



Proceedings

A monthly newsletter from McGraw-Hill

September 2013 Volume 5, Issue 2



The McGraw-Hill Companies

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Dear Professor,

I hope your 2013-2014 academic year is off to a fantastic start! Welcome to McGraw-Hill's September 2013 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 5, Issue 2 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the September 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 recent federal appeals court decision regarding government access to cell phone records without a warrant;
2. A recent tort case involving the Drug Enforcement Agency (DEA) as the defendant;
3. A proposed ordinance in San Antonio, Texas banning discrimination by government officials and city contractors against the LGBT community;
4. Videos related to a) a jury verdict in a recent Fair Credit Reporting Act (FCRA) lawsuit and b) a television reporter's firing for a "tell-all" blog post; and
5. An "ethical dilemma" and "teaching tips" related to a television reporter's firing for a "tell-all" blog post.

The fall season is near!

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 recent federal appeals court decision regarding government access to cell phone records without a warrant;
- 2) A recent tort case involving the Drug Enforcement Agency (DEA) as the defendant; and
- 3) A proposed ordinance in San Antonio, Texas banning discrimination by government officials and city contractors against the LGBT community.

Hot Topics in Business Law

Article 1: "Government Can Grab Cell Phone Location Records without Warrant, Appeals Court Says"

<http://investigations.nbcnews.com/news/2013/07/30/19781508-government-can-grab-cell-phone-location-records-without-warrant-appeals-court-says?lite>

According to the article, in a major victory for the Justice Department over privacy advocates, a federal appeals court ruled recently that government agencies can collect records showing the location of an individual's cell phone without obtaining a warrant.

The 2-1 ruling by the 5th Circuit Court of Appeals in New Orleans upheld the Justice Department's argument that "historical" records showing the location of cell phones, gleaned from cell site location towers, are not protected by the Fourth Amendment.

A key basis for the ruling: The use of cell phones is "entirely voluntarily" and therefore individuals who use them have forfeited the right to constitutional protection for records showing where they have been used, the court held.

"The Government does not require a member of the public to own or carry a phone," wrote U.S. Judge Edith Brown Clement in an opinion joined by United States Judge Dennis Reavley. The opinion continued: "Because a cell phone user makes a choice to get a phone, to select a particular service provider, and to make a call, and because he knows that call conveys cell site information ... he voluntarily conveys his cell site data each time he makes a call."

The issue of cell phone location data has become a major and increasingly contentious battleground in the privacy wars. Privacy advocates argue that the proliferation of cell phone towers in the U.S. – 285,561, according to the latest industry records, more than double the number 10 years ago – and new technologies, such as smart phones, permit law enforcement agents to track highly sensitive information about where individuals have been – their homes or trips to see doctors, friends or lovers – without making a showing to a judge that there is "probable cause" that a person has committed a crime.



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Instead, police and law enforcement agents have been obtaining such records under a law called the Stored Communications Act by asserting that there are "specific and articulable facts" showing the records are needed for a criminal investigation – a lower standard.

The debate has even touched on the National Security Agency's surveillance program: Director of National Intelligence James Clapper last week wrote a letter to Oregon Senator Ron Wyden stating that the agency has "no current plans" to collect cell phone location data as part of its bulk collection of phone records.

But Wyden, a Democrat, has repeatedly asserted that the agency has the legal authority to do so, noting in a recent speech that "most of us have a computer in our pocket that potentially can be used to track and monitor us 24/7."

The ruling involved three cases in which unknown federal agencies applied for 60 days of cell site location data in three criminal investigations. But it is hardly the last word on the subject. The 3rd Circuit Court of Appeals has already ruled that federal judges may require warrants for such data, and the ACLU and other privacy groups this recently filed a brief to the 4th Circuit urging that warrants be required for all such government requests.

Discussion Questions

1. Which constitutional provision protects the individual right to privacy?

The Fourth Amendment to the United States Constitution protects the individual right to privacy. The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

2. As the article indicates, a key basis for the Fifth Circuit Court of Appeals' ruling is based on the rationale that the use of cell phones is "entirely voluntarily," and therefore individuals who use them have forfeited the right to constitutional protection (for records showing where they have been used). Could the same argument be made with respect to an automobile, or a bank account? Explain your response.

