

CASES

FOR THE

NINTH INTERCOLLEGIATE ETHICS BOWL

TAKING PLACE AT

THE ANNUAL MEETING OF THE

ASSOCIATION FOR PRACTICAL AND PROFESSIONAL ETHICS

IN

CHARLOTTE, NORTH CAROLINA

ON FEBRUARY 27, 2003

Prepared by:

Becky Cox-White: Chair, Case Preparation Committee

Lida Anestidou

Peggy Connolly

David Keller

Robert Ladenson

Martin Leever

© Association for Practical and Professional Ethics 2003

Case 1

Pharmaceutical giant Eli-Lilly, the drugstore chain Walgreens, and 3 physicians are being sued by a 59-year old woman, S.K., from Broward County, FL for invading her privacy and improper medical practice, as well as other violations of the sunshine state's laws. S.K. is one of approximately 150 people who received unsolicited, a free, one-month supply of a new version of Prozac, *Prozac Weekly*. 16-year old Michael Grinstead of Palm Beach was also one of the recipients.

The medication was accompanied by a "Dear Patient" generic letter signed by three local medical doctors, including S.K.'s personal physician, that stated: "We are very excited to be able to offer you a more convenient way to take your antidepressant medication. For your convenience, enclosed you will find a FREE one-month trial of Prozac Weekly [...]. Congratulations on being one step to full recovery".

S.K., however, had not taken Prozac for more than 7 years and was given her initial - and only- prescription for the medication by her physician in Massachusetts where she resided at the time. Because she did not tolerate the medication well, she switched to a different drug, which she has been using ever since. Michael, on the other hand, has neither been diagnosed with depression nor has he ever been treated with antidepressant medication.

As part of an aggressive marketing campaign, sales representatives for Eli-Lilly prepared the letter, which they added to blank letterhead previously signed by the local doctors, and delivered to the neighborhood Walgreens drugstore to mail the samples in handwritten manila envelopes. Walgreens received faxed prescriptions from the doctors' offices and reimbursement coupons from Eli-Lilly for the samples, but it is not clear what, if any, compensation the prescribing physicians received.

The growing association of the pharmaceutical industry with health care providers is transforming the traditional doctor-patient relationship as well as raising new questions about the professional and ethical obligations of health care practitioners to their patients. Pharmaceutical companies pay major drug stores to contact patients and encourage them to either fill prescriptions, change to a different drug, or update to a newer version of a particular medication. Advertisements or special services related to particular drugs and/or diseases target the independent streak of the patient-consumer, such as email reminders about medications (a computer glitch in Eli-Lilly's internet service resulted in the public listing of the email addresses of all the patients participating in the online service a year prior to the Prozac incident).

The research, development and production costs of a single successful drug characteristically climb to hundreds of millions of dollars, while sales profits materialize mostly for the duration of the patent. Prozac's patent expired in August 2001 and its sales for Eli-Lilly have since plummeted more than 80%, due both to the substitution of generic drugs for the expensive brand drug form and competition from other brand medications with similar modes of action.

Case 2

In July 2000, Kenneth Powell was awakened by a call from police in the middle of the night to pick up a friend, Michael Pringle, who had been arrested for drunk driving. Powell signed a release form stating that he would be responsible to take Pringle home. Instead of doing so, however, Powell returned Pringle to his car, which had been left at the arrest site. (Powell had been given directions to its location by a police officer.) Pringle resumed driving when he reached his car. Upon being released from arrest the police had returned his car keys to him. An hour later, he crossed the center line and collided with an on-coming car, killing himself and the other driver, John Elliott, and critically injuring Elliott's girlfriend.

Powell was charged with manslaughter and vehicular homicide, the first time in history someone with no direct involvement in a Driving While Intoxicated (DWI) crash was charged with a crime. Prosecutors said it was Powell's responsibility to keep his drunk friend off the road, and pointed to the release he had signed agreeing to take Pringle home. Defense attorneys argued that it was irresponsible of police to return his keys to Pringle, and then give Powell directions to Pringle's car; instead, they said, the police should have held Pringle until he was sober. Powell's lawyers contended that convicting Powell would allow prosecution of anyone who fails to stop a drunk driver.

In August of 2002, Powell was acquitted of manslaughter, but the judge declared a mistrial on lesser charges about which the jurors couldn't agree. Elliott's girlfriend and her family, as well as Elliott's family, have now brought charges against Powell for letting Pringle drive while intoxicated. Since these events, the New Jersey State legislature has passed a law requiring police to impound the vehicles of intoxicated motorists. The legislature has not, however, passed any legislation expanding or precluding criminal liability for the friends of drunk drivers.

