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ABSTRACT

Litigation in 1987 was very brisk with an increase in the number of higher education cases reviewed. Cases discussed in this chapter are organized under four major topics: (1) intergovernmental relations; (2) employees, involving discrimination claims, tenured and nontenured faculty, collective bargaining and denial of employee benefits; (3) students, involving admissions, financial aid, First Amendment rights, and academic and disciplinary dismissal; and (4) liability, involving personal injury, workers' compensation, contracts, educational and medical malpractice, negligence, indemnification, antitrust, and patent and trademark issues. Employment cases of particular interest included the setting aside on jurisdictional issues of a court order requiring southern and border states to bring their higher education systems into compliance with Title VI of the Civil Rights Act of 1964. A class of female faculty were decertified because of the decentralized structure and employment decision-making at a university. There were numerous cases in the areas of tenure awards and termination of tenured faculty for cause. Student litigation cases were varied, with loan and scholarship defaults continuing to be the bulk of cases in the financial aid area. Liability cases such as alcohol consumption resulting in death and fraternities serving alcohol to minors were among those before the courts. (MLF)

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HIGHER EDUCATION

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INTRODUCTION

Litigation in 1987 was very brisk with an increase in the number of higher education cases reviewed. A number of issues were somewhat unique this year. A state's action of closing down an institution continued to result in litigation. Legislative authority, sunshine laws, and questions of ownership of scholarly papers were some of the more interesting cases in the area of intergovernmental relations.

In employment, the case law continued to be substantial. Cases of particular interest included the setting aside on jurisdictional issues of a court order requiring southern and border states to bring their higher education systems into compliance with title VI of the Civil Rights Act of 1964. A class of female faculty were decertified because of the decentralized structure and employment decision making at a university. Multiple regression cases under title VII and the Equal Pay Act continued to be litigated. There were also numerous cases in the areas of tenure awards and termination of tenured faculty for cause.

The student litigation cases were varied. Loan and scholarship defaults continued to be the bulk of cases in the financial aid area. Cases involved first amendment questions in the location of shanties in apartheid demonstrations at several institutions. Another case involved the student government's denial of student funds to a homosexual group.

The number of liability cases was also voluminous. Cases such as alcohol consumption resulting in death and fraternities serving alcohol

to minors were before the courts. A Colorado case removed liability from the institution emanating from a trampoline accident on the front lawn of a fraternity.

INTERGOVERNMENTAL RELATIONS

Litigation continued around the decision of the South Dakota Legislature to close a state college.[1] In one of the latest cases, students claimed that their contract and constitutional rights were violated in the closing of the state institution.[2] The court found that contract obligations only existed on an academic term basis; thus, no contract existed or was breached when the institution was closed. Furthermore, the court found that the students had no enforceable claims against the regents. In a related case, the court ruled that attorney's fees could not be awarded in a claim which challenged the constitutionality of the legislation converting the college to a prison.[3] In yet another case, the court ruled the warranty of the deed, transferring the land the college was located on from a private citizen to the state, contained no provisions restricting the use of the land for educational purposes.[4]

In Alabama, the court was asked to review the constitutionality of an appropriations bill for elementary and secondary schools, technical schools, colleges, and universities as well as nonstate agencies.[5] The court found that the bill fit under the provisions of a "single subject" appropriations bill (funding public education), but the funding of nonstate agencies should not be included. In another case involving legislative appropriations, a governor's veto of a portion of a bill was limited to an emergency clause, not to other provisions in the bill.[6]

The authority of the board over various activities and its powers as a governmental agency were before the court in several states. A Wyoming case involved the issue of the state community college commission's denial of a county's petition to establish a community college district.[7] The court found that the commission had not acted in an arbitrary or capricious way even though the production of evidence was inadequate under several of the areas the commission was obligated to consider under the law. The court noted that caution needs to be observed in not leaving the realm of jurisdiction of the court and becoming embroiled in

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1 See The Yearbook of School Law 1986 at 229. Kanaly v. State, 368 N.W.2d 819 (S.D. 1985); Merkwan v. State, 375 N.W.2d 624 (S.D. 1985).

2 VASE v. State, 400 N.W.2d 269 (S.D. 1987).

3 Kanaly v. State, 401 N.W.2d 551 (S.D. 1987).

4 Kanaly v. State, 403 N.W.2d 33 (S.D. 1987).

5 Opinion of Justices, 512 So. 2d 72 (Ala. 1987).

6 Libscomb v. State Bd. of Higher Educ., 736 P.2d 571 (Or. Ct. App. 1987).

7 *In re* Campbell County, 731 P.2d 1174 (Wyo. 1987).

the decision-making responsibilities of an administrative agency. In a Texas case, the state approved a constitutional amendment which allowed a city to declare a blighted area a "reinvestment zone" where bonds could be sold to finance improvements and ad valorem tax revenues from the zone designated under other state statutes for educational purposes would be used to pay for improvements. The court remanded the case for consideration of the conflict between the two amendments in the use of tax funds.[8]

In Arizona, the court ruled that the state constitution provides that employees of the state university system are under the authority of the board of regents and exempt from the state civil service system.[9] In another case, local hotel and taxi cab owners challenged the state university's practice of housing groups in residence halls during a Shakespearean Festival.[10] The owners alleged that the practice was outside the statute requiring the state board of higher education to use its facilities for "higher education" since those housed were not matriculated students. The court found that the authority to interpret the meaning of the phrase "higher education" was within the board's discretion. In a related case, the court found that the board had authority under the bonding statute to raise dormitory rent and to use revenue for a maintenance facility.[11] Public notice of the board meeting met any due process requirements alleged by the plaintiff, a student renter. The role of the board members in conflict of interest situations was before a West Virginia court.[12] The court found that a conflict of interest existed and the attorney, as a public trustee, could not represent a claimant in a claim against the institution or its employees.

Litigation involving agencies which regulate academic standards, licensure, award of funds, or environmental or safety issues within higher education institutions was also before the courts. For example, the court upheld the authority of the education department to refuse to award a license to practice psychology in the state to the holder of a doctoral degree in counseling and student personnel instead of the requisite psychology degree.[13] In another case, the National Coal Association, whose members produce most of the nation's coal, charged that the Secretary of the Interior of the United States failed to act in the public interest when he allowed the exchange of private land within Grand Teton National Park for federal land in another area of Wyomi-

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8 City of El Paso v. El Paso Community College, 729 S.W.2d 296 (Tex. 1987)
9 Arizona Bd. of Regents v. State, 728 P.2d 669 (Ariz. Ct. App. 1986)
10 Jansen v. Ativeh, 743 P.2d 765 (Or. Ct. App. 1987)
11 Reese v. Board of Regents of Utah, 745 P.2d 457 (Utah 1987)
12 Graf v. Frame, 352 S.E.2d 31 (W. Va. 1986)
13 Karasik v. Board of Regents, 516 N.Y.S.2d 331 (App. Div. 1987)

ing.[14] Princeton University had received the land in the national park as a bequest. By trading the parcels of land the federal government acquired the land within the national park, and Princeton was able to sell the other land to a coal mining company. The court refused to "second guess" the secretary's discretionary decision. A Florida case involved the authority of the State Board of Independent Colleges to restrict the use of the word "college" in the name of a consulting firm.[15] The court ruled that a consulting firm, which offered classes and seminars but did not offer degrees, could not be restricted by the board in its selection of a name.

Several cases involved the payment of public funds to a university operated hospital for services rendered under welfare[16] or medicare.[17] Finally, a university had not sought adequate administrative remedies in its appeal of the denial by the state health agency to grant it a permit to acquire and operate a nuclear magnetic scanner at its teaching hospital.[18]

Sunshine laws and access to university records and meetings were litigated again this year. In a Colorado case, a newspaper wanted access to documents related to a university project to establish a medical school in a foreign country.[19] The court balanced the right of privacy of an individual's personnel file against the need of public access to information under the law. The court found in this case, where salaries are coming from a foreign power, that the public needs access to personnel documents. However, the court denied the newspaper an award of attorney's fees because the university had not acted in an arbitrary and capricious way when it refused to release the documents. In a Mississippi case, the court vacated a decision in one county and remanded the case to the county wherein the plaintiff and the university resided.[20]

In a Kentucky case, the court ruled that the presidential search committee appointed by the university board was required to hold meetings open to the public.[21] The court reasoned that provisions in the law only exempted discussions of an individual's personnel matters, not general personnel matters.[22] In North Carolina, the court ruled the case

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14 National Coal Ass'n v Hodel, 825 F 2d 523 (D C Cir 1987)

15 Philip Crosby Assoc v State Bd of Indep Colleges 506 So 2d 490 (Fla Dist Ct App 1987)

16 Temple Univ v Commonwealth Dept of Pub Welfare, 521 A 2d 986 (Pa Commw Ct 1987)

17 University of Cincinnati v Secretary of Health and Human Servs 809 F 2d 307 (6th Cir 1987)

18 George Washington Univ Medical Center v District of Columbia Bd of Appeals and Review, 530 A 2d 227 (D C 1987)

19 Denver Post Corp v University of Colo 739 P 2d 874 (Colo Ct App 1987)

20 Board of Trustees of State Institutions of Higher Learning v VanSlyke, 510 So 2d 490 (Miss 1987)

21 Lexington Herald-Leader Co v University of Ky 732 S W 2d 881 (Ky 1987)

22 *Id* at 886

moot since the report in question had subsequently been released with a final report from the board.[23] In a California case, students sued to obtain access to law school faculty meetings under the state's public meeting law.[24] The court ruled that bodies appointed to advise the board, or that have authority delegated to them by the regents, were not subject to the open meeting laws.

A number of cases concerned whether local taxes should be applied to various functions of colleges or universities. In an Illinois case, the city assessed property tax against a privately owned apartment building leased to the college for use as a dormitory.[25] The court found that the property being held for the benefit of the grantors of the lease, as opposed to the college, was subject to property tax, and that the college was obligated to pay the taxes under the lease agreement. A West Virginia community assessed an amusement tax on revenues from a public university's athletic contests and concerts.[26] The court ruled that revenues from events deposited in a public fund which did not result in private profit were not taxable under the provisions of a city amusement tax. A Washington case involved the validity of a 1906 condemnation order which gave control to the university of a street through university property, but also required the university to pay street use fees.[27] The property bequeathed to the university in 1861 was located in downtown Seattle. The court ruled that equitable estoppel bars the state from attempting to void the condemnation order. Furthermore, the city's ordinance requiring the removal of a pedestrian skybridge at the institution's expense and the payment of permit fees was enforceable.

Zoning laws and rulings of zoning boards were also before the courts. In a Massachusetts case, the court ruled that the licensing board had exceeded its authority when it denied the university an apartment license for a facility in a residential neighborhood because of its affect on the neighborhood.[28] In a New York case, the court ruled that the zoning board exceeded its authority when it required the institution to justify the need for the expansion.[29] Elaborating further, the court noted that this does not preclude the board from placing restrictions to mitigate delitorious effects the project might have on the neighborhood.[30] A

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23 North Carolina Press Ass'n v. Spangler, 360 S.E. 2d 138 (N.C. Ct. App. 1987)

24 Tafoya v. Hastings College of Law, 236 Cal. Rptr. 395 (Ct. App. 1987)

25 Wheaton College v. Department of Revenue, 508 N.E. 2d 1136 (Ill. App. Ct. 1987)

26 City of Morgantown v. West Virginia Bd. of Regents, 354 S.E. 2d 616 (W. Va. 1987)

27. Washington Univ. Bd. of Regents v. Seattle, 741 P.2d 11 (Wash. 1987)

28 Trustees of Boston Univ. v. Licensing Bd. of Boston, 510 N.E. 2d 283 (Mass. App. Ct. 1987)

29 Cornell Univ. v. Bagnardi, 510 N.Y.S. 2d 861 (N.Y. 1986)

30 *Id.* at 868

California court challenged the approval of the university's environmental impact statement issued for the construction of a biomedical research facility in a neighborhood.[31] Since the project involved the release of toxic chemicals and the use of radioactive materials and carcinogens in a densely populated area, the court found the impact statement to be inadequate.

