



Proceedings

A monthly newsletter from McGraw-Hill Education



December 2017 Volume 9, Issue 5

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Dear Professor,

Happy holidays, everyone! Welcome to McGraw-Hill Education's December 2017 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 9, Issue 5 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the December 2017 newsletter topics with the various McGraw-Hill Education business law textbooks.

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

1. The continuing investigation of the Equifax "hack";
2. Mandatory sexual harassment training in the United States Senate;
3. A \$7.5 million jury verdict for a man injured at an Alabama Walmart;
4. Videos related to a) wrongful convictions in the Maryland criminal justice system and b) constitutionally-protected freedom of the press;
5. An "ethical dilemma" related to bankrupt Bitcoin exchange Mt. Gox and its former head, Mark Karpeles; and
6. "Teaching tips" related to Article 3 ("Jury Awards \$7.5M to Man for Walmart Injury") and Video 1 ("The Ungers: Righting a Miscarriage of Justice") of the newsletter.

I wish everyone a joyous holiday season!

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

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

- 1) The continuing investigation of the Equifax "hack";
- 2) Mandatory sexual harassment training in the United States Senate; and
- 3) A \$7.5 million jury verdict for a man injured at an Alabama Walmart.

Hot Topics in Business Law

Article 1: "Atlanta Cybercrime Experts Investigating Equifax Hack"

<https://www.cbsnews.com/news/atlanta-cybercrime-experts-investigating-equifax-hack/>

According to the article, the U.S. Attorney's office has confirmed that, along with the FBI, it is investigating the breach at Atlanta-based Equifax, which the company said lasted from mid-May to July and exposed the data of 145 million Americans.

Neither agency would discuss Equifax, but their cybercrime teams shared insights about the difficulties of cybercrime cases.

"They are challenging, and the success stories are rare," said prosecutor Steven Grimberg, who leads the Atlanta U.S. attorney's office cybercrime unit, created last year to fight the growing threat. For every conviction there may be 10 times as many that don't end successfully, he said.

Atlanta has become a hub for cybercrime prosecution in large part because of a proactive and aggressive local FBI team, and because U.S. attorneys have committed the necessary resources in recent years, Grimberg said.

Who's behind the keyboard?

Identifying who's responsible is a key difficulty: Cybercriminals use aliases and operate on the dark web, in corners of the internet reached using special software, where access is invite-only.

Investigators have infiltrated some of these online forums and can sometimes engage cybercriminals there, said FBI Supervisory Special Agent Chad Hunt, who oversees one of FBI Atlanta's cyber investigation squads. Once they obtain some information, they can use search warrants to get other data, such as business records or credit card transactions, to match the online alias to a real person.

Even extremely sophisticated cybercriminals sometimes slip up or collaborate with someone who's less careful, Hunt said.



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"If we're looking at somebody for a while, eventually they'll make a mistake," he said. "So even if they are using high-quality encryption, eventually they'll do something stupid."

Uncooperative foreign governments

Even when a cybercriminal's identity is pinpointed, arrests can take time. Many operate in countries that won't extradite to the U.S. But the FBI continues monitoring these suspects and can catch them if they travel, said Assistant Special Agent in Charge Ricardo Grave de Peralta, who oversees the Atlanta office's cyber investigation squads.

"A lot of these people are in places that aren't so great and they like to go on vacation, and we're happy to meet them in a third location and perhaps bring them to a second vacation here in the United States, all expenses paid," he said with a smile.

Even with friendly foreign governments, extraditions can take time: Often, the merits of a case are essentially litigated in the process, so that authorities in the other country are satisfied the incriminating evidence is solid, Grimberg said.

Deals and cooperation

Once confronted with evidence against them, some cybercriminals decide to plead guilty and work with prosecutors instead of going to trial.

Their language skills, technical expertise and ability to communicate on online forums and sites open exclusively to cybercriminals make their cooperation invaluable, sometimes leading directly to new prosecutions, Grimberg said.

The government is committed to being as transparent as possible about that cooperation, especially when people get lighter sentences as a result, Grimberg said, but details are often sealed because cooperators fear repercussions.

Meaningful sentences

Prosecutors said the SpyEye malware caused close to \$1 billion and Citadel more than \$500 million in harm to individuals and financial institutions worldwide.

Because the scope of harm can be huge, federal sentencing guidelines often allow for a life-in-prison sentence.

Prosecutors ask for sentences tough enough to send a warning to others, and to discourage the person from returning to cybercrime when they get out. But because cybercriminals are frequently young, have no criminal history and the crimes aren't violent, prosecutors rarely ask for life, Grimberg said.



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One hacker involved in SpyEye's development got nine-plus years in prison while another got 15 when sentenced last year, and a Citadel developer got five in July. They weren't ordered to reimburse victims.

That highlights another challenge: Despite financial losses, prosecutors frequently ask judges to find that it is impractical or overly cumbersome to impose restitution. Tracing the affected IP addresses to identify possible victims would be difficult, Grimberg said, and U.S. authorities can't force them to pay once they return to their home countries.

Working with the private sector

Investigators and prosecutors in Atlanta work to establish relationships with companies before anything bad happens, which can make them more comfortable if there is a problem. But companies may hesitate to contact law enforcement because they worry about reputational damage, actions from civil authorities, lawsuits, and the exposure of trade secrets or sensitive information.

