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Preface

This annotated bibliography is a summary of cases and materials available since Summer, 1988, when I completed the manuscript for The Law and Higher Education: Cases and Materials on Colleges in Court (Durham: Carolina Academic Press, 1989). In the five years that have passed, substantial cases and volumes of scholarship have emerged for consideration in this supplement, which I am readying for Fall, 1993 adoption. As difficult as writing a casebook is [see the article I have enclosed on writing such a text], a supplement -- at least the first supplement -- is even more difficult.

Or it has been for me. Part of the difficulty is the sheer need to look away to other things, particularly the queue of backlogged projects that lay in waiting during the years I wrote the casebook. In truth, I tired of the treadmill, and turned to other scholarly interests, some allied (a book on Prepaid Tuition Programs, for instance) and some not (a series of pieces on immigration issues and refugee children). Even so, this project loomed large over everything I have written since, and I never strayed far. My clipping files grew, and I have run through (and graduated) a series of law students and doctoral advisees. Each in his or her own way rejuvenated me and refreshed my memory of the project. I am now ready to plunge back in.

I am circulating these raw files to help the many others who have used the book for teaching or reference in practice, many of whom have inquired of my progress. Although there are far more references and cases here than I could possibly include, I thought
that teachers would find the outline useful, including my characterization of how the pieces fit. While I have not sat down to edit this into a manageable whole, I will not add anything without a corresponding deletion from the overall length. In some instances, this will be easy: the Tang case on the academic freedom privilege will replace the Dinnan and EPOC cases. Of course, any other case that has been overturned will probably be deleted and the new case added, and I may restore sections I had deleted. For instance, I had prepared a short section on racial harassment, but deleted it at the last moment on the principle that no cases had arisen; of course, this is no longer true.

As a final matter, I welcome any suggestions or questions from colleagues using this supplementary outline or the casebook. Feel free to contact me at the University of Houston Law Center, Houston, TX 77204-6370 (713-743-2078) or Fax (713-743-2299).

Michael A. Olivas
January, 1993
The study of higher education law, like that of its parent fields, higher education and law, is developing rapidly. In response to an administrative need to understand complex litigation and its effect upon the governance of institutions, knowledge of higher education law has become essential to anyone in a responsible position in higher education. In addition to the immediate, practical, and applied uses of law in college settings, there has emerged more systematic research on higher education law. Beginning with M. M. Chambers' seminal 1941 work, *The Colleges and the Courts*, scholars have mined the rich veins of litigation to contribute to an understanding of legal processes in postsecondary institutions.

However, this research, frequently published in law reviews and legal periodicals, has rarely enriched the practice of administration. Attorneys and law professors seldom become college administrators, although most senior administrators rely heavily upon counsel when making major policy decisions. Moreover, faculty in other fields become administrators, and there is little interaction in formal scholarly associations between legal researchers and academics. A veritable cottage industry has emerged to bridge the gap between litigation and administration and between scholar and practitioner, but the gap remains great.

This essay is a chronicle of how I made my choices in authoring *The Law and Higher Education: Cases and Commentary on Colleges in Court* (Durham: Carolina Academic Press, 1988). As with any text, there were problems with defining the domain: There is no consensus on what constitutes higher education law. Paul Dressel and Lewis Mayhew noted more than a decade ago that higher education itself as a field of study "is an active, confused field, lacking many of the attributes of a discipline, yet demanding more disciplined effort." Surely the same must be said for the field's subspecialty, higher education law. More vexing, perhaps, is what constitutes the "law" of higher education law. While no definition is proffered here, the organization of the book suggests more than a narrow definition of law-as-litigation. Indeed, an expansive view is taken, revealing testing organizations, politicians, state agencies, the federal and state governments, and institutions all to be
factors in the legalization of the academy. Notably absent is any deliberate ideological attempt to comment upon whether the increased litigation is “good” or “bad” for the higher education enterprise. This omission is deliberate, not because I have no principled views in the matter, but because the explicit question was simply beyond the scope of this project.

In truth, however, the issue of whether the litigation chronicled in the book is too much or too little is crucial to the legitimacy of higher education law as a developing field of study. If legal scholarship in higher education were simply to take on a “body-count” cast, counting victories and losses, serving only to legitimate unprincipled administrative decisions, or advancing only theories of risk management, much would be lost in law’s possibility for ensuring equitable treatment in a meritocracy. This scenario is unlikely to occur, as the increased resort to litigation has not always advantaged college administrators, who frequently lose in court. As many of these cases demonstrate, courts’ views of students have changed, and more than one critic has decried the pendulum’s swing to students.

When a more thorough review of higher education law is written, it will surely address the crucial issue of the proper role of law in the academy. Fifteen years ago, in Higher Education as a Field of Study, Dressel and Mayhew noted, “An almost new component of the field of higher education covers legal provisions, legal interpretations and the implications for higher education of precedent and legislated and administrative law.” This casebook was an attempt to provide a teaching tool that reflects the extraordinary growth in “the law of higher education” and the corollary rise in scholarship and commentary on higher education law and governance.

As in any casebook, I chose cases to reflect major themes and issues, and they form the core of the text. Additional materials were selected from exceptional scholarship, commentary, and news coverage of legal issues bearing upon higher education. I consulted widely with colleagues to identify the most significant cases and materials for inclusion, with their pedagogical value in mind: Would they help students understand the complex relation-
ships between institutions of higher education and society? To this end, I considered cases with interesting facts but less precedential value, anomalous cases since disregarded but providing a unique insight into a judge’s thinking, news accounts of fascinating cases or developments to reveal how law arises in U.S. society, and insights from scholars and practitioners who have thought about these issues. I edited with a heavy hand, and refer readers to the complete opinions; all extraneous footnotes and citations were deleted without notice, and all deletions from the text were noted with asterisks. In addition, some obvious cases were not included, either because they were extensively incorporated into cited cases or because space limitations necessitated the choice.

I gained renewed admiration for authors who had produced excellent casebooks, and I read through dozens, in order to understand the threads of logic, the flow of ideas, and the organizing principles employed by authors. Two principles struck me, and I tried to appropriate them for my own work. First, the best casebooks, to my way of thinking, treated a few large ideas extremely well: There is no room for purebred foxes, and no room for hedgehogs. Students appreciate several large ideas organized around meaningful principles, and the field of higher education law has evolved to the point that many cases exist for choosing among important issues. Second, the authors evidently made difficult choices about including reference materials, and chose to incorporate enough to refer students to additional sources, but were judicious in their selections. The least interesting books to me when I was a law student and doctoral student, and to me today as a law professor, were those that indiscriminately included notes or ephemeral commentary, or that seemed to include rote string-cites.

The book is intended for classroom use or for general legal reference, and is not intended to serve as a manual or substitute for legal counsel. Persons not having access to a law library may find it useful for reading edited cases, but I deliberately chose not to write a treatise, or to include reference materials on every case. Several exceptional treatises exist (most notably William Kaplan’s *The Law of Higher Education* and James Rapp’s four-volume *Education Law*), and many excellent
sources are incorporated by reference throughout the book. In the spirit of full disclosure, I acknowledge that the book's central purpose is to teach. One last thought on the best textbooks, or for that matter, the best writing. For my tastes, the best writing on almost any topic shows enthusiasm and care. Cases can seem bloodless, dry recitations of facts, even when the underlying issue is important to the participants, who may feel passionately about their stake in the matter.

Higher education cases are often a proxy for larger societal themes—particularly race relations, fairness in the treatment of women, and the rise of the modern administrative state. Students in higher education law courses have an understanding of their subject matter, one almost unique in their curriculum; they may never have read a will, been a criminal defendant, purchased property, or committed a tort, but they all are students and will have ideas about their own status. As a result, I have been the fortunate beneficiary of much student thinking on this topic, and I hope I have met the high expectations students properly have for their course materials.

For Teaching Education readers, I have selected one important choice of the hundreds I made to elaborate the considerations I had in mind: the recognition of student organizations. Because institutional recognition of student groups is an important area, with most campuses having dozens of such groups, it is an area with which most students and administrators are familiar. After all, who hasn’t been active in one student group or another? It is also an area that has leading cases, with interesting facts: student activism, financial implications, unpopular causes of every ideological persuasion, and a historical sense to the issues. By the latter, I mean that paying close attention to this series of cases over time can tell you a lot about an era, whether the student groups were organized for racial, anti-war, sexual preference, political, or religious solidarity.

First, I gathered nearly two dozen possible cases, culled from six years of teaching the course and from other information-gathering processes (books, law reporters and other research resources, and colleagues' suggestions). I knew I would include Healy v. James, the leading case in the field (1972), but there were literally fifty cases I could have
been safe in choosing. Because religion was a sub-theme throughout the book, as was race, I considered several cases that included the “right” of students to organize for religious worship and racial solidarity. I boiled down all the cases to four “types,” and tried to pick the “best” of each type: 1.) *Healy v. James* (right of students to organize on campus and be recognized); 2.) religious worship on public campuses; 3.) unpopular causes (gays, progressives, conservatives, minorities); and 4.) student fees (refusing to pay fees or institutional restrictions on fees).

I toyed with the idea of picking one issue (say, gay students’ right to meet and organize), and actually produced a draft where I used *Healy* and four different cases brought by gay student organizations, two that students won and two where colleges prevailed. One included a Catholic institution (Georgetown), which reflected my interest in the interaction between higher education law and religion; however, it wasn’t about religious worship, but about the “right” of a Catholic institution *not* to recognize gay student groups because the college claimed that homosexuality was counter to Roman Catholic doctrine. This topic deserves its own book, and the case had founders on some technical and procedural points. In early 1988, it was resolved (the stu-
dents won what they wanted, Georgetown won some of what it wanted, but the opinions were nearly 200 pages. To do justice to the case, I edited it to almost 20 pages, and then cut it again. By now, I had passed the point of no return. I had spent so much time editing the case that I almost felt obligated to include it, even though it was overly long. It remains, as it promotes several fascinating lines of discussion in class: What is a Catholic college? What rights do students have if their social beliefs do not adhere to the college's official teachings? What right does an institution have to public programs (such as a D.C. bond program) if their institutional doctrine does not comport with social legislation (this leads to some tax cases brought by segregated colleges)? Are all groups treated similarly? Would the American Nazi Party qualify? The PLO? How far can a college go in its regulation? Can a college abolish all student groups? How does the law treat public and private colleges in this area? In nearly all classes on this topic, class discussions have been lively and provocative.

I finally settled upon Healy, a Texas A&M case (for its public institution value, and because it went for the college and was overturned on appeal), the Georgetown case, and one on recognizing minority alumni (Baruch). I chose the Baruch case because alumni are unusual litigants, and because it involved minority issues. (In the interest of full disclosure, I admit I graduated from Georgetown law school, and so it was of interest to me.) I also decided to include the leading case on campus worship (Widmar) in its own section, to highlight the issue rather than submerge it within this larger topic. I also accorded student fees its own section.

Looking back, I made this set of choices for each section of the five chapters. Perhaps because the case was decided by the courts during the final stages of my editing, it was fresh on my mind. Notwithstanding this, the case (Gay Rights Coalition v. Georgetown University) is important, interesting, and likely to reappear in a different guise.

I welcome advice and comments from Teaching Education readers who use The Law and Higher Education, as well as suggestions for inclusions in subsequent editions.
HIGHER EDUCATION - CASE BOOK SUPPLEMENT

KEY
>  - Locate near
~  - Cross reference
^  - See........
*  - Overrules another case or calls its validity into question
**- Decision on remand from a higher court
*P- Partially reverses a case in the text
$  - Modifies a lower court ruling
$**- Case on appeal affirmed
M  - Case modified
R  - Case reversed
RA- Case reversed in part, affirmed in part
V  - Opinion vacated

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   e. Continental Training Serv. Inc. v. Cavazos, 893 F.2d 877 (7th Cir. 1990).
      > Locate near Beth Rochelle, p. 28. Correspondence and training courses in truck driving qualify for financial aid. Concern courses did not comply with regulatory requirements. Also due process issues, deprivation of property and liberty interests.
      ^ See I A. 1. i.


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   Tax consequence of payments made by a college to student work study employees.

3. COMMENTARY
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   b. Jaschik, "Overlap Group could Survive Ivy League’s Agreement to End Collaboration on Financial Aid,

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\^ See I B. 3. b.
\^ See I H. 2. 1 & bb

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\a. Albert v. Carovano, 851 F.2d 561 (2nd Cir. 1988).
   \> Locate near Coleman, p. 48. Cited by this case.
   \> Alleged university is a state actor because it filed disciplinary rules. The statute does not reach selective enforcement against gays and students without old family ties.
   \> Cross ref. IV E.

   \> Supper club.
   \> Whether the club is distinctly private or public by association with Princeton. Simbiotic relationship. Meal exchange program. Advertise bicker in student paper. Conduct regulated by the University.
   \> Cross ref. I E.

   \* Court of Appeals directs the superior court to vacate its opinion in light of a statute. The validity of this case may be questionable.

\d. Silver v. City University of New York, (May be unpublished was not able to find a citation). (C.A.N.Y.), No. 91-7594, Oct. 23, 1991, Per Curiam.
   \> Public university not discriminate against a white male professor.
   \> Cross Ref. III C. 2 & V C.

\^ e. See I H. 1. a.

2. COMMENTARY

   \> State funds supporting state residents at sectarian schools in state but not out of state, theory need to determine that the primary purpose of the college is non religious.

   \> Locate near Albert v. Carovano, I C. 1. a. Hamilton
College.

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1. CASES
   
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   Cross ref. II A. 3.
   
   Cross ref. IV G. Gay Rights Coalition v. Georgetown University, p. 789.
   
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g. Blum, "Vatican Publishes Oath of Fidelity to Church Teachings to be Taken by Theology Professors at

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s. Steinfelds, "Vatican Bars Swiss University from Honoring Archbishop of Milwaukee", N.Y.T. Nov. 11, 1990. p. 12y
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1. CASES
      Cross ref. II A. 3.
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   c. Roy v. Pennsylvania State University, 568 A.2d 751
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      University relied on private sources for income.

2. COMMENTARY
   a. Grasso, "Suit to Recover King Papers Threatens
      University Archives, Trustee Says", Educ. Daily,
   b. Van Tol, "Crisis in Higher Education governance: One
      State's Struggle for Excellence", 91 W. Va. L. Rev. 1
      University of Vermont - University does not accept
      enough local residents. For labor relations purposes
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      private.
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   a. Jaschik, "Alabama Practice of College Officials'
      Serving in Legislature Draws Fire", Chronicle of Higher
   b. "Texas to Help Students Pay Insurance Costs", Chronicle
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   c. Fuchsbluge, "Takeover Battle Pits Chico State President
      Against Student Group", Chronicle of Higher Education,
      Student government vs. University President.
      Cross ref. IV G.
   d. Watt, "A Chico Decision", AOA Newsletter, Vol. 10,
      See c.
   e. Blumenstyk, "State and U. of Michigan End Divestment


Cross ref. III A.


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l. See I J. 1. d.

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1. CASES
      Students lease home in the local community. Held, ten unrelated male college students were family within the meaning of the local ordinance limiting use and occupancy of dwellings to families only.

      Homosexuals excluded from military.


2. COMMENTARY
   a. Blumenstyk, "Plan to Deal With Exodus of North Dakota Graduates; U. of Arizona’s Graphic Identity", Chronicle of Higher Education, 15 March 1989, p. 21. State representative introduced a bill to require all university graduates who leave the state within six months of graduation to pay back to North Dakota the difference between their tuition and the state’s cost for educating them.
   h. "In an action by Northwestern University to preclude the city of Evanston from collecting a hotel-motel tax based on room charges for sleeping rooms at its Allen Center which is used for continuing education programs and by executive MBA students, it was held that the use of the Center’s sleeping rooms was so minimal as to not change the Center’s character as an educational facility.", School Law Reporter, June 1992, p. 12.

CH. I H. CONSORTIA AND INTERINSTITUTIONAL GOVERNANCE p.101 (This section includes materials on athletic programs and, in particular, drug testing of athletes. These materials should be cross referenced with the materials in Chapter IV k. on athletes. You may want to consider consolidating these materials or somehow splitting the articles between the two chapters.) This section also includes accreditation issues and interstate agreements.

1. CASES
      ~
      Cross ref I C. & I E.
NCAA conduct not state action. Discussion focuses on NCAA as a state actor and the relationship between the University and the NCAA.


Nevada's statutes designed to alter NCAA procedures for regulating rule infractions violate the Commerce and the Contracts Clauses of the U.S. Constitution.

2. COMMENTARY


Law student challenges state bar's request for his social security number.


  > Locate near H. 1 a., NCAA v. Tarkanian.


