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Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

Contents

Dear Professor,

Fall has arrived in all of its glorious splendor! Welcome to McGraw-Hill's October 2014 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 6, 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 2014 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 federal district court judge's ruling regarding a gay marriage ban in Louisiana;

2. A guilty verdict in former Virginia Governor Bob McDonnell's "influence-peddling" case;

3. National Football League running back Adrian Peterson's indictment for negligent injury to his child;

4. Videos related to a) President Obama's decision to delay modification to United States immigration law; and b) a New York businessperson's trial for the alleged murder of her autistic child;

5. An "ethical dilemma" related to Wal-Mart's new dress code; and

6. "Teaching tips" related to Video 1 ("Democratic Congressman Hits President Obama for 'Playing it Safe' on Immigration") of the newsletter.

I hope you enjoy the fall season!

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 federal district court judge's ruling regarding a gay marriage ban in Louisiana;

2) A guilty verdict in former Virginia Governor Bob McDonnell's "influence-peddling" case; and

3) National Football League running back Adrian Peterson's indictment for negligent injury to his child.

Hot Topics in Business Law

Article 1: "Louisiana's Gay Marriage Ban Upheld by Federal Judge"

http://abcnews.go.com/blogs/politics/2014/09/louisianas-gay-marriage-ban-upheld-by-federal-judge/

According to the article, a federal judge in Louisiana has upheld a state ban on gay marriage.

"Louisiana's laws and constitution are directly related to achieving marriage's historically preeminent purpose of linking children to their biological parents," Judge Martin Feldman of the United States District Court for the Eastern District of Louisiana wrote in his 32-page opinion released recently.

"The court is persuaded," Feldman, a Reagan appointee, said, "that a meaning of what is marriage that has endured in history for thousands of years, and prevails in a majority of states today, is not universally irrational on the constitutional grid".

In the opinion, Feldman relied upon United States v. Windsor, the 2013 Supreme Court case that struck down a federal law that defined marriage as between a man and a woman. Feldman quoted Justice Anthony Kennedy's opinion and noted that it relied heavily on federalism principles.

But Feldman also acknowledged that other federal judges have used equal-protection language in other parts of Windsor to strike down state bans on gay marriage and expressed a concern for a limiting principle.

"For example," he wrote, "must the states permit or recognize a marriage between an aunt and niece? Aunt and nephew? Brother/brother? Father and child? May minors marry? Must marriage be limited to only two people? What about a transgender spouse? Is such a union same-gender or male-female? All such unions would undeniably be equally committed to love and caring for one another, just like the plaintiffs."

Ian Millhiser of the progressive group ThinkProgress was quick to condemn the ruling. "After a disastrous losing streak in the federal courts – every single federal court to consider the question after the Supreme Court struck down the

anti-gay Defense of Marriage Act (DOMA) in 2013 has sided against marriage discrimination – Team Anti-Gay finally found a single court in Louisiana that was willing to stand up for the principle that same-sex couples should not be allowed to marry," he said.

But Byron Banione of the conservative Alliance Defending Freedom praised the decision. "The people of Louisiana – and the people of every state – should continue to have the authority to affirm marriage as the union of a man and a woman in their laws," he said in a statement. "The district court in this case was right to conclude, as the U.S. Supreme Court did in its Windsor decision last year, that marriage law is the business of the states."

The case is sure to be appealed to the 5th Circuit Court of Appeals. So far two different appeals court have struck down state bans on gay marriage. Since Windsor, there has been no split in the federal courts of appeal on this issue.

Discussion Questions

1. Describe the "Equal Protection" Clause of the United States Constitution.

Section 1 of the Fourteenth Amendment to the United States Constitution is more commonly referred to as the "Equal Protection" Clause. The Equal Protection Clause holds that "No state shall make or enforce any law which shall…deny to any person within its jurisdiction the equal protection of the laws."

2. In your reasoned opinion, should the United States Supreme Court decide whether individual states have the right to ban gay marriage? Why or why not?

Regardless of whether an individual believes states should allow or prohibit gay marriage, this is a "classic" case of federal constitutional interpretation and should be addressed by the United States Supreme Court. The issue for the court to decide is whether denying a homosexual couple the right to wed violates the Equal Protection Clause of the United States Constitution or instead represents a "reasonable classification" in terms of access to rights. Based on prior judicial precedent, a person can be denied equal protection of the law if it is reasonable to do so. For example, a blind person can be denied a driver's license; in other words, a law forbidding those without proper vision to drive an automobile constitutes a "reasonable classification."

3. In your reasoned opinion, is a state's refusal to allow a homosexual couple the right to marry a violation of equal protection, and therefore a violation of the Fourteenth Amendment to the United States Constitution? Why or why not?

This is an opinion question, so student responses to this question will likely vary. As mentioned in response to Discussion Question Number 2, however, the issue of whether gay marriage is supported

by the Equal Protection Clause of the United States Constitution is a classic case of federal constitutional interpretation and should, in your author's opinion, be reviewed by the United States Supreme Court.

Article 2: "Former Virginia Governor Found Guilty in Influence-Peddling Case"

http://www.nbcnews.com/news/us-news/ex-virginia-gov-mcdonnell-found-guilty-corruption-case-n195941

Note: In addition to the article, please also see the video included at the above-referenced internet address.