The former head of Equifax told members of Congress last month that the company was cooperating with the FBI and state agencies, but Equifax has suffered at least some of these consequences after failing to repair a known security weakness for months this year. Digital burglars had access to the company's computer systems for 11 weeks before Equifax discovered the hack July 29. The company then waited until Sept. 7 before issuing a public alert, saying they hadn't understood until then just how much information had been stolen.

Discussion Questions

1. Define cybercrime.

A cybercrime is a criminal activity carried out by means of a computer and/or the internet.

2. As the article indicates, cybercrime cases “are challenging, and the success stories are rare.” Further, for every cybercrime conviction, there might be ten times as many cases that do not end successfully. Are you surprised that the success rate for cybercrime prosecutions is so low? Explain your response.

This is an opinion question, so student responses may vary. In your author’s opinion, given the surreptitious nature of the internet, it is not surprising that the “solve” rate for cybercrimes is extremely low.

3. As the article indicates, federal sentencing guidelines allow for as much as a life sentence for the commission of a cybercrime. Define “federal sentencing guidelines.” Are you surprised that the punishment for the commission of a cybercrime can be as severe as life imprisonment? Why or why not?



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Federal sentencing guidelines dictate the maximum and minimum punishment for the commission of a particular crime. They are designed to lend stability, predictability, and fairness to the sentencing of criminal defendants. In your author's opinion, it is not surprising that the punishment for the commission of a cybercrime can be as severe life imprisonment, given the potential harm that can result from the commission of such an offense.

Article 2: Senate Passes Mandatory Sexual Harassment Training

<http://abcnews.go.com/Politics/senate-passes-mandatory-sexual-harassment-training/story?id=51050867>

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

According to the article, just before the United States Senate adjourned for the Veterans Day holiday weekend, the upper chamber passed a resolution mandating that sexual harassment training will be mandatory for senators, staff, and interns of the U.S. Senate.

"Making harassment training mandatory in the Senate sends a clear message: Harassment of any kind is not and will not be tolerated in Congress. Period," Sen. Amy Klobuchar, D-Minn., said in a press release.

Klobuchar and Sen. Chuck Grassley, R-Iowa Republican, who is chairman of the Senate Judiciary Committee, co-authored the legislation.

"No place of work is immune to the all-too-prevalent scourge of sexual harassment, but we in Congress have a particular duty to set high standards of conduct," Grassley said in a statement.

"In the wake of so many scandals and reports of sexual harassment around the country, it's critical that we continue do everything we can to prevent it," he said.

The bipartisan resolution requires all Senate members, staff, and interns to complete the sexual harassment prevention training offered by the Office of Compliance or the Office of the Senate Chief Counsel for Employment.

The training must be completed within 60 days, and each office would be required to submit certification of completed training, which would be published on the public website of the Secretary of the Senate.

The resolution also calls for an anonymous survey to be administered by the Sergeant at Arms that will gather information about instances of sexual harassment or related behavior in the Senate.



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Discussion Questions

1. What is sexual harassment?

According to the Equal Employment Opportunity Commission (EEOC):

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

https://www.eeoc.gov/laws/types/sexual_harassment.cfm

2. As the article indicates, the United States Senate has passed a resolution mandating that sexual harassment training will be mandatory for senators, staff, and interns of the U.S. Senate. Should not professionals already know that sexual harassment is inappropriate and illegal? Explain your response.

As stewards of the law, all senators, staff, and interns of the United States Senate should already know that sexual harassment is inappropriate and illegal. As an unfortunate reality, however, sexual harassment training should be mandatory for them, particularly in light of the spate of sexual harassment controversies currently plaguing the United States.

3. In your reasoned opinion, is the mandatory sexual harassment training referenced in the article substantive, or is it merely "political posturing" in light of the overwhelming number of sexual harassment scandals surfacing in the United States recently? Explain your response.

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



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Article 3: “Jury Awards \$7.5M to Man for Walmart Injury”

<http://fortune.com/2017/11/10/walmart-watermelon-injury/>

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

According to the article, an Alabama jury has awarded \$7.5 million to a man who says he broke his hip buying a watermelon at Walmart.

Henry Walker, 61, says his foot became trapped in a pallet beneath a box of watermelons as he reached for one in 2015. He fell and sustained the injury. His attorney argued the retail giant should have covered the pallet, making the display safer.

Walmart, however, maintains the display is not dangerous and the injury was the fault of the customer. The retailer added it was disappointed in the verdict, feels it was an excessive amount and plans to appeal. In court documents during the trial, it said the same displays are still being used in stores around the country.

“Walmart continues to display watermelons in the same manner as it did on June 25, 2015,” the company said in a recent court filing. “These displays come to the store from the producer already packaged and ready to be dropped and displayed.”

Discussion Questions

1. Define negligence.

Negligence is the failure to do what a reasonable person would have done under the same or similar circumstances. In order to establish negligence, a plaintiff must prove four elements: a) the defendant owed a duty of care to the plaintiff; b) the defendant violated the duty of care; c) the defendant proximately caused the plaintiff's harm; and d) the plaintiff experienced damages (physical and/or economic) as a result.

2. Describe the defenses to negligence liability, including contributory negligence, comparative negligence and assumption of the risk

Contributory negligence doctrine dictates that if the plaintiff's negligence, however slight, contributed to her own injury, the plaintiff cannot recover anything from the defendant, even if the defendant's negligence substantially contributed to the plaintiff's injury. Currently, four (4) states recognize the contributory negligence defense to negligence liability, including Alabama, North Carolina, Maryland, and Virginia.



