

# REGIONAL ETHICS BOWL CASES

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**Editor's Note:** Please note that we have provided citations for source materials used to generate the following cases. A source may be used multiple times, but only identified once per case.

## **CASE #1: SEXTING**

The exchange of racy images between consenting adults is a phenomenon that has exploded with recent technological advances. Pornography is one of the Internet's major revenue generating mechanisms and many people report receiving unsolicited emails for pornographic websites. Users have found ways to transmit pornography with other technology, including text messages sent via cellular phone. A recent survey of 1200 teenagers revealed that one in five had used their cell phone to send "sexy or nude photos of themselves," or sexts.<sup>1</sup>

Sexting can be as simple as a person sending a provocative image to his partner to inspire a wry grin. The issue has become prominent in part because the couple just described might be children, and the image might be extremely provocative. In one case a 17-year-old girl used her cell phone to send nude photos of herself to her boyfriend. After the two broke up, however, the photos began circulating among the other students at their high school.<sup>2</sup> In one such case, the teen committed suicide. While sexting may facilitate easier transmission of these types of images, some contend that new messaging technology is just a new medium for old behaviors.

Beyond the possible embarrassment of circulating nude photographs, teenagers across the U.S. have been charged with obscenity for owning, producing, and distributing sexts.<sup>3</sup> Since sexters are often under the legal age of consent, some prosecutors have even chosen to punish sexting as child pornography. If convicted, such charges come with serious consequences, such as hefty fines, jail time, and the stigma of the sex offender label. On one hand, such punishment may serve as a strong deterrent, reducing the number of sexts sent by impulsive teens.

On the other hand, in at least one case, the ACLU has sought to protect the speech rights of minors and to prevent criminal prosecution for sexting.<sup>4</sup> According to the ACLU's Witold Walczak, "Kids should be taught that sharing digitized images of themselves in embarrassing or compromised positions can have bad consequences, but prosecutors should not be using heavy artillery like child-pornography charges to teach them that lesson."<sup>5</sup> Some legislators agree and

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<sup>1</sup> Harsha, Keagan, "Is your child sexting?" [http://www.wcax.com/Global/story.asp?S=9612361&nav=menu183\\_2](http://www.wcax.com/Global/story.asp?S=9612361&nav=menu183_2), *WCAX.com* (Jan. 3, 2009).

<sup>2</sup> "Castalia police look into complaint of nude photos sent by cell phone," <http://www.sanduskyregister.com/articles/2009/03/19/front/1232333.txt>, *Sandusky Register* (Mar. 20, 2009).

<sup>3</sup> Pilkington Ed, "Sexting Craze Leads to Pornography Charges," <http://www.guardian.co.uk/world/2009/jan/14/child-pornography-sexting>, *Guardian News and Media Limited* (Jan. 14 2009).

<sup>4</sup> *Miller, et al v. Skumanick*, 605 F.Supp.2d 634 (M.D. Pa, Mar. 30, 2009), commentary available at: [www.aclupa.org/legal/legaldocket/milleretalvskumanick](http://www.aclupa.org/legal/legaldocket/milleretalvskumanick).

<sup>5</sup> ACLU, <http://www.aclupa.org/pressroom/aclusueswyomingcountydafor.htm>, (press release, Mar. 25, 2009).

sex crimes laws have been changed in some jurisdictions to either allow for consensual sharing of sexual materials between minors, or to reduce the penalties for such behavior.<sup>6</sup>

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<sup>6</sup> Associated Press, “Vermont considers legalizing teen ‘sexting’,” <http://www.foxnews.com/story/0,2933,514875,00.html>, *Fox News.com* (April 13, 2009); Russ, Dick, “Ohio to address ‘sexting’ laws,” <http://www.wkyc.com/print.aspx?storyid=111478>, *WKYC.com* (April, 2009).

## CASE #2: TESTING JUNIOR

The New York Times recently reported on several scientists who have applied their craft to members of their own families, researching their own children.<sup>1</sup> Some used MRI scans on their children, some recorded their children's every word, and others merely parlayed their scientific knowledge and parental observations into ideas for future use in controlled studies. Three scientists – Dr. Arthur Toga, Dr. Deb Roy, and Dr. Deborah Linebarger discussed their research on their children and their views on the impact of such research. These researchers drew different lines with how they studied their children, though all expressed concern for the privacy and wellbeing of their children in the research process.

Dr. Toga allowed his children to participate in a longitudinal MRI study which aimed at outlining the maturational stages of brain development across many children. His children volunteered for the research on their own volition, and the results were rendered anonymously. Dr. Linebarger both observed and tested her four children, though primarily only in pilot studies. And Dr. Roy recorded over 250,000 hours of his son's life, focusing on his son's early language acquisition – his son was his first and only subject in the early stages of his research. His students now process small segments of the recordings of his son, and his research is being parlayed into much larger studies of children with autism.

All of these scientist parents express the belief that, if anything, involving their children in their research has strengthened their relationship with their children, by allowing their children access to, and understanding of, what mommy or daddy does for a living. However, such involvement does come with some risks. Dr. Linebarger discussed how even pilot testing proved difficult as a parent. When she tested her son five-year-old son, Dr. Linebarger became interested in her son's responses to some pilot questions about parenting, and pursued the questions beyond the scope of the study. After the fact, she realized that she would not have pursued that line of questions with other subjects, and subsequently made a rule for her studies: when piloting questions on her own children, she would not deviate from the scripted questions except insofar as necessary to fix or improve them.

Dr. Linebarger has also grappled with the issue of consent, and generally asks her husband to sign parental consent forms prior to conducting research. She additionally explains any studies she wishes to perform to her children, and then asks them whether they are comfortable being studied. Dr. Linebarger may not necessarily obtain her children's consent for observational studies for several reasons, though. First, such consent might interfere with the natural actions that she seeks to observe. Second, the potential harm from observation is so slight that she can feel comfortable providing the consent for them. Ultimately, Dr. Linebarger notes that no matter what sort of research she involves her children in, she would not involve her children in actual, publishable studies due to the potential for bias and diminished credibility.

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<sup>1</sup> Belluck, Pam, "Test Subjects Who Call the Scientists Mom or Dad," <http://www.nytimes.com/2009/01/18/science/18kids.html?pagewanted=all>, *New York Times* (Jan. 17, 2009). Note that the remainder of this case contains original content obtained via electronic and telephone interviews obtained from Dr. Roy between Aug. 9 and 10, 2009, Dr. Deborah Linebarger on Aug. 11, 2009, and Dr. Arthur Toga on Aug. 12, 2009. Please respect these individuals' privacy and forward any questions to Rhiannon Dodds Funke at [rfunke@law.stetson.edu](mailto:rfunke@law.stetson.edu).

Why engage one's children in research at all? Several reasons motivate Dr. Linebarger. First, she finds that her prior knowledge of her children, their experiences and their capabilities, enriches her research – it helps her to mold her methods and gauge her results. Second, she admits that participants, particularly in longitudinal studies, may be difficult to find, and by engaging her children in the pilot studies, she doesn't have to give up willing volunteers for the "real" study to pilot tests.

Dr. Roy's son is four years old now; he stopped recording his son over a year ago and his focus now is to "analyze the recordings made from ages 9-24 months." Roy states that his son "is still far too young to understand what 'research' means, although he does enjoy watching the occasional video clip." While Dr. Roy believes that his research has made him more attuned to his son's language skills, when asked, he states that he does not believe the research has affected his relationship with his son in other ways.