Several cases involved jurisdictional questions or questions of ownership. A Maryland university brought suit against a Rhode Island university over a contract dispute concerning a research contract.[32] A Maryland court granted a default judgment against the Rhode Island university. The Rhode Island court ordered the enforcement of the Maryland court default judgment finding that the Rhode Island university did sufficient business in the state of Maryland to apply the state's long arm statute and give the court jurisdiction. In an Illinois case, the court ruled that the jurisdiction of campus police is not limited to the campus proper and upheld the issuance of a drunk driving citation by campus police a mile off campus.[33]

In a case involving ownership, the widow and daughter of an author bequeathed his manuscripts and correspondence to Yale University. The writings were being held as part of the collection of Fisk University, which claimed ownership. The federal district court found that Fisk University, by its practices, had acknowledged it lacked ownership of the collection and that there was no record that a gift had been made to Fisk.[34] The collection was ordered transferred to Yale University.

Finally, two cases involved university affiliated hospitals. In a New Mexico case, the court found that the wrongful death act prohibited an attempt by the university to attach a lien to a wrongful death award.[35] In a New York case, the court found that a patient does not possess a constitutional right to highly technical hospital equipment, which would require the hospital to give the patient's doctor access to the equipment when that doctor is not affiliated with the hospital.[36]

EMPLOYEES

Discrimination in Employment

Title VI. A number of cases involve the use of federal funds or state funds in state systems which have perpetuated a historical tradition of

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31 Laurel Heights Improvement Ass'n v. University of Cal., 238 Cal. Rptr. 451 (Ct. App. 1987)

32 Maryland Cent. Collection Unit v. University of R.I., 529 A.2d 144 (R.I. 1987)

33 People v. Smith, 514 N.E.2d 1158 (Ill. App. Ct. 1987)

34 Yale Univ. v. Fisk Univ., 660 F. Supp. 16 (M.D. Tenn. 1985), *aff'd*, 810 F.2d 204 (6th Cir. 1987)

35 Hall v. Regents of the Univ. of N.M., 740 P.2d 1151 (N.M. 1987)

36 Brindisi v. University Hosp., 516 N.Y.S.2d 745 (App. Div. 1987)

discrimination. The most notorious case emanates out of the *Adams* case.[37] In this case, under a court order, the United States Department of Health, Education, and Welfare was to enforce the provisions of title VI[38] by requiring a number of southern and border state educational systems to develop plans to comply with the statute under pain of loss of federal funds. Since that time the court order has been the focus of a number of litigations and court maneuvering. The most recent ruling challenges the court's jurisdiction to issue the original court order.[39] This case emanated from another case remanded for a hearing on the question of standing.[40] The federal district court of the District of Columbia found limited jurisdiction in a case involving a federal agency because of the concepts of separation of powers under article II of the United States Constitution from which the doctrine of standing emanates. Under the standing doctrine, the court found that there was a justiciable injury, the right to be educated in a racially integrated institution. However, the conduct of a third party was not involved in this litigation (i.e., public institutions and programs which are not federal agencies, possess the nexus between injury and causation). The plaintiffs failed to show a nexus between the provision of federal funds and the alleged discrimination. The court held that the court orders under review violated the concepts of separation of powers between the executive and judicial branches of government that the plaintiffs and interveners lacked standing to continue this litigation.

In a related case, the United States and interveners[41] sued the state system of higher education alleging the perpetuation of a discriminatory dual system of higher education in violation of title VI. The district court found that the dual system existed and ordered the state to submit a plan to the court which would eliminate all vestiges of this dual system.[42] On appeal, the circuit court found that the district court judge should have disqualified himself, because as a state politician he was deeply involved in determining the make up of the state board and the formulation of this case.[43] More importantly, citing *Grove City College v. Bell*,[44] the court found that a claim could not be maintained against the entire

37 Adams v. Richardson, 351 F. Supp. 641 (D.D.C. 1972), *modified*, 356 F. Supp. 92 (D.D.C. 1973), *aff'd*, 480 F.2d 1159 (D.C. Cir. 1973).

38 42 U.S.C. § 2000d.

39 Adams v. Bennett, 675 F. Supp. 668 (D.D.C. 1987).

40 Women's Equity Action League v. Bell, 743 F.2d 42 (D.C. Cir. 1984).

41 *See* The Yearbook of School Law 1987 at 238, United States (Knight) v. Alabama, 791 F.2d 1450 (11th Cir. 1986), *cert. denied*, 107 S. Ct. 1287 (1987).

42 *See* The Yearbook of School Law 1986 at 192, United States v. Alabama, 628 F. Supp. 1137 (N.D. Ala. 1985).

43 United States v. Alabama, 828 F.2d 1532 (11th Cir. 1987).

44 *See* The Yearbook of School Law 1985 at 313, Grove City College v. Bell, 465 U.S. 555 (1984).

state system of higher education because of the program specific nature of title VI. However, the court remanded the case for adjudication of the equal protection claims of the individuals known as the Knight Interveners.

An Arkansas case brought the issue of race discrimination in salaries and promotion in a university extension service before the court.[45] The court found that the disparate treatment of blacks was based on a valid employment criteria (poor job performance). However, the case was remanded requiring the state to show by a perponderence of the evidence that the employees would have been treated the same way if they were white. The court reasoned that past and current practices may have worked to disadvantage blacks.[46]

In a Tennessee case, an employee was barred from a discrimination suit under federal law.[47] State statutes made it clear that the university fell under the sovereign immunity provisions of the eleventh amendment. In a related case, the court set the statute of limitations at three years under New York Law in a section 1983[48] case involving an arrest and alleged beating by campus police.[49]

Title VII. Title VII requires that the plaintiff file a complaint within 300 days of the alleged discrimination. The concept used to determine whether this time limit was met or when the clock starts is called equitable tolling. In a tolling case, the Supreme Court denied *certiorari* in a case involving a white male who alleged discrimination in his termination as an instructor at a community college.[50] The Court found that the tolling period had lapsed and, under the circumstances, the reasonably prudent individual could have determined whether his dismissal was discriminatory.

Procedural issues were also before the court under title VII. In a Louisiana case, the Fifth Circuit ruled that the district court errored in dismissing a case because of counsel's tardiness in meeting pretrial deadlines when the plaintiff's counsel was ready for trial.[51] They found that such a ruling penalized the plaintiff who was innocent of any misconduct. In Texas, the court ordered a mistrial because of the meffectiveness of the plaintiff's counsel.[52] A portion of the attorney's fees were awarded to a Michigan institution by a plaintiff and counsel

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45 White v. University of Ark., 806 F 2d 790 (8th Cir. 1986)

46 *Id.* at 794

47 Jam v. University of Tenn., 670 F. Supp. 1388 (W.D. Tenn. 1987)

48 42 U.S.C. § 1983 (1983)

49 Okure v. Owens, 816 F 2d 45 (2d Cir. 1987)

50 Mauro v. Board of Higher Educ., 658 F. Supp. 322 (S.D.N.Y. 1986) *aff'd*, 819 F 2d 1130 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 169 (1987)

51 John v. Louisiana, 828 F 2d 1129 (5th Cir. 1987)

52 Vance v. Texas A. & M. Univ. Sys., 117 F.R.D. 93 (S.D. Tex. 1987)

resulting from false testimony.[53] In a Virginia case, the court ruled that although the filing of a title VII case did not preclude the filing of a section 1981 claim, it was barred by the eleventh amendment.[54]

Title VII cases involving the shifting burden of proof and disparate impact were before the court. In several cases, the plaintiff failed to establish a *prima facia* case of discrimination. In one case involving a theology position at a Catholic university, the plaintiff failed to establish that sex was a factor in her failure to obtain the position.[55] The court touched on a religious institution's exemption from title VII, but decided there was no need to explore the exemption question in this case. In a North Carolina case, the circuit court affirmed the lower court finding that the plaintiff failed in her burden to establish a prima facia case for both sex and age discrimination.[56] The court found that while the plaintiff alleged that the county extension service discriminated against women in the employment of supervisors for the extension service, she failed to substantiate these allegations with statistical evidence.

In another case decided in the Seventh Circuit, the court ruled that the plaintiff failed to establish a prima facia case for discrimination when the institution failed to promote her.[57] The institution provided a valid nondiscriminatory reason (i.e., failure to meet published criteria used in salary enhancement). Finally, a white female failed to show she was treated any differently than black males similarly situated.[58]

In another shifting burden of proof case, the plaintiff failed to establish that the reasons given for a personnel decision were a pretext for discrimination. In a New York case, the female applicant for an associate dean's position failed to show that the institution's reason for not hiring her, the lack of appropriate qualifications, was a pretext for discrimination against women.[59] Two black electricians sued when they lost their jobs at a predominantly black institution because of financial exigency.[60] The Eighth Circuit Court reversed and remanded the case finding that the evidence indicated that they were removed because of their race. The court found the institution's reasons (undependable work records) were not supported by the evidence, and the institution's action of filling a subsequent vacancy with an inexperienced white person gave credence to the conclusion that race was a factor. A similar

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53 Bynum v. Michigan State Univ., 117 LRRD 94 (WD Mich. 1987).
54 Wilson v. University of Va., 663 F. Supp. 1059 (WD Va. 1987).
55 Macguire v. Marquette Univ., 814 F.2d 1213 (7th Cir. 1987).
56 Ballinger v. North Carolina Extension Serv., 815 F.2d 1001 (4th Cir. 1987).
57 Dugan v. Ball State Univ., 815 F.2d 1132 (7th Cir. 1987).
58 Martin-Trigona v. Board of Trustees of the Univ. of D.C., 668 F. Supp. 682 (D.D.C. 1987).
59 Crowman v. Manhattan Community College, 667 F. Supp. 130 (S.D.N.Y. 1987).
60 Legrand v. Trustees of the Univ. of Ark., 821 F.2d 478 (8th Cir. 1987).

outcome was reached in an Alabama case.[61]

Class action suits were also before the courts. In a ruling which plows new ground in the class certification area, a district court decertified a class of female faculty.[62] The court reasoned that the multiple regression analysis and other anecdotal evidence, which pointed to actions based on sex, was insufficient to establish discrimination against a class. The court found the evidence showed a decentralized decision-making process, which prevented plaintiffs from sustaining an argument that a pattern of discrimination against women could exist across the university.[63]

In another class action case, the institution's counsel continued unethical and inappropriate communications with members of a class of female athletes at the university.[64] The sanctions issued by the court included the distribution of notices at the institution's expense and the assessment of attorney's fees incurred in this litigation.

In a disparate impact class action case, the court found that the female plaintiffs had met their burden of establishing a *prima facie* case of discrimination.[65] In this multiple regression case, plaintiffs were able to establish sex as a factor in several years under analysis. While plaintiff's grouping of the departments into six groups was criticized, it was accepted by the court. The defendant's reasons for salary disparity, market forces, and service awards, did not account for the salary disparities over several years. The court found that the defendants had failed in their burden to establish other reasons for the disparity in salary.

In a disparate treatment case in which the institution's treatment of female faculty was compared with the treatment of males on employment decisions of rank, pay, promotion, tenure, and administrative appointments, the plaintiffs failed in their burden to show discriminatory intent.[66] The court noted that while historical evidence shows a record of past discrimination, the state has made attempts to rectify these discrepancies, and history alone would be insufficient to show intent.[67] Furthermore, the court's rejection of a multiple regression analysis, which either left out or inadequately measured decision-making variables, did not place an unrealistic burden of proof on the plaintiffs. On the individual complaints, the judge found that each of the plaintiffs had established a *prima facie* case of discrimination; the institution had

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61 Harrell v. University of Montevallo, 673 F. Supp. 430 (N.D. Ala. 1987).
62 Rosenberg v. University of Cincinnati, 654 F. Supp. 774 (S.D. Ohio 1986).
63 *Id.* at 778.
64 Haffer v. Temple Univ., 115 F.R.D. 506 (E.D. Pa. 1987).
65 Denny v. Westfield State College, 669 F. Supp. 1146 (D. Mass. 1987).
66 Penk v. Oregon State Bd. of Higher Educ., 816 F. 2d 458 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 158 (1987), *rehearing denied*, 108 S. Ct. 473 (1987).
67 *Id.* at 461.

provided valid reasons related to the specific job, and the plaintiffs each failed in their burden to show the institution's reasons to be pretextual.[68]

In a retaliation case, the plaintiff met his burden by showing that he engaged in a protected activity and was subjected to adverse employment activity by the employer, and that a causal link existed between the two.[69] A black personnel administrator had complained both publically and privately that race discrimination had existed in employment. Retaliation consisted of a limitation on activities and a demeaning monitoring procedure requiring permission from his superior to leave his work space.