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Comparative negligence doctrine states that if the plaintiff's negligence contributed to his own injury, the plaintiff can nevertheless recover from the defendant; however, the plaintiff's recovery is reduced by the percentage his negligence contributed to his own harm. The defendant is then held responsible for the percentage that her negligence contributed to the defendant's injury. Currently, forty-six (46) states recognize some version of the comparative negligence doctrine.

Assumption of the risk is a situation where the plaintiff voluntarily and willingly proceeds in the face of danger, knowing that injury may result. This doctrine is recognized in all fifty (50) states. If a trial jury concludes, based on the evidence presented, that the plaintiff assumed the risk, the jury is duty-bound to return a verdict entirely in favor of the defendant.

3. Based on your review of the article and related video, was the jury verdict sound in terms of a) liability and b) verdict amount? Do you need more information in order to assess the propriety of the jury verdict? Explain your response.

These are opinion questions, so student responses may vary.



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Video Suggestions

Video 1: "The Ungers: Righting a Miscarriage of Justice"

<https://www.cbsnews.com/news/the-ungers-righting-a-miscarriage-of-justice/>

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

"The Ungers: Righting a Miscarriage of Justice"

The people who call themselves THE UNGERS are convicted criminals -- some 250 in all -- sentenced to life in prison many years ago for violent crimes. Thanks to an appeals court in Maryland, they now have the opportunity to be released, an opportunity many have already taken. Our Cover Story is reported by CBS "Sunday Morning" Senior Contributor Ted Koppel:

The group has been away a long time. They are, all of them, convicted criminals who went to prison in their youth; back when Nixon, Ford and Reagan were in the White House.

In their day, Apple was just a fruit: "I don't even know how to work all this one here," said one man pondering an iPhone.

At this recent celebration in Baltimore, there's a mix here of public defenders, law school interns, social workers, murderers and rapists. The first of those convicts was released four years ago.

Charles Chappell did 39 years on a charge of murder one. He told a Baltimore County prosecutor, "I'm not going to let myself down and I'm most definitely not going to let you down."

"Good to see you again."

"Yes, sir, it's good to see you."

"There are a quarter-million older prisoners locked up across this country; 170 of you are now out. More to come, I hope," said Mike Millemann, a law school professor at the University of Maryland. He's also a defense attorney who was deeply troubled by the fact that for decades in Maryland, judges had



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been telling juries that it was their job to interpret the law pretty much as they saw fit.

It sounds incredible, but a jury could -- if it so decided -- ignore a defendant's presumption of innocence, in effect tossing the constitutional right to a fair trial out the window.

"If the jurors liked the fundamental requirement that the state has to prove guilt beyond a reasonable doubt, they could apply it. If they didn't, they could reject it," said Millemann.

"So, the constitution was nothing more than a guiding principle?" asked Koppel.

"It was 'advice.' That really nullified the rule of law. So these, in effect, were lawless trials."

In 2012 a Maryland appeals court agreed, and ordered a new trial for Merle Unger, who was serving a life sentence for killing a police officer. That opened the door for 250 other lifers convicted in Maryland before 1981.

With much of the work being led by lawyers from the public defenders office, they and Mike Millemann argued that all those trials had been unconstitutional. And, interestingly, prosecutor Scott Shellenberger -- Maryland's state attorney for Baltimore County -- is on the same page:

"By saying to the jurors that they are judges of the law, it undermined those very fundamental constitutional rights of reasonable doubt and presumption of innocence," Shellenberger said.

"After they were found guilty, but in a flawed proceeding," said Koppel. "Therefore, is it in fact fair to conclude that they are guilty?"

"Well, they were granted a new trial. Now, most of those have pled guilty because prosecutors are recommending time served -- which means they get out.

With the exception, it should be noted, of Merle Unger himself. He was retried, reconvicted, and is still in prison. In acknowledgement of his case, the now more than 180 prisoners who have been released refer to themselves as "the Ungers."

Over four years, there have been a few misdemeanors, but so far, not a one of the Ungers has committed another felony.

Millemann said, "The success of the Unger folks should be a beacon for the whole United States of America."

Kareem Hasan was one of the first of the Unger group to be released. According to his count, he spent 37 years, nine days in prison.

"So if I said to you, 'You're out on a technicality,' how would you feel about that?" asked Koppel.



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"Well, I was just trying to get out. I didn't care how I got out," Hasan laughed. "You know, after 37 years I said, 'Okay, why are you still sitting here? Yes, I want that deal!' Because I wanted to get out."

Etta Myers is the only woman in the group. To this day, she maintains her innocence.

"I was in prison 36 years, nine months, five hours, 24 minutes. And I didn't count the seconds," she said.

Karriem Saleem El-Amin has been out for four years now: "I served 42 years, three months and three days," he said.

"The fact that you can all remember down to the day and in some cases down to the hour how long you were in, what does that say about doing time in prison?" Koppel asked.

"That you're conscious of every day that you're in there," El-Amin said. "You don't actually count it while you're doing it. But seems like when you get closer and closer to a year, then it means something. Other than that, you're just living, trying to survive while you're in there. You don't want to just think about how much time you're doing, because there's no end to a life sentence."

Actually, when El-Amin was convicted -- when all the Ungers were convicted -- wasn't true. They were all eligible for parole.