This may be, in part, due to the strong precautions he enacted to ensure his son's privacy and wellbeing were protected. He states that he and his wife had some reservations about the "possibility of the recordings affecting their everyday lives in adverse ways," and therefore "made a number of provisions to provide [them] with complete control of when recordings were made, multiple ways to delete recordings after the fact, etc."

Why not just test unrelated subjects? Dr. Roy believes studying his son provided benefits and useful insights that he would not have obtained without testing his own son. He states, "Due to the intimate nature of the recordings, I was not willing to record someone else's children until I knew that we had a properly worked out methodology not only for making recordings but also privacy policies governing future access of the recordings. As both subject of the study and investigator, I was able to reflect on the effects of the recordings on myself and my family and make adjustments to the method accordingly."

He further relates, "With the methodology now relatively mature and proven, we are extending our research to study children of other families with a focus on understanding early stages of autism. We have new funding from the National Institutes of Health and from an autism foundation to pursue these directions in collaboration with other researchers and clinicians. We do not plan to release the raw recordings to the public in order to respect the privacy of my son and others that were recorded in the course of the study."

Dr. Toga, when interviewed by the New York Times, related how some nonscientists chastised him for exposing his children to the risks of MRI scans. He notes, however, that MRI scans really pose no risk – that they are comparable to taking a photograph. When performing research, IRBs generally require scientists to disclose very extensive information about every conceivable risk to parents. Such a conservative approach might scare away less scientifically versed parents. Dr. Toga admits that, given his strong understanding of science, he believes that he might actually be more willing than the average parent to have his children participate in scientific research. However, he believes the minimal risks he would be willing to allow his children to undertake during scientific testing vastly outweighed by the learning they gain and their contribution to human knowledge (resulting from their participation). He further notes that he might not have consented to more risky procedures, such as PET scans.

### CASE #3: CHRISTIAN BASHING?

The founding fathers enacted the Bill of Rights to protect certain rights against infringement by the government. The First Amendment enumerates freedom of speech as one of the first protected rights, and deemed it essential to the marketplace of ideas that fosters a healthy democratic process. However, even politically charged speech may at times go too far, and constitute impermissible hate speech. And that's exactly the sort of speech that supporters of George Washington University's College Republicans allege College Democrats submitted them to.<sup>1</sup>

According to the school newspaper, "A number of crosses used by the Young America's Foundation [YAF] during an anti-abortion event last week were defaced and left in [the office shared by both College Republicans and Democrats]..." Specifically, one was "draped with a condom, another featured a drawing of Jesus along with the words 'pwned' and 'lol,' and others were emblazoned with words like 'Darwin,'" among other writings.<sup>2</sup>

College Democrats took responsibility for the action, and publicly apologized for the actions of one of their members; furthermore, the student responsible, "face[d] disciplinary action under the Code of Student Conduct."<sup>3</sup> University Police took custody of the defaced property, and opened an investigation into the incident, as well. The College Republicans released a public statement condemning the acts, but their president did express appreciation at the way the College Democrats handled the situation.

A student who witnessed the defaced crosses expressed a much stronger reaction to the display, stating, "Apparently to the College Democrats, making fun of Christianity, and specifically a memorial to aborted unborn children is humor. To me, it is flagrant, disrespectful and downright disgusting." In a press release, President Steven Knapp stated, "Such acts are unacceptable and are utterly incompatible with the spirit of mutual respect that is essential to the life of an academic community. I continue to hope and expect that all our students, no matter what opinions they hold, will conduct themselves in the spirit of mutual respect that has long been a hallmark of this University." However, while this bad behavior may be offensive, the exact nature of the act remains up for debate.

Some believe that the acts were childish, boorish, or just poor judgment that justifies the normal penalties for the vandalism. Others argue that the speech goes well beyond childishness – it constitutes desecration of one group's sacred images and religious symbols – and crosses the line to constitute hate speech, which deserves a higher penalty than an average act of vandalism.

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<sup>1</sup> For images of the defaced property and , see Dollard, Pat, "Anti-Christian Hate Crime..." <http://patdollard.com/2009/01/anti-christian-hate-crime-by-college-democrats-at-george-washington-university-political-group-steals-crucifixes-deface-them-with-penises-condoms-crucified-christ-mocked-with-pwned-and-l/>, *patdollard.com* (blog), (Jan. 30, 2009).

<sup>2</sup> Grossman, Nathan, "YAF crosses defaced in MC, College Democrat takes responsibility," <http://blogs.gwhatchet.com/newsroom/2009/01/29/yaf-crosses-defaced-in-mc/>, *GWHatchet.com* (blog) (Jan. 29, 2009).

<sup>3</sup> Schario, Tracy, "Statement from The George Washington University Regarding the Defacing of Several Small Crosses," [http://www.gwu.edu/~media/pressrelease.cfm?ann\\_id=29986](http://www.gwu.edu/~media/pressrelease.cfm?ann_id=29986), George Washington University (press release) (Jan. 29, 2009).

#### CASE #4: TESTING VIRTUE

Most people overestimate their ability to act on their principles, according to a recent article in the *New York Times*.<sup>1</sup> “In recent years, social psychologists have begun to study what they call the holier-than-thou effect. They have long known that people tend to be overly optimistic about their own abilities and fortunes – to overestimate their standing in class, their discipline, their sincerity. But this self-inflating bias may be even stronger when it comes to moral judgment, and it can greatly influence how people judge others’ actions, and ultimately their own,” is how Carey Benedict summed up the issue.

In the Good Samaritan experiment, even seminary students could not be counted on to stop and help a stranger in need. In the experiment, Princeton seminarians were asked to prepare a report on the parable of the Good Samaritan in one building and report to another building to discuss the parable. The seminarians were randomly assigned to one of three groups, those told that they were running late, right on time, and a little early. While making their way to the other building, each of the seminarians encountered a man slumped on the sidewalk in obvious distress. Of the seminarians told they were early, 63% stopped to help; those on time stopped 45% of the time; and 10% of those running late helped. The researchers found that, “Ironically, a person in a hurry is less likely to help people, even if he is going to speak on the parable of the Good Samaritan. (Some literally stepped over the victim on their way to the next building!) The results seem to show that thinking about norms does not imply that one will act on them.”<sup>2</sup>

The problem is how to develop empirical evidence that tests the credence of self-righteous claims or that shows those who claim moral certitude to be only deceiving themselves. Studies that best test individuals’ actions against their claims usually involve observing those individuals’ actions in manufactured situations where they are called on to act, but don’t know that the morality of their actions is being measured. They might not even know that they are the subjects of a research experiment. Critics claim that there is something unethical about using deceptive means to test the good character of others. For example, the University of Washington medical school cautions its researchers, “As a general rule, deception is not acceptable when doing research with humans. Using deception jeopardizes the integrity of the informed consent process and can potentially harm your participants.”<sup>3</sup>

For instance, Stanley Milgram’s experiments on authority have been roundly criticized as causing a potential crisis in the lives of test subjects. However, one is forced to wonder if tests of virtue are being criticized simply on the basis of the poor performance of test subjects. It is hard to imagine any test gauging the relationship between moral attitudes and actions which is not potentially harmful to participants. Research that uncovers an uncomfortable but important truth—moral hypocrisy—is likely to seem harmful to test subjects, but reveals important character trends.