  ^ See I H. 1 a. and I H. 2. d.


Sports agents convicted of racketeering. Discusses corrupt nature of college athletics.

h. Oberlander, "Public Cynicism About Big-Time College Athletics Seen as Possible Legacy of Agents' Trial", Chronicle of Higher Education, 26 April 1989, p. 34.

  ^ See I H. 2. g.


j. Lederman, "NCAA Asks Nevada Court to Dissolve


- Locate near *Zavaletta v. ABA*, I H. 1. b.


- Antitrust concerns, price fixing by private colleges.
  - Cross ref. I B. 3. c.


- See I H. 2. l.


- See I H. 2. l & m.


  - See I H. 2. d, f, j, k.


- See I H. 2. l, m, n.


- See I H. 2. c.


- Locate near *NCAA v. Bd. of Regents of the University Of Oklahoma*, p. 108.


- See I H. 2. t.

v. Reed, "Ready for Prime Time", *Sports Illustrated*,

11
Locate near NCAA v. Bd. of Regents of the University of Oklahoma.

High profile programs have a virtual monopoly on national television.


The Irish cut a lucrative network TV deal just for themselves.

x. Reed, "We're Notre Dame and You're Not", Sports Illustrated, 19 Feb. 1990, p. 56 - 60.


Both the article and the case deal with NCAA's ability to punish.


May be a threat to academic freedom, remove instructor for fear of federal financial aid loss.


Federal Trade Commission seeks to classify college sports as a commercial venture and not an educational activity. Focus television contracts.

ff. Wheeler, "NIH Office That Investigates Scientists'


Colleges decline to submit a decade's worth of financial records related to their sports programs.

^ See I H. 2. ee.


^ See I H. 2. l, m, n, p, bb.


^ See I H. 2. l, m, n, p, bb, hh.


^ See I H. 2. ee, gg.


^ See I H. 2. d.


^ See I H. 2. ee, gg, jj.

mm. Laponsky, "Campus Drug Testing and Individual Rights", (no source supplied)

^ See I H. 2. c, s.


> Locate near Bennett v. state Bar of Nevada, p. 105.


The University accepted a proposal to become affiliated with a group associated with Rev. Sun Myung Moon's Unification church. The school will remain nonsectarian.

oo. Onley, "Judge Sets Trial For MIT In Aid-Fixing Case", Education Daily, 27 April 1992, p. 3.

^ See I H. 2. l, m, n, p, bb, hh.


^ See I H. 2. l, m, n, p, bb, hh, oo.

Antitrust, prestigious colleges bidding for top students.

rr. Feigen, "TV Key to college Athletics' Future," Houston Chronicle, 14 July 1992, p. 3D.


The legal war between the NCAA and the University of Nevada at Las Vegas appears to continue as the defendants in NCAA v. Miller plan to appeal.


^See U.S.v.Brown University

^See US.v.MIT.


Federal judge dismisses an antitrust suit bought by a Wesleyan graduate against his university and members of the Overlap group.


3. LEGISLATION


CH. I I. TRUSTEES p.118

1. CASE

a. [State Ex Rel. Spire v. Beermann, 455 N.W.2d 749 (Neb. 1990)].

State legislature was allowed to transfer the operation of one of the state's existing state colleges to the University of Nebraska System.

2. COMMENTARY


Governor meddled in selection process for the president.


Dekalb County transferred the deed for the college to the Board of Regents because the county could not afford to support the institution.


Law school moved to secede from the financially troubled institution. Bridgeport University.

> Locate near Cahn and Cahn v. Antioch, p. 118.
   Locate near Cahn and Cahn v. Antioch, p. 118.
   See I I 1. c.

CH. I J. CLOSING A COLLEGE  p.126 - Includes reconstituting private univ. as state.
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   b. Stearns v. The Corp. of Mercer Univ., (Not published)
      Students sue for injunctive and breach of contract
      relief. Court grants breach of contract damages.
   c. Harris et al v. The Corp. of Mercer Univ., (no cite
      available, probably unpublished), No 89-7309-4.
      March 29, 1990.
      Teachers sue, breach of contract, they win.
      Cross ref. III C. 4.
      The Legislature may transfer a state college to
      the University of Nebraska system.
   e. Beukas v. Board of Trustees of Fairleigh Dickinson U.,
      University acted reasonably and complied with duty of
      good faith and fair dealing in its decision to close
      dental school.
2. COMMENTARY
   a. DeLoughry, "Judge Halts Closing of a Dental School",
      Georgetown's president violated university rules by not
      seeking the advice of the Faculty Senate before
      recommending to the Board that the dental school be
      closed.
   b. Cage, "As Budgets Get Tighter, More States Are
      Reviewing College Programs in Hope of Curbing
      Duplication", Chronicle of Higher Education, 12 July
      1989, p. 18.
   c. "Bishop College Campus Bought, to Be Reopened",
   d. Nicklin, "The Renaissance of Wilson College, a Financial
      and Academic Success", Chronicle of Higher Education,
      21 March 1990, p. 3.
      Court ordered college to remain open.
   d. Pelesh, "accreditation and Bankruptcy: The Death of
      Executory Contract", Educ. L. Rptr. 12 March 1992,
      pp. 975-981.
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^ e. See I B. 3. a.

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Freedom Wirsing v. Bd. of Regents of Colo.", College and
Univ. Law, 1990.
^ See Wirsing, II 1.
b. "Declaration of Rights and Duties Inherent In Academic
Freedom", IAUPL.
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1990).
First Amend. does not transfer control of public
school curriculum from school administrators to
individual teachers and students. Religious community’s
opposition to the play is not a valid reason for the
administrators to cancel class.
^ Cross ref. II A. 4.
State colleges creation of "shadow sections" and ad hoc
committee of faculty to investigate professor’s writings
violated the professor’s First Amendment rights.
^ Locate near Furumoto v. Lyman, p. 148.
^ Cross ref. II A. 3.
2. COMMENTARY
a. Tierney, "Cultural Politics and the Curriculum in
b. "School Accreditation: Activities of Seven Agencies
That accredit Proprietary Schools", United State
Accrediting agencies requirements can dictate or
greatly influence a schools curriculum.
c. Jaschik, "Political Activists Working to Change Land
Coalitions of farmers and environmentalists are working to prod the university’s focus more on the environ.
and sustainable agriculture.

^ See Levin v. Harleston, II. A. 1.
^ Cross ref. II D.

^ See Levin v. Harleston, II A. 1.
^ Cross ref. II B.


CH. II A.2. - WHO MAY TEACH p.148

1. CASE
American-Arab v. Nelson,
Individuals having membership in the PFLP challenge the McCarran-Walter Act. The case was not ripe.

2. COMMENTARY
^ See II A. 2. 1.

^ See II A. 2. a. & II A. 2. 1.

Professor from Japan who was waiting to receive a visa was afraid to leave the country for fear of what might happen when he tried to return.

CH. II A.3. - HOW IT SHALL BE TAUGHT p.196

1. CASES
Court holds, that the professor’s evaluation of her students and assignment of their grades is central to the professor’s teaching method.
^p Reverses in part the District Court, Parate v. Isibor, p. 212,
~ Cross ref. II B. 2.. near hill v. Talladega, p. 362.
Principal did not violate a teacher’s constitutional rights by dragging her from her classroom.
c. Bishop v. Aronov, 926 F.2d 1066 (11th Cir. 1991). Professor’s free speech rights were not violated by department head’s letter directing him to refrain from interjecting religious beliefs during class time. Not germane to the course.
> Locate near Lynch v. Indiana State Univ., p. 198.
~ Cross ref. II A.1.

d. Keen v. Penson, 970 F.2d 252 (7th Cir. 1992). University professor’s demeaning letters to a student were not protected free speech. Demotion and sanction of professor was not in violation of the First Amendment.
~Cross Ref.IV.C

e. Levin v. Harleston, 966 F.2d 85 (2nd Cir. 1992). Absent evidence that university professor’s expression of racially denigrating theories outside of classroom harmed students or educational process within classroom, creation of alternative classes for students to transfer into, with intent and consequence of stigmatizing professor, violated professor’s free speech rights and warranted injunctive relief.
> Locate near Furumoto v. Lyman p.150.

2. COMMENTARY

Comment that the Bishop case may help to define the obligations of public universities to protect students on their campuses from unconstitutional religious influences.
> Locate near Bishop v. Aronov, II. A. 3. 1. c.

Focus on the conflict between a professor’s right to express personal religious beliefs in the classroom and a university’s right to take action to limit the professor’s expression.
> Locate near Bishop v. Aronov, II A. 3. 1. c.
^ See II A.3 2. b.

CH. II A.4. - THE RIGHT TO HEAR p.216
1. LEGISLATION
SEC. 128. Prohibition on Exclusion or Deporation of Nonimmigrant Aliens on Certain Grounds.
Political beliefs.
2. COMMENTARY
Controversy over whether the film "The Last Temptation of Christ", should be shown on the Oklahoma State University campus.


Senate gave final congressional approval to a State Department authorization bill that permanently prohibits the government from barring foreigners from visiting the U.S. because of their political beliefs.

See Brooks v. Auburn, p. 216.


The school claimed the film could cause community unrest. The court applied a clear and present danger test to the situation. Mere apprehension that something will go wrong is not enough.

See DiBona v. Mathews, II A. 1. 1. a

II A. 4. 2. a & b.

e. "Court Bars Hearingless Exclusion of Resident Alien as Violative of First Amendment", Interpreter Releases, June 1, 1992.

CH. II B. ACADEMIC FREEDOM IN RESEARCH AND PUBLICATION  p.222

1. CASE


Tobacco companies were entitled to subpoena research data of nonparties.


2. COMMENTARY


Criticism of government’s excessive classification of scientific and technical information, tends to hinder academic research by commercializing information.


The article was written by Mr. Maltzman, a professor of psychology at UCLA. It criticized the data of two researchers who threatened to sue for libel. Because Mr. Maltzman had been promised by the journal's editors that it would appear in the journal, he filed suit for breach of contract. Maltzman's suit was dropped when the journal published the article.

Threat of suits may inhibit free inquiry.

U. of Texas published a Druffel translation of a book written by Mr. Nicosia, a history professor at Saint Michael's College. Mr. Nicosia says the translation was unauthorized and U. of Texas failed to protect his rights by not informing him.

Leading universities are offering their work to 496 foreign corporations for a fee.

~ Cross ref. III E. 1.

Regulations require scientists to obtain the Dept. of health and Human Services approval of articles about their federally financed research. Universities argue that the final decision on whether to publish the article should rest with the scientist.
~ Cross ref III E. 1. & III E. 3.

Federal government could endanger the success of some AIDS research by refusing to protect the confidentiality of the participants.

University professors and university officials are becoming more protective of the fruits of academic inquiry, potential economic gains from patented discoveries.
~ Cross ref. III G.

i. "Cal. Supreme Court to Review Libel Verdict", Chronicle
of Higher Education, 12 June 1991, p. 2. Rancher sued the university and three professors for libel. He claims he had been libeled in an academic report by three veterinarians which blamed the deaths of his cattle on improper care and feeding. A verdict for this plaintiff could have a chilling effect on the research and expert opinion of professors.

Cross ref. II C.1

See II B. 2. c.

j. Magner, "Politicians Press Officials at the City college of New York to Punish Black-Studies Chairman for Remarks on Jews", Chronicle of Higher Educ., 4 Sept. 1991, p. 19 Furo of regarding a speech Mr. Jeffries gave at a black cultural festival in Albany. He said that Jews and the Mafia had conspired to denigrate blacks in the movies. He also referred to a colleague as the "head Jew" at City College and discussed the role of "rich Jews" in financing the slave trade.

Cross ref. II G.

k. Onley, "New York City College to Appeal Academic Freedom Ruling", Educ. Daily, 23 Sept. 1991, p. 4. College officials are appealing the judge's ruling that bars the school from closely examining a faculty member for his controversial writings on black intelligence.

See II A.1. 1. b.

CH. II B.1. - HOW RESEARCH CAN BE CONDUCTED  p.228

1. CASE
   a. Calif. Agrarian Action Project, Inc. v. Regents of Univ. of Calif., 258 Cal.Rptr. 769 (Cal.App.1 Dist. 1989). State university is not required to establish an administrative process to ensure that Hatch Act funds for agricultural research are expended so as to give primary consideration to the needs of small family farmers.

2. COMMENTARY
      See CAAP, II B.1. 1. a.
      See CAAP, II B.1. 1. a., & II B.1. 2. a.
      See CAAP, II B.1. 1. a., & II B.1. 2. a. & b.
   d. "Cal. High Court Upholds Agriculture Ruling" Chronicle of Higher Education, 13 Sept. 89, p. 2. California Supreme Court rejected a suit by a public interest group seeking to require the University of California to revise its agricultural research program to provide more benefits for small farmers.
^ See CAAP v. Regents of Univ. of Calif, II.B.1. 1. a., & II B.1. 2. a., b., & c.
Harvard created a venture fund for its own professors. The fund is to be used primarily to support innovative scientific research and to finance spinoff companies for selling marketable products that result from it. Fear the program will prompt profitable research at the sacrifice of free inquiry.

Cross ref. III G. & II B.

f. University of Penn School of Veterinary Medicine, Summer 1991.
University imposed sanctions on a microbiologist for failure to follow the approved research protocol established by the University. The professor and the AAUP are fighting the sanctions.


Government agencies cannot require researchers who receive federal funds to submit results of their research to the agencies for review before the results are released.

Cross ref. II B.

CH. II B.2. - WHO MAY CONDUCT RESEARCH p.232

COMMENTARY

High tech companies need confidential, real-world tests of new products, and universities are eager to get an early look at tomorrow's technology.


University must allow two researchers to apply for grants from the Pioneer Fund, a private foundation that some on the campus have labeled as racist.

CH. II C. A CITIZEN OF THE ACADEMY p.232

CASE
Expression of opinion is not actionable as libel, afforded protection as freedom to express ideas even if false.


CH. II C.1. - IS THE SPEECH A MATTER OF PUBLIC CONCERN  p.246

1. CASES


c. [Kurtz v. Vickrey, West's Educ. Law Rptr., Sept 29, 1988, p. 7]. Could not find cite. Professor's criticism of a public university's expenditure of funds while the university was undergoing a financial crisis was on an issue of public concern.

d. [Barnhill v. Bd. of Regents of UW System, (Wis. App.) Sept. 27, 1990. 462 N.W.2d 249 (Wis.App. 1990). A university employee's free speech rights were violated when he was discharged for disclosing confidential survey questions to the news media. The university's interest in maintaining the confidentiality of the questions did not outweigh the interest of the employee in disclosing the questions which touched upon a matter of public concern.

R
Case reversed on appeal, 479 N.W.2d 917.

A black female employee of a state university showed that her letter to a U.S. Senator touched upon matters of public concern, but the university's interest in maintaining its formal grievance procedure outweighed her interest in writing the letter.

f. [Ayoub v. Texas A & M University, West's Educ. Law Rptr. March 29, 1991]. 927 F.2d 834 (5th Cir. 1991). Foreign born professor's office was relocated allegedly in response to his complaints about past discriminatory pay scale, held not a matter of public concern.

Dorsett claimed a pattern of harassment was leveled at him after he commented on matters of departmental concern regarding institutional programs. Court held the professor's speech did not address matters of public concern.

~ Cross ref. II C. 5.


2. COMMENTARY
   Ms. Walker chaired a committee that wrote a report for accreditation officials that contained criticisms of the university, she and her husband were terminated.
   The self study report addressed matters of public concern but, it substantially interfered with the orderly operation of the department.
   See Hall v. Ford, II C.1. 1. b.

CH. II C.2. - IS THE SPEECH PROTECTED p.253

1. CASES.
   A. Mckinney v. Board of Trustees of Maryland Community College, 955 F.2d 924 (4th Cir. 1992).
   Fired faculty member's political affiliations may have been a substantial factor in their dismissal, which would violate their first amendment rights.
   COMMENTARY
   Locate near Kemp v. Ervin, p. 259.
   Electronic communication systems should be treated in the same manner as the public library with few if any restrictions on ideas or how they are communicated.
   Instructor fired over racial remarks he made to a student during an office conversation. Not protected speech.
   ~ Cross ref. II G.
   AAUP policy condemns discrimination in colleges and universities on the basis of sexual or affectional
preference. First Amendment right to speak on the
topic of homosexuality arose in the U.S. Supreme Court
in 1984 in a case in which the Association
participated.
Cross ref. II G.