Millemann said, "Because when they were sentenced, the norm was that if you did what you were supposed to do in prison and you were a lifer with the possibility of parole, you were paroled after 15 or even, you know, later, 20 years. So there's an expectation, if they did what they were supposed to do, they'd be coming out. And that all changed when a liberal Democratic governor in effect ended parole for lifers in Maryland."

Because? "Because a lifer in a work release program killed his woman friend and then killed himself," said Millemann.

That was in the mid-1990s and from that time on, even model inmates like Etta Myers paid the price. She had three parole hearings.

"Obviously, you were turned down at each one," said Koppel.

"No, actually I was recommended for each one," Myers replied.

And what happened? "The governor never signed off on it."

It didn't matter what the parole board ruled; without the governor's signature, there was no release.



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Maryland's parole boards were still going through the motions, but their recommendations of parole for a lifer were simply ignored.

Hassan said, "So, at that time, I was married to my wife, that I'm married to now -- Miss Annette -- and I made her leave me. You know, I took her off my visiting list. Told her to go ahead, enjoy her life. That I'm never coming home. And I made her divorce me."

It would be twenty more years before Hasan's ultimate release. "She came the day I came home from court," he recalled. "And I seen her. The feelings, the emotions, and everything was still there. And asked me to marry her again. And we married."

"Well, good for you."

"And it's enjoyable!"

Incredibly, and this is according to social workers who've been counseling the Ungers, 70 percent of the freed inmates were initially taken in by a family member.

Charles Chappell moved in with his sister last December. Finding work has been something else again. In prison, Chappell was head clerk in a multi-million dollar furniture business.

"And now that you're out," said Koppel, "you've got another job running another million dollar business?"

"I can't even flip a burger for Burger King because I have a felony," Chappell said. He's been applying for warehouse supervisor or warehouse associate. "I have these skills in running a business, so I can run a warehouse," he said.

"Now part of the problem obviously is -- and I say this as a guy who's almost old enough to be your dad -- but you're an old man in terms of the labor market. How old are you now? 60?"

"I'm 61 years old. My disappointment is being incarcerated for 39 years, that this body has been preserved. I could do ten years of labor Mr. Koppel and I know that I would hold up. So I'm asking for not the online interview. I would like a face-to-face interview, so where they could see a 61-year-old man who is ready to become a productive member of society."

Scott Shellenberger is a tough prosecutor who takes a common-sense approach. Koppel asked him, "When we talk about imprisonment, we're talking about two things. First and foremost, punishment for a crime. But secondly, implicit in that is also the notion of the possibility of rehabilitation. Your thoughts on that?"

"Well, certainly, I do believe in rehabilitation in the criminal justice system," said Shellenberger. "When we get to murder, I believe there has to be a balance, and that balance has to strike between



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the appropriate punishment and what's going to happen when you're released in society. The studies show that most violent crime is committed by men between the ages of 17 and 35. And the Ungers are a perfect example that you can age out of violent crime."

Wayne Brewton-Bey only got out last spring. After decades in prison, he needs the support of the other Ungers. It may be that only another Unger can appreciate how disorienting the outside world can be -- even the old neighborhood. "My heart just fell outta my chest," he said. "I couldn't believe all the abandoned homes around here. And once the neighborhood was so beautiful."

Still lingering after all these years are the memories of what some basketball coaches were telling Brewton-Bey when he was a youngster, and what his fellow inmates called him: "The Legend."

"Still makes you smile now?" Koppel said.

"Absolutely!"

"Could'a been?"

"As a matter of fact, my mother used to always say that I was supposed to be living in a mansion. That's what she used to tell me when she used to visit me."

Just then, a young man with a basketball was spotted walking down the street. Koppel asked Brewton-Bey, "Give you any thoughts?"

"Yeah. That's how I was. Going, looking for a game at one point in my life."

Brewton-Bey's mother, who waited almost 38 years for his release, died the year before he came home. But his wife, Vickie, was waiting for him. They've renewed their vows. And his 10-year-old granddaughter, Madison, is helping Brewton-Bey adjust to the brave new world of the internet.

It needs to be said that even these tiny stories of long-deferred happiness must grate on the families of the victims.

Koppel said, "Well, I'm gonna put it to you very brutally. Tell me why you're an asset to the community."

"Because I believe I can save lives by sharing my story with a lot of the younger guys and women in the neighborhood, and that one mistake, one bad choice can ruin your life forever," Brewton-Bey replied. "I took a young man's life. And so his family suffered. My family suffered. 'Cause I went to prison, I took my whole family with me. And during the process of my incarceration my family spent \$10-20,000 on legal fees, which they didn't have. You know, they went in debt for me."

"And I believe I owe Earl Jenkins a debt."



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"He's the man you killed."

"The man whose life I took."

The Ungers are guardians of a fragile success, and they are acutely aware of what their failure would mean. Their motto: "Failure is not an option."

Because? According to Charles Chappell, "There's so many guys that we left behind who may not have 'Unger.' But our success will show those individuals who are making these major decisions on individuals who have rehabilitated themselves after 30 to 40 years of incarceration, that it's a possibility, because the Unger guys made it."

Discussion Questions

1. As the article indicates, for decades in Maryland, judges had been telling juries that it was their job to interpret the law "pretty much as they saw fit." Are you surprised by this decades-long practice? Why or why not?

This is an opinion question, so student responses may vary. Although your author is not necessarily surprised by the practice described, it clearly constitutes an error of law and an abuse of discretion for a trial court judge to advise a jury that it has complete discretion to interpret the law as it sees fit, particularly if the law is clear in a certain area.