Although the same argument could be made with respect to an automobile or a bank account, your author is not convinced that such an argument would be convincing to citizens who "hold dear" the constitutionally-protected right to privacy! It would be interesting to solicit student opinions regarding whether the use of cell phones is "entirely voluntarily" in a society that has grown so dependent on the use of technology for personal and business matters. Further, ask students whether the use of an automobile or a bank account is "entirely voluntarily."



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2. In your reasoned opinion, if the Fifth Circuit Court of Appeals' decision is appealed to the United States Supreme Court, will the Supreme Court uphold the decision? Explain your response.

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

Article 2: "Daniel Chong, Forgotten in DEA Cell, Settles Suit for \$4.1 Million"

http://www.cnn.com/2013/07/30/justice/california-dea-settlement/index.html?hpt=hp_t2

According to the article, a University of California San Diego student left unmonitored in a holding cell for five days by the Drug Enforcement Administration has settled a lawsuit for \$4.1 million.

"This was a mistake of unbelievable and unimaginable proportions," said attorney Julia Yoo.

Daniel Chong, 25, drank his own urine to survive and even wrote a farewell note to his mother before authorities discovered him severely dehydrated after a 2012 drug raid in San Diego.

He was held in a 5-by-10-foot cell with no windows but a peephole through the door. It had thick concrete walls and was situated in a narrow hallway with four other cells, isolated from the rest of the DEA facility, said Eugene Iredale, another of Chong's attorneys.

There was no toilet, only a metal bench on which he stood in a futile attempt to set off the sprinkler system with his cuffed hands, Chong said.

He kicked the door and yelled, anything to get someone's attention. "I was screaming. I was completely insane," he said.

One matter still unclear is why no one heard him. Chong said he heard footsteps, muffled voices and the opening and closing of cell doors, even from the cell adjacent to his. Yet no one responded to the ruckus coming from inside his cell.

Chong was detained on the morning of April 21, 2012, when DEA agents raided a house they suspected was being used to distribute MDMA, commonly known as "ecstasy."

A multiagency narcotics task force, including state agents, detained nine people and seized about 18,000 ecstasy pills, marijuana, prescription medications, hallucinogenic mushrooms, several guns and thousands of rounds of ammunition from the house, according to the DEA.

It was not until the afternoon of Wednesday, April 25, that an agent opened the steel door to Chong's cell and found the handcuffed student, Chong's attorney Iredale said.



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Upon his release, Mr. Chong said he was visiting a friend and knew nothing about the presence of drugs and guns. He was never formally arrested or charged, according to the DEA.

While detained, Chong had given up and accepted death, using a shard of glass from his glasses to carve "Sorry Mom" onto his arm as a farewell message, Yoo said. Chong lost 15 pounds and suffered from severe post-traumatic stress disorder, she said.

"He's the strongest person I have ever met," Yoo said. "As a result of his case, it is one of the primary reasons the DEA placed a nationwide policy that calls on each agent at satellite offices to check on the well-being of prisoners in their cells on a daily basis," Yoo said.

A DEA spokeswoman indicated that a review of DEA procedures was conducted and submitted to the inspector general's office at the Department of Justice.

"I am deeply troubled by the incident that occurred here," said DEA San Diego Special Agent in Charge William R. Sherman shortly after the incident. "I extend my deepest apologies to the young man and want to express that this event is not indicative of the high standards that I hold my employees to."

Since the incident, Chong has returned to complete his undergraduate degree at UC San Diego, Yoo said. "He changed his major from engineering to economics and wants to finish school, pursue his career and help take care of his mother."

Discussion Questions

1. As the article indicates, the Drug Enforcement Agency (DEA) has settled Daniel Chong's lawsuit for \$4.1 million. Should the DEA be immune from liability in tort lawsuits, given the fact that taxpayers must ultimately pay for settlements and verdicts in such cases? Why or why not?

