



Proceedings

A monthly newsletter from McGraw-Hill



September 2014 Volume 6, Issue 2

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Dear Professor,

I hope your fall semester is off to a great start! Welcome to McGraw-Hill's September 2014 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 6, 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 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. The death of Michael Brown, an unarmed teenager who was shot by a police officer, and the resulting fallout in Ferguson, Missouri;
2. The right to bear arms in a supermarket;
3. A mother's arrest for cursing in front of her children;
4. Videos related to a) a woman's consumption of "toxic tea" at a barbeque restaurant in Utah; and b) a New Jersey amusement park's decision to deny admission to a military veteran for wearing a t-shirt with "offensive" language;
5. An "ethical dilemma" related to the ethical and criminal implications of a father using deadly force to avenge the deaths of his children; and
6. "Teaching tips" related to of the newsletter Article 1 ("NAACP President: Special Prosecutor 'Critically Important' in Ferguson") of the newsletter.

Here's to academic fulfillment in the fall semester!

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Of Special Interest

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

- 1) The death of Michael Brown, an unarmed teenager who was shot by a police officer, and the resulting fallout in Ferguson, Missouri;
- 2) The right to bear arms in a supermarket; and
- 3) A mother's arrest for cursing in front of her children.

Hot Topics in Business Law

Article 1: "NAACP President: Special Prosecutor 'Critically Important' in Ferguson"

<http://www.cbsnews.com/news/naACP-president-special-prosecutor-critically-important-in-ferguson/>

According to the article, NAACP President Cornell Brooks said it is "critically important" that a special prosecutor be appointed to investigate the death of Michael Brown, the unarmed black teenager who was shot by a white police officer recently.

Browns' death has resulted in a week of clashes between protesters and police in the St. Louis suburb of Ferguson, Missouri, even as Governor Jay Nixon attempted to restore the peace by instituting a curfew over the weekend.

Nixon said recently that the local prosecutor assigned to the case "has a real opportunity to step up" in the aftermath of the shooting, and that a dual investigation by the Justice Department and FBI ensures that justice will be served.

But Brooks said there is a need for a special prosecutor to restore credibility with the mostly black residents of Ferguson.

"It is critically important for a prosecutor to be appointed," Brooks said.

"It is critically important for the Justice Department to remain active and engaged because this county, this municipality both have a long history of troubled relationships with the community. And so as a matter of community credibility, as a matter of credibility with respect to the nation they need to step up."

He said the local investigation, from the lack of engagement with the community to the local police department's decision to release a surveillance video that purportedly showed Brown robbing a convenience store, has been "very troubling."

"I would liken it to the Keystone Cops but I don't want to insult the Keystone Cops," he said.



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Nixon said the release of the video, which federal law enforcement opposed, had an "incendiary effect" in Ferguson.

But Brown did have praise for the White House and federal handling of the case, noting he has received calls from the White House to discuss the situation.

"They want to see justice served here, it speaks well of the president and the attorney general that the Justice Department is on the ground," he said. "The NAACP has been working with the FBI agents to identify and bring forward witnesses. That says to me that the Justice Department is not operating from Washington but in Ferguson, Missouri. That speaks well of the potential for this investigation to result in justice."

He also said it was "incredibly encouraging" that the Justice Department announced that it would perform a second autopsy on Brown to ensure an independent examination.

Brooks said the police's use of heavy military gear to help contain the protests "absolutely" added to the unrest in the wake of Brown's death.

He said Americans across the country are asking themselves, "How is it the in the wake of this controversy we respond with armored vehicles with militarization, as opposed to explanation, conversation, community engagement?"

But Representative Mike Rogers, a former FBI agent and the chairman of the House Intelligence Committee, said that sometimes police officers do need tactical gear because they are outgunned.

"As a former F.B.I. agent, law enforcement officer, you're taught about that force continuum, and when do you escalate force? Obviously your first goal is to deescalate the problem. It appears that they may have reacted a little quickly on that force continuum when they decided to deal with certainly the protesters. Hard to say, sitting a thousand miles away," Rogers said.

"But I will tell you that you have to at least police officers with the ability to have something to meet those particular challenges."