Case 3

The International Criminal Court (ICC), which came into existence on July 1, 2002, is a bone of contention between the United States and many nations throughout the world, including staunch allies such as Great Britain and Canada. The court was created in order to take appropriate action in the event that authorities within a nation, who have the principal responsibility to enforce the criminal law, fail to prosecute serious crimes against humanity such as atrocities committed during war, genocide, and other blatant violations of human rights committed within the nation's jurisdiction.

While President Clinton endorsed the Treaty of Rome, which created the ICC, the court's very existence is being put into question by the refusal of the United States to ratify the treaty unless American troops are exempt from the ICC's jurisdiction. On July 12, 2002 the United Nations Security Council voted to exempt American and UN peacekeeping forces from prosecution for 12 months, with the option of annual renewal of the exemption. On October 1, 2002 the fifteen nations of the European Union agreed to exempt American soldiers and government officials from prosecution before the ICC so long as the U.S. government guarantees to try charged individuals in American courts. The votes of the Security Council and the European Union followed in the wake of increasing threats by the Bush administration to veto all future UN peacekeeping missions unless American military personnel and government officials are granted permanent immunity from the ICC.

Officials from the United Nations and countries supporting the ICC argue that the US government's position is "undermining the Court's credibility, crippling its ability to detain war criminals for trials." Europeans hail the ICC as a prime example of international cooperation to prosecute serious crimes against humanity and violations of human rights that require an international response through building an international justice system. Europeans view the work of the ICC as especially important at this time, on the heels of the worldwide condemnation of terrorism after the attacks on the World Trade Center and the Pentagon on September 11, 2001

Supporters of the Bush administration's position on the ICC insist that, especially in the wake of the September 11 attacks, the United States must face the stark reality of an extremely dangerous geopolitical environment. In this environment, say the supporters of the Bush administration's position, it makes little sense for the United States to tie its own hands, which it would do, the administration's supporters say, by agreeing to accept the jurisdiction of the ICC. Doing so, in the opinion of the supporters, could result in politically motivated prosecutions of American soldiers, diplomats, and political officials before the ICC.

Case 4

Many employers in the United States at this time require, as a condition of being hired, that prospective employees sign contracts in which they agree to arbitrate any disputes with the employer that may arise in the course of employment. By signing such a contract a person agrees not to bring an action against the employer in a court of law if during the course of employment she comes to believe the employer violated her legal rights, for example, under federal civil rights or age discrimination in employment laws. Instead, the contract requires that she pursue any such dispute exclusively through arbitration, a private dispute resolution process whose features -- e.g. who serves as judge, what procedures are followed, etc -- are specified in the contract.

The U.S. Supreme Court has upheld the legal validity of such employment arbitration contracts over the past decade in the cases of *Gilmer v. Interstate Lane Corporation* 500 U.S. 20 (1991) and *Circuit City Stores Inc. v. Adams* 532 U.S. 105 (2001). Central to its decisions in these cases, the Supreme Court viewed private arbitration as an efficient, cost-effective, and readily accessible method of resolving disputes between employers and employees. Critics, however, view the Supreme Court's decisions as having provided employers an opportunity to replace a public system of justice with, in the worst instances, grossly unfair procedures, heavily biased in the employer's favor. Such concerns led to the creation of a task force composed of representatives from six leading national organizations of attorneys, arbitrators, and other dispute resolution professionals. The task force developed an extensive set of recommended procedures for the private arbitration of disputes involving claims of an employee that the employer violated his or her legal rights under federal or State statutes.

You are an employment lawyer retained by a company that wants you to draft a contract requiring prospective employees, as a condition of being hired, to agree to arbitrate any disputes with the employer arising out of the employment relationship. In the course of discussing this matter with the company's CEO you bring to his attention the above mentioned set of recommended procedures developed by the task force composed of representatives of six leading national organizations of attorneys, arbitrators, and other dispute resolution professionals. The CEO rejects it emphatically, stating that, in his opinion, most federal and State statutes concerning the employment relationship, enacted in the last fifty years, only serve to give argumentative employees weapons to extract unwarranted concessions from management. You inform him that in a few instances courts have declined to uphold private arbitration contracts because they found the dispute resolution procedures contained in them "fundamentally unfair." You point out also, however, that in the vast majority of cases, courts have ruled in favor of employers.

The CEO makes it clear that he would like to see you draft the "toughest" (i.e. most favorable to the company) contract that, in your legal judgment, will stand up in court.

Case 5

The sheriff's department admits the investigation into the death of a newborn is at a standstill. Workers at the Harold Rowley Recycling Center in Storm Lake, Iowa, found the body of an unknown baby boy born on May 30, 2002. Investigators have not been able to identify the cause of death of the day-old baby, since the Center's machinery had shredded the baby's body.