The final case in this section involves both title VII and the Equal Pay Act. The court found that a Florida institution's refusal to allow a male employee to participate in a salary equity scheme was discriminatory.[70] The multiple regression analysis, used to identify females for salary equity adjustments, identified him as a candidate for adjustment even after a salary adjustment agreement had been entered into by the parties. The court noted that discrimination, which occurred after a salary equity agreement was put in place for the plaintiff, was justiciable and that the lower court errored in ignoring the salary inequity after the agreement was in force. The case was remanded.

The Equal Pay Act. The lead-off case in this section is one which has been before the courts for a number of years.[71] The case dealt with a class action suit involving multiple regression analysis which was found inadequate by the courts because crucial job factors were excluded. The circuit court remanded the case[72] based on the Supreme Court ruling in *Bazemore*.[73] On remand the district court upheld its previous decision. The court reasoned that under the test in *Bazemore*, the multiple regression failed to show discrimination based on sex.[74] Additionally, the rejection of evidence when the plaintiff switched from disparate treatment proof to disparate impact proof in the eleventh hour of litigation was based on evidentiary rules (i.e. plaintiff failed to prove that the evidence was new or that the delay in presentation was caused by the defendant).[75]

In an Illinois case, a female assistant professor assumed a position at a salary lower than the previous employee had received. The previous

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68 *Id* at 463

69 Coleman v. Wayne State Univ., 664 F. Supp. 1082 (E.D. Mich. 1987)

70 Schwartz v. Florida Bd. of Regents, 807 F.2d 901 (11th Cir. 1987)

71 *See* The Yearbook of School Law 1984 at 284, 289; Sobel v. Yeshiva Univ., 566 F. Supp. 1166 (S.D.N.Y. 1983)

72. Sobel v. Yeshiva Univ., 797 F.2d 1478 (2d Cir. 1986)

73. *See* The Yearbook of School Law 1987 at 240; Bazemore v. Friday, 106 S. Ct. 3000 (1986)

74 Sobel v. Yeshiva Univ., 656 F. Supp. 587 (S.D.N.Y. 1987)

75. *Id* at 559

employee was a male tenured faculty member from another department. The court found that the previous salary history of the tenured faculty member was a factor in the pay differential and not sex. In affirming the lower court decision the court noted that a financial crisis was not a valid factor available to the university as a defense for salary disparity between males and females.[76]

The Third Circuit ruled, in a case involving custodial services under contract with a college, that the procedural errors by the trial judge were harmless errors.[77] While the trial judge inexplicably ruled that the gender of the plaintiff and the preferred labor class were not relevant, the evidence contained gender information and the error was corrected when the charge was given to the jury.

Title IX. *Cannon*, a saga of cases which has been before the courts for a number of years,[78] saw the Supreme Court refusing to hear another appeal.[79] In rejecting another suit of Ms Cannon's in a federal rules decision,[80] the court threatened the plaintiff and counsel with further sanctions if "this endless stream of redundant and meritless pleadings" is not discontinued.[81]

Age Discrimination. The E.E.O.C. brought action against an institution when it terminated the grievance procedures filed by an employee after the employee had filed charges with the E.E.O.C. for age discrimination in the denial of tenure.[82] The institution took its action on the basis of a collective bargaining agreement. The court, balancing the employer's contractual rights against the individual's employee rights, found that the institution's action constituted retaliation which cannot be made legal by a collective bargaining agreement.

In another case, the court found that the provisions of an employee retirement plan did not violate the Age Discrimination Act.[83] The provisions maintained that no employer contributions would be made to the retirement program after the employee reached a certain age. In a Minnesota case, the plaintiff was unable to establish a prima facia case of age discrimination in his removal from a position with the state coordi-

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76 Covington v. Southern Ill. Univ., 816 F.2d 317 (7th Cir. 1987), *cert. denied*, 108 S. Ct. 146 (1987).

77 Brobst v. Columbus Servs. Int'l, 824 F.2d 271 (3d Cir. 1987).

78 *See* The Yearbook of School Law 1987 at 245 nn. 61-63.

79 Cannon v. Loyola Univ. of Chicago, 107 S. Ct. 880 (1987), *See* The Yearbook of School Law 1987 at 245, Cannon v. Loyola Univ. of Chicago, 784 F.2d 777 (7th Cir. 1986).

80 Cannon v. Loyola Univ. of Chicago, 116 F.D.R. 244 (N.D. Ill. 1987).

81 *Id.* at 245.

82 EEOC v. Board of Governors of State Colleges and Univs., 665 F. Supp. 630 (N.D. Ill. 1987).

83 Bell v. Trustees of Purdue Univ., 658 F. Supp. 184 (N.D. Ind. 1987).

nating board.[84] The state legislature had voted to remove funding for the position.

A Utah case was brought under state statutes[85] on age discrimination and involved the reversal of an administrative law judge's findings.[86] The institution had provided legitimate reasons for the demotion and eventual dismissal of the employee. The plaintiff could not prove that poor work habits and failure to follow orders was a pretext for discrimination. In a related case, the finding of age discrimination under state law qualified the individual for a damage award but not reinstatement under the circumstances of this case since he was not qualified to teach in the area where the vacancy existed.[87] In another case, the court ruled that an employee could not use federal statutes to expand a claim under a state's common law of tort.[88]

Rehabilitation Act. A case involving a student who was refused a degree because of a handicap has implications for employment.[89] The student was evaluated by a state board and admitted to an optometry school. In his third year, he failed to pass one of four clinical areas because his handicap prevented him from performing the manual skills for several procedures which resulted in danger to patients. The court found that he was not an otherwise qualified handicapped individual and the institution had not errored in refusing to waive the requirements. The court found that these clinical requirements were substantial or fundamental and could not be interpreted as a reasonable waiver.[90]

Hiring Discrimination. Several hiring discrimination cases dealt with the question of access to information used in the hiring decision. In a California case, the plaintiff alleged discrimination based on sex in the failure to hire her as a faculty member. The court, citing key cases on access to documents,[91] found that she could "probably" establish a *prima facie* case of discrimination and ordered access to the peer evaluation materials of the successful male applicant.[92] In another California case, the plaintiff in a defamation suit sought access to information

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84. Reddemann v. Minnesota Higher Educ. Coordinating Bd., 811 F.2d 1208 (8th Cir. 1987).

85. Utah Anti-Discrimination Act, U.C.A. 1953 §§ 34-53-1 (Supp. 1986).

86. University of Utah v. Industrial Comm'n, 736 P.2d 630 (Utah 1987).

87. State Univ. Agricultural and Technical College at Farmingdale v. State Div. of Human Rights, 520 N.Y.S.2d 814 (App. Div. 1987).

88. Leathem v. Research Found. of City Univ. of N.Y., 658 F. Supp. 651 (S.D.N.Y. 1987).

89. Doherty v. Southern College of Optometry, 659 F. Supp. 662 (W.D. Tenn. 1987).

90. *Id.* at 673.

91. *See* The Yearbook of School Law 1987 at 249, EEOC v. Franklin and Marshall College, 775 F.2d 110 (3d Cir. 1985), The Yearbook of School Law 1982 at 264, *In re* Diman, 661 F.2d 426 (5th Cir. 1981).

92. Rubin v. Regents of the Univ. of Cal., 114 F.D.R. 1 (N.D. Cal. 1986).

presented at a faculty meeting in which a unanimous vote denied him an endowed chair.[93] The court found that privacy rights of the professor outweighed the candidate's rights to take a deposition in this case.

In a West Virginia case, the plaintiff was able to prove that the refusal to hire her as a county extension agent was based on sex. The state Civil Rights Commission ordered her hired and awarded back pay.[94] The court affirmed the award of back pay and awarded the plaintiff attorney's fees for both the action before the commission and this action. In a California case, the court found that the plaintiff failed to establish a *prima facie* case of discrimination based on national origin as a Filipino American.[95]

Nontenured Faculty

First Amendment Freedom of Speech. The lead-off case in this section has been in the courts for over a decade. A faculty member who was refused tenure sustained a charge that his first amendment rights had been violated, because denial was due to his political activity.[96] The court ordered reinstatement, but based on eleventh amendment immunity, denied the award of back pay. In subsequent litigation, the plaintiff sued for back pay.[97] This 1987 litigation involved a suit for back pay against the state system office instead of the specific institution which the court denied on the same grounds.[98]

In an Arizona case, a faculty member was denied tenure due to his ineffective teaching style.[99] He filed a grievance with a faculty committee. The faculty committee found that his academic freedom had been violated by the institution's denial of tenure. The plaintiff alleged that his free speech and academic freedom were violated because the institution was in disagreement with his chosen methods of teaching (i.e., not attending classes so his students would become more self-reliant). The court found no violation of first amendment rights in the president's decision to deny tenure.

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93 Kahn v. Superior Court (Davies), 233 Cal. Rptr. 662 (Ct. App. 1987).

94 Kerns v. Bucklew, 357 S.E.2d 750 (W. Va. 1987).

95 Ibarbia v. Regents of the Univ. of Cal., 234 Cal. Rptr. 167 (Ct. App. 1987) *vacated, reh'g.*, 237 Cal. Rptr. 92 (Ct. App. 1987).

96 Skehan v. Board of Trustees of Bloomsburg State College, 358 F. Supp. 430 (M.D. Pa. 1973), *vacated*, 501 F.2d 31 (3d Cir. 1974) *vacated and rem'd*, 421 U.S. 983 (1975), *reh'g.*, Skehan v. Board of Trustees Bloomsburg State College, 431 F. Supp. 1379 (M.D. Pa. 1977).

97 *See* The Yearbook of School Law 1983 at 304, Skehan v. Board of Trustees of Bloomsburg State College, 669 F.2d 142 (3d Cir. 1982), *cert. denied* 459 U.S. 1048 (1982). *See* The Yearbook of School Law 1987 at 250, Skehan v. Bloomsburg State College, 503 A.2d 1000 (Pa. Commw. Ct. 1986).

98 Skehan v. State System of Higher Educ., 815 F.2d 244 (3d Cir. 1987).

99 Carley v. Arizona Bd. of Regents, 737 P.2d 1099 (Ariz. Ct. App. 1987).

In another case, a faculty member who challenged the administration of the college by the dean was denied tenure.[100] The plaintiff alleged violations of free speech and argued that he came under earlier tenure provisions which meant he already had tenure. The circuit court found material issues of fact, reversed the summary judgment, and remanded the case for adjudication. In a related case, the court affirmed a lower court decision.[101] The circuit court found that while the plaintiff was involved in protected speech, other valid reasons for nonrenewal existed.[102]

Nonrenewal Procedures. The Supreme Court ruled that national origin would be a valid classification under a section 1983 suit alleging discrimination.[103] The circuit court had reversed and remanded the district court's grant of a summary judgment to the university on the plaintiff's discrimination claim based on Arab ancestry in the plaintiff's denial of tenure.[104] The case awaits a decision by the district court.

In another case reported previously,[105] plaintiffs alleged that they had *de facto* tenure, because of the number of years of service put in under one year contracts, and that nonrenewal of their contracts required due process. On appeal, the circuit court ruled that Rutgers University was an autonomous organization, not an arm of the state, removing the possibility of an eleventh amendment immunity defense.[106] Qualified immunity could not be determined for individual officers until the district court decided whether *defacto* tenure or a property right existed thereby requiring due process prior to nonrenewal.

Several cases involve access to information used in the decision to deny tenure. In a New York case, a male brought action to compel discovery of promotion and tenure committee deliberations.[107] The court found, absent "extraordinary cause," that disclosure would not be compelled. In another case, the university filed a motion to prevent the disclosure of confidential evaluations of outside experts in three promotion and tenure files.[108] The case involved state civil rights agency's

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100 Honore v. Douglas, 833 F.2d 565 (5th Cir. 1987)

101 *See* The Yearbook of School Law 1987 at 250, Hamer v. Brown, 641 F. Supp. 662 (W.D. Ark. 1985)

102 Hamer v. Brown, 831 F.2d 1398 (8th Cir. 1987)

103 St. Francis College v. Al-Khazraji, 107 S. Ct. 2022 (1987)

104 *See* The Yearbook of School Law 1987 at 247, Al-Khazraji v. St. Francis College, 784 F.2d 505 (3d Cir. 1986)

105 *See* The Yearbook of School Law 1987 at 249, Kovats v. Rutgers University, 633 F. Supp. 1469 (D.N.J. 1986)

106 Kovats v. Rutgers, The State Univ., 822 F.2d 1303 (3d Cir. 1987)

107 Desmone v. Skidmore College, 517 N.Y.S.2d 880 (Sup. Ct. 1987)

108 Dixon v. Rutgers, 521 A.2d 1315 (N.J. Super. Ct. App. Div. 1987)

findings of probable cause that sex discrimination was involved in the denial of tenure to a female while promotion and tenure was granted to two similarly situated males. The university's motion was denied and the court endorsed the administrative law judge's limitations on disclosure.