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<sup>1</sup> Carey, Benedict, “Stumbling Blocks on the Path of Righteousness,” <http://www.nytimes.com/2009/05/05/health/05mind.html>, *New York Times*, D5 (May 5, 2009).

<sup>2</sup> Darley, J. M., and C.D. Batson, “From Jerusalem to Jericho: A study of Situational and Dispositional Variables in Helping Behavior,” *Journal of Personality and Social Psychology*, v. 27, pp. 100-108 (1973). [http://faculty.babson.edu/krollag/org\\_site/soc\\_psych/darley\\_samarit.html](http://faculty.babson.edu/krollag/org_site/soc_psych/darley_samarit.html).

<sup>3</sup> “Ethics in Medicine,” <http://depts.washington.edu/bioethx/topics/resrch.html>, *University of Washington School of Medicine*.

## CASE #5: STUDENTS' LITTLE HELPER

Sara, a college junior, had watched others in her dorm pound their way through all-night paper writing sessions, jobs, and parties with the help of Ritalin, Adderall, and other drugs designed to keep them awake and focused. Some of the students had been diagnosed with ADHD and had been on the drugs for years.<sup>1</sup> Others bought them at street prices from students who were happy to share their prescriptions. Although an estimated 7% of students enrolled in US universities have used cognitive enhancement drugs, with up to 25% of students on some campuses reporting their use,<sup>2</sup> Sara believed that true success was the outcome of hard work and living a balanced life. She was sure that no drug could substitute for that. Her grades, when compared to those using the drugs, showed that her theory had merit. She had better grades than anyone she knew who was using cognitive enhancement drugs.

But, now she had a dilemma. Sara was preparing for the LSAT and had always had problems staying focused for those hours-long tests. Sara's mother, who was herself a lawyer, suggested that Sara talk to their family doctor about a prescription for Provigil. Her mother used Provigil sparingly, only when she was litigating tough cases and had to be sharp over long hours in the courtroom.<sup>3</sup> The doctor, who had known Sara all her life, wanted to help Sara fulfill her lifelong dream of getting into a top law school and knew that Sara had under-performed on standardized tests in the past. Sara had the grades to get into a top school, but it was questionable if she would have the LSAT scores that she needed. The doctor occasionally did "off-label" prescribing of Provigil when she thought it was appropriate. Sara left the doctor's office with a prescription for 4 100 mg tablets of Provigil, more than she would ever need, and with reassurance that the drug, taken as prescribed, would not harm her.

Before going to her next LSAT prep course session, Sara took the drug. She moved along through the practice test, feeling focused and confident. "This is actually fun," she thought and realized that she wasn't experiencing the fatigue that normally hit at the start of the third test segment. Sara's score was significantly higher than it had been on past tests. She was ready for the LSAT.

That evening, she enthusiastically told two friends, Barbara and Nancy, about her experience. "Isn't using that drug cheating," Barbara wondered, "like athletes who use steroids?"<sup>4</sup> She argued that only enhancements available to everyone – like caffeine -- should be allowed to be used. Nancy pointed out that not everyone could afford to take a LSAT prep course, and maybe the cognitive enhancement drug offered the same kind of boost. Nancy asked Sara if she could have one of the Provigil tablets that Sara would not be using.

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<sup>1</sup> Gould, Benjamin, "Cognitive Enhancement on Campus: Taking Competition Seriously," *Bioethics Forum* (2009). <http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=3142>.

<sup>2</sup> Greely, Henry, et al., "Towards responsible use of cognitive-enhancing drugs by the healthy," *Nature*, v. 256, i. 11, pp. 702-872 (Dec., 2008).

<sup>3</sup> Roache, R., "Enhancement and Cheating," *Expositions*, v. 2(2), p. 153 (2009). <http://oxford.academia.edu/RebeccaRoache/Papers/72962/Enhancement-and-Cheating>

<sup>4</sup> Schermer, M., "On the argument that enhancement is 'cheating'," *Journal of Medical Ethics*, v. 34(2), pp. 85-88 (2008). <http://jme.bmj.com/cgi/content/abstract/34/2/85>.

## CASE #6: PARKLIFE

Desperate Kenyans, who, due to climate change, have seen a dramatic drop in their food and water supplies, are settling illegally in their country's national parks. Around 15,000 squatters currently live throughout Kenya's protected parks.<sup>1</sup> In order to make heavily forested areas apt for cultivation and cattle-grazing, settlers have deforested almost 1 million acres.

Food insecurity has been the main cause behind these settlements, yet the consequence of cutting down protected forests is to put Kenyan people in an even more precarious situation. Because trees "promote the formation of clouds – cutting them down inevitably leads to lower rainfall." In turn, lower rainfall adversely affects agriculture and food security. The indiscriminate clearing of many of Africa's forests has already caused the desertification of the African landscape. Mourning the recent disappearance of a local river, a Kenyan farmer worriedly complained: "My life will be completely ruined if I cannot get water for us and our livestock, our land will turn into a desert. We will all die."<sup>2</sup>

Thus far, the Kenyan government has responded to the so-called assault on its parks by vowing to add more armed guards and electric fences to prevent illegal settlements. However, the situation in Kenya defies easy solutions. While many squatters are hungry Kenyans in search of sustenance, allowing the poor to extract resources out of nature parks will not solve Kenya's problems. As the director of Kenya's Wildlife Service has argued, "Kenya is destroying itself. The population has reached an unsustainable level. We are killing ourselves slowly by destroying the forests and settling there." Complicating the issue still further, many of the current settlers belong to indigenous groups who claim to have lived in the forest for generations while allegedly harvesting its resources in a sustainable manner. Furthermore, the label "squatters" has even been called into question by those who claim to have land titles in the protected areas.

Electric fencing might prevent additional settlements in Kenyan parks, and the removal of current squatters may help prevent further destruction of Kenya's flora and fauna. However, these measures do little to address the underlying cause of these illegal settlements: food scarcity and climate change. It is unclear what the Kenya government can do to address climate change, given that global warming can be partly attributed to developed nations overuse of ecological resources.<sup>3</sup> Because the lifestyle in developing nations (in the form of copious carbon emissions) has unavoidably impacted the whole earth, the negative consequences of global warming experienced in the developing world constitute the "largest health inequity of our time."<sup>4</sup>

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<sup>1</sup> Vidal, John, "Electric fences to stop invasion of Kenya nature parks," <http://www.guardian.co.uk/world/2009/may/10/kenya-climate-change-mau-park>, *Guardian News and Media Ltd.* (May 10, 2009).

<sup>2</sup> Moody, Barry, "Destruction of Kenya forest is national emergency," <http://ca.reuters.com/article/oddlyEnoughNews/idCAL246908720080903?sp=true>, *Reuters* (Sept. 2, 2008).

<sup>3</sup> Baer, Paul, et al., "Equity and Greenhouse Gas Responsibility," *Science*, v. 289, i. 5488, p. 2287 (Sept. 29, 2000) <http://www.climate-talks.net/2004-ENVRE130/PDF/20000929-Science-Equity.pdf>; Srinivasan, U.T., et al., "The debt of nations and the distribution of ecological impacts from human activities," *Proceedings of the National Academy of Sciences*, v. 105(5), p. 1768 (Oct. 19, 2007) <http://www.pnas.org/content/105/5/1768.abstract>; Singer, P.P., *One World: The Ethics of Globalization* (2nd ed.), Yale University Press (2004).