Officials believe access to medical records may help them discover who is responsible for the baby's death. Subpoenas were issued to hospitals and clinics for the records of all women who tested positive for pregnancy between August 15, 2001 and May 30, 2002. The sheriff's department ran DNA tests on women they thought had been pregnant. Although some healthcare providers complied with the request, Planned Parenthood would not release the records of women who sought their services.

Jill June, director of Planned Parenthood of Greater Iowa refused to turn over the women's names to local officials, citing the obligation to preserve the confidentiality of medical records. Planned Parenthood guarantees in writing that medical records will be kept confidential. Although Storm Lake is a small community, Planned Parenthood performed over 1000 pregnancy tests in the time period covered by the subpoenas. Ms. June asks people to imagine the invasion of privacy that would result if sheriff deputies were to knock on women's doors and ask for proof of live birth or documentation of termination of pregnancy. Planned Parenthood has cooperated with law enforcement officials in the past, working with a particular suspect and her lawyer to agree on release of records. In the current case, there is no suspect, and no evidence the woman responsible for the baby's death ever was a patient at the clinic. Planned Parenthood officials have indicated their willingness to cooperate in the investigation if they can do so without violating the privacy of hundreds of women.

Philip E. Havens, Buena Vista County Attorney, states that with no suspects, the records are the only hope of investigating the crime. Ms June counters that records may not help because many of the women in the socially conservative community of Storm Lake who receive services from Planned Parenthood give false names. In addition, the mother may not be from the area, may never have been tested, and may not have sought medical care.

Following her refusal to comply with the subpoena, a district court judge ordered Ms. June to turn over the records, but she still refused. The Iowa Supreme Court granted a delay of compliance to the subpoena until the week of December 9. Subsequently, the Buena Vista County District Court granted the county attorney's motion to withdraw the subpoena. The Iowa Supreme Court has maintained jurisdiction and may decide to hear the case despite the withdrawal of subpoenas because of the importance of the competing interests that have the potential to impact people far beyond Storm Lake.

Case 6

On his fifth birthday, a month before starting kindergarten, Justin Jones was diagnosed with Type-1 (insulin-dependent, or "juvenile") diabetes (T1D). T1D is a genetically inherited disease in which the pancreas fails to produce insulin, a hormone needed to metabolize sugar. As a result, blood sugar levels become dangerously high; extreme elevations of blood sugar can cause coma and death.

With careful management, diabetics can live near-normal lives, provided they check their blood sugar levels several times each day. If the level is too high, the person with diabetes injects insulin; if the level is too low, the person has a snack to get more sugar into the body. If the level is dangerously low, an injection of glucagon (a naturally-occurring peptide that stimulates the liver to release stored sugar) is given.

Most diabetics test their own blood sugar and, based on the results, decide how much insulin, food, or glucagon (if any) to take. Very young diabetics typically need adult assistance for blood testing and administration of insulin or glucagon. Their parents assist at home, but other arrangements must be made to carry out these activities when the child is at school.

Ideally, a school nurse would oversee blood sugar testing and administer any drugs Justin might need. But Justin's school has no nurse. As a result, Justin's parents taught him to test his blood sugar. Justin, now in second grade, leaves his classroom twice a day and goes to the principal's office where he pokes his finger, places a drop of blood on a chemically-treated paper, and puts the paper into an instrument that reads his blood sugar level. If he needs either insulin or glucagon, he calls his mother who leaves work, gives Justin his medication, and waits with him until he is able to return safely to his classroom.

Ms. Jones typically must leave her job twice each week to care for Justin. Her employer's patience has worn thin over the last three years. Further, Ms. Jones is not paid for the time away from her job; some weeks she loses a full eight hours of pay. At the beginning of this school year, Ms. Jones met with Justin's principal to request that Justin's teacher be trained to oversee testing and treatment. Ms. Jones volunteered to teach Justin's teacher everything she needs to know about the disease, warning signs of complications, blood sugar testing, and medicine administration.

The principal and Justin's teacher seriously considered the request, but chose not to accept this responsibility. They agreed that, however well-intentioned, Ms Jones is not a health care professional trained to educate others about diabetes or its management. Both worried that important information could be missing or misunderstood, jeopardizing Justin's welfare. (In fact, the principal contacted the California Nurses Association and was informed that insulin is a "high-alert" medication that requires two licensed nurses to check the dosage before the drug is administered.) Furthermore, testing and injections

are medical procedures that neither feels comfortable performing. Indeed, the teacher stated that blood and needles make her squeamish. The principal added that assuming responsibility for these tasks could place the school in a precarious position regarding liability, should Justin have a serious problem while at school.