Cases involving tenure review and a subsequent decision to deny tenure were before the courts. In one case a state appeals court held that the hiring of another faculty member to fill the plaintiff's position prior to the completion of the plaintiff's grievance did not violate due process and that judicial proceedings should not be filed prior to completion of administrative remedies.[109]

A variety of cases alleged discrimination under title VII. The Fourth Circuit found that the plaintiff lacked the appropriate qualifications for tenure under the burden of proof standard of title VII. This finding would collaterally estop the plaintiff's claims under both the Equal Pay Act and the Age Discrimination Act since the proof in all three were similar.[110] In Arizona, the plaintiff failed to establish sex discrimination based on the fact that the faculty in the all female school of nursing were not granted the same percentage of release time for research as the faculty in the all male school of pharmacy.[111] In another case, the court found a number of allegations time barred and ruled that ample evidence existed to support the institution's denial of tenure based on poor performance across several criteria.[112] However, the First Circuit remanded a case involving denial of tenure because the court errored in applying the burden of proof and in ordering the plaintiff reinstated for two years with back pay.[113] The institution alleged that poor teaching was the reason for denial of tenure. The plaintiff alleged that the decision was effected by discrimination because the all male department made the original decision to deny tenure. The court found that the second step in the shifting burden of proof was for the institution to prove that absent discrimination, the same decision would have been reached. Finally, a Maryland case found that the plaintiff was unable to establish a *prima facie* case for race, sex, or maternity discrimination and that the testimony on sexual harassment was not worthy of credence.[114] A North Carolina plaintiff also failed to meet *prima facie* requirements.[115] In another case involving the denial of tenure for lack of publications and the contesting of a listing as third author of a publica-

109. Ashley v. University of Louisville, 723 S.W.2d 866 (Ky. Ct. App. 1986)
110. Ritter v. Mount St. Mary's College, 814 F.2d 986 (4th Cir. 1987)
111. Rios v. Board of Regents, Univ. of Ariz., 811 F.2d 1248 (9th Cir. 1987)
112. Merrill v. Southern Methodist Univ., 806 F.2d 600 (5th Cir. 1986)
113. Field v. Clark Univ., 817 F.2d 931 (1st Cir. 1987).
114. Monroe-Lord v. Hytche, 668 F. Supp. 979 (D. Md. 1987).
115. Latimore v. University of N.C. at Charlotte, 669 F. Supp. 1345 (W.D.N.C. 1987)

tion, the court awarded attorney's fees to the institution for the plaintiff's frivolous suit.[116]

Several cases involved the nonrenewal of tenure track contracts. In one case, the court found that a letter sent prior to the end of the contract period did not imply immediate firing, but rather was a notice of nonrenewal.[117] Several cases involved the nonrenewal of a contract where oral discussions at hiring were perceived by the plaintiff to be a guarantee of contract renewal up through tenure review. In each of these cases, written documentation supported the institution's option of nonrenewal at the end of the contract period.[118]

In a case involving a collective bargaining agreement, the court found that the arbitrator applied the wrong burden of proof and remanded the case.[119] The dean denied promotion when a unanimous faculty committee voted for promotion. The court found that arbitrariness under the agreement meant without reason and the institution should, on rehearing, be given the opportunity to provide reasons for its decision.

Part-time Faculty. A part-time associate professor alleged that her demotion to a research associate was motivated by gender considerations under title VII.[120] The court found that the institution's reasons for removal from the associate professor's position, lack of publications and noncollegial behavior, were valid. The retaliation claim, however, was remanded.

Other cases involving part-time faculty are covered under financial exigency.

Tenured Faculty

Termination for Cause. In an Oklahoma case, a tenured faculty member who followed instructions enclosed with the contract (signed the contract, returned it on time), but also included a note questioning the salary amount, had not reopened negotiation, thus vacating the contract. The court found the signature to represent "acceptance" and the note simply reflected his displeasure with the conditions of the contract rather than a counteroffer.[121]

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116 Weinstein v. University of Ill., 811 F.2d 1091 (7th Cir. 1987). See The Yearbook of School Law 1987 at 248, 628 F. Supp. 862 (N.D. Ill. 1986).

117 Hill v. Talladga College, 502 So. 2d 735 (Ala. 1987).

118. Upadhya v. Langenberg, 671 F. Supp. 521 (N.D. Ill. 1987), *aff'd*, 834 F.2d 661 (7th Cir. 1987); Baker v. Lafayette College, 532 A.2d 399 (Pa. 1987), *aff'g*, *see* The Yearbook of School Law 1987 at 248, 504 A.2d 247 (Pa. Super. Ct. 1986); Brumbach v. Rensselaer Polytechnic Inst., 510 N.Y.S.2d 762 (App. Div. 1987).

119 *In re* Board of Trustees of Univ. Sys. of N.H. Keene State College, 531 A.2d 315 (N.H. 1987).

120 Gottheb v. Tulane Univ. of La., 809 F.2d 278 (5th Cir. 1987).

121 Price v. Oklahoma College of Osteopathic Medicine and Surgery, 733 P.2d 1357 (Okla. Ct. App. 1986).

In a District of Columbia case, a professor became embroiled in a controversy when a student made slanderous comments in his class. The student, referred for disciplinary action, refused on order of the disciplinary committee to apologize to the professor and continued to attend class. The university failed to follow up and the professor refused to continue teaching his class. The institution charged him with neglect of duty and the grievance committee found him not guilty of the charge because of extenuating circumstances. The board reviewed a summary of the grievance committee report and dismissed the professor. The district court issued a summary judgment in favor of the university, finding the board had final authority in these matters.[122] On appeal, the D.C. Circuit Court found that legitimate claims existed for the case to be adjudicated. First, the court found that significant evidence existed to question whether the professor had, in fact, neglected his duty. Furthermore, the court found that the plaintiff's allegations that the institution had breached its contract when it failed to follow through on the disciplinary action against the disruptive student had significant merit and should be reviewed. Finally, the court found that the institution may have violated its due process procedures when the president transmitted a two-page summary of the grievance committee's report to the board when the faculty handbook stated that the full report must be transmitted.[123]

A Vermont case involving allegations of the forging of student evaluations was also before the court.[124] The court remanded the case on the retaliation claim and found that faculty are not subject to the state's Administrative Procedures Act. While finding that the hearings by the faculty disciplinary committee were subject to the open meeting laws, the court ruled that student evaluations which dealt with an employee's performance should not be subject to public scrutiny but would be available to the plaintiff.

In a Kansas case,[125] the court found that statutory provisions require the board to follow a unanimous decision of the hearing committee, which voted not to dismiss the faculty member who did not have tenure but was in the middle of a contract period. In a New York case, the institution had not violated any rights by refusing to remove a letter of warning of a previous employment action from the faculty member's personnel file.[126]

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122 *See* The Yearbook of School Law 1986 at 251, McConnell v. Howard Univ., 621 F. Supp. 327 (D.D.C. 1985).

123 McConnell v. Howard Univ., 818 F.2d 58 (D.C. Cir. 1987).

124. Sprague v. University of Vt., 661 F. Supp. 1132 (D. Vt. 1987).

125 Keller v. Board of Trustees of Coffeyville Community College, 733 P.2d 830 (Kan. Ct. App. 1987).

126 Mieczkowski v. Ithica College, 516 N.Y.S.2d 534 (App. Div. 1987).

Several termination cases involved institutions with collective bargaining agreements. In an Illinois case, the court upheld an arbitrator's ruling that dismissal was not warranted where a faculty member violated policy by holding two full-time positions.[127] The institution had dismissed a faculty member for smoking marijuana with students enrolled in a class that was held at the professor's home. An arbitrator reduced the dismissal to a suspension without pay and the lower court overrode the arbitrator's ruling. Review of the arbitrator's findings by the court is limited and the lower court exceeded those limits.

Termination for Financial Exigency. In an Illinois case, tenured faculty were dismissed for financial exigencies.[129] The faculty alleged that the institution's policies and the collective bargaining agreement allowed them to bump part-time faculty in order to put together courses to yield a full-time position. The court ruled that the bumping provisions apply only to full-time positions and that the board is the determiner of an individual's competence to fill a position or teach in specific areas. A California case also affirmed the board's authority to lay-off full-time employees and to determine competency to teach in subject areas.[130]

In another case, a female faculty member was terminated for a financial exigency while two male professors with seniority were retained. The district court issued a summary judgment to the institution in the plaintiff's title IX claim.[131] Later, at trial, the court found that the institution had established a valid reason, seniority, for its action in relation to plaintiff's title VII claim. The circuit court affirmed those decisions and ruled that it needed to consider the plaintiff's claim that the program she was involved in received federal funds under title IX, because the claim was actionable and disposed of under title VII.[132]

In Massachusetts, a faculty member who was terminated, rehired, and then notified that the contract would not be completed, was given due process even though the hearing was held after the termination.[133] The court also affirmed the state's authority to terminate a contract because of financial necessity.[134] In a Washington case, the court af-

127 Community College Dist 508 v. McKinley, 513 N.E.2d 951 (Ill. App. Ct. 1987)

128 Lansing Community College v. Lansing Community College Chapter of Mich. Ass'n of Higher Educ., 409 N.W.2d 823 (Mich. Ct. App. 1987)

129 Biggiam v. Board of Trustees of Community College Dist. 516, 506 N.E.2d 101 (Ill. App. Ct. 1987)

130 Duax v. Kern Community College Dist., 241 Cal. Rptr. 860 (Ct. App. 1987)

131 *See* The Yearbook of School Law 1986 at 242, Mabry v. State Bd. for Community Colleges and Occupational Educ., 597 F. Supp. 1235 (D. Colo. 1984)

132 Mabry v. State Bd. of Community College and Occupational Educ., 813 F.2d 311 (10th Cir. 1987), *cert. denied*, 108 S. Ct. 148 (1987)

133 Jerman v. Board of Regents of Higher Educ., 503 N.E.2d 50 (Mass. App. Ct. 1987).

134 *Id.* at 52

firmed the program specific nature of financial exigencies which would allow the institution to reduce staff in one program while hiring in another.[135] In a case involving a college operating under a collective bargaining agreement, the court found that the reduction in force provisions for temporary nontenured faculty in the collective bargaining agreement was void where it conflicted with board regulations.[136]

Collective Bargaining

A case involving the same issues as the *Yeshiva*[137] decision was decided in Florida.[138] The court ruled that the college faculty were not managerial and, therefore, were qualified to organize as a collective bargaining unit. A California court ruled that a prospective bargaining unit could use the intercampus mail system in the process of organizing the collective bargaining unit.[139]

The collective bargaining agent lacked standing to litigate a case where the dismissed employee was not a member of the union.[140] In another ruling, the court found that the college arbitration procedures could not be used to resolve alleged violations (sexual harassment) since those violations were not incorporated into the collective bargaining agreement.[141]

A number of allegations of unfair labor practices were before the courts. In New York, the court ruled that it was not an unfair labor practice to reduce the load of the faculty person representing a group of faculty where the group has made no attempt to organize.[142] The court also found that a salary dispute that came about during the expired agreement, but was settled under the new agreement, had rendered the action dismissible.[143] A Washington court found an unfair labor practice in the institution's denial of released time to faculty who were negotiating for the union.[144]

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135 Refar v. Central Wash. Univ., 742 P.2d 137 (Wash. Ct. App. 1987)

136. Board of Trustees of Community College Dist. 508 v. Federation of College Clerical and Technical Personnel, Local 1708, 505 N.E.2d 1264 (Ill. App. Ct. 1987)

