January 2006(#512 & 513)

Legal Update for Community Colleges
January 2006

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The **Legal Up Date 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 Initiative** located in the Graduate School of Management, Leadership, and Administration at the University of Central Arkansas. If you have any questions or comments about these cases and their potential ramifications, please phone me at **501-450-5258**. In addition, feel free to contact me regarding educational legal concerns; school safety and security; student discipline/management issues; and concerns pertaining to gangs, cults, and alternative beliefs.

Topics:

- Labor and Employment
- Torts

Topics

Labor and Employment:

"Title VII Suit Against College Due to Hiring Issue"
Rudin v. Lincoln Land Community College (C. A. 7 {Ill.}, 420 F. 3d 712), August 25, 2005.

Unsuccessful white, female applicant for instructor position brought Title VII action against community college, alleging race and sex discrimination. The issue arose when a Caucasian female submitted an application for a business administration instructor position. She had been an adjunct instructor in the department since 1993. She had a bachelor's degree in management, along with a master's degree in public administration. A black male, who had not been selected for an interview was added to the interview pool. Additionally, the plaintiff rated second highest for the position, while the black-male applicant ranked second from the bottom. However, the black-male got the position. The United States Court of Appeals, Seventh Circuit, held that material issues of fact **existed** as to whether community college was truthful (employer's shifting and inconsistent explanation for employment decision) in asserting that it decided to hire male candidate over female candidate for instructor position because male candidate was most qualified for the job. Thus **summary judgment was precluded** for the college for college on female's sex and race discrimination claim under Title VII. In accordance with their decision, the court **reversed and remanded** the lower court's decision back for rehearing and reconsideration.

"University Police Officer Terminated After Internal Investigation"
Hooper v. North Carolina (M. D. N. C., 379 F. Supp. 2d 804), April 13, 2005.

State university employee, a police officer who was terminated upon completion of an internal investigation regarding various allegations of misconduct, filed complaint asserting federal claims under Title VII, Title IX, and Section 1983, based on alleged gender discrimination and retaliation. The defendant moved to dismiss all claims. The United States District Court, M. D. North Carolina, granted motion in part and denied in part. In doing so, the court held that the police officer **stated claim for intentional infliction of emotional distress against individual defendants in their personal capacities by alleging** that: (1) lieutenant and captain ordered her to violate state law by withholding lawfully issued citation; (2) officers assisted student in filing false complaint against her; (3) officers charged her with insubordination for failing to obey unlawful order to withhold lawful process: (4) officers falsely accused her of leaving scene of an accident; (5) lieutenant fabricated evidence against her that she failed to report accident involving her cruiser,; (6) officers withheld evidence showing that she reported an accident; (7) officers falsified and edited police reports and report logs to attack her and cover up their misconduct; (8) chief demoted and transferred her when she indicated that she wanted to file claim for sexual discrimination; and (9) police chief and university chancellor engaged in unlawful wiretapping and surveillance of her.

"Athletic Director Comments Not Racial Discrimination"
Seagrave V. Dean (La. App. 1 Cir., 908 So. 2d 41), June 10, 2005.

Louisiana State University and Agricultural and Mechanical College (LSU) athletic director's comments that white male employee would not be considered for head track coach position because employee only had experience coaching women and because he was married to an African-American woman were **not** sufficient evidence of racial discrimination. Athletic director's comments were allegedly made during hiring process for university's head track coach; and the employment decision at issue in employee's suit was his termination as head coach of women's track team. Therefore, director's comments **were neither proximate in time to the employment decision, nor related to the employment decision at issue.**

Torts:

"Student Sues University Due to Fall"
Rhaney v. University of Maryland Eastern Shore (Md., 880 A. 2d 357), September 2, 2005.

Evidence in negligence action against state university established that area of campus where student fell in the dark was not existing pathway, and that student **could have used** existing pathways in lieu of his chosen route. Thus, route chosen by student, rather than any defect in existing pathway, **contributed** to student's fall. Students walking with plaintiff testified that there was no "beaten path" in the grassy area in where plaintiff fell; and the area where the student fell was not "really a sidewalk or lawn". Furthermore, university's former director for safety and risk management testified that area **was paved embankment with no sidewalks**. In addition, he testified that **there was a sidewalk on opposite side of the road.**

March 2006 (#'s 516 & 517)

Legal Update for Community Colleges March 2006

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Topics:

- Labor and Employment
- Torts

Topics

Labor and Employment:

"Job Applicant Failed to Prove Title VII Employment Discrimination"
Goodman v. Georgia Southwestern (C. A. 11 {Ga.}, 147 Fed. App. 888), September 6, 2005.

African-American male job applicant **failed to demonstrate** that university employer submitted nondiscriminatory reasons for hiring other candidates instead of applicant. He had virtually **no** relevant experience compared to other candidates, and he **performed poorly** at his interviews. The nondiscriminatory reasons for not employing applicant were **not** pretextual to race and sex discrimination as required for plaintiff to prevail under Title VII. The court went on to rule that plaintiff's request for records and documents for as far back as 15 years **was overly broad, burdensome, and irrelevant.**

"Professor Failed in Age Discrimination Suit"
Quintas V. Pace University (N. Y. A. D. 1 Dept., 804 N. Y. S. 2d 67), November 15, 2005.

