



Proceedings

A monthly newsletter from McGraw-Hill Education



May 2019 Volume 10, Issue 10

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Dear Professor,

Summer is almost here! Welcome to McGraw-Hill Education’s May 2019 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, Issue 10 of Proceedings incorporates “hot topics” in business law, video suggestions, an ethical dilemma, teaching tips, and a “chapter key” cross-referencing the May 2019 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 United States Supreme Court’s decision to review whether Title VII of the Civil Rights Act of 1964 applies to gay and transgender workers;
2. A lawsuit filed by PepsiCo against four farmers in India for violating its intellectual property rights; and
3. Whether Amazon and its Alexa device are violating the privacy rights of customers.
4. Videos related to a) whether Title VII Civil rights protections should include the LGBTQ community and b) a Massachusetts judge accused of helping an undocumented immigrant escape an ICE officer;
5. An “ethical dilemma” related to General Electric’s subprime mortgage unit’s (WMC Mortgage’s) recent bankruptcy filing; and
6. “Teaching tips” related to Article 1 (“Supreme Court to Decide Whether Landmark Civil Rights Law Applies to Gay and Transgender Workers”) and the Ethical Dilemma (“GE’s Subprime Mortgage Unit Files for Bankruptcy”) of the newsletter.

This marks the *one hundredth* issue of the McGraw-Hill Education Business Law Newsletter, and the *tenth* year of its existence. What a sincere privilege it is to serve as the author and editor of this newsletter, and I look forward to many more years of its publication!

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Of Special Interest

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

- 1) The United States Supreme Court's decision to review whether Title VII of the Civil Rights Act of 1964 applies to gay and transgender Workers;
- 2) A lawsuit filed by PepsiCo against four farmers in India for violating its intellectual property rights; and
- 3) Whether Amazon and its Alexa device are violating the privacy rights of customers.

Hot Topics in Business Law

Article 1: "Supreme Court to Decide Whether Landmark Civil Rights Law Applies to Gay and Transgender Workers"

<https://www.nytimes.com/2019/04/22/us/politics/supreme-court-gay-transgender-employees.html>

According to the article, the United States Supreme Court announced recently that it would decide whether the Civil Rights Act of 1964 guarantees protections from workplace discrimination to gay and transgender people in three cases expected to provide the first indication of how the court's new conservative majority will approach L.G.B.T. rights.

The Equal Employment Opportunity Commission has said the 1964 act does guarantee the protections. But the Trump administration has taken the opposite position, saying that the landmark legislation that outlawed discrimination based on race, religion, national origin and, notably, sex, cannot fairly be read to apply to discrimination based on sexual orientation or transgender status.

The three cases the court accepted are the first concerning L.G.B.T. rights since the retirement last summer of Justice Anthony M. Kennedy, a champion of gay rights. His replacement by the more conservative Justice Brett M. Kavanaugh could shift the court's approach to cases concerning gay men, lesbians and transgender people.

Most federal appeals courts have interpreted Title VII of the Civil Rights Act to exclude sexual orientation discrimination. But two of them, in New York and Chicago, recently issued decisions ruling that discrimination against gay men and lesbians is a form of sex discrimination.

The Supreme Court agreed to hear the case from New York, Altitude Express Inc. v. Zarda, No. 17-1623, along with one from Georgia that came to the opposite conclusion, Bostock v. Clayton County, Ga., No. 17-1618.

The New York case was brought by a skydiving instructor, Donald Zarda, who said he was fired because he was gay. His dismissal followed a complaint from a female customer who had voiced concerns about being tightly strapped to Mr. Zarda during a tandem dive. Mr. Zarda, hoping to reassure the customer, told her that he was "100 percent gay."



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Mr. Zarda sued under Title VII and lost the initial rounds. He died in a 2014 skydiving accident, and his estate pursued his case.

Last year, a divided 13-judge panel of the United States Court of Appeals for the Second Circuit allowed the lawsuit to proceed. Writing for the majority, Chief Judge Robert A. Katzmann concluded that “sexual orientation discrimination is motivated, at least in part, by sex and is thus a subset of sex discrimination.”

In dissent, Judge Gerard E. Lynch wrote that the words of Title VII did not support the majority’s interpretation.

“Speaking solely as a citizen,” he wrote, “I would be delighted to awake one morning and learn that Congress had just passed legislation adding sexual orientation to the list of grounds of employment discrimination prohibited under Title VII of the Civil Rights Act of 1964. I am confident that one day — and I hope that day comes soon — I will have that pleasure.”