CH. II C.3. - IS THE SPEECH A SUBSTANTIAL OR MOTIVATING REASON (for
the termination, denial of promotion or denial of tenure) p.263
CASES
a. [Narumanchi v. Bd. of Trustees, 850 F.2d 70 (2d Cir.
1988)].
Professor contends that his suspension was motivated by his
vocal opposition to some policies at the university. First
Amendment rights are substantive in nature, not procedural.
The grievance procedures provide for protection against
procedural violations, but not to violations of substantive
rights.
b. [Jacobs v. Meister, (N.M.App.), April 21, 1989].
University administrators were liable for their decision
not to reinstate a nontenured professor in violation of his
First Amendment rights, despite administrator’s argument
that the regents made the ultimate decision.
University professor denied travel reimbursement from the
state, allegedly because of his opposition to the U.S.
government’s foreign policy in Nicaragua, failed to prove
that the denial of the reimbursement was based on his
expressed beliefs.
d. Colburn v. Trustees of Indiana U., 973 F.2d (7th Cir.
Former faculty member’s rights to free speech were not
violated where their letters to university officials
concerning peer review committee and faculty feud did not
involve matter of public concern.

CH. II C.4. - ON THE ISSUE OF REMEDIES p.270

CH. II C.5. - CONDUCT TOWARD COLLEAGUES: ACADEMIC FREEDOM PRIVILEGE
p.272
1. CASES
a1. [Mahoney v. Hankin, 844 F.2d 64 (2d Cir. 1988), SchoolLaw
Rptr, Sept. 1988].
Resolution of a qualified immunity defense involved
questions of both law and fact and thus, the denial of the
defense was not appealable.
1988).
A department head’s letter to a college professor, in
response to the professor’s inquiry, regarding
additional materials which might be helpful in obtaining the promotion sought by the professor, contained opinions protected by the First Amendment.

A candidate for tenure sued a professor at the college for slander. He did not overcome the conditional privilege which attached to the professor’s transmission of information to the tenure committee. The candidate must show that the defendant had falsely reported conversations.

> Locate near In re Dinnan, p. 272.

^ See II C. 5. 1. a.

Common law privilege would not be recognized to protect peer review materials from disclosure in university professor’s Title VII race and sex discrimination action against the university. The court need only determine that the charge is valid and that the material requested is relevant to the charge.

* Overrules qualified immunity approach of EEOC v. Univ. of Notre Dame, p. 274.

~ Cross ref. I F.

College bursar brought action against university’s budget director, university regents, and chancellor to recover for defamation. The subject matter of the allegedly defamatory letter to the college bursar was one of public concern, it is afforded First Amendment protection.

> Locate near In re Dinnan, p. 272.

^ See II C. 5. 1. a. & b.

~ Cross ref. II C.1.

2. COMMENTARY


> Locate near In re Dinnan, p. 272.


Difference in opinion of the adequacy of EEOC’s statistical proof of discrimination.


Criticism of the University of Penn v. EEOC, opinion.

^ See Univ. of Penn. v. EEOC, II C. 5. 1. c.

b1. Blum, "Supreme Court Rejects Privacy Claim for Tenure files, Says university Must Disclose Information in Bias
See Univ. of Penn. v. EEOC, II C. 5. 1. c. & II C. 5.
2. a.

Florida State and several other public universities subject to the open records law allow tenure candidates to see their review files. The policy has not undermined the tenure system.

Locate near EEOC v. University of Notre Dame, p. 274.
See Univ. of Penn v. EEOC, II C 5. 1. c. & II C. 5.
2. a. & b1.

Professor accused Ms. Cowan, a physical ed. professor of academic treason, by changing athletes' grades.

CH. II C.6. - CONDUCT TOWARD STUDENTS OUTSIDE OF CLASS p.279
(emphasis on sexual harassment)

CASES.


University may be liable for its failure to enforce its obligations under an agreement to protect victim of sexual harassment.

COMMENTARY

Ms. Yu seeks recovery for sexual harassment and research findings. Mr. Doi contends the relationship was consensual and that Yu was terminated for insubordination.


CH. II D. FACULTY AS CITIZENS IN SOCIETY p.287 (McCarthyism)

COMMENTARY


Rutgers authorized a reexamination of the case of a professor discharged in the early 1930's allegedly for his Nazi views.


CH. II E. INSTITUTIONAL ACADEMIC FREEDOM  p.296

CASE

[Stone v. Univ. of Maryland Medical System Corp., (C.A.Md.), Aug. 19, 1988].

Court failed to follow required procedures to seal the entire record of a civil rights suit brought by a former state university medical school professor against the school.

COMMENTARY

   In a struggle between academic freedom and obedience to Pope John Paul II, the university may choose for itself on which side of the conflict it wants to come down.

   A measure adopted by the House of Commons would abolish tenure for newly appointed university faculty members. The House of Lords contends that if the government were going to do away with tenure, it would have to guaranty that faculty members could not lose their jobs because of what they said or wrote.
   Cross ref. III C.3.

   Codified the principles of academic freedom.
   Also allowed a proposal to let financial support of universities take the form of grants rather than contracts.
   See II E. a.
   Cross ref. III C.3.

   The 1940 Statement implied church related institutions could depart from the principle of academic freedom.
   A history of the statement.

   Father Curran was barred from teaching theology at the university after the Vatican censured him. Honor academic freedom only insofar as it was consistent with church law.
   Right to teach deter by the Vatican or peer review?
   Here the Vatican decided. Is the institution independent of the Vatican?
   Cross Ref. I D. & III. I.
   See II E. a.

   Where limits on commercial speech are allowed, state
agencies need only adopt reasonable rules not those that are least restrictive. Colleges will be better equipped to maintain both security and appropriate academic environment on campuses. Students see this as a setback for student rights.

~ Cross ref. IV J. 1. Solicitation on campus


~ Cross ref. II A. & IV G.

CH. II F. ACADEMIC FREEDOM FOR STUDENTS AND OTHERS ON CAMPUS p.318

(there are no cases on this in the book, only an article on the FBI)

1. CASES

   11th Amendment immunity barred student's suit against assistant professor at state university claiming student was unlawfully required to read profane language.

   Former dormitory resident assistant sued trustees after the university decided not to rehire him, allegedly due to his beliefs. The court found the university did not rehire him because of insubordination. A public university does not violate First Amendment when it takes reasonable steps to maintain an atmosphere conducive to study and learning.

   PHD candidate was expelled from the doctoral program. Brought suit alleging violation of due process and free speech rights. University protected by qualified immunity.

   Student did not defame the professor by expressing her views regarding him in her letter to the tenure and promotion committee.

2. LEGISLATION


3. COMMENTARY

   FBI assigned a summer intern the project of obtaining information on Kristen Crabtree, a student who had an altercation with an FBI agent at a career fair on campus.
The intern was asked to find deviant acts by Crabtree or friends.


FBI asked UH to keep records on library use by two visiting foreign nationals from the Soviet Union who were conducting research under an academic exchange program.


^ See II F. 3. a.

Students sought to join suit or to bring an independent suit when the university dismissed Rev. Curran because the Vatican disapproved of his views.

^ II E. d.

Student playwright filed suit contending college unconstitutionally censored his work.

Discipline of FBI agents.


^ See II F. 2, II F. 3. a., & II F. 3. b.

The 5 contend that the university violated the student university contract by prohibiting his instruction, and that it cheapened their degrees by forbidding the free exchange of ideas.

^ See II E. d. & II F. 3. c.

Dispute between Law school legal clinic and lawyers representing timber industry.

Students sue over the decision by the Board of Regents to postpone the campus showing of the movie "The Last Temptation of Christ".

~ Cross ref. II A. 4.

Files on Cispes.


^ See II. F. 2,
   - Cross ref. Perry, III A.; IV G.; IV I.

CH. II G. RACIAL TORTS ON CAMPUS - THIS IS A NEW SECTION NOT IN THE BOOK

1. CASES
   a. [U.S. Supreme Court case, St. Paul].
   c. Iota Xi Chapter of Sigma Chi v. George Mason Univ., 773 F. Supp. 792 (E.D.Va. 1991). The court held that the University had unconstitutionally punished expressions protected by the first Amendment when it disciplined a fraternity for their sponsorship of a contest in which fraternity members dressed as caricatures of ugly women.
   d. [UWM v. Bd. of Regents of The Univ. of Wis. System, E.D. Wis. Oct. 11, 1991]. University tried to argue its anti-discrimination policy fit into the "fighting words" exception to free speech protection. The court held the policy was unconstitutional.
   e. UWM Post Incorporated v. Board of Regents of the University of Wisconsin, 774 F. Supp. 1163 (E.D. Wis. 1991). The University of Wisconsin’s ambitious policy against hate speech is deemed violative of the First Amendment.

2. LEGISLATURE
   "Interpreter Releases", March 5, 1990. Senate approved legislation requiring the federal government to collect and publish statistics on hate crimes involving race, religion, ethnic origin and sexual orientation.

3. COMMENTARY
2 student staff members of the newspaper were suspended for allegedly writing derogatory remarks concerning female faculty members.

Cross ref. II F., IV I.


Cross ref. Gay Rights Coalition v. Georgetown, p. 789. IV G.

g. "Vandals Paint Racial Slurs on Rutgers Jewish Center", Cronicle of Higher Educ., 6 Sept. 1989, p. 2. The suspects were charged with desecrating a venerated object, damaging property, and criminal mischief.


Locate near Doe v. Univ. of Mich., II G. 1. b.


Locate near Doe v. Univer. of Mich., II G. 1. b.


k. Heller, "U. of Michigan Scales Back Its Rules on discrimination and Harrassment", Chronicle of Higher Education, 27 Sept. 1989, p. 3. Interim policy, comments or actions that directly slur a person are prohibited under the new policy. The plan does permit offensive remarks to be addressed to groups, and protects statements made as part of ideological or intellectual discussions in classes.

Locate near Doe v. Univ. of Mich., II G. 1. b.

See II G. 3. i.


m. Wilkerson, "Black Fraternities Thrive, Some on Adversity", N.Y.T., 2 Oct. 1989, p. 1. The draw to black fraternities is an effort to band together in the face of rising racial tension.
One approach is to penalize students for verbally or physically attacking other students directly. The second approach is to prohibit students from engaging in any kind of offensive behavior, regardless of whether it is directed at an individual. The second approach comes under attack most often.

Discusses concern over whether penalties for slurs and epithets to harass others, will decrease discussion of sensitive subjects on campuses.

University of Calif. policy prohibits students from using fighting words. Discusses the S. Calif. ACLU's failure to take any action on the UC policy.

The policy went into effect after a student sold T-shirts that listed "15 Reasons Why Beer is Better than Women at Tufts". Aimed at curbing remarks that were sexist, racist, or otherwise offensive, the policy allowed free expression in most public areas, but identified others, such as classrooms and residence halls, where demeaning expressions would not be tolerated. The University rescinded the policy after the U. of Mich. case for fear it would not be defensible in court.

^ See Doe v. Univ. of Mich., II G. 1. b.

Supports the position that racial insults are not deserving of First Amendment protection because the intent is not to discover truth or initiate dialogue but to injure the victim.

Fraternity held a Rosh Hashanah theme party.

The anti-gay message was displayed on a Miller Co.'s building. The Miller Co. denied that messages were displayed until shown the photos. They then claimed that an employee was responsible.

v. "Students March in Protest of Hate Mail on Campus"
A physical confrontation occurred in a resident hall stemming from racial tensions between two students. The university treated the incident as an assault case only. It did not deal with the racial tensions.
Discussion of racism at the University of Wisconsin.
Review of university rules, procedures and incidence of racial harassment.
^ See II G. 2.
The University of Texas policy intended to stop racial harassment could stifle free speech. Fear of "Big Brother" government.
Advocates a comprehensive program to deal with racial harassment instead of just dealing with punishment when it occurs.
Goal to try to prevent acts of racism, sexism, antisemitism and anti-anything from occurring.
Discusses Univ. of Calif. policy.
Concern over stories run on the electronic bulletin board. The only steadfast policy on electronic mail at UMass prohibited the use of computer time to harass individuals.
^ Cross ref. II C.2.
Bulletin boards of homosexual, Hispanic and other groups were defaced at Northwestern University Law School.
The ACLU and students say UWS 17 is unconstitutional.

34
^ See II G. 3. g.

Incidents of prejudice reported at college campuses are occurring more at places considered progressive than at Southern locales commonly associated with intolerance.

A black professor of music at Dartmouth College, face criticism from the off-campus Review, which commented caustically on his teaching style. Supporters of Dr. Cole, accused the newspaper of racial bias.
Editors of the Review denied any motivation but the pursuit of academic excellence.
~ Cross Ref. IV. I.

Dartmouth College students protest the Dartmouth Review.
The paper printed a quotation from Hitler on Yom Kippur.
~ Cross Ref. IV. I.
^ See II G. 3. jj.


The school's faculty senate voted to include sexual preference as an example of the forms of discrimination that will not be tolerated in hiring, firing and tenure decisions.
~ Cross ref. III A.
^ See II G. 3. mm.

ED office for Civil Rights is planning to develop new policies next year to prevent sexual harassment of college students and age discrimination in admitting people to graduate and professional schools.
~ Cross ref. Arizona Board of Regents v. Wilson, p. 655. IV. B.

~ Cross ref. V. A. & V B.
^ See II G. 3. g.

qq. Collison, "Judge Cites First-Amendment Protection in
Judge ruled a fraternity sponsored ugly woman contest, in which members appeared in blackfaced, was protected by the First Amendment. This decision puts the university in a difficult position.

^ See Iota Xi Chapter of Sigma Chi v. George Mason Univ., II G. 1. c.
The judge said the rule was unconstitutionally broad. The university argued the rule was allowable under the fighting words doctrine, but the judge ruled it clearly reaches beyond the narrow confines of the fighting words doctrine.


^ See II G. 3. rr.

^ See Iota Xi Chapter Sigma Chi v. Geroge Mason Univ., II G. 1. c.
^ See II G. 3. qq.
The AAUP’s role is to protect the academic freedom of everyone and not to take on a political agenda.

Student said, in the presence of four other students "Faggot! Hope you die of AIDS! Can’t wait 'til you die, faggot". The school determined the student did not violate the hate speech regulation, even though it was out of line.
Discussion of the history of political correctness in American academe.

xx. Newby, "Hate Speech: The Wisconsin Experience".
Discussion of the need for a rule at UW, the rule and the court’s decision as to it’s constitutionality.


yy. Ackerman, "Universities’ Reaction to Racism Stirs Debate", Houston Chronicle, p. 4A.
Universities are learning that enacting policies prohibiting ethnic slurs or requiring students take classes on racism can cause as much controversy as not doing anything. The article focuses especially on UT professors objecting to a curriculum change to an English composition
class.
~ Cross ref. II A.1.
zz. Board of Regents of the University of Wisconsin System
   Public Hearing, Proposed Amendments: Section UWS
   17.06(2).
   aaa. "Wisconsin revises hate-speech rule", Chronicle of Higher
   bbb. O'Neil " A Time to Re-Evaluate Campus Speech
   ccc. Jaschik, "Wis. Lawmakers fail to block speech code",
   ddd. Shea, "Court's Decision on Hate Crimes Sows Confusion,
  eee. "On Freedom of Expression and Campus Speech Codes " -
   Approved by Committee A on Academic Freedom and Tenure,
   fff. "Creed Promotes Different Way to Handle Hate Speech ",
   University of South Carolina tries to combat bigotry
   through the use of a university-student-faculty pledge
   against such actions.
   ggg. "Freedom of Expression and Campus Speech Codes," Academe,

CHAPTER III THE LAW AND THE FACULTY - GENERAL  p.323
COMMENTARY
   a. Jaschik, "Adjunct Professors ruled "Employees"; Cap on
      Overhead Voted", Chronicle of Higher Educ., 26 July 1989,
      p. 23.
      Adjunct faculty members were legally employees of the
      university.
   b. "AHA Statement on Standards of Professional Conduct".

CH. III A. TENURE AND PROMOTION ISSUES  p.323
1. CASES
      under the State and County College Tenure act, fact that
      employee was given a non-academic title for four years of
      her employment did not preclude tenure. If the statutory
      prerequisites for tenure where met, no further
      participation by the board of trustees was required.
   2. COMMENTARY
      b. Blum, "U. of California to Stop tenure Clock for New
         Faculty members who are candidates for tenure and who have
recently become parents may continue working while stopping
the clock on the eight year probationary period before
tenure review.

c. Levin, "Report of the Special Committee on Tenure and the

d. Mooney," Court Lifts Decree on Brown U. Hiring and
   A15.
   Lamphere Decree is lifted from Brown U.

