CASES

For the

SEVENTEENTH

INTERCOLLEGIATE ETHICS BOWL

TAKING PLACE AT

THE ANNUAL MEETING OF THE

ASSOCIATION FOR PRACTICAL AND PROFESSIONAL ETHICS

IN

CINCINNATI, OHIO

ON THURSDAY March 3, 2011

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Note: Case 11, "Pesterpower", was used in the 2003 Texas Regional Ethics Bowl

Case 1

"Cons and Pros"

Americans have long thought of work as a suitable punishment for criminals. The Thirteenth Amendment to the United States Constitution distinguishes between slave labor and prison labor: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Accordingly, into the beginning of the twentieth century, prisons continued making frequent use of convict labor.

The use of prison labor came under fire in the 1920s from companies that depended on wage labor and had a hard time competing against prison-produced goods. Not only could prisoners be compelled to work for much less than workers in the open market, but they could neither strike nor organize labor unions. States could and frequently did attempt to prohibit the sales of interstate prison-made goods. They could not, however, control imports of prison-made goods from other states or from foreign countries. In response to these concerns, Congress enacted the Hawes-Cooper Convict Labor Act (passed in 1929 and effective in 1934) that declared goods imported from out-of-state to be subject to the laws of the state where they were to be sold. The 1940 Ashurst-Sumner Act (18 U.S.C. §§1761-62), in part, prohibited interstate transportation or importation of foreign goods made by convict labor.

The constitutionality of these laws has been upheld, and they are still in effect; however, they have been considerably weakened by subsequent legislation. In 1979, as part of the Justice System Improvement Act, Congress created the Prison Industry Enhancement (PIE) Certification Program, which exempted certain prisons and correctional institutes from laws regulating interstate sales of prison-made goods. The stated purpose of the program is to provide a work environment very similar to that on the outside, a comparable (minimum) wage, and training in marketable skills. Supporters claim that inmates who participate in these programs will be more likely to function as productive members of society upon their release. Although prison workers are paid minimum wage, the prison may, and usually does, deduct up to eighty percent for taxes, room and board, family support programs, and victims' compensation. Proponents say that the PIE Program not only helps prisoners in the long term by lowering the recidivism rate, but also in the short term by alleviating the boredom of prison life. Opponents of the PIE point out that the jobs held by convicts are taken away from the most economically hard-pressed segments of society.

While the United States has improved conditions in prisons and loosened its prohibition against interstate transportation of prison-made goods, and although it never stopped US prisons from exporting such products, the importation of such products from foreign countries is still prohibited. Foreign convict labor, however, exists in many forms and produces many types of goods and services not envisioned by the framers of the US laws.

To wit, on 12 May 2010 the BBC reported that a prison in India would form an experimental partnership with an Indian company, Radiant Info Systems, which specializes in handling outsourced work from other companies. On its website, Radiant Info Systems claims several strategic partnerships with American firms, among them IBM, Microsoft, Dell, and Sun Microsystems. Radiant has agreed to hire 200 inmates from a local Indian state jail to do data entry and around-the-clock processing of banking information. In this particular prison, forty percent of the inmates are educated (high school or baccalaureate). According to TopNews.in, the eligible applicants will not have a history of theft or robbery, but will be in prison for things like harassment or dowry-murder. The prisoners will be paid approximately US$3.30 per day, as opposed to US$0.33 per day for other prison work, such as weaving or making steel furniture, and will leave prison with marketable technical skills. The arguments presented by Radiant spokespersons bear a strong resemblance to those presented in favor of the PIE Certification Program.

Case 2

"Don't Ask, Don't Tell"

In February 2010 Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, announced his intention to work to repeal "Don't Ask, Don't Tell" (DADT). This practice requires, in essence, that anyone serving in the military is forbidden to inquire about anyone's sexual preferences (don't ask), and that homosexuals may serve in the military as long as they do not reveal their homosexuality (don't tell).

Since at least 1981 the US Department of Defense (DOD) has maintained explicitly that homosexuals are ineligible to serve in the armed forces. This ineligibility was retained in the 1993 law passed by Congress. Nonetheless, President Clinton implemented DADT as a practice, in which recruiters were instructed not to ask about sexuality, and recruits were instructed not to reveal sexual orientation. As a result, the law came to be known (inaccurately) as "Don't Ask, Don't Tell".

In 1993, when DADT became standard operating practice, the majority of US residents did not favor military service by homosexuals. But times have changed. A 2006 poll by Zogby International of 545 veterans returning from service in Iraq and Afghanistan found that approximately 75% were comfortable serving with gay service members. A 2009 USA/Gallup poll revealed that 69% of respondents favored allowing homosexuals to serve in the military and not requiring them to keep their sexuality secret. To date, no survey of the attitudes of the current 1.4 million active service members has been conducted.

Admiral Mullen's testimony to the Senate Armed Services Committee, as reported in the 3 February 2010 New York Times, quoted him as saying, "No matter how I look at the issue, I cannot escape being troubled by the fact that we have in place a policy which forces young men and women to lie about who they are in order to defend their fellow citizens." While, strictly speaking, they do not have to lie about their sexuality (they need only not to admit to it), still, they are denied the freedom to engage in age-appropriate behavior—sexual expression—that is typically an important facet of their personalities and social relationships.

