Facing the Law:

Educators on Unfamiliar Turf

By Kent Daniels Seltman and Jillian E. Staples

The authors' view of our professional responsibilities was modified about four years ago when we were called from our classes by a sheriff's officer who served us with papers charging us in the complaint of a former student. After we had spent two years in research and thousands of dollars of institutional money had been spent in our defense, the student withdrew his complaint just before jury selection was to begin for the trial. Our reflections upon this experience in the larger context of recent judicial practice should provide some guidance to educators who daily expose themselves to legal liabilities they hardly ever think about.

Traditionally, U.S. courts have shied away from cases dealing with academic issues. However, in the past 25 years fundamental shifts in social attitudes and educational practice have resulted in some significant changes in the traditional attitude of the courts. The 1954 and 1955 Supreme Court decisions in *Brown vs. Board of Education* ruled that racial segregation was illegal.[1] In matters of discipline, the Supreme Court ruled in *Goss vs. Lopez* that students in public schools are entitled to an informal hearing before even a short suspension of ten days or less.[2] Another Supreme Court decision, *Tinker vs. Des Moines*[3] gave public school students the right to nondisruptive symbolic speech on school grounds. To these landmark decisions have been added other court decisions too numerous to mention here. Presently, these decisions deal only with State-operated schools, but the legal picture is further complicated by the Federal antidiscrimination and student record laws of the 1960's and 1970's which have affected practices in the private as well as public sector. As a result of these decisions and laws, educational institutions and individual educators, from classroom teachers through administrators and even board members, must face their responsibilities in a legal context not dreamed of a few years ago.[4]

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Though educational malpractice suits have grabbed some headlines in recent years,[5] the courts have not decided harshly against the educational establishment in these cases labeled "malpractice" by the news media. The issues that have seriously occupied the courts concern students' rights to fair and reasonable treatment, particularly in business matters and administrative procedure —especially those areas pertaining to discipline. The courts have been reluctant to enter the domain of academic evaluation except in cases of extremely arbitrary or capricious action such as the assignment of a student's final grade before he had enrolled in the course.[6]

Schools have traditionally enjoyed considerable legal autonomy. They have created their own systems of justice and have acted without much judicial interference in matters relating to both students and teachers. Thomas J. Flygare observes, "Only a few years ago we believed that minors possessed no constitutional rights and that adults relinquished whatever rights they may have if they became public school teachers."[7] Stated in more precise terms, in their relationship to students, the schools have for many years acted upon the legal theory of *in loco parentis* which "places the student under the jurisdiction of the college which is able to stand in place of the parent and which regulates the student in any manner it chooses up to the limit that the parents could."[8] But the

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development of civil rights and consumer movements in recent years has forced schools to temper this autonomy with legal accountability.

As a result, the legal theorists now advocate a contract model as the best concept on which to build educational practice. This contract is described as an "implied or quasicontract" as opposed to a traditional written

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or expressed contract. The contract is based upon the bulletin of the institution, but does not end there. It includes correspondence, oral exchanges, and even academic tradition.[9] Our recent experience in *Hubbard vs. Pacific Union College Association, et. al.* is a case based primarily upon an allegation of racial discrimination, but the complaint is stated from the point of view of a consumer who has paid a fee to a business—Pacific Union College—for the purpose of obtaining an education.

Is a College a "Business"?

The definition of Pacific Union College as a business was not established in court. In fact, the college attorneys argued otherwise. Private colleges are regulated by the Education Code, not the Business Code,[10] and thus, a private educational institution is not a "'business establishment' as that term is used in the Unruh Civil Rights Act."[11] A school is unlike a business in that a student must not only pay tuition, but also perform at acceptable levels in order to receive the product—academic credit or a degree. Courts have traditionally concerned themselves with the question of whether school authorities were motivated by malice or acted capriciously in the treatment of a student.[12] In other words, schools and students, as the parties entering into this quasicontract, are both accountable legally in ways only recently being spelled out. In practical terms, the preparation for each course of a syllabus that clearly and completely states the requirements for the course and the manner in which the grade will be determined is legally as well as pedagogically important. Further, specific theme assignments—particularly for a research paper—should probably be prepared in writing so that a student cannot claim that he misunderstood or that the teacher failed to give adequate instructions. Fortunately, in *Hubbard vs. PUC, et. al.*, we had these documents, whose value proved to be immeasurable.

We now turn to the suit, not to try it out of court, but to discuss it, in order that others may learn from our experience. In spite of having had three years in which to build his case, the student concluded that his complaint had no merits as demonstrated when he stated in court that he had "made a complete and thorough investigation of his claim" and "found the allegations of descrimination [sic] . . . were not substantiated." Furthermore, he stated that all of the defendants had "acted in good faith toward" him and "did not deal unfairly with him."[13] This statement directly contradicts the claim in his complaint and settles the legal issue, but the additional details below describe the vulnerability faced by all teachers, administrators, and institutions.