“I would be equally pleased to awake to learn that Congress had secretly passed such legislation more than a half-century ago — until I actually woke up and realized that I must have been still asleep and dreaming,” Judge Lynch wrote. “Because we all know that Congress did no such thing.”

The arguments in the Second Circuit had a curious feature: Lawyers for the federal government appeared on both sides. One lawyer, representing the E.E.O.C., said Title VII barred discrimination against gay people. Another, representing the Trump administration, took the contrary view.

The Georgia case was brought by a child welfare services coordinator who said he was fired for being gay. The 11th Circuit, in Atlanta, ruled against him in a short, unsigned opinion that cited a 1979 decision that had ruled that “discharge for homosexuality is not prohibited by Title VII.”

The justices also agreed to decide the separate question of whether Title VII bars discrimination against transgender people. The case, *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*, No. 18-107, concerns Aimee Stephens, who was fired from a Michigan funeral home after she announced in 2013 that she was a transgender woman and would start working in women’s clothing.

“What I must tell you is very difficult for me and is taking all the courage I can muster,” she wrote to her colleagues. “I have felt imprisoned in a body that does not match my mind, and this has caused me great despair and loneliness.”

Ms. Stephens had worked at the funeral home for six years. Her colleagues testified that she was able and compassionate.

Two weeks after receiving the letter, the home’s owner, Thomas Rost, fired Ms. Stephens. Asked for the “specific reason that you terminated Stephens,” Mr. Rost said: “Well, because he was no longer going to represent himself as a man. He wanted to dress as a woman.”



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The United States Court of Appeals for the Sixth Circuit, in Cincinnati, ruled for Ms. Stephens. Discrimination against transgender people, the court said, was barred by Title VII.

“It is analytically impossible to fire an employee based on that employee’s status as a transgender person without being motivated, at least in part, by the employee’s sex,” the court said, adding, “Discrimination ‘because of sex’ inherently includes discrimination against employees because of a change in their sex.”

John J. Bursch, a lawyer with Alliance Defending Freedom, which represents the funeral home, said the appeals court had impermissibly revised the federal law.

“Neither government agencies nor the courts have authority to rewrite federal law by replacing ‘sex’ with ‘gender identity’ — a change with widespread consequences for everyone,” Mr. Bursch said in a statement. “The funeral home wants to serve families mourning the loss of a loved one, but the E.E.O.C. has elevated its political goals above the interests of the grieving people that the funeral home serves.”

James D. Esseks, a lawyer with the American Civil Liberties Union, which represents Ms. Stephens and Mr. Zarda’s estate, said the cases concern elementary principles of fairness.

“Most of America would be shocked if the Supreme Court said it was legal to fire Aimee because she’s transgender or Don because he is gay,” Mr. Esseks said in a statement. “Such a ruling would be disastrous, relegating L.G.B.T.Q. people around the country to a second-class citizen status.”

There is a second issue in Ms. Stephens’s case, one that could allow her to win however the Supreme Court might rule on whether Title VII applies to discrimination against transgender people. In 1989, the court said discrimination against workers because they did not conform to gender stereotypes was a form of sex discrimination.

The Sixth Circuit ruled for Ms. Stephens on that ground, too, saying she had been fired “for wishing to appear or behave in a manner that contradicts the funeral home’s perception of how she should behave or appear based on her sex.”

All three cases present the question of how courts should interpret statutes whose drafters might not have contemplated the sweep of the language they wrote.

In January, in a minor arbitration case, Justice Neil M. Gorsuch wrote that courts should ordinarily interpret statutes as they were understood at the time of their enactment. In a concurring opinion, Justice Ruth Bader Ginsburg said that was not always so.

“Congress,” she wrote, “may design legislation to govern changing times and circumstances.” Quoting from an earlier decision, she added: “Words in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic.”



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Discussion Questions

1. What are the five (5) prohibited forms of discrimination recognized by Title VII of the Civil Rights Act of 1964?

The five (5) prohibited forms of discrimination recognized by Title VII of the Civil Rights Act of 1964 are sex, race, national origin, cultural and religious discrimination.

2. In your reasoned opinion, should Title VII of the Civil Rights Act of 1964 prohibit discrimination on the basis of sexual orientation? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, it would not require a great expansion of judicial interpretation to conclude that discrimination against the LGBTQ community is a form of sex discrimination prohibited by Title VII of the Civil Rights Act.

3. How do you think the United States Supreme Court will decide this case?

This is an opinion question, so student responses will likely vary. In its 2015 Obergefell v. Hodges decision, the United States Supreme Court legalized gay marriage based on the Equal Protection Clause of the U.S. Constitution. If this is any indication of a trend, the Supreme Court may use this opportunity to further protect the rights of the LGBTQ community.