In addition, DADT poses a raft of practical challenges. First, it is in conflict with a number of state laws. For example, in 1996 the Connecticut Supreme Court found that the DADT policy on homosexuality violated the state's 1991 Gay Rights Law barring discrimination based on "sexual orientation". This violation allowed the University of Connecticut to ban military recruiters from their campuses, a policy decision that has been repeated on many high school campuses. As a result, military recruiters' access to many of the young people who would be good candidates for military service is restricted.

Second, in support of equality, diversity, and non-discrimination, many university campuses have evicted ROTC (Reserve Officer Training Corps) units, and have enacted policies precluding their return until DADT is repealed. In addition to eliminating an historically important option for training officers, these university policies may pose an irresolvable conflict for land grant colleges, which were charged in the 18th century to prepare young people for military service.

On the other hand, past Chair of the Joint Chiefs of Staff, General (Ret.) Merrill A. McPeak argues in an opinion piece in the March 5, 2010 New York Times that DADT is a necessary practice for maintaining effective armed forces. Gen. McPeak asserts that if the purpose of the armed forces is fighting and winning wars, then combat forces most effectively achieve these ends when members of combat units are closely bonded with and dependent on each other. Gen. McPeak claims that openly gay comrades might discourage the development of this interdependence—"unit cohesion", thus undermining the ability of the armed services to fulfill their fundamental mission effectively. The General suggests that the failure of the Joint Chiefs to present a united front on this issue could encourage negative attitudes within ranks and contribute to dissention therein—a situation that occurred when the armed forces undertook racial integration in the 1950s.

Case 3

"DisenCHANted?"

Charlie Chan is a fictional Chinese-Hawaiian detective, created by novelist Earl Derr Biggers. Biggers published six enormously successful Charlie Chan novels between 1925 and 1931. Two silent Charlie Chan movies were made in the 1920's, followed by about four dozen more films, several radio programs, two television shows, and numerous comic book series over the next decades.

While cleaning out old files at Warner Brothers-Seven Arts Studios, vice president Harvey Chertok discovered a forgotten 1968 Charlie Chan documentary. Controversy erupted when the documentary was screened at the New York Chapter of the National Academy of Television Arts and Sciences in February 2010. While some film aficionados consider Charlie Chan to be an international entertainment icon who challenged many negative perceptions about the Chinese, detractors charge that the depiction of the Chinese-American detective is offensive racial stereotyping.

Critics call the portrayal of Chan by non-Asian actors in yellowface degrading. Chan's mangled singsong English and kitschy pseudo-Confucian aphorisms provoked ridicule: some older Asian Americans report that growing up they were mocked by Charlie Chan-inspired racial taunts. Chan's sons' flippant attitude toward their father's methodical investigations undermined the traditional value of respect for elders. Critics charged that Chan's apparent subservience to whites and his failure to respond to racial slurs encouraged offensive treatment and the perception of inferiority of Asian Americans.

Supporters counter that the first Chan films using Asian actors were commercially unsuccessful, and only when popular Caucasian movie stars played the detective did the movies become commercially viable. It was not racial bias, but rather business interests that dictated the choice of actors. The novelist Earl Derr Bigger's sympathetic treatment of Charlie Chan had a positive impact on interracial relations, shattering an offensive ethnic stereotype. Charlie Chan was created during a time when federal miscegenation laws were still determinative, and the American Immigration Act of 1924 prohibited immigration of Asians as an "undesirable" race. There was widespread fear among Americans of the "Yellow Peril": fear that Chinese overpopulation would lead to attempts to colonize and take over the world.

Biggers based his Charlie Chan character on the Chinese-Hawaiian detective, Chang Apana, after reading about Apana in a Honolulu newspaper. Apana joined the Honolulu Police Department in 1898. An astute and scrupulous investigator, fluent in several languages, with an intimate familiarity with the city and possessing a wide network of contacts, Apana was a respected and successful detective. His single-handed arrest of 70 criminals at one time is legendary. Biggers deliberately created the Apana-based character to counter the prevalent depiction of the Chinese as menacing and inscrutably evil. Charlie Chan was wise, shrewd, honorable, benevolent, and modest. He did not react to offensive stereotyping, but used these false perceptions to his advantage to thwart evildoers.

Nearly a century later, Charlie Chan remains a beloved hero to some, and an invidious stereotype to others.

Case 4

"Ethical Hacking"

Randal Schwartz worked for Intel Corporation from 1988 to 1993. While working in the iWarp division (later incorporated into Supercomputer System Division (SSD)), he recommended that they institute some fairly basic security practices, such as using strong (hard-to-crack) passwords. In 1991, he began running a password-cracking program called "Crack" on the password list for the division to insure that all users' passwords were strong. He left that division in 1992 and moved to another division within Intel. In 1993, while a system administrator in his new division, he became concerned that the security might have become lax since he had left SSD. A security breach in one division easily compromises every machine in the network. Using an old account in SSD, he downloaded the password file from the cluster of computers in SSD and ran Crack on it, breaking 48 weak passwords, one of them that of a vice president. This was a serious weakness.