CH III B.1. - LIBERTY, PROPERTY AND CONTRACT ISSUES  p.336

1. CASES
      By requiring some sort of justification for decisions with
      regard to tenure, the university does not create a right or
      due process property interest in tenure.
      Nontenured probationary professor did not have protectible
      property interest in his continued employment.
   c. *[Gonzalez de Brindle v. Reoyo]*, (D.Puertor rico), June 9,
      After a tenured university professor started her judgeship
      she lost tenure and thus, did not have a property interest
      in her professorship.
   d. *Staheli v. Univ. of Mississippi*, 854 F.2d 121 (5th Cir.
      1988).
      Professor did not have a property interest in grant of
      tenure despite claim that the specific standards of the
      university’s tenure policy created an informal tenure
      obligation when coupled with the understanding he had with
      his department head.
   ~
   d1. *[Maples v. Martin]* (C.A.Ala., 858 F.2d 1546), West’s Educ.
       Law Rptr. 8 Dec. 1988, p. 23].
       Transferred professors had not property interest in making
       statements critical of department head such as would
       support due process claims.
      Tenured law school professor lost his property interest in
      his position when he failed to show up to teach in the next
      academic year.
   f. *[Faur v. Jewish Theological Seminary of America, *
      Professor did not show the existence of any contractual duty
      on the part of the seminary to refrain from changing its
      admission policies.
   g. *[Spiefel v. Univ. of S. Florida, *(Fla.App.) Oct. 6, *
      1989]*.  555 So.2d 428.
      Court held that a professor had a property interest in his
      appointment as chairman of a medical school’s department of
      orthopedics and rehabilitation which could not be stripped
      from him without due process.
Court held former faculty member was not stigmatized by the rescission of her employment contract. No liberty interest implicated.

Where conditions of employment contracts of university professors included procedures customarily employed by the department or faculty handbooks, they become a part of the contracts and professors can only be dismissed for cause during the academic year for which they are appointed. No breach of contract occurs when the contracts are not renewed.

When one party acquires vested rights under a contract, other party may not amend the terms of the contract so as to unilaterally deprive the first of its rights.

New Jersey Supreme Court refuses to interfere in employment dispute where faculty member duties included ministerial functions.

Employee’s status as cleric standing alone does not justify judicial abstention from enforcement of rights in job security. Nuns hired to teach with no ministerial functions.

m. Spuler v. Pickar, 959 F.2d 103 (5th Cir.1992).
Spuler failed to prove the existence of any constitutionally protected interest in achieving tenure.

CH III B.2. - A REASONABLE EXPECTATION TO CONTINUE EMPLOYMENT; TENURE BY DEFAULT; DEFACTO TENURE p.358

1. CASES
Professor at a community college had a legitimate expectation of continued employment as a departmental chairperson by virtue of mutually explicit understandings with college officials.

b. [Howard Univ. v. Best, 547 A.2d 145 (D.C. 1988)].
Faculty member received a late notice of nonrenewal, she was not entitled to indefinite tenure but she did have an expectancy of a three-year appointment.

Where a university has published written procedures governing tenure, the legitimacy of a claim to tenure acquired outside those procedures is vitiating because there is no basis for mutuality.

Professor did not have de facto tenure where university had
not granted professor any prerequisites of tenure, there was no record evidence that his colleagues ever evaluated his fitness for tenure or gave him assurances that he would be granted tenure without going through established formal tenure procedures.


f. West Virginia Univ. v. Sauvageot, 408 S.E.2d 286 (W.Va. 1991). University's long term and repeated practice was to reappoint the employee as her annual contracts expired and further the university demonstrated apparent attitude to protect employment of long-term, nontenured employees which was formally expressed in the university's policy. The court ordered the employee reinstated.

2. COMMENTARY

CH. III B.3. - TENURE AND RACE  p.372 (See note in Chapter V A. and V.C. on consolidation or new section)

1. CASES
a. [Namenwirth v. Bd of Regents of Univ. of Wisc. System, 769 F.2d 1235 (7th Cir. 1985)]. Sex discrimination in promotion. Namenwirth was hired as assistant professor. She was the first woman hired in a tenure track position in 35 years. She later became the first person ever to be denied tenure by the Department of Zoology.

b. [Roebuck v. Drexel Univ., 852 F.2d 715 (3d Cir. 1988), West's Educ. Law Rptr. Sept. 29, 1988]. Action by a black assistant professor alleging that he was the victim of racial discrimination when he was rejected for tenure. Case remanded, verdict was against the great weight of the evidence. The verdict was in favor of the professor.


e. Coats v. Pierre, 890 F.2d 728 (5th Cir. 1989).
In the absence of evidence of race or skin color of other candidates granted tenure after formal review process was adopted by the university, a teacher denied tenure fails to establish equal protection violation on the ground that he was treated differently from light skinned blacks and whites.

f. [Adjaye v. Vansina, (W.D.Wis. 1990)].
g. [Arenson v. Souther Univ. Law Center, 911 F.2d 1124 (5th Cir. 1990)].
The university historically was an all black institution. A white lawyer sued, claiming race discrimination. Arenson showed that two tenure-track positions had been vacated and that a less-experienced black woman was offered a tenure track position. Comments were also made that the school needed to maintain a black majority on the faculty and that the faculty already had too many white law professors.

Hispanic associate professor was denied promotion to full professor. Filed action against the university alleging discrimination on the basis of national origin and in retaliation for prior litigation. A change in status from tenured associate professor to full professor is not a change in position that creates or offers an opportunity for a new contract.

Male assistant professor brought action against university alleging that he was denied promotion based on his Indian national origin and because he was a male. The University’s evidence that the professor was repeatedly absent or late to class, failed to turn in students grandes in timely fashion, and failed to make arrangements for his classes to be covered during his absences satisfied the university’s burden of producing evidence that their failure to promote the professor was not based on sex, national origin, or race, but rather on poor performance.

White male who was denied promotion brought action alleging discrimination on the basis of race. The university acted egrigeously, professor won.

k. Clark v. Claremont U. Center, 8 Cal. Rptr.2d 151 (Cal.App. 2 Dist,1992). Evidence permitted finding that entire tenure process was tainted by discrimination.

2. COMMENTARY
Supreme Court ruled that statistical evidence about the effects of an employer's policies could be used as part of an effort to prove discrimination in situations where a variety of imprecise criteria are used.

Judicial abstention has begun to wane in the area of discrimination claims against institutions of higher education.

A white professor who was forced to retire from TSU was awarded $207,000 in a race discrimination verdict in Houston Federal court. Article points out increasing number of reverse discrimination cases.

~ Cross ref. III D.

Suit by Ann Hopkins against Price Waterhouse. The Price Waterhouse promotion process was similar to the tenure process in many respects. Plaintiff if not obligated to identify the precise causal role played by legitimate and illegitimate motivations.

Brown claimed that her scholarship had been held to a higher standard than the work of men who had received tenure in her department and that she had been denied tenure on the basis of sex.

~ Cross ref. III D.

Mr. Spece claimed he had been the victim of discrimination because he earned less than minority professors who had been hired long after him.

g. Franke, "Life in the academy after University of Pennsylvania v. EEOC", Educ. L. Rptr, p. 23
Blessing for the unsuccessful tenure candidates. The ruling clarifies that access to the candidate's files and those of relevant comparators, similarly situated successful candidates, must routinely be made available.

~ Cross ref. II C. 5.

Discusses the effect of Univ. of Penn. v. EEOC.

~ Cross ref. II C. 5.

i. Casey, "New Act Clarifies Disparate Impact Law", Nat'l
Under the new act the plaintiff still must show initially
that the employer uses a particular employment practice that
causes a disparate impact on the basis of race, color,
religion, sex or national origin. If the employer does not
prove that its single requirement is required by the
business the plaintiff will prevail. If multiple
employment criteria are involved and the plaintiff cannot
separate for analysis certain functionally integrated
practices, the entire decision making process may be
analyzed as a single employment practice. There is some
fear that this will lead employers to institute quotas.

j. Sage l. Schoenfeld, "Sex Discrimination in Higher Education
Employment: An Empirical Analysis of the Case Law", 
Overall odds favor the defendant - institutions over the
plaintiff - employees by a 4-to-1 ratio.

k. Shea, "California Supreme Court Upholds Big Award in Tenure

CH. III B.4. - DUE PROCESS IN TENURE REVIEW - NEW SECTION

1. CASES
   a. Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970).
      When a teacher who is to be terminated for cause opposes
      his termination minimum procedural due process requires
      that he be advised of the cause for termination, that he be
      given the names and nature of the testimony witness against
      him, at a reasonable time after such advice he must be
      accorded meaningful opportunity to be heard, hearing should
      be before a tribunal that possesses some academic expertise
      and has an apparent impartiality toward the charges.

   b. Levitt, v. Univ. of Texas, 759 F.2d 1224 (5th Cir. 1985).
      Levitt contends that the due process clause guaranteed him
      a hearing before a tribunal that was free of both apparent
      and actual bias. The appearance of bias, without actual
      bias of the decisionmaker, does not offend due process.

   c. [Levi v. univ. of Texas at San Antonio, (C.A.Tex.) March
      840 F.2d 277.
      State university's denial of tenure to a professor did not
      violate the professor's equal protection or due process
      rights. University was entitled to consider the
      professor's lenient grading policy.

   d. Pong v. Purdue University, 692 F. Supp. 930 (N.D. Ind.
      1988).
      The procedures outlined by the university in its executive
      memorandum regarding academic freedom, responsibilities,
      and tenure, and procedures for termination of faculty for
      cause satisfied procedural due process requirements.
Professors speech was not protected.

Cross ref. II C.1.

An intra agency personnel action involving a tenured instructor’s grievance was not a contested case within the meaning of the Alabama Administrative Procedures Act providing for review of such contested cases.

Where there are tenure review committees in place, the chancellor serves merely as a conduit from one committee to the next and cannot single-handedly prevent an approved application from reaching the next stage of review.

Opinion modified by 539 N.Y.S.2d 367.

g. [Roberts v. College of the Desert, (C.A.Cal. Nov. 22, 1988] (no cite found, as noted above).
The procedures used in taking away from an instructor her position as chairperson of the home economic department did not afford the instructor due process. She was given only eight minutes at a postdeprivation hearing to make her presentation.

University officials were entitled to qualified immunity from damage claims brought by a tenured professor who had been censured for seriously negligent scholarship.

Before being deprived of tenure, the professor was entitled to oral or written notice of the charges against him, explanation of the evidence against him and an opportunity to present his side of the story. The professor received only abrupt notice before being summoned to a brief interview and was never advised of what information the committee sought or that his tenure was to be revoked.

See III B.4. 1. a.

Alleged lying of tenured professor during preemployment interview did not relieve the university of duty to afford due process and to comply with policy of giving adversarial hearing before discharge, even though the university claimed a right to rescind the contract, there was a dispute whether professor had lied during the interview.

Cross ref. III. C.1.

locate near Morgan v. American University, p. 383.

j. Spuler v. Pickar, 959 F.2d 103 (5th Cir. 1992).

2. COMMENTARY

State judge overturned a jury's verdict that legitimate remarks about another professor were the reason Corr was
not awarded tenure. Corr testified that Coven threatened to work against him in his effort to regain tenure.


Academic administrators at Arizona concluded tenured professors who are no longer professionally active in their disciplines and who do not meet their institutions' current tenure standards should not be allowed to evaluate their colleagues for promotion and tenure.


A law signed gives new power to independent appeals committees to review cases in which professors allege they were denied tenure by a department of the basis of impermissible factors. Sets out an alternative route for tenure grant without department's approval.

c. "Prof Denied Tenure Wins Damage Suit", Houston Chronicle, 19 April 1992, 5-D.

July determined that the university president acted arbitrarily in denying Rosiere's application for tenure.

- Cross ref. III D.

- Cross ref. II C. 3.


CH III C.1. - TERMINATION FOR CAUSE  p.383

1. CASES


Professor was denied tenure because he lacked a terminal degree in architecture. The court held that a judicial tribunal should not intrude into promotion and tenure decisions and should not substitute its judgment for that of a college faculty with respect to the qualifications of faculty peers for the purpose of awarding promotion or tenure. The court should interfere only when the administration has acted fraudulently, in bad faith, abused its discretion or when the candidate's constitutional rights have been infringed.


Barrow, a tenured professor, was disciplined for violations of the university Code of Conduct. He brought and offered a bag of marijuana cookies to the students. University discipline of a faculty member for university-
related, off campus behavior which was found to violate a
criminal law was upheld.

Tenured professor was discharged for misconduct. He had
repeatedly put his arms around female student's shoulder
during class and during examination and harassed several
other students.

~ Cross ref. III. F. 1.

Cal.Reptr. 57.
University alleged the professor was unfit for service.
The court must review evidence of unfitness in light of
criteria enunciated in Morrison v. State Bd. of Educ.

e. [Harris v. Bd. of trustees of state Colleges, (Mass.)
N.E.2d 261.
Tenured professor was dismissed for just cause. The
professor had repeatedly belittled his students, falsely
stated that he had applied for a permit to carry a gun to
protect himself against a squirt gun toting student and
constantly harassed his fellow faculty members, administrators and support staff.

1990).
Professor could not be dismissed for violating ethical
standards because ethical standards were not included
within the university regulations defining dismissible
offenses.

R Reversed by 961 F.2d 1125.

Regulations on what is adequate cause sufficient to
encompass immoral conduct.

How to win a sexual harassment case.

2. COMMENTARY

a. Mooney, "Rutgers Dismisses Tenured Professor", Chronicle
Professor San Filippo was dismissed. He had been accused
of exploiting visiting chinese scholars by having them do
garden work and other household chores.


b. Mooney, "AAUP Panel Finds that Northwestern U. Acted
Properly in Tenure-Denial Case", Chronicle of Higher
Foley, an assistant professor of English, disrupted a
campus speech by Adolfo Calero, a Nicaraguan rebel leader.
The AAUP found that the university acted within the
associations established evaluation procedures and it did
not recommend a censure vote. Foley dropped her suit.

b1. McCurdy, "U. of California Panel to Revise Procedures for
Faculty Dismissals", Chronicle of Higher Educ. 10 Jan.

   "Tenure Contract is worthless Nowadays", 31 Aug. 1990. Downs was fired based solely on the allegations of a single disturbed student.

   Judge ruled that Rutgers was wrong in firing a tenured chemistry professor accused of exploiting 2 Chinese scholars. Dismissal standards were too vague.
   See San Filippo, III. C. 1. 1. f. & III C. 1. 2. a.

   Article regarding Chris Downs. Downs will be on leave with pay while the case is reconsidered.
   See III C. 1. 2. c.

CH. III C.2. - SENIORITY AND AGE DISCRIMINATION  p.403

1. CASES

   Tenured faculty member who had proven that he was discharged by a school in violation of the federal Age Discrimination Act could not recover both liquidated damages and prejudgment interest.
   § Judgement modified on appeal Linn, p. 406.

   b. [Salmon v. Corpus christi ISD, 911 F.2d 1165 (5th Cir. 1990)].
   In a civil case a litigant has no automatic right to a court-appointed attorney. Mr. Salmon was not entitled to an attorney in is age-discrimination suit against the school district.

   Whether theological school recklessly discharged a 62-year-old professor in violation of the age Discrimination in Employment Act was a fact question, precludes summary judgment.
   > Locate near Linn, p. 406.

   d. Andover Newton Theological School v. Continental Casualty Co. 964 F.2d 1237 (1st Cir. 1992)
   To avoid liability Insurer must prove that school’s violation of ADEA was intentional and thus uninsurable.

   New Jersey statute that grants institutions of higher education the discretion to retire tenured faculty at age 70 is upheld.

2. LEGISLATION
   "EEOC notice N-915.038", NACUA College Law Digest, 6 Dec.
1990, p. 54.


3. COMMENTARY
      A 55 year-old-former professor at the Univ. of S. Colo. sued the institution claiming it fired him because of his age and outspokenness. In 1985 there was a reorganization and Mr. Lipp and 12 other faculty members' jobs were abolished. The Court of Appeals held for the professor, the case has been appealed.
      ~ Cross ref. III C-4.

CH. III C.3. - FINANCIAL EXIGENCY p.408

COMMENTARY
      The court ruled that the university had fired one of eight professors before attempting other solutions to the financial crisis.
      > Locate near AAUP v. Bloomfield College, p. 408.
      Confirms that in Britain, as in the United States, tenure rights do not give faculty members immunity from dismissal regardless of their institutions' financial circumstances.
      ~ Cross ref. II E. 2. b. & c.