Discussion Questions

1. What is the role of a special prosecutor?

A special prosecutor is an attorney appointed to investigate a matter in a situation where a perceived or actual conflict of interest situation might present if the regular prosecutor were allowed to make a prosecutorial decision on his or her own. In the Michael Brown shooting case, the concern is that the local prosecutor might choose not to pursue charges against the police officer who shot the young man, based on the prosecutor's perceived or actual support for local law enforcement (including the police officer who shot him). Racial overtones to the case (i.e. the fact that the police



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officer is white, and that Michael Brown was African-American) would arguably further warrant the need to appoint a special prosecutor.

2. In your reasoned opinion, is a special prosecutor desirable and/or necessary in this case? Why or why not?

This is an opinion question, so student responses may vary in response to this question. As indicated in response to Discussion Question Number 1 above, the racial overtones to this case (i.e. the fact that the police officer is white, and that Michael Brown was African-American) would arguably further warrant the need to appoint a special prosecutor. Given the fact that the case is receiving national (and even international) media attention, the appointment and involvement of a special prosecutor would send a message that the authorities are proceeding in a non-biased manner with the investigation and determining whether prosecutorial action against law enforcement is necessary. In this case (and actually, in all cases), the prosecutor must avoid even the appearance of impropriety. A perceived or actual conflict of interest would not meet such a standard.

3. As the article indicates, Missouri Governor Jay Nixon has imposed a curfew in Ferguson, Missouri. In your reasoned opinion, does such a curfew unconstitutionally interfere with the rights of peaceful demonstrators to protest the death of Michael Brown? Why or why not?

This is an opinion question, so student responses may vary in response to this question. The free speech protection of the First Amendment to the United States Constitution is not absolute, and is subject to reasonable “time, place and manner” restrictions. The key here is determining whether the curfew is a reasonable time restriction on freedom of expression. Arguably, such a curfew is necessary to keep the peace, especially in light of the politically-charged nature of Michael Brown’s death, and the intense focus of attention on the case. In response, peaceful demonstrators might argue that they must “take to the streets” in order to disseminate their message—That the use of deadly force against an unarmed young man represented unreasonable force, and that the officer responsible for his death must be held accountable.

Article 2: “Kroger under Fire from Gun Control Moms”

http://www.huffingtonpost.com/2014/08/18/guns-kroger_n_5683023.html

According to the article, the fight over whether shoppers should be allowed to tote guns openly in American businesses is about to spill into the aisles of Kroger, the nation's largest supermarket chain.

Moms Demand Action for Gun Sense in America, a national gun control organization backed by former New York Mayor Michael Bloomberg, will kick off a campaign that seeks to pressure the grocery giant to ban the open carry of firearms in all of its nearly 2,500 stores. The moms' group decided to take action in response to recent demonstrations by open carry activists in Kroger stores in Ohio and Texas, and after conducting research that identified more than a dozen shootings on Kroger property since 2012, said Erika Soto Lamb, a spokeswoman.



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"Kroger employees shouldn't have to determine whether the person holding a gun in the frozen aisle is someone dangerous or someone making a political statement," Lamb said.

Open carry activists seek to force broader social acceptance of guns in public. Disciples of the movement wear guns while shopping or dining out. Tension over this practice has flared up in several states, especially Texas, where openly carrying a handgun in public is banned, but carrying long rifles is not.

Moms Demand Action, which was formed in the wake of the Newtown, Connecticut, school massacre, has seized on open carry as an effective issue to rally support for one of its ambitions: to limit the prevalence of guns in public places. The group has cleverly leveraged the power of social media, distributing photos of people armed with assault rifles in popular dining chains, and betting that the sometimes jarring images will prompt companies to react.

The gun control group has also circulated online petitions and staged several rallies outside of retailers.

The strategy has worked.

In recent months, Chipotle, Starbucks, Target, Sonic, Chili's, Jack In The Box and others have enacted no-gun policies.

These policies stop short of outright bans, but each company has announced that guns are no longer welcome in stores.

Given the current political climate, in which even overwhelmingly popular proposals like expanded background checks can't gain any legislative traction, what the gun control activists have accomplished via low-budget Twitter and Facebook campaigns is impressive.

In taking on Kroger, Moms Demand Action seeks to force the biggest grocery chain in the U.S. to take a stance on guns, something few major companies want to do.

Company spokesman Keith Dailey said the grocery chain had no plans to change existing policy, which is to abide by state and local laws.