2. Why would ignoring the defendant's presumption of innocence violate the United States Constitution?

Ignoring the defendant's presumption of innocence would violate the due process protections of the Fifth and/or Fourteenth Amendments to the United States Constitution.

3. In your opinion, should the "Ungers" be compensated for their time served? If so, by whom?

In your author's opinion, the "Ungers" should be compensated for their time served. Compensation should be forthcoming from each jurisdiction that wrongfully convicted a particular defendant. Since the prosecution represents the people as a whole, compensation for a wrongfully-convicted defendant must arguably originate from the taxpayers residing in a jurisdiction that wrongfully convicted a particular defendant.



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Video 2: "Whose Freedom Is It?"

<http://www.cnn.com/2017/11/12/opinions/what-does-freedom-of-press-mean-opinion-stelter/index.html>

Note: In addition to the video, please see the following opinion article also included at the above-referenced internet address and written by Brian Stelter, a CNN senior media correspondent:

"Whose Freedom Is It?"

Press freedom is YOUR freedom. That's the way I recommend thinking about "freedom of the press."

I can see why this topic might seem conceptual or vague to the average reader. Journalists have an obvious interest in preserving and expanding press freedom. The writers for this website benefit from the fact that press freedom in the United States is constitutionally protected and buttressed by cultural norms.

But it's about MORE than just journalists. Turn it around. Recognize how protections for the press benefit each and every one of us, whether we're reporting the news or reading about it.

The First Amendment, of course, "applies only to the government," as the famed media lawyer Floyd Abrams said in his most recent book about the subject.

He titled his book "The Soul of the First Amendment" -- to explore the spirit of the text that protects freedom of speech, what he called "its anti-censorial soul."

The values enshrined in the First Amendment protect members of the media from government interference, yes, but it protects all of us.

You're in the media

Press freedom means you have the information you need to make up your own mind. And you have the ability to speak out. Nowadays, if you share links on Facebook or tweet on Twitter or chat on Snapchat, you're a part of the media and you benefit from the constitutional protection of the free press.

Now, those social media sites and apps are owned by private companies, with their own rules that sometimes restrict free expression. This is an issue that we're going to be grappling with for years to come.



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But those sites enable hundreds of millions of people to participate in the news process -- providing eyewitness information and new perspectives. The web has enabled countless people, myself included, to become bloggers and reporters and commentators.

Think about it this way: If your view of President Trump has soured or improved over the past year, you have benefited from constant press access and scrutiny of the White House. You have benefited from a vigorous free press.

When journalists uncover corporate wrongdoing and expose political cover-ups, we all benefit. When lawyers at a newspaper or a TV network gain access to government documents through the Freedom of Information Act, we all benefit.

Of course, our cherished First Amendment protections also enable falsehoods, hoaxes and other forms of misinformation to spread across the country and all around the world.

Our responsibility

With our rights to free expression come responsibilities. Since press freedom applies to all of us -- since we're essentially all members of the media nowadays -- we all have a responsibility to be part of the solution, not part of the problem.

How so? By triple-checking before sharing sensational stories on social media. Is the source recognizable? Reliable? Are the facts verifiable?

Think of the classic example from the 2016 campaign -- the one that claimed that the Pope endorsed Donald Trump for President. That never happened.

A more recent example is a real picture from the Seattle Seahawks locker room that was photo-shopped to show a flag being burned. You might say, "Hey, c'mon, that's obviously fake," but some people shared it, wanting to believe it, and that spread a falsehood to others.

How can you be a part of the solution? By triple checking before sharing sensational stories on social media. Is the source recognizable? Reliable? Are the facts verifiable?

Newsrooms and media companies have responsibilities, too -- to seek out what Carl Bernstein likes to call the best obtainable version of the truth. To be forthright about mistakes and missteps. To practice and promote media literacy.

Part of media literacy, I think, means recognizing our roles as both consumers and creators of media.

It means recognizing that press freedom doesn't just insulate the journalists who are attacked and demeaned by the Trump administration or local lawmakers.



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It means resisting government attempts to devalue and delegitimize journalism. Why? Because, simply put, press freedom is your freedom.

Discussion Questions

1. The author of this article is a media correspondent. In your opinion, does that detract from the main point of the article (that press freedom is “your” freedom)? Explain your response.

This is an opinion question, so student responses may vary. Obviously, a media correspondent would most likely favor constitutionally-protected freedom of the press, but keep in mind that our Founding Fathers also favored such freedom (otherwise they would not have codified the right in the First Amendment to the United States Constitution), viewing the press as the unofficial “fourth branch” of government serving as a “check” or a “balance” with regard to the executive, legislative, and judicial branches of government.

2. According to the article, our cherished First Amendment protections also enable falsehoods, hoaxes and other forms of misinformation to spread across the country. Does constitutionally-protected speech and press extend to the dissemination of such falsehoods, hoaxes and other forms of misinformation? Why or why not?

In your author’s opinion, despite the wide-ranging flexibility that has been traditionally afforded political speech, First Amendment free speech and freedom of the press protections should not extend to the dissemination of falsehoods, hoaxes and other forms of misinformation. Such information constitutes a threat to the United States democracy.

3. According to the article’s author, with our rights to free expression come responsibilities. What responsibilities? In your opinion, is the public satisfying those responsibilities? Explain your response.