Professor, challenging university's denial of his application for distinguished professorship, **failed** to state retaliation claim absent allegation of facts setting forth requisite connection between denial and protected conduct on professor's part. The university's requirement that distinguished professors teach 12 credits annually, which plaintiff concededly would not have been able to satisfy, **is applicable** regardless of age. Furthermore, the denial **was appropriate** due to the plaintiff's unremarkable teaching performance ratings.

Torts:

"Student Injured in Soccer Games Sponsored by English Class"
Fabricius v. County of Broome (n. Y. A. D. 3 Dept., 804 N. Y. S. 2d 510), December 1, 2005.

A 45-year-old female student enrolled in a community college brought action against college and teacher for personal injuries (while attempting to kick a soccer ball, she fell and sustained a torn anterior cruciate ligament) incurred while participating in a soccer game during her English class. The teacher utilized the game of soccer as an example of a communal activity utilized by the former Soviet Union to exemplify team achievement, as opposed to individual achievement. The New York Supreme Court, Appellate Division, Third Department, held that **an issue of material fact existed** regarding whether the student was required to participate in the game. According to the plaintiff, all students in the class were required to participate in the game, or forfeit a quiz grade and receive a zero on the assignment.

April 2006(#'s 518 & 519)

Legal Up Date For Community Colleges

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Topics:

- Athletics
- Civil Rights
- Labor and Employment
- Property and Contacts

Topics

Athletics:

"**Students Dismissed From University's Golf Team"**
Costello v. University of North Carolina at Greensboro (M.D.N.C., 394 F. Supp. 2d 752), June 29,2005

Scholarship golf team member sued state university and others for her dismissal from the school's golf team. At the beginning of his sophomore year he, was dianosed with obsessive-Compulsive Disorder (OCD). This required him to miss some practices for preapproved doctor appointments. However, the golf team coach decided to dismiss him from the team, which caused his scholarship to be revoked. Afterward, he transferred to another school to continue his collegiate golf. The United States District Court, M. D North Carolina held that student's discrimination claim under the Americans with Disability Act (ADA) was barred by the Eleventh Amendment of the U.S. Constitution. On the other hand, the student state a cause of action in his claim under the Rehabilitation Act base on his dismissal from the golf team. He met the necessary requirements to continue on the golf team by stating that the golf coach, upon learning of his OCD, was concerned with his qualifications. However, the coach determined he was able to play golf despite his disability; but then he dismissed him from the team for missed practices because of medical appointments (each Tuesday)

Civil Rights

" **Former Academic Dean Establishes Discrimination Claim"**
Salami v. North Carolina Agr. & Technical State University (M.D.N.C., 394 F. Supp. 2d 696), April 13 , 2005

Former Associate Dean of the College of Engineering brought Title VII action against state university, alleging that he was demoted due to his Iranian national origin and Muslim religion. He was told by one university official that, " A&T is first for blacks, then for whites, and then for you."Plaintiff's supervisor also told another individual that plaintiff did not have the work ethnic of most Iranians, and that he did not work as hard as Chinese faculty. The United States District Court , M.D. North Carolina, held that plaintiff demonstrated that he was performing up to supervisor's expectations as was required to establish a prima facie discrimination claim under Title VII. Plaintiff's supervisor admitted that, as of the date plaintiff's demotion, he thought former associate dean was doing "a good job" and supervisor mad no negative comments during plaintiff's performance review.

Labor and Employment:

"Leave Granted to New Mothers Did not Discriminate Against Biological Fathers"
Johnson v. University of Iowa (C.A. 8 (Iowa), 431 F. 3d 325), December 15, 2005.

State university leave policy (University Parental Leave Policy) was not discriminatory on basis of gender, in violation of Title VII or equal protection , as applied to biological father who was denied paid parental leave upon birth of his daughter. This also was valid, even assuming that the last two weeks of paid six-week temporary disability leave that his wife received were actually for care giving purposes, and not for disability leave. Father was not similarly situated to mother through because he was a full-time employee (Office of the Registrar) and she was a part-time employee (College of Nursing) in a different department. Additionally, he had not gone through the physical trauma of labor and child birth.

“ **Former Female Employee Failed to Estrablish She was Treaded Differently Than Male Employees”**

Samuels v. University of South Ala. (C.A. 11 (ALA.), 153 Fed. App. 612), October 28, 2005.

Former Female employee (Ultrasonographer II - makes sonograms or pictures of body tissue) at university failed to establish that similarly situated male employees were treated more favorably, or that she was qualified for position, as required to support her claim that she was terminated because of her sex in violation of Title VII. Plaintiff was not qualified for the position because she did not become certified.

“ **University Police Officer Failed in His Age Discrimination and Retaliation Cliams”**

Uber v. Slipperry Rock University of Pennsylvania (Pa. Cmwlth., 887 A. 2d 362), November 23, 2005.

University Police officer brought age discrimination and retaliation claims against state university under Pennsylvania Human Relations Act (PHRA). The commonwealth Court of Pennsylvania ruled thta officer’s “ adverse employment action” claim was not valid for purposes of his retaliation claim under PHRA when he was not promoted from a police officer #1 to a police office #2 for which he applied. He claimed that because he was 59 years of age, a younger and less qualified officer was selected. The officer had received “fair” in his evaluation categories of “ relationship with people” and “ initiative” ; however, these rating did not affect the hours he worked, his duties, his benefits, or his opportunities for overtime.