In his complaint, filed March 14, 1978, the student, "a person of the Black race," alleged that Jillian E. Staples, "a White native of South Africa," "because of her own biasness [sic] and prejudice, falsely accused plaintiff of plagiarizing materials used in his assigned work and gave him a failing grade for the course. . ."[14] In a second cause of action the administrators (also named as defendants in the case) were alleged to have acted "negligently and with complete disregard and insensitivity toward plaintiff and all other Black students enrolled in Pacific Union College Association by being, and allowing person of defendant Staples' prejudice and biasness [sic] to teach a class in which students of the Black race were enrolled . . ."[15] The complaint asked for $25,000 in punitive damages,

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unspecified medical expenses, and "a permanent injunction enjoining the defendants" from permitting any black student to "enroll in the defendant Jillian E. Staples's course."[16]

Though the primary allegation in the complaint was racism, the primary issue in the classroom arose over the evaluation of the research paper submitted by the student in his freshman English course in the winter of 1977. Immediately after reading the essay, the

instructor had given it without comment to two other department members for evaluation. Because of stylistic mannerisms, form, and sources, both concurred independently with the instructor that the paper did not appear to be the work of a college freshman. The paper relied on a rather sophisticated, if not always accurate, use of sociological jargon, with which a college freshman would have been unlikely to have been familiar. Further, the bibliography and footnote format was not that taught in the course. In addition, the student had been absent from class during the times the bibliography and note cards were examined by the instructor, and so, the first she saw of his research work was the finished product. Also, the paper lacked a thesis statement —the principal rhetorical focus of the course. The English professors who read the essay suspected that it had originally been written for another course, probably in the early 1970's, since the paper dealt with community control of the police, a topic about which there had been a referendum in a Berkeley, California, municipal election in April, 1971. This was referred to in the essay as a recent election. Further, all of the sources cited in the paper had been published between 1968 and 1971.

Additional Evidence

Upon more careful examination of the situation, additional evidence supported our original suspicions. First, some of the sources were so obscure that the instructor had to resort to the more specialized legal libraries in the San Francisco Bay area to find them, causing her to question whether a college freshman would have had access to these sources. Next, we noted that most of the pages had staple holes from a previous stapling while a few pages, which had been typed on a different typewriter, had only one set of holes. Finally, the retyped pages were from the beginning and the end of the paper—pages that would normally contain written comments from a teacher. In spite of the above evidence, the paper did not receive the failing grade awarded to all cases of proven plagiarism. However, the C- given to the essay did not give the student enough points to pass the course.

After threatening litigation in telephone conversations with several of the defendants, the student, his attorney, and his mother and stepfather met with the defendants on April 26, 1977. Although the defendants felt that this meeting resolved the issues, it was ultimately not successful in preventing the threatened litigation.

Given the evidence we accumulated, we have reason to believe we were dealing primarily with a case of malicious prosecution motivated by reverse racial discrimination.

Though we as defendants were confident of our integrity and good faith in the academic process, we were shocked by the details our investigation uncovered. The star witness for our defense was the student's roommate, whose sworn deposition suggested a family conspiracy promoting academic dishonesty. Below, in the unedited words of his oral transcript, the roommate described how the student's mother told both of the young men that when they had research papers due in their courses,

> she didn't think we'd have to rack our brains, because she did have some papers we could use at her home, and she basically had a lot of them because they had all just finished school. I think she had just completed her Master's, and her father had just finished the nursing course, and her husband had just finished his Master's also. So, they had papers from all the classes they had attended, so, and she did say that these were good papers. They made A's on all these papers and so first she told Bob that if he needed something, just to call home and let her know what the subject was and how long the paper had to be, and they'd mail it to him, and he was to use it and mail it back.[17]

Then the roommate testified to the student's involvement in these activities: "First, after he would receive the assignment from his teacher for any given subject, he would call home, tell his mother—he called collect and they accepted, of course—and he would tell them the subject matter he needed, the approximate length."[18] Then "they would let him know whether or not they had it, and if they did they'd send it special delivery."[19] Then the roommate testified that after the student received the papers, "He would retype the title page and usually the last page and any page that had any marks on them, and he would turn them in."[20]

On the day of the trial we intended to show by the above testimony that the paper was indeed plagiarized. Furthermore, we planned to impeach the previously sworn testimony of the student on several accounts. We had as a witness a typewriter expert who was prepared to show that the student had not used the typewriters in preparing his paper in the way he had testified in his deposi-

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those goals.