This is an opinion question, so student responses will likely vary. In answering this question, remind students that any award of money in favor of a plaintiff and against the federal government and its agencies "passes through" to taxpayers. The settlement, although not an acknowledgement of legal liability in this case, recognizes that the federal government and its agencies can be held responsible in civil court for tort violations, including torts like false imprisonment and intentional (or negligent) infliction of emotional distress. In agreeing to a settlement amount of \$4.1 million, the DEA is likely acknowledging potential exposure for punitive damages as well as compensatory damages. Punitive damages are designed to punish a defendant for egregious intentional, extremely reckless or grossly negligence actions that "shock the conscience" of a reasonable person. Had the case gone to trial, the verdict amount could have been even higher, since the trial jury has great discretion in determining what amount of money is appropriate to compensate the plaintiff for emotional pain and suffering, and what amount of money is appropriate for punitive damages.



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2. In your opinion, is the \$4.1 million settlement amount reasonable in light of the facts and circumstances of the case? Why or why not?

This is an opinion question, so student responses will likely vary. As indicated in response to Article 2, Discussion Question Number 1 above, in agreeing to a settlement amount of \$4.1 million, the DEA is likely acknowledging potential exposure for punitive damages as well as compensatory damages (including damages for intentional/extremely reckless/grossly negligent infliction of emotional distress).

3. In your opinion, do such lawsuits have a “chilling effect” on DEA law enforcements efforts? Explain your response.

In your author’s opinion, it would be difficult to substantiate the exact effect such lawsuits have on law enforcement efforts. Lawsuits like Daniel Chong’s do effect change; as the article indicates, as a result of his case, the DEA has established a nationwide policy that calls on each agent at satellite offices to check on the well-being of prisoners in their cells on a daily basis.

Article 3: “San Antonio Proposal Could Bar Christians from City Council”

<http://radio.foxnews.com/toddstarnes/top-stories/san-antonio-proposal-could-bar-christians-from-city-council.html>

According to Fox News contributor Todd Starnes, churches across San Antonio are expressing outrage over a proposed anti-discrimination law that would protect LGBT workers but would not provide a religious exemption and would effectively prohibit anyone who opposes homosexuality from holding public office or getting a city contract.

The proposed change would add “sexual orientation” and “gender identity” to the city’s discrimination ordinance. It would protect gays, lesbians, transgender, and veterans – a move that had critics accusing the council of playing politics with the military.

“No person shall be appointed to a position if the city council finds that such person has, prior to such proposed appointment, engaged in discrimination or demonstrated a bias, by word or deed, against any person, group or organization on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability,” the ordinance reads.

Critics argue that the ordinance could ban Christians who believe homosexuality is a sin from serving on the city council.

They also believe the ordinance would also ban the city from doing business with anyone who fails to espouse politically correct views and businesses run by people of faith would be subject to



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criminal penalties if they refused to provide services that conflict with their religious beliefs related to homosexuality.

“It’s extremely dangerous,” said Ken Klukowski, of the Family Research Council. “This is a flagrant violation of the U.S. Constitution and the San Antonio City Council looks like a bunch of anti-Christian activists.”

Klukowski said if the council approves the ordinance they would be guilty of “viewpoint discrimination.”

“If it’s passed, any person who has either expressed any belief in favor of traditional marriage or in terms of Judeo-Christian morality regarding sexuality in general, verbally or in writing, could be barred from participating in public life on that city council,” he said.

Councilman Diego Bernal and Mayor Julian Castro are pushing for the proposed changes.

According to Castro, “(t)o say that you agree with this ordinance is to say that you do not believe that someone who is gay or lesbian ought to be discriminated against in the same way that an African American or a Hispanic or a woman shouldn’t be discriminated against.”

Bernal claims he did not play politics by including veterans in the ordinance. “No one wants to vote against veterans — I get that,” he said. “I didn’t include veterans to be some sort of shoehorn or Trojan horse for another group.”

Dozens of churches across the city have organized to oppose the proposed legislation, warning that it creates a religious test for involvement in city government as well as lucrative contracts and subcontracts.

“If it passes and you attend a church that opposes gay marriage, you could be disqualified from getting a city job,” said Steve Branson, the pastor of San Antonio’s Village Parkway Baptist Church.

“I would be disqualified from running for office. My church members couldn’t run for office if they held the same views I do.”

Branson said he has never been involved in political matters – but he said the threat to religious liberty was too great for him to remain silent.