Article 2: "PepsiCo Is Suing Farmers in India for Growing the Potatoes It Uses in Lays Chips"

<https://www.cnn.com/2019/04/25/business/pepsico-india-potato-farmer-lawsuit/index.html>

Note: Since this article was originally published, PepsiCo has offered to settle the case, and the offer is still pending the defendants' approval. For more details concerning the terms of the settlement, please see the above-referenced internet address (the article has been re-titled "PepsiCo Offers to Settle with Indian Farmers It Sued over Potatoes for Lays Chips" and updated to include coverage of the settlement proposal).

According to the article, PepsiCo is suing four farmers in India for copyright infringement, claiming they were growing a variety of potatoes trademarked by the company for exclusive use in its Lays potato chips.

The lawsuits were filed earlier this month by the company's Indian subsidiary and will be heard by a district court in the western Indian state of Gujarat. PepsiCo says the farmers being sued are not among the thousands it has authorized to grow the trademarked potatoes.

But farmer unions and activists are fighting back against the food and beverage maker, marking the latest battle in India between local businesses and big global players. Small Indian retailers have been protesting against companies like Walmart and Amazon — claiming the American retailers are



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unfairly destroying their business — and even succeeded in getting the government to put in some restrictions.

PepsiCo, which owns brands like Pepsi, Lays, Gatorade and Quaker Oats, is reportedly seeking damages of 10 million rupees (\$143,000) from each farmer.

"PepsiCo is India's largest process grade potato buyer and amongst the first companies to work with thousands of local farmers to grow a specific protected variety of potatoes for it," an India-based company spokesperson told the media. "In this instance, we took judicial recourse against people who were illegally dealing in our registered variety."

The spokesperson did not comment on the damages the company is seeking.

Farmers' associations and activists in India called on the Indian government to step in and take action against PepsiCo. In a letter to the government published earlier this week and shared with CNN Business, they said the farmers' rights to grow and sell trademarked crops are protected under India's agricultural laws.

"We believe that the intimidation and legal harassment of farmers is happening because farmers are not fully aware of [their] rights," the letter said. The letter also claims PepsiCo sent private detectives to the accused farmers posing as potential buyers, secretly recording video of them and taking samples of the potatoes.

PepsiCo did not comment on those allegations.

The company's actions are "against food sovereignty" and the "sovereignty of the nation," said Kapil Shah of Jatan, one of the advocacy groups helping to defend the farmers.

"We will fight it out, no matter how big the company," Shah said. "Pepsi has made a huge mistake."

Discussion Questions

1. Define copyright and trademark.

A copyright is the right of exclusivity granted to the creator of a literary or artistic work, while a trademark is the right of exclusivity granted to any name, term, sign or symbol used to identify a product. Both copyrights and trademarks are types of intellectual property.

2. What is the legal protection afforded an intellectual property holder?

An intellectual property holder is entitled to: a) an injunction (i.e., a court order) prohibiting violation of the holder's intellectual property rights and b) money damages either based on the intellectual property holder's lost profit resulting from the violation or profits gained by the defendant due to the intellectual property right violation.



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3. How do you think the Indian court will decide this case?

This is an opinion question, so student responses may vary. In your author's opinion, more evidence is needed to determine whether there is an intellectual property violation in this case.

Article 3: "Alexa Is Always Listening —And So Are Amazon Workers"

https://abcnews.go.com/Technology/alexa-listening-amazon-workers/story?id=62331191&cid=clicksource_4380645_null_sq_hed

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

According to the article, it's not just Alexa listening when you talk to her.

Sometimes there's Amazon workers tuning in as well, the company confirmed recently. Amazon workers around the world listen in to help make its artificial intelligence, aka Alexa, smarter, the company said.

"This information helps us train our speech recognition and natural language understanding systems, so Alexa can better understand your requests, and ensure the service works well for everyone," a company spokesperson wrote in an emailed statement to the media.

Echo devices, Amazon's smart speakers, respond to keyword-detecting technology to know when a "wake word" like "Alexa" is uttered, and then stores and send the commands to the cloud, the company said.

"By default, Echo devices are designed to detect only your chosen wake word (Alexa, Amazon, Computer or Echo). The device detects the wake word by identifying acoustic patterns that match the wake word. No audio is stored or sent to the cloud unless the device detects the wake word (or Alexa is activated by pressing a button)," the statement said.