<sup>4</sup> Patz, J.A., et al., "Climate change and global health: Quantifying a growing ethical crisis," *EcoHealth*, v. 4(4), pp. 397-405 (Nov. 30, 2007) <http://www.springerlink.com/content/212lw8m6466n645p/>.

## CASE #7: MYSPACE INVASION

Twenty-five-year-old Stacy Snyder, a senior at Millersville University in Millersville, Pennsylvania, was dropped from the student-teaching portion of her course work after the staff at the high school where she was student-teaching viewed postings on her MySpace page.<sup>1</sup> Already frustrated by what the high school administration viewed as Stacy's poor subject knowledge, her weak grammar skills, and her overly informal attitude toward her students, the high school staff decided, after viewing Stacy's postings, that she was not an acceptable candidate for a teaching degree. When Stacy could not complete her required hours of student teaching because she was not allowed on the high school grounds, the university decided to award her a degree in English rather than the anticipated degree and certificate in teaching.

The postings that the high school staff found inappropriate included a photo of Stacy taken at a costume party. In the photo, Stacy is seen wearing a pirate hat, drinking from a plastic cup; the photo caption reads: "A Drunken Pirate."<sup>2</sup> Her MySpace page also included a posting that could be interpreted as a negative comment about her supervising teacher at the high school. Millersville University had warned the student-teachers earlier that they should not post any comments about the high school staff on their web pages, nor should they direct their students to personal web pages; both directives Stacy ignored. In addition to showing general bad judgment in posting questionable photos on MySpace, employers may generally dismiss an employee for failure to follow workplace policies.

Ms. Snyder filed a federal law suit against the university, claiming violation of her First Amendment rights.<sup>3</sup> She sued for her degree in teaching and the right to apply for a certificate. Some states have enacted laws protecting employees from repercussions of personal postings on the web, but Pennsylvania does not.<sup>4</sup>

The federal judge ruled against Ms Snyder, stating that the university is under no obligation to award the teaching degree without the required hours of student teaching. The judge also stated that a teacher's First Amendment rights pertain to public matters only, not personal.<sup>5</sup>

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<sup>1</sup> Stross, Randall, "How to Lose Your Job on Your Own Time," <http://www.nytimes.com/2007/12/30/business/30digi.html>, *New York Times*, (Dec. 20, 2007).

<sup>2</sup> "College Sued Over 'Drunken Pirate' Sanctions," <http://www.thesmokinggun.com/archive/years/2007/0426072pirate1.html>, *The Smoking Gun* (Apr. 26, 2007).

<sup>3</sup> Krebs, Brian, "Court Rules Against Teacher in MySpace 'Drunken Pirate' Case," [http://voices.washingtonpost.com/securityfix/2008/12/court\\_rules\\_against\\_teacher\\_in.html](http://voices.washingtonpost.com/securityfix/2008/12/court_rules_against_teacher_in.html), *Security Fix* (blog), *Washington Post* (Dec. 3, 2008).

<sup>4</sup> *Snyder v. Millersville University, et al.*, 2008 WL 5093140 (E.D. Pa., 2008), filings available at: <http://news.justia.com/cases/featured/pennsylvania/paedce/2:2007cv01660/228127/>, Justia.com.

<sup>5</sup> Rosen, Lester, "Stacy the 'Drunken Pirate': A Federal Court Case in the MySpace Age," [http://www.collegerecruiter.com/employersblog/2009/05/stacy\\_the\\_drunken\\_pirate\\_a\\_fed.php](http://www.collegerecruiter.com/employersblog/2009/05/stacy_the_drunken_pirate_a_fed.php), *collegerecruiter.com* (May 19, 2009).

## CASE #8: IN THE SPIRIT OF FULL DISCLOSURE

On November 4, 2008, 52.3% of California voters approved Proposition 8 – also known as the Marriage Protection Act. The proposition amended the state constitution to bar same-sex couples from civil marriage.<sup>1</sup> On May 26, 2009, the California Supreme Court confirmed the legality of Prop 8, while at the same time allowing same-sex couples who were married before November 5, 2009 to remain married.<sup>2</sup> Although supporters of Prop 8 feel that so-called traditional marriage has finally received its due protection, advocates of same-sex marriage have decried the ratification of the voter initiative as a gross violation of civil rights, akin to anti-miscegenation laws.

Backed by California's campaign disclosure law, an anonymous individual has put together the website [www.eightmaps.com](http://www.eightmaps.com), which "takes the names and ZIP codes of people who donated to the ballot measure [Prop 8]... and overlays the data on a Google map."<sup>3</sup> Some of the individuals and companies who donated money to outlaw same-sex marriage have received death threats, and "their businesses have been boycotted."<sup>4</sup> In response to this harassment, a group of Prop 8 supporters have filed a lawsuit attempting to "to block their campaign finance records from public view."<sup>5</sup> Without the protection of their personal information, some donors have indicated that they would not contribute to similar causes, lest they receive further harassment. This is exactly what critics of eightmaps.com fear: disclosure laws, coupled with new technologies, such as Google maps, could discourage voters from participating in the political process. As Michael Shin has noted, websites disclosing donor information are not "explicitly pernicious." However, they can become a tool for violence and persecution.<sup>6</sup>

According to Dr. Shin, a political scientist, transparency in the electoral process promotes an informed electorate, thus "enhancing the quality of democracy." However, critics of eightmaps.com have noted that the goal of transparency and disclosure laws is to expose powerful private interests that are trying to influence the government – not private citizens writing \$100 checks to a political cause of their choice. While transparency is necessary for an effective democracy, so too is privacy. Political theorist Anabelle Lever has noted that privacy rights are not merely instrumentally useful in protecting political participation, but also necessary for the full exercise of personal freedom and equality.<sup>7</sup>

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<sup>1</sup> "California General Election: Official Voter Information Guide," <http://voterguide.sos.ca.gov/past/2008/general/title-sum/prop8-title-sum.htm>.

<sup>2</sup> *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009), opinion available online at: <http://www.courtinfo.ca.gov/opinions/documents/S168047.PDF>.

<sup>3</sup> Stone, Brad, Prop 8 Donor Web Site Shows Disclosure law is 2-Edged Sword," <http://www.nytimes.com/2009/02/08/business/08stream.html>, *New York Times* (Feb. 7, 2009).

<sup>4</sup> Zavis, Alexandra, et al., "Gay marriage bashers threaten boycotts of pro-Prop. 8 restaurants," <http://latimesblogs.latimes.com/lanow/2008/11/gay-marriage-ba.html>, *Los Angeles Times* (Nov. 12, 2008).

<sup>5</sup> Lawrence, Steve, "Calif. gay marriage foes want donors anonymous," <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/01/08/state/n172303S97.DTL>, *San Francisco Chronicle* (Jan. 9, 2009).

<sup>6</sup> Shin, M.E., "Democratizing electoral geography: Visualizing votes and political neogeography," *Political Geography*, v. 28, i. 3, pp. 149-152 (Mar. 2009).

<sup>7</sup> Lever, Annabelle, "Privacy Rights and Democracy: A Contradiction in Terms?" *Contemporary Political Theory*, v. 5(2), pp. 142-162 (May 20, 2004).