“This got my attention,” he said. “It affects freedom of speech and freedom of religion.”

The pastor said it appears to be nothing less than a crackdown on people who oppose homosexuality. “I’m certain that’s it,” he said. “In the long run, we know this is an attack against people who think that homosexuality is wrong.”



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Klukowski is hoping the city's attorneys will pull the plug on the proposed ordinance. Regardless, he said the city council has sent a chilling message to the religious community.

"This is a shameful form of anti-clergy bias," he said. "It's an appalling form of government discrimination against people of traditional religious faith in this country."

The Washington Times blasted the city council – in an editorial titled, "Tolerance in San Antonio."

"Such bigots, for bigots is what they are, have no qualms about using such power as they have to bully anyone who holds views rooted in tradition or religion," the editorial stated. "Such discrimination is proposed under the cloak of a 'non-discrimination' ordinance. George Orwell is alive and hiding in Texas."

But not all council members are supportive of the changes.

Councilwoman Ivy Taylor said she had concerns about the impact the new rules might have on businesses that contract with the city.

I do not believe that we can legislate moral or religious convictions and am sensitive to that perspective," she told the television station. "I am meeting with groups and citizens on both sides of the issue and working with city staff to make sure I understand the proposal before making a decision on how to vote. I welcome input from constituents."

Discussion Questions

1. Is the headline associated with this article an accurate assessment of the proposed San Antonio anti-discrimination law? Why or why not?

Before answering this question, encourage students to review both the exact language of the headline and the exact language of the proposed ordinance.

The headline reads: "San Antonio Proposal Could Bar Christians from City Council."

The proposed ordinance reads:

"No person shall be appointed to a position if the city council finds that such person has, prior to such proposed appointment, engaged in discrimination or demonstrated a bias, by word or deed, against any person, group or organization on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability."

With regard to the proposed ordinance, for a self-proclaimed Christian to be prohibited from serving on the City Council, an individual would have to:



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- a. sincerely believe that opposition to the LGBT “lifestyle” and community is a legitimate tenet of the Christian faith; and
- b. act on that belief by engaging in discrimination or demonstrating a bias, by word or deed, against the LGBT community.

*Even if the ordinance is adopted, a self-proclaimed Christian who opposes the LGBT lifestyle and community but who does not act or speak out against LGBTs would still be allowed to serve. Accordingly, the ordinance differentiates between **thinking** and **acting**.*

The objective of the proposed ordinance is to equate discrimination on the basis of sexual orientation or gender identity with other historically-prohibited types of discrimination, such as discrimination on the basis of race, color, religion, national origin, sex, etc.

2. The article indicates that critics of the anti-discrimination ordinance believe the proposed law would ban the city from doing business with anyone who fails to espouse “politically correct” views. What does the term “politically correct” mean?

The term “politically correct” is a derisive, divisive, derogatory, politically-charged term used to pejoratively attack the view(s) of opponents. In essence, “politically correct” means any political view opposed by the person who uses the term! Those who oppose the LGBT “lifestyle” and community would argue that it is “politically correct” to support non-discrimination on the basis of sexual orientation or gender identity. In your author’s opinion, the term “politically correct” has little to no value in terms of objectively and substantively discussing an issue.

3. The article quotes San Antonio Councilwoman Ivy Taylor as saying “I do not believe that we can legislate moral or religious convictions.” What does it mean to “legislate morality?” What does the term “legislate morality” mean specifically in the context of the proposed San Antonio anti-discrimination law?

Similar to the term “politically correct,” the term “legislate morality” is a derisive, divisive, derogatory, politically-charged term used to pejoratively attack the view(s) of opponents. In reality, all laws “legislate morality.” Capital punishment for first degree murder “legislates morality.” A \$100 fine for littering “legislates morality.” A five-year prison sentence for orchestrating a Ponzi scheme “legislates morality.” In your author’s opinion, the term “legislate morality” has little to no value in terms of objectively and substantively discussing an issue.