The existence of these teams was first reported by Bloomberg, who reported that the company has hired thousands of employees and contractors around the world, including in Boston, Costa Rica, India and Romania to review, transcribe, mark up and then feedback the information into its software to improve Alexa's grasp of language and voice commands.

Bloomberg reported that the majority of the transcribed clips were uneventful: commands to play Taylor Swift, bad singing in the shower or a child screaming for help.

However, the report cited more disturbing instances of recordings.

"Sometimes they hear recordings they find upsetting, or possibly criminal. Two of the workers said they picked up what they believe was a sexual assault. When something like that happens, they may share the experience in the internal chat room as a way of relieving stress," the report said.



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Amazon seemingly denies this portion of the report. The company spokesperson wrote, "when the wake word is detected, the light ring at the top of the Echo turns blue, indicating the device is streaming your voice request to the cloud. Only recordings after the wake word are ever streamed to Amazon."

The revelation of human teams working off of Alexa recordings may spark privacy concerns, but Amazon said, "we have strict technical and operational safeguards, and have a zero-tolerance policy for the abuse of our system. Employees do not have direct access to information that can identify the person or account as part of this workflow. While all information is treated with high confidentiality and we use multi-factor authentication to restrict access, service encryption, and audits of our control environment to protect it, customers can delete their voice recordings associated with their account at any time."

Still, a screenshot viewed by Bloomberg reporters showed that the human-reviewed recordings "don't provide a user's full name and address but are associated with an account number, as well as the user's first name and the device's serial number," the report said.

Discussion Questions

1. If the evidence presented in this article is accurate, is there a constitutional violation in this case? Why or why not?

Since there is no allegation of governmental invasion of privacy in this case, there is no constitutional violation. The Fourth Amendment to the United States Constitution only guards against "unreasonable searches and seizures" by the government.

2. What are the privacy protections afforded an individual by civil law? Is there an illegal invasion of privacy, in violation of civil law, in this case?

Like the United States Constitution's protection against governmental invasions of privacy, civil (common) law prohibits private-party invasions of privacy. In terms of whether Amazon has illegally invaded users' privacy in this case, student opinions may vary.

3. In your reasoned opinion, has Amazon acted unethically in recording the conversations of its Alexa users? Why or why not?

This is an opinion question, so student responses may vary. Some may argue that Amazon has an ethical obligation to disclose that Alexa users' conversations are being recorded, and that the recordings are used only for the purposes of improving the artificial intelligence of the Alexa device.



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Video Suggestions

Video 1: “Should Title VII Civil Rights Protections Include the LGBTQ Community?”

<http://fortune.com/2019/04/23/title-vii-supreme-court-lgbt-case/>

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

“Should Title VII Civil Rights Protections Include the LGBTQ Community?”

According to the article, the United States Supreme Court is taking on three cases that will determine whether a federal civil rights law regarding workplace discrimination applies to the LGBTQ community.

The law, Title VII of the 1964 Civil Rights Act, prohibits discrimination on the basis of race, color, religion, sex, and national origin. In its existing form, however, the law does not address sexual orientation or gender identity. Lower courts have been divided as to whether the law should include such protections.

The first two cases involve sexual orientation. The two individuals in question, Donald Zarda and Gerald Bostock, both alleged that they were fired from their respective jobs for being gay. Although Zarda died in 2014, the U.S. 2nd Circuit Court of Appeals ruled in his favor in early 2018, finding that discrimination on the basis of sexual orientation is in violation of Title VII. In Bostock’s case, a federal district court in Atlanta and then the 11th Circuit Court of Appeals dismissed the case.

The final case involves Aimee Stephens, a Michigan transgender woman, who was fired from the funeral home where she worked two weeks after she told her boss that she was transitioning. The U.S. 6th Circuit Court of Appeals ruled in Stephens’ favor.

The question is whether the Supreme Court—now with an empowered conservative majority—will side with the plaintiffs and expand the definition of Title VII.

The Trump administration has reversed course from the Obama administration so far, with the Justice Department taking the position that Title VII was not intended to encompass protections for gay or transgender individuals.



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“When Title VII was enacted in 1964, ‘sex’ meant biological sex; it ‘refer[red] to [the] physiological distinction’ between ‘male and female,’” the Justice Department wrote in an October 2018 brief, concluding that Title VII does not apply to discrimination against an individual based on his or her gender identity.

This position follows the publication of a leaked memo by *The New York Times* that found the Trump administration was considering rolling back Obama-era protections for transgender people, defining gender as a “biological, immutable condition determined by genitalia at birth.”