According to the article, former Governor Bob McDonnell of Virginia, once a rising star in the Republican Party, was found guilty recently of selling the influence of his office to a vitamin salesman. He and his wife, Maureen, faced 14 counts of fraud, bribery charges, and corruption; McDonnell was found guilty of 11 counts, while Maureen was found guilty of nine.

McDonnell was found guilty of all charges against him, except for two counts of bank fraud. Both McDonnells sobbed as the verdicts were read, while their adult children cried in the seats behind them. U.S. District Judge James Spencer set sentencing for January 6.

"All I can say is my trust remains in the Lord," McDonnell said as he left court.

McDonnell, 60, and Maureen McDonnell were accused of accepting $170,000 in gifts and loans from Jonnie Williams, the CEO of a dietary supplement company, in exchange for favors, including state promotion of one of the company's products.

In closing arguments at trial, a prosecutor told the federal jury that McDonnell "stomped on the Virginia flag by selling out his office."

Williams bought $20,000 in clothes for Maureen McDonnell and an engraved Rolex for the governor, which jurors passed among themselves during the trial. Williams also spent $15,000 on a wedding reception for the McDonnells' daughter.

The executive arranged golf outings for the first couple, let them stay at his mountain lake house and lent them his Ferrari. A photo of Bob McDonnell, in sunglasses and smiling behind the wheel, was entered as evidence.

Prosecutors gave Williams an immunity deal and made him their star witness. He testified that he pampered the McDonnells to secure their help promoting the company's big product, an anti-inflammatory agent called Anatabloc.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

The former governor testified that he never gave Williams anything beyond ordinary political courtesy. Maureen McDonnell did not testify.

The case took a personal turn when the McDonnells plotted an unusual strategy: They argued that their marriage was so badly in trouble that they could not possibly have conspired to commit a crime. Defense lawyers said during opening statements that Maureen McDonnell had a crush on Williams, and among the evidence introduced at trial was an anguished email that the governor sent his wife about the state of their marriage.

"The evidence shows that she was gaga for Jonnie," Maureen McDonnell's defense lawyer, William Burck, said, adding that his client genuinely believed in Williams' product.

The case took off when a personal chef who was fired in 2012, accused of stealing food from the governor's mansion, provided investigators with documents showing that Williams had paid for catering at the daughter's wedding.

McDonnell was elected governor in 2009. He left office in January of this year and was indicted less than two weeks later. He is the first governor in Virginia history to be charged and convicted of a crime.

Discussion Questions

1. Define "influence peddling."

"Influence peddling" is defined as the use of position or political influence on someone's behalf in exchange for money or favors.

2. In this case, how is it possible to distinguish between gift-giving and bribery? Should a government official not be allowed to accept gifts? What if the donor receives no direct, discernible benefit in return for the gift to the government official?

The law defines a gift as the donor's transfer of ownership of property to the donee with no expectation of receiving any consideration (value) in return for the property. In contrast, bribery is the offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties. The expectation of a particular voluntary action in return is what makes the difference between a bribe and the private demonstration of goodwill.

In your author's opinion, in the McDonnell case, it is important to look at the magnitude of property transferred from Johnnie Williams, CEO of a dietary supplement company, to the McDonnells. As the article indicates, the McDonnells accepted $170,000 in gifts and loans from Mr. Williams, including:

a. an engraved Rolex watch for Mr. McDonnell;
b. $20,000 in clothing for Mrs. McDonnell;
c. golf outings, mountain lake house stays and the use of a Ferrari for Mr. and Mrs. McDonnell; and
d. a $15,000 wedding reception for the McDonnells' daughter.

Quite the "friendship!"

In terms of strict adherence to ethical and legal standards, government officials must avoid even the appearance of impropriety in accepting property. Even if the donor receives no immediate, direct, discernible benefit in return for the gift to the government official, the concern is that the government official's future decision-making could be either consciously or subconsciously affected in favor of the donor.

3. Comment on the McDonnell's defense that their marriage was so badly in trouble that they could not possibly have conspired to commit a crime. In your opinion, was this good strategy for the defense?

This is an opinion question, so student responses may vary in response to this question. Students should know, however, that not all criminal co-conspirators "get along" perfectly when they are engaged in criminal activity! Obviously, even if the McDonnells' marriage was "on the rocks," they were still capable of conspiring to commit a crime. The jury realized this in reaching its verdict.

Article 3: "Updated: Exclusive Details on Adrian Peterson Indictment Charges"

http://houston.cbslocal.com/2014/09/12/exclusive-details-on-adrian-peterson-indictment-charges/

According to the article, Adrian Peterson has been booked and released following his indictment for negligent injury to a child charges.

Peterson was booked into the Montgomery County Texas Jail recently. He was allowed in through a side entrance, presumably by a Montgomery County Sheriff's Department employee.

Peterson posted $15,000 bond and posed for a mug shot. The whole process took about 30 minutes. Peterson left the Montgomery County Sheriff's Department around 1:50am.

According to law-enforcement sources, Minnesota Vikings running back Adrian Peterson beat his 4-year-old son with a tree branch as a form of punishment this summer, an incident that allegedly resulted in multiple injuries to the child. According to reports, Peterson has been indicted in Montgomery County, Texas for injury to a child.

businesslaw

Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

The "whooping" – as Peterson put it when interviewed by police – occurred in Spring, Texas, in May. Peterson's son had pushed another one of Peterson's children off of a motorbike video game. As punishment, Peterson grabbed a tree branch – which he consistently referred to as a "switch" – removed the leaves and struck the child repeatedly.