Ms. Jones replied that neither procedure is especially complicated. She pointed out that Justin can do his own testing, so all she is really asking is that the teacher (or some other adult) give any injections he needs. She noted that Justin's teacher needs to understand his disease and warning signs of crisis in any event, since Justin is in her care 6 hours each day. She added that she is concerned about losing her job, given her repeated absences.

Case 7

City Farm, a piece of open land encompassing approximately 6,000 acres, is located east of the City of Lubbock in the Texas panhandle. While a major piece of City Farm is a natural canyon, 3,450 acres have been used for agriculture for decades producing a variety of crops: cotton and Bermuda grass until 1989, corn with other crops for a few years after that, and for the last 10 years mostly rye grass. The City of Lubbock has been using the site for wastewater effluent application (i.e. spraying of treated sewage on crops) since the 1930s. At times, the City sprays as much as 8 million gallons of wastewater a day on the crops.

In 1989 the nitrate levels from the wastewater were so elevated that they reached the groundwater and wells of homes around the City Farm area. Recognizing that it is scientifically sound to use soil, such as in City Farm, to filter wastewater, and prompted by concerns of the Texas Natural Resource Conservation Commission (TNRCC), the City hired environmental specialists who developed a wastewater management plan. Subsequently, however, the City failed to follow the plan. In 1997 Consultant and Texas Tech Civil Engineering Professor Clifford Fedler warned the City that wastewater usage levels recommended in the report were grossly exceeded. During the period from 1997 to 1999, water balance drafts (i.e. city records of effluent usage) show that the experts' recommendations were surpassed by as much as 1000% on one plot at one time and at a lower –but still excessive– rate on other plots at other times.

In June 2002, TNRCC (now entitled Texas Commission on Environmental Quality) cited the City of Lubbock for polluting City Farm, thereby causing elevated amounts of nitrates to seep through to the monitoring wells and the water table beneath the Farm as well as possibly permeating as far as the Ogallala Aquifer, west Texas's primary water source. In the citation, TNRCC focused on the presence of prairie dogs, which have colonized City Farm grounds for years, but whose population has over the last 4 years rapidly grown. TNRCC postulated that the animals' burrowing habitat allowed effluent to pass unfiltered to deeper ground layers. Pat Cooke of the TNRCC said: "Explosive growth of the prairie dog population could lead to crop failure due to overgrazing, which, in turn, could allow effluent constituents to migrate further into the soil and possibly the groundwater".

Prairie dogs, which are classified as a *keystone* wild rodent species upon which 9 other prairie species depend, and of whose habitat another 20 take opportunistic advantage, burrow huge tunnels and mounds in the fields where they live. Based on the TNRCC citation and emboldened by the fact that black-tailed prairie dogs are not a protected species, the City of Lubbock (whose ambassador to the world was once Prairie Dog Pete) is proposing to exterminate the 40-50,000 prairie dog population. Although Cooke, under fire from several groups for complete lack of scientific evidence to support his initial claim, has since said that his statement was never meant to incriminate prairie dogs, Lubbock's environmental officer Dan Dennison is of the opinion that "This is a farm, f-a-r-m, not a prairie dog town. [...] We should have gone out and done what

everybody else does: quietly go out there and get rid of them. [...] You don't need a scientific study to know water runs down holes".

Case 8

The news has been rife with accusations that unethical business practices, including improper accounting and inflated profit estimates, have cost employees and stockholders billions of dollars. In addition to losing their jobs, some people have lost entire life savings. Retirement annuities have withered, and college funds for children have been obliterated.

Some of the allegedly ill-gotten corporate gains have gone to a number of worthy educational, cultural, and philanthropic causes. Kenneth Lay, former Chief Executive Officer of the now disgraced Enron, donated hundreds of millions of dollars to nonprofit organizations. The auditing firm Arthur Andersen endowed numerous accounting professorships. The Whitney Museum and the New York Museum of Modern Art received gifts of more than \$1 million from executives embroiled in scandal.

Businessmen John and Michael Rigas pledged \$2 million to the National Cable Television Center and Museum, and were subsequently honored with a lifetime achievement award and an invitation to sit on the board of directors, respectively. In July 2002, the Rigases were arrested for allegedly stealing billions of dollars from their cable company, Adelphia Communications. Now the museum views the contributions differently. Paul Maxwell, a board member, wonders if they have received stolen goods and may be guilty by extension: "For charities to say it's okay to take this money just because they are doing good -- I don't think that's an adequate answer."

Some assert that tainted donations should be returned to shareholders and creditors, regardless of the worthiness of the cause that received the donations. In fact, under federal law, gifts of illegal origins are subject to forfeiture. After a hedge-fund manager was convicted of fraud, the Securities and Exchange Commission (SEC) revoked donations to a homeless shelter, a church, and a politician. David Komblau, an SEC attorney, commented: "When it's someone else's money, it's very easy to be generous. The victims did not make the choice about where the funds went. Even if given to a perfectly honorable charity, the money should be returned to its rightful owners."