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Video Suggestions

Video 1: “Woman Wins Lawsuit over Credit Report Mistakes”

<http://www.today.com/video/today/52619655/#52619655>

Note: Before answering the Video 1 Discussion Questions, please refer to the following summary of rights regarding the Fair Credit Reporting Act:

“FCRA Summary of Rights”

https://help.equifax.com/app/answers/detail/a_id/36/~/fcra-summary-of-rights

Discussion Questions

1. As the article indicates, this case was tried in federal court. Why was the case tried in federal court, rather than state court?

The key issue involved in this case is whether the defendant violated the Fair Credit Reporting Act (FCRA). Since the FCRA is federal law, the federal court has jurisdiction. Federal courts have jurisdiction over all cases involving interpretation and/or application of federal constitutional, statutory or case law.

2. As the article indicates, the trial jury awarded Julie Miller \$180,000 in compensatory damages and \$18.4 million in punitive damages. What are compensatory damages? What are punitive damages?

Compensatory damages are designed to compensate the plaintiff for her actual damages. Compensatory damages can include compensation for property damages, other economic losses, physical injury and/or emotional pain and suffering. Punitive damages are designed to punish a defendant for egregious behavior—intentional, extremely reckless or grossly negligent actions that “shock the conscience” of a reasonable person. The amount of punitive damages awarded in a case are not directly related to compensatory damages; instead, punitive damages are awarded based on what amount of money would be necessary to “send a message” to the defendant that his/her/its actions are not to be tolerated. Punitive damages are designed to deter future bad behavior on the part of the subject defendant (specific deterrence), as well as others (general deterrence).



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3. In your reasoned opinion, is the jury verdict (specifically, the verdict amount) fair in light of the facts and circumstances of the case? Why or why not?

This is an opinion question, so student responses will likely vary. Students may not challenge the compensatory damage award of \$180,000 (although the video does not describe the evidence in support of the compensatory damage award), but they might take exception to the punitive damage award of \$18.4 million. Remind students that punitive damages are not directly related to compensatory damages; instead, punitive damages are awarded based on what amount of money would be necessary to “send a message” to the defendant that his/her/its actions are not to be tolerated. Punitive damages are designed to deter future bad behavior on the part of the subject defendant (specific deterrence), as well as others (general deterrence). The amount of the punitive damage award is tied to the egregiousness of the defendant’s actions; further, if the defendant is a corporation, punitive damages are related to the size of the corporation. As a general rule, the larger the corporation, the greater the punitive damage award. Equifax Inc. is a large corporation; in 2012, the company’s total revenue amounted to \$2.2 billion (<http://investor.equifax.com/releasedetail.cfm?ReleaseID=750710>).

Video 2: “Shea Allen, TV Reporter, Fired for Tell-All Blog Post”

<http://live.huffingtonpost.com/r/archive/segment/she-a-allen-tv-reporter-fired-for-tell-all-blog-post/51f86d8e2b8c2a20f30001e2>

Note: Before answering the Video 2 Discussion Questions, please refer to the following case-related article:

“Glamorous TV Reporter Fired after Posting 'Tell-All' Blog about Going Bra-Less on Air and Getting Stories from People with a Crush on Her”

<http://www.dailymail.co.uk/news/article-2380964/Glamorous-TV-reporter-Shea-Allen-fired-posting-tell-blog-going-bra-air.html>

According to the article, a glamorous television reporter has been fired for posting ten candid confessions about her job to her blog - including going bra-less on air and getting stories from people with a crush on her.

Shea Allen, a correspondent for WAAY in Huntsville, Alabama, listed secrets about her conduct while on the job in a blog post with the title 'Confessions of a Red-Headed Reporter'.

'I've gone bra-less during a live broadcast and no one was the wiser,' she said in the post recently, before adding that she has also figured out how to sit to look thinner on camera.



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'My best sources are the ones who secretly have a crush on me,' she added.

The truths also included sleeping in the news car, hating positive news stories, stealing mail and being so scared of old people that she refuses to do stories about the elderly.

Hours after she posted the blog, her bosses at WAAY ordered her to take it down.

She obliged for a few hours before re-posting the list and adding 'No Apologies' to the title.

'This post was taken down because I was momentarily misguided about who I am and what I stand for,' she explained in a newly-added disclaimer.

'To clarify, I make no apologies for the following re-post. It's funny, satirical and will likely offend some of the more conservative folks. But it isn't fake and it's a genuine look into my slightly twisted psyche.'