The beating allegedly resulted in numerous injuries to the child, including cuts and bruises to the child's back, buttocks, ankles, legs and scrotum, along with defensive wounds to the child's hands. Peterson then texted the boy's mother, saying that one wound in particular would make her "mad at me about his leg. I got kinda good wit the tail end of the switch."

Peterson also allegedly said via text message to the child's mother that he "felt bad after the fact when I notice the switch was wrapping around hitting I (sic) thigh" and also acknowledged the injury to the child's scrotum in a text message, saying, "Got him in nuts once I noticed. But I felt so bad, n I'm all tearing that butt up when needed! I start putting them in timeout. N save the whooping for needed memories!"

In further text messages, Peterson allegedly said, "Never do I go overboard! But all my kids will know, hey daddy has the biggie heart but don't play no games when it comes to acting right."

According to police reports, the child, however, had a slightly different story, telling authorities that "Daddy Peterson hit me on my face." The child also expressed worry that Peterson would punch him in the face if the child reported the incident to authorities. He also said that he had been hit by a belt and that "there are a lot of belts in Daddy's closet." He added that Peterson put leaves in his mouth when he was being hit with the switch while his pants were down. The child told his mother that Peterson "likes belts and switches" and "has a whooping room."

Peterson, when contacted by police, admitted that he had "whooped" his son on the backside with a switch as a form of punishment, and then, in fact, produced a switch similar to the one with which he hit the child. Peterson also admitted that he administered two different "whoopings" to his son during the visit to Texas, the other being a punishment for the 4-year-old scratching the face of a 5-year-old.

In an interview with Houston police, Peterson was very matter-of-fact and calm about the incident, appearing to believe he had done nothing wrong and reiterating how much he cared about his son and only used "whoopings" or "spankings" as a last resort. He offered up information that the police didn't have and was incredulous when asked if some of the numerous wounds and marks on the child were from an extension cord, saying, "Oh, no, I'd never hit my child with an extension cord. I remember how it feels to get whooped with an extension cord. I'd never do that."

Peterson also said, "Anytime I spank my kids, I talk to them before, let them know what they did, and of course after." Peterson also expressed regret that his son did not cry – because then, Peterson said, he would have known that the switch was doing more damage than intended. He didn't realize the "tip of the switch and the ridges of the switch were wrapping around [the child's] legs." Peterson

also acknowledged that this was administered directly to the child's skin and with the child's pants pulled down.

Peterson later told police that the marks on his son's buttocks were similar to the marks any of his other children get when he "spanks them with a switch," but that the mark on the child's leg from when the switch "wrapped around his thigh" was more severe than anything he had ever done in the past.

Peterson said he knew that his son had a doctor's appointment scheduled for when he returned home and that the doctor would discover the injuries. Peterson added that if he felt like he was "really wrong for what I did, or had any ill intent, there's no way I would have let him get on that plane." He went on to say, "I have nothing to hide, but I also understand when a child has marks like that on his leg, they have to report that."

When Peterson was asked how he felt about the incident, he said, "To be honest with you, I feel very confident with my actions because I know my intent." He also described the incident as a "normal whooping" in regards to the "welps" on the child's buttocks, but that he felt bad immediately when he saw the injuries on the child's legs. Peterson estimated he "swatted" his son "10 to 15" times, but he's not sure because he doesn't "ever count how many pops I give my kids."

Peterson went on to reiterate again how much he loves all his kids, and only "whoops" them because he wants them to do right. Toward the end of the interview, Peterson said he would reconsider using switches in the future, but said he would never "eliminate whooping my kids…because I know how being spanked has helped me in my life."

After the child returned home to Minnesota in late May, the mother took the son to his previously scheduled doctor appointment and the doctor that examined the child said the injuries were consistent with child abuse and that it appeared the child had injuries from one incident involving a "switch" and another incident possibly involving a cord.

Authorities in Minnesota referred the case to the Houston Police Department to investigate. During the investigation, authorities determined that the incident did not take place on Woodway Drive in Houston, as originally believed, but instead in Spring, Texas, which is in the Montgomery County jurisdiction.

According to a law-enforcement source, Peterson was indicted recently in Montgomery County, Texas, but has not yet been arrested.

The NFL recently unveiled a domestic-violence policy, which stipulates a six-game suspension for a first offense but allows for steeper penalties if children are involved.

The Montgomery County Sheriff Office released the following statement:

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

On Thursday, September 11, 2014, a Montgomery County Grand Jury "true billed" Adrian Lewis Peterson on a charge of injury to a child. On today's date at 2:47 PM, a warrant was issued and entered for the arrest of Adrian Peterson for that charge.

Since the Montgomery County Sheriff's Office has referred the case to the Montgomery County District Attorney's Office, and the investigation has led to a, "true bill", on a criminal offense, the Montgomery County Sheriff's Office will not discuss details in reference to the case or investigation.

At the time of this release, Adrian Peterson is not in custody at the Montgomery County Jail and the Montgomery County Sheriff's Office does not have any details in the arrest of Adrian Peterson.