Others counter that returning such donations, even if obtained fraudulently, is contrary to the common good. Audrey Alvarado, Executive Director of the National Council of Nonprofit Associations, said it would do more harm than good for the SEC to go after charitable donations unlucky enough to have been gifted with tainted money. Some of the nonprofits, which would be potential targets of such punitive action, "are on the front lines helping those company employees most affected by the corporate scandals" by providing support structures for those experiencing difficult times.

Case 9

The Indonesian archipelago is anchored on both ends by a similar conflict; on the west end in Northern Sumatra's Aceh province, and on the east end in Irian Jaya, separatist rebels are fighting with the Indonesian government for independence. Manifestations of local violence involve complex ethnic, religious, and nationalist ideologies complicated by economic interests.

Political instability has created problems for United States-based multinational corporations operating in these regions. On September 1, 2002, for example, an ambush left two Americans dead and seriously wounded several others near a Freeport-McMoran Copper and Gold Incorporated facility in Irian Jaya. The indigenous people accuse the corporation of destroying sacred land, polluting the environment, and hoarding profits. For example, Freeport-McMoran dumps 70 million tons of toxic tailings a year from its gigantic Grasberg mine into the Ajkwa River.

For U.S. companies, political instability which threatens economic development is solved by hiring the Indonesian military to protect industrial sites. In the Aceh province, Texas-based Exxon-Mobil Corporation has provided funding to the Indonesian military in exchange for army security forces to patrol its oil and gas producing interests, and in Irian Jaya, Louisiana-based Freeport-McMoran has used Indonesian military patrols to secure its Grasberg mine. Meeting with Indonesian President Megawati Sukarnoputri on her U.S. visit last year, representatives from both Exxon and Freeport requested a security guarantee from the Indonesian government that would provide a safe climate to continue their operations. The action is mutually beneficial to both the Indonesian army and U.S. business; while profits are generated for U.S. firms, a portion of the profits is paid to the Indonesian government. U.S. corporations argue that while wages paid to Indonesian workers are only a fraction of what American workers earn, Indonesian workers working for U.S. firms are still much better off than their counterparts.

The Indonesian military has a long history of massacring local populations to quell independence movements. The recent failures of the democratic Indonesian government that replaced the Suharto dictatorship to control the actions of its military have been well documented. In fact, pointing to the military's admission of murdering Theys Eluay, a prominent Papua independence leader, some claim that the military, not indigenous peoples, is behind the Irian Jaya Freeport-McMoran attack for the purpose of inflaming conflict and bolstering its own position. Critics argue that U.S. corporations should quit exploiting local communities or pull out, and in either case, should not subsidize the Indonesian military with its long history of human rights abuses.

Case 10

The goal of the North American Free Trade Agreement (NAFTA) is to increase trade between the United States, Canada and Mexico. Since NAFTA took effect in January 1994, less restrictive standards for Mexican trucks entering the U.S. have significantly increased cross-border traffic. For example, the Environmental Protection Agency reports that truck traffic through Texas has increased 17% since the passage of NAFTA. This increasing number of trucks entering the U.S. from Mexico has sparked controversy on environmental and economic issues.

Trucks entering the United States from Mexico are not subject to the same emissions standards as U.S. trucks. Prior to 1993, Mexico had no emissions standards for trucks; when Mexico enacted standards in 1993, those standards fell well short of the standards for U.S. trucks. Trucks built prior to 1993 represent 80 to 90% of those entering the U.S. from Mexico. U.S. cities bordering Mexico such as San Diego, El Paso, Laredo, and Brownsville are facing a rise in pollution levels that is partly due to the increased truck traffic, as a vast majority of truck traffic squeezes through these entry points.

Under the Clinton Administration, trucks entering the United States from Mexico were restricted to a 3 to 20 mile radius from the point of entry in order to reduce accidents and mitigate diesel emissions. However, a NAFTA tribunal ruled that this policy is not in accordance with the agreement and that trucks entering the United States from Mexico must have full access to the country. In late November 2002, President Bush acted on the tribunal's ruling and lifted the 20-mile restriction, paving the way for Mexican trucking companies to have full access to the U.S.

Environmentalists and highway safety advocates claim that under such a plan, many of the highway safety and diesel exhaust problems restricted to border towns would be expanded to other areas of the United States. Air pollution in areas such as southern California would be exacerbated by an influx of trucks not required to meet the State of California standards. The Teamsters union also opposes allowing Mexican trucking companies having full access to the U.S., claiming that doing so would cost American jobs.