"Millions of customers are present in our busy grocery stores every day and we don't want to put our associates in a position of having to confront a customer who is legally carrying a gun," Dailey said. "We know that our customers are passionate on both sides of this issue and we trust them to be responsible in our stores."

In a letter sent to Kroger CEO Michael Ellis recently, Moms Demand Action founder Shannon Watts said those existing laws are not sufficient to keep customers safe.



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"In most states, gun laws are exceedingly lax, especially when it comes to the open carry of firearms," Watts wrote. "In many states, virtually anyone can openly carry a loaded gun without going through any licensing, permitting or training."

Moms Demand Action has logged a dozen shootings that have taken place inside a Kroger or in the parking lot of one since 2012.

In June 2013, a 2-year-old girl was shot in a Kroger parking lot in Stone Mountain, Georgia, after a customer tried to intervene in an attempted mugging.

In February, in another incident in Georgia, a 42-year-old man shot and wounded two Kroger customers at a store in Lawrenceville, east of Atlanta.

It is impossible to say whether these incidents would have happened if Kroger were to advertise a no-gun policy. Gun advocates are quick to note that criminals are unlikely to abide by polite requests to leave their guns at home.

Discussion Questions

1. Describe the Second Amendment to the United States Constitution.

The Second Amendment to the United States Constitution states:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

The language of the Second Amendment has sparked intense debate in terms of whether the right to bear arms is absolute, whether it exists for the purpose of having a "well-regulated militia," or whether it is subject to other "reasonable" restrictions. In your author's opinion, the debate surrounding the Second Amendment will never be fully resolved, since the language is subject to interpretation, and since the right to bear arms is such a politically-charged issue.

2. Would it be unconstitutional for Kroger to deny individuals the right to carry weapons in its grocery stores? Why or why not?

The relevant question here is whether a private business has the right to impose a restriction on the right to bear arms on its property. Fervent Second Amendment advocates would argue that the right to bear arms is absolute, and applies to carrying a gun even on someone else's private property, while those in favor of restricting the right in this context would argue that a private property owner has a say in terms of what transpires on the property, and that the safety and perceptions of other customers matter as well.



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3. Even if Kroger has the right to ban weapons in its grocery stores, should it? Explain your response.

Kroger has a difficult decision that must be based on weighing the costs and benefits of such a ban for all parties involved. Obviously, fervent Second Amendment advocates who patronize the supermarket would likely be upset by such a ban, while other customers might welcome such a restriction.

Article 3: “Mom Arrested for Swearing in Front of Kids”

<http://www.usatoday.com/story/news/nation/2014/08/15/newser-mom-arrested-swearing-in-front-of-kids/14102633/>

According to the article, Danielle Wolf was not having a good night at the Kroger grocery store in North Augusta, South Carolina, where she moved with her family recently.

She says her husband kept squishing the bread in their cart by putting frozen pizzas on top of it, and Wolf expressed her displeasure at the situation.

That's when her night got really bad. A fellow shopper approached her and accused her of using the “F-word” in front of her kids.

"I'm like, 'When did I say this to my kids?' I said that to my husband, that he was smashing the bread."

But somehow the police were called, and Wolf ended up getting arrested in the incident.

According to Wolf, the shopper who originally complained did not actually want Wolf arrested:

"I didn't harm nobody. I didn't hurt nobody. The lady said she was having a bad day. So, because you're having a bad day you're going to ruin somebody's life."

But the shopper denies having a bad day, and says Wolf used profanity repeatedly — and even cursed at her after she approached the family to complain.

Wolf faces disorderly conduct charges, and is due in court in September.

According to Salon, which looked up the city ordinance, disorderly conduct is defined as "riotous conduct of any kind," "cry(ing) out in a noisy, scandalous, or abusive manner" in a public place, or "utter(ing), while in a state of anger, in the presence of another, any bawdy, lewd, or obscene words or epithets."



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Discussion Questions

1. Describe the free speech protection of the First Amendment to the United States Constitution. Does the First Amendment protect an individual's choice to use curse words in public?

The free speech provision of the First Amendment to the United States Constitution states:

"Congress shall make no law...abridging the freedom of speech..."

Although the First Amendment free speech provision reads as an absolute right, courts have imposed reasonable "time, place and manner" restrictions on the right. For example, fighting words (i.e., language designed to provoke a physical altercation) are not typically protected by the First Amendment. One may not yell "Fire!" in a crowded theatre, and one may not defame another individual without incurring civil liability.

