**TEACHING NOTE**

**I’VE LEFT, DO I STILL COME FORWARD?**

**Overview**

This decision-based critical incident is based on the experience of Jen a student-athlete. Jen, who was Muslim, was recruited by Public University. Her coach was a conservative Christian who engaged in proselytizing. The coach’s church was well known in the area and had strong adherents who were possibly constituents of the university. The coach was also very controlling about behavior in general and critical of Jen’s weight. The situation which was stressful, led Jen to transfer schools and leave this university. The following year the coach was fired; however, no information concerning the reason was given to the public. Jen must decide whether to come forward. Current players were not allowed to talk to the media nor were the Athletic Director or Board of Trustee Members.

The incident is appropriate for use in either the undergraduate or graduate courses in the legal environment of business, sports management or business ethics. A major issues in the case is ethical behavior within organizations as well as whistleblowing (coming forward with reports of misconduct), and religious harassment.

**Research Methods**

This critical incident was experienced by Jen while a student-athlete. All information from the critical incident is from public sources. References to these sources are at the end of the Teaching Note. While the authors directly reached out to Jen, she did not respond.

**Learning Objectives**

1. Students will analyze the situation in order to identify aspects of an ethical dilemma.
2. Students will apply a decision making model (COVER) to help evaluate Jen’s dilemma. .
3. Students will understand the legal definition of whistleblower and know about the various protections that do/not exist.
4. Students will evaluate aspects of hostile work environments and generate possible remedies available to someone in that environment.

**Questions**

1. How can you tell if Jen is facing an ethical dilemma? What is Jen’s ethical dilemma? How can she come to a decision?

2. Apply the COVER Decision Model to resolve the ethical dilemma presented in this critical incident.

3. Is Jen a whistleblower? If she comes forward, does the law protect her for doing so?

4. Did Public U create a hostile work environment through the actions of Coach Fran? What options are available to someone in a hostile work environment?

**Answers to Questions**

**1. How can you tell if Jen is facing an ethical dilemma? What is Jen’s ethical dilemma? How can she come to a decision?**

Researchers in behavioral ethics have discovered that one of the reasons that many people behave unethically, is because most people fail to recognize an ethical dilemma when it is presented to them (Bazerman & Tenbrunsel, p. 4, 2011). “Ethical dilemmas are problems because two or more equally good values are in conflict.” (Baird, 2012, p. 106). In this situation, Jen is facing two competing values. The first value is her privacy, if she does not come forward, she does not have to worry about the press and other individuals pressing her for information about her experience at Public U. She has moved on and maybe she should let it go. The second value in conflict is her desire to help others and possibly prevent this situation again. Since Jen has to choose between these values, she is facing an ethical dilemma.

**2. Apply the COVER Decision Model to resolve the ethical dilemma presented in this critical incident.**

“[E]thics instruction that focuses on strategies for addressing ethical dilemmas and emphasizing cognitive strategies is more effective than instruction that focuses on moral imperatives.” (Mitchell & Yordy, 2010, p. 37). When students are given an ethical framework or decision making model, they can better address ethical dilemmas that they may face. One of the ethical decision making models that provides an easy mnemonic tool to remember is called the COVER model. (Mitchell & Yordy, 2010). The COVER model prompts students to remember the following: “First I Ask Some questions to COVER my bases.

F = Facts C= Codes

I = Issues O = Outcomes

A = Alternatives V = Values

S = Stakeholders E = Editorial

R = Rules

This decision making model requires the student to first perform due diligence and ensure that he/she understands the facts of the situation, including what they do not know. The student needs to determine the issues involved in the dilemma, the various alternatives to the dilemma and who is affected by the dilemma. After the student has done their due diligence, they begin their philosophical analysis. They then can find out if there are any laws, rules, codes of conduct that govern the decision. They then do a cost benefit analysis to determine the results of each alternative; this is a way to incorporate the philosophy of utilitarianism into the discussion. They evaluate the values that in tension with one another. During this evaluation, students will look at deontological philosophies and/or virtue ethics that emphasize character. Next the students must evaluate the most newsworthy alternatives and determine how they feel if their decision was broadcast to the public in the news. Finally, the students have to look at the various alternatives and evaluate whether they would want that alternative to turn into a rule that everyone, faced with this same dilemma, should follow. Would they want everyone to follow that rule?