Unfortunately for Schwartz, another employee noticed the activity, and reported it before Schwartz had a chance to inform Intel of his findings. Intel contacted the police, and he was subsequently tried under Oregon State law ORS 164.377, and convicted on three counts of computer crime. The law reads, in part, "Any person who knowingly and without authorization uses, accesses or attempts to access any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime." This crime is a Class A misdemeanor. Furthermore, the law labels as a Class C felony the act of altering, damaging, or destroying any computer, computer system, or computer network if the act is done knowingly and without authorization.

As a convicted felon, Schwartz lost the right to vote, to serve in a public office, or to serve on a jury. In 2007, however, Schwartz's record was expunged. The court order read, in part, "The defendant, for all purposes of the law, shall be deemed not to have been previously convicted or arrested."

Recently, a few schools have been offering certification programs in "ethical hacking," that is, the art of hacking into computer systems for good purposes. UMBC Training Centers, in Maryland, offer a non-credit program, called "Certified Ethical Hacker," that promises to prepare students for taking the EC-Council (International Council of E-Commerce Consultants) Certified Ethical Hacker exam 312-50. According to the EC-Council's website, an ethical hacker is "an individual who is usually employed with the organization and who can be trusted to undertake an attempt to penetrate networks and/or computer systems using the same methods as a hacker." The website warns that hacking is a crime in the United States and in many other countries, but points out that it is legal "when it is done by request and under a contract between an Ethical Hacker and an organization."

Such programs are also offered in other countries. Tilak Maharashtra University offers a three-semester long Advanced Degree in Cyber Security. Sunny Vaghela, a prominent ethical hacker in India, hosted a workshop at the Tryst science and technology festival, put on annually by the Indian Institute of Technology Delhi. As reported in a May 16, 2010 article in the Economic Times, Vaghela said, "At the workshop I highlighted some of the common yet neglected cyber crimes. I hacked into major government and private websites and later issued an advisory to these, suggesting possible solutions.''

Case 5

"Gin & 'Sin'"

Jillian grew up in the little hamlet of Jackpot, Nevada, less than a mile from the Idaho border. Jillian's father had been a pit boss at Barton's Club-93 for years and she spent her summers during high school busing tables at its coffee shop. For Jillian the most enjoyable part of those summers was sitting in the lounge off the casino floor sipping gin and tonic with her father and his friends after his shift ended. Sometimes these soirées lasted for hours as workers returned to work and those on break or finished for the day ambled in to claim the recently vacated seats.

Jillian's standard gin-invigorated rant was the injustice of the State law that restricted dealing and bartending to those 21 years of age or older. "I could run circles around Gus up there," she challenged, gesturing toward the bar where an avuncular man with thinning hair and shaggy mustache struggled to align the handful of bills in his hand. "Sweet as the day is long, but still not exactly sure what a Tom Collins is." "A Collins for Sweet Jill," shouted Jack mischievously. Jack worked at the Phillips 66 across the street and went to high school with Jillian. He loved a cold beer on a hot day and occasionally joined the group when his Mom was working the counter in the coffee shop, just across the casino floor. Jack threw her a wave as he waited for the verdict on the Collins.

Jillian celebrated her eighteenth birthday a few days after graduation, and soon found work about 70 miles south, in Wells. She was sad to leave Jackpot, but busing tables wasn't the key to independence. Opportunity was down the road, not around the corner.

Jillian landed at Bella's Hacienda Ranch, a very popular brothel in Eastern Nevada. She found prostitution to her liking. It was lucrative (at least for attractive teenagers), the hours were great (two weeks on and two weeks off), and, frankly, she liked the men. In the brothel, she was in control and she liked it. As an independent contractor, she had power, too, except at the bar. Drinking under the age of 21 is prohibited in Nevada, unless the minor is in the presence of a parent or guardian. It was always awkward negotiating a price for her body with a stranger while explaining that she was too young to legally accept a drink from him.

Two years later, when Jack turned 21, he proposed to Jillian who was now 20. The wedding and reception, they decided, would be at Jack's parents' home in Rogerson, Idaho, only a few minutes up the road from Jackpot. The property had a largely empty red barn that Jack transformed into what could best be described as a German beer hall. Rows and rows of tables pointed toward a raised dance floor and stage for the band. Along the back of the room six feet of beer taps, spaced six inches apart, stood at attention. Blue and white bunting hung everywhere. Although the polkas and toasts sometimes grew loud, the crowd was well behaved, perhaps because the entire communities of Jackpot and Rogerson were in attendance, parents and neighbors included.

This would have been the end of the story, were it not for Francis. Francis, Jack's second cousin and a reporter for the Twin Falls News, decided to write a story about the "Munich Wedding in Rogerson" when his editor complained that the newspaper was under attack for not including enough rural content. "What's more rural than Rogerson?" he thought. With the newlyweds' blessing, the story appeared the next day, Sunday, along with pictures of the happy couple toasting their guests.