2. In your reasoned opinion, is the city ordinance defining disorderly conduct unconstitutional? Why or why not?

This question should spark lively classroom discussion! Note that the city ordinance is broadly written, defining disorderly conduct as including the "utter(ing), while in a state of anger, in the presence of another, any bawdy, lewd, or obscene words or epithets." Historically, broadly-written statutes restricting speech have not been favorably received by courts. The North Augusta, South Carolina statute may be subject to constitutional challenge as an overly-excessive restriction on free speech.

3. According to Mrs. Wolf, the shopper who originally complained about her foul language did not even want her arrested. Assuming the shopper did not want her arrested, should that affect the police officer's decision to arrest? Explain your response.

Although the police may consider the desire of the other shopper to have or not have Mrs. Wolf arrested, it is ultimately the decision of law enforcement whether to arrest a suspect. Law enforcement must decide whether the circumstances justify/dictate arrest.

Video Suggestions

Video 1: “Restaurant’s Toxic Tea Leaves Woman in Critical Condition”

<http://abcnews.go.com/US/restaurants-toxic-tea-leaves-woman-critical-condition/story?id=24993815>

A woman is in critical condition after taking a simple sip of toxic iced tea at a Utah restaurant.

Jan Harding, 67, was eating at a Dickey's Barbecue Pit with her husband, Jim. She sipped her tea and started gagging and coughing, Jim Harding said.

"I said, what is wrong?" Jim Harding said. "She said, 'I just drank acid.'"

The tea contained a heavily toxic industrial cleaner. The cleaner, made up of sodium hydroxide, or lye, is known to cause severe burns to the mouth, throat and stomach if swallowed -- chemical burns that Harding suffered from one drink.

Her husband watched as emergency crews tried to help.

"There was terror in her eyes. I said, 'I love you.' And she couldn't talk at that point, just mouthed, 'I love you, too.'"

Police were interviewing employees and checking surveillance cameras, but authorities initially believed it was an accident -- that the powdered cleaner may have been mixed in by an employee who mistook it for sugar, which has a similar appearance.

Barbara Insley Crouch, the executive director of Utah's Poison Control Center, said Harding's suffering is profound.

"You can imagine it would burn the tissues in your mouth and down into your esophagus and down into your stomach," Crouch said.

The franchise owner of the restaurant released a statement following Harding's hospitalization expressing concern.

"At this time we are fully involved in cooperating with all parties," the statement read.



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Health Department officials said despite the situation, the restaurant was safe for customers, and remained open for business. Police said no one else was hurt -- that it was a fresh batch of iced tea and Harding seemed to have been the first person to try it.

Jim Harding hoped a lesson is learned from his wife's situation.

"If the people in the restaurant industry could just be made aware of the potential danger, it's worth it," he said.

Discussion Questions

1. Define negligence.

Negligence is the failure to do what a reasonable person would do under the same or similar circumstances. Negligence can also be defined by its four (4) elements of proof—namely, that in order to hold a defendant liable for negligence, the plaintiff must prove that:

- a. The defendant owed the plaintiff a duty of care;*
- b. The defendant breached said duty of care;*
- c. The defendant caused the plaintiff economic and/or physical harm; and*
- d. The plaintiff experienced resulting damages.*

In an employment situation, an employer is generally responsible for an employee's negligent act(s) resulting in harm to a third party, such as a customer, committed within the "course and scope" of employment. If the employee intended to cause harm to a third party, the employer is liable only if the employer knew or should have known under the circumstances that the employee would commit an intentional act resulting in harm to the third party (This liability would be based on employer negligence in its hiring, supervision and/or retention of the employee).

2. In your reasoned opinion, is there enough evidence presented in the article to conclude, as a matter of law, that Dickey's Barbeque Pit was negligent in Mrs. Harding's poisoning? Why or why not?

If one were to assume that this is a case of negligence liability (in other words, that the employee who mixed lye with the tea did not intend to cause harm, but instead did so as a result of inattentiveness), the case is a strong one against the employer. This would appear to be a "res ipsa loquitor" case; in other words, the evidence speaks so loudly of negligence that no other proof of fault would be required for liability. Further, as mentioned in response to Discussion Question Number 1 above, in an employment situation, an employer is generally responsible for an



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employee's negligent act(s) resulting in harm to a third party, such as a customer, committed within the "course and scope" of employment.

