

Grab the Spotlight in Haste, Repent in Leisure

Amundsen Davis Commercial Litigation Alert
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Business Litigation

Buried on the third and fourth pages of *The Wall Street Journal* and my local newspaper recently, I found two interesting business stories. These stories followed much more prominent stories.

In the first, the WSJ reported that Duke University had recently settled (on confidential terms) with a male student it had expelled less than a month before his graduation several years ago during the “Dear Colleague” Title IX frenzy on college campuses. Very quickly after the accusation was made, and without providing any opportunity for due process, Duke sided with his female accuser and expelled the plaintiff with little or no ability to confront the accusation. The accusation was later retracted. In retrospect one wonders if the retraction might have come earlier had simple due process safe guards been utilized.

In the second, a 20-year old sued Dick’s Sporting Goods for refusing to sell him a Ruger .22 rifle even though no law prohibited the sale.

Both Duke and Dick’s grabbed the spotlight by doing what they thought would bring them favorable public opinion on the hot issues of campus rape and gun violence.

The protections of due process of law and the right to be free from discrimination are among the most fundamental legal building blocks of our country. They are what make our free country free.

Duke and Dick’s strategies may have been successful PR strategies and they likely made their choices with full knowledge of the backend price they risked in terms of litigation and settlement.

The consequences of similar actions by a smaller entity may prove to be disastrous with litigation and settlement for infringing a Constitutional right potentially wiping out years of profit or ending the company for good.

Ordinary businesses face these challenges of balancing “doing the right thing” and running a business every day much more quietly. Ordinary businesses can far less afford to pay for a “mistake.” The lesson of the two news articles is clear: unless you can afford to pay the price later, do not accede to the pressure of public opinion before thoroughly dissecting the issue. You may not need to act as if you were the government, but a little thought and investigation goes a long

way. Your lawyer can provide the guidance and through attorney/client privilege, the “quiet space” to consider the issue. Heed this advice and you’ll only meet lawyers in articles like this. Ignore it and you will be someone’s next client.

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