On Monday morning, as Jillian and Jack packed their Mini Cooper for their honeymoon in Pocatello, an Idaho State Police car pulled up to Jack's parents' home in Rogerson. Jillian and Jack were taken away in handcuffs: Jack charged with providing alcohol to a person under 21 years old, and Jillian for underage drinking.

Case 6

"Hemmed In"

Even before Haiti's devastating earthquake in January 2010, economists and politicians debated how to help Haiti rise from its grinding poverty. Since the earthquake, the island nation's economic situation has become dramatically worse.

In 2009, Paul Collier, an Oxford economist, forecasted that global recession and weather disasters would continually threaten Haiti's 'fragile' socioeconomic condition. His report to the United Nations Secretary-General, entitled *Haiti: From Natural Catastrophe to Economic Security*, recommended establishing garment factories where hundreds of thousands of Haitians could work. Though some economists and investors view Haiti as caught in an intractable cycle of despair, Collier pointed out that Haiti has many conditions that make economic development likely to succeed. He notes other countries, like Bangladesh, where such factories created a quick base of economic opportunity.

President Obama has taken Collier's recommendations seriously. He sent his UN Special Envoy for Haiti, Bill Clinton, to Haiti to endorse Collier's recommendations. In a second visit, after the earthquake, Clinton continued to promote garment assembly for duty free export. On other occasions, Clinton has called for the US to raise its import quota on fabric items to create demand and encourage investment in Haiti.

In Haiti, some grassroots organizations oppose the US-backed UN recommendations. They refer to garment factories as exploitative and decry export-oriented development, calling instead for sustainable rebuilding (for example, infrastructure development and producing goods and services for the Haitian market). They worry that jobs would be diverted from other Caribbean countries with less poverty and higher wages, thereby undermining these fragile economies. Opponents contend that Haitian garment workers could be paid unlivable wages. Proponents of garment industry expansion point out that multinational firms usually pay more than locally owned companies.

Case 7

"Loopy Juice"

Scotland's per capita alcohol consumption is the eighth highest in the world. Health and social problems related to alcohol abuse and subsequent loss of productivity cost Scotland $3.6 billion annually.

Buckfast Tonic Wine™ (also called "Wreck the Hoose Juice", "Loopy Juice", "Commotion Lotion", and other pet names) is 15 percent alcohol by volume, and each 750 ml bottle contains as much caffeine as three liters of Coca Cola™. The combination of alcohol, sugar, and caffeine can make people simultaneously uninhibited, hyper, anxious, and combative. Buckfast drinkers often get blindingly inebriated, but are simultaneously so charged by the caffeine, that they are unable to sleep and so keep on drinking. Its syrupy sweet taste and low price make it a favorite "starter" beverage for novice drinkers.

Loopy Juice accounts for less than 1% of Scotland's alcohol market, but has a disproportionate impact crime. In the Strathclyde region of Scotland (population 2,300,000), Buckfast is mentioned in crime reports on average of almost four times a day: a total of 5,638 reports between 2006 and 2009 (the bottle was used as a weapon in 114 of them). A survey of offenders at the Polmont Young Offenders Institution, Scotland's largest juvenile detention center, revealed that over 40% of the juvenile offenders who drank before committing their crime drank Buckfast. The Caffeine Awareness Association named Buckfast Tonic Wine the "Worst Caffeinated Product" of 2010; however, when Scotland's Minister of Justice asked liquor stores to limit sales of Buckfast, a backlash by aficionados caused sales to soar.

Buckfast has been produced since the 1880's at Buckfast Abbey, an 11th century monastery in the Devon countryside, by an English order of Benedictine monks. In the 1920s Buckfast's formula was enhanced with caffeine to reach a larger market (prompting suggestions that the name be reversed to "Fastbuck"), and was often prescribed by physicians for depressed coalminers. Daily sales of Buckfast in Scotland now total more than £50,000.

According to The New York Times (3 February 2010), the Right Reverend Bob Gillies, Episcopalian Bishop of Aberdeen and Orkney, charged that the monks who make and profit from Buckfast had betrayed the teachings of St. Benedict by knowingly causing personal and social damage through their product. The monks denied responsibility for the misuse of their "medicated wine". A spokesperson for J. Chandler & Company (the distributor of Buckfast) responded, "It's always wise to remember that Jesus turned water into wine".

According to Britain's The Independent (1 September 2008), despite the link between Buckfast and crime and the havoc Buckfast causes society, the monks plan to increase production of Buckfast in response to growing demand. The article quoted J. Chandler & Company spokesman Jim Wilson: "The responsibility to behave properly and drink within reason lies with the drinker, not the drink. People who wish to drink simply to get drunk will do this whether they select Buckfast or any other drink."

Case 8

"Lords of Creation"

Following heated debate, the British House of Lords passed the Human Fertilisation and Embryology Bill, which allows the creation of mixed human-animal embryos for medical research purposes.

After removing the nuclei from animal embryos, human DNA is inserted into the embryo to create interspecies embryos–cytoplastic hybrids or "cybrids" for short–that proponents claim are 99.9% human and .1% animal. Cybrids may be kept for a maximum of fourteen days, after which time the beginnings of the spinal cord and brain begin to form. Stem cells can be harvested during those two weeks to be used for research purposes. The legislation prohibits the implantation of cybrids into humans.