She added that she had always been proud of never making apologies for the truth.

'Sources trust me because I am an unadulterated version of the truth,' she wrote. 'I won't ever bend just because it's popular to do so and I'm not bending now.'

But in a tweet recently, she revealed that she was 'terminated without cause' for the post - and thanked for supporters for their kind words.

WAAY has not yet responded to a request for comment.

Allen has also worked as an anchor for the station. She attended Kennesaw State University and has one son.

It is not the first time she has posted content on her blog that might not be appreciated by her bosses.

In February 2013, she posted a video of her speaking to camera, complaining about how she had been sent on a pointless job - and how she got paid very little for the privilege.

'On a Friday, I wait for a live shot where I'm going to talk about nothing,' she said. 'I'm actually going to be live for a minute-and-a-half where I talk about the fact that nothing happened.'

'So for all you college kids out there who want to make a difference - who want to be Katie Couric - this isn't Katie Couric, this is me sitting in my car waiting to do a story about nothing. And getting paid less than most McDonald's managers.'

Included below is a complete list of Allen's "ten candid confessions":



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Revealing Too Much: ‘Confessions of a Red-Headed Reporter’

1. I’ve gone bra-less during a live broadcast and no one was the wiser.
2. My best sources are the ones who secretly have a crush on me.
3. I am better live when I have no script and no idea what I’m talking about.
4. I’ve mastered the ability to contort my body into a position that makes me appear much skinner (sic) in front of the camera than I actually am.
5. I hate the right side of my face.
6. I’m frightened of old people and I refuse to do stories involving them or the places they reside.
7. Happy, fluffy, rainbow stories about good things make me depressed.
8. I’ve taken naps in the news car.
9. If you ramble and I deem you unnecessary for my story, I’ll stop recording but let you think otherwise.
10. I’ve stolen mail and then put it back. (maybe)

Source: Shea Allen Says...

Discussion Questions

1. Does the “employment at will” doctrine apply to Shea Allen and her employment with WAAY? If so, what effect does the employment at will doctrine have on this case? If not, what are the legal implications in terms of WAAY’s decision to terminate Ms. Allen’s employment?

The “employment at will” doctrine, recognized in Alabama (where Shea Allen worked at WAAY) and number of other states, allows an employer to terminate an employee for any reason or no reason at all. One exception to the employment at will doctrine is a contract for a term (i.e., a guaranteed length of time). Many news reporters have employment contracts for a term. If a contract for a guaranteed period of employment exists, the employer must have a valid reason for terminating the employee. In essence, the employer would have to argue that the employee essentially breached the employment contract, thus justifying termination of employment.

2. Review Shea Allen’s ten (10) “Confessions of a Red-Headed Reporter” included in the above article accompanying Video 2. In your reasoned opinion, which (if any) of these “confessions” justify WAAY’s termination of Ms. Allen’s employment?

Arguably, the entire blog is unprofessional. Most, if not all, of the specific “confessions” are unprofessional. The lack of professionalism can itself justify termination of employment, even if a contract for a term exists. Lack of professionalism can constitute breach of the employment contract.

3. Review the facts surrounding Shea Allen’s retraction and subsequent re-posting of her blog (This information is included in the above article accompanying Video 2). In your reasoned opinion, how do the retraction and re-posting of the blog affect WAAY’s legal right to terminate Ms. Allen’s employment?



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In your author's opinion, Ms. Allen's re-posting of her blog further justifies her termination of employment. In re-posting the blog, Ms. Allen has willfully ignored her employer's wishes. Freedom of speech and freedom of the press arguments do not sway your author's opinion in this case; if Ms. Allen would like to re-post her blog, she can do so outside the confines of her employment with WAAY. Ms. Allen must keep in mind, however, that such postings might likely interfere with her employment with another news outlet!



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Of Special Interest

This section of the newsletter addresses the question what ethical obligations are owed by an employer and an employee in the employment relationship.