Peterson's lawyer Rusty Hardin released a statement saying:

"Adrian Peterson has been informed that he was indicted by a grand jury in Montgomery County, Texas for Injury to a Child. The charged conduct involves using a switch to spank his son. This indictment follows Adrian's full cooperation with authorities who have been looking into this matter. Adrian is a loving father who used his judgment as a parent to discipline his son. He used the same kind of discipline with his child that he experienced as a child growing up in east Texas. Adrian has never hidden from what happened. He has cooperated fully with authorities and voluntarily testified before the grand jury for several hours. Adrian will address the charges with the same respect and responsiveness he has brought to this inquiry from its beginning. It is important to remember that Adrian never intended to harm his son and deeply regrets the unintentional injury."

Discussion Questions

1. Is child discipline merely a "family matter?" Why or why not?

Is spousal abuse merely a "family matter?" Obviously, it is not, and even if an abused spouse should later argue in favor of not prosecuting his or her abuser, prosecution is ultimately for the district attorney to decide. The same can be said for child discipline—If it is excessive and thereby in violation of the law—In other words, if child "discipline" becomes child "abuse"—it is no longer just a "family matter," and the abuser can be criminally prosecuted.

2. According to Peterson's defense attorney, his client "used the same kind of discipline with his child that he experienced as a child growing up in east Texas." In your opinion, is this a viable defense? Why or why not?

In your author's opinion, this is <u>not</u> a viable defense. Adrian Peterson' guilt or innocence should be based on an objective determination as to whether he violated the law in physically punishing his child. The fact that an individual's parent acted a certain way should not give the individual a license to act in that same way if such action violates current law.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

3. According to common law definitions, assault is the "reasonable apprehension or fear of immediate, offensive physical contact," while battery is the actual offensive physical contact. If a child is bruised and/or bloodied as the result of parental discipline, does that constitute assault and battery? If not, why not?

In your author's opinion, excessive physical discipline of a child does meet the "classic" definition of assault and battery. One must remember that young children are largely defenseless—In an abuse situation, their fear will likely be great, and the physical harm associated with the abuse (in terms of being bruised and/or bloodied) may be severe. Whether parents should be given a "free pass" in terms of responsibility for assaulting and battering their children is for society, the law and the courts to decide. In your author's opinion, our society owes a profound and solemn obligation to children to draw a clear line of demarcation between child discipline and child abuse.

businesslaw

Mc Graw Hill Education

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

Video Suggestions

Video 1: "Democratic Congressman Hits President Obama for 'Playing it Safe' on Immigration"

http://abcnews.go.com/blogs/politics/2014/09/rep-luis-gutierrez-hits-obama-for-playing-it-safe-on-immigration/

According to the article, President Obama is "playing it safe" on immigration reform by announcing that he will delay executive action until after the midterm elections in November, Democratic Representative Luis Gutierrez said.

"It's clear that playing it safe is what is going on at the White House and among Democratic circles," Gutierrez said. "Playing it safe means walking away from our values and our principles."

The White House announced that President Obama recently made the decision to postpone executive action on immigration until after the upcoming midterms.

The decision to put off executive action on immigration reform comes just days after President Obama promised to act "soon" on the issue. In a news conference recently, the president said, "In the absence of Congressional action, I intend to take action to make sure we are putting more resources on the border, that we are upgrading how we process these cases, and that we find a way to encourage legal immigration, and give people some path so they can start paying taxes and pay a fine and learn English."

Gutierrez said waiting will hurt the Latino community that has historically supported the president and other Democrats.

"President Barack Obama in the last five years has deported more people than any other president in the history of the United States," Gutierrez said. "While we wait until November, because that's the president's decision, there's going to be another 60,000 people deported. So there is pain and suffering in the community and there's a lot of anguish and anger."

Critics say Obama's decision is a political one designed to help vulnerable Senate Democrats who are up for re-election in red states. Some analysts –

including FiveThirtyEight's Nate Silver – project that the GOP will likely take control of the Senate in November.

Gutierrez said that action on immigration reform should not be based on party politics.

"Playing it safe might win an election. Sometimes you lose an election playing it safe also. But it's almost never leads to fairness, to justice, and to good public policy that you can be proud of," he said.

Republicans have also criticized President Obama for failing to act more quickly on the immigration issues facing the country. House Speaker John Boehner, a Republican from Ohio, said the decision to hold off on immigration reform until after the midterms "smacks of raw politics," while Senate Minority Leader Mitch McConnell, a Republican from Kentucky, called it "Washington politics at its worst."

Gutierrez said that he's still hopeful for progress on immigration reform in the coming weeks. "I've called the president, called the White House, I expect that we will be meeting this week so that we can continue," he said.

Discussion Questions

1. Is immigration reform the responsibility of the executive branch (the President of the United States) or the legislative branch (the United States Congress?)

Traditionally, the responsibility of the legislative branch (the United States Congress) is to make the law, while the responsibility of the executive branch (the President of the United States) is to enforce the law. Executive action on immigration could be based on the President's belief that Congressional inaction on the issue must be addressed, particularly if immigration is a pressing issue that the federal government must address on the basis of national security, the performance of the United States economy, the state of the United States labor market, etc.

2. In your reasoned opinion, should political calculations (such as the effect of government decision-making on an upcoming election) ever be the basis for government action? Explain your response.

Students should know that in their decision-making, both Democrats and Republicans are influenced by politics (including the potential political ramifications of their decision-making.) Neither political party has a monopoly on political strategizing! If the 2014 midterm elections indeed influenced President Obama's decision to delay action on immigration reform (and the timing does seem to suggest that it was), the delay was likely based on the political calculation that it would do little good to win the "battle" (immigration reform by executive action) if that would result in losing the

"war" (the outcome of the 2014 midterm elections, including control of the United States Senate and/or House of Representatives).