<u>Property and Contracts</u>:

" **University Catalog Not Enforceable Contact"**
Davis v. George Mason violate student university (E.D Va., 395 F. Supp. 2d 331), October 21, 2005

State University's academic dismissal of a graduate student did not violate student's procedural due process rights, despite students's contention that he retroactively withdrew from course in which he received a failing grade. The graduate catalog required that a student obtain approval by his/her academic dean; and withdrawal could only be based on nonacademic reasons; and student's academic dean denied students' request to withdraw on ground that it was untimely. The university catalog for the relevant academic year stated in part: "A student may withdraw from a semester after the end of the drop period without academic penalty only for nonacademic reasons that the student's academic dean approves as sufficient to merit an exception to policy.

June 2006 (#'s 522 & 523)

Legal Up Date For Community Colleges
June 2006

Johnny R. Purvis*

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Topics:

- Labor and Employment
- Property and Contracts
- Security
- Torts

Topics

Labor and Employment:

"Graduate Student's Purported 'Narcoleptic Condition' Failed the Test"
Brettler v. Purdue University (N. D. Ind., 408 F. Supp. 2d 640), January 10, 2006.

Former graduate research assistant brought action alleging that state university violated his right to reasonable accommodation pursuant to Title VII and Titles I and II of the Americans with Disability Act (ADA). Purdue University required that graduate assistantships are contingent upon successful academic performance as a graduate student and periodic reviews of the graduate assistant's work. Additionally, graduate assistants are expected to enroll in 12 credit hours of course work and maintain a grade point average (GPA) of at least a 3.0. At the conclusion of the spring semester, the plaintiff's GPA was 2.33. He had received one grade of "D", two grades of "B", and one "Incomplete". Furthermore, the plaintiff received a "not acceptable" evaluation for his graduate assistantship efforts, due to his failure to produce any work product after 10 weeks on his research assignment. Plaintiff claimed he suffered from a "narcoleptic condition" (a neurological disorder in which there is a sudden recurrent uncontrollable compulsion to sleep) and he needed roomier seating because "he was larger than the average man". A United States district court in Indiana held that graduate student **failed** to provide factual basis for his Title VII claim with the Equal Employment Opportunity Commission (EEOC). In addition, he **failed** to establish that he was disabled as a result of his purported "narcoleptic condition" because he had not submitted any medical records or affidavits establishing such an impairment; **failed** to identify any major life activity impaired by his reported condition; and did **not** demonstrate that purported condition substantially limited his ability to learn or fulfill his duties.

Property and Contracts:

"Cafeteria Bench Collapses"
Nair v. Aramark Food Services Corp. (Ga. App., 625 S. E. 2d 78), December 12, 2005.

A doctoral candidate working at an Emory research laboratory ate lunch at a university cafeteria. He took his meal to a seating area in an outside courtyard and sat at a metal picnic-type table. A few minutes later, the plaintiff leaned back a little and the bench collapsed and tipped over backwards. After his fall, plaintiff filed suit against Aramark, claiming that the company owed him a duty to exercise ordinary care in maintaining the dining facility, which it breached. A Georgia court of appeals stated a genuine issue of material fact as to whether university and food service company intended that bench that collapsed while plaintiff was eating would be considered part of facility, which was the university's responsibility, or part of the equipment, which was Aramark's responsibility. Thus, **summary judgment** for Aramark was **precluded (forestalled)** because the court was unable to determine from the language of the contract between Aramark and the university which entity was liable. Accordingly, the issue **must** be resolved by a jury. *Footnote:* Under the contract, Emory was responsible for maintaining the foodservice facilities, including: the servicing of roofs; ventilation and air conditioning equipment; elevators; and exterior plumbing lines. Aramark, on the other hand, was responsible for maintaining the equipment, which included the ovens, hoods, dishwasthers, fan coil units, walk-in coolers, stoves, shredder(s), and refrigerators.

Security:

"University Police Did <u>Not</u> Have Jurisdiction Regarding Traffic Stop Off Campus"
Ward v. State ex rel. Dept. of Public Safety (Okla. Civ. App. Div. 2, 127 P. 3d 643), December 6, 2005.

A police officer for the University of Oklahoma Health Science Center arrested plaintiff for driving under the influence. The Oklahoma Department of Public Safety (DPS) revoked plaintiff's driver's license for one year. DPS found that the officer "had observed sufficient facts to reasonably believe" plaintiff was operating a motor vehicle while under the influence of alcohol or other intoxicating substance. DPS revoked her license because she refused to submit to a chemical test to determine her blood alcohol level. An Oklahoma civil appeals court stated that DPS **failed** to establish that the university police officer had jurisdiction to conduct traffic stop off campus, as required to prove a valid arrest under Okalahoma's implied consent law. Although the traffic offense occurred within campus jurisdictional boundaries, there was **<u>no</u>** evidence that officer's off-campus enforcement activities complied with jurisdictional agreements with municipality, as required by statute governing jurisdiction of campus police officers.

Torts:

"Student Falsely Publicized As Homosexual"
Wilson v. Harvey (Ohio App. 8 Dist., 842 N. E. 2d 83), October 27, 2005.

