complicated, but we're cautiously optimistic," said Andrew Dietderich, an attorney with Kodak's legal counsel, Sullivan & Cromwell.

Kodak filed for Chapter 11 bankruptcy protection in January 2012 with the goals of shoring up its sagging finances, selling off non-strategic intellectual property, wrapping up legacy expenses such as its British pension fund shortfall and refocusing the company on only the most valuable of its lines of business, Dietderich said. Tuesday, he told the court, "Kodak is a different company than the one in popular imagination and a very different one than the one that filed for bankruptcy."

Kodak came into its recent U.S. Bankruptcy Court hearing with sizable momentum. Prior to the hearing, the company announced that a majority of its various creditors had signed off on the company's turnaround plan. The official committee representing unsecured creditors also is backing the plan.

But Kodak faced a variety of opposition at the hearing in the form of objections from a group of retirees, from a number of former Kodakers, and from the wing of the U.S. Justice Department overseeing the bankruptcy. Several handfuls of Kodak shareholders filed roughly 200 objections to various aspects of the plan.

Much of the hearing was taken up by addressing those various objections, including a lengthy back-and-forth between Canadian money manager Gunes Biray and some of Kodak's outside consultants. Biray wanted to know how they arrived at the various values of Kodak's estimated worth. He also argued the company has substantial untapped wealth that could have gone to repaying creditors, with enough left over for shareholders.

Kodak's reorganization plan has it canceling all its existing stock and issuing new stock that will be owned by a handful of large financial firms and by unsecured creditors. Its stock price fell 2 cents to close at 5.6 cents, a 28% drop.

The company had hoped that "someone else would walk in and say Kodak is worth more," testified David Kurtz, global head of the Restructuring Group of Lazard Freres & Co. LLC, one of Kodak's bankruptcy consultants. "If someone had been willing to do that, we would have embraced them. No one did that.

## Discussion Questions

1. Generally speaking, what is a Chapter 11 bankruptcy reorganization plan?



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*A “Chapter 11” bankruptcy reorganization plan seeks debt restructuring (and in some situations, debt forgiveness) so that the debtor can continue business operations.*

2. How is “Chapter 11” bankruptcy distinguishable from “Chapter 7” bankruptcy?

*Through “Chapter 11” bankruptcy reorganization, the debtor continues business operations, while in “Chapter 7” bankruptcy, the debtor liquidates its assets for the benefit of creditors and ceases to exist as an ongoing business concern. Expressed another way, Chapter 11 allows the business debtor to continue to operate, while Chapter 7 does not.*

3. Why are Kodak’s creditors, retirees and shareholders not pleased with judicial approval of the company’s bankruptcy reorganization plan?

*As indicated in response to Video 1 Discussion Question Number 1 above, a “Chapter 11” bankruptcy reorganization plan seeks debt restructuring (and in some situations, debt forgiveness) so that the debtor can continue business operations. To the extent that Kodak’s creditors, retirees and shareholders are not be pleased with judicial approval of the company’s bankruptcy reorganization plan, it is likely due to the court’s reduction or elimination of Kodak’s financial obligations to the aforementioned parties.*

## **Video 2: “Osama Bin Laden Photos Case Could Be Headed To Supreme Court”**

[http://www.huffingtonpost.com/2013/08/20/osama-bin-laden-photo-supreme-court\\_n\\_3787431.html](http://www.huffingtonpost.com/2013/08/20/osama-bin-laden-photo-supreme-court_n_3787431.html)

Note: In addition to the video, please refer to the following associated article, also located at the above-referenced web site:

### **“Osama Bin Laden Photos Case Could Be Headed To Supreme Court”**

According to the article, Judicial Watch a conservative group suing the government to obtain photos taken of Osama bin Laden's dead body, is taking its case to the United States Supreme Court.

An appeals court ruled in May that releasing the images "could reasonably be expected to trigger violence and attacks" against the United States. Judicial Watch had argued that releasing photos of bin Laden's body being buried at sea would not compromise national security.