The Equal Employment Opportunity Commission, itself a part of the Trump administration, has taken an opposing stance, noting on its website that it “interprets and enforces Title VII’s prohibition of sex discrimination as forbidding any employment discrimination based on gender identity or sexual orientation.” The EEOC explicitly includes “firing an employee because he is planning or has made a gender transition” among its list of examples of LGBT-related sex discrimination claims.”

But without a national law that explicitly bars sexual orientation or gender identity discrimination, states are permitted to set their own standards.

Twenty-six states are in a federal circuit that have a ruling which “explicitly interprets existing federal prohibition on sex discrimination (under Title VII) to include discrimination based on sexual orientation and/or gender identity,” according to MAP, an LGBT advocacy think tank. Meanwhile, there are also 26 states in which there are “no explicit prohibitions for discrimination based on sexual orientation or gender identity in state law.”

James Esseks, director of the ACLU LGBT & HIV Project, who is representing Stephens and Zarda’s estate, said that a ruling against the individuals in these cases “would be disastrous, relegating LGBTQ people around the country to a second-class citizen status.”

“The LGBTQ community has fought too long and too hard to go back now,” Esseks said, “and we are counting on the justices not to reverse that hard-won progress.”

HRC legal director Sarah Warbelow said this is an opportunity for the Supreme Court to make clear that Title VII does apply to those who identify as LGBTQ.

“The growing legal consensus is that our nation’s civil rights laws do protect LGBTQ people against discrimination under sex nondiscrimination laws,” she said. “The Supreme Court has an opportunity to clarify this area of law to ensure protections for LGBTQ people in many important areas of life. The impact of this decision will have very real consequences for millions of LGBTQ people across the country.”

Alliance Defending Freedom, which is representing Harris Funeral Homes in Stephens’ case, has argued the opposite, saying this is an opportunity to clarify that equating sex with gender



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identity would undermine equal treatment for women, jeopardize the dignity and privacy of women, and put employers in difficult situations.

“Replacing ‘sex’ with ‘gender identity’ in Title VII should not be taken lightly,” the organization said. “Only Congress has the authority to make such a drastic shift—a change that has widespread consequences for everyone.”

The cases will be argued in the fall with decisions expected by June 2020—as 2020 campaigns are in full swing.

Discussion Questions

1. Define legal standing.

In order to sue, the plaintiff must have a vested interest in the outcome of the case. This is known as legal standing. If a plaintiff does not have legal standing, the court will dismiss the case.

2. Do the three (3) plaintiffs referenced in the article have legal standing to sue their employers? Why or why not?

By any objective measure the three (3) plaintiffs referenced in the article do have legal standing to sue their employers. The plaintiffs contend that their employer discriminated against them due to their sexual orientation, so they definitely have a vested interest in the outcome of their cases. Obviously, it remains for the United States Supreme Court to determine whether sexual orientation discrimination is prohibited by Title VII of the Civil Rights Act.

3. In your reasoned opinion, should the issue of LGBT discrimination be resolved at the state level, or at the federal level? Explain your response.

This is an opinion question, so student responses may vary. If the United States Supreme Court determines that sexual orientation discrimination is prohibited by Title VII of the Civil Rights Act, its decision will be uniformly applied across the U.S. as a matter of federal judicial precedent.

Video 2: “Judge Accused of Helping an Undocumented Immigrant Escape an ICE Officer”

<https://www.cnn.com/2019/04/25/us/massachusetts-judge-indicted/index.html>



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

“Judge Accused of Helping an Undocumented Immigrant Escape an ICE Officer”

According to the article, a Massachusetts judge and a former court officer are accused of helping a twice-deported undocumented defendant elude immigration authorities by slipping out a rear courthouse door.

Newton District Court Judge Shelley Richmond Joseph, 51, and former trial court officer Wesley MacGregor, 56, were indicted recently on obstruction of justice and other federal charges. They face counts of conspiracy to obstruct justice, obstruction of justice, obstruction of a federal proceeding, aiding and abetting, according to an indictment in US District Court in Boston. MacGregor was also charged with one count of perjury.

"This case is about the rule of law," US Attorney Andrew Lelling said in a statement. "We cannot pick and choose the federal laws we follow or use our personal views to justify violating the law."

Joseph and MacGregor appeared in federal court recently. They were released without bond after pleading not guilty.

"This prosecution is totally political, and Shelley Joseph is absolutely innocent," Joseph's attorney, Thomas Hoopes, told reporters outside court. MacGregor's attorney was not immediately available. She has been suspended without pay "until further order of this court," according to the state's Supreme Judicial Court.