The case against Dickey's Barbeque Pit would be more difficult in an intentional tort situation. As mentioned in response to Discussion Question Number 1 above, if the employee intended to cause harm to a third party, the employer is liable only if the employer knew or should have known under the circumstances that the employee would commit an intentional act resulting in harm to the third party (This liability would be based on employer negligence in its hiring, supervision and/or retention of the employee). Further evidence would be required to determine whether the intentional act of the employee in poisoning the tea was the proximate result of employer negligence in its hiring, supervision and/or retention. If the employee had no previous criminal record, and if there was no prior indication that the employee would commit such a heinous act, how could a jury reasonably conclude that employer negligence in hiring, supervision and/or retention proximately resulted in harm to the customer?

3. In answering Discussion Question 2 above, would it matter whether a Dickey's Barbeque Pit employee negligently or intentionally mixed lye in tea? Explain your response.

As mentioned in response to Discussion Question 1 above, in an employment situation, an employer is generally responsible for an employee's negligent act(s) resulting in harm to a third party, such as a customer. If the employee intended to cause harm to a third party, the employer is liable only if the employer knew or should have known under the circumstances that the employee would commit an intentional act resulting in harm to the third party (This liability would be based on employer negligence in its hiring, supervision and/or retention of the employee). Generally, it would be easier for a plaintiff to recover from an employer if the employee was negligent than if the employee committed an intentional act desiring to harm a customer. In the subject case, if the evidence should indicate that a Dickey's Barbeque Pit employee intended to poison a customer, the restaurant could argue that such an intentional act was not foreseeable, and did not result from its negligence in hiring, supervising and/or retention.

Video 2: "New Jersey Vet Says Military T-Shirt Led to Denied Entry at Six Flags Amusement Park"

<http://www.foxnews.com/us/2014/08/15/new-jersey-vet-says-military-t-shirt-led-to-denied-entry-at-six-flags-amusement/>

According to the article, a New Jersey veteran was denied entry at Six Flags Great Adventure due to an "offensive" T-shirt he wore in support of the United States Marines.

Mario Alejandro, 33, of Woodbridge, said he was stopped while entering the theme park in Jackson recently. The father of three, who took part in the initial invasion of Iraq in 2003 as a member of the



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Marines, said the T-shirt — emblazoned with the words “Keep Calm and Return Fire” above a red, white and blue machine gun — caught the eye of a security guard at the front gate.

“I can’t let you into the park with that shirt on. That shirt’s offensive,” Alejandro recalled the guard saying. “I said it’s not offensive, it’s a military shirt. I told him that I am an Iraq veteran ... I served in the war. But he said: ‘I don’t care, you have to take it off ... or you need to buy another shirt to put over it.’”

Alejandro refused to remove the T-shirt from The Reconnaissance Foundation, a nonprofit group supporting Marines and their relatives, or to buy another garment, leading the security guard to call a supervisor.

“I saw him talk to two women in white shirts, who looked at me and then shook their heads,” he said. “And then the man grabbed my arm and asked me to leave. I told them that it’s not offensive, that it’s a military shirt and that it means nothing. But they said: ‘I don’t care, get out of the park.’”

A spokeswoman for Six Flags Great Adventure said the theme park stands by the decision.

"We do not allow guests to wear T-shirts with images of machine guns in our parks," spokeswoman Kristin Siebeneicher said via e-mail. "We apologize for any inconvenience we caused this guest; however, we stand by our policy, which does not permit clothing with vulgar, offensive or violent language or images. Our goal is to maintain a fun, safe and family-friendly environment."

Siebeneicher noted Six Flags' "longstanding relationship" with United States veterans and the park's special discounts and events to honor the nation's veterans and their relatives.

Alejandro, meanwhile, said no veteran deserves the same treatment he encountered last week. “I fought for this country,” he said. “I laid in a hole for 36 hours with no sleep, and had friends die for this country and so the people here could have the freedom to (do) things like visit amusement parks. So when they told me that I couldn’t come in there with my family because of my shirt — a patriotic shirt — it hurt a lot. No other veteran should ever have to experience that.”

Discussion Questions

1. Describe the free speech protection of the First Amendment to the United States Constitution. Does the First Amendment protect an individual’s choice to wear a t-shirt others might construe as offensive in an amusement park?

