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Legal Update for Community Colleges

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The **Legal Update for Community Colleges** is a monthly update of selected significant court cases pertaining to post-secondary institutions. It is written by Johnny R. Purvis for the **Safe, Orderly, and Productive School Institute** located in the Department of Leadership Studies at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone Purvis at **501-450-5258**. In addition, feel free to contact Purvis regarding educational legal concerns; school safety and security issues; crisis management; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Defamation
- Tort

Topics

Defamation:

“University’s Email Warning Faculty and Staff to Avoid Contact with Professor and to Call Police was Not Defamatory”

Collins v. University of New Hampshire (C. A. 1 [N. H.], 664 F. 3d 8), December 20, 2011.

Under New Hampshire law, state university’s statement in an email to faculty and staff that “anyone who sees professor anywhere on campus should avoid contact with him and immediately notify the university police department” **was privileged**, even if it falsely implied that the professor was dangerous. The professor had been banned from campus for an incident that involved violence against property and a threat of violence against another person. Furthermore, there was **no** evidence that university officials acted with malice. **Note:** The plaintiff is a tenured associate professor of Biochemistry and Molecular Biology in the College of Life Sciences and Agriculture at the University of New Hampshire. At the time of the incident he was chair of the Department of Biochemistry and Molecular Biology. On the morning of June 28, 2007, he received a parking ticket for being parked beyond the 30 minute limit in a loading zone. He suspected that a female professor reported that his vehicle was parked in the loading zone; thereupon, he responded by stating several time that he could “kill that fucking bitch” and he also kicked a large trash can. All of the plaintiff’s behaviors were either heard or observed by at least six people. He was arrested and charged for stalking and disorderly conduct, for which he was cleared by a New Hampshire district court. In addition, he was restored to his faculty position, but not his position as department chair.

Tort:

“Doctrine of Primary Assumption of Risk Did Not Bar University Student’s Recovery for Diving Incident”

Buckley v. State (N. Y. Ct. Cl., 938 N. Y. S. 2d 734), October 14, 2011.

The doctrine of primary assumption of risk did **not** apply to bar state university student from recovering for injuries that student sustained when she dove from the starting blocks during a recreational swim at a university’s swimming pool with a lifeguard’s permission. The university’s conduct in advising its lifeguards to exercise discretion in permitting recreational swimmers to use the starting blocks and, in turn, the lifeguard’s affirmative conduct in granting the plaintiff permission to use the blocks, *unreasonably increased the risks assumed* by the plaintiff in diving off the pool’s starting blocks. Based on the aforementioned, the university was 60% liable and the student was 40% liable for her injuries. **Note:** The student hit her head on the bottom of the pool and was rescued by the pool’s lifeguard.

Books of Possible Interest: Two recent books published by Purvis –

1. Leadership: Lessons From the Coyote, www.authorhouse.com
2. Safe and Successful Schools: A Compendium for the New Millennium-Essential Strategies for Preventing, Responding, and Managing Student Discipline, www.authorhouse.com

Note: Johnny R. Purvis is currently a professor in the Department of Leadership Studies at the University of Central Arkansas. He retired (30.5 years) as a professor, Director of the Education Service Center, Executive Director of the Southern Education Consortium, and Director of the Mississippi Safe School Center at the University of Southern Mississippi. In addition, he serves as a law enforcement officer. He can be reached at the following **phone numbers:** 501-450-5258 (office) and 601-310-4559 (cell)