137. NLRB v. Yeshiva Univ., 444 U.S. 672 (1980)

138. NLRB v. Florida Memorial College, 820 F.2d 1182 (11th Cir. 1987)

139. Regents of the Univ. of Cal. v. Public Employment Relations Bd., 227 Cal. Rptr. 57 (Ct. App. 1987), *prob. juris. noted*, 107 S. Ct. 3226 (1987)

140. Guild of Admin. Officers of Suffolk County Community College v. County of Suffolk, 510 N.Y.S.2d 914 (App. Div. 1987)

141. County of Rockland v. Rockland County Community College Fed'n of Teachers, 509 N.Y.S.2d 608 (App. Div. 1987)

142. Rosen v. Public Employment Relations Bd., 510 N.Y.S.2d 180 (App. Div. 1986)

143. Faculty Ass'n of Suffolk County Community College v. Public Employment Relations Bd., 508 N.Y.S.2d 591 (App. Div. 1987)

144. Green River Community College Dist. No. 10 v. Higher Educ. Personnel Bd., 730 P.2d 653 (Wash. 1986)

In a time of financial crisis, it was not an unfair labor practice for the institution to propose a wage freeze in lieu of layoffs of clerical staff.[145] In Pennsylvania, the court found an unfair labor practice in the deduction of unemployment compensation for summer, a time when the plaintiff was not under the annual contract, in the institution's payment of an arbitrator's award of back pay and reinstatement.[146] Another decision found the state system of higher education guilty of an unfair labor practice because faculty were compensated differently for "course by special arrangement" and "individualized instruction."[147] The case also affirmed the board's authority to rescind the arbitrator's ruling. Finally, a New York court found that the grievance procedures were the exclusive remedy of the plaintiff, an adjunct faculty member, in the resolution of a conflict over class scheduling.[148]

Administration and Staff

In a case involving a member of the board of trustees, felony charges were brought for receipt of a bribe to influence a board vote on a pending contract award.[149] The court ruled that the education code which made acceptance of a bribe a misdemeanor did not bar a felony charge under the penal code.

A number of cases involve controversies surrounding the appointment to or removal from academic administrative positions. The court found a faculty member removed from the directorship of a center lacked a property interest in the directorship.[150] In a similar ruling, the court cited not only the lack of property interest, but also institutional policy which prohibited the acquisition of tenure based on the performance of administrative duties.[151] In another case, the court reversed the lower court's issuance of a preliminary injunction against the institution in its removal of a department head.[152] The court found on appeal that the institution's academic autonomy, severely hampered by the injunction, outweighed the loss of the plaintiff's bonus funds which were recoverable in a pending civil rights action.[153] In another case involving

145 Schoolcraft College Ass'n of Office Personnel, MESPA v. Schoolcraft Community College, 401 N.W.2d 915 (Mich. Ct. App. 1987)

146 Association of Pa. College and Univ. Faculty v. Pennsylvania Labor Relations Bd., 532 A.2d 60 (Pa. Commw. Ct. 1987)

147 State Sys. of Higher Educ. v. PLRB, 528 A.2d 278 (Pa. Commw. Ct. 1987)

148 Post Adjunct Faculty Ass'n v. Board of Trustees, 511 N.Y.S.2d 874 (App. Div. 1987)

149 Robinson v. Superior Court, 237 Cal. Rptr. 75 (Ct. App. 1987)

150 Chiriboga v. Saldana, 660 F. Supp. 618 (D.P.R. 1987)

151 Jimenez-Torres De Panepinto v. Saldana, 834 F.2d 25 (1st Cir. 1987)

152 *See* The Yearbook of School Law 1987 at 256, Vargas-Figueroa v. Saldana, 646 F. Supp. 1362 (D.P.R. 1986)

153. Vargas-Figueroa v. Saldana, 826 F.2d 160 (1st Cir. 1987)

the appointment of a department head, the court ordered the plaintiff hired,[154] where the plaintiff was the recommended candidate and institutional policy as part of the plaintiff's contract required the dean to reconstitute the search committee within a reasonable time after refusing the recommendation. The court found the two-year delay to be a breach of the employment contract and, while reversing the trial court's order to appoint him to the position, ordered damages equivalent to the salary he would have received had he been appointed.

Cases also involved appointment or removal of staff for cause. In one case, the court upheld the removal of a police officer for gambling in his office, finding no reasonable expectation of privacy in the employee's office.[155] In a Florida case, the court reversed a hearing officer's ruling, finding that the institution did not have to grant compulsory disability leave before dismissal where the employee suffered from alcoholism and denied he had a problem.[156] In a similar case, the court found that three warnings after low job performance ratings were not a vague or overly broad basis for dismissal.[157]

In a case previously before the courts,[158] the circuit court found that under New York law the secretary to the president served at the pleasure of her supervisor contrary to letters giving her an appointment to a permanent position.[159] The court found the plaintiff unable to substantiate a property interest requiring due process.

The Fifth Circuit found that a state court order to pay the plaintiff's salary for the remainder of a contract period removed any property right claim of a public safety director terminated in the middle of a contract period.[160] Other courts ruled that sovereign immunity blocked action in a financial exigency dismissal[161] and an inadequate performance case.[162] An Alabama court failed to find duress in the notification of nonrenewal of plaintiff's contract and his subsequent resignation.[163] A Michigan court dismissed a claim over termination because the plaintiff and counsel had made no progress in their suit.[164]

Removal from athletic positions was also litigated. The court found that a basketball coach on a one-year contract had no reason to expect

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154 University of Minn. v. Goodkind, 399 N.W.2d 585 (Minn. Ct. App. 1987).

155 Thornton v. University Civil Serv. Merit Bd., 507 N.E.2d 1262 (Ill. App. Ct. 1987).

156 University of Fla. v. Mossburg, 503 So. 2d 404 (Fla. Dist. Ct. App. 1987).

157 University of Fla. v. Moore, 506 So. 2d 69 (Fla. Dist. Ct. App. 1987).

158 *See* The Yearbook of School Law 1987 at 257, Wright v. Cavan, 642 F. Supp. 947 (N.D.N.Y. 1986).

159 Wright v. Cavan, 817 F.2d 999 (2d Cir. 1987), *cert. denied*, 108 S. Ct. 157 (1987).

160 Robinson v. Boyer, 825 F.2d 64 (5th Cir. 1987).

161 Lewis v. Kelchner, 658 F. Supp. 358 (M.D. Pa. 1986).

162 Stokes v. University of Tenn. at Martin, 737 S.W.2d 545 (Tenn. Ct. App. 1987).

163 Ellis v. Owens, 507 So. 2d 436 (Ala. 1987).

164 Maxwell v. University of Mich., 407 N.W.2d 16 (Mich. Ct. App. 1987).

renewal of the contract.[165] Another court found an athletic director who served at the will of the president lacked a claim in removal.[166] A federal district court also found that poor performance as a reason for the dismissal of an academic coordinator for athletes was not a pretext to discrimination based on gender.[167]

A state court remanded a case rejecting an immunity claim were the president refused to implement grievance procedures in the removal of a counselor.[168] An Arizona court affirmed the summary judgment dismissal of a case where an "at will" employee was dismissed resulting from position elimination through reorganization.[169] In South Carolina, the court ruled that pending administrative remedies must be exhausted before proceeding with judicial remedies.[170]

In a hiring case alleging sexual harassment by the interviewer of an applicant for a position, the defense requested the plaintiff to undergo a medical examination. The court affirmed the order for an exam but limited inquiry, affirming the plaintiff's right to sexual privacy, but rejected the plaintiff's request to have counsel present.[171] In another case, a plaintiff assumed he had been hired for a position when he was given the keys to an office, watched game films and was given use of a car whose insurance policy listed him as an employee. The court found evidence sufficient to support a finding that the contract for employment had not been offered.[172]

Denial of Employee Privilege

In a case where the plaintiff, a faculty member, was censured for plagarism, the court dismissed the claim for its failure to be concise.[173] A California litigation involved charges of breach of good faith and infliction of emotional distress surrounding the university's investigation of unethical research charges the plaintiff brought against a former colleague.[174] Allegations by the colleague against the plaintiff were contained in a disciplinary report on the colleague and the court found that the university was not obligated to release that report to the plaintiff.

In a federal case, the court upheld a board decision not to promote

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165 Lindsey v. Dempsey, 735 P.2d 840 (Ariz. Ct. App. 1987)
166 Hill v. California State Univ. Sys. Trustees, 238 Cal. Rptr. 799 (Ct. App. 1987)
167 Gray v. University of Ark., 658 F. Supp. 709 (W.D. Ark. 1987)
168 Perry v. Texas A. & I. Univ., 737 S.W.2d 106 (Tex. Ct. App. 1987)
169 Valles v. Arizona Bd. of Regents, 743 P.2d 960 (Ariz. Ct. App. 1987)
170 Medical Univ. of S.C. v. Taylor, 362 S.E.2d 881 (S.C. Ct. App. 1987)
171 Vinson v. Superior Ct., 740 P.2d 404 (Cal. 1987)
172 Bruner v. University of S. Miss., 501 So. 2d 1113 (Miss. 1987)
173 Newman v. Massachusetts, 115 F.R.D. 341 (D. Mass. 1987)
174 Dong v. Board of Trustees of Leland Stanford Junior Univ., 236 Cal. Rptr. 912 (Ct. App. 1987)

the plaintiff.[175] The private university board's decision was consistent with both the faculty committee and the hearing grievance committee, but was contrary to the grievance appeal committee's decision. The institution's motion for summary judgment was upheld.

In a case involving summer school pay, a professor claimed he was not treated equitably when he did not receive reduced load assignments during the academic year for six semesters of overload assignments.[176] The court found that he was paid a full salary for six semesters of reduced load when full pay during summer session is the same as an academic semester. In another case over summer session pay, an instructor failed to show that his contract for summer session teaching was inconsistent with board policy.[177]

Denial of Employee Benefits

The 1984 Deficit Reduction Act[178] decoupled the collection of withholding and social security tax and required the retroactive collection of social security tax on retirement annuity accounts. The court, citing two cases,[179] found that the statute did not violate due process, equal protection, or separation of powers by the assessment of the retroactive tax.[180]

Plaintiffs brought suit contesting failure of the university to grant salary awards approved by the legislature.[181] The university argued that as a position was vacated, the salary offered to the new employee could be at a lower rate than that appropriated by the legislature under the act. The court, granting summary judgment to the plaintiffs, found that the legislative intent was to upgrade the salaries of all positions, and the increased appropriations should stay with the position. In another case, the court found that the tuition waiver benefit could be changed without violating the contract of an employee not on fixed term.[182]

In a question on retirement benefits, the retirement commission ruling that a full-time faculty member with ten years of service had credit for only eight and a half years because she was under a ten month contract, was upheld in state court.[183] An employee in a trial court divorce settlement, awarded ownership of interest and stocks for a

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175 Kyriakopoulos v. George Washington Univ., 657 F. Supp. 1525 (D.D.C. 1987)

176 Stark v. Troy State Univ., 514 So. 2d 46 (Ala. 1987)

177 Barnes v. Patrick Henry State Junior College, 515 So. 2d 1257 (Ala. Civ. App. 1987)

178 Pub. L. No. 98-369, § 462(g)

179 *See* The Yearbook of School Law 1986 at 228, Temple Univ. v. United States, 769 F. 2d 126 (3d Cir. 1985). *See* The Yearbook of School Law 1987 at 254, Canisius College v. United States, 799 F. 2d 15 (2nd Cir. 1986)

180 Robert Morris College v. United States, 11 Cl. Ct. 546 (1987)

181 University of Tex. at Austin v. Joki, 735 S.W. 2d 505 (Tex. Ct. App. 1987)

182 Wall v. Tulane Univ., 499 So. 2d 375 (La. Ct. App. 1986)

183 Bama v. New York State Employment Sys., 516 N.Y.S. 2d 588 (Sup. Ct. 1987)

specific amount of assets in a retirement fund held by an annuity company to his ex-wife. The wife attempted a garnishment of the sum and the court granted summary judgment to the annuity company.[184] In Illinois, the state court ruled that an act which made those eligible to purchase military service credit ineligible to receive the credit after a certain date, violated the state constitution.[185] In another case, the court ruled that the state coordinating agency could not bind the state retirement system to a contract.[186] An expresident of one of the state institutions had an exit agreement which would allow him to continue to buy into the state retirement system. The retirement board refused the plaintiff's contribution since he was no longer an employee of the state

A retiree's claim for disability benefits was denied because he failed to show that work related chemical exposure was the cause of his respiratory ailment.[187] In South Dakota, the court overturned the retirement system's denial of disability benefits where the disability was job related and the employee now held a job with less salary than the one his disability prevented him from doing.[188] In another case, the plaintiff was awarded disability benefits for an injury received while teaching a class.[189] In North Carolina, the court found the industrial commission had the authority to award attorney's fees in a disability action.[190]

Denial of health benefits was also alleged. In one case, the court agreed to hear the merits of a breach of contract and damages claim for the over assessment by $5,000 of the plaintiff's compensation for health care benefits for which a refund had been received.[191] In another case, the alleged malicious prosecution of a former employee by the president resulted in an award of damages.[192] Illness requiring medical treatment was caused by the president's action. A Pennsylvania case involved health care benefits terminated after it was determined that a child, disabled since birth, was not eligible for the benefits.[193] The court found that the institution's claim against the third party insurance company, which had been making payments to the employee, was upheld and motions to dismiss were denied. The case awaits determination on the merits.