The bulk of Hook's dissertation is a step-by-step exposition of the development of Avondale from its inception to the dispersion of the Avondale pioneers in 1900 after the completion of their task. Hook has reconstructed the development of the school, the struggles its founders went through, and its frustrations and successes in detail from the primary sources left by its originators. His treatment is detailed and informative without being sluggish and pedantic. This history provides the concrete context in which the goals and methodologies were developed. It is this context that gives the goals and methodologies meaning for us today. Hook's dissertation is the most thorough study ever done on early Avondale.

The focus of Lindsay's thesis was on the influence of Ellen White on the development of the Adventist school system in Australia up through 1900. As a result, he does not present a detailed history of Avondale, but rather highlights the impact of Mrs. White upon the philosophy, goals, and daily operation of that institution. He demonstrates how her philosophy was implemented in the development of Avondale. In the process he provides a helpful analysis of that philosophy.

Lindsay's study, however, reaches beyond Avondale to the system of Adventist elementary education which was stimulated by Ellen White during her stay in Australia. Most Seventh-day Adventists have not realized that there was virtually no elementary work among Adventists until after 1895. Lindsay provides us with the most thorough treatment of the development of the Adventist elementary movement yet written.

By giving us breadth of coverage on Mrs. White's total impact on education during the Australian years Lindsay has helped his readers gain a fuller understanding of the importance of this period for Adventist education. It is in the context of this fuller picture that the legacy of Ellen White to the educational system of the church can best be appreciated.

In conclusion, we should note that the events of the 1890's changed the shape of Adventist education. The Avondale "experiment" had repercussions that were widely felt in Adventist higher education around the world. In some institutions the impact was gradual and moderate, while in others, such as Battle Creek College, the effects were immediate and extreme. Whether modest or extreme, however, the impact of Avondale was felt and continues to be felt in Adventist education. No less cataclysmic were the reverberations from the counsel on the elementary work. There was only one Adventist elementary school in 1880, and nine in 1890. On the other hand, there were some 220 elementary schools by 1900, 594 by 1910, and 928 by 1920.

Adventist education has never been the same since those crucial years of the 1890's. Neither Adventist educational history nor the educational writings of Ellen White can be understood in their fullest sense unless we come to grips with the significance of those years. Hook and Lindsay have provided documented histories of that period. For this reason their works should receive wider reading and study than is generally accorded the research of graduate students.

FOOTNOTES

[1] E.g., School Committee, "The Proposed School," *Review and Herald,* May 7, 1872, p. 168. George I. Butler, "What Use Shall We Make of Our School," *Ibid.,* July 21, 1874, pp. 44, 45.

[2] Ellen G. White, *Testimonies for the Church* (Mountain View, Calif.: Pacific Press Publishing Association, 1948), vol. 3, pp. 131-160.

[3] For the fullest account of this struggle see George R. Knight, "Battle Creek College: Academic Development and Curriculum Struggles, 1874-1901," Heritage Room, Andrews University, 1979.

[4] E.g., Ellen G. White, "Our College," *Testimonies,* 5:22-36.

[5] For the fullest account of this convention see Craig S. Willis, "Harbor Springs Institute of 1891: A Turning Point in Our Educational Concepts," Ellen G. White Vault, Andrews University, 1979.

[6] W. W. Prescott, "Report of the Educational Secretary," *General Conference Bulletin,* February 23, 1893, p. 350. Percy T. Magan, "The Educational Conference and the Education Reform," *Review and Herald,* August 6, 1901, p. 508.

[7] Ellen G. White, Ms. 186, 1898; Ms. 92, 1900; W. C. White, "The Responsibility of Our Publishing Houses and the Division of Territory to Accomplish the Best Results, and to Economize Means," *General Conference Bulletin,* 1901, p. 10.

[8] *Special Testimonies on Education* has recently been republished in photocopy by Leaves-of-Autumn Books in Payson, Arizona.

[9] Copies of Hook's dissertation may be obtained in either photocopy or microfilm from University Microfilm in Ann Arbor, Michigan.

[10] Copies of Lindsay's thesis may be obtained from the University of Newcastle, N.S.W., Australia.

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tion. Also. we were prepared to show, for instance, that the San Francisco public library he had testified that he used on a given Saturday had never been open on any Saturday during the entire year.

Given the evidence we accumulated, we have reason to believe we were dealing primarily with a case of malicious prosecution motivated by reverse racial discrimination. Nowhere in the discovery portion of the proceedings did we see any evidence that the plaintiff had identified any evidence of racially biased behavior on the part of any of the defendants. The depositions of the student and his roommate suggest that the student and his family built their attitudes toward the instructor upon the fact of her white South African heritage. It would also appear that the student and his attorney did not realistically expect to win the case in court, for they chose to withdraw rather than proceed to the jury trial. Nevertheless, Pacific Union College had been forced to spend more than $13,000 in legal fees to

prepare a defense that would protect the good name of the teacher, the administrative defendants, and the school.