In a petition filed to the Supreme Court this week, Judicial Watch wrote that the United States Court of Appeals for the District of Columbia Circuit erred by trusting the government's claim that releasing photos of bin Laden's body being buried at sea would spark riots. Allowing the government to make such a claim would weaken the Freedom of Information Act (FOIA), Judicial Watch argued.



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"By providing almost blind deference to the Executive Branch, it is foreseeable that the Executive Branch will abuse its seemingly unreviewable authority" to use exemptions to FOIA, Judicial Watch argued.

1. What legal argument(s) support(s) Judicial Watch's claimed entitlement to the photographs of Osama bin Laden's dead body?

*Judicial Watch's claimed entitlement to the photographs of Osama bin Laden's dead body is based on the Freedom of Information Act (FOIA). The FOIA seeks to ensure "transparency" in government and its operations through "on-demand" disclosure of information.*

2. What legal argument(s) support(s) the federal government's decision not to release the photographs?

*The preservation of national security is a recognized exception to FOIA requests. The government's argument is that releasing such photographs would "fan the flames" of anti-American sentiment and terrorism, thereby compromising national security.*

3. Based on consideration of the competing legal arguments, who should prevail in this case? Explain your response.

*This is an opinion question, so student responses will likely vary. In your author's opinion, the risks of compromising national security outweigh any advantages of releasing such photographs.*



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## Of Special Interest

This section of the newsletter addresses the question of whether it is ethical for conservative group Judicial Watch to request, and for the federal government to release, photographs of Osama bin Laden's dead body.

## Ethical Dilemma

### Ethical Dilemma (Related to Video 2—"Osama Bin Laden Photos Case Could Be Headed To Supreme Court")

[http://www.huffingtonpost.com/2013/08/20/osama-bin-laden-photo-supreme-court\\_n\\_3787431.html](http://www.huffingtonpost.com/2013/08/20/osama-bin-laden-photo-supreme-court_n_3787431.html)

Note: In addressing this ethical dilemma, reference the following federal government web site devoted to the Freedom of Information Act:

"What is FOIA?"

<http://www.foia.gov/>

### Discussion Questions

1. The Discussion Questions related to Video 2 ("Osama Bin Laden Photos Case Could Be Headed to Supreme Court") address the *legal* obligation of the federal government to release information pursuant to the Freedom of Information Act (FOIA). What is the *ethical* obligation of the federal government to release such information?

*The ethical obligation of the federal government to release information pursuant to the FOIA relates to the idea that transparency in government results in better government. The FOIA seeks to ensure governmental accountability for its operations and decision-making.*

2. In your reasoned opinion, is the FOIA primarily an ethics-based law?

*This is an opinion question, so student responses may vary. In your author's opinion, the FOIA is principally an ethics-based law in that it seeks to ensure governmental accountability for its operations and decision-making.*

3. In your reasoned opinion, is it ethical for Judicial Watch to request the release of photographs of Osama bin Laden's dead body? Would it be ethical for the federal government to release such photographs? Explain your response.



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*This is an opinion question, so student responses will likely vary. In responding to these inquiries, students should first seek answers to the following questions:*

- a. What are Judicial Watch's motives in requesting the release of such photographs?*
- b. What are the federal government's motives in refusing to release the photographs?*
- b. In terms of the "net effect" of releasing the photographs, would the advantages outweigh the disadvantages, or vice versa?*



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## Of Special Interest

This section of the newsletter will assist you in covering Article 2 ("Daycare Workers Fired after Instagram Photos Mock Kids") and Video 1 ("Judge Approves Kodak's Bankruptcy Plan") of the newsletter.

## Teaching Tips

### Teaching Tip 1 (Related to Article 2--"Daycare Workers Fired after Instagram Photos Mock Kids"):

Note: Please share and discuss with students the following article as another example of the dangers of using social media in a business/organizational/employment setting.

#### "Chicago Doctor Accused of Posting Photos of Intoxicated Patient"

<http://abcnews.go.com/US/chicago-doctor-sued-photographing-hospitalized-intoxicated-woman/story?id=20003303>

According to the article, a former Northwestern University student claims that after she was admitted to an Illinois hospital for extreme intoxication, a doctor there took photos of her and posted them to social media sites with commentary about her condition.