Governor Charlie Baker, a Republican, "believes no one should obstruct federal law enforcement officials trying to do their jobs and supports the Supreme Judicial Court's decision to suspend Judge Joseph without pay," his office said in a statement. His administration has filed legislation to allow court and law enforcement officials to work with immigration authorities "to detain dangerous individuals."

"Everyone in the justice system -- not just judges, but law enforcement officers, prosecutors and defense counsel -- should be held to a higher standard," Lelling said. "The people of Massachusetts expect that, just like they expect judges to be fair, impartial and to follow the law themselves." Massachusetts Attorney General Maura Healey said the indictment was "a radical and politically motivated attack on our state and the independence of our courts" and that the matter could have been handled by the state Commission on Judicial Conduct and the Trial Court. "It is a bedrock principle of our constitutional system that federal prosecutors should not recklessly interfere with the operation of state courts and their administration of justice," she said in a statement.

Carol Rose, executive director of the ACLU of Massachusetts, called the case "preposterous, ironic, and deeply damaging to the rule of law" and said it had "everything to do with enforcing the president's anti-immigrant agenda."



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"This prosecution is nothing less than an assault on justice in Massachusetts courts, and it will further undermine community trust and safety," she said.

US Immigration and Customs Enforcement, in a 2017 report, listed Boston as a jurisdiction that limits cooperation with the agency.

ICE does not consider courthouses sensitive locations, the agency states on its website. Places where agents generally avoid making arrests include schools, hospitals, churches and ceremonies, the ICE guidelines state.

The subject of mounting ICE arrests at courthouses during the Trump administration has been particularly sensitive between major cities and federal officials. Local jurisdictions and attorneys have complained that arresting undocumented immigrants in courthouses has a chilling effect on their participation in prosecuting criminals as witnesses and reporting victims.

Federal prosecutors said the charges stemmed from an April 2, 2018, incident in which Richmond and MacGregor allegedly allowed an undocumented immigrant at a criminal court hearing to escape detention by an ICE officer.

Newton Police had arrested and charged the undocumented immigrant days earlier with being a fugitive from justice and drug possession, according to the indictment. Authorities later learned he had been deported from the US in 2003 and 2007 and was prohibited from re-entering the country until 2027. ICE issued an immigration detainer and warrant of removal.

A plainclothes ICE officer went to the Newton courthouse to execute the warrant.

At one point, the court clerk was directed by Joseph to ask the ICE officer to wait in the lobby, according to court documents.

When the case was called, a court audio recording captured Joseph, the defense attorney and the prosecutor speaking at sidebar about the ICE detainer.

The defendant's attorney told Joseph he believed his client was not the same person named in the fugitive warrant.

"My client denies that it's him," the attorney said. "ICE is going to pick him up if he walks out the front door. But I think the best thing for us to do is to clear the fugitive issue, release him on a personal, and hope that he can avoid ICE. ... That's the best I can do."

Joseph responded. "ICE is gonna get him? ... What if we detain him?"

The judge then allegedly ordered the courtroom clerk to "go off the record for a moment." The audio recorder was turned off for 52 seconds, the indictment said.

When the recorder was turned on again, the documents said, Joseph said she intended to release the defendant.



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The prosecutor said, "Your Honor, with the information that I have I don't think that there is enough tying him to the Pennsylvania warrant."

The defense attorney asked to speak with the defendant downstairs.

"I believe he has some property downstairs," the attorney said. "I'd like to speak with him downstairs with the interpreter if I may."

Joseph responded, "That's fine. Of course," according to prosecutors.

When reminded by the clerk that an ICE officer was in the courthouse, Joseph said, "That's fine. I'm not gonna allow them to come in here. But he's been released on this."

MacGregor then allegedly escorted the defendant, his attorney and an interpreter downstairs to the lockup and used his security access card to open the rear exit and release the defendant, the indictment said.

The ICE officer, meanwhile, was waiting for the defendant in the lobby outside the courtroom -- where the clerk told him the man would be released.

Joseph in April 2018 "made false and misleading statements" to other district court judges looking in the incident, according to the indictment. She allegedly told a senior district court judge that the courtroom recorder was shut off due to her "unfamiliarity with the Courtroom recording equipment." MacGregor allegedly told a federal grand jury in July that he did not know ICE agents were at the courthouse.

The indictment cited guidance issued in November 2017, by the Executive Office of the Massachusetts Trial Court, that said "DHS officials may enter a courthouse to perform their official duties."