In this situation, the students will discuss the facts as contained in the C.I. The issue is whether or not Jen should come forward. Her alternatives are come forward/do not come forward. The stakeholders are many, but include, Jen, her family, her current university, Public U, Coach Fran, current players on Public U’s basketball team, current students at Public U, possible future players for Coach Fran in the event she ends up coaching somewhere else. Codes – there are really no laws or codes that apply to this situation. Jen is no longer a student at Public U, so their student code of conduct would not apply. Jen may not meet the definition of a whistleblower (see below) and she may not have any protections. Depending on how she left Public U. she may have signed an agreement with them preventing her from disclosing what she knows. Outcomes – here the students will discuss the pluses and minuses of coming forward and not coming forward and how each alternative would affect a stakeholder. If she does not come forward, she keeps her privacy, her new school is not impacted and neither is her family; however, the students/players at Public U could suffer from not knowing the truth, future players on Coach Fran’s teams could suffer the same ills if she stays silent. By coming forward, she inconveniences herself; however, she will bring resolution to Public U and its students and could be preventing harm to future players. Values – One value could be the “Golden Rule:” Do unto others as you would want them to do unto you. Would Jen have wanted some other player to have come forward before she signed with Public U? Does Jen want to be known as someone who will speak the truth even though that truth could have a negative impact upon her? Does Jen want to be known as someone who advocated for better treatment of college athletes? Editorial – by coming forward this will be published in the press – will Jen, her family, her school, her classmates think she did the right thing? Can she defend her decision to come forward as being the right decision? Rule – Do we want all people faced with type of dilemma to come forward? If the answer is yes, that all people who have left an organization due to religious intimidation and weight harassment should come forward and speak about what happened to them. Making this a rule could help others not be faced with type of treatment; however it could subject to further scrutiny in the spotlight.

**3. Is Jen a whistleblower? If she comes forward, does the law protect her for doing so?**

“Whistleblowers are persons, often employees or former employees, who report illegal or fraudulent activity by an employer, government or organization.  Employees may risk retaliation from their employers for making such reports, giving rise to state and federal protections for whistleblowers.” (National Conference of State Legislatures, 2013). Each state has their own Whistleblower protection laws; however, they all protect employees or former employees. Whether Jen would be considered a former employer by Public U is up for discussion. Recently, the National Labor Relations Board held that college athletes were employees for purposes of possibly forming a union. (Strauss and Eder, 2014). The State of Michigan defines “employee” as “a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.” (M.C.L. §15.361(a), 2013). Arguably, if she received a scholarship in order to play on the basketball team, she would fit the definition of employee. Most whistleblower protection laws prohibit the employer from taking any adverse action against the employee for disclosing information. In this case, Jen is no longer at Public U. However, if she discovered that Public U tried to disparage her, gave a poor reference, tried to interfere with her scholarship at her new school, then she could be protected under a whistleblower protection act.

**4. Did Public U create hostile work environment through the actions of Coach Fran? What options are available to someone in a hostile work environment?**

A hostile work environment is found when (1) a person has suffered intentional, unwanted discrimination because of their status in a protected class; (2) the harassment was severe or pervasive; (3) the harassment negatively affected the terms, conditions or privileges of the work environment; (4) the harassment was unwelcome; and (5) management knew about the harassment or should have known and did nothing about it. (Kubasek, 2012). Hostile work environments are generally found in cases involving sexual harassment. However, courts have begun to find hostile work environments when other types of discrimination have been found. Courts have stated that the same elements listed above for sexual hostile work environment claims also apply to religious hostile work environment claims (Swartzenruber v. Gunite Corporation, 99 F. Supp.2d 976 (2000) and Johnson v. Sinai Hospital of Greater Detroit, 2012 U.S. Dist. LEXIS 8643 (E.D. Mich. Jan.25, 2012)).

Applying those factors to Jen’s situation, Coach Fran subjected her to verbal abuse about her religion and her weight. Her religion puts her in protected class. The harassment was severe, it had a negative effect on the school environment, the harassment was unwelcomed and arguably management knew about the harassment (the President of Public U was at a party where Bible passages were read) and did nothing to stop it. It is likely that Public U allowed the creation of a hostile work environment by failing by failing to stop Coach Fran’s abuse.

Ghumman, Ryan, Barclay and Markel (2013) present an overview of religious discrimination in the workplace. They specifically define religious harassment as requiring individuals to participate (or not participate) in religious practices as a condition of employment. In this critical incident, it would appear certain religious practices were a basis of participation in the team. The EEOC (2008) suggests that religious harassment policies be well-publicized and uniformly applied. In the current CI Jen approached assistant coaches and the AD. It may be that those individuals did not have sufficient background to address the issue. Other options a person could consider would be visiting the Human Resource Department or Legal Office (many organizations have Diversity officers associated with such an office). Ghumman et al. (2013) suggest manager training that discusses religious expression versus proselytizing as a means to address religious harassment.

**Epilogue**

When Jen heard, she “cried tears of happiness when she [I] found out she got fired because I was so, so happy for those girls that they don’t have to go through that—or the girls coming in.” Jen then decided to come forward to the media. She gave several interviews including being interviewed on local television news. According to one report, being able to actually talk about the situation was “a weight lifted off her shoulders.” She indicated the situation was so stressful that her academics suffered. In one interview she stated (McCabe & Synder), “I just wanted people to be aware of what she did and has been doing and just to educate people that things like this do happen at the collegiate level…I know the NCAA has never, ever, ever, had a case with religious discrimination or anything like this.”

**Disclaimer**

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