In your author’s opinion, the free speech and freedom of the press protections afforded by the United States Constitution come with the responsibility to disseminate, in good faith, truthful information and opinions. In the political arena, non-fulfillment of such responsibilities constitutes a threat to the United States democracy.



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Of Special Interest

This section of the newsletter addresses bankrupt Bitcoin exchange Mt. Gox and its former head, Mark Karpeles.

Ethical Dilemma

“Head of Bankrupt Bitcoin Exchange Could Make Hundreds of Millions from Failure”

<http://fortune.com/2017/11/11/karpeles-mt-gox-profitable-bankruptcy/>

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

According to the article, Mark Karpeles, the former head of what was for a time the world’s largest Bitcoin exchange, could wind up profiting handsomely from the portal’s ignominious 2014 collapse. Those who had owned Bitcoin on the site, on the other hand, stand to lose hundreds of millions of dollars generated by the cryptocurrency’s rising value.

Mt. Gox was one of the first convenient platforms for buying and selling Bitcoin online. Much like a bank, it retained direct control of the Bitcoin that belonged to many of its users. But it shut down in early 2014, claiming that hackers had stolen hundreds of thousands of its customers’ Bitcoins. Karpeles, in addition to being publicly condemned for mismanagement, faces criminal charges of embezzlement in the case. Nonetheless, according to the *Wall Street Journal*, Karpeles could make in the neighborhood of \$1 billion from the bankruptcy, thanks to Japanese law’s treatment of the Gox Bitcoins.

Article 124 of Japan’s bankruptcy codes required that liabilities be registered at market values when proceedings were opened in April of 2014. At that point, one Bitcoin was worth roughly \$500, but the price has since risen to more than \$6,300. Mt. Gox later recovered some of the allegedly hacked cryptocurrency, and still holds 202,195 Bitcoins, now worth around \$1.5 billion.

But at a September 27 hearing, Karpeles’ lawyer argued that those market gains belonged primarily to the collapsed Bitcoin exchange, not to the users who lost them years ago. According to the *Journal*’s calculations, based on a higher Bitcoin price earlier this week, selling off Mt. Gox’s remaining Bitcoin holdings at today’s prices while paying back creditors at April 2014 prices could leave a \$977 million surplus. According to the *Journal*, Karpeles’ holding company, Tibanne, owns about 88% of Mt. Gox, meaning he could pocket a large portion of those gains.



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According to *Fortune*'s prior reporting, Japan's bankruptcy code does allow for liabilities in a bankruptcy to be marked to market values, but the *Journal* reports that the period for creditors to dispute such decisions has ended.

Discussion Questions

1. As the article indicates, Mark Karpeles, the former head of Mt. Gox, faces criminal charges of embezzlement in the subject case. Define embezzlement.

Embezzlement is the wrongful misappropriation of property (including, but not limited to, money) that has been entrusted to the defendant. Typically, embezzlement carries a greater punishment than does larceny and other forms of theft, since embezzlement constitutes not only a violation of the victim's property ownership rights, but also a violation of trust.

2. In your reasoned opinion, is Bitcoin legal currency? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, Bitcoin should not be legal currency, since it is represented as currency without being backed by the "full faith and credit" of a particular government, or subject to prudent regulation by a particular government. Perhaps this is why Bitcoin is referred to as a "cryptocurrency," with "cryptic" being defined as "having a meaning that is mysterious or obscure!"

3. In your reasoned opinion, should Mr. Karpeles be allowed to personally benefit from Bitcoin appreciation referenced in the article? Why or why not?

This is an opinion question, so student responses may vary. If Mr. Karpeles is allowed to personally benefit from the Bitcoin appreciation referenced in the article, it will be due to Japanese bankruptcy law, not United States law. Arguably, justice would not be served in such a situation, since the true owners of the subject cryptocurrency (and not the fiduciary in charge of their property) should benefit from any appreciation in the currency's value.



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Of Special Interest

This section of the newsletter will assist you in addressing Article 3 (“Jury Awards \$7.5M to Man for Walmart Injury”) and Video 1 (“The Ungers: Righting a Miscarriage of Justice”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 3—“Jury Awards \$7.5M to Man for Walmart Injury”): “Walmart Shopper Who Broke His Hip Picking Out a Watermelon Awarded \$7.5 Million”

Note: In a critical thinking exercise with students, compare and contrast the following article (and its related video) with Article 3 (and its related video) of this newsletter to determine which media presentation best describes the subject incident and related case in order to reach logical, reasoned conclusions regarding the jury verdict:

“Walmart Shopper Who Broke His Hip Picking Out a Watermelon Awarded \$7.5 Million”

https://www.huffingtonpost.com/entry/walmart-watermelon-hip-fall-lawsuit_us_5a0716f6e4b05673aa598385

According to the article, an Alabama jury has decided that the Army veteran who broke his hip while picking out a watermelon at a Walmart store should receive \$7.5 million.

Retired Sgt. Henry Walker was 59 in June 2015 when he went shopping at a Walmart in Phenix City, Alabama, the Ledger-Enquirer reports. As Walker reached for the watermelon, his foot got stuck in the side of a wooden pallet under the display. That led him to fall and shatter his hip, according to court documents described by The Washington Post.

Walker’s attorney, Shaun O’Hara, said the injury permanently changed his client’s life: He used to play basketball three days a week and now must use a walker to get around. Walker sued Walmart for negligence and wantonness, arguing that the store had not kept its premises reasonably safe.