Several cases involved the denial of unemployment compensation for the summer months when the person would be returning to the

184 Dyer v Investors Life Ins Co of N Am , 728 S W 2d 478 (Tex Ct App 1987)
185 Buddell v Board of Trustees of State Retirement Sys , 514 N E 2d 184 (Ill 1987)
186. Watrel v Commonwealth, Dept of Educ , 518 A 2d 1158 (Pa 1986)
187 Andrews v Division of Retirement, 508 So 2d 477 (Fla Dist Ct App 1987)
188 *In re* Templeton, 403 N W 2d 398 (S D 1987)
189. Killen v Continental Ins Co , 514 So 2d 711 (La Ct App 1987)
190. Karp v. University of N.C., 362 S.E.2d 825 (N C Ct App 1987)
191 Sanders v Judson College, 514 So 2d 890 (Ala 1987)
192 Eggleston v. Ellis, 724 S.W 2d 462 (Ark 1987)
193 Krupp v Lincoln Univ , 663 F. Supp 289 (E D Pa 1987)

institution in the fall.[194] An employee who laid down on the job due to a dizzy spell and was then dismissed, was not substantially at fault, when the policy was ambiguous, and did qualify for unemployment benefits.[195] An employee who quit her job to go to graduate school was denied unemployment benefits since she could have returned to her job in the fall.[196]

STUDENTS

Admissions

The Supreme Court[197] refused to hear a case in which the circuit court found that the Educational Testing Service was not an agent of state government requiring due process in the cancellation of the test scores and in the notification of cancellation sent to the law school without explanation.[198]

In a question on admission of a conditionally released prisoner, a suit resulted from the murder and rape of college students and the stabbing of a nonstudent. The plaintiffs alleged the college was responsible for the actions of the prisoner, who was granted admission to the college. The court held that the state was not negligent in releasing the prisoner since it was required to do so by law. Furthermore, the prison physician's negligence by inaccurately completing the prisoner's health forms (citing no emotional instability when it existed) did not extend to students. Finally, the college did not have a duty to restrict the prisoner's activity on campus to protect other students.[199]

A black student suffering from alcoholism brought suit claiming handicap and race discrimination in the university's refusal to readmit him to law school.[200] The court, while acknowledging a recovered alcoholic as being handicapped under 504, ruled that the student could not maintain the required academic standards of the law school and was not an otherwise qualified handicapped individual. Race was not found to be a factor in the readmission decision. In Michigan, a university's doctoral candidate denied admission brought suit against the university

194 University of Toledo v. Ilemy, 507 N.E. 2d 1130 (Ohio 1987), *In re* Sifakis, 519 N.Y.S. 2d 433 (App. Div. 1987)

195 Baxter v. Bowman Gray School of Medicine, 361 S.E. 2d 109 (N.C. Ct. App. 1987)

196 Wurster v. Commonwealth, Unemployment Compensation Bd., 518 A. 2d 350 (Pa. Commw. Ct. 1986)

197 Johnson v. Educational Testing Serv., 105 S. Ct. 3504 (1985)

198 *See* The Yearbook of School Law 1986 at 263, Johnson v. Educational Testing Serv., 615 F. Supp. 633 (D. Mass. 1984)

199 Eiserman v. State, 518 N.Y.S. 2d 608 (N.Y. 1987)

200 Anderson v. University of Wis., 665 F. Supp. 1372 (W.D. Wis. 1987)

under a state civil rights act.[201] The court found that post-traumatic stress disorder was not substantiated by the plaintiff as a handicap. The plaintiff, rather than show that she was an otherwise qualified handicapped individual, claimed the program should establish special admission criteria for her.[202]

In a case on appeal, the plaintiff, a white male, alleged age and race discrimination and sought a preliminary injunction compelling his admission to an institution. The district court ruled that federal action was barred under the principle of *res judicata* since the plaintiff had previously brought proceedings under article 78 in a New York court. The circuit court reversed and remanded the case for trial.[203]

In Connecticut, an applicant denied admission to the university's graduate English department in 1981 brought suit alleging he was discriminated against in violation of the Rehabilitation Act and Age Discrimination Act. The action was dismissed since the English department did not receive federal funds in that year.[204] A Colorado Vietnam War veteran brought charges of violation of due process and seven other claims that stretched back to 1969. The court found the claims, which included the denial of admission to law school in 1983, to be time barred.[205]

In a Kansas case, the federal circuit court heard an appeal by plaintiffs filing action for discrimination in admission based on their, and their father's association with civil rights causes.[206] In a previous case,[207] the court awarded summary judgment to the university, but failed to set attorney's fees. The claims on appeal were dismissed due to lack of jurisdiction until final fees have been set. In Ohio, a student who participated in a summer prelaw qualification program at the university alleged the university was precluded from maintaining as part of his undergraduate record attendance at and achievement in the summer qualification program. The court found no violation of law in the maintenance and consideration of this information in the admissions process. Furthermore, the suit was time barred.[208]

Cases relating to admissions, but involving admission to the profes-

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201 Mich Comp Law § 37 1101

202. Crancer v Board of Regents of Univ of Mich , 402 N W 2d 90 (Mich Ct App 1986)

203 Davis v Halpern, 813 F 2d 37 (2d Cir 1987)

204 Stephamdis v Yale Univ , 652 F Supp 110 (D Conn 1986)

205 Arko v. United States Air Force Reserve Officer Training Program, 661 F Supp 31 (D. Colo 1987)

206 Phelps v Washburn Univ , 807 F 2d 153 (10th Cir 1986)

207. *See* The Yearbook of School Law 1987 at 260, Phelps v Washburn Univ , 634 F Supp 556 (D Ka 1986)

208 Smith v Ohio N. Univ , 514 N E 2d 142 (Ohio Ct App 1986)

sion after completion of a college program, were before the courts. Law school graduates who received an education at an unaccredited law school petitioned for admission to the state bar. The court agreed that the education they had received was substantially similar or functionally equivalent to that provided at an ABA-accredited school. Those students who graduated and had met all other requirements should now be seated at the Nevada Bar even though the school had not received full accreditation.[209] In Illinois, a plaintiff alleged defamation by his former employer based on statements requested by and made to the Character and Fitness Committee of the Illinois Supreme Court. The court found that the committee was a quasi-judicial body, and the statements made to the committee in response to an inquiry were privileged communication.[210]

Financial Aid

A student alleged a breach of contract for the institution's failure to award him a degree removing his obligation to repay the student loan. The Eleventh Circuit[211] affirmed a district court decision[212] and rejected the student's claim.

The question of federal certification of an institution's eligibility to participate in federal student financial aid programs was litigated. A seminary sought review by the district court of a department of education's determination that it did not qualify to participate in student financial assistance programs and had been required to return sums of money previously paid.[213] The circuit court affirmed the department of education's interpretation of the Higher Education Act of 1965 allowing unaccredited institutions eligibility for aid only if students actually transferred credits to each of the three accredited institutions.[214] The seminary was ordered to return previous student financial assistance program payments.

Several cases involved institutional claims against state agencies surrounding their qualification under various student aid programs.[215] A

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209 Bennett v. State Bar of Nev., 746 P.2d 143 (Nev. 1987).

210 Kalish v. Illinois Educ. Ass'n, 510 N.E.2d 1103 (Ill. App. Ct. 1987).

211 Olavarrieta v. United States, 812 F.2d 640 (11th Cir. 1987), *cert. denied*, 108 S. Ct. 152 (1987).

212 *See* The Yearbook of School Law 1987 at 263, Olavarrieta v. United States, 632 F. Supp. 895 (S.D. Fla. 1986).

213 *See* The Yearbook of School Law 1987 at 263, Beth Rochel Seminary v. Bennett, 624 F. Supp. 911 (D.D.C. 1985).

214 Beth Rochel Seminary v. Bennett, 825 F.2d 478 (D.C. Cir. 1987).

215 Board of Trustees of Community College Dist. No. 508 v. Burris, 515 N.E.2d 1244 (Ill. 1987), Duchess Community College v. Regan, 519 N.Y.S.2d 782 (Sup. Ct. 1987), *In re* Bible Speaks, 69 B.R. 368 (Bankr. D. Mass. 1987).

father petitioned the court for relief from a child's tuition support obligation after his son had received failing grades one semester. The father's obligation, paying tuition for each semester the son pursued full-time course work and maintained passing grades, was part of a family court settlement. The state court held that the agreement was not subject to termination, but required a semester by semester determination The father was released of the obligation only for the semester the son had failing grades.[216]

Procedures and qualifications under financial aid programs were also before the courts. In New York, the court affirmed the tie-breaking procedure—ranking SAT scores by the verbal portion of the test—as an equitable method to select scholarship awards.[217] The Supreme Court of Arkansas ruled that the state legislative action, raising the population definition for a rural area for the allowance of service credit in a scholarship program, did not retroactively relieve the plaintiff from his loan obligations under the loan agreement.[218] In Arkansas, the court affirmed the decision of the unemployment compensation board of review and denied unemployment compensation benefits to a college instructor who refused to comply with the college policy requiring employees who default on student loans to set up a repayment schedule. The court ruled that the instructor was guilty of willful misconduct and that the instructor's hardship claim due to family expenses was an insufficient justification for her refusal to comply with policy.[219]

A number of cases involved attempts to have student loans discharged because of undue hardship under chapter seven of the bankruptcy laws. In a number of cases, the debtor was unable to maintain undue hardship because of unemployment,[220] injuries,[221] or other reasons.[222] However, in other cases, the loan was discharged based on a finding of undue hardship,[223] or injury,[224] or on a finding that the co-maker was not held responsible for the repayment.[225] In another

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216 Acrey v Acrey, 356 S E 2d 437 (S C Ct App 1987)

217 Ersbruck v New York State Educ Dep't 520, N Y S 2d 138 (Sup Ct 1987)

218 Arkansas Rural Medical Practice Student Loan and Scholarship Bd v Luter, 729 S W 2d 402 (Ark 1987)

219 Azzari v Commonwealth Unemployment Compensation Bd of Review, 521 A 2d 539 (Pa Commw Ct 1987)

220 Brunner v New York State Higher Educ Serv , 831 F 2d 395 (2d Cir 1987), *In re* Courtney, 79 B R 1004 (Bankr N D Ind 1987), *In re* Lisanti, 77 B R 27 (Bankr W D Pa 1987), Lohman v Connecticut Student Loan Found , 79 B R 576 (Bankr D Vt 1987)

221 *In re* Carter, 77 B R 25 (Bankr E D Pa 1987)

222. *In re* Osborn, 72 B R 691 (Bankr W D Mo 1987)

223. Indiana Univ v Canganelli, 501 N E 2d 229 (Ill App Ct 1986)

224 *In re* Alliger, 78 B R 96 (Bankr E D Pa 1987)

225 Northwestern Univ Student Loan Office v Behr, 80 B R 124 (Bankr N D Iowa 1987)

chapter seven case, conflicting statutes[226] were balanced to reach a ruling. The court ruled that the provision[227] of exhausting the five-year period for pay back before a loan can be declared dischargeable governed.[228] In Rhode Island, the court refused to rule on dischargeability until the state's unemployment compensation commission ruled on the disability.[229]

Chapter thirteen proceedings were also before the court. The court rejected a pay back plan because allocations in other areas of the debtors budget were outside specifications under the provisions.[230] In one case, the repayment plan for a portion of the debt was approved and attorney's fees were awarded to the debtor because of the way the government filed claims.[231] Several cases upheld the department of education's action to garnish federal tax refunds to meet defaulted loan obligations.[232]

The fulfillment of service contracts after graduation as part of the award of a scholarship was also litigated. Several debtors were found to be in breach of their service contract by failing to: serve in a health manpower shortage area;[233] a medical residency for longer than one year;[234] locate in a particular area;[235] and choose a specific area of specialization.[236]

A case involved harassment by a collection agency in its attempt to collect a defaulted loan.[237] The plaintiff brought action under the Fair Debt Collections Practices Act, claiming bad faith and harassment. The court held that early morning calls were a bona fide error. Also, the university could withhold the college transcripts if loan payments were in default. In this particular case, since the debts had been discharged in bankruptcy court, withholding the transcripts was misleading as a matter of law. The case was remanded to the lower court for a ruling on state claims.