CH. III C.4. - PROGRAM DISCONTINUATION OR PROGRAM CHANGE p.435

1. CASES
      (first publication of the case).
      Held for university. Plaintiff failed to demonstrate that tenure was denied on any other basis apart from program discontinuance. The budget restrictions at the time demonstrated a genuine need to limit the budget of the German Department for both the short and long-term. The decision to terminate the only Assistant Professor in the department was a reasonable one.
      > Locate near Browzin v. Catholic University of America, p. 435.
   b. Texas Faculty Ass'n v. Univ. of Texas at Dallas, 946 F.2d 379 (8th Cir. 1991).
      Tenured faculty at a public institution are entitled to a meaningful opportunity to demonstrate that, even if his
program was to be discontinued and the number of faculty positions associated with the program eliminated, that he should nevertheless be retained to teach in a field in which he was qualified.

2. COMMENTARY

   Former community college was reorganized, it became a unit of three regional universities in Anchorage, Fairbanks and Juneau. The administrators overlooked a provision counting three years' experience outside the system toward the seven years required for tenure. The Faculty Senate recommended a new promotion policy that would treat former community college instructors more favorably, but not in accordance with the provision mentioned supra.


   Discussion of employment termination, one case deals with dismissal based on program termination due to underutilization by the students, Southern Utah State.


   The university told 14 tenured faculty members their positions would be eliminated at the end of the academic year. University officials said they would try to relocate as many of the fired faculty members as possible.

   ^ See Texas Faculty Ass'n v. Univ. of Texas at Dallas, III C. 4. 1. b.


   Discusses the Univ. of Texas at Dallas situation.

   ^ See Texas Faculty Ass'n v. Univ. of Texas at Dallas, III C. 4. 1. b. & III C. 4. 2. c.

CH. III C.5. - TENURE DENSITY p.453
CASE

CH. III C.6. - TENURE AND COLLECTIVE BARGAINING p.461

CH. III D. REMEDIES AND RELIEF p.467
1. CASES

   Court order to reinstate petitioner as a tenured teacher, with back pay and benefits, upheld.


   Female professor satisfied causation element for disparate treatment claim. The court granted full back pay but
refused to grant reinstatement with tenure.

- Cross ref. III B. 3.

Sex discrimination in promotion case. There is a general presumption in favor of reinstating discrimination victims at a level of seniority they would have attained had they remained in their jobs. Court held the district court abused its discretion in ordering that reinstatement be with tenure where a new system requiring positive approval of the board of Regents before completion of faculty member’s five-year probationary period.

- Cross ref. III B. 3.

Sex discrimination action. Upheld a consent decree.

- Cross ref. III B. 3.

An order granting tenure to a tenure candidate was a proper remedy for a university’s title VII violation in denying tenure on the basis of sex.

- Cross ref. III B. 3.

f. [Gibson v. Kentucky State University, 799 S.W.2d 38 (Ky. 1990).]
Gibson was invited to serve as an official at the jr. olympic games in Barbados and planned to attend at his own expense, in part, to enhance the recruitment of student athletes. The president refused to allow Gibson to go, he went nonetheless. The jury awarded Gibson punitive damages. The court upheld the award.

g. Fields v. Clark U., 966 F.2d 49 (1st Cir. 1992).
Former professor failed to make out prima facie case of that denial of tenure was the result of sex discrimination.

CH. III E.1. - RESEARCH REGULATION p.479

1. CASES

Qestion of how far the federal government may go in restricting the behavior of federal grantees.

- Cross ref. II B. 1.

Health and Human services department may forbid health officials at federally funded clinics from discussing abortion with their clients.

^ See III E.1. 1. a.
c. [West Davis Community Ass’n v. Regents of Univ. of Calif. 2 Cal.Rptr.2d 888 (1992), West’s Educ. Law Rptr. 27 Feb. 1992. Environmental impact report for university’s long range development plan that did not include analysis of on campus energy research facility in which hazardous waste was buried was inadequate.

2. LEGISLATION
   c. Winkler, "Bush Signs Law Easing Access to Foreign Policy Documents", Chronicle of Higher Educ., 6 Nov. 1991, p. 34. The law requires the Department of State to establish a systematic program for declassifying all but the most sensitive foreign policy documents that are over 30 years old.

3. COMMENTARY
      ~ Cross ref. II B.
   c. Roark, "Drug Test Regulations Often Clash with Doctor’s Values", Houston Chronicle, 21 Aug. 1988, p. 22. The Food and Drug Admin. placed a total restriction on Linker’s research activities for two years. The sanction followed FDA finding that Linker had violated a number of drug safety standards, involving consent forms, drug logs and other research protocols.
      ~ Cross ref. II B. 2. & III E. 2.
      ^ See III E. 1. 3. e.
The interest in maintaining the confidentiality of information outweighed the need for the information.

City will monitor experiments and select a commissioner to supervise research.

A panel of alumni will begin evaluating new university technologies with an eye toward finding ones that hold promise for new products, spin-off companies and profits.


~ Cross ref. II B.


~ Cross ref. II B.

Industry is devoting more attention to translating promising ideas into marketable products. The Federal Government has traditionally been the major source of support for basic research. The government is lagging behind.

The new policy follows complaints that errors in files about researchers could unfairly hurt their chances of receiving foundation support.


Discussion of the U. of Arizona telescope case.

^ See III. E. 1. 3. n.


^ See III E. 1. 3. d.

Declining federal support for scientific research has led colleges and universities to turn increasingly to business
for help. 
^ See III E. 1. 3. 1.

CH. III E.2. - INFORMED CONSENT AND RESEARCH ETHICS p.487
(informed consent and DES)
1. CASES
   a. Moore v. Regents of Univ. of Calif, 249 Cal.Rptr. 494
      (Cal.App. 2 Dist. 1988).
      Patient brought action against doctor, university, and
      regents alleging conversion through development of
      cell-line from patient's cells which was capable of
      producing pharmaceutical products of enormous
      therapeutic and
      commercial value. Person has a property interest in his
      own human body. Question of whether patient abandoned his
      spleen was a jury question.
      RA Case reversed in part, affirmed in part, 793 P.2d 479.
      Plaintiff sued alleging dental malpractice. Defendants
      move for summary judgment contending that plaintiff waived
      all claims based upon negligence by signing a release.
      Motion granted.
   c. Moore V. Regents of the Univ. of Calif., 793 P.2d 479
      (Cal. 1990).
      Theory of conversion liability could not be extended to
      case where patient's excised cells were utilized in
      research project to produce patented cell line; extension
      of conversion law would hinder research by restricting
      access to necessary raw materials and the patient's rights
      were protected through informed consent doctrine.
      ^ See III E. 2. 1. a.
2. COMMENTARY
   a1. Reinhold, "Revival of Suit Over Man's Tissue Stirring
       Article regarding the Moore decision and implications.
       ^ See Moore v. The Regents of the Univ. of Cal, III E. 2. 1.
          a. & c.
          a. DeLoughry, "Man May Sue Over Use of His Blood", Chronicle
             Concern the decision will hamper scientific research on
             blood and tissue. Court suggested that Mr. Moore might
             have a legal interest in particular properties of his
             blood.
             ^ See Moore v. Regents of the Univ. of Calif, III E. 2. 1.
                a. & c.
             ~ Cross ref. III. E. 3.
          b. Wheeler, "Use of Fetal Tissue in Research Projects Is
Controversy over use of fetal tissue. One side argues abortion is murder and transplantation of fetal tissue involves complicity in the crime. Those opposing say that transplants of fetal tissue have the potential to help those with crippling diseases.

Cross ref. III E. 3.


NIH also agreed that some safeguards similar to ones used in the past with organ transplants ought to be used to insure that no harm comes to anyone as a result of the research.

Cross ref III E. 3.


Charge against CIA for using nine Canadians as human guinea pigs in mind-control research that included heavy doses of LSD. There is a tentative out of court settlement. The settlement amounts to a statement that every part of our government is under the law, that no part of our government is above the law.


Fear approval will encourage abortions.

See III E. 2. 2. b. & c.


Discusses debate over the potential abuses of modern medicinal advances like the ability to determine the sex or potential deformities in a fetus, artificial insemination and test-tube fertilization.

Cross ref. III E. 3.


See III E. 2. 2. b., c. & e.


Cross ref. III E. 3.

^ See Moore v. Regent of Univ. of Calif, III E. 2. 1. a. & c.
More oversight may be needed to protect patients from poorly designed fetal tissue transplantation experiments.
Regarding the Moore decision.
^ See Moore v. The Regents of the Univ. of Calif, III E. 2. 1. a. & c.
Mr. Moore may be able to share in profits for a patented cell line derivied from his blood but he does not have a property right to his bodily substances.
^ See Moore v. Regents of the Univ. of Cal., III E. 2. 1. a. & c.
If tossies and genes are the raw material, some argue, the providers should be compensated.
^ See Moore v. Regents of Univ. of Cal., III E. 2. 1. a. & c.
~ Cross ref. III E. 3.
^ See III E. 2. 1. a. & b.
Critics say many hospital and university researchers concentrate more on obtaining signatures than on talking and listening to the patients.
^ See Moore v. The Regents of the Univ. of Calif, III E. 2. 1. a. & b.

CH. III E.3. - THE LAW AND BIOTECHNOLOGY  p.500
1. CASES
a. Laurel Heights Improvement Ass’n v. Univ. of Cal., 764 P.2d 278 (Cal. 1988).
Supreme Court of Calif. has found that the enviromental impact study was deficient and must be prepared again for public review and comment. The university’s present
activities at the new location would not be staged pending the preparation of a new report.

> Locate near Laurel Heights Improvement Ass’n, p. 511.

** Case on appeal affirmed (for the most part).


Summary of the Court of Appeals for the Federal Circuit in In re O’Farrell, No. 87–1486. Decided Aug 10, 1988. Issue whether a method of producing a protein in bacteria transformed through "genetic engineering" was patentable. The invention was not patentable due to its express suggestion in a prior publication.


2. COMMENTARY


The FDA does not allow either prescription or over-the-counter medicines to be sold until years of research have proved them safe and effective.


Summary of the Laurel decision.

^ See Laurel Heights Improvement Ass’n, p. 511 and III. E. 3. 1. a.


A federally approved experiment involving the transfer of foreign genes into humans is expected to provoke a lawsuit and public debate over gene therapy. Extreme concern about using children in the experiments.

~ Cross ref. III E. 2.


Article regarding research on mice with the AIDS virus. Critics say the results of the experiment show that research mistakes are inevitable and the possibility of an error with more serious consequences is reason to ban biotech. Because of the controversy in this area, a web of biotechnology regulation has been woven over the past five years, leading to the need for legal advise.


Similar article to III. E. 3. 2. c. above.

^ See III. E. 3. 2. c.

~ Cross ref. III. e. 2.


g. Wheeler, "Scientists Begin First Federally Approved Experiments to Introduce Genetically Altered Cells Into
Humans", Chronicle of Higher Educ., 31 May 1989, p. 4. The first federally approved experiment to transfer non-
human genes into human patients began after the settlement of a lawsuit seeking to halt the procedure.

^ See III E. 3. 2. c. & e.


15 years of experience had failed to produce a single hazard. It ought to be the beginning of the end for extensive regulation of such research, which will open up endless possibilities.

^ See III 3. 2. d.


Research on skin cancer patients is giving scientists ideas for other cancer therapy, they want to expand their study beyond the 10 patients they are now authorized to treat.

^ See III E. 3. 2. c. & e. & g. & i.


Scientists are proposing to use gene therapy to treat children stricken by a rare enzyme deficiency that leaves them without functioning immune systems. It was the affliction suffered by David the "Bubble Boy".


As universities and industry continue to promote biotechnology states are seeking ways to assert more control over research and commercialization in the field.


Two human gene therapy experiments won important regulatory approval. The potential for human gene therapy is finally being realized.


Judge ruled that the university may go ahead with plans to convert a big office complex near its campus into a biomedical laboratory. The judge rejected the residents’ complaint that the neighborhood would be adversely affected by excessive traffic, air pollution and emissions from the laboratory building. The opinion will be appealed.

^ See Laurel, III E. 3. 1. a.
Response to an article suggesting that the issue for universities was a constraint upon the institution’s ability to develop a financial return. The author of the article suggests that the real issue is the restrictions on publication of research results.

p. "Settlement Calls for Campus to Pay for $1.3 Million Study", Chronicle of Higher Educ., no date or page.
The University of Calif. has agreed to spend $1.3 Million to study whether neighborhoods surrounding the campus have been contaminated by toxic materials. The study and a 25,000 fine are part of a settlement reached with state officials on 33 citations issued over the storage and disposal of radioactive materials.
^ See Laurel, III E. 3. 1. a.

CH. III E.4. - NATIONAL SECURITY CONTROLS AND RESEARCH SECRECY

p.518
1. LEGISLATION
Law applies to destructive software. Fines up to $50,000 and 10 years in jail. Have to knowingly distribute the virus and have intent to do damage.

2. COMMENTARY
Documents which would be readily available to readers are limited to those with computer capability and can afford it. There has been a growing tendency of Federal agencies to use computer and telecommunications technologies for collecting and storing information. It has resulted in a higher user charge and increase in the amount of data available only in electronic form.

FBI has asked librarians to help spy on agents of the soviet Union.
^ See II F. 3. a. & b.

The university has urged libraries at its nine campuses to drop their subscriptions to a scientific information service of NASA, which restricts its use to U.S. citizens. The restriction violates the institution’s policy against discrimination and would be difficult to enforce because of the large number of foreign students at its campuses.


58

Criticism of secrecy at the expense of incomplete and inaccurate information.


Internal dissent and an uncertain nuclear future create confusion at Los Alamos and Livermore.


In 1946, a nuclear accident killed one scientist and injured several others: The government response to that tragedy established a pattern of secrecy that still persists.


Morris was convicted of violating federal law by unleashing a rogue program that paralyzed some 6,000 computers on a national research and education network. Computers at many university laboratories, as well as at government and private laboratories, NASA, and military sites, were invaded. A university commission concluded that Morris had acted with reckless disregard of the probable consequences in writing the program and sending it out over the Internet.


Article on Morris. Further discussion of the problem of computer crimes. Discusses outsiders vs. insiders.


Confrontation between Reagan administration and Congress concerning the requirement that executive branch employees sign a nondisclosure agreement.


19 criticize restricted access to documents in Energy Dept.’s custody.

CH. III E. 4. 2 e. & g.
CH. III F.1. - SEXUAL HARASSMENT p.525 (U of H homosexual case)

1. CASES

a. [Matter of kozy, (N.C.App.) Sept. 20, 1988, West’s Educ. Law Rptr., 13 Oct. 1988] 371 S.E.2d 778. A discharge of a tenured professor for misconduct was supported by evidence that the professor had repeatedly put his arms around the shoulders of a female student during class and during an examination, that the professor had harassed a second female student by going to her seat and squeezing her shoulder and suggest to a female student that she could remedy her poor performance and obtain an A is she worked alone with the profesor and was cooperative.

b. Lipsert v. Univ. of Puerto Rico, 864 F.2d 881 (1st Cir. 1988). Quid pro quo sexual harassment occurs when supervisor or teacher conditions granting of a benefit upon receipt of sexual favors from a subordinate or student. The student in this case made out a prima facie case, the court reversed the lower courts grant of summary judgment and remanded.

c. [Lenhard v. Butler, 745 S.W.2d 101 (Tex.Ct. App. 1988)., School Law Reporter, Aug. 1988]. Action by a student alleging medical malpractice against a professor of psychology, with whom she had entered into therapy and subsequently had sexual relations, it was held that the statute of limitations in Medical Liability did not apply and she was precluded from raising issue of two year negligence statute of limitations because it was not raised in her brief.

d. [Bougher v. Univ. of Pittsburg, (W.D.Pa.) March 14, 1989] (No cite found). Female university student failed to state a claim for a violation of Title IX arising out of a professor’s alleged sexual relationship with her. She did not allege the denial of any benefit to her on the basis of gender. She claimed that the university was responsible for the environment which permitted the harassment. Title IX does not permit a claim for sexual harassment based on a hostile environment.

e. Jew v. Univ. of Iowa, 749 F.Supp. 946 (S.D.Ia. 1990). Jew, a medical doctor and tenured associate professor. She worked on many projects with Williams, others gossiped and speculated about an romantic relationship between the two. Dr. Jew filed a complaint with the dean. The dean advised that there was nothing he could do. Dr. Jew was the departmental hatchet woman. Dr. Jew was denied full professor status. Dr. Jew proved her hostile work environment and denial of promotion claims. The court ordered a promotion to the position of full professor retroactively, to adjust her salary level to the level it would be at if she had been promoted to full professor on July 1, 1984, pay back pay.
   Student who alleged sexual harassment and abuse by a
teacher was entitled to damages.