The First Amendment to the United States Constitution states, in pertinent part, that “Congress shall make no law...abridging the freedom of speech.”

The First Amendment limits the power of government to restrict freedom of speech. Since the subject case involves a private business, Six Flags Great Adventure, this is not a First Amendment case.



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Some students might argue, however, that despite the foregoing conclusion based on constitutional interpretation, American culture demands freedom of speech regardless of whether the government, a business or an individual seeks to restrict speech.

2. Take a look at the t-shirt in controversy in the video accompanying the article at the above-referenced web address. Is it a “military t-shirt” as the title of the article suggests? Is it a “patriotic” shirt as Mr. Alejandro suggests? Does the tenor of the article appear to suggest that Six Flags Great Adventure was unpatriotic in denying Mr. Alejandro admission while wearing the t-shirt?

These questions should provoke interesting classroom discussion. The subject t-shirt is not issued or expressly endorsed by the United States military. “Patriotism” is commonly defined as having or expressing devotion to and vigorous support for one’s country. Whether a picture of a United States flag-embossed, military-style assault rifle and the words “Keep Calm and Return Fire” represent patriotism is subject to interpretation. Finally, the tenor of the article does seem to suggest that Six Flags Great Adventure was unpatriotic in denying Mr. Alejandro admission while wearing the t-shirt, even though some patrons might be offended by the shirt, and even though the express policy of the amusement park does not permit clothing with vulgar, offensive or violent language in order to maintain a “fun, safe and family-friendly environment.”

3. From a public relations standpoint, what (if anything) should Six Flags Great Adventure do in response to the controversy surrounding the t-shirt?

This is an opinion question, so student responses may vary. As with any public relations decision, the company must weigh the relative costs and benefits of standing by its decision versus the costs and benefits of a retraction.



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Of Special Interest

This section of the newsletter addresses the ethical and criminal implications of a father using deadly force to avenge the deaths of his children.

Ethical Dilemma

Ethical Dilemma: "Trial of Texas Father Accused of Shooting Driver Who Killed 2 Sons Raises Legal, Moral Issues"

<http://www.foxnews.com/us/2014/08/18/trial-texas-father-accused-shooting-driver-who-killed-2-sons-raises-legal-moral/>

According to the article, David Barajas denies killing a drunken driver in a fit of rage after his two sons were fatally struck in 2012 on a rural road in Southeast Texas.

His defense attorney says Barajas is a good man, a grieving father and not a murderer. At the same time, his defense has not publicly suggested who else might be responsible for Jose Banda's shooting death.

Barajas' trial is set to begin in a case with many complexities: No weapon was recovered, no witnesses identified him as the shooter and many in Barajas' community have strongly sympathized with him, with some saying they might have taken the law into their own hands if faced with a similar situation.

Legal experts acknowledge prosecutors could face a greater challenge than simply proving who committed the shooting, similar to another Texas case from 2012 in which a grand jury declined to indict a father who killed a man who molested his child.

"It's not the right way to do it, but jurors a lot of times make judgments based on moral responsibility, not legal responsibility," said Joel Androphy, a Houston defense attorney who is not connected to the case.

The trial will focus on prosecutors' allegations that Barajas shot 20-year-old Banda in the head in December 2012 near Alvin, about 30 miles southeast of Houston. Minutes earlier, Banda's car struck Barajas' sons as they pushed the family's broken-down truck down a dark, narrow road just 50 yards from their home. David Jr., 12, died at the scene; 11-year-old Caleb died at a hospital.

If convicted of murder, Barajas faces up to life in prison.

Many in the community have rallied around the 32-year-old father, including setting up a Facebook page called "Free David Barajas," which details fundraising events and where individuals have expressed their support.



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But Banda's family says their loved one's fate should have been decided by the justice system and no one else.

"What (Barajas) did wasn't right," said Felicia Leija, 22, Banda's common-law wife. The couple has a 2-year-old daughter, Alisa, who was born a few months before the crash. "For other people to say they would have done the same thing ... you don't know what you would have done."

Barajas' attorney, Sam Cammack, says claims that his client took the law into his own hands are untrue, noting that Barajas didn't even own a gun. Brazoria County District Attorney Jeri Yenne declined to comment.

Neighbors said they heard gunshots minutes after the crash, and authorities allege Barajas went home, retrieved a gun and went back to the crash site, where he shot Banda in the head. Toxicology tests later determined Banda had been driving while intoxicated. But Brazoria County sheriff's investigator Dominick Sanders said that in the moments after the crash, there had been no way to know it was alcohol-related.

