

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.¹

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.² 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.³ 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.⁴ 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."⁵ Some legislators agree and 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.⁶

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

² "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).

³ 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).

⁴ *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.

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

⁶ 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 #4: TESTING VIRTUE

Most people overestimate their ability to act on their principles, according to a recent article in the *New York Times*.⁷ “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.”⁸

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.”⁹

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.

⁷ 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).

⁸ 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.

⁹ “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.¹ 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,² 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.³ 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?"⁴ 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.

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

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

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

⁴ 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 #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.¹ 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."² 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.³ 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.⁴

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.⁵

¹ 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).

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

³ Krebs, Brian, "Court Rules Against Teacher in MySpace 'Drunken Pirate' Case," http://voices.washingtonpost.com/securityfix/2008/12/court_rules_against_teacher_in.html, *Security Fix* (blog), *Washington Post* (Dec. 3, 2008).

⁴ *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.

⁵ 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, *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.¹ 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.² 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, 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."³ Some of the individuals and companies who donated money to outlaw same-sex marriage have received death threats, and "their businesses have been boycotted."⁴ 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."⁵ 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.⁶

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.⁷

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

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

³ 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).

⁴ 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).

⁵ 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).

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

⁷ 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."⁸

⁸ 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 #10: OFF THE FIELD

Michael Vick made headlines in 2007 when authorities discovered his involvement in illegal dog-fighting.¹ 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 2009.²

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.³ 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.⁴

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.⁵ In 2004, Dolphin's tight end, Randy McMichael was arrested for hitting his pregnant wife.⁶ 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.⁷ Some people, such as comedian Chris

¹ The Associated Press, "Vick linked to dog selling business,"

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, *Philadelphia Inquirer* (Aug. 14, 2009).

² "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);

³ 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).

⁴ 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.

⁵ 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).

⁶ Associated Press, "Notebook: Miami TE arrested for hitting wife,"

http://seattletimes.nwsources.com/html/sports/2001968573_nfl30.html, *Seattle Times* (June 30, 2004).

⁷ 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.⁸

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."

⁸ 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 employer¹. 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 coverage². (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.³

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.

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

² 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).

³ 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 #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.

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

Most U.S. airlines have policies regarding seats for obese passengers;³ 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.⁴

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.⁵ 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

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

² 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, *TheAge.Com* (Jan. 17, 2009).

³ 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 (Aug. 6, 2008).

⁴ Southwest Airlines, “Customer of Size Q&A,” http://www.southwest.com/travel_center/cos_qa.html.

⁵ 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.⁶ 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.”⁷

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.⁸

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

⁷ 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).

⁸ 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).