Plaintiff and defendant students were students at Case Western Reserve University (Case) and resided on the same floor of a campus dormitory. On a weekend when the plaintiff was away, defendants created computer-generated flyers depicting plaintiff as a homosexual. The flyers were entitled "In Search of Male Companion" and included a picture of plaintiff that was downloaded from Case's website. The flyers provided plaintiff's name, university e-mail address, and campus phone number. The text of the flyer included the following statement: "Looking for non-smoking GWM who enjoys dominating and interests included: biology, kissing, crying at movies, picking flowers, and dreaming of that special some-guy." An Ohio court of appeals held that student (plaintiff) could **not** prevail on invasion of privacy against fellow students' display of flyer depicting plaintiff as a homosexual. Plaintiff **was unable to establish** that the disclosed facts concerned his private life because contact information and photograph were published in various forms and were accessible to all students and faculty at the university.

July 2006 (#'s 524)

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Topics

Labor and Employment:

"College Presented Legitimate Reasons For Not Hiring Middle Eastern Applicant"
Amini v. Oberlin College (C. A. 6 {Ohio}, 440 F. 3d 350), March 10, 2005.

College **presented legitimate reasons** for not hiring Middle Eastern applicant for a faculty position. He was not one of the most qualified candidates; the successful candidate was most likely to succeed in the position. Thus, there was **no** pretext associated with discrimination under Title VII, Age Discrimination in Employment Act (ADEA), and Section 1981. Furthermore, it was **not** illegal for college to base its hiring decision on successful applicant's personal and family connections to college. **Note:** The plaintiff was an Iranian-born Muslim who lived in the Untied States since 1977 with a doctorate degree in statistics from the University of Iowa. The successful applicant had a doctorate in statistics from Carnegie Mellon University, and he was hired to succeed in his father's position as professor of statistics. Applicant's father had taken the college's director of athletics position.

Security:

"Campus PD Within Jurisdiction When Motorist Arrested Off Campus"
Simic v. State ex rel. Dept. of Public Safety (Okla. Civ. App. Div. 2, 129 P. 3d 177), December 30, 2006.

Oklahoma State University campus police officer **was acting within his jurisdiction** when he arrested motorist outside state university's campus, at approximately 1:45 a. m., based on motorist's driving behavior (running a stop sign), appearance, and failure of field sobriety test. Plaintiff's refusal to take blood or breath test **warranted automatic revocation** of his driver's license under the Oklahoma's implied consent law. University's agreement with city gave campus police officers jurisdiction over roads adjacent to campus, and allowed completion of enforcement begun within their jurisdiction. Motorist **was adjacent to campus** when officer saw him drive through a stop sign.

August 2006 (#'s 525 & 526)

Legal Update For Community Colleges
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Johnny R. Purvis*

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Topics

Athletics:

"Coach's Comments Did Note Create A Sexually Hostile Environment"
Jennings v. University of North Carolina, at Chapel Hill (C. A. 4 {N. C.}, 444 F. 3d 255), April 11, 2006.

Head soccer coach has been head coach of the women's soccer team at the University of North Carolina since 1979. The team's assistant coach has been the assistant coach since 1980. Before soccer practice formally began each day, the women on the team customarily warmed-up, ran a lap, and stretched in small groups with a large circle for approximately 10 to 15 minutes. These warm-ups were casual and informal; and while stretching, the team members regularly talked and joked among themselves about non-soccer related topics, such as schoolwork, social activities, and their personal lives (including dating and their sexual lives). During this time, the two male coaches would walk among the players, participate in their conversations, and joke with them. The plaintiff, a third-string or fourth-string goalkeeper was offended, and alleged a sexually hostile environment had been created by her coaches. The United States Court of Appeals, Fourth Circuit, held that coaches' comments regarding the sexual activities of female state university soccer team members were **not** sufficiently severe, pervasive, and objectively offensive to support student athlete's hostile sexual environment claim under Title IX. Players were teasing and joking amongst themselves when comments were made, and coaches' did **not** initiate discussions or steer players' conversation in direction of sex. Furthermore, coaches' comments were **not** physically threatening, and atmosphere at practice did **not** interfere with player's performance on the field or in the classroom.

Civil Rights:

"Outdoor Common Areas Designated Public Forum For Free Speech Purposes"
Bowman v. White (C. A. 8 {Ark.}, 444 F. 3d 967), April 14, 2006.

Street preacher brought a Section 1983 action against state university officials seeking damages and injunctive relief, and alleging university's policy restricted the use of its facilities and space by non-university entities was unconstitutional and abridged his First Amendment right to free speech. The preacher's message typically pertained to sin, repentance, and the final judgment. He employed various means of communication, including the use of signs, public speaking, literature distribution, symbolic speech, and one-on-one conversation. He often used inflammatory language and tactics in his presentation, the nature of which were considered highly offensive by many students. A number of students and faculty complained about the preacher's presence on campus. Campus police occasionally had to erect barricades to maintain crowd control, because he often drew crowds as large as 200 people. The United States Court of Appeals, Eighth Circuit, affirmed in part, and reversed in part, the plaintiff's charge when it stated: (1) Outdoor common areas were clearly within the boundaries of the campus of the state university and **were "designated public for public forms"**; (2) state **had significant interests** in protecting the educational experience of the students in furtherance of state university's mission, ensuring students' safety, and fostering diversity; (3) requirements that a non-university entity obtain a permit before using common outdoor space **was a "prior restraint on speech"**; (4) university's requirement that a non-university entity obtain a permit before using outdoor common area did **not** violate free speech guarantees; (5) university's five-day cap per speaker per semester **violated** First Amendment free speech guarantees; (6) three-day advance notice requirement did **not** violate free speech guarantees; and (7) "dead days", or ban on use of outdoor common areas during certain time periods did **not** violate free speech guarantees.