Witnesses have identified Barajas as the person who approached the vehicle before the shooting, Sanders said. And other witnesses said there was a man opening fire but none could identify Barajas as that person. Investigators never found the weapon, and gunshot residue tests done on Barajas came back negative.

A search of Barajas' home found ammunition consistent with the bullet that killed Banda, but Sanders said the missing weapon could still make "a big difference in the case."

So could the perceived moral circumstances, which legal experts agree may influence jurors. In June 2012, a grand jury in Shiner decided not to charge a father who fatally beat a man who was found molesting his 5-year-old daughter behind a barn. In that case, the father called 911 afterward and urged paramedics to rush to the scene, shouting, "Come on! This guy is going to die on me!"

From a strictly legal perspective, experts say the Barajas case will be difficult to prosecute given the lack of hard evidence.

"The prosecutor is starting from behind the eight ball," Houston criminal defense attorney Grant Scheiner said.

Cammack would not speculate on who may have shot Banda.

"Mr. Banda lost his life out there at the scene that night, somehow," he said. "That is not a good thing. But to suggest Mr. Barajas has anything to do with it is a far stretch of the imagination."



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Discussion Questions

1. If David Barajas did indeed kill Jose Banda, was such an act legal under the circumstances? Explain your response.

The law is well-settled on this issue. Barring a successful temporary insanity defense, if Mr. Barajas did indeed kill Jose Banda in retaliation for the deaths of his children, Mr. Barajas committed murder. Murder is defined as the unlawful taking of the life of another human being with "malice aforethought." A person is not allowed to "take the law into his own hands." If the alleged facts presented in the article are true, two unlawful acts have occurred here: 1) the deaths of the two children resulting from Mr. Banda driving while intoxicated (manslaughter); and 2) the death of Mr. Banda due to the intentional act of Mr. Barajas (murder).

2. If Mr. Barajas did indeed kill Mr. Banda, was such an act ethical under the circumstances?

Although student opinions may vary in response to this question, if Mr. Barajas took Mr. Banda's life, he has acted both illegally and unethically. There is a strong argument to be made that one may not act ethically while violating/disregarding the law.

3. Evaluate the strength or weakness of the prosecutor's case against Mr. Barajas, based on the evidence described in the article. In your reasoned opinion, would the prosecution have an easy or a difficult time successfully prosecuting Mr. Barajas? Explain your response.

Apparently, there is no eyewitness willing to testify that Mr. Barajas shot and killed Mr. Banda. That means that the case must be proven circumstantially, rather than by direct evidence. The article presents the following circumstantial evidence that the prosecution will likely introduce at trial if a trial should occur in this case:

- a. Neighbors said they heard gunshots minutes after the crash;*
- b. Witnesses have identified Barajas as the person who approached the vehicle before the shooting;*
- c. Witnesses said there was a man opening fire;*
- d. A search of Barajas' home found ammunition consistent with the bullet that killed Banda; and*
- e. Barajas certainly had motive to take Banda's life.*

As the article indicates, there are inherent difficulties in the prosecution's case, including:

- a. No weapon was recovered;*
- b. No witness has identified Barajas as the shooter; and*



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c. Gunshot residue tests performed on Barajas were negative.

Obviously, the prosecution must weigh the strengths and weaknesses of its case before charging and attempting to convict Barajas, and even if the prosecution chooses to proceed, it may have a difficult time convicting Barajas in light of evidentiary weaknesses and jury sympathy for a father who lost his two sons due to the careless and reckless actions of a drunk driver.



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Of Special Interest

This section of the newsletter will assist you in addressing Article 1 ("NAACP President: Special Prosecutor 'Critically Important' in Ferguson") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1-"NAACP President: Special Prosecutor 'Critically Important' in Ferguson")

Note: In Addition to Article 1, please see the video accompanying Article 1 at the following web address:

<http://www.cbsnews.com/news/naacp-president-special-prosecutor-critically-important-in-ferguson/>

Teaching Tip 2 (Related to Article 1-"NAACP President: Special Prosecutor 'Critically Important' in Ferguson")

Note: In addition to Article 1, please see the following article regarding the Michael Brown case:

"20,000 Sign Petitions Seeking Special Prosecutor in Michael Brown Shooting"

http://www.stltoday.com/news/local/crime-and-courts/sign-petitions-seeking-special-prosecutor-in-michael-brown-shooting/article_d0cc6e7f-8b32-5153-8ab4-86ebdc4659ca.html

According to the article, organizers said recently that more than 20,000 people had signed online petitions seeking a special prosecutor to investigate the death of Michael Brown.