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226 11 U.S.C. § 523(a)(8), 42 U.S.C. § 254o(c)(3)

227 42 U.S.C. § 254o(c)(3)

228 *In re* Brown, 79 B.R. 789 (Bankr. N.D. Ill. 1987)

229 *In re* Wilson, 76 B.R. 19 (Bankr. D.R.I. 1987)

230 *In re* Suthiff, 79 B.R. 151 (Bankr. N.D.N.Y. 1987), *In re* Makarchuk, 76 B.R. 919 (Bankr. N.D.N.Y. 1987)

231 *In re* Cleveland, 80 B.R. 204 (Bankr. S.D. Cal. 1987)

232 Gerrard v. United States Office of Educ., 656 F. Supp. 570 (N.D. Cal. 1987), Swaney v. Secretary, United States Dep't of Educ., 664 F. Supp. 172 (D. Del. 1987)

233 United States v. Bills, 822 F.2d 373 (3d Cir. 1987). *See* The Yearbook of School Law 1987 at 263, United States v. Bills, 639 F. Supp. 825 (D.N.J. 1986), United States v. Turner, 660 F. Supp. 1323 (E.D.N.Y. 1987)

234 United States v. Redovan, 656 F. Supp. 121 (E.D. Pa. 1986)

235 Fisher v. Bowen, 659 F. Supp. 784 (D. Or. 1987), United States v. Fowler, 659 F. Supp. 624 (N.D. Cal. 1987)

236 Board of Trustees of State Inst. of Higher Learning v. Johnson, 507 So. 2d 887 (Miss. 1987)

237 Juras v. Aman Collection Serv., Inc., 829 F.2d 739 (9th Cir. 1987)

Several cases involved payment for courses offered to military personnel. A California case brought before the court by the United States to recover alleged overpayments of tuition made to a college providing study for active military duty personnel was ruled time barred. The court held the statutory period began when the responsible office could have known of the overpayment, rather than at the later date when the veteran's administration issued a report.[238] In Ohio, a college filed an action to recover allegedly unpaid tuition fees for an extension course taken by a serviceman. The court ruled in favor of college. After three years, the serviceman appealed the denial of his motion to vacate a default judgment. The court of appeals held that since the serviceman had waited three years to file suit, Ohio procedural law offered no remedy.[239]

First Amendment

Freedom of Religion. The university's policy requiring foreign students to carry health insurance did not violate equal protection, due process, or the first amendment.[240] The students were unable to prove that the policy interfered with religious freedom. The Sixth Circuit dismissed the case as moot since the students were no longer enrolled at the university.[241]

Freedom of Speech. The Sixth Circuit affirmed[242] a district court ruling[243] that a state-operated art theater's cancellation of a controversial film, at the request of a state senator, was a state action and an unconstitutional deprivation of students' first amendment rights to receive information and ideas.

Several cases involved controversies surrounding institutional policies toward corporations doing business in South Africa. Students from the University of Virginia brought suit seeking an injunction against enforcement of a lawn regulation which prohibited the erection of symbolic shanties on certain areas of the university's campus.[244] The court held that the university regulations were vague and too broad to satisfy the university's legitimate interest in maintaining the aesthetics of the grounds, and the alternative locations provided for shanties did not provide meaningful alternative channels for expression. In a later case,

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238 United States v. Gavilan Joint Community College Dist., 662 F. Supp. 309 (N.D. Cal. 1986)

239 Urbana College v. Conway, 502 N.E. 2d 675 (Ohio Ct. App. 1985)

240 Ahmed v. University of Toledo, 664 F. Supp. 282 (N.D. Ohio 1986)

241 Ahmed v. University of Toledo, 822 F. 2d 26 (6th Cir. 1987)

242. Brown v. Board of Regents of Univ. of Neb., 669 F. Supp. 297 (D. Neb. 1986)

243 *See* The Yearbook of School Law 1987 at 264. Brown v. Board of Regents of Univ. of Neb., 640 F. Supp. 674 (D. Neb. 1986)

244 Students Against Apartheid Coalition v. O'Neil, 660 F. Supp. 33 (W.D. Va. 1987)

students brought action to enjoin the enforcement of the university's revised lawn-use policy, which resulted in the removal of shanties from the front of the Rotunda.[245] The court found the revised policy as a content-neutral regulation aimed at protecting the university's aesthetic concern in architecture, while permitting students a wide array of alternative modes of expression. The revised policy eliminated vagueness and did not violate constitutional protections of free speech.

In another apartheid case, a student group brought suit challenging the university's order to remove shanties erected on campus in protest of South Africa's apartheid system and the university's investment policies.[246] The court held that the shanties presented a symbolic message protected under the first amendment. The court also determined that the campus is a public forum for students, but that the university has the authority to appropriately regulate student expression. The order making the shanties portable for removal at night served all interests and was permissible.

In a related case, publishers of an independent student newspaper challenged the university rule prohibiting plaintiffs from personally distributing their newspaper containing third party advertisements at student organization tables on campus. The court ruled that distribution from unmanned stands did not violate freedom of speech, press, or association under the United States or Texas constitutions.[247] A federal district court ruled that it was appropriate to require a permit for the distribution of literature on campus.[248]

The level of constitutional guarantees for commercial speech was also litigated. A corporation and students brought suit seeking declarative and injunctive relief against institutions of higher education and university officials over the refusal to permit the corporations to conduct product demonstrations in student dormitory rooms. The district court found that the student rooms were limited public forums with the intent of facilitating social, cultural, and educational activities, not commercial speech. Refusal was thus ruled as viewpoint neutral and consistent with the institution's educational mission.[249]

In Arkansas, students brought suit against a student newspaper alleging refusal to print sexual preference in classified advertisements was a violation of the first amendment. The court determined that the

245 Students Against Apartheid Coalition v. O'Neil, 671 F. Supp. 1105 (W.D. Va. 1987)

246 University of Utah Students Against Apartheid v. Peterson, 649 F. Supp. 1200 (D. Utah 1986)

247 Texas Review Soc'y v. Cunningham, 659 F. Supp. 1239 (W.D. Tex. 1987)

248 City of Parma v. Manning, 514 N.E. 2d 749 (Ohio Ct. App. 1986)

249 Fox v. Board of Trustees of State Univ. of N.Y., 649 F. Supp. 1393 (N.D.N.Y. 1986)

newspaper was not an agent of state government and its editorial policy does not represent state action implicating constitutional guarantees.[250]

Freedom of Expression. A gay student rights association brought suit against university officials after being denied funding by the student senate.[251] The defendants held that since the organization had not sought funding for two years, the case was moot. Instead, the court ruled that given the fact that the funding procedures had not changed and the organization was still active, the issue warranted examination. The court held that the organization was entitled to no relief since student legislative denial of funding was rationally related to the distribution of limited funds in a manner which best benefited the entire campus. Denial of funds did not infringe upon the association's constitutional rights.

Dismissal

Disciplinary Dismissal. Students at a private college who were dismissed without a hearing for participating in a sit-in, brought suit against the president and the dean of the college under civil rights statutes alleging discrimination and denial of due process rights.[252] The Second Circuit, relying on an earlier decision[253] and reversing the lower court, found state action since the college adopted a disciplinary code, which was on file with the state, in compliance with the state code In Pennsylvania, a student who received a suspended suspension for a major violation of the student code of conduct, lacked standing to raise a due process claim because he was not dismissed.[254]

A law student brought suit against three state university officials for alleged deprivation of due process and first amendment rights as a result of a disciplinary suspension.[255] The court concluded that the student, who attended a rally as a "legal observer," was not denied due process since he had the opportunity to state his intentions to university officials before the demonstration and was warned that all who remained in the building after the 2:00 p.m. closing would be arrested. First amendment rights, according to the court, were not violated since being prevented from entering university property or attending university events would not preclude participation in political activity or speaking on any subject at other locations.

In a case involving academic dishonesty, two students suspended

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250 Smn v The Daily Nebraskan, 829 F 2d 662 (8th Cir 1987)
251 Gay and Lesbian Students Ass'n v Gohn, 656 F Supp 1045 (W D Ark 1987)
252 Albert v Carovano, 824 F 2d 1333 (2d Cir 1987)
253 Coleman v Wagner College, 429 F 2d 1120 (2d Cir 1970)
254 Beaver v Ortenzi, 524 A 2d 1022 (Pa Commw Ct. 1987)
255. Rosenfeld v Ketter, 820 F 2d 38 (2d Cir 1987)

from the university's school of veterinary medicine, brought action seeking injunctive relief and damages for violations of their constitutional rights.[256] The court held that the students were advised in writing of charges of academic dishonesty, given at least seventy-two hours notice prior to a hearing, allowed to indirectly question witnesses, and permitted to be present during testimony and they were afforded a fair hearing. Furthermore, evidence presented at the hearing supported the allegations.

A high school student sued to gain a hearing after being discharged from a summer college program for use of marijuana and alcohol.[257] The student, who admitted to use of illicit substances, was properly discharged based on the summer college code used for high school students. The court found that a private institution's receipt of financial assistance from the state alone did not constitute sufficient state involvement to invoke requirements of constitutional due process.

At a private Christian college, a student who had met all requirements and paid tuition was denied his diploma when a rumor circulated that he was a homosexual.[258] The college imposed an order requiring the student to seek counseling. In compliance, the student saw a therapist. However, during the sessions the student revealed personal information to the therapist, believing the sessions were confidential, when, in fact, the therapist reported the sessions to the college. The student brought suit against the college and the counselor for breach of contract and violation of the Mental Health and Development Confidentiality Act.[259] The court found that when the college admitted the student, an implied contract was invoked which was violated when the college refused graduation. The therapist violated the Confidentiality Act by disclosing the student's personal thoughts.

Academic Dismissal. In Minnesota, a graduate student, academically dismissed from a doctoral degree program in psychology, sued the university for denial of procedural and substantive due process, age, sex, and emotional handicap discrimination, and pendant state claims.[260] The Eighth Circuit, citing *Ewing*.[261] noted that academic decisions are subject to judicial review which is limited to inquiry as to whether the process was a departure from the norm, arbitrary, or capricious. The court held that the plaintiff was unable to show that the procedures

256. Nash v. Auburn Univ., 812 F 2d 655 (11th Cir. 1987).

257. Stone v. Cornell Univ., 510 N Y S 2d 313 (App. Div. 1987)

258. Johnson v. Lincoln Christian College, 501 N E 2d 1380 (Ill. App. Ct. 1986)

259. Confidentiality Act, Ill. Rev. Stat. 1985 ch. 911/2 §§ 802, 803, 805

260. Shuler v. University of Minn., 788 F 2d 510 (8th Cir. 1986), *cert. denied*, 107 S. Ct. 932 (1987); *See* The Yearbook of School Law 1987 at 267.

261. *See* The Yearbook of School Law 1986 at 271, Regents of the Univ. of Mich. v. Ewing, 106 S. Ct. 507 (1985)

followed to grieve her oral examination were different from common practices or were arbitrary or capricious actions.

A graduate student, who allegedly fabricated data for a master's thesis, brought a complaint to the court that he was not afforded due process when the university's board of regents rescinded his degree. The district court ruled in favor of the degree holder.[262] The circuit court, vacating the decision, held that the board of regents had the authority to rescind the academic degree under Michigan law.[263] Additionally, the student was afforded due process through a hearing at the university even though his attorney was not allowed to examine and cross-examine witnesses.