3. In your reasoned opinion, is "immigration reform" necessary? Why or why not?

This is an opinion question, so student responses will likely vary. The term "reform" suggests that the system is broken and needs wholesale repair. Immigration reform advocates believe that our immigration and naturalization system is broken. Others may believe that if the United States enforced the federal and state laws currently on the "books" (such as the Immigration Reform and Control Act of 1986), that would go a long way in addressing illegal immigration in the United States.

Video 2: "NY Businesswoman Accused of Killing Autistic Son Stands Trial"

http://www.cnn.com/2014/09/13/justice/new-york-autistic-death-trial/index.html?hpt=hp_t4

According to the article, Gigi Jordan showed no emotion as a New York prosecutor described to a jury a "chilling and horrifying scenario" in which the businesswoman who made a fortune in pharmaceuticals allegedly concocted a lethal cocktail of painkillers and anti-inflammatories and forced her 8-year-old autistic son to swallow it.

"Two fresh bruises on his nose, fresh bruises on his chin and chest suggest she got on top of him and, hopefully while he was asleep, filled a syringe with the poisonous concoction and pressed that plunger into his body," said assistant district attorney Matt Bogdanos, demonstrating how she might have squeezed his nose and pressed open his mouth to deliver the poison.

"His fate was sealed," Bogdanos said. "He didn't die fast. One by one, his vital organs shut down. It didn't take minutes. It took hours to die."

But on the first day of Jordan's sensational second-degree murder trial -- expected to last months -- defense attorney Allan Brenner painted a starkly different portrait.

Brenner described Jordan as a desperate mother ultimately driven to kill Jude Mirra by her two former husbands: One who had allegedly threatened to kill her, a crime that would have left the boy with his biological father, who she believed had sexually abused Jude.

In a packed Manhattan criminal courtroom, no one disputed the unthinkable manner in which little Jude spent his final hours on February 5, 2010. Police found his cold body after they were dispatched to the luxury Peninsula Hotel in Manhattan. The call to police came after a relative of Jordan was unable to reach her.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

At an autopsy, four of the painkillers and anti-inflammatories used to kill Jude were recovered undigested from his stomach, prosecutors said. Orange juice and vodka were used to wash down the drugs.

While Jude lay dying, Bogdanos said, Jordan sent an email to a financial adviser instructing him to transfer the $125,000 trust she set up for her son to her personal account.

Brenner said Jordan, believing she was ultimately protecting her son, brought the drugs to the hotel room with the intention of killing them both, but she survived the suicide attempt.

The prosecution sought to show the jury that the killing was premeditated and that Jordan expected to survive.

Bogdanos said Jordan "went to the bank, she transferred $8 million from savings to checking. She checked in (at the hotel) without a reservation and paid cash."

The exact time of the boy's death could not be determined, but Jude's body temperature was 80 degrees, suggesting that when police arrived, he had been dead for eight to 14 hours, Bogdanos said.

Police found a variety of drugs, which the prosecutor enumerated for the jury.

"Xanax, 1,000 pills; Prozac, 200 pills; Ambien 400 pills; Celebrex, a pain reliever, 250 pills; Trexone, similar to morphine, 300 pills; and hydrocodone 9" were among the drugs found in the hotel room and part of the lethal mix that Jordan allegedly gave her son, according to Bogdanos.

Still, Brenner told a spellbound jury that on that fateful day in 2010, Jordan acted out of love and desperation.

She had been threatened by her first husband and former business partner, Brenner said. She had accused the man of raiding her bank accounts and defrauding her of millions in profits from their joint businesses. She filed a lawsuit against him in 2012, seeking damages for breach of contract and fraud.

"Gigi knew all the dirty deals," Brenner said. "He knew that Jude was her soft spot."

Jordan "believed he was going to kill her, leaving a sexual predator to exercise his paternal rights," Brenner told the jury.

A lawyer representing her first husband did not returns calls and emails seeking comment. But her first husband filed a lawsuit in August 2013, claiming Jordan defamed him in interviews she gave the media in an effort to advance her defense.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

Jordan believed that if she died, Jude's biological father -- a yoga instructor and undocumented immigrant who Jordan said she married to help him get a green card -- would get custody, according to Brenner.

Jordan first learned that Jude had been sexually abused in December 2007, Brenner said.

Jude was autistic and his vocabulary was limited, but in just a few words, he uttered: "Dad bad, Dad bad, over and over again," according to Brenner. That was Jude's way of letting his mother know that he had been victimized repeatedly sexually and physically, Brenner said.

"He had been made to eat feces and subjected to the most degrading conduct imaginable," he said.

The boy's father has denied the allegations and has never been charged.

Brenner said Jordan told a therapist about the alleged abuse. The allegations were reported to local authorities, but no action was taken. Jordan then decided to seek the help of a nationally renowned expert on child exploitation in Cheyenne, Wyoming.

After being interviewed by him for 30 minutes, Brenner said, Jordan was accused of being unfit and delusional, taken to a medical facility and separated from her son for several months before being reunited with the boy.

"Now she sits here forever brokenhearted, stranded and separated from the true love of her life -- her son," Brenner said.

Jordan faces 15 years to life in prison if convicted. She is expected to take the stand.