Jurors were shown security footage from the same store that showed several other customers had also caught their feet in the pallet.

Recently, the jury awarded Walker \$2.5 million in compensatory damages and \$5 million in punitive damages.

Walmart has called those amounts “excessive in light of the facts” and said it plans to appeal the decision.



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Teaching Tip 2 (Related to Video 1—“The Ungers: Righting a Miscarriage of Justice”): “From a Life Term to Life on the Outside: When Aging Felons Are Freed”

Note: As a supplemental source in coverage of Video 1 (and its related article), please refer to the following article (and its related audio feed, also included at the internet address referenced below):

“From a Life Term to Life on the Outside: When Aging Felons Are Freed”

<https://www.npr.org/2016/02/18/467057603/from-a-life-term-to-life-on-the-outside-when-aging-felons-are-freed>

According to the article, when Karriem Saleem El-Amin went to prison in 1971 for the murder of Baltimore grocer David Lerner during a robbery, he was an 18-year-old killer named William Collins.

In 2013, El-Amin left prison after serving 42 years, 3 months and 3 days. Today, he is 60 years old, back in the city of his youth, converted to Islam, subdued by age and often baffled by the experience of freedom.

Little things, like dining in a restaurant, can be disorienting.

"I'm full, I'm enjoying the company of my family. And at some time, I guess maybe 30 or 40 minutes had passed, I'm feeling uneasy," El-Amin says. "Because I'm so used to having The Man telling me it's time to go."

El-Amin is one of more than 130 prisoners serving life sentences for violent crimes in the state of Maryland who were freed on probation following a landmark ruling by the state's highest court. As a condition of their release, the prisoners received social services and other special preparations. And so far, none of them has re-offended.

The affected prisoners were convicted at least 35 years ago; their average age now is 64. They aged behind bars. Their bodies, which used to brawl and run, now ache and strain.

"One time I wouldn't even consider it, play basketball from the sun up to sun down, in the dark, in the snow," El-Amin says. "But you mature, you see that your knees ain't like that no more. ... Father Time steps in and you have to make the adjustments."

The return of El-Amin and others to life on the outside has encouraged advocates of more liberal parole policies, infuriated the families of their victims, and raised questions about what a life sentence really means.



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Unusual Legal Twist in Maryland

The released prisoners were all convicted of felonies in jury trials before 1981. They're out as the result of a strange instruction that Maryland judges were required to give to juries until that year.

At the end of every criminal trial in the state, explains Tony Gioia, Baltimore's deputy state's attorney, the judge told the jury that "they are the judges of the facts and the law and that whatever the court said to the jury was advisory only."

As contradictory as it may be to common understanding of what juries and judges do — it's what judges in Maryland instructed juries for decades.

Here is a typical judge's instruction to the jurors in a trial from before 1981:

"You, ladies and gentlemen, are the judges of not only the facts, as you are on every case, but on the law as well. It is your responsibility to determine for yourselves what the law is. Everything I say to you is advisory only. You are free to find the law to be other than what the court says it is. We have given you our best opinion about the matter but the final determination — that is solely in your hands."

In other words, principles such as the presumption of innocence and the standard of proof beyond a reasonable doubt? Just "advice" from the bench — take it or leave it.

By 1980, Maryland was the only state that was giving such an instruction, says Michael Millemann, a professor and expert in public interest law at the University of Maryland's Carey School of Law. In the early 1980s, Maryland's highest court finally put a stop to the practice. But for more than 30 years, in various cases, the state's Court of Appeals said that convictions from trials using the old jury instruction were still valid.

Then, in 2012, in a case brought by a Maryland inmate, the court changed its position.

In *Unger v. State*, the court ruled that people convicted on the basis of the old jury charge had been denied due process — and were entitled to a new trial.

By that time, there were only about 250 people behind bars who were affected. They were serving long sentences for serious crimes committed more than 30 years earlier.

Preparing For Life on The Outside

El-Amin was one of them. Like him, 90 percent of the affected prisoners are African-American. Millemann, who has a long background in legal aid and advocacy for prisoners, notes that 40 years ago, blacks were often charged with more serious offenses than whites for the same crime.



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Of the 250 Unger prisoners, all but one are men; they typically entered prison at age 24 and served 40 years.

Some of them will be retried. But for most, Millemann and prosecutor Gioia negotiate the terms of their release. The prisoners have to concede their guilt, abandon further appeals and be resentenced to time served.

They are released on probation only after there is a plan for where they will live. A single probation violation sends them back to prison, with no chance to get out.

The assistance they receive from social workers is key to their success outside prison, Gioia says. The social workers help those released secure everything from housing and clothing to bus passes, telephones and information on where to get food.

Rebecca Bowman-Rivas, who runs the social work clinic at the University of Maryland's law school and oversees some of the *Unger* cases, says some of the prisoners even need help establishing who they are.

"We've had one gentleman who found out that he had a completely different father and a different name on his birth certificate," she says. "We've seen a few where there was no name; it just said 'Baby.' "

People incarcerated for decades also grapple with the "Rip Van Winkle effect." They can be thrown by pedestrians speaking on Bluetooth while walking alone and by buses that bend at the middle.

Some of the released prisoners have outlived their family, including their children.

And for many, Bowman-Rivas says, there is also a delayed grief.