Advocates for full access suspect that the real reason of the opposition is not based on health and safety concerns, but rather on an effort by United States labor unions to retain economic hegemony over Mexico. In fact, these advocates claim, many of the standards for trucks entering from Mexico exceed United States standards for U.S. trucks and trucks entering from Canada. NAFTA expert Sidney Weintraub remarked in the summer of 2001, "I wouldn't call it racism, but I'd call it a kind of economic imperialism."

Case 11

So full of life and laughter only 48 hours ago, Mr. Ahmed now lay in the ICU of the local community hospital after suffering a massive heart attack. While CPR was successful in securing a heartbeat, there was only marginal brain activity, and he could breathe only with the assistance of a ventilator. The well-liked, energetic patriarch of a large Shiite Muslim Arab-American family, Mr. Ahmed was known as a generous family man and a community leader. Indeed, while several of Mr. Ahmed's adult children were flying in from out-of-state, friends came to the hospital to lend emotional support to the family. Mrs. Ahmed remained silent as her son Tony spoke with the doctor, Linda Hopkins, MD. Dr. Hopkins suggested that the family begin to think about withdrawing ventilator support. Tony's reaction was strongly negative. Even though Dr. Hopkins explained to him that his father would not regain consciousness, Tony insisted that every effort be made to keep his father alive. When Mr. Ahmed's other children arrived at the hospital, Tony filled them in on his conversation with Dr. Hopkins. Meanwhile, Nurse Janet Simpson, RN, attempted to talk with Mrs. Ahmed about what she thought her husband would have wanted for himself in this circumstance. Because they never spoke to one another about such things, Mrs. Ahmed felt uncomfortable speculating. Concerned that his mother was too distressed to talk, Tony broke into the discussion. He reiterated that the family wanted everything done to save their patriarch.

Anxious to diffuse the emotionally charged circumstance, Nurse Simpson recommended that the family sit in a conference room to talk with Dr. Hopkins and the staff Imam from pastoral care. While they were waiting for Dr. Hopkins and the Imam, Janet listened to the family talk about Mr. Ahmed and their family. Tony used to help his father with the family business, a neighborhood grocery store. However, he and his father often disagreed about business decisions. Tony had always been critical, for example, of the amount of money his father spent sponsoring local youth athletic teams, providing uniforms, refreshments, and trophies. These differences of business philosophy led Tony to take a job out of state several years ago. The daughters, however, still lived close to Mr. and Mrs. Ahmed and still helped keep the books for the store. In fact, the youngest daughter, Rita, was at the store with her children, decorating the store window for the holidays, when Mr. Ahmed suffered his heart attack.

Dr. Hopkins arrived, and the Imam shortly after. The Imam explained to Dr. Hopkins and Nurse Simpson that for Shiite Muslims cessation of brain activity is not considered death. Instead, he explained, they believe that death means cessation of cardiac function. The Imam then helped the family to understand that because Mr. Ahmed's brain activity would likely soon cease, from the standpoint of the medical staff, he would then be dead, even though, in all likelihood, his heart and lungs would still function. After a long pause in the conversation, Nurse Simpson asked the family to imagine what Mr. Ahmed might say if he were sitting among them. "He would say that we should keep trying," said Rita. Other family members nodded.

As time passed, brain activity waned until Mr. Ahmed was brain dead. Dr. Hopkins spoke with the family about Mr. Ahmed's condition. "We're sorry that there isn't

anything more we can do. We think that we should turn off the ventilator and let nature take its course.” The family appeared shocked at Dr. Hopkins’s suggestion and Tony responded angrily, “How can you say that you’ve done everything you could? I’m not going to let you give up on him as long as he’s still alive.” Later, Nurse Simpson reminded Dr. Hopkins about what the Imam had said regarding the Shiite beliefs about death. “That’s fine,” she said, “but by ‘death’ we mean brain death, and that’s the law.”

After a day and a half, Dr. Hopkins was growing impatient. She felt that allowing a brain dead patient to remain breathing on a ventilator was permissible for a brief time if it would allow out-of-town family time to get to the hospital to say goodbye. However, Mr. Ahmed’s family had been present for over a day, and was still insistent upon doing everything to keep him alive. Worried that she had alienated the family, Dr. Hopkins asked Nurse Simpson if she could try and talk to the family.