2. COMMENTARY
   a. "Complaints Reported, University of Wisconsin - Madison",
   b. Connolly, "Sexual Harassment of Univ. or College Students
      by Faculty Members", 15 Journal of College and Univ. Law
      381 (Spring 1989).
      To protect itself against liability and to provide a remedy
      for the problem of sexual harassment, each college should
      draft, implement and enforce a sexual harassment policy.
      The article discusses the problem of sexual harassment on
      campus, details the legal rights and remedies of the
      student and of the faculty member, as well as the
      university's potential liability.
   c. Mooney, "Student's Infatuation With Professor Turned to
      Harassment and Threats", Chronicle of Higher Educ., 21
      Addresses the guidelines that should be followed when
      confronted with potentially troublesome situations
      involving students.
      Discusses the Jew decision.
   e. Margolick, "Curbing sexual Harassment in the Legal
      New codes to deal with an upsurge of complaints.
   f. Blum, "Medical Professor, U. of Iowa Face Aftermath of
      Bitter Sexual-Harassment Case", Chronicle of Higher
      Dr. Jew has remained at the university during the entire
      ordeal. She is disappointed in how long her case dragged
      on and how the university fought her every step of the way.
   g. Leatherman, "Jury to Decide $3-Million Lawsuit by
      19.
      Question of whethr this is a dispute resulting from a
      romantic relationship gone sour or sexual harassment.
   h. Plevan, "Harassment Gets Taken Seriously," National Law

CH. III F.2. - ACADEMIC FRAUD AND SCIENTIFIC MISCONDUCT p.534
1. CASES
      1989).
      Tenured professor filed a civil rights action after she was
      censured on charges of seriously negligent scholarship.
Officials were entitled to qualified immunity. They reasonably believed that their investigation of plagiarism charges satisfied requirements of procedural due process.

A committee at the University of Wisc. - Madison conducted an inquiry into allegations concerning the research of James Abbs, professor of neurology. The internal committee advised the NIH office of extramural research accordingly. The court held the board of regents had standing to challenge an NIH investigation into allegations of scientific misconduct by a principal investigator conducting research under an NIH grant to the university.

c. See III F. 2. 3. aa.

d. See III F. 2. 3. jj.

\[ Opinion vacated, 963 F.2d 918. \]

\[ Arbs v. Sullivan, 963 F.2d 918 (7th Cir.1992) \]
District court lacked jurisdiction over challenge to the administrative procedures involved in administrative investigation. Administrative process must run its course before a court may intervene. Suit involved NIH investigation into alleged scientific misconduct by Dr. James Abbs.

2. LEGISLATION
42 CFR part 50.
final rule
Responsibilities of PHS awardee and applicant institutions for dealing with and reporting alleged or suspected misconduct in science involving research, training, applications for support of research or related activities for which PHS funds have been provided or requested.

Discussion of cases and recommendations.

3. COMMENTARY
Allegation that NIH was negligent in rooting out fraudulent research.

First time a scientist was indicted on criminal charges for faking research. The University of Pittsburgh criticized by an NIH panel for not vigorously pursuing an investigation of Mr. Breuning when the matter first came to light.
c. MacRae, "Letter from the Executive Secretary, Department of Health and Human Services", Executive Office of the President, 29 Apr. 1988.
Response to a proposal submitted by H & HS to combat scientific misconduct.

O.M.B. suggests that the research agencies should consider a system similar to that in the FDA, which goes beyond responding to reports of fraud and routinely audits some of the research data it receives.
^ See III F.2. 3. c.

The Congressional investigation of research fraud has caused some scientists and universities to take a new look at their research practices and promotion policies to determine whether they are involved in or encouraging scientific misconduct.

Article regarding Mr. Breuning, convicted under federal fraud statutes for falsifying scientific data.
^ See III F.2. 3. b.

The court awarded Mr. Neary $7-million libel award against the University of California. The university published a report about the death of several hundred cattle of Mr. Neary blaming the deaths on ranch mismanagement.
^ See II B. 2. i.


The guidelines developed by university groups and scientific societies are intended to help institutions draw up their own research fraud procedures, but not to dictate them.

Message sent that this is a very serious crime. Breuning sentenced to a two-year prison term, suspended except for sixty days of work release residence in a halfway house, which requires that Breuning be there when not a work, community service totaling 250 hours, five years probation, restitution to his former place of employment of $11,352
salary, a commitment to stay out of psychology research for 10 years.


The AAU proposes guidelines to help universities comply with a 1986 federal law. The guidelines provide for no punishment to whistle-blowers.

Personal account of the difficulties involved in exposing research fraud.


Debate over who should investigate and punish scientists who have fabricated their research results, the dean or the district attorney.

Mr. Yeh accused of using grant money to purchase equipment from a company he owned and hired relative to work on his research projects without disclosing either fact as required.

Bridges was found guilty of plagiarizing experiments from a manuscript submitted to him for review. He will be stripped of his grant and excluded for 10 years from serving on peer review committees for any proposals submitted to the Depart of Health and Human Services.

The agencies guidelines would require scientist supported
by government money to file financial disclosure forms to help eliminate conflicts of interest. The guidelines prohibit agency supported researchers from having any outside financial interests that could influence their research. Prohibit holding stock in a company that might be influenced by their research results.

^ See III F.2. 3. o.
~ Cross ref. III F.3.
Controversy surrounding Nobel Laureate David Baltimore’s appointment as president of Rockefeller University.
Discusses 42 CFR part 50.
^ See III F. 2. 2.
Under new guidelines the Assoc. will be freer to publicize the details and outcomes of cases of misconduct.
An examination of the correlations between science, regulation, fraud and punishment.
Discussion of the Abbs case. Discussion of the San Filippo case. Discussion of models for resolving the problems of scientific misconduct. The scientific dialogue model and the direct confrontation model.
^ See Abbs, III F. 2. 1. b. & San Filippo, III C. 1. 1. f.
Discusses the problem of contribution credit.
Discusses the lure of big financial gain when faculty members hold equity in companies and the consequences.
CH.III G.1 Commentary
CH. III G.2-Commentary


^ See III F.2. 3. o. & r.
~ Cross ref. III F.3.
Ch. IV Students and the Law

1. Commentary
   a. Zirkel, "Academic Misguidance in Colleges and Universities", Educ. L. Rpt., p. 709. Common factors in claims against university officials for academic misadvice include the following: 1) the exhaustion of all administrative remedies, 2) the prospect of extremely severe consequences, 3) the allegation of bad faith or arbitrary action by the acting official and 4) the presence of an agency issue.
      The Fifth Circuit ordered a lower court to develop a plan to desegregate the state's 8 public universities.
      Creighton University, without admitting liability announced, April 27, that it will pay former basketball player $30,000 to settle a federal lawsuit alleging that the school failed to educate him.

Ch. IV A.1 In loco parentis

1. Cases
      College did not stand in loco parentis to 17-year old freshman.
      College may have in loco parentis relationship to minor high school students enrolled in a summer program at the college.

2. Commentary
      The recent murders of five students at Gainesville Fla., have sparked federal legislative initiatives that would require all higher educational institutions receiving federal aid to report annual crime figures and security measures undertaken.
   b. Complying with the Campus Security Act - 1990 Title II-Crime Awareness and Campus Security. (National Association of Student Personnel Administrators, Inc.)
   c. "Education Department has told 15 universities they risk losing federal monies, unless they refrain from releasing the names of students charged with crimes", Educ. Daily, 4 March 1991, p. 2.
Berea College's long standing commitment to excellence in higher education.

Ch. IV A.2 Tort Theories

1. Cases

      Former meditation instructor's claim against meditation organization for teaching him an unsafe method of
      meditation and for misrepresenting the benefits of such a method raised issues of fact that merited jury
      review.

      Liability issues of a university for the death of a student who participated in a student organized race.

      College officials entitled to qualified immunity for acts or omissions which led to a black student being
      terrorized by white students dressed in K.K.K. garb. The Court found that the plaintiff failed to establish
      that a reasonable person standing in the stead of the college should have known that the previous punishment
      given to the group of white students was insufficient to protect the plaintiff's rights.

      Textbook author and publisher found not liable for injuries sustained by a nursing student who self
      administered an enema following the procedures specified in the book.

   e. Niesward v. Cornell University, 692 F. Supp. 1464 (N.D.N.Y. 1988). University may be liable to parents
      of a student who was murdered in her dormitory.

      University found to be in loco parentis with respect to minor high school students participating in summer
      programs at the university.

      furnishing beer to minors.

      Black student, allegedly beaten by group of white students because of his race, faces procedural
      obstacles in suing the state of Massachusetts, under that state's Tort Claims Act.

   i. [Bullock v. Board of Governors of the University of North Carolina, The College Administrator and The
      Courts, Oct. 1989, p. 530.]
Court deems residential student business invitee, entitled to the exercise of reasonable care by the university in providing a safe environment for residential students.


Illinois Appellate Court ruled that a college was not liable for intentional infliction of emotional distress for the acts of its administrators in insulting a student.

Teacher’s criticisms of university policies may be protected speech under the First Amendment, but teacher failed to prove that such speech motivated the university to deny him tenure.

College dismisses student for failure to maintain weight requirements. This did not amount to intentional infliction of emotional distress. Also substantial performance question.

Locate near Russell v. Salve Regina College, p. 979.

The Supreme Court of Arkansas affirmed a judgment awarding a student $50,000 in the the student’s suit against the college for fraudulent inducement to enroll.

One-year statute of limitations bars student’s claim against university for its improper revealing that the student had tested positive for AIDS antibodies.

o. Phelps v. President and Trustees of Colby College, 595 A.2d 402 (Me.--).
Court upholds the college’s right to ban fraternities.

University owed a duty to student to use further efforts to attempt to abate the hazing activities which caused his injuries.

In suit involving hazing death, sovereign immunity was not waived where it was not shown that any possible negligence on the part of the university was connected to the use of real property.

Illinois anti-hazing statute withstands equal process attack.
See Com. v. Tau Kappa Epsilon.

2. Commentary
   ~ Locate near Mullins v. Pine Manor College p. 635.
      Fraternity may be liable for damage resulting from fire started by member on the basis of negligent supervision of its member.
      Hazing death at Morehouse College.
   g. "Illinois Supreme Court has reversed a lower court ruling and unanimously upheld the constitutionality of a 1901 statute law that outlaws hazing", The Chronicle of Higher Education, 6 May, 1992.

Ch. IV A.3 Contract Theories
1. Cases
   a. 
      Students deemed to have standing to assert RICO action against school for its acts in fraudulently procuring federal aid.
   c. Doherty v. Southern of Optometry, 862 F. 2d 570
      Implicit in university's general contract with its students is a right to change the university's academic requirements if such changes are not arbitrary and capricious.
      Decision to dismiss medical student for poor academic performance upheld. School afforded student all the
process that he was due prior to dismissal. Furthermore, language in catalog did not give rise to enforceable contract between university and student.

   An Illinois college and its official did not commit common-law or statutory fraud by failing to affirmatively inform nursing students prior to their enrollment that the college’s program was not yet eligible for accreditation.

d. Bobal v. Rensseleaeer Polytechnic Institute, 919 F.2d 759 (2nd Cir. 1990).
   Pro se student litigant entitled to some discretion in asserting causes of action. The Second Circuit overturns district court’s dismissal of litigant’s claims for failure to comply with discovery.

   Judge dismisses student’s suit against Harvard for its alleged discrimination in hiring. Students found to lack standing.


   Student’s claim against business college for misrepresentation, under Texas’ Deceptive Trade Practices Act, is upheld.

h. Ross v. Creighton University, 957 F.2d 410 (7th Cir. 1992).
   The Seventh Circuit has held that a former university student stated a breach of contract claim against the university for failure to provide any real access to its academic curriculum, as promised in return for his playing basketball.

   University breached its contract with out of state students who were not given any notice of a probable tuition hike. Furthermore, reservation of rights clause in tuition notice in catalog did not give university the right to raise tuition arbitrarily after registration.

2. Commentary

   Court orders State of Montana to pay 14 students, $2.5 million for damages resulting from the cancellation of an aviation program. Compensation was based on the costs of alternate training, the delay in the students’ careers, and the potential loss of not receiving a program equal to the one offered by the State.
B. Student Admissions
1. Cases
a. State v. Freidman, 533 So.2d 309 (Fla.App.1Dist. 1988). Student who altered private academic transcript and submitted it to State university, found not to have violated state statute prohibiting altering public documents.
e. Langston v. ACT, 890 F.2d 380 (11th Cir. 1989). In suit against national testing service, student who claimed he had defamed by testing company’s inquiry into the validity of the test scores, failed to prevail on breach of contract claim.
~ See Johnson v. Texas Educational Agency
f. Tarka v. Franklin, 891 F.2d 102 (5th Cir. 1989). A student who audits a university course is not a "student" for purposes of the Family Educational Rights
& Privacy Act. Furthermore, FERPA does not explicitly provide for a private right of action.

Education Department adds two Wonderlic tests.

Use of minimum ACT score as an admission requirement for teacher-education programs was not educationally justified, for purposes of disparate impact claim under Title VI, where there was no evidence that particular cutoff score was valid measure of minimal ability necessary to become a teacher.

See Johnson v. Tx. Educ. Agency & Langston v. ACT

> Locate near University of California Regents v. Bakke p. 663.

Bakke revisited, -14 years after Bakke affirmative action admission is governed along the same lines.

The New York Dept. of Education should not use the SAT as the sole factor in determining the award of scholarships. This test has disperate impact on females who traditionally score lower than men.


New York’s Truth-In-Testing Law violates MCAT’s copyright.


Auburn University’s use of a sliding scale combining ACT scores and high school GPA is consistent with a remedial decree previously issued against the university in a discrimination action.

2. Statutes
Commentary

a. "California Lawsuit Challenges 2-Year Colleges’ Practice that Restricts Low Test-Scorers to Remedial Courses", Chronicle Of Higher Education 1 June 1988 p. 29

See Langston v. ACT

c. Letter from Donald Stewart, President, The College Board to concerned educators, (Feb. 8 1989).
See Sharif v. NYSED

Questions remain as to whether the SAT is sex and or racially bias.


Challenges to the admissions process have been lodged, successfully on both contract and due process grounds.

> Locate near_Bakke p. 663.


The Education Dept. allegedly lost 8 complaints made by Asian-Americans against universities for discrimination in the admissions process. This is seen by some as demonstrative of the Dept.'s attitude concerning Asian-Americans' concerns that they are being discriminated against in the admissions process.


Increases in the number of women receiving math Ph.D.s have not been met with similar increases in the hiring of female Ph.D.s by universities.


New York law illegally preempted federal law by forcing the publication of material protected by federal copyright. This may prove to cutback the move toward disclosure in testing.


The number of persons with a perfect score on the 1989 LSAT has increase remarkably. Some question the utility of using the LSAT as useful predictor.

j. "College Board Would Add SAT Test Dates In New York State if Injunction On Test Disclosure Granted By Court"

News from The College Board April 1990.

The College Board has filed a lawsuit seeking an injunction from New York's Truth-in-Testing law. If granted, the College Board would offer two additional SAT administrations in the state.


The Educational Dept. has determined that the Family Educational Rights and Privacy Act entitles students to
access to comments written by admission officers about them in their admission process.

   FERPA requires universities to grant students requests to review admission officers' written observations. Schools that refuse requests will lose federal funding.
   Locate near Arizona Board of Regents v. Wilson, p. 655.


   Locate near Bakke p. 663.


   GMAT must comply with New York Law.

q. Education Departments Office of Civil Rights Compliance Review of the admissions program of the School of Law (Boalt Hall) University of California at Berkeley.


Ch.IV B Grades.

1. Cases

      Medical student dismissed for unsatisfactory academic performance faces significant obstacles in suit against school
      ~ Cross Reference IV D

   b. [Keen v. Penson, 87-C-1092, (E.D. Wis. 1987)]
      Professor sues the University of Wisconsin-Oshkosh and its chancellor because they demanded that he change a student's grade from 'F' to 'C' or above and that he apologize to her. Professor claimed that this constituted a violation to his rights to academic freedom.

      Law graduate alleged that one of his professors retaliated against him for submitting an unfavorable evaluation of the professor. However, evidence did not support the allegations.

Law school's decision to dismiss student based on academic deficiency should not have been made without reasonable assurances that grade given was a rational exercise of discretion by grader.

The New York Court of Appeals reversed the lower court and found that allegations by student did not indicate bad faith and was beyond review.

Colleges decision to dismiss student for failure to maintain the required GPA was not an arbitrary or irrational exercise of authority.

Students cannot use FERPA to claim that a grade received in class is inaccurate or misleading, and thereby obtain a hearing requiring the school to show how the grade was assigned.

h. Tobias v. University of Texas at Arlington, 824 S.W.2d 201 (Tex App.—Fort Worth 1991).
University's grade grievance procedures provided the student with adequate procedural due process. Furthermore, decision to fail student did not a departure from academic norms to show a lack of professional judgment.