Joseph was appointed to the Massachusetts District Court bench in November 2017 after working as a Newton-based criminal defense attorney and lecturing at law schools, prosecutors said.

MacGregor was a Massachusetts trial court officer since 1993. He was assigned to the Newton courthouse in 2016.

"Everyone in the justice system -- not just judges, but law enforcement officers, prosecutors, and defense counsel -- should be held to a higher standard," Lelling said. "The people of Massachusetts expect that, just like they expect judges to be fair, impartial and to follow the law themselves."

Discussion Questions

1. What is the professional obligation of a judge?



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A judge is duty-bound to reasonably preside over his courtroom, maintaining order, ruling over evidentiary decisions, and affording the litigants due process.

2. Describe the following alleged crimes listed in this case: conspiracy to obstruct justice, obstruction of justice, obstruction of a federal proceeding, aiding and abetting, and perjury.

Conspiracy to obstruct justice is an illegal agreement between two or more individuals to interfere with the realization of justice; Obstruction of a federal proceeding is interfering with a federal proceeding; aiding and abetting is assisting another individual in the violation of law; and perjury is lying in a judicial proceeding while under oath or affirmation.

3. In your reasoned opinion, did the judge act unethically in this case? Why or why not?

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



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Ethical Dilemma

Of Special Interest

This section of the newsletter addresses General Electric's subprime mortgage unit's (WMC Mortgage's) recent bankruptcy filing.

“GE’s Subprime Mortgage Unit Files for Bankruptcy”

<https://www.cnn.com/2019/04/24/business/ge-subprime-mortgage-bankruptcy-wmc/index.html>

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

“GE’s Subprime Mortgage Unit Files for Bankruptcy”

According to the article, General Electric is trying to put its sins from the financial crisis behind it.

WMC Mortgage, a defunct subprime lender that GE Capital acquired during the housing boom, filed for bankruptcy recently.

The Chapter 11 filing, a rare step by a major company, comes just weeks after GE (GE) agreed to pay a \$1.5 billion fine over WMC, a leading subprime lender that was shut down in 2007. News of the bankruptcy was reported earlier by Reuters.

The Justice Department alleged that WMC misrepresented the quality of subprime mortgages — contributing to the mortgage meltdown and ensuing financial meltdown. Investors lost billions of dollars when those subprime loans went bust.

GE said in a statement that WMC filed for bankruptcy to resolve its remaining liabilities "in an efficient and equitable manner."

WMC's bankruptcy highlights the repercussions of GE's decision in 2004 under former CEO Jeff Immelt to get into the subprime lending game at the top of the market.

"They saw quick and easy money. The consequences turned out to be a disaster," said John Inch, an analyst at Gordon Haskett who covers GE.

Federal bank regulators ranked WMC as one of the "worst" subprime mortgage lenders in major metro areas, with more than 10,000 foreclosures between 2005 and 2007.

GE, reeling from years of bad acquisitions and questionable decisions, is now seeking to clean up its debt-riddled balance sheet. Under CEO Larry Culp,



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GE has slashed its dividend to a penny, sold off long-held businesses and vowed to cut costs.

The WMC bankruptcy and recent Justice Department settlement could remove major questions that had been looming over the company and GE Capital, the financial arm that nearly destroyed GE during the financial crisis.

"This filing is another important step in the de-risking of GE Capital," a GE spokesperson said. GE emphasized that neither the parent company nor GE Capital are part of the filing and the case has "no adverse impact on our business operations."

GE has previously said in filings that putting WMC into bankruptcy could allow the company to no longer consolidate WMC's financials into the parent company. That could help make GE's balance sheet look healthier.

However, GE also said that a WMC bankruptcy would increase legal and administration expenses. GE first signaled a WMC bankruptcy was possible a year ago.

It's not the first time a GE unit has succumbed to bankruptcy.

In December 2000, Montgomery Ward, a retailer owned by GE Capital, filed for bankruptcy and liquidated. The retailer had been acquired by GE Capital in 1999 after emerging from a prior bankruptcy, according to filings.

GE, which was already making microwaves, jet engines and locomotives, decided in 2004 to add subprime lending to its empire. At the time, WMC was the sixth-biggest subprime lender.

"This fits the pattern that's long been established of GE buying high, selling low and doing whatever they could to drive earnings as high as they could — regardless of the consequences," said Inch.

The bankruptcy filing does not end GE's misadventure into subprime mortgages.

WMC is still involved in litigation with investors who allege the lender misrepresented the quality of mortgages it sold. Those investors want WMC to buy the mortgages back.