Discussion Questions

1. As the article indicates, the defense in the case is largely based on the contention that Gigi Jordan was a desperate mother ultimately driven to kill her son Jude Mirra by her two former husbands: One who had allegedly threatened to kill her, a crime that would have left the boy with his biological father, who she believed had sexually abused Jude. In your reasoned opinion, is this a viable defense to the murder charge? Why or why not?

In your author's opinion, this is a weak defense to murder. Murder is defined as the wrongful, intentional taking of the life of another human being. The key here is that if the prosecutor's allegations are accurate, Gigi Jordan exercised her own free will in deciding whether her son would live or die. In your author's opinion, if Ms. Jordan took her son's life, she must be held responsible for the consequences of her actions.

2. The article indicates that Ms. Jordan is being tried for second-degree murder. In your reasoned opinion, should the charge be first-degree murder? Why or why not?

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

This is an interesting question. First degree murder is defined as the wrongful, intentional taking of the life of another human being with ***premeditation and deliberation****, while second-degree murder is a "crime of passion," the wrongful, intentional taking of the life of another human being without premeditation and deliberation. In your author's opinion, if the facts are as the prosecutor alleges—namely, that Ms. Jordan prepared a lethal cocktail of painkillers and anti-inflammatories and then forced her son to swallow it—the mother's actions would appear to involve premeditation and deliberation.*

3. In your reasoned opinion, should Gigi Jordan take the witness stand in her own defense (i.e., testify) or instead exercise her Fifth Amendment (to the United States Constitution) privilege against self-incrimination? Explain your response.

Whether the defendant chooses to take the witness stand in her own defense is a decision the defendant must make in consultation with her attorney. Ultimately, it is the defendant's decision to make. Criminal defense strategy is a key issue here—If the defendant testifies, the jury can evaluate the defendant's perceived credibility, and if the defendant is a "bad" witness, that can help establish the prosecution's case. Additionally, if the defendant takes the witness stand, the defendant is subject to cross-examination by the prosecution, which could also potentially impeach the defendant's perceived credibility.

If the defendant chooses not to testify, the court will recognize the defendant's Fifth Amendment privilege against self-incrimination, and instruct the jury to not perceive the defendant's refusal to take the stand as an indication of the defendant's guilt. Most defendants choose not to testify in their criminal trial, believing the risks of testifying (and being subject to the prosecution's cross-examination) as outweighing any potential benefits to taking the stand.

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A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

Of Special Interest

This section of the newsletter addresses Wal-Mart's new dress code for its employees.

Ethical Dilemma

"Walmart Workers Complain They Can't Afford New Dress Code"

http://www.huffingtonpost.com/2014/09/09/walmart-dress-code_n_5792224.html

Note: In addition to the article, please also see the video included at the above-referenced internet address.

According to the article, Walmart workers are apparently not too happy about having Walmart tell them how to dress, and now labor activists are getting involved.

Richard Reynoso, a Walmart employee working in a southern California store, sent a letter to Walmart's corporate headquarters recently, claiming that he could not afford to comply with a new company dress code that takes effect on September 29. It was written on letterhead with the logo of OUR Walmart, a union-backed organization advocating for Walmart workers.

Under the new code, workers will have to a wear a collared blue or white shirt and black or khaki pants, along with a Walmart vest the company will provide. Employees can use clothes they already own or buy new clothes anywhere they want, but they have to pay for the shirts and pants out of their own pockets.

Reynoso wrote that he makes between $800 and $900 a month and asked the company to cover the cost of buying the new clothes he needs.

"The sad truth is that I do not have $50 laying around the house to spend on new uniform clothes just because Walmart suddenly decided to change its policy," he wrote. "If I have to go out of pocket for these new clothes, I'm going to have to choose which bill to skip."

Walmart spokesman Kory Lundberg cautioned against giving too much weight to Reynoso's letter. He said the company decided to roll out the dress

code in advance of the busy holiday season. Workers and customers had told the company that shoppers could not distinguish between store employees and customers wearing blue T-shirts and khakis. Walmart had gotten "a lot of feedback" from workers, Lundberg said, but that most of it has been positive.

“We always want to hear from our associates, it makes us a better company," Lundberg said. "I find it odd that this letter came from the Washington D.C. office of the UFCW and not from California, where the associate who signed it is from. I think that context helps most reasonable people better understand the letter.”

Reynoso's complaints echo those of Walmart workers in an internal forum, Gawker reported .

"With all due respect to the company, this is more of a financial burden to our family since this is our only source of income with my wife and two kids. We can hardly afford to live on my income now with us having to pay for a new uniform (aside from the vest). It's silly. The uniform we have now works. Why change it?" one worker wrote in the forum, according to Gawker.

Several employees also vented their frustration to Business Insider, including one who complained: "In the time I have been at Wal-Mart I have gone through four to five dress code changes. This one is by far the weakest and most pathetic attempt to gain customers back."

On Reddit, reaction to the dress code changes were mixed, with some commenters saying they looked forward to having more clothing options and others writing that it "sucks."

Workers can buy the new clothes they need at Walmart using their employee discount, the company noted in an internal announcement about the dress code leaked to Gawker by a Walmart employee.

Discussion Questions

1. Does Wal-Mart have the legal right to require its employees to adhere to a dress code?

Wal-Mart does have the legal right to require its employees to adhere to a dress code.