Labor and Employment:

"Former Employee Not Limited In A Major Life Activity"
Macchia v. Loyola University Medical Center (N. D. Ill., 424 F. Supp. 2d 1099), March 28, 2006.

Plaintiff was hired as a service representative. Her general duties consisted of handling patient check-ins and check-outs; data entry on the computer; answering telephones; preparing patient charts; scheduling patient appointments; and other secretarial duties. On December 15, 2000, plaintiff slipped and fell in the Loyola employee parking lot. She reported the incident four days later, and was sent to Loyola's Occupational Health Services Clinic, where she was examined, released, and returned to work without any restrictions. Several days later, she "walked off" work without authorization. Plaintiff claimed she was not able to do her work due to the fall. She presented no doctor's certificate and was not disciplined for leaving work without authorization. On January 12, 2001, and on July 9, 2001, she had back surgery and did not return to work again until October 1, 2001. Her doctor provided her with a certificate that she could return to work provided she did not lift more than 15 pounds; did no overhead work; not type more than 2 hours per day, and be excused from work at times to complete physical therapy. The request was allowed and accommodated by Loyola. On December 18, 2002, plaintiff requested Family Medical Leave Act (FMLA) leave for her back condition. She was granted FMLA leave from December 18, 2002 through April 14, 2003. In February 2003, she underwent a medical examination by a neurologist. She was determined to be physically able to return to work at full duty with no restrictions. Upon returning to work, and because of a series of work related events, plaintiff was counseled for her poor work attitude, attendance, failure to adhere to established customer services principles, and failure to enter charges for patients. On January 13, 2004, plaintiff termination was recommended and was upheld by the director of employee relations. Plaintiff sued Loyola, claiming disability discrimination under the Americans Disability Act (ADA) and retaliation in violation of ADA. A United States District court in Illinois held: (1) employee was **not** limited in a major life activity (plaintiff readily admitted she was able to drive, undertake laundry duties, clean house, cook, and perform other activities of daily living) associated with working; and thus, she did **not** have a disability recognized with the AD; and (2) employee was **not** treated less favorably than similarly situated employees who did **not** engage in statutorily protected activity.

Torts:

"Teacher Not Agent of College"

Fernandez v. Florida Nat. College, Inc. (Fla. App. 3 Dist., 925 So. 2d 1096), March 29, 2006.

College teacher was **not** acting within the course and scope of his employment when taking student and student's daughter on an excursion (trip to the beach in which class members could bring friends and family members) during which student was injured and daughter was killed. While attempting to pass a pickup truck in a rented van, the teacher loss control and the van rolled over. The plaintiff sustained injuries, and her daughter died when she was ejected from the van. There was **not** a relationship between the teacher and the college in order to establish an agency relationship between college and teacher because the term had ended and the teacher had already turned in grades. Thus, excursion did not affect student's grades. Furthermore, the college had a policy which stated that all class sponsored field trips could only be taken during scheduled class periods.

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Johnny R. Purvis*

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Topics:

- Discrimination
- Labor and Employment
- Torts

Topics

Discrimination:

"Former Employee Failed To Exhaust Administrative Remedies"
Stanley v. University of Tex. Medical Branch, Galveston, TX (S. D. Tex., 425 F. Supp. 2d 816), August 15, 2003.

Licensed registered nurse formerly employed by the University of Texas Medical Branch (UTMB) and assigned to a state jail brought action against his former employer. The focus of his suit centered on an alleged violation of Title VII by UTMB perpetuating a hostile work environment toward African-American males and by retaliating against him. Shortly after being hired by UTMB, plaintiff was placed on six months probation for eight cited instances which were primarily for insubordination or inappropriate behavior toward female coworkers. Soon thereafter, he was placed again on six months of probation for unprofessional conduct. On November 19, 2001, plaintiff refused to administer insulin to a known insulin dependent patient, despite the fact that his supervisor ordered him to give the patient the shot. Afterward, he was suspended for three days without pay for refusing to follow his supervisor's order and for recklessly endangerment of a patient's health. Finally, on December 21, 2001, a female nurse filed a sexual harassment complaint against plaintiff. Plaintiff received a letter informing him that UTMB intended to terminate his employment and he was entitled to a hearing. Thereupon, he tendered a letter of resignation on January 17, 2002, and failed to attend the hearing. Shortly thereafter, he filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). A United States District Court in Texas held that plaintiff's hostile work environment and retaliation claims **were barred** by his failure to exhaust administrative remedies, and he **failed** to establish a prima facie case (produce enough evidence to rule in the party's favor) of hostile work environment based on either gender or race.