St. Louis County Prosecuting Attorney Robert McCulloch is in charge of the investigation. The petition asks him to step aside.

"Many community members don't believe he can be fair and impartial," state Sen. Jamilah Nasheed, D-St. Louis, said. She launched the petition drive with the goal of gathering 50,000 signatures. "We will continue to put pressure on him to resign," she said.

Nasheed cited McCulloch's investigation into the actions of two undercover drug detectives who killed a suspect and his passenger in a car on the parking lot of the Jack in the Box restaurant in Berkeley in 2000.



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Grand jury proceedings are secret. McCulloch, in telling the public what the grand jury had found, repeatedly insisted that “every witness” had testified that the two detectives fired to defend themselves after the suspect tried to run them over with his car.

The Post-Dispatch reviewed the previously secret grand jury tapes and found that McCulloch’s public statements were untrue.

Only three of the 13 detectives who testified said the suspect’s car had moved forward, in the direction of the two officers who shot him and his passenger. Two of those were the shooters themselves. The third was a detective who McCulloch later said he considered charging with perjury because his account was so at odds with the facts.

Contrary to McCulloch’s public statements, the grand jury tapes showed that four other detectives testified that they never saw the suspect’s car travel toward the officers.

McCulloch never brought independent evidence before the grand jury to sort out who was right.

Nor did he request the testimony of a nationally noted collision expert who investigated the case for the Justice Department. He determined that the suspect’s car had always been in reverse — added proof that it did not move toward the detectives.

Another controversial case involving McCulloch’s use of the grand jury was dubbed “Kinkogate.”

In 1997, McCulloch used a grand jury subpoena to identify a whistleblower who contacted the FBI and reported what he said was improper behavior by a member of then St. Louis County Executive George “Buzz” Westfall’s cabinet. The whistleblower was Russ Signorino, then an employee of the St. Louis County Economic Council. He sent an anonymous fax to the media from a Kinko’s store in Creve Coeur.

Without telling the grand jury what he was doing, McCulloch gave the subpoena to the St. Louis County police, who used it to obtain a video recording from Kinko’s showing who sent the fax. After he was identified, Signorino was forced to quit his county job.

McCulloch at first claimed that he had issued the grand jury subpoena because the fax contained a “threat.”

He later admitted that there never had been any threat and conceded that no crime was involved. He denied that he had abused the grand jury process to identify a whistleblower who was acting lawfully.

According to the Missouri attorney general’s office, only an order from a judge can remove McCulloch from the case; he can also step aside himself. Nasheed said the petition would put pressure on McCulloch to step down voluntarily.



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Manuel Blair, 41, of Florissant, said he is supporting the petition drive for a special prosecutor. He noted that McCulloch's father was a police officer who was killed in the line of duty. McCulloch's father, brother, nephew and cousin all served with the St. Louis Police Department; his mother was a clerk there.

I don't think he will effectively prosecute a police officer," Blair 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 7	Chapters 5 and 8	Chapters 2 and 7	Chapter 7
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5 and 7	Chapters 5 and 8	Chapters 2 and 7	Chapter 7
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4 and 5	Chapters 4 and 6	Chapters 1 and 5	Chapter 5
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3 and 5	Chapters 3 and 7	Chapters 4 and 5	Chapter 5
Barnes et al., Law for Business	Chapters 4 and 5	Chapters 4 and 7	Chapters 3 and 5	Chapter 5
Brown et al., Business Law with UCC Applications	Chapters 2 and 5	Chapters 2 and 6	Chapters 1 and 5	Chapter 5
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6 and 13	Chapters 6 and 10	Chapters 2 and 13	Chapter 13
McAdams et al., Law, Business & Society	Chapters 4 and 5	Chapters 5 and 7	Chapters 2 and 4	Chapter 4
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2 and 23	Chapters 2 and 10	Chapters 5 and 23	Chapter 23
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 1 and 8	Chapters 1 and 6	Chapters 1 and 8	Chapter 8



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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)