Supporters claim that due to the short supply of human embryos, interspecies embryos are necessary. Contributing to the shortage of human embryos in Britain is the prohibition of the sale of human ova, which are necessary for making human embryos. Human embryos are used, among other things, as a source of stem cells. Stem cells are used in research to better understand and develop treatments for neurogenerative diseases, developmental abnormalities, cancer, and a host of other diseases and injuries. Among other promises, stem cell technologies hold the potential for improved burn treatment, regenerative medicine, organ transplantation, and providing the means for infertile couples to have children who carry some of their genetic material. Better treatment of disease and traumatic injuries has tremendous social benefits for individuals and their quality of life. There are potential economic benefits for society as well, due to greater productivity of healthier individuals and reduced cost for treatment for traumatic or chronic conditions. The research will offer insights into the working of the human body on both the cellular and integrated levels, including human growth and development.

Opponents claim that creating interspecies embryos tampers with the fundamental nature of what it means to be human, and challenges the dignity of human beings. Many members of society hold deep religious convictions against tampering with human embryos. Some fear that it is inevitable that a cybrid will be implanted in a human uterus...or in an animal uterus, and allowed to develop to term, resulting in the birth of a cybrid. Many types of research have resulted in devastating unforeseen consequences. It is not possible to predict how this research will affect the course of human and animal evolution: opponents claim it is particularly troublesome that these consequences may affect the fundamental meaning of being human.

Case 9

"Papers, Please."

On April 23, 2010, Arizona Governor Jan Brewer signed AZ 1070 into law. AZ 1070 (modified one week later by HB 2162) requires that police officers who, upon stopping someone for any other suspected legal infraction, "reasonably suspect" that their subject is in the country illegally, to demand proof that the subject is in the U.S. legally. Those who cannot show documentation of legal entry (e.g., valid state driver's license, H-1B visa, etc.) will be arrested and detained until their status is clarified; those unable to provide documentation will be fined up to $100 and may be jailed for up to 20 days. AZ 1070 also prohibits hiring workers from the back of a truck, and fines employers $1,000 if they are caught doing so.

Because immigration policies and practices have implications for international relations, immigration policy is solely the province of the national government. However, the federal government has been unable (or unwilling) to stem the tide of undocumented immigrants: To date an estimated 12 million foreign nationals illegally reside in the U.S. While these immigrants originate in many countries, those in Arizona are primarily Mexican and Central American. Arizona is home to an estimated half million undocumented immigrants—who comprise roughly 10% of Arizona's population.

Recruited by employers in the agricultural and construction industries in the Southwest, tens of thousands of Mexican citizens cross into the U.S. each year. So large an influx of workers (many accompanied by their families), employed in businesses that have higher-than-average health risks, has strained the Arizona public education and healthcare systems, already reeling from lost tax revenues resulting from the current recession. Further, because undocumented aliens are typically willing to work for much lower wages than American citizens, the immigrants are preferentially hired over the many Arizona citizens left unemployed in the presently struggling economy.

In short, supporters of the bill hope to reduce the influx of illegal immigrants and the drain on their tax-supported services, and improve employment opportunities for legal residents. They are hopeful that the bill will reinvigorate national efforts to enforce and/or reform immigration policy.

Critics of AZ 1070 accuse the state of scapegoating a vulnerable population, blaming them for aggravating the current economic downturn of the state. Critics' greatest concern, however, is that the law virtually insures racial profiling of persons of color: first, the vast majority of undocumented aliens in the United States are Mexican; second, the law does not articulate any characteristics or behavior that would constitute or even merely raise "reasonable suspicion" of undocumented status. The latter void suggests that no one may be "reasonably" suspected and, thus, no one may be "reasonably" detained. The former fact suggests that only dark skinned people will be stopped—effectively singling them out because of race. Thus, even if the motivation for AZ 1070 is not racially motivated, its application will invariably be race-based.

In response to AZ 1070, many persons, organizations, and cities have denounced the law. President Obama worried that the bill is antithetical to American goals and values; and Mexican President Calderon described the law as a violation of human rights. The Los Angeles City Council voted to cancel any contracts with Arizona and its cities, and many other cities across the nation are considering similar actions. Organizations are considering relocating their conventions outside the state, and individuals are changing vacation plans to avoid Arizona. Long-distance truckers are looking at changing routes to circumvent Arizona. Such actions are likely to aggravate Arizona's fiscal woes rather than the reverse, as the bill's supporters anticipated.

Opinion polls show that approximately one-half to three-quarters of those polled favor at least some aspects of the law. Many respondents cite the failure of the federal government to address immigration effectively, and increasing demands for tax-supported services in the face of decreasing tax revenues.

Case 10

"Paygrade"

Parents, industry, and society are heightening pressure on school districts to improve elementary and high school student achievement. Most states have standardized testing to track student achievement, but the resulting data are open to multiple interpretations and controversy. In addition, there is little consensus on how to improve students' performance. But, eventually, attention focuses on teachers. Some US school districts financially reward teachers for their students' achievement. Research, however, does not provide clear evidence of success for these merit pay schemes. Many states are even more interested in quality improvement in order to be eligible for funds from the Obama administration's "Race to the Top" program.