Labor and Employment:

"Bipolar University Employee Not Terminated Due to His Disability"
Mammone v. President and Fellows of Harvard College (Mass., 847 N. E. 2d 276), May 12, 2006.

On March 7, 2003, Harvard University terminated the seven year employment of Michael Mammone. Plaintiff, who suffers from bipolar disorder and claimed he was terminated due to his mental disability, brought suit against the university on grounds that he had been discriminated against due to his mental disability. Plaintiff was employed as a staff assistant at the university's Peabody Museum. He was usually stationed at the museum's receptionist desk in the main lobby. Several workplace behavioral episodes in which the plaintiff engaged include the following: established a web site critical of the university's low wages; engaged coworkers in loud and animated conversations regarding his website and its content; used his personal laptop computer to access and update his website during work; would sing along with, clap to, and dance to protest songs from his website while stationed at the receptionist desk, refused to stop using his laptop computer during his shift after being told by his supervisor to stop; use of abusive and threatening language toward both his supervisor and human resources director; and finally he had to be arrested (charged with trespassing and disorderly conduct) by university police after refusing to meet with his supervisor and sitting on the floor in the middle of the museum's lobby. The Supreme Judicial Court of Massachusetts, Middlesex, held that employee who engaged in egregious misconduct as a result of his bipolar disorder was **not a "qualified handicapped person"** entitled to statutory protection.

Torts:

"Community College Police Not Liable For False Arrest"
O'Toole v. Superior Court (Cal. App. 4 Dist., 44 Cal. Rptr. 3d 531), June 14, 2006.

Campus police officers for the San Diego Community College were **not** liable for false arrest of nonstudent (a member of the "Survivors of the Abortion Holocaust", a "pro-life association) on campus for delaying and obstructing the officers' **valid law enforcement obligations** enforcing college's prohibition against distribution of literature on campus without a permit. Each of the officers who participated in the arrest were aware of the permit requirement and were aware that nonstudent did not have a permit. Officers had been instructed by college officials that they must enforce the permit requirement against the nonstudent. The officers reasonably believed the permit policy to be a valid policy; and the nonstudent admitted he unequivocally made it clear to the officers that he would continue to violate campus policy by distributing materials without a permit. In addition, the nonstudent repeatedly refused to follow the officers' requests to leave the campus.

"Student Slips On Water In The Community College Gym"
Torres v. City University of New York (N. Y. A. D. 2 Dept., 815 N. Y. S. 2d 279), May 23, 2006.

On September 28, 2001, plaintiff sustained personal injuries when he slipped on water on the floor of the gymnasium of the LaGuardia Community College. The premises in question were owned by the Dormitory Authority of the State of New York (Dormitory Authority) and leased to the City University of the City of New York (CUNY). When plaintiff was a freshman, he saw water on the gym floor on a regular basis, along with buckets on the floor to catch water leaking from the gym's roof. The New York Supreme Court, Appellate Division, Second Department, stated that **genuine issue of material fact existed** as to whether allegedly defective roof repairs undertaken by the Dormitory Authority contributed to accident, thus ***precluding summary judgment***.

"One Student Shot and Another Killed on University's Campus"
Johnson v. Alcorn State University (Miss. App, 929 So. 2d 398), May 23, 2006.

On the evening of Monday, October 8, 2001, Demetrice Williams and three of his friends (all nonstudents) drove onto Alcorn State University's campus. The university had a "welcome center" located at the main and rear entrances to the campus. The main campus welcome center is opened 24/7. The rear welcome center is opened from 7:00 a. m. until 10:00 or 11:00 p. m. The campus police department had the discretion to suspend the log-in process when public events occurred, such as the "non-Greek" step show that took place on the evening of the shooting. Demetrice and his friends rode around campus and, they encountered four female students. One of Demetrice's friends tried to talk to one of the females, but she was had no interest in talking to him. Thereupon, Demetrice's friend threw beer in the female's face and a fight erupted between both parties of individuals. During the altercation, Demetrice or one of his friends hit one of the girls in the head with a beer bottle. Five or 10 minutes after the incident, one of the girls involved in the incident found her boyfriend (Roddel Devoual) and brought him to an area where a large crowd had gathered to watch a stripper. Suddenly, Sheena (one of the four girls involved in the fight) recognized Demetrice. Either simultaneously, or a split second after Sheena recognized Demetrice, Demetrice drew a concealded Bryco Arms .380 caliber pistol and fired it in Roddel's direction. Demetrice hit Roddel once in his right side. However, another student was shot multiple times, including a fatal shot in the head. Roddel survived; but the other student died where he fell. Demetrice was apprehended as he attempted to return to his home in Natchez, Mississippi. Demetrice was sentenced to 20 years for manslaughter, 20 years for aggravated assault, and three years for possession of a firearm on the property of an educational facility. The deceased student's mother brought a wrongful death action suit against Alcorn on behalf of her son. Additionally, the injured student brought action against the university. Subsequently the two cases were consolidated. The Court of Appeals of Mississippi held: (1) even assuming dormitory director owed a duty to supervise the area outside his assigned residence hall, his application of that duty **was subject to his discretion**; (2) evidence **failed** to establish that director acted with reckless disregard of students' safety and well being; (3) even assuming campus police officers acted in reckless disregard regarding the safety of the students by failing to apply its visitor log-in procedure, the officers' actions were **not** the proximate cause of a student's death and another student's injuries; and (4) nonstudent's decision to draw a pistol and shoot students **was an intervening and superseding cause**, relieving university from liability.