Case 12

On November 7, 2001, 22-year-old Samar Kaukab was headed back home to Columbus, Ohio after attending a conference in Chicago hosted by the Volunteers in Service to America. Set to depart from O'Hare airport, Samar and some of the other conference attendees proceeded to the security checkpoint in Terminal 1. Wearing a hijab, traditional headdress for Muslim women, Samar walked through the metal detector without setting it off. However, at that point, a member of the Illinois National Guard directed the security staff to search Samar further. After passing the handheld metal detector around her body several times, the National Guardsman instructed her to remove her hijab. Samar objected, explaining that, for religious reasons, she could not remove the jibab in public, especially in the presence of men. She did, however, indicate a willingness to remove it in a private location in the company of women. Despite her pleas, security continued to insist that she remove her hijab. She finally persuaded the National Guardsman and the security personnel to allow her to be searched in a private room with female security employees. There the female officers felt around her sweater and bra, unbuttoned and unzipped her pants, and patted her down over her underwear. "I felt as though the security personnel had singled me out because I didn't belong, wasn't trusted, and wouldn't be welcomed in my own country," said Samar. American Civil Liberties Union lawyer, Lorie Chaiten, stated that "Ms Kaukab was identified and subjected to a humiliating search not because she posed any security threat, but only because her wearing of a hijab identified her as Muslim....Security personnel surrounded her, detained her and subjected her to an embarrassing and degrading search simply based on her ethnicity and religion."

Although many Americans would likely disapprove of the way Samar Kaukab and other Arab Americans have been singled out in airports after the September 11, 2001, some believe that greater scrutiny of Arabs, including Arab-Americans, is warranted, at least in airports. While many view racial profiling as ordinarily impermissible, they believe, nonetheless, that targeting Arabs in security checks at airports is morally justifiable. One such person is *National Journal* columnist, Stuart Taylor. Taylor points out that he is not advocating a general practice of the racial profiling of Arabs. Indeed, he holds that most racial profiling is impermissible, even when there is a statistical justification. Detaining a young African-American male, Taylor explains, may help catch drug dealers, but is not worth the harm it causes or the racism it may suggest. However, for Taylor, racial profiling of Arabs is morally permissible in airports. Among other reasons, Taylor notes that "100% of the people who have hijacked airliners for the purpose of mass-murdering Americans have been Arab men." If we consider this in conjunction with the fact that "a virulent perversion of Islam is the only movement in the world bent on mass-murdering Americans," it should become clear that such profiling is warranted in this specific case, says Taylor.

Many, however, object to profiling Arabs in airports and elsewhere. According to Frank Wu, Professor at Howard University School of Law and author of *Yellow: Race in America: Beyond Black and White*, the U.S. must not "purchase national unity by

ostracizing one group.” Just the opposite, says Professor Wu, “we should be taking steps to protect Arab American and other minorities from such discriminatory practices.”

Case 13

Nearly twenty-five states have enacted a “Three Strikes Law” (TSL). A TSL requires that persons who have been previously convicted of two violent or serious crimes and who are subsequently convicted of a third such crime be convicted as habitual criminals and serve lengthy prison sentences (usually 25 years to life).

Recent California cases have raised moral questions about the TSL. In these cases the first two crimes were serious or violent felonies, but the third crime was relatively trivial (shoplifting). Under the TSL any felony can count as the third strike. California law allows shoplifting (typically a misdemeanor) to be elevated to a felony if the shoplifter has a previous conviction for property crimes.

In one recent case Mr. Leandro Andrade was convicted of stealing nine children's videotapes. Having been convicted (17 years previously) of theft, burglary, and transporting marijuana, Mr. Andrade was eligible for trial under the TSL. He was convicted and sentenced to 50-years-to-life in prison for shoplifting “Snow White.”

The genesis for the TSL was the 1993 kidnapping, rape, torture and murder of twelve-year-old Polly Klaas. Richard Allen Davis, the perpetrator of the crime, was caught and ultimately convicted. Davis had a long criminal history (robbery, burglary, assault, kidnapping) and was on parole when he kidnapped Polly. Had he been imprisoned for life after his third felony, Polly would still be alive.

Supporters of the TSL argue that it is a significant deterrent to felonious crime by habitual criminals and an appropriate punishment for those who jeopardize the welfare of others. Opponents of the TSL argue that its application to third offenses that are not violent or serious crimes violates the Eighth Amendment of the U.S. Constitution, which prohibits “cruel and unusual punishment.” After all, even if previous crimes were serious felonies, shoplifting is still only shoplifting, say the opponents of TSL.

TSL's opponents say that it has had little effect on crime rates, pointing to statistics such as the following to support this contention. Crime in California was declining before the TSL was enacted. Further, San Francisco county, which rarely applies the TSL, has seen a 33% drop in violent crime rates; while Sacramento country, which used the TSL seven times more frequently, saw only a 10% drop. Furthermore, California crime rates have risen in the last two years--when the TSL was in effect. Finally, the opponents of TSL contend that it aggravates racial injustice already present in the prison system. The opponents note, in this regard, that African Americans constitute 7.5% of California's population, but 31.3% of the prison population and 44% of persons sentenced under TSL.