In Colorado, teachers could be denied tenure or fired for poor performance, but they rarely were. In May 2010, the Colorado legislature passed the much-contested Senate Bill 191. The new legislation ties tenure and continuation of tenure (changing the fundamental meaning of the term) to teacher effectiveness. One half of every elementary and high school teacher's annual evaluation will be based on multiple measures of student progress. To earn tenure, teachers need to receive three consecutive "effective" ratings. They will lose tenure and revert to probationary status with two successive "ineffective" ratings. If tenure is lost, the teacher can be removed, though the bill includes an appeals process. To regain tenure, a teacher needs to receive three consecutive "effective" evaluations.

The Colorado Education Association opposes the bill, citing budget-mandated larger class size, lack of parental involvement, and ill-defined measures of student progress. The American Federation of Teachers ultimately endorsed SB 191 after negotiating concessions for appeals and deference to seniority when teacher layoffs are anticipated.

Case 11

"Pesterpower"

John works for an ad agency and has to design an ad campaign for ZazzBrands, a new client that manufactures clothing for teens. In their past campaigns through another agency, ZazzBrands has targeted the intended purchaser of their product, normally teenagers with their own clothes budget or parents of teens. But John suspects that a more profitable and far-sighted approach will be to target even younger kids. He envisions a line of similar styles for children and series of ads that would run on Saturday morning cartoons intended for audiences under eight years old. The ads would feature teenagers in social settings scoring prestige points with their friends because their choice of clothing is so independent, youthful, and because they are comically defiant in the face of the disapproval of parents and teachers. If handled properly, John reasons, the ad campaign could get children from a very early age to connect with ZazzBrands as an emotionally supportive company that truly understands what it means to be a repressed and misunderstood kid in a world dominated by adults.

According to some marketing studies, brand loyalty begins very early, possibly as early as age two. According to a report published on the Media Awareness Network website, by the age of three twenty percent of children make specific requests for name brand products. Furthermore, the Annenberg Public Policy Center reports that forty-seven percent of US children have a television set in their bedroom.

Many groups are trying to outlaw or restrict ads to children, citing several reasons. Small children are not able to distinguish between programming and commercials. Furthermore, because smaller children do not make their own purchases, companies who advertise to them rely on pesterpower to get children to nag and whine until their parent gives in to the demands. Advocacy groups claim that ads brainwash children into becoming eager consumers who increasingly define themselves in terms of the things they own. In many countries, in fact, ads to children are simply banned.

John believes that ZazzBrands products have nothing to set them apart from any other line of clothes, but turning today's children into diehard fans of their product will build a solid, brand-loyal customer base for the future.

Case 12

"Running Away from Home"

Andrea felt as if she had reached the Promised Land when she unlocked the door to her new house for the first time in 2006. The bungalow in Kings Beach, a small California town on the north shore of Lake Tahoe, meant she no longer had to commute over the Mount Rose Summit (8,911 feet) to her job in Incline Village. Sure, she reasoned, she was now spending close to 50% of her income on her mortgage, property taxes and homeowners insurance, but her commuting costs had dropped significantly and the singular location of her home protected her from taking a loss when it was time to sell. In addition, her home, and those surrounding it, had deed restrictions that prohibited renting. Just another hedge against falling home prices, she reasoned.

Four years later, just after New Years 2010, it was time to move back over the Carson Range for graduate school. So Andrea listed her home for sale "by owner" for a modest 6% over what she bought it for in 2006 ($411,300). After all, the economy had soured in the interim so she couldn't expect the kind of appreciation others experienced earlier in the decade. After her property listing generated little interest, she sought the help of an appraiser and learned to her dismay that her home was probably worth only $288,000. The housing bubble had indeed burst everywhere.

"Options, options, options," Andrea thought, panicked. According to her calculations it would be 2025 before she could sell her home for what she paid for it. Or maybe 2035. Andrea first tried to have the renting restrictions removed from her deed. This, she soon learned, was a long and expensive process with very little likelihood of success. Deed restrictions are valuable precisely because they run with the land in perpetuity.

Andrea's friends all advised her simply to walk away from her home, since California is a non-recourse mortgage state. Essentially, these states prohibit deficiency judgments–a judgment against a debtor when a foreclosed home does not sell for enough at auction to pay the mortgage in full. There are 12 non-recourse mortgage states. These are commonly known as jingle mail states because the borrower can effectively void an obligation to pay a mortgage by placing the keys to the property (the jingle) in the mail to the lender.

Jingle mail sounded like the way out, but it troubled Andrea. After all, her mortgage was a promissory note–a written promise to repay a loan under specific terms. Since the lender didn't violate those terms and she had the means to make her mortgage payments, how could she justify breaking such a promise?

Andrea's Dad suggested a short sale, where she would negotiate with the lender to sell her home at a price lower than the outstanding principal on her mortgage, and the lender would accept the sale proceeds to settle her debt. This seemed like a reasonable solution to Andrea; unfortunately her lender didn't agree. The risk management officer at the bank explained that they would not begin negotiations on a short sale until she was at least six months in arrears. This, too, was essentially a broken promise (not paying her mortgage), but she seemed to get permission from the bank for doing so.