New Insights and Procedures

As a result of this litigation, the defendants gained many new insights and adopted some new procedures. First of all, at the initial mention of litigation, the Pacific Union College Administration now gives the matter into the hands of the college attorney who conducts all subsequent communication with the plaintiff. Thus, no meeting such as the one on April 26 will take place again without the presence of the college attorney. We also learned that insurance companies are more interested in the financial aspects of litigation than in the moral principles. Consequently, the college insurance carrier would have happily negotiated a small cash settlement with the plaintiff rather than face larger financial risk in a trial situation. However, the college administration, upon the advice of the school's legal counsel and with board of trustee concurrence, elected to pursue the case on a matter of principle in order to fully exonerate the good name of the teacher and the college.

Probably one of the most significant lessons we learned through this experience was that since the charge of an abstract evil such as racism is difficult to counter, a defense must often rest on the lesser, more tangible issues which can be demonstrated. Judges are reluctant to deny a hearing to a plaintiff whose charge is that his civil rights have been abused, making this almost a privileged area of the law, and allowing cases to get into court which otherwise would be unlikely to get beyond the level of empty threats. Because of this, we have learned the value of defensive documentation. Fortunately, the instructor's gradebook contained very complete attendance records, which indicated that the student was absent from class for approximately one-third of the class periods. The teacher also had in her files the previous essays written by the student, which served to document the stylistic inconsistency between the plagiarized paper and work in his own handwriting produced under more controlled conditions. While it is difficult to prove in absolute terms the absence of racism, we could demonstrate the fairness of the grade assigned.

We would not argue that in cases of genuine discrimination or capricious and unfair practice educational institutions should be immune from legal prosecution.

New Documentation Procedures

Our new procedures also include documenting with written notes all controversial telephone calls and personal conversations. In this case, these notes kept in our personal files helped prepare us for our testimony. Furthermore, the department has adopted the policy of having student essays become the property of the department when they are handed in. This does not preclude the student's having a copy of his essay, but it does mean that we can have in our files all the material needed for our defense should another student raise a complaint. (This practice also deters the circulation of hundreds of previously written essays.)

Though it was very frustrating for us to be involved in the long and painful process of building a legal defense, we would not argue that in cases of genuine discrimination or capricious and unfair practice educational institutions should be immune from legal prosecution. In almost no other aspect of society is the balance of power so heavily skewed in one direction as it is in the direction of the professor in the educational establishment. This tradition places a great deal of responsibility upon the shoulders of the educator who must be scrupulously fair, equitable, and just in his relationships with student consumers. The fact that we are ethically accountable to our students as they have for years been academically and ethically accountable to us is evidence that we have succeeded in educating young men and women who see themselves as full human beings in their relationship to us in our classrooms.

FOOTNOTES

[1] *Brown vs. Board of Education of Topeka,* 457 U.S. 483 (1954), 349 U.S. 294 (1955).
[2] *Goss vs. Lopez,* 419 U.S. 565 (1975).
[3] *Tinker vs. Des Moines Independent Community School District,* 393 U.S. 503 (1969).
[4] For a fuller overview see Thomas J. Flygare, "Schools and the Law: Some Jubilee Year Observations," *Phi Delta Kappan,* 62:5 (January, 1981), 390-391. See also Ray J. Aiken, "Tort Liability of Governing Boards, Administrators and Faculty in Higher Education," *The Journal of College and University Law,* 2:2 (1974-1975), 129-141.
[5] Arlene H. Patterson, "Professional Malpractice: Small Cloud, but Growing Bigger," *Phi Delta Kappan,* 62:2 (November, 1980), 193-196. See also "Suing the Teacher," *Newsweek* (October 3, 1977), 101.
[6] Virginia Davis Nordin, "The Contract to Educate: Toward a More Workable Theory of Student-University Relationship," *The Journal of College and University Law,* 8:2 (1980-1981), 171-174.
[7] Flygare, p. 390.
[8] Nordin, p. 143.
[9] *Ibid.,* pp. 158-165.
[10] *Supplemental Memorandum of Points and Authorities in Support of Demurrer,* No. 37868, California State Superior Court, Napa County (June 22, 1978), p. 9.
[11] *Ibid.,* p. 1.
[12] *Ibid.,* p. 3.
[13] *Stipulation,* No. 37968, California State Superior Court, Napa County (June 17, 1980), pp. 1, 2.
[14] *Hubbard vs. Pacific Union College Association, et. al.,* Complaint No. 37968, California State Superior Court, Napa County (March 14, 1978), pp. 3, 4.
[15] *Ibid.,* p. 6.
[16] *Ibid.,* pp. 5, 7, 8.
[17] *Deposition of Desmond Pierre-Louis,* No. 37868, California State Superior Court, Napa County (August 9, 1979), p. 12.
[18] *Ibid.,* p. 4.
[19] *Ibid.*
[20] *Ibid.,* p. 17.