The U.S. Supreme Court has agreed to review the law.

Case 14

In his recent book, *The Debt: What America Owes to Blacks*, civil rights activist and Harvard-educated attorney, Randall Robinson, argues that the U.S. has an obligation to provide reparations to African Americans for slavery and legal discrimination. Robinson notes that the initial proposal by the U.S. government to provide restitution for slavery, i.e., giving each freed slave 40 acres and a mule, failed when it was vetoed by President Andrew Johnson after the Civil War. In addition to the losses of well-being brought about through the obvious physical and emotional suffering, Robinson estimates that slaves lost \$1.4 trillion in unpaid wages in today's money.

According to Robinson, even after slavery was abolished, legal discrimination extended the debilitating effects slavery. Education was, for the most part, denied to African Americans. Since people without education cannot compete for jobs, African Americans became trapped in poverty. Similarly, discriminatory housing practices further interfered with the economic growth of African Americans. For instance, home ownership is an important method of building wealth. Robinson claims that discriminatory mortgage policies and redlining, the practice under which real estate brokers only sell property located in certain neighborhoods to Blacks, cost African Americans as much as \$90 billion over the years. As a result of such unjust treatment, says Robinson, African Americans have suffered significant economic disadvantage that continues up to the present time.

However, the idea of reparations for slavery (and subsequent legal discrimination) has met with much criticism. For instance, if reparations were to consist in monetary payments, how much should those payments be, and who, specifically, is entitled to receive them? Since not all African Americans are direct descendents of slaves, it may be difficult to argue that they are entitled to reparations. While reparations advocates, such as Randall Robinson, propose figures, the critics reject all such proposals as hopelessly speculative and arbitrary.

David Horowitz, author of *Uncivil Wars: The Controversy over Reparations for Slavery*, asserts that in the pre-Civil War period only approximately 20% of Whites owned slaves. This would mean, argues Horowitz, that most White U.S. citizens who fought in the Civil War, a war many believe was fought over the permissibility of slavery, died to free the slaves. Hence, opponents of reparations argue that it would be unfair for their descendents to have to pay for reparations. Indeed, given America's diverse citizenry, many U.S. citizens are descendants of families that came to the U.S. long after the abolition of slavery. Requiring them to contribute to reparations for slavery would be unjust, says Horowitz.

Case 15

Since 1998 Americans have increasingly traveled to China to receive organ transplants from executed prisoners. Following successful transplants in China, these organ recipients return to their U.S. physicians for follow-up care to insure that the transplanted organ continues to function appropriately. While many of the patients are reluctant to divulge the source of their new organs, others freely admit that the “donors” were prisoners executed by the Chinese government.

As Craig Smith recently reported in *The New York Times*, “Executed prisoners are China’s primary source of transplantable organs, though few of the condemned, if any, consent to having their organs removed....”

Outsiders worry that some donors may have been innocent, political prisoners who were arrested and executed for criticizing current political leaders. Further, in keeping with its policy of zero tolerance of crime, China mounted a recent nation-wide anti-crime effort that has yielded large numbers of arrests, many followed by hasty trials and confessions extracted through torture.

China’s political history suggests that execution of some innocent persons is likely. However outsiders suffer from an information deficit about why Chinese prisoners are incarcerated and executed. Presumably some Chinese prisoners are guilty of crimes other than political criticism, and presumably some of those crimes have been capital crimes (though human rights groups, such as Amnesty International, note that even minimal offenses (e.g., stealing a pig) qualify as capital crimes in China).

The United Network for Organ Sharing (UNOS), which sets the standards for U.S. organ donations, requires that donations be chosen freely. No coercion, exploitation, or payment is permitted. Furthermore, UNOS forbids organ donations by prisoners (even death row inmates) out of concern that prison constitutes an inherently coercive environment that makes genuinely voluntary donations impossible. UNOS also forbids the sale of human organs.

Most persons who received Chinese transplants were on the waiting list for an organ transplant in the U.S. The motivation for traveling to China is undoubtedly the long, often fatal, wait for an organ in the U.S. As of September 27, 2001, 80,314 persons were on the national waiting list for organ transplants. The total number of transplant recipients in 2001 was 24,110--less than one third of those in need. By far the most commonly needed organ is the kidney; 53,000 people await a kidney donation (often for as long as six years), but in 2001 only 14,184 kidneys were donated. Until supply matches demand, desperate patients will likely seek whatever avenues are available to achieve the life-saving procedures. And, since China is executing more persons each year as part of its anti-crime effort, Chinese organs will be increasingly available.