After six months of not paying her mortgage, Andrea had saved a considerable sum (over $13,000) and now lives "rent-free" with impunity. The bank still refuses to negotiate, yet isn't in any hurry to foreclose and evict Andrea. "Am I doing the right thing?" Andrea wonders. "When did figuring out the right thing become so hard?"

Case 13

"Smokescreen"

Since 2005, a nicotine-free hiring policy has been adopted by a growing rank of employers including, among others, the Cleveland Clinic, Medical Mutual of Ohio, Scotts MiracleGro Company, and USI Financial. In early 2010, Summa Health Systems, the largest employer in Akron OH, stopped hiring smokers. As of 1 May 2010, St. Luke's Hospital and Health Network in Bethlehem PA no longer hires smokers.

Employers justify the selective hiring practice, citing data that support this decision. The U.S. Centers for Disease Control and Prevention (CDC) assert that smoking is the # 1 preventable cause of death, leading to heart disease, emphysema, lung cancer and other costly health problems. A 2006 study published on the website of the Ohio Health Policy Institute reported a number of findings demonstrating the impact of smoking on business costs. Businesses lose $3,400 per year for every employee who smokes. Smokers average 6.16 missed days of work per year due to illness compared to 3.86 days for nonsmokers. Employees who smoke have almost twice as much lost production time per week as nonsmokers. Businesses average $2,189 in workers' compensation costs for smokers compared to $176 for nonsmoking employees. Employees who smoke drive health insurance premiums up. Health-related and insurance companies maintain that hiring only non-smokers models good behavior for clients and society.

Short of a ban on hiring smokers, many companies have taken advantage of federal workplace clean air rules to encourage their smoking employees to quit smoking. Some employers have extended smoking prohibitions to the entire workplace (including outdoors), and ban employees from starting their workday smelling like smoke. In the Dayton OH area, Kettering Health Network employees are not allowed to smoke during breaks because they may return to work smelling of smoke. Other companies offer insurance incentives (within Health Insurance Portability and Accountability Act – HIPAA limitations) and other inducements to encourage smokers to quit smoking. However, employers that have gone to the more extreme ban on hiring smokers hope that eventually the culture of their companies will change and lead to a completely smoker-less workforce.

For companies with a no-hire policy, new hires are required to take a urine test as part of their pre-employment physical. The test indicates the presence or absence of cotinine, a nicotine metabolite with a relatively long half-life that remains in the urine of habitual smokers. Job offers are withdrawn for those who test positive for cotinine, or, in some cases, the smoker must agree to take a smoking cessation class and pass a follow-up urine test before the job offer is finalized. Current smokers are not affected at organizations banning new hires who smoke, except for possible disincentives to smoking (like higher insurance premiums) or incentives to quit (bonuses, etc.).

The Cleveland Clinic website posts the following hiring policy:

> To take further steps in preserving and improving the health of all its employees and patients, Cleveland Clinic has recently implemented a nonsmoking hiring policy requiring all job applicants and individuals receiving appointments to take a cotinine test during their pre-placement physical exam. This is a pre-employment test only.

During a presentation at the Akron Roundtable, reported on 29 July 2008 in the Akron Beacon Journal, Cleveland Clinic President and CEO Dr. Cosgrove said that not hiring smokers had saved the Cleveland Clinic system about $7 million in 2007.

Uwe Reinhardt, Professor of Economics and Public Affairs at Princeton University, is quoted on the Ohio Health Policy Institute website:

> "Management is facing tough decisions with regard to controlling [health] costs. You really have two choices: make everyone share more of the cost burden, or use your legal right to go after those who are demonstrably reckless with their health. Since a small minority uses the majority of health-care resources, they need to be held accountable for their actions."

Not surprisingly, the no-hire policy has its critics who argue that employees should be free to engage in any legal activity during their off-work hours. They wonder whether not hiring smokers presages prohibitions against hiring those who are overweight, for example, given that the CDC confirms that obesity is the # 2 preventable cause of death in the US. Perhaps employers will avoid prospective employees who engage in risky activities such as hang gliding or mountain climbing.

Lewis Maltby, President of the National Workrights Institute, is quoted in The New York Times on the Web (8 February 2005): "Once you cross the line and allow employers to control any type of behavior that's not related to job performance, there's no limit to the harm that can and will be done."

The American Civil Liberties Union also opposes these hiring limitations, but Ohio is an 'employment at will' state, which limits the possibility of legal action. States cannot interfere with federal laws banning discrimination based on race, color, religion, sex, national origin, gender, age, disabilities, or genetic information. Individual states can pass specific legislation to prevent employers from making smoking status a condition of employment. Unlike Ohio, more than half the states plus the District of Columbia have done just that, offering varying levels of protection. Connecticut and California have laws prohibiting hiring discrimination based on any legal behavior. The remaining states have no such limitations.

Case 14

"STELLAAAH!"

Stella was always a little irritable in morning, as Dr. White could attest. "The demands. The objections. Her unmet cries for attention. I wonder how he lived with her for so long. Thank God she's gone." But, she was, in fact, still there, just across the hall.