2. Read Richard Reynoso’s letter regarding Wal-Mart’s new dress code at the following internet address:

   http://big.assets.huffingtonpost.com/ourwalmart.pdf

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

You will note that Reynoso's letter was written on "OURWalmart" (Organization United for Respect at Walmart) stationary. This would lead a reasonable person to conclude that Reynoso had some assistance from the organization in preparing the letter. As the article indicates, according to Wal-Mart spokesperson Kory Lundberg, "I find it odd that this letter came from the Washington D.C. office of the UFCW (The United Food & Commercial Workers International Union) and not from California, where the associate who signed it is from. I think that context helps most reasonable people better understand the letter."

Does the source of this letter influence your opinion regarding the merit of Wal-Mart employee Richard Reynoso's dress code complaint? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, if the dress code complaint was actually his own, whether Mr. Reynoso received assistance in the preparation and submission of the complaint should be largely irrelevant in assessing objectively the propriety or impropriety of his complaint. Also, even if "OurWalmart" and/or the UFCW used Mr. Reynoso merely as the "face" for the complaint, the propriety of the dress code complaint should be evaluated on its own merit.

3. Does the average pay of a non-supervisory Wal-Mart worker influence your opinion regarding the propriety of the company's new dress code and its associated employee expense? Explain your response.

This is an opinion question, so student responses will likely vary in response to this question. As mentioned in response to "Ethical Dilemma" Discussion Question Number 1 above, as a general rule of law, a dress code is enforceable. Whether requiring a dress code and imposing the cost associated with the dress code on a low-wage worker is ethical is a matter subject to debate.

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October 2014 Volume 6, Issue 3

Of Special Interest

This section of the newsletter will assist you in addressing Video 1 ("Democratic Congressman Hits President Obama for 'Playing it Safe' on Immigration") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Video 1—"Democratic Congressman Hits President Obama for 'Playing it Safe' on Immigration"):

"Immigration Law Overview"

http://www.law.cornell.edu/wex/immigration

"Historical Overview of Immigration Policy"

http://cis.org/ImmigrationHistoryOverview

Teaching Tip 2 (Related to Video 1—"Democratic Congressman Hits President Obama for 'Playing it Safe' on Immigration"):

"The Senate Immigration Bill: Here's What You Need to Know"

http://www.washingtonpost.com/blogs/wonkblog/wp/2013/04/16/the-senate-immigration-bill-heres-what-you-need-to-know/

According to the article, months after their January 28, 2013 announcement of a tentative compromise on immigration reform, the bipartisan "Gang of Eight" has finally unveiled its bill, or at least a summary of the proposal. It includes sweeping changes in treatment of both existing undocumented workers and aspiring immigrants. Here are the key points of the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013:

Is there amnesty and/or a "path to citizenship"?

Yes. If you're an undocumented immigrant who arrived in the United States before Dec. 31, 2011, haven't committed a felony (or three misdemeanors), hold a job, and pay a $500 fine and back taxes, then you will immediately gain the status of "registered provisional," allowing an individual to legally stay in the United States without risk of deportation. Registered provisionals wouldn't be able to get any means-tested public benefits. If you've already been deported, you're eligible to apply to re-enter if your parent or child is a citizen or permanent resident, or if you are DREAMer and were deported as a minor (see next section).

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October 2014 Volume 6, Issue 3

After six years, you'd have to renew the status, which is dependent on maintaining a steady work history, having a clean criminal record, and paying another $500 fine.

Four years after that (10 years after initially attaining "registered provisional" status), you could apply for permanent residency (aka a Green Card). That step requires showing constant work history, constant presence in the United States, continuous tax payments, clean criminal record, and knowledge of English and civics, as well as paying another $1,000 fine.

Three years after that you'd be eligible to become a citizen. So the recognition-to-citizenship process takes a total of 13 years and requires $2,000 in fines from each adult affected.

Would anyone get a faster path?

Also yes. DREAMers — or those who entered illegally before age 16, graduated from high school, and have been in the United States for at least five years — would have a quicker path. They would be able to apply for permanent residency after five years and citizenship immediately thereafter, provided they serve two years in the military or complete at least two years of college.

Agricultural workers also would get a chance at Green Cards after five years, but would not be immediately eligible for citizenship, unlike DREAMers.

What would it do on border security?

Six months after the bill's passage, the Department of Homeland Security would have to submit two plans, one outlining a strategy for reducing traffic over high-risk areas on the Mexican border, and another for increasing fencing. The bill appropriates $3 billion for the department to carry out the first plan (through better drone surveillance and more border patrol officers, among other things) and $1.5 billion for it to carry out the latter. The National Guard would be allowed to be deployed to the border, and 3,300 new customs agents hired.

If, by the fifth year the bill is in effect, 90 percent of crossers aren't being apprehended and 100 percent of the border isn't being surveilled, the bill would establish a commission of four border-state governors and add another $2 billion in security funding.

The bill also requires the establishment of an electronic exit checking system at airports and sea ports in order to track the movements of visa holders.

What about employer enforcement?

The bill would mandate employers use an improved version of E-Verify, an electronic system for determining the legal status of current and prospective employees, within five years. Non-citizens would have to have and show "work authorization cards" or Green Cards, each with biometric data embedded so as to prevent forged documents.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

The program would be phased in slowly: "Employers with more than 5,000 employees will be phased in within 2 years. More than 500 employees will be phased in within 3 years. All employers, including agricultural employers, will be phased in within 4 years."