Nursing student fails to prove that failing grade was not the result of his poor clinical performance.

2. Commentary

a. Ken Wysocky, "Professor files suit over chancellor's order to change 'F' grade,"

Teen loses first round in effort to erase D+ from his transcript.

Coach Denny Crum and University of Louisville President have different views on academic requirements for athletes.

~ Cross Ref. IV K

A tenured professor says he will sue Western New Mexico University over a grade scandal concerning athlete's grades.

~ Cross Ref. IV K


f. Samborn, "Court: Some Education Claims OK", Nat'l Law
Journal 23 March 1992, p. 3.
Former Creighton University basketball player may not sue for negligent education by university. However breach of contract claim can be pursued.

^ See Ross v. Creighton IV A.3

Ch. IV D Academic Dismissals
1. Cases
Dismissal of graduate student from Ph.D. program was on academic grounds and thus informal faculty evaluation with student was all that was required by due process, where focus of the university’s inquiry was on quality work.
^ Cross Ref. IV C
c. Doherty v. Southern College of Optometry, 862 F.2d 570 (6th Cir. 1990)
Implicit in the university’s contact with it students is a right to change the university’s academic requirements, if such changes are not arbitrary or capricious. School of Optometry did not act in bad faith by adopting new requirements even though plaintiff had physical disability that prevented him from meeting the new requirements.
> Locate near Babb p. 704.
The Circuit upholds university’s right to change degree requirements even though change adversely affects student, previously enrolled and bars him from attendance. Student was within 7 credits from graduating.
Locate near Babb p. 704
^ See Doherty v. Southern College of Optometry.
e. [Ross v. University of Minnesota, No. C8-88-2449, (Minn.App. May 2, 1989).]
The decision to terminate a medical resident from a hospital-based residency program is the same as any other decision to terminate or fail a graduate student for inability to meet academic standards.
f. [Lewis v. Russe, No. 88 C 8684 (N.D.Ill. May 26, 1989).]
A college’s policy toward make-up exams may be evidence of racial discrimination.
> Locate near Ewing p. 707.
> Haberle p. 712.
Statement by Dean that school had friendly interaction between students and instructors held not to be fraudulent misrepresentation.
   ~ Cross Ref. IVC
   > Locate near Ewing p. 707
j. Tarka v. Cunningham, 917 F.2d 880 (5th Cir. 1990).
   FERPA does not give a student right to bring action challenging his physics professor’s grading process.
   Federal District Court has held that an alien was entitled to vacation of his conviction for making false
   statement to the Dept. Education in connection with a student loan application, provided that he make
   payments of restitution. The conviction was the only obstacle to obtaining amnesty under the Immigration
   ~ Cross Ref. VB
m. Vaksman v. The Board of Trustees of the U. of Houston,
   ^ (Affirmed 902 F.2d 956)
   Former student claiming that she was dismissed from university’s doctorate program because of her sex was
   not entitled to a jury trial in her action under Title IX of Education Amendments, and was also not entitled
   to money damages. Title IX action is not a common law action.
o. Lunde v. Iowa Board of Regents, 487 N.W.2d 357 (Iowa
   Evidence supports female medical students dismissal on academic grounds.
p. Lazaro v. University of Texas, 830 S.W.2d 330 (Tex.
   Former medical student’s suit against state officials
   fails. State officials are entitled to immunity from personal liability while performing discretionary
   duties in good faith within the scope of their apparent authority.

2. Commentary
   a. Jaschik, "Supreme Court to Rule in Dispute Over
      Dismissal of Nursing Student", Chronicle of Higher
      High Court agrees to hear Salve Regina College v.
      Russell.
   b. Milling, "Russian Immigrant battles UH over doctoral
      ^ See Vaksman v. University of Houston
      1: 267.
Ch IV E Disciplinary Dismissals

1. Cases
      A private college’s suspension of students under the
      rules of conduct it adopted in response to a New York
      statute requiring colleges and universities to adopt
      rules for "maintenance of public order" did not
      constitute state action for purposes of 42 USC ? 1983.
      Allegations of white students concerning racial
      motivation of their suspensions following their
      confrontation with black professor were insufficient to
      state claim under federal civil rights statute.
      Watts failed to establish his present moral fitness to
      practice law. He had been convicted of two felony
      offenses while attending law school.
      ~ Cross Ref. IV C
   d. *Warren v. Drake University*, 886 F.2d 200 (8th Cir.
      1989).
      Court found law school’s action in suspending and
      refusing to admit student charged with crime not be
      breach of contract between school and student.
      Student who reports academic dishonesty pursuant to the
      college’s honor code is conditionally privileged to
      make such disclosure with respect to a defamation suit
      brought by the offending student.
      Fraternity’s attempt to enjoin university from imposing
      sanctions on fraternity following hazing incident.

2. Commentary
   a. "7 students Penalized in VPI Assault Case", *Chronicle
   b. "Fraternity placed on probation in Nazi uniform hazing
      case", *Houston Chronicle* 14 April 1989 p.22A.
      ~ *PSI Upsilon v. University of Pa.*
      ~ *Chronicle of Higher Education* 3/15/89.
   c. "Judge penalizes UT fraternity in hazing death",
      ~ *PSI Upsilon v. University of Pa.*
      ~ *Houston Chronicle* 4/14/189
   d. "Free Speech vs. Racism Regulation", ______ April
      Free Speech or hate speech question unresolved at
      Stanford University.
      ~ Cross Ref. II G
   e. "Judge’s Ruling Will Let Morehouse Hold New Hearings in
      Hazing Case", *Atlanta Journal and Constitution* 3 Nov. 3
Fraternity encouraged pledges to take pictures of themselves kissing black women.
~ Cross Ref. II Racial Torts

~ Cross Ref. IV

Ch. IV F. Academic Misconduct
1. Cases
a. In Re Petition of Zbiegien, N.W.2d 871 (Min. 1988). Minnesota Supreme Court overruled the committee on character and fitness and held that, under the circumstances, a single incidence of plagiarism while in law school was not sufficient to deny admission to the state bar.

Dental student was afforded due process at the administrative hearing on his expulsion; student participated fully in hearing although he was aware that he was not required to testify, and student did not call witnesses on his own behalf although he was informed that he had that right.

Due process entitled petitioner to a statement detailing the factual findings and the evidence relied upon by the decision-maker in reaching the determination of guilt.
> Locate near University of Houston v. Sabeti p. 753

Disclosure of academic dishonesty is conditionally privileged.

81
Former law students claimed they were denied due process through faculty collusion. Faculty revoked honor code, then reinstated a new honor code with a faculty investigator who reopened their case after a student investigator had previously found no probable cause. A school must be allowed to act where misconduct has an impact on academic standing.
Upon finding that a student plagiarized his thesis, under New Mexico law, the Board of Regents and not faculty members must oversee or review the revoking of the degree.
g. University of Texas Medical School v. Than, 834 S.W.2d 422 (Tex. App.-Houston[1st Dist.] 1992).
Court orders university of Texas to give student his certificate of professional education, pending resolution of underlying dispute concerning alleged cheating.

2. Commentary
Mr. Mosher to work as a resident scholar at the Heritage Foundation. Previously Mr. Mosher was embroiled in a dispute with Stanford University over his dismissal from the university's doctoral program.

Ch. IV G- Recognition of Student Organizations

1. Cases
Court found the Armstrong Amendment to impermissibly burden the freedom of speech of council members.
Issue was moot after expiration of last extension of appropriate statute.
University’s regulations on student elections did not violate the First Amendment.
2. Commentary
   a. "Catholic University in Washington, D.C. has approved a recent request by a newly formed gay and lesbian campus group to receive full university privileges and services.", Conscience, May/June 1988, p. 17
      > Locate near Georgetown p. 789.
      > Locate near information on Georgetown.
   c. "Georgetown University last week denied it was behind a senate measure that would exempt it and other religious colleges in the District of Columbia from laws requiring them to recognize groups' that "condone" homosexuality.", Chronicle of Higher Education, 20 July 1988, p.A17.
      > Locate near Georgetown p. 789.
      > Locate near Georgetown p. 789.
      > Locate near Georgetown p. 789.
      > Locate near Georgetown p. 789.
   g. "'White pride' group not racist, Temple University student says", Houston Post, 24 Nov. 1988, p.A-34.
      Temple University recognized the White Student Union as an official student organization.
   h. "The battle between Congress and the District of Columbia over the right of religious colleges to ignore the District's laws barring discrimination against homosexuals has moved from the political arena to the courtroom.", Chronicle of Higher Education, 4 Jan. 1989, p. 24.
      ^ See Clarke v. U.S.
      Texas A&M University was ordered to pay the legal fees of the Gay Student Services after the losing efforts to deny gay organization recognition.
      > Locate near TX. A&M p. 782.
   l. "Black and Hispanic alumni Sue to Gain Independent Status at Baruch College", Chronicle of Higher


~ Cross Ref. IIG


r. "Georgetown University has revoked its decision to recognize a pro-choice student group because university officials said that trying to strike a balance between freedom of speech and guidelines that prohibit advocacy of abortion proved to be impossible.", Chronicle of Higher Education, 6 May 1992 p.A39.

> Locate near Georgetown p. 789.

s. "The Alabama Legislature found an unambiguous way to show that is supports the Student Government Association at Auburn University, which is trying to deny recognition to a gay-students group: The legislature passed a law to bar groups that support homosexuality from meeting on public-campuses", Chronicle of Higher Education 13 May 1992 p.A25

^ See Chronicle 4/8/92


u. NALP Recruitment Guidelines.

> Locate near Commentary p. 813.

Ch. IV H Student Fees

1. Cases


Floridas Department of Education rule requiring correspondence schools to have specific tuition refund policies prior to licensure was upheld.


University has authority to assess mandatory student activities fee as a condition of enrollment under broad constitutional grant of powers.

> Locate near Erzinger p. 816.
c. **Student Government Ass'n v. Board of Trustees of University of Massachusetts**, 868 F.2d 473 (1st Cir.1989)
   Termination of university legal services office did not violate students' First Amendment rights.
   > Locate near **Student Government v. Trustees, University of Massachusetts** p. 825.

   Funding of an extra-curricular program that supports issues which a student disagrees with, through a portion of mandatory student activity fees, does not violate the first amendment rights of an objecting student.

   University could constitutionally allocate students' activity fees to group with whose speech some students disagreed, as long as group spent equivalent of student funds on campus. Campus group must be open to all students, not just due payers.

   Non-public forum property may be restricted with greater discretion than limited public forum property. University may deny funds to religious student group.

   Mandatory student fees may be used to support activities that some students do not approve of.
   > Locate near **Erzinger** p.816.

   There was no private right of action against Department of Education with respect to its policy regarding minority student scholarships.

2. Commentary


d. Blumenstyk, "A federal judge has dismissed, most of a lawsuit that sought to prevent Minnesota from using tax dollars to pay the tuition of high school students who attend church-related colleges.", **Chronicle of Higher Education**, 8 August 1990, p.A14.


h. Montano, "Financial service companies under scrutiny", Daily Cougar, Date


Ch. IV I The Student Press and Distribution on Campus
~ Cross Ref. Dartmouth conservative weekly scandal
~ Cross Ref. African-American Professor vs. the Dartmouth Review

1. Cases
   a. Zurcher v. Stanford Daily, 436 U.S. 547 (1978). Search Pursuant to a warrant, of the offices of student newspaper, which itself was not suspected of crime, does not violate Am.I or Am.IV.
   b. Walko v. Kean College of New Jersey (N.J.Super.L., July 18, 1988). A spoof in a college newspaper was privileged under the first amendment and therefore precluded recovery by official highlighted in the spoof.
   c. Romano v. Harrington, 58 USLW2353. The court held that the Supreme Court’s 1988 decision in Hazelwood v. Kuhlmeier does not extend to student newspapers outside the curriculum. May there, indeed be some first amendment protection for student publication?
   > Locate near Hazelwood p.846.
   d. Burch v. Barker, 861 F.2d 1149 (9th Cir. 1988). School district policy requiring high school students to submit for approval any student-written material prior to distribution, irrespective of whether the topics were school related, was a overly broad prior restraint in violation of First Amendment.
   > Locate near Hazelwood p.846.
   > Locate near Hazelwood p.846.
   g. Mathews v. Dibone, 269 Cal.Rptr. 882 (Cal.Ct.App. 1990). A public community college teacher and a student sued their college for cancelling a drama class in which a controversial play was to have been performed. The
court held that the plaintiff’s First Amendment rights were violated.

   Appeals court finds university’s antisolicitation regulations to impermissibly restrain free speech.

2. Commentary

      The faculty advisor to the student newspaper at California State University at Los Angeles has been fired over what she views as editorial control of the newspaper.
      This is the first legislative response to the Hazelwood decision.
   > Locate near Hazelwood p. 846.
   f. Piller, "UH student reporter disciplined", Houston Chronicle 14 April 1989, p.23A.
      UH student reporter put on probation for voting more than once in student elections. The multiple voting was done for journalist purposes.
      See Dartmouth Review v. Dartmouth College
      Former Attorney General Edwin Meese and the ACLU agree that college administrators must stop censoring conservative students.
      > Locate near Hazelwood p. 846.
      Federal judge issues a preliminary injunction prohibiting a high school administration from enforcing publishing policy that would infringe on student’s First Amendment rights. It appears that Hazelwood may less expansive than previously thought.
      > Locate near Hazelwood p.846.
   k. "Dartmouth Review Staff Loses in Appeals Court", Chronicle of Higher Education 22 Nov. 1989, p3
   l. "Student Press Activists Seek State Protection",
Educational Daily, 29 April 1992, p.3
The trend seems to be to seek state protection from
censorship by school officials.
> Locate near Hazelwood p.846.
m. Dovalina, "UT's Daily Texan putting muzzle on free
speech?—No, wisely standing up against hate.", Houston
Chronicle, May 17, 1992, p.4F.
n. Onley, "Fifth Circuit Strikes Down Texas University's
o. Salomone, "Free Speech and School Goverance in the Wake

Ch. IV J College as Open Forum
1. Cases
   a. Board of Educ. of Westside Community Schools v.
      Equal Access Act applies to forbid discrimination
      against high school religious groups which meet on
      school grounds after school hours.

Ch. IV J.1 Solicitation on Campus
1. Cases
      Sport's agents contract with college player to
      compensate player for interceptions made did not
      constitute a violation of a statute prohibiting
      tampering with a sports contest.
      ~ Cross Ref. IV.K
   b. Martin-Trigona v. University of New Hampshire, 685
      Court held that campuses may exercise broad discretion
      in opening campus to non-students. Reasonable
      limitations on access and use are appropriate and
      necessary.
   c. Thomas v. Humfield, 916 F.2d 1032 (5th Cir. 1990).
      Fifth Circuit determines that student was entitled to a
      hearing prior to appointment of guardian ad litem . . .
   d. Board of Trustees of State University of New York v.
      The Supreme Court ruled that the university's policy
      against commercial operations on campus need only be
      'narrowly tailored' to guard the school's security and
      educational environment.
2. Commentary
   a. Bishop, "A Warning on Student Directories", New York
   b. Locker, comment, "Board of Trustees of the State
      University of New York v. Fox: Cutting Back on
      1335.
Ch. IV J.2 Protests on Campus
~ Cross Ref. with Higher Ed.
Cases-Administration/discipline/protests IV.J.2
1. Commentary

Ch. IV K Student Athletes
1. Cases
      Players had no liberty interest in playing football.
      Claims by students that the NCAA violated various Anti-trust and Civil Rights laws by restricting the benefits that student athletes may receive failed to constitute violations.
   c. Rutledge v. Arizona Bd. of Regents, 859 F.2d 732 (9th Cir. 1988).
      In player’s civil rights suit against coach who struck him, player failed to show that a conspiracy to intimidate the witnesses affected his ability to present a case in federal court.
   d. O’Halloran v. University of Wash., 856 F.2d 1375 (9th Cir. 1988).
      Student’s action seeking to prevent the university from administering a drug test was remanded back to state court from which it was removed.
      Student challenging the drug testing policies of the NCAA succeeded in getting case remanded back to state court.
   f. U.S. v. Walters, 711 F.Supp. 1435 (N.D.Ill. 19 690
      ~ Cross Ref. IV A. 189).
      Sport’s agent alleged signing of post-dated contracts with undergraduate athletes defrauded the university of property within the meaning of the fraud statute.
      Northeastern University’s drug testing policy does not violate the Mass. Civil Rights Act or its right to privacy statute.
      University’s drug testing plan violates the fourth
amendment of the U.S. Constitution and its counterpart in the Colorado Constitution.

NCAA rules are not subject to Anti-trust analysis.