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Topics:

- Labor and Employment
- Property and Contracts
- Student Discipline
- Torts

Topics

Labor and Employment:

"Professor Did Not Have Protective Speech"
Mullin v. Gettinger (C. A. 7 {Ill.}, 450 F. 3d 280), June 8, 2006.

Art professor **failed** to prove "causal link" between her protected activity of sending a letter to her art department chair and university president reporting alleged harassment of students by other professors, and the school's administrative alleged failure to correct errors in calculating her sick leave and retirement benefits. The aforementioned "causal link" was necessary to support plaintiff's First Amendment retaliation claim; however, refusal to correct alleged benefits occurred over a year after her letter was sent to the respective parties. The university administrators associated with her benefit claim worked with professor for several weeks trying to resolve her grievance; however, professor's benefit report was calculated with the most accurate data available. Furthermore, the individuals administering the university's benefit program were far removed from the art department. **Note:** The art professor wrote a letter to the Chair of the Art Department, along with a copy sent to the university's president , which reported that a student revealed to her that another art professor called a student a whore in front of other students and faculty while attending a forum where alcohol was consumed. She also stated that other students had advised her about another professor's off-color remark, and that students were pulled from their classes and told by faculty members not to talk to anyone about these matters.

"Temporary Assignment of African-American Officers Not Adverse Employment Action"
Nichols v. Southern Illinois University Edwardsville (S. E. Ill., 432 F. Supp. 2d 798), May 17, 2006.

Temporary assignment of four African-American campus police officers to smaller of state university's two campuses was **not** an adverse employment action, as required for prima facie case (production of enough evidence) of race discrimination under Title VII. Assignment did **not** inhibit their professional growth nor diminish their opportunities for advancement. The four plaintiffs (two current and two (1) former university officers) challenged the university on three categories of discrimination: assignment (assigned to University East St. Louis campus because of their race); (2) upgrades (upgrades in job assignments were given to two white officers; and (3) retaliation (retaliated against for making complaints of racial discrimination).

Property and Contracts:

"Community College Required to Mitigate Off-Campus Traffic Impact From Project"
County of San Diego v. Grossmont-Cuyamaca Community College Dist. (Cal. App. 4 Dist., 45 Cal. Rptr. 3d 674), July 7, 2006.

Community college district **was implicitly authorized** under California's Community College Construction Act of 1980 and the California Environmental Quality Act (CEQA) to spend funds on off-campus road and intersection improvements related to 20 construction and remodeling projects in and around campus, due to substantial growth in the college's student population.

Student Discipline:

"Court Lacked Jurisdiction Over Student Discipline Claim"
Texas A & M University v. Hole (Tex. App.-Waco, 194 S. W. 3d 591), July 19, 2006.

A student who was a member of the Parsons Mounted Cavalry (PMC), a unit within the university's Corps of Cadets, was reported to university officials for hazing another student. The university initiated disciplinary action for the student's reported misconduct. However, before his hearing, the plaintiff filed a petition seeking a temporary restraining order (TRO), which the trial court granted. The TRO stopped the hearing process and the enforcement of any sanctions. Accordingly, the university appealed the trial court's ruling. A Texas appeals court held that because the student had **not** completed the state university's disciplinary process, he did **not** have a concrete injury; and the case was **not** ripe for adjudication. Thus, the trail court **lacked** jurisdiction over the case because the plaintiff did **not** complete the university disciplinary process, and his entitled due process rights **within** the institution.

Torts:

"Visitor At College Falls To Her Death"
Blust v. Berea College (E. D. Ky., 431 F. Supp. 2d 703), January 4, 2006.

Danger of falling from cliff (known as the "Rock") on college's property was open and obvious, and college had **no duty** to warn and was **not** negligent under Kentucky law in connection with visitor's death. Visitor's friend admitted that she considered the edge of the cliff to be dangerous. The cliff was natural and of sufficient height to look down on tops of mature trees. In addition, visitor was familiar with the area and was aware that she was standing on the edge of the cliff. **Note:** Jessica Phelps, her husband, and two of the friends were visiting the area known as the Rock. Upon arrival, Ms Phelps removed her sandals and climbed barefoot to the top of the cliff, five or six feet from the edge. After her ascension, she turned, slipped, and fell off the side to her death. There was no fence prohibiting the public access to the Rock, no signs warning of any potential hazard, and no signs prohibiting trespassing. The court did go on to say, "As a matter of law, the danger of slipping and falling from the edge of such a cliff is **open and obvious to one exercising ordinary care**. The defendant had no duty to warn of such a danger, **nor** did it have a duty to make the property absolutely safe."

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Johnny R. Purvis*

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Topics:

- Civil Rights
- Labor and Employment
- Security

Topics

Civil Rights:

"No Adverse Employment Was Suffered When Community College Employee Was Transferred"
Vasquez v. El Paso County Community College Dist. (C. A. 5 {Tex.}, 177 Fed. Appx. 422), April 20, 2006.