The WMC bankruptcy filing lists liabilities of between \$100 million and \$500 million. The largest unsecured creditors include Barclays, Morgan Stanley, Merrill Lynch and a unit of Deutsche Bank.

"The failure to disclose material deficiencies in those loans contributed to the financial crisis," Jody Hunt, the assistant US attorney general, said in a statement earlier this month announcing the \$1.5 billion GE settlement.

GE has said that the Justice Department settlement contains "no admission of any allegations" and it's "pleased to put this matter behind us."

Discussion Questions



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1. What is a subprime mortgage?

A subprime mortgage is a debt instrument issued to a high-risk debtor that typically involves less favorable terms for the debtor—more specifically, it involves a substantially higher interest rate.

2. What is Chapter 11 bankruptcy?

Chapter 11 bankruptcy is debt restructuring. Although Chapter 11 bankruptcy may involve some debt forgiveness, the essential purpose of a Chapter 11 plan is to restructure the debt so the debtor can more readily service the debt.

3. Describe the ethical breach in this case. More specifically, exactly how did GE Capital and WMC Mortgage act unethically?

As the article indicates, the United States Justice Department has alleged that WMC (a subsidiary of GE Capital) misrepresented the quality of subprime mortgages — contributing to the mortgage meltdown and ensuing financial meltdown. Investors lost billions of dollars when those subprime loans went bust.



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Of Special Interest

This section of the newsletter will assist you in addressing Article 1 (“Supreme Court to Decide Whether Landmark Civil Rights Law Applies to Gay and Transgender Workers”) and the Ethical Dilemma (“GE’s Subprime Mortgage Unit Files for Bankruptcy”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1—“Supreme Court to Decide Whether Landmark Civil Rights Law Applies to Gay and Transgender Workers”): Title VII of the Civil Rights Act of 1964

For an excellent summary of Title VII of the Civil Rights Act of 1964, please see the following internet address maintained by the United States Equal Employment Opportunity Commission (E.E.O.C.):

<https://www.eeoc.gov/laws/statutes/titlevii.cfm>

Teaching Tip 2 (Related to the Ethical Dilemma—“GE’s Subprime Mortgage Unit Files for Bankruptcy”): “What Is A Subprime Mortgage?”

For additional information regarding subprime mortgages, please see the following internet address:

<https://smartasset.com/mortgage/what-is-a-subprime-mortgage>



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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 6, 8 and 25	Chapters 1, 2 and 25	Chapters 3 and 44	Chapters 3, 25 and 44
Bennett-Alexander & Hartman, Employment Law for Business	Chapters 1, 3, 9 and 10	Chapters 1, 3, 9 and 10	N/A	1, 3, 9 and 10
Kubasek et al., Dynamic Business Law	Chapters 8, 12 and 43	Chapters 3 and 43	Chapters 2 and 32	Chapters 43
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 7, 8 and 24	Chapters 3 and 24	Chapters 2 and 19	Chapters 2, 19 and 24
Liuzzo, Essentials of Business Law	Chapters 4, 28 and 33	Chapters 1 and 33	Chapters 2 and 21	Chapters 2, 21 and 33
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 6, 8 and 51	Chapters 2 and 51	Chapters 4 and 30	Chapters 4, 30 and 51
McAdams et al., Law, Business & Society	Chapters 7, 13 and 16	Chapters 4 and 13	Chapters 2 and 15	Chapters 2, 13 and 15
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 9, 12 and 24	Chapters 3 and 12	Chapters 5 and 20	Chapters 5, 12 and 20
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 10, 11 and 20	Chapters 3, 4 and 20	Chapters 2 and 18	Chapters 2, 18 and 20
Sukys, Brown, Business Law with UCC Applications	Chapters 6, 23 and 33	Chapters 3 and 23	Chapters 1 and 21	Chapters 1, 21 and 23



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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, 9th Edition ©2019 (1259722333)
- Kubasek et al., Dynamic Business Law, 4th Edition ©2017 (1259723585) *New edition available for Summer/Fall 2019 use*
- Kubasek et al., Dynamic Business Law: The Essentials, 4th Edition ©2019 (125991710X)
- Liuzzo, Essentials of Business Law, 10th Edition ©2019 (1259917134)
- Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition ©2019 (1259917118)
- McAdams et al., Law, Business & Society, 12th Edition ©2018 (1259721884)
- Melvin, The Legal Environment of Business: A Managerial Approach, 3rd edition ©2018 (1259686205)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 18th Edition ©2019 (1259917126)
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14th Edition ©2017 (0077733738) *New edition available for Summer/Fall 2019 use*