On the other hand, eightmaps.com can enhance individuals' freedom by allowing them to vote with their dollars. By boycotting Prop 8 donors, supporters of equal rights for same-sex couples are, as many oppressed minorities have done in the past, using soft power to bring about change. As a No-on-8 activist put it, "a citizen has every right to donate money to a cause that hurts me. And I have as much right to express my disagreement by not patronizing their business."<sup>8</sup>

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<sup>8</sup> Schwyzer, Hugo, "Prop 8, boycotts, and villains who aren't villains," <http://hugoschwyzner.net/2008/11/13/prop-8-boycotts-and-villains-who-arent-villains/#comment-467301> HugoSchwyzer.net (blog) (Nov. 13, 2008).

## CASE #9: IMAGINARY PUNDIT

Over the past 20 years, the Internet has become the ultimate vehicle to accelerate the flow of relevant information. Around the world, the internet is being utilized as a tool to self-educate faster than ever before. While an immense library of knowledge on any subject is just a keystroke (or Google search) away, there is a growing risk that some of this knowledge is not credible. In many cases, authors create and package fiction with the sole purpose of deceiving or manipulating the public into believing things that are, in fact, false.

The 2008 U.S. presidential election has cast a spotlight on political falsehoods created to appear as fact. A number of major news agencies have fallen victim to fictitious information and quotes that were created in an attempt to get air time and gain notoriety. Take the case of fictional pundit, Martin (a.k.a. Michael) Eisenstadt.<sup>1</sup> Sources ranging from Fox News to Mother Jones, The New Republic, and the Los Angeles Times all fell prey to Eisenstadt's hoax.

The day after the 2008 presidential election, FOX News Channel reported that an unnamed member of the McCain campaign stated, "Sarah Palin did not know that Africa was a continent."<sup>2</sup> Following this story, David Shuster, an MSNBC anchor, using information obtained from a blog, attempted to set the record straight by reporting, "Turns out it was Martin Eisenstadt, a McCain policy adviser, who has come forward to identify himself as the source of the leaks."<sup>3</sup> While the truth of the Palin-Africa claim remains uncertain, Mr. Eisenstadt, who claimed to be the source, does not in fact exist – he is a fictional character created by filmmakers Eitan Gorlin and Dan Mirvish; Gorlin plays Eisenstadt in YouTube videos. Gorlin, via Eisenstadt, claimed responsibility for breaking the story of Palin's faux pas, but in truth he created the video in response to the Fox News report, not before it.<sup>4</sup>

Why did Eisenstadt perpetrate this fraud on the media? Gorlin states that he and Mirvish started distributing the Eisenstadt pieces in order to get a TV show. They changed Eisenstadt's first name when bloggers and journalists first noticed that Eisenstadt did not "check out," and later even went to the trouble of creating, "video footage, biography, a false think tank Web site, and blog" for Eisenstadt to keep the ruse up.<sup>5</sup> Journalists do not have to operate in the dark or alone, however. The website, sourcewatch.org provides some information on newsworthy (pseudo) individuals like Eisenstadt to help journalists check backgrounds and verify sources.<sup>6</sup> Unfortunately, Time and CNN quoted Eisenstadt as a political pundit again in May of 2009.<sup>7</sup>

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<sup>1</sup> Pérez-Peña, Richard, "A senior fellow at the Institute of Nonexistence,"

<http://www.nytimes.com/2008/11/13/arts/13iht-13hoax.17776408.html>, *The New York Times*, Nov. 13, 2008.

<sup>2</sup> Carl Cameron, Fox News Channel broadcast, approx. 5:05 p.m. CT (Phoenix, AZ), Nov. 5, 2008, accessible at: <http://www.youtube.com/watch?v=MWZHTJsR4Bc>.

<sup>3</sup> David Schuster, MSNBC broadcast, approx. 4:40 p.m. ET, Nov. 10, 2008, accessible at:

<http://www.youtube.com/watch?v=ucfA86t7sH4&feature=Playlist&p=AB4B95866BFE0C5D&index=8>.

<sup>4</sup> Friedman, Emily, "Martin Eisenstadt: Pundit or Fraud?"

<http://www.abcnews.go.com/Politics/Vote2008/Story?id=6250151&page=2>, *ABC News*, Nov. 14, 2008.

<sup>5</sup> Harper, Jennifer, "Pranksters get the last laugh," <http://www.washingtontimes.com/news/2008/nov/14/pranksters-get-the-last-laugh/>, *Washington Times*, Nov. 14, 2008.

<sup>6</sup> [http://sourcewatch.org/index.php?title=Martin\\_Eisenstadt](http://sourcewatch.org/index.php?title=Martin_Eisenstadt)

<sup>7</sup> Huston, Warner Todd, "Time gets taken by fake McCain advisor unmasked months ago,"

<http://newsbusters.org/blogs/warner-todd-huston/2009/05/14/time-gets-taken-fake-mccain-adviser-unmasked-months-ago>, newsbusters.org, May 14, 2009.

## CASE #10: OFF THE FIELD

Michael Vick made headlines in 2007 when authorities discovered his involvement in illegal dog-fighting.<sup>1</sup> Through the legal proceedings, the public learned that he had been a heavy hitter in the dog fighting world, engaging in the purchase, training, abuse, and inhumane killing of many animals. He pled guilty in August of 2007, and was released from prison in August of 2009.<sup>2</sup>

As Vick reenters society and seeks to reenter the role of professional football player, as well, many have called his character into question, asking whether he ought to be allowed to continue his role as a famous professional athlete.<sup>3</sup> Animal rights groups have expressed willingness to accept the actions that Vick has taken since his conviction to educate the public about the horrors of animal abuse, but also hold some reservations about his reentry into the public spotlight. As stated in the *New York Times*:

In May, the Humane Society broke ranks with other animal rights groups by announcing a partnership with Vick.... The relationship between Vick and the Humane Society is part of a well-manicured initiative that benefits Vick as well as the organization. Vick uses the Humane Society for validation. The society plans to use Vick to discuss the evils of dogfighting and animal cruelty with young adults in urban areas.<sup>4</sup>

While dog fighting is a horrific crime, resulting in terrible trauma to its victims, dogs are not the only ones subject to harsh treatment, particularly by NFL players. In 2000, Colts player, Steve Muhammed's wife died, and he faced charges of battery relating to her death.<sup>5</sup> In 2004, Dolphin's tight end, Randy McMichael was arrested for hitting his pregnant wife.<sup>6</sup> These are not the only violent episodes against the families of NFL players, but none has received as much press as Michael Vick's involvement in dog fighting.<sup>7</sup> Some people, such as comedian Chris

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<sup>1</sup> The Associated Press, "Vick linked to dog selling business,"

[http://www.usatoday.com/sports/football/nfl/falcons/2007-05-04-vick-website\\_N.htm](http://www.usatoday.com/sports/football/nfl/falcons/2007-05-04-vick-website_N.htm), *USA Today* (May 4, 2007); The Associated Press, "Summary of Michael Vick Dog Fighting Case," [http://www.philly.com/philly/wires/ap/news/state/pennsylvania/20090814\\_ap\\_summaryofmichaelvickdogfightingcase.html](http://www.philly.com/philly/wires/ap/news/state/pennsylvania/20090814_ap_summaryofmichaelvickdogfightingcase.html), *Philadelphia Inquirer* (Aug. 14, 2009).