Is the legalization portion linked to increased enforcement?

Yes. Applications for permanent residency would be allowed to start either 10 years after granting of "registered provisional" status or after Homeland Security's enforcement plans, e-verify implementation, and the visa-tracking system are all completed, whichever of the two comes later. So if ten years pass and the Homeland Security enforcement plans aren't judged to have been completed, then registered provisionals would not be eligible to become permanent residents.

What about high-skilled immigrants? Would we let more in?

Yep. The number of H1-B visas, which are designed for high-skilled workers, would increase from 65,000 to at least 110,000, and up to 180,000 depending on employer demand. Employers who use H1-B visa holders for 30 percent or more of their workforce would have to pay new fees. Unlike currently, in which dependents count against the quota, the cap would only apply to the actual number of high-skilled workers. The effect would be an even larger than anticipated expansion of the supply of high-skilled immigrants.

Employers who count H1-B holders as more than 75 percent of their workforce would be banned from hiring more foreign workers starting in 2014. That percentage cutoff would drop to 65 percent in 2015 and 50 percent in 2016.

However some groups would be exempt altogether: "derivative beneficiaries of employment-based immigrants; aliens of extraordinary ability in the sciences, arts, education, business or athletics; outstanding professors and researchers; multinational executives and managers; doctoral degree holders in STEM fields; and physicians who have completed the foreign residency requirements or have received a waiver."

What about low-skilled immigrants? Are we setting up a guest worker program?

Yes. A new "W-visa" program for low-skilled guest workers, capped at 20,000, would start in 2015. The cap would rise to 75,000 by 2019. Immigrants would apply at U.S. embassies and consulates in their home countries, and would stay in three-year renewable stints along with their families. If they are unemployed for 60 days or more they would be required to leave the United States. The workers must be paid the prevailing wage and cannot be employed in metropolitan areas where unemployment is above 8.5 percent barring special exemptions from the Secretary of Homeland Security. Employers cannot fire American workers 90 days before or after the hiring of guest workers.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

A new federal bureau, the Immigration and Labor Market Research Bureau, would be charged with determining worker shortages and adjusting those caps accordingly to align with the state of the national labor market, but would not be able to increase the cap above 200,000 a year. Its director would be appointed by the president and confirmed by the Senate, and it would have to present construction employment data every three months and deliver an annual report recommending improvements to immigration programs. It would get $20 million to start and will otherwise be funded by employer fees for participating in the program, and "other fees related to the hiring of alien workers."

Construction companies would be limited to 15,000 workers a year or a three percent of total visas, whichever is lower.

However, a "safety valve" would also be put in place whereby companies could hire guest workers in excess of the cap, provided they pay them higher wages. The hope is that this would encourage workers to look first to American workers who would like accept the same level of wages.

Can guest workers apply for permanent residence?

Yes and no. They're ineligible to apply for permanent residence under "track two" of the merit-based visa system set up in the bill, which applies to "long-term alien workers and other merit-based immigrants" who have been "lawfully present in the United States for not less than 10 years." However, Michelle Mittelstadt of the Migration Policy Institute tells me that she believes W visa holders are eligible to file for change of status through normal employment/family-based visas or through "track one," which distributes visas through a merit-based point system. She notes that the bill changes the law surrounding renunciation of foreign residences to "enable current W holders to apply for a green card while still maintaining their W nonimmigrant status." That's roughly how H-1B visas work today; while technically a "nonimmigrant" visa, H-1B holders are allowed to intend to emigrate and can apply for a green card through employment or family-based channels.

What about farm workers? What's up with them?

In addition to the sped-up, five year process for undocumented agricultural workers to gain permanent residency, the bill also caps the number of agricultural visas to 337,000 over three years. A new agricultural guest worker program would be launched as well. The changes are similar to those in the unpassed AgJOBS bill.

Are there any changes to family-based visas?

Yep. The bill allows an unlimited number of visas to go to parents, children and spouses of U.S. citizens and permanent legal residents. But 18 months after the law takes effect, visas for siblings of citizens and permanent residents would be eliminated, as would visas for adult married children over 30.

Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

What about that weird random visa program?

The Diversity Visa, which uses a lottery to distribute 55,000 permanent resident visas every year to natives of countries with low rates of immigration to the United States, would be eliminated starting in 2015. It would be replaced with a merit-based system using a mix of family ties, work history in the United States and strength of work skills. That would start at 120,000 visas per year and then grow to a maximum 250,000, growing by 5 percent every year that there are more applicants than spots and unemployment is below 8.5 percent.

The "Gang of Eight":
Sen. Michael Bennet, D-CO
Sen. Richard J. Durbin, D-IL
Sen. Jeff Flake, R-AZ
Sen. Lindsey Graham, R-SC
Sen. John McCain, R-AZ
Sen. Bob Menendez, D-NJ
Sen. Marco Rubio, R-FL
Sen. Chuck Schumer, D-NY

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Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

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

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Proceedings

A monthly newsletter from McGraw-Hill

October 2014 Volume 6, Issue 3

This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 12th Edition 2015© (0078023815)
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, 3rd Edition 2015© (0078023785)
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)
Melvin, The Legal Environment of Business: A Managerial Approach, 2nd edition 2015© (0078023807)
McAdams et al., Law, Business & Society, 10th Edition 2012© (0073525006)
Reed et al., The Legal and Regulatory Environment of Business, 16th Edition 2013© (0073524999)