Elena Chernyakova filed suit in the Cook County Circuit Court against Dr. Vinaya Puppala, the Feinberg School of Medicine and the Northwestern Memorial Hospital on Aug. 15, claiming invasion of privacy and infliction of emotional distress. Puppala is a fellow in the Multidisciplinary Pain Medicine Fellowship at Feinberg, which works in conjunction with Northwestern Memorial Hospital, according to court documents.

Chernyakova has the "potential to someday work for Fortune 500 companies, which may now not occur because of said photographs," according to the complaint. Court documents show that she is seeking compensation of over \$1.5 million.

The incident allegedly took place this past June, when Chernyakova was transported to the emergency room at Northwestern Memorial Hospital for overconsumption of alcohol, according to the complaint. She was allegedly unconscious for eight hours.

Approximately 15 minutes after she had regained consciousness, Puppala, who was on duty at the time and knew Chernyakova through a mutual friend, visited her hospital room, according to the complaint.





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He allegedly asked to view her medical records, and returned several hours later to take photographs of her "while she was on the hospital bed, crying and attached to an IV," according to the complaint. He then posted these photographs on Instagram and Facebook, accompanied by "attached statements of commentary" about Chernyakova's condition, according to the complaint.

Puppala refused to delete the photographs when he was asked to do so by hospital security, according to the complaint.

The complaint alleges that Chernyakova never agreed to be photographed, and was not even in a condition to provide consent. The hospital and Feinberg Medical School "substantially assisted" Puppala in allowing this to happen, according to the complaint.

Chernyakova, according to her personal website, graduated from Northwestern in 2012, and is a freelance model and actress.

In a statement, the Northwestern Memorial Hospital said they were investigating the allegations and will cooperate with authorities but emphasized that Puppala was acting "entirely on his own." "Any invasion of privacy at the hands of our trusted health personnel or extended care team of training fellows is unacceptable and not indicative of the Patients' First culture of Northwestern Memorial Hospital, which has zero tolerance for exploitation of private health information, including photography," the hospital said in a statement.

## **Teaching Tip 2 (Related to Video 1--"Judge Approves Kodak's Bankruptcy Plan"):**

Note: For the interesting story of Eastman Kodak's fall and resulting bankruptcy, including the effect of Kodak's financial troubles on its hometown of Rochester, New York, please refer to the following video:

**"Kodak: From Blue Chip to Bankrupt"**

<http://www.usatoday.com/media/cinematic/video/2665155/>



# Proceedings

A monthly newsletter from McGraw-Hill



October 2013 Volume 5, Issue 3



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

	<b>Hot Topics</b>	<b>Video Suggestions</b>	<b>Ethical Dilemma</b>	<b>Teaching Tips</b>
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 7, 42 and 47	Chapters 32 and 44	Chapter 2	Chapters 5, 32 and 44
<b>Kubasek et al., Dynamic Business Law: Summarized Cases</b>	Chapters 7, 42 and 47	Chapters 32 and 44	Chapter 2	Chapters 5, 32 and 44
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 3, 5 and 24	Chapters 3 and 18	Chapter 1	Chapters 3, 4 and 18
<b>Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 5, 49 and 51	Chapters 30 and 47	Chapter 4	Chapters 3, 30 and 47
<b>Barnes et al., Law for Business</b>	Chapters 5, 25 and 45	Chapter 44	Chapter 3	Chapters 4 and 44
<b>Brown et al., Business Law with UCC Applications</b>	Chapters 5, 23 and 28	Chapter 21	Chapter 1	Chapters 2 and 21
<b>Reed et al., The Legal and Regulatory Environment of Business</b>	Chapters 13, 16 and 21	Chapter 18	Chapter 2	Chapters 6 and 18
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 4, 10, 11 and 12	Chapter 15	Chapter 2	Chapters 5 and 15
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 11, 19 and 22	Chapter 20	Chapter 5	Chapters 2 and 20
<b>Bennett-Alexander &amp; Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society</b>	Chapters 8, 11 and 14	Chapter 9	Chapter 1	Chapter 9 and Appendix A



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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)