"When you're in prison, it's not really a safe place to deal with emotional issues," she says. "We have a lot of folks who lost their parents while they were incarcerated, or siblings, and when they get out, it's when it really starts to come back to them or when they go see the gravesite for the first time."

Despite these hurdles, the lifers released in Maryland have a perfect record so far. But that perfect record has not impressed families of the murder victims.

For Victims, a Painful Injustice

Shirley Rubin says she can remember "every single detail" of the day in 1972 when she and her husband, Benjamin, were shot during a robbery at their Baltimore grocery store. He was killed; she was left with a bullet lodged in her hip.



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When the gunman was sentenced to life in prison plus 36 years, Rubin was confident he would be locked up until he died.

Four decades later, she learned he was getting out of prison.

"They released him; shame on them," Rubin, now 92, says. "And that's an injustice to me." Photos of her children and grandchildren fill the living room of her Baltimore home. Talking about the shooting, which happened more than 40 years ago, Rubin's anger is still palpable.

"My husband missed everything. He missed all his grandchildren; he missed his great-grandchildren," Rubin says. "And I don't care what the case of *Unger* was, it had nothing to do with this. The man committed a terrible crime and he should have been punished for the rest of his life."

Karen Wilson also remembers getting the "*Unger* call" from a woman in the state's attorney's office. The man convicted of killing her father in 1969, restaurant owner Joseph Wilson, was getting out.

"She spoke about 10 minutes and I finally said, 'Are you trying to tell me that he's getting out of prison?'" Wilson recalls. "And she said, 'Yes.' "

Wilson is Karen's maiden name — for privacy reasons, NPR is not using her married name. It was as Karen Wilson that she attended a hearing prior to the release of her father's killer. She told him of the devastation he caused her family: her mother's subsequent poverty, her sister's descent into depression and suicide.

As a Christian whose faith has deepened in recent years, Wilson says she has forgiven her father's killer. His release from prison is something else.

"I think that every last one of these people should still be in prison. They're still guilty; I don't care about the jury instruction. I don't believe that was an issue at all," she says. "I've served on juries and none of the jury instructions made any sense to me so I think the average person doesn't understand their jury instructions."

What *Unger* Says About Aging Lifers

During the time since the crimes covered by *Unger* decision, conventional thinking about sentencing has changed dramatically.

Back then, a life sentence in Maryland typically meant a convict went to prison, stayed out of trouble, took part in prison programs and would be out on parole in 20 years.

William Gardner went to prison in 1968 at age 16 for killing Baltimore cab driver Henry Kravetz. He was among those who experienced the old state policy on incarceration.



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"Especially when we first got in there, there was a lot of emphasis on rehabilitation, so we had an opportunity to go to school, college, obtain trades," Gardner says. "But at the end, the money that they invested in the rehabilitation, it kind of got lost."

By the mid-1990s, all that changed. The governor canceled those programs and blocked parole for all prisoners serving life. The slogan of the day was: Life means life. Their life sentences turned literal, until the reprieve afforded by *Unger*.

So why have so many lifers left prison without re-offending? One answer is that the Maryland prisoners who have been released were always good candidates for parole. This group also has benefited from the social workers on the prisoners' cases.

And then there's the simple fact that they're old.

The freedom of the *Unger* prisoners may never be accepted by the people whose lives they shattered. But so far, the would-be lifers have demonstrated they can walk the straight and narrow — provided they have some help.



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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 5, 7 and 25	Chapters 4 and 5	Chapter 3	Chapters 5 and 7
Bennett-Alexander & Hartman, Employment Law for Business	Chapters 1, 3, 8 and 9	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 7, 8, 9 and 43	Chapters 5 and 7	Chapter 2	Chapters 7, 8 and 9
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 6, 7 and 24	Chapters 5 and 6	Chapter 2	Chapters 6 and 7
Liuzzo, Essentials of Business Law	Chapters 3, 4 and 32	Chapters 3 and 5	Chapter 2	Chapters 3 and 4
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 5, 7 and 51	Chapters 3 and 5	Chapter 4	Chapters 5 and 7
McAdams et al., Law, Business & Society	Chapters 4, 7, 12 and 13	Chapters 4 and 5	Chapter 2	Chapters 4 and 7
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 9, 11, 12 and 22	Chapters 2 and 22	Chapter 5	Chapters 9 and 22
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 10, 13, 20 and 21	Chapters 6 and 13	Chapter 2	Chapters 10 and 13
Sukys, Brown, Business Law with UCC Applications	Chapters 5, 6 and 23	Chapters 2 and 5	Chapter 1	Chapters 5 and 6



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This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 13th Edition ©2018 (1259722325)
- Bennett-Alexander et al., Employment Law for Business, 8th Edition ©2015 (0078023793) *New edition available Jan 2018!*
- Kubasek et al., Dynamic Business Law, 4th Edition ©2017 (1259723585)
- Kubasek et al., Dynamic Business Law: The Essentials, 3rd Edition ©2016 (007802384X) *New edition available Jan 2018!*
- Liuzzo, Essentials of Business Law, 9th Edition ©2016 (07802319X) *New edition available Feb 2018!*
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 16th Edition ©2016 (0077733711) *New edition available Jan 2018!*
- McAdams et al., Law, Business & Society, 12th Edition ©2018 (1259721884) – *New edition now available!*
- Melvin, The Legal Environment of Business: A Managerial Approach, 3rd edition ©2018 (1259686205)
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- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14th Edition ©2017 (0077733738)