The United States Court of Appeals, Fifth Circuit, held that an employee at a community college did **not** suffer an adverse employment action when he was transferred to another department with no loss of pay; nor was anyone treated more favorably than he was, thus defeating his discrimination claim under Title VII and the Age Discrimination in Employment Act (ADEA). **Note:** The plaintiff was employed as the coordinator of inter-library loans at the college. The college hired an outside consultant to review the college's library services, and consultant determined that due to technological advances and low volume of inter-library loans a full-time position was not necessary. Accordingly, plaintiff was replaced by a part-time clerk and transferred to the position of assistant in the Americana Language Program.

Labor and Employment:

"Employee Failed In Her Hostile Work Environment Claim"
Patane v. Clark (S. D. N. Y., 435 F. Supp. 2d 306), June 21, 2006.

Plaintiff is the Executive Secretary in the Classics Department at Fordham University and reported directly to the chair of the department. Secretary reported that many times he would bring his nine or 10 year-old daughter to the department office where she would sit straddled one of his legs and rub her groin back and forth in front of staff. In addition, he watched "hard core" movies one to two hours a day, and about every 20 minutes he would rush out of his office, with his face flushed, on his way to the men's restroom. Additionally, she handled the department's mail, and chair often received masochist videotapes in the mail. Secretary filed a hostile work environment claim against chair and university. The United States District Court, S. D. New York stated that the court was sympathetic to plaintiff's position; however, her allegations **were insufficient** to raise a hostile work environment claim because plaintiff never saw the videos, did not witness chair watching the videos, or witness chair perform sex acts.

"Community College Officers Not Performing Their Duty When They Investigated A Fellow Officer"

Brown v. Board of Educ. (Or. App., 139 P. 3d 1048), August 2, 2006.

Two public safety officers (PSO) terminated by community college after they conducted an unauthorized investigation of a fellow officer brought a wrongful discharge action against community college district. The Court of Appeals of Oregon held that the two PSO's at the community college, who were also deputy sheriffs, were **not** performing an important public duty when they investigated a third PSO. Thus, their termination did **not** violate public policy. **Note:** The plaintiffs took it upon themselves to investigate a fellow PSO who claimed he was a retired police officer with 20 years of experience, plus 30 years as a police officer with the Veterans' Administration (VA). In reality, the fellow PSO law enforcement registration number belonged to another retired officer and he had not been an employee at the VA, but was a patient who had a very limited role as a patient guard. Furthermore, the plaintiffs did not inform their chief or the college's human relations department of their independent investigation.

Security:

"Student Assaulted In Dorm At College"

Williams v. Utica College of Syracuse University (C. A. 2 {N. Y.}, 453 F. 3d 112), June 28, 2006.

College student who was assaulted in her dormitory room by an unidentified assailant brought negligence action against college. Plaintiff and her roommate had returned to their dorm room around 11:30 a.m. and were preparing lunch when a masked assailant entered their room with both a knife and a handgun. He forced plaintiff to undress and kiss her roommate. In addition, he fondled and physically rubbed up against both plaintiff and her roommate. Prior to leaving the dorm room, he bound both victims' wrists to a bed with duck tape. Additionally, he recorded the attack with a video camera. The United States Court of Appeals, Second Circuit, stated entered judgment in favor of college because: (1) the attack was **not** foreseeable; and (2) the assailant's presence in the dorm could **not** have been attributed to the college's purportedly negligent administration of the college's dorms and their entrances.

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Topics:

- Labor and Employment
- Property and Contracts

Topics

Labor and Employment:

"Campus Police Officer Not Entitled To Legal Representation"
Flagg v. State System of Higher Educ. (Pa. Cmwlth., 904 A. 2d 1004), September 6, 2006.

While on duty, plaintiff stopped and purchased a newspaper, coffee, and lottery tickets for himself at a convenience store. A customer, after noticing the officer's university's patch on his uniform, made disparaging remarks about the officer's place of employment. Plaintiff ignored the customer's remarks. However, the customer got upset, unruly, cursed, and got "directly" in the face of the officer. Thereupon, the officer conducted a pat-down search out of concern for his safety; he did not find any weapons. Customer filed action against officer, university, and university officials. Officer (plaintiff) sought representation by Pennsylvania's Office of General Counsel (OGC). The Commonwealth Court of Pennsylvania held officer was **not** advancing his employer's interest at the time he conducted the pat-down search of the customer who confronted him. Furthermore, he was **not** acting within the scope of his employment, as would entitle him to representation by the OGC. The court went on to state that the officer was on duty at the time of the incident. However, he left campus and drove three miles to a convenience store to buy a newspaper, coffee, lottery tickets, and returned to the store when he discovered the clerk had given him the incorrect change.

Property and Contracts:

"Universities' School Colors, Logos, and Designs Protected"
Board of Sup'rs of La. State University v. Smack Apparel Co., (E. D. La., 438 F. Supp. 2d 653), July 18, 2006.

Colors schemes, logos, and designs of four universities (Louisiana State University, University of Oklahoma, Ohio State University, and University of Southern California) **had acquired secondary meaning, as required for unregistered trademark protection** under the Lanham Act (15 U. S. C. 1125{a}) and under common law. Universities had been displaying colors and logos since the 1800's and spent millions of dollars in promoting them, particularly in conjunction with sporting events.

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