<sup>2</sup> "Vick faces prison time after agreeing to plead guilty," <http://sports.espn.go.com/nfl/news/story?id=2983121>, *ESPN News Services* (Aug. 21, 2007);

<sup>3</sup> Jeansonne, John, "Michael Vick gets mixed reaction from animal rights groups," <http://www.newsday.com/sports/football/vick-gets-mixed-reaction-from-animal-rights-groups-1.1370594>, *Newsday.com* (Aug. 14, 2009).

<sup>4</sup> Rhoden, William C., "Vick's path to redemption is clear," <http://www.nytimes.com/2009/08/29/sports/football/29rhoden.html?em>, *The New York Times*, Aug. 28, 2009.

<sup>5</sup> Huppke, Rex W., "NFL Wife's Death a Shadow on Playoffs," <http://articles.latimes.com/2000/jan/16/news/mn-54467>, *Los Angeles Times* (Jan. 16, 2000).

<sup>6</sup> Associated Press, "Notebook: Miami TE arrested for hitting wife," [http://seattletimes.nwsources.com/html/sports/2001968573\\_nfl30.html](http://seattletimes.nwsources.com/html/sports/2001968573_nfl30.html), *Seattle Times* (June 30, 2004).

<sup>7</sup> See also, "Former NFL player charged in Lakewood Ranch attack," <http://www.heraldtribune.com/article/20090506/ARTICLE/905069997?Title=Former-NFL-player-charged-in-Lakewood-Ranch-attack>, *Sarasota Herald Tribune* (May 6, 2009). For statistics on online published news articles, see Google's advanced news search, enter names of party and view number of articles by date. Over 11,000 articles on Michael Vick were published right around the time of his conviction for dog fighting.

Rock, question why people have become so outraged over Vick's actions, and think that the outrage may misunderstand the context in which the crime occurred.<sup>8</sup>

Wayne Pacelle, the Humane Society's president and CEO, recently discussed the partnership with Vick, and stated, "Do I believe that he cares about animals and wants to see dogfighting end? Yes.... In terms of the depth of his passion, I'm not a mind reader, but I believe he's going to say the right things to kids and that he's going to stick with the program."

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<sup>8</sup> Perloff, Andrew, "Chris Rock says outrage over dogfighting is forced," <http://sportsillustrated.cnn.com/danpatrick/blog/73901/index.html>, based on interview with Dan Patrick, *Sports Illustrated* (Aug. 12, 2009).

## CASE #11: WOMEN AND HEALTH INSURANCE

Roughly 10% of Americans, including 6% of American women, who have health insurance purchase that coverage as an individual, rather than through an employer<sup>1</sup>. Premiums are generally higher than one would pay through one's employer, but one need not worry about losing the insurance due to job loss.

According to a recent article in the *New York Times*, however, the deal may be more costly if you don't happen to be male. Women pay between 20% and 50% higher premiums than men for the same insurance coverage<sup>2</sup>. (Employer-subsidized insurance plans offer all employees the same benefit plan, regardless of sex or gender.) Furthermore, women are charged more even if they decline maternity coverage. Only ten states have passed laws prohibiting this kind of discrimination in the individual insurance market, leaving the vast majority of women unprotected on the open market.<sup>3</sup>

Insurance companies argue that the higher cost for women is justified. Women use more healthcare services than men, including a broad array of services associated with maternity and reproductive health, and are thus more expensive to insure. In this respect, the high premiums women pay are like the higher premiums associated with age, despite one's inability to choose one's sex or stop getting older. The higher premiums simply reflect the higher expenses to the insurance company. Men and women seeking insurance on the individual market can expect to pay more for a policy if they have a pre-existing condition or other factors that cause them to use more healthcare services. Women use more services in general, particularly regular checkups and screenings, and unfortunately happen to be the only demographic that can get pregnant.

Others claim that despite the business logic behind the higher premiums, they are discriminatory. A significant wage gap already exists between men and women who work similar jobs. To expect women to pay more on the individual insurance market increases the wage gap even more. Charging higher premiums based on racial or ethnic differences has been banned for some time, despite the potential for differences in healthcare consumption between races. These and other reasons fuel the contention that sex-based insurance premium differences should be outlawed.

Of course purchasing insurance on the individual market is already expensive for men, as well. Increasing their costs would introduce further disincentives to buy insurance, potentially leading to fewer insured people altogether. The concept of insurance implies that all of the people who pay premiums subsidize others who use more than their "share" of medical care, but the line between dispassionately pricing risk and sexism remains extremely controversial.

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<sup>1</sup> Kaiser Family Foundation, "Women's Health Insurance Coverage Fact Sheet," [http://www.kff.org/womenshealth/upload/6000\\_07.pdf](http://www.kff.org/womenshealth/upload/6000_07.pdf) (Oct. 2008).

<sup>2</sup> Pear, Robert, "Women Buying Health Policies Pay a Penalty," <http://www.nytimes.com/2008/10/30/us/30insure.html>, *New York Times* (Oct. 28, 2008).

<sup>3</sup> Varney, Sarah, "Women Pay the Price for Health Insurance," <http://www.npr.org/templates/story/story.php?storyId=102618109>, *All Things Considered*, NPR (Apr. 2, 2009).

## CASE #12: SYNTHETIC MEAT

Science has always been on the forefront of making food easier to produce, but the possibility of synthetically produced meat has some people wondering if it has gone too far.

Traditionally, of course, making meat requires raising, feeding, and slaughtering animals. Scientists like Dr. Vladimir Mironov at the Medical University of South Carolina in Charleston, however, have begun to engineer rudimentary forms of meat without producing animals at all, merely growing the meat in a nutrient bath<sup>1</sup>. Muscle cells from various animals are isolated, then placed in a nutrient-rich mixture to divide. After a suitable number of cells are present, they are attached to a structure to grow in a “bioreactor.”<sup>2</sup> Currently the synthetically grown meat is not ready for human consumption. It is slimy, visually unappealing, and lacks the familiar texture of meat grown on animals. Mentioning the technology also seems to turn off many meat-eaters, who see animal-grown meat as more “natural.” If synthetically produced meat could eventually become cheap enough, however, it may feature in solutions to some of the world’s hunger problems. Since it does not require the rest of the animal-production infrastructure, it may be able to accomplish this cost-savings at the same time it dodges the problems with animal hygiene and disease.

If synthetically produced meat were ever to become more appealing (either by matching animal-grown meat in terms of quality or undercutting it in terms of price), much of the agriculture surrounding meat may be threatened. Ranchers and farmers may lose important sources of income. Food policy reform advocates such as author and professor Michael Pollan say that modern society is already unfamiliar with the sources of its nourishment and synthetically produced meat would exacerbate that problem. Millennia of eating animal-grown meat has shown meat to be (largely) safe for human consumption. No such data exists on meat grown in nutrient baths. Since synthetic meat could also be genetically engineered to bring out desirable traits, some detractors claim it will suffer from the same criticisms leveled at other genetically modified foods.

Animal rights activists are also split on the potential benefits and costs associated with synthetic meat production. The controversial animal rights group known as People for the Ethical Treatment of Animals (PETA) has announced a \$1 million dollar prize to the first scientist or group who can make synthetic chicken meat as commercially appealing as animal-grown meat.<sup>3</sup> PETA’s reasoning seems to be that since synthetically produced meat does not harm any animals, it is ethically preferable to animal-grown meat. By growing the meat in laboratories, it will endure no more suffering than a plant does growing hydroponically or out in the field.