Ethical Dilemma

Ethical Dilemma: Related to Video 2 (“Shea Allen, TV Reporter, Fired for Tell-All Blog Post”) and Related Article (“Glamorous TV Reporter Fired after Posting 'Tell-All' Blog about Going Bra-Less on Air and Getting Stories from People with a Crush on Her”)

Note: In the Video 2 Discussion Questions, you were asked to focus on the *legal* aspects of the employer-employee relationship, including the right of the employer to terminate employment. In answering the following Discussion Questions, please focus on the *ethical* aspects of the employer-employee relationship, including any ethical obligations on the employer in terminating employment.

Discussion Questions

1. Describe WAAY’s ethical obligation(s) regarding its employment relationship with Shea Allen.

In your author’s opinion, WAAY has an ethical obligation to provide a work environment that is mutually beneficial to the company and its employees. This mutually-beneficial relationship, however, must be governed by reasonable, commonly-accepted standards of professionalism.

2. Describe Shea Allen’s ethical obligation(s) regarding her employment relationship with WAAY.

In your author’s opinion, Shea Allen has an ethical obligation, as does any other employee, to exercise diligence in the achievement of organizational objectives and the overall organizational mission. Ms. Allen’s employment must be governed by reasonable, commonly-accepted standards of professionalism.

3. In terms of the facts represented in Video 2 and the accompanying article, did WAAY act unethically in its employment relationship with Shea Allen (specifically in terms of deciding to terminate Ms. Allen’s employment?) Did Shea Allen act unethically in her employment relationship with WAAY? Explain your response.

This is an opinion question, so student responses may vary. It must be noted, however, that in exercising “good faith” to its employee, WAAY did give Ms. Allen the opportunity to retract her blog. As the article indicates, although



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Ms. Allen initially retracted her blog, she rejected her employer's wishes by re-posting the blog.



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Of Special Interest

This section of the newsletter will assist you in covering Video 1 ("Woman Wins Lawsuit over Credit Report Mistakes") of the newsletter.

Teaching Tips

Note: Please use Teaching Tips 1 and 2 below to facilitate discussion of Video 1 ("Woman Wins Lawsuit over Credit Report Mistakes")

Teaching Tip 1 (Related to Video 1--"Woman Wins Lawsuit over Credit Report Mistakes"):

"Oregon Woman Wins \$18.6 million over Credit Report Mistakes"

<http://www.foxnews.com/us/2013/07/28/oregon-woman-wins-186-million-over-credit-report-mistakes/?test=latestnews>

According to the article, a federal jury in Oregon has awarded \$18.6 million to a woman who spent two years unsuccessfully trying to get Equifax Information Services to fix major mistakes on her credit report.

Julie Miller of Marion County was awarded \$18.4 million in punitive damages and \$180,000 in compensatory damages, though the award against one of the nation's major credit bureaus is likely to be appealed.

The jury was told she contacted Equifax eight times between 2009 and 2011 in an effort to correct inaccuracies, including erroneous accounts and collection attempts, as well as a wrong Social Security number and birthday.

Her lawsuit alleged the Atlanta-based company failed to correct the mistakes.

"There was damage to her reputation, a breach of her privacy and the lost opportunity to seek credit," said Justin Baxter, a Portland attorney who worked on the case with his father and law partner, Michael Baxter. "She has a brother who is disabled and who can't get credit on his own, and she wasn't able to help him."

Tim Klein, an Equifax spokesman, declined to comment on specifics of the case, saying he didn't have any details about the decision from the Oregon Federal District Court.

Miller discovered the problem when she was denied credit by a bank in early December 2009. She alerted Equifax and filled out multiple forms faxed by the credit agency seeking updated information. She had found similar



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mistakes in her reports with other credit bureaus, Baxter said, but those companies corrected their errors.

A Federal Trade Commission study earlier this year of 1,001 consumers who reviewed 2,968 of their credit reports found 21 percent contained errors. The survey found that 5 percent of the errors represented issues that would lead consumers to be denied credit.

Teaching Tip 2 (Related to Video 1--“Woman Wins Lawsuit over Credit Report Mistakes”):

“Lessons from \$18 Million Credit Reporting Suit”

[http://www.cbsnews.com/8301-505144_162-57596225/lessons-from-\\$18-million-credit-reporting-suit/](http://www.cbsnews.com/8301-505144_162-57596225/lessons-from-$18-million-credit-reporting-suit/)

According to the article, Oregon resident Julie Miller tried very hard, for two solid years, to get Atlanta-based Equifax Corporation to correct errors in her credit report she discovered when she was turned down for a loan in 2009. When the company failed to correct the errors, she sued and won a multimillion judgment.