Drug testing program of NCAA violated student athletes right of privacy guaranteed under the California Constitution.

NCAA rules found not violative of Anti-trust

^ See Gaines v. NCAA
^ See McCormack v. NCAA

l. Abernathy v. State, 545 So.2d 185
~ Cross Ref. IV.J.1

Law Rept., April 23, 1992, (E.D. Ark.)]
Procedural due process protections did not extend to student’s participation in intercollegiate athletics.

2. Statutes
a. Drug Free Workplace Act
d. GAO Fact Sheet-Student Athletes "Information on their Academic Performance", May 1989.

3. Commentary
b. "A lawmaker from Omaha, who has argued for years in Nebraska legislature that college football players should receive paychecks for their efforts on the playing field in addition to their scholarships, is still pushing for more compensation for athletes.", Chronicle of Higher Education, 13 July 1988, p. A33.
State Senator proposes eliminating the cap on PELL grant money available for student athletes.
c. "NCAA’s allegations against UH football program", Houston Chronicle, July 17, 1988, p. 10.
~ Cross Ref. IV A.2
f. Lederman, "Tutors of Athletes at U. of Georgia Are
^ See Kemp v. Erwin p. 478.
^ See U.S. v. Walters
^ See Derdeyn v. U. of Colorado {unreported}
Proposition's 42 negative impact on minorities.
m. Selected Exchange of Legal Information Accessions, NACUA College Law
^ Cross Ref. II.G racial torts.
^ See Ross v. Creighton IV A.3.
^ Cross Ref. I.H Consortia
Sale of advertising space in NCAA's Final Four Tournament held not to be taxable income.
^ See Hill v. NCAA
u. "Another update on the case that would not die: The University of Nevada at Las Vegas last month offered four sets of proposed penalties to the National Collegiate Athletic Association’s infractions panel, which has banned Las Vegas’s men’s basketball team from defending its 1990 Division I title. Chronicle of Higher Education & Nov. 1990, p. A35.
^ See Chronicle 8/1/90 Tarkanian.
v. Shattuck, "Tarkan - NCAA chronology", Houston Chronicle, Nov. 18 1990, P. 1B.
x. Reed, "Rebel Reprieve", Sports Illustrated ????
Lawsuits fly in the aftermath of Hank Gather’s Death.
Cox’s views are critical of the use of the mail fraud statute to reach the unethical actions of the two sports agents in U.S. v. Walters.

Ch. IV. L. Residency Requirements
1. Cases
   a. U.S. v. Maravilla, 907 F.2d 216 (1st Cir. 1990)
      "A foreign citizen who intended to stay in the United States only a few hours didn’t qualify as an
"Inhabitant of any State, Territory, or District" for purposes of deprivation of civil rights under 18 U.S.C. 242, the 1st Circuit held June 28."

b. DeCecco v. Board of Regents, Univ. of Wis., 442 N.W.2d 585 (Wis. App. 1989).
Plaintiff fails to show the type of residency determination that the Supreme Court struck down in Vlandis v. Kline. As one factor in determining residency requirements, Wisconsin's consideration of whether an applicant for state residency for tuition was held to be proper.
> Locate near Frame v. Residency Appeals Committee, p. 894.

Unemancipated student whose parents were not domiciled in New Hampshire found not to be entitled to instate tuition rate. Even though some evidence of a domicile in New Hampshire existed, review board was within its rights to deny applicant residency status.
> Locate near Frame v. Residency Appeals Committee, p. 894.

d. Regents, Univ. of Cal. v. Superior Court, 276 Cal Rptr. 197 (Cal. App. 2 Dist. 1990).
Undocumented alien students are precluded form qualifying as residents of California for tuition purposes under a statute that provides that aliens can be resident students for tuition purposes unless precluded by I.N.S.
> Locate near Frame v. Residency Appeals Committee, p. 894.

e. Peck v. University Residence Committee, 807 P.2d 652. (Kan. 1991). Residency Committee's determination that student was not a resident is upheld despite some factors indicative of domiciliary in the state.
> See Bisson v. University of New Hampshire.
> Locate near Frame v. Residency Appeals Committee, p. 894.

Requiring students eligible for in-state tuition and student loans to first register with selective service is not violative of Ohio's Constitution.

2. Statutes
a. Wis. Stat. ? 36.27 (2)
Wisconsin Statute relating to exemption from nonresident tuition at the University of Wisconsin at Madison.

b. 1989-1990 Legislative Update

c. Memorandum from University of Houston Registration and Academic Records: INS forms I-688B 1-766 & Economic Development and Diversification Employees.
3. Commentary
      A review of Zobel v. Williams and other cases
      Tuition discounts as an incentive to economic development - states are making it attractive to move into their boundaries.
      "The Board of Regents of Higher Education in Massachusetts has voted to raise the tuition paid by out-state students attending the state's colleges and universities under a compact.", Chronicle of Higher Education, 10 Jan. 1990, p.A27.
   e. Memorandum from Ted D. Ayer, Kansas Board of Regents regarding the Peck v. The Kansas Board of Regents.
   f. Cage, "California's Gov. Pete Wilson has vetoed a bill that would have allowed undocumented aliens to pay the same low tuition that California residents pay to attend public institutions.", Chronicle of Higher Education, 3 July 1991, p.A16.
      ^ See Regents University of California v. Superior Court.
      Homeless non-collegiate homeless students must be allowed to enroll in public schools where they live without proof of residency.

Ch. V Affirmative Action
   A. Institutions and Affirmative Action. 1. Statutes
      ^ See Cases following Commentary
   1. Commentary
      a. Greene, "Gaines the Litigation and the Legacy", A paper prepared for the University of Missouri Symposium,
1986.
Commentary on Gaines ex rel. Missouri v. Canada


~ Cross Ref. II G


~ Cross Ref. IV. K


> Locate near Adams p. 909.

Complaints filed with the Education’s Department’s Office for Civil Rights Almost doubled in fiscal 1988 after Congress restored the powers curtailed in 1984 by the Supreme Court in Grove City College v. Bell.


^ See The Florida bar Re: Virgil Darnell Hawkins.

The Challenges facing Paul Verkuil in La.


~ Cross Ref. II G. racial torts


Civil Rights group that brought 1970 Public college desegregation case still has standing to pursue case.


m. Cage, "Court Orders Louisiana to Alter College Governance, Abolish Southern U. Board", Chronicle


> Locate near Miss. University for Women v. Hogan, p. 939

^ See U.S. v. Commonwealth of Virginia.

p. Cage, "The Justice Department last week challenged a federal court's sweeping reorganization of higher education in La., saying that it was 'likely to sweeping reorganization of higher education in La., saying that it was 'likely to be counterproductive.'", Chronicle of Higher Education, 9 August 1989, p.A17.


> Locate near Adams p. 911.


In-state tuition rates offered to foreign student who participate in cultural program.

~ Cross Ref. IV. L. Residency Requirements


> Locate near Adams p. 909.


> Locate near Miss. v. Hogan p. 939.
   See LULAC v. Clements


   See US v. State of LA.

   See colleges controversy
   See Ayers

   *AALS Regulation on Non-Discrimination: Its effect on The Military recruiting on AALS law schools.
   *EEOC Rule may mean the end minority job fairs and other means to increase minorities presence in the workforce.
   > Locate near Miss. v. Hogan p. 939.

   1972 Law may deny federal funds to colleges who bar the military from recruiting on campus.
   > Locate near Miss. v. Hogan p. 939.

   The Justice Dept. is asking the US Supreme Court to force Miss. to launch further efforts at removing what the Justice Dept. considers a dual system in higher education in Miss.
   > See Ayers

   > See Ayers

^ See LULAC v. Clements.


ll Locate near Edgewood v. Kirby.

> Locate near Miss v. Hogan p. 939.


> Locate near Miss. v. Hogan.

^ See Ayers

^ See Ayers

^ See LULAC v. Richards

^ See US v. Fordice

^ See LULAC v. Richards

^ See LULAC v. Richards


^ See LULAC v. Richards


^ See LULAC v. Richards

yy. Marriott, "Indians Turning to Tribal Colleges For Opportunity and Cultural Values", New York Times

98

Its CUNY vs SUNY in a fight for New York's sparse education dollars.


^ See US v. Mabus "Ayers"


^ See VMI Case -U.S. v. Comm. of VA.


nnn. Rugeley, "High Court is asked to rule on efficiency of higher-ed system", Houston Chronicle , Oct.14, 1992, p.14A.


uuu. Onley, "Court Rejects Virginia's Bid For Rehearing In VMI Case", Education Daily, 2 Dec.1992

2. Cases

a. Geier v. Richardson, 871 F.2d 1310 (6th Cir. 1989). In the aftermath of Greir v. Alexander, the US attempted to overturn the validity of the consent decrees worked out between the parties. As a result of the US challenge both the private litigant and the State of Tenn. incurred legal costs. Under the Equal Access to Justice Act and U.S.C. ? 1988, the district court may assess legal cost in favor of the prevailing parties (in this case the private plaintiffs and the state of Tenn.).

b. Geier v. Richardson, 801 R.2d 799 (6th Cir. 1988). The stipulation of settlement is upheld by the Sixth Circuit. The US had challenged the stipulation's measure designed to increase the numbers of blacks in professional schools in Tenn.


f. U.S. v. Fordice ,112 S.Ct. 2727 (1992) States's adoption and implementation of race neutral policies governing its college and university system is insufficient to fulfill its affirmative obligation to desegregate a de jure segregated system.

g. Clements v. LU:LAC, 800 S.W.2d 948 (Tex. App.--Corpus Christi 1990)


i. U.S. v. Commonwealth of Va., Fourth Circuit remands case to require the Commonwealth
to formulate and adopt a plan that conforms to the principles of equal protection. However, court did not order VMI to admit women if adequate alternatives were available.


Ch. V. B. Affirmative Action/Minority Scholarships

1. Cases
   b. Podberesky v. Kirwan, 956 F.2d 52 (4th Cir. 1991) Scholarship program for African American Students cannot stand equal protection challenge without showing that program remedied some past effect of past discrimination.
   c. Ayers v. Allain, 914 F.2d 676 (5th Cir. 1990). No evidence of intentional discrimination in the operation of Miss. higher education system.
   e. Clements v. LULAC, 800 S.W. 2d 948 (Tex. App.--Corpus Christi 1990) Plaintiffs have standing to sue as class. Class representative have claims typical of class and adequately protect class interests. The first victory by plaintiffs in challenge to the state of Texas’ higher education system.
   > Locate near LULAC v. Clements p. 939
   * Even though the ACT was first used in Alabama for illegal purposes, that alone is not determinative of its present use in Alabama . . .
   * The states’ admissions standards were found to be permissive under the laws and constitution of the U.S.
   * Alabama had made no effort to eliminate the effects of years of discriminatory funding of black universities . . .
   * Auburn University’s black enrollment is a vestige of segregation.
2. Commentary
   b. Olivas, "Some Thoughts on OCR's Minority Scholarship Policy".
   g. "Two men who were long-time companions have bequeathed $200,000 to establish a scholarship fund for lesbian and gay students at San Francisco State University and other institutions in Bay area", Chronicle of Higher Education, 6 March 1991, p. A23.
   ^ Wash. Legal Found. v. Alexander
   ^ Wash. Legal Found. v. Alexander
   m. Comments of the American Civil Liberties Union on Student Financial Aid Programs in Which Race, Color or National Is Factor (56 Fed. Reg. 24, 383).
   ^ See Podbereky v. Kirwan.
^ See Alexander
x. Jaschik, "The University of Maryland at College Park has decided not to appeal to the U.S. Supreme Court an appeals-court decision that questioned the legality of a minority scholarship program supported by the state.", Chronicle of Higher Education, 15 July 1992, p. A25.

Ch. V.B.2 Affirmative Action/Students

1. Cases

a. Nesmith Through Nesmith v. Grimsley, 702 F.Supp. 122 (C.D. S.C. 1988). Qualified Immunity granted to Citadel officials, who were sued by black student for failing to control group of white students that terrorized him while dressed in KKK garb. White students were not expelled from Citadel.
~ Cross Ref. Ch. II. G Racial Torts
b. Doherty v. Southern College of Optometry, 862 F.2d 570 (6th Cir. 1989). University may change academic requirements as long as they are not arbitrary and capricious. Disabled student unable to meet new requirements.
> Locate near Southeastern Community College v. Davis p. 970.
discrimination. Clubs comprise a functional part of university.
>
See US v. Commonwealth of Virginia

e. U.S. v. The Board of Trustees for the U. of Alabama, 908 F.2d 740 (11th Cir. 1990).
A victory for disabled students at U. of Alabama:
1) Rehabilitation Act prohibits denying auxiliary aid to handicapped students on basis that a student failed to show financial need.
2) Auxiliary aids must be provided to non-degree students
3) University's handicapped bus service was not adequate
>
Locate Near Southeastern Community College v. Davis, p.970.

f. Russell v. Salve Regina, 890 F.2d 484 (1st Cir. 1989
SEE SUPREME COURT CITE

~ Cross Ref.IVA.2

> Locate near Russell v. Salve Regina College p. 979.

Dental student with AIDS disenrolled by university based on his medical condition.

2. Statutes


b. US Dept. of Education Assistant Secretary for Civil Rights Michael Williams, Priorities and strategy for enforcement of civil rights laws. {NACUA College Law Digest-Continued}


Response to invitation for comments in Federal Register

Ch. V. Affirmative Action/Students

3. Commentary


e. Jaschik, "Landmark 1970 Lawsuit on College


g. Whitten, "TEA probing HCC English program", Houston Chronicle, July 30, 1990, p. 7A.

h. Warren, "TEA probing HCC English program", Houston Chronicle, July 31, 1990, p. 9A.


^ See Frank v. Ivy Club


^ See US v. Commonwealth of Virginia


^ Locate near Pushkin p. 975.


^ Locate near Chance v. Board of Examiners p. 945.


confidential data about minority students.


~ IV. B Student Admissions


> Locate near Pushkin p. 975.

~ Cross Ref. V.C.

^ U.S. v. Board of Trustees of the University of Alabama


aa. Jaschik, "President Bush last week disavowed a memo that the White House had circulated about a plan to abolish the affirmative-action programs run by most federal agencies," Chronicle of Higher Education, 27 Nov. 1991, p. A29.


^ See Podbersky v. Kirwan. Make Sure you have current Podbersky case from 4th Circuit


> See Franklin v. Gwinnett by Supreme Court

d. Brown, "Salve Regina College v. Russell: Implications for Appellate Deference", Education Law Rptr, (___) date?


^ See Grove City College v. Bell. Cite

ff. Selected Exchange of Legal Information Accessions-June 1992


Ch. V.C. Affirmative Action in Employment

1. Cases

a. [Ford v. Nicks, No. 77-3202 (M.D. Tenn. Feb. 9, 1988)] Court finds university guilty of intentional discrimination on basis of gender in dealings with Dr. Ford.

b. Narumanchi v. Board of Trustees, 850 F.2d 70 (2nd Cir. 1988).

gender discrimination that University of Houston failed to refute.
d. West Virginia Institute of Technology v. West Virginia Human Rights Commission, 383 S.E.2d 490 (W.Va. 1989). Unlawful discrimination evidenced by lower compensation rate for 'international people'. Plaintiff a native of Iran was discriminated against by his employer.
e. [Jackson v. Harvard University, Educ. Daily, 2 Oct. 1990, p. 3.]
g. University of Southern Cal. v. Superior Court, No. B047646, (Aug. 10, 1990). Decision not to promote Feminist scholar supported by legitimate factors. There was no evidence that reasons were solely preexual.
h. [Kemp v. State Bd. of Agriculture and Colorado State University, No. 89SC 696, (Dec. 10, 1990).] University entitled to terminate closed grievance hearing-procedure when employee wrote letter to Senator in regard to outcome of grievance committee.
i. Austin v. State of Hawaii, 759 F.Supp. 612 (D. Hawaii 1991). Female faculty member was discriminated and retaliated against for promoting Feminism issues. Professor was seriously affected by her chairman's constant harassment.
k. Reise v. Board of Regents of U. of Wisconsin System, 957 F.2d. 293 (7th Cir. 1992). White male law professor candidate fails in attempt to enjoin the law school from hiring others for the vacant position.
l. Silver v. City University of New York, 947 F.2d 1021 (2nd Cir. 1991). White male professor fails to prove reverse discrimination.
m. Arenson v. Southern University Law Center, 963 F.2d 88 (5th Cir. 1992). White law professor sues predominantly black law school over tenure.
employee.


2. Statutes
   a. 1990 Civil Rights Act
   b. House Bill 638 Texas Education Code ? 51.917 (Faculty Members; Use of English)

3. Commentary