But not all animal rights supporters see a silver lining around the synthetic production of meat. If animal suffering is the only thing that makes meat production unethical, presumably we

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<sup>1</sup> Maddox, Bruno, “The Way of All Flesh,” <http://discovermagazine.com/2006/jul/blinded>, *Discover Magazine* (July 12, 2006).

<sup>2</sup> Siegelbaum, D. J., “In Search of a Test-Tube Hamburger,” <http://www.time.com/time/health/article/0,8599,1734630,00.html>, *Time* (Apr. 23, 2008).

<sup>3</sup> Levine, Ketznel, “Lab-Grown Meat a Reality, But Who Will Eat It?” <http://www.npr.org/templates/story/story.php?storyId=90235492>, *Morning Edition*, NPR Health and Science (May, 20 2008).

should feel fine about eating synthetically produced cat and dog meat, and maybe even human meat. Furthermore, the long term benefits of moving to a more vegetarian diet may be much better for human health and the environment than simply finding more substitutes for meat.

Scientists respond to these criticisms by noting that if meat were synthetically produced, it would contain pure muscle cells only, putting manufacturers in better control of fat content and other unhealthy by-products of non-synthetic meat.

## CASE #13: MEDICAL PROFESSIONALS' ROLE IN TORTURE

In October 2006, the United States enacted the Military Commissions Act of 2006. This act authorized the use of military tribunals for enemy combatants, along with the right to hold them indefinitely without judicial review under the terms of habeas corpus. Part of the Act was an amendment which retroactively rewrote the War Crimes Act, effectively immunizing those applying policies of water-boarding, stress positioning, sleep deprivation, and other controversial military tactics from prosecution under U.S. law.<sup>1</sup>

Beyond the moral issues related to the use of torture there is a debate regarding the role of medical professionals in overseeing and providing medical attention associated with such practices. For example, investigators for the Red Cross published a report in 2006 which concluded that medical professionals working for the C.I.A. monitored prisoners undergoing waterboarding, apparently to make sure they did not drown. Medical workers were also present when guards confined prisoners in small boxes, shackled their arms to the ceiling, kept them in frigid cells and slammed them repeatedly into walls, the report said.<sup>2</sup>

According to other accounts when medical professionals were not present during harsh interrogations they have assisted afterwards by stitching wounds caused by the blows of guards, replacing dislocated shoulders resulting from hanging by the arms, etc.<sup>3</sup> At times, the reports of such medical professionals have assisted in the identification of prisoner abuse. On other occasions medical staff has been complicit in hiding abuse and even death by altering or camouflaging the injuries they reported.<sup>4</sup>

There is nothing about medical personnel that makes them intrinsically more or less moral than the rest of the population, but doctors at least take the Hippocratic Oath, "to do no harm." In addition, many doctors submit to the Nuremberg Code, enacted in reaction to the human rights abuses of Nazi doctors who engaged in experimentation on human subjects; this code provides ten tenets of ethical medical research.<sup>5</sup> Some are seriously concerned that when medical personnel participate in harsh interrogations, they are violating their most basic oath, and other ethical requirements of the medical field. Others worry about the ways that medical personnel can be complicit, including sharing prisoner's medical records with interrogators in an effort to reveal vulnerabilities.

Others argue that without the presence of medical personnel harsh interrogations would be less effective and more dangerous. Medical supervision offers the possibility of a more controlled environment including greater emphasis on prisoner welfare. It may also make interrogations more effective and thus contribute to homeland security.

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<sup>1</sup> No longer punishable under US law.

<sup>2</sup> Shane, Scott, "Report Outlines Medical Workers' Role in Torture," <http://www.nytimes.com/2009/04/07/world/07detain.html>, *New York Times* (Apr. 6, 2009).

<sup>3</sup> Zernike, Kate, "Only a few spoke up on abuse as many soldiers stayed silent," <http://www.nytimes.com/2004/05/22/international/middleeast/22WITN.html>, *New York Times*, A1 (May 22, 2004).

<sup>4</sup> Lifton, Robert Jay, "Doctors and Torture," <http://content.nejm.org/cgi/content/full/351/5/415>, *The New England Journal of Medicine*, v. 351, n. 5, pp. 415-416 (July 29, 2004).

<sup>5</sup> United States Holocaust Memorial Museum, "The Nuremberg Code," [http://www.ushmm.org/research/doctors/code\\_expl.htm](http://www.ushmm.org/research/doctors/code_expl.htm).

## CASE #14: MINING IN WEST PAPUA

The Grasberg mine in West Papua, New Guinea is the largest, most productive open-pit copper mine in the world and may be the largest source of gold for the foreseeable future. PT Freeport, the Indonesian subsidiary of mining giant Freeport-McMoran, has owned and operated the Grasberg mine under government contract since 1967. As a result of the success at Grasberg PT Freeport has become a leading contributor to Indonesia's economy, its largest exporter and its highest taxpayer.<sup>1</sup> In addition to the immense benefits to the Indonesian economy the Grasberg mine has helped Freeport-McMoran to become highly successful returning hundreds of millions in profits to its shareholders.<sup>2</sup>

Beyond the benefits to corporate shareholders the open-pit mine at Grasberg has the consequence of providing inexpensive copper to help fuel growth in the developing world. Copper is a vital ingredient in the generation and transmission of electricity, plays a significant role in telecommunications, and is required for numerous industrial applications. As a result persons in need of expanded electrical services and an increased industrial base are all stakeholders in mines like Grasberg. Of special note are those stakeholders for whom inexpensive copper is crucial for the beginnings of industry and consumer electricity, especially those in the developing world. Unfortunately, Freeport's success has not come without a cost.

At the time mining began the Grasberg mine appeared as a road winding up to the top of a decapitated mountain. Now the open-pit style mine appears as an immense crater in the earth several times the size of the original mountain.<sup>3</sup> PT Freeport contends that the open-pit mining style is more efficient than traditional tunneling methods and is safer for mine workers. Although they admit the open-pit is aesthetically unpleasing, they claim the environmental damage is negligible. Environmental groups point out that the loss of rich land and wild life is only half of the picture. Also of concern is the dumping of tailings, the discarded waste material produced by mining, into the Fly river. The operation at Grasberg deposits 40 million tons of sediment into a 20-kilometer stretch of the 1000-kilometer river which naturally receives a total of 90 million tons of deposit per year.

Also, of concern is the effect that the mine has had on the 20,000 members of two indigenous tribes, the Amungme and the Kamoro. In 1967 both tribes had had some contact with western missionaries, but practiced traditional lifestyles including subsistence farming, fishing and hunting. The mining operation has made traditional food sources vanish and has brought an influx of approximately 100,000 foreigners. The result is that a city has been erected and the traditional living arrangements of the Amungme and Kamoro are now impossible. Some

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<sup>1</sup> Kennedy, Danny, "Risky Business: An Independent Report on PT Freeport Indonesia, 1998," [http://www.freewestpapua.org/docs/risky\\_business.pdf](http://www.freewestpapua.org/docs/risky_business.pdf), *Project Underground* (1998).

<sup>2</sup> "Fortune 1000 Ranked Within Industries," *Fortune* (Apr. 28, 1997).