The verdict puts credit reporting agencies on notice that a failure to follow the dictates of the Fair Credit Reporting Act could have costly consequences, says Justin Baxter, Miller's attorney. "Juries across the country have been returning multimillion-dollar verdicts like this," Baxter said.

It also is good news for consumers who understand their rights. Despite updates to the act, which require credit-reporting agencies to pay closer attention to accuracy, federal regulators say that more than one in five credit reports still contain errors. Many of these can affect a consumer's ability to get reasonably priced loans. However, the law not only gives consumers ways to fix their reports, but gives them the tools to fight back when their entreaties are ignored, as the Miller case makes clear.

Lenders are obliged to tell you whether a denial of credit is due to information on your credit report, as it was in Miller's case. The trouble was, the negative information belonged to another Julie Miller -- with a different birthdate, different Social Security number and different address.

Information about Julie Miller No. 2 was merged into the file of Julie Miller No. 1 file because they share a common name. An estimated 2 million to 4 million individuals have the same problem, says Baxter. Although it shouldn't be difficult to differentiate one consumer from another with the aid of personal details like an address or Social Security number, a common name or a namesake -- such as a child or parent who has the same name with a junior or senior attached -- may cause the merging of files. Identity theft or transcription errors may cause such mergers.

The Fair Credit Reporting Act sets up a simple procedure to detect and correct errors when they arise. First, the law requires that each of the three major credit-reporting bureaus provide every



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consumer a free copy of his or her credit report every 12 months. All you have to do is ask. Consumers are also allowed a free copy of a credit report when they've been denied credit based on report information or suspect they are a victim of identity theft.

To get a free copy, go to www.annualcreditreport.com or call 1-877-322-8228.

Any inaccurate items -- such as loans mistakenly linked to you that are outstanding or incorrect addresses and identifying information -- should be corrected in writing with a formal letter or informally by simply noting the inaccuracies on a copy of the report. Simply put, you can circle the inaccurate items and explain what's wrong in the margins. If additional documentation is needed to prove your claim, it's wise to attach a copy of those documents, but you should always hang on to the originals.

Corrections and documentation should be mailed back to the credit bureau by certified mail (with a return receipt) so you have proof the agency received the correction request. The Federal Trade Commission even has sample letters on its website for consumers who need further instruction. The credit-reporting agency is required to investigate the claim and respond promptly -- generally within 30 days. You can also request a corrected version of your report at the end of the investigation. The corrected report is also free.

Miller did everything right, attorney Baxter says. She identified the errors and provided numerous documents to prove her identity and demonstrate she was in no way connected to the other Julie Miller, who had run up bad debts. But Equifax failed to investigate or correct the report, Baxter says. (Equifax officials failed to return this reporter's phone calls and have publicly declined to comment about the case.) So when repeated requests for action by Equifax were ignored, Miller sued.

She won an award of \$180,000 in compensatory damages and \$18.4 million in punitive damages.

"This was an egregious case, and the jury wanted to send a message," Baxter said.



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

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 5 and 8	Chapters 42 and 45	Chapter 2	Chapter 45
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5 and 8	Chapters 42 and 45	Chapter 2	Chapter 45
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4 and 6	Chapters 24 and 25	Chapter 1	Chapter 25
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3 and 6	Chapters 48 and 51	Chapter 4	Chapter 48
Barnes et al., Law for Business	Chapters 4 and 6	Chapters 25 and 46	Chapter 3	Chapter 46
Brown et al., Business Law with UCC Applications	Chapters 2 and 6	Chapters 15 and 23	Chapter 1	Chapter 15
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6 and 10	Chapters 18 and 21	Chapter 2	Chapter 18
McAdams et al., Law, Business & Society	Chapters 5 and 7	Chapters 12 and 15	Chapter 2	Chapter 15
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2 and 9	Chapters 10 and 21	Chapter 5	Chapter 21
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapter 6 and Appendix A	Chapter 11	Chapter 1	N/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)
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