Stella, a 7 year-old purebred Saint Bernard, is Bubba Hart's companion. She patrols daily in front of the elegant brownstones along Ovington Avenue, in Bay Ridge, Brooklyn. The children in the neighborhood are protective of Stella and look forward to seeing her standing sentinel as their school bus turns down their street in the afternoons.

A silent sentinel, though, Stella was not. Her bark was tremendous. Stella's extended vocal performances each morning (and each afternoon and each evening), forced Dr. White's once simple pleasures–like the New York Post and a cup of coffee in her sunny kitchen–underground. Well, at least down the block to Starbucks. Bubba was exasperated, both by his inability to quiet Stella and the constant hounding by his neighbors in the building demanding he do so.

Finally, as if channeling Almira Gulch, Dr. White persuaded the co-op board to consider evicting Stella. The co-op board ruled in January that if Bubba could not keep Stella's exuberant bark in check, either Bubba or Stella would have to go. The barking soon stopped and everyone, except for the children on the block, thought Stella was gone.

Bubba had been beside himself when he considered the likelihood that he must either leave his home or part with Stella. Moving would most likely just transfer the problem to another building and Bubba could find no one willing to take in Stella. Euthanasia was an unbearable option to Bubba.

Bubba tried everything he could think of to muzzle Stella. This included a muzzle (impractical), a collar that sprays malodorous citronella when Stella barks (toxic) and trips to an animal behaviorist (unsuccessful). His veterinarian, Dr. Robert Boyd, finally suggested a minimally invasive procedure called debarking. Debarking involves cutting an animal's vocal cords, either through the mouth or through an incision in the larynx. Dr. Boyd claims that dogs recover very quickly and don't seem to be any worse for wear. "My clients report that debarking has no effect on the animal's personality."

Dr. Boyd's professional partner, Maggie Conley, made a scene in the lobby of their practice when she overheard Dr. Boyd's advice. "No, please. How can you destroy an animal's central means of communication!"

"Maggie. They almost always can still make sounds, their barks are just muffled and raspy," Dr. Boyd interjected.

"Bobby, no! Last year I had to operate on a debarked dog after excessive scar tissue put her into respiratory distress."

"One in a million," Dr. Boyd protested. Finally, Dr. Conley pulled Dr. Boyd over to an impressively framed copy of the AVMA (American Veterinary Medical Association) Principles of Veterinary Medical Ethics.

"There!" Dr. Conley insisted, pointing to paragraph IIa. It read: "Veterinarians should first consider the needs of the patient: to relieve disease, suffering, or disability while minimizing pain or fear."

“How can you square debarking with that?” she asked.

“But Margaret,” pleaded Dr. Boyd, clearly exasperated. “Even the AVMA recommends debarking in some situations.” Dr. Conley waved him away. By the expressions on their clients’ faces, this conversation did not belong in the waiting room.

Bubba had Stella debarked on Saturday, after he read that the Westminster Kennel Club sanctions debarking for show dogs. Even so, it still seemed strange to Bubba that so many states prohibit it. It's probably just good politics, he thought.

Months after the debarking, Bubba still couldn’t shake his nagging doubt over what he had done to Stella. He still searches her brown eyes every night for some sign that might lighten his burden.

Case 15

"TO 'D' OR NOT TO 'D'"

Academic dishonesty has reached epidemic proportions on college campuses. Myriad studies find–at large and small, private and public, institutions–that as high as 76% of students report having cheated at least once on a paper or examination. As one response to this behavior, Simon Fraser University in British Columbia, Canada, is considering a notation on the transcript of a student caught cheating: "FD" to indicate that the failing grade (F) resulted from academic dishonesty (D).

The motivations for cheating are many and various: fear of failure, planning a post-baccalaureate education in a competitive field, competing obligations for one's time, and a belief that an assignment is needlessly difficult or meaningless, to name a few. In the current technological environment, cheating has become much easier, as students download entire papers from the web, use web sources without citation, transfer photographs of exams via cell phones to friends who will take the exam later, and program phones with complex formulas or exercises that may be retrieved during an exam.

The implications of cheating extend beyond the campus. Cheating can diminish an institution's reputation and the value of its diplomas. Robert Mittelstaedt, Dean of the W.P. Carey School of Business, notes on the school's website, Knowledge@ W. P. Carey, widespread cheating risks the integrity of universities: "If a school becomes known as a place where you can cheat and get away with it and get a degree without working very hard, eventually that is the kind of students the school will attract."

Gwena Lovett-Hooper and her colleagues report in Ethics & Behavior (2007) that students' dishonesty does not end with their university careers. Students who cheat in college are much more likely to engage in dishonest behavior in their post-educational venues: breaking rules in the workplace, cheating on spouses, engaging in illegal actions. Cheaters are also more likely to engage in academic dishonesty in post-baccalaureate programs (medicine, law, engineering, for example), where failure to master the content of the discipline can have dire consequences for future clients.

Some educators suggest that a notation on cheaters' transcripts will alert prospective post-graduate programs or employers of the applicants' undesirable characteristic.