<sup>3</sup> Primaldhi, Alfindra, "Photograph of Grasberg Mine," [http://en.wikipedia.org/wiki/File:Grasberg\\_mine.jpg](http://en.wikipedia.org/wiki/File:Grasberg_mine.jpg) (2007).

indigenous people have assimilated and begun working for PT Freeport, while others have protested what they consider an illegal taking of their land.<sup>4</sup>

In response to the protests of native Papuans PT Freeport has adopted a two-prong strategy, both making threats and offering benefits to the Amungme and Kamoro. Beginning in the late 1960's, PT Freeport employed both private security and the Indonesian military, and at present spends upwards of \$500 million dollars each year in security for its Indonesian facilities. These security forces have been implicated in numerous beatings, rapes, killings, disappearances and bombings over the last 40 years. As a second prong PT Freeport has offered to compensate the Amungme and Kamoro at the rate of 1% of the Grasberg mine's yearly profits. Some local leaders claim this amount is too small, while others assert that no amount of money is adequate to compensate for their forced change in lifestyle.<sup>5</sup>

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<sup>4</sup> Abrash, Abigail, "Repressive Mining In West Papua," in *Moving Mountains: Communities Confront Mining and Globalization*, Ch. 4, ed. Abigail Abrash and Danny Kennedy. New York: Oxford University Press (2001).

<sup>5</sup> *Beanal v. Freeport-McMoRan*, 197 F.3d 161 (5th Cir. Nov. 29, 1999), accessible at: <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=5th&navby=docket&no=9830235CV0>.

## CASE #15: OBESE AIRLINE PASSENGERS

Irish airline Ryanair recently raised media attention by suggesting that it may implement a surcharge for passengers above a specified weight limit or waist circumference. According to a representative, one in three passengers surveyed favors an extra fee for overweight passengers.

<sup>1</sup> In response to this so-called “fat tax” some have argued that extra fees amount to discrimination against the obese.<sup>2</sup>

Most U.S. airlines have policies regarding seats for obese passengers;<sup>3</sup> however, these policies are not well publicized. Defending this tendency to be secretive, airline companies state that they prefer to be discreet about announcing this particular area of policy because their onsite workers try to find comfortable seating for all passengers if they possibly can do so. Southwest Airlines, for example, places its Obese Passenger policy on its website.<sup>4</sup>

The lack of a clearly communicated policy on obesity, though, can result in obese people being bumped to a later flight or hit with a double fare or both, due to lack of information. In fairness, this would be likely to occur only with an inexperienced passenger, since agents in the airports usually inform the client, diplomatically in most cases, of the requirements.

Most airlines now require obese people to purchase two tickets in coach. Usually the company refunds the extra fare if the flight does not fill up, making that second seat available. If the negotiation occurs at the gate, no extra fare changes hands if there are empty seats. On the other hand, boarding-time decisions have included incidents of humiliating treatment of passengers, who are called out from the line and confronted in public with their extra-fare obligation, and an option to stand by for a plane offering extra seats.

Passengers who are 6’5” and taller are also met with problems of inadequate space on planes.<sup>5</sup> However, they do not encounter policies requiring them to arrange appropriate seating for themselves, e.g. by obtaining aisle or emergency row seats, preferably in advance. One obese passenger states that he observed a seat being taken out in a bulkhead row, to allow a tall passenger his leg-room, while he, the fat man, had been offered no comparable accommodation.

“Normal sized” passengers have claims to comfort and safety, as do the obese; legion are the reports to airlines of the many experiences of discomfort, and even embarrassments, that have occurred from being seated next to obese people. This is not always a blanket issue of

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<sup>1</sup> Ingham, John, “Now Rynaair plans a ‘fat tax’ for obese passengers,” [www.express.co.uk.posts/v/96590/now-Ryanair](http://www.express.co.uk.posts/v/96590/now-Ryanair), *Daily Express, UK News* (Apr. 23, 2009).

<sup>2</sup> Datko, Karen, “Is airline policy for obese passengers fair?,” <http://blogs.moneycentral.msn.com/smartsending/archive/2009/04/16/is-airline-policy-for-obese-passengers-fair.aspx>, *MSN Smart Spending Blog* (Apr. 16, 2009); see also, Vedelago, Chris, “When size matters: obese passengers and economy seating,” [www.theage.com.au/action/printArticle?id=348127](http://www.theage.com.au/action/printArticle?id=348127), *TheAge.Com* (Jan. 17, 2009).

<sup>3</sup> Landsel, David, “Some Airlines Make Obese Passengers Buy Two Seats,” <http://www.smartertravel.com/travel-advice/some-airlines-may-make-obese-passengers-buy-two-seats.html?id=2644439>, originally printed at [www.airfarewatchdog.com](http://www.airfarewatchdog.com) (Aug. 6, 2008).

<sup>4</sup> Southwest Airlines, “Customer of Size Q&A,” [http://www.southwest.com/travel\\_center/cos\\_qa.html](http://www.southwest.com/travel_center/cos_qa.html).

<sup>5</sup> Doyle, Brendan, “Airlines squeezing extra fares out of extra-large people,” <http://www.mcclatchydc.com/economy/story/70390.html>, *McClatchy Washington Bureau* (June 19, 2009).

equitable enjoyment of the space; for example, a thin person might have a chronic shoulder or back disorder that requires her to favor one armrest, or else expect proportional support from both. She requests aisle seats for every flight, but cannot always obtain them. If one or both armrests has in effect disappeared into the flesh of another, the back-pain surges up needlessly, and she either suffers in silence or files a complaint. Many slim passengers do not complain and in fact they quietly sacrifice some of their seating space with compassion and empathy. Still, it is they, not the airlines and not the obese people, who pay for extras the overweight people receive.

In January of 2008, the Supreme Court of Canada upheld the “one person, one ticket” policy that has been the touchstone of passenger services since commercial aviation began.<sup>6</sup> The Court said it is discrimination to require extra fares from the differently-abled, including those who are obese because of an illness and/or medically recognized condition. As of January, 2009, Canadian companies must provide a second seat free for disabled passengers. The firms have complied, but they require medical notation, weeks in advance of the flight, of the disability or of the obesity’s medically-recognized origin. They supply a form for physicians to fill out, including instructions with a diagram on how to “measure the obese person’s butt.”<sup>7</sup>

Obesity remains a controversial subject. Some argue that most obesity results from poor individual choices, including excessive calorie intake and a sedentary lifestyle. Others believe that obesity more likely results from genetic makeup, metabolic disorders or illnesses, or social conditions for which obese individuals should not be held responsible.<sup>8</sup>

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<sup>6</sup> “Ruling means airlines must make room for disabled,” [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20081120/scc\\_ruling\\_081120/20081120?hub=Health](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20081120/scc_ruling_081120/20081120?hub=Health), *CTV.ca News* (Nov. 20, 2008).

<sup>7</sup> Weibel, Barbara, “Hysterical New Rules For Obese Canadian Airline Passengers,” <http://holeinthedonut.com/2009/02/06/obese-canadian-airline-passenger-rule/>, Hole in the Donut (blog) (Feb. 6, 2009).

<sup>8</sup> Neuroanthropology, “On the Causes of Obesity: Common Sense or Interacting Systems,” <http://neuroanthropology.net/2008/04/03/on-the-causes-of-obesity-common-sense-or-interacting-systems/> (Apr. 3, 2008).