A graduate student terminated from a doctoral program brought civil rights action against the university and university officials.[264] The student filed a section 1983 action alleging discrimination based on national origin contrary to the equal protection clause. The court, on appeal, remanded the case, holding that the suit against the university was barred by the eleventh amendment. However, injunctive relief against the officials for reinstatement was available to the plaintiff on remand.

A special education doctoral student having academic difficulty was advised to switch to a program of study for students not wishing to pursue a doctorate degree. The program required comprehensive exams before graduation. The student failed the exam and was dismissed from the program. The student brought suit claiming that a promise of graduation by the academic advisor was a promissory estoppel. Furthermore, she claimed her dismissal constituted discrimination based on alleged statements and actions of the academic advisor and his wife. The court, affirming the lower court's decision, awarded summary judgment to the defendants.[265]

A black female physician terminated from a medical fellowship program at a university after excessive absenteeism and inadequate performance, brought a civil rights action against the university. The court ruled that her dismissal was not a pretext of discrimination. While she was not granted a formal hearing before the dismissal, she had been given at least two written evaluations expressing dissatisfaction and an opportunity to discuss her performance with the faculty, thus she could

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262 *See* The Yearbook of School Law 1985 at 343, Crook v. Baker, 584 F. Supp. 1531 (E.D. Mich. 1984)

263. Crook v. Baker, 813 F.2d 88 (6th Cir. 1987)

264. Kashani v. Purdue Univ., 813 F.2d 843 (7th Cir. 1987), *cert. denied*, 108 S. Ct. 141 (1987)

265. Cuddihy v. Wayne State Univ. Bd. of Governors, 413 N.W.2d 692 (Mich. Ct. App. 1987).

not claim she was denied due process.[266]

A student brought a section 1983 civil rights action against university personnel after being dismissed from an academic program.[267] The court, granting summary judgment, held that the student, dismissed from the program for poor academic performance after graduation requirements changed, was not denied due process. Also, a change in degree requirements is not a breach of contract when the university's bulletin contained a clause stating that the university reserved the right to modify requirements.

A nursing student at a private college was expelled due to the student's obesity.[268] The student brought action alleging wrongful expulsion, and the college moved for summary judgment. The court found the college, a private institution receiving no federal funds, was not a "state actor" subject to due process requirements. Additionally, claims of discrimination under the Rehabilitation Act can only be sought when a specific program receives federal funds. However, the student could claim intentional emotional distress and a right to privacy since college officials, before dismissal, badgered the student into losing weight. Furthermore, while private colleges are afforded wide discretion in enforcing standards, there is no basis for humiliation nor did the student's girth preclude her proficiency.

A case brought before the court by a professor stemmed from the academic dismissal of a student. The student had alleged discrimination by the university against Hispanic women. The professor wrote an affidavit supporting the claims of the student, and the university filed a defamation suit against the student, her attorney, and the professor. In the district court, the professor moved for a preliminary injunction in the civil rights action against the state judge and the private university. His motion was denied.[269] On appeal, the court held that injunctive relief is allowed against state judicial officers acting in official capacity, but the professor failed to state a cause of action cognizable under section 1983.[270]

A former medical student brought suit against officials at a university alleging they refused to re-admit her following an authorized one-year leave of absence. The court held that the letter granting her leave did not constitute an express contract. Actions by university officials were not unreasonable or arbitrary, and the student was not denied substantive

266 Hankins v. Temple Univ., 829 F.2d 437 (3d Cir. 1987)

267. Hammond v. Auburn Univ., 669 F. Supp. 1555 (M.D. Ala. 1987)

268 Russell v. Salve Regina College, 649 F. Supp. 391 (D.R.I. 1986)

269 *See* The Yearbook of School Law 1987 at 239, Paisey v. Vitale, 634 F. Supp. 741 (S.D. Fla. 1981)

270 Paisey v. Vitale, 807 F.2d 889 (11th Cir. 1986)

due process when officials balanced the student's ability to complete her coursework with the potential danger for patients.[271]

Other Constitutional Privileges

In an arrest case, a male Hispanic, wrongfully arrested, filed a civil rights suit against the city, the university, and their police as well as other state defendants. The court ruled that the eleventh amendment barred suit. The court held that mention of race to determine the identity of the suspect does not warrant racial discrimination.[272] A student living in a university-owned apartment sought appeal of his possession of marijuana and cocaine conviction. He argued that police officers wrongfully entered his apartment when he answered "Yeah" at their knock on the door. The court agreed with the student and reversed his conviction since evidence was obtained in violation of the knock and wait rule.[273]

Voting rights were before the courts when a town moved a polling site to an off-campus location and college students sued. The court ruled that the new location, while less convenient, did not impose a substantial burden on students and did not constitute a violation of their right to vote.[274] In another polling case, the county commissioner's rejected university students' voter registration. Students brought a class action suit against the state and county election boards and the independent commissioners for injunctive relief to enable students residing at the state university to vote as residents of the community. The court affirmed the lower court opinion[275] by upholding the New York election law definition of "residence" as constitutionally permissible so long as "he" is read to include both men and women and the word "permanent" is read to mean physical presence with intent to remain for a time. The court affirmed injunctive relief and ruled that the fourteenth amendment does not permit the state to discriminate against students by denying them the right to vote or by subjecting them to more rigorous registration requirements than are generally applied.[276]

In Washington, female student athletes and coaches brought sex discrimination action under the state's Equal Rights Amendment[277] against a state university. The court ruled in favor of the plaintiffs and awarded damages, injunctive relief, attorney's fees, and costs. The

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271 North v. State, 400 N.W.2d 566 (Iowa 1987)
272 Meza v. Lee, 669 F. Supp. 325 (D. Nev. 1987)
273 State v. Sturgeon 730 P.2d 93 (Wash. Ct. App. 1986)
274 Taylor v. Angarano, 652 F. Supp. 827 (S.D.N.Y. 1986)
275 *See* The Yearbook of School Law 1986 at 264, Williams v. Salerno, 622 F. Supp. 1271 (S.D.N.Y. 1985)
276 Williams v. Salerno, 792 F.2d 323 (2d Cir. 1986)
277 West RCWA §§ 49.60.010

plaintiffs appealed since the damage award did not include the football program in calculations for participation opportunities, scholarships, and distribution of nonrevenue funds. The appellate court held that excluding football is prohibited, but that sports generated revenue did not come under the acts.[278]

In a case involving city zoning laws, students appealed their conviction for violating a zoning ordinance which limited occupancy of single family dwellings. The court ruled that the occupancy ordinance did not deprive students of property without due process under the state constitution. However, the students could not receive cumulative fines or penalties for a single, but continuing, violation of the zoning ordinance.[279]

LIABILITY

Personal Injury

The Colorado Supreme Court overturned a case having significance for college and university liability. A lower court had ruled that the university was liable for an accident which rendered a student a quadraplegic. The accident occurred on a trampoline located on property leased by the school to a fraternity.[280] Citing the demise of *in loco parentis* the court on appeal reversed, finding that the university's duty did not go beyond reasonable maintenance of the facility to a duty to protect the student from taking unreasonable actions.[281] In a related case, a state court found that a private university was not liable for injury during a prank by the fraternity.[282]

In another case, the circuit court found that the district court[283] too narrowly defined the provisions of liability for serving alcohol to minors. The court held that the "accomplice" to the crime of consumption of alcoholic beverages by a minor must meet two criteria to establish civil liability.[284] First, they must intend to promote or facilitate the consumption; and second, they must aid or have agreed to aid in the minor's consumption.[285] In a related case, the court found that neither the national fraternity nor its local chapter was liable for the death of a

278 Blair v. Washington State Univ., 740 P.2d 1379 (Wash. 1987)
279 People v. Multari, 517 N.Y.S.2d 374 (App. Div. 1987)
280 *See* The Yearbook of School Law 1986 at 194, Whitlock v. University of Denver, 721 P.2d 1072 (Colo. Ct. App. 1985)
281 University of Denver v. Whitlock, 744 P.2d 54 (Colo. 1987)
282 Rabel v. Illinois Wesleyan Univ., 514 N.E.2d 552 (Ill. App. Ct. 1987)
283 *See* The Yearbook of School Law 1987 at 270, Fassett v. Poch, 625 F. Supp. 324 (E.D. Pa. 1985).
284 Fassett v. Delta Kappa Epsilon, 807 F.2d 1150 (3d Cir. 1986)
285 *Id.* at 1161

member resulting from overconsumption by failing to establish a policy for underage drinking in the chapter house.[286]

In university sponsored activities, plaintiff's have prevailed against the institution in several cases. A student, injured while participating in a sack race using plastic bags during a physical education class, was awarded damages.[287] Additionally, a cheerleader who shattered an elbow during practice had not removed institutional liability by participating in a voluntary activity.[288] However, an award was denied to a student who voluntarily participated in a dive[289] since the injury could not have been foreseen. An institution was not found liable for student injuries during recreational sports[290] or injuries that occurred while sledding on a dining room tray.[291] The university was not held liable when a member of its basketball team punched and injured an opponent during a game.[292] Claims in the death of a football player who collapsed during practice are still pending.[293]

Several defamation suits were before the courts. In New York, the court found that the academic vice president's referral to the plaintiff as a "clown" because of his offer challenging anyone in the university to out teach him, was not defamatory in the context it was spoken.[294] In another suit, the court ruled that the insurance company could not intervene prior to an award of damages by the jury.[295]

The courts refused to hold the institution liable in a pedestrian's fall on campus[296] or in the shooting deaths of people in a university hospital emergency room.[297] However, a private institution was held liable for damage done by water expelled onto a homeowner's land through a storm sewer originating in the institution's parking lot.[298]

Worker's Compensation

In one case, the court found that the sole remedy for a cleaning worker who was injured on the job was with worker's compensation

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286. Andres v. Alpha Kappa Lambda Fraternity, 730 S.W.2d 547 (Mo. 1987)
287. Yarbrough v. City Univ. of N.Y., 520 N.Y.S.2d 518 (Ct. Cl. 1987)
288. Kirk v. Washington State Univ., 746 P.2d 285 (Wash. 1987)
289. Whitlock v. Duke Univ., 829 F.2d 1340 (4th Cir. 1987), *aff'g, see* The Yearbook of School Law 1987 at 269, 637 F. Supp. 1463 (M.D.N.C. 1986)
290. Swanson v. Wabash College, 504 N.E.2d 327 (Ind. Ct. App. 1987)
291. Pizzola v. State, 515 N.Y.S.2d 129 (App. Div. 1987)
292. Townsend v. State, 237 Cal. Rptr. 145 (Ct. App. 1987)
293. Sorey v. Kellett, 673 F. Supp. 817 (S.D. Miss. 1987).
294. Depuy v. St. John Fisher College, 514 N.Y.S.2d 286 (App. Div. 1987)
295. Employers Ins. of Wausau v. Lavender, 506 So. 2d 1166 (Fla. Dist. Ct. App. 1987)
296. McIlrath v. College of St. Catherine, 399 N.W.2d 173 (Minn. Ct. App. 1987)
297. Beck v. Kansas Adult Auth., 735 P.2d 222 (Kan. 1987)
298. Jacobs v. Pine Manor College, 504 N.E.2d 639 (Mass. 1987)

since he was a special employee of the institution.[299] A part-time soccer coach was found to be employed for instructional purposes, not as a professional athlete, and was qualified for compensation.[300] However, in another case, the court held that the mental disability and stress allegedly produced by being a basketball coach and resulting in an attempted suicide was not covered by the state's compensation laws.[301]

In Texas, the court found that an employee who injured her back while carrying boxes in an office move was covered under the Worker's Compensation Act.[302] A cabinet maker whose back injury was related to tasks on the job, received a compensation award.[303] However, an employee presenting a paper at a conference did not receive benefits from an injury received while bicycling from the conference to a campsite.[304]

Contracts

Disputes over various contracts between the institution and purveyors were voluminous. Contracts involving catering services saw a dispute over termination of the contract[305] and a cater's breach of contract for failing to provide liability insurance.[306] In another case, the institution was successful in the recovery of real estate taxes mistakenly paid after the property was sold.[307] In Alabama, the court found that the removal of the signature page while a will was in the possession of the testator negated the will.[308] An attorney's legal fees were not due from the college when he knew he would be called as a key witness in the case against the college.[309]

A number of cases involved contracts where the work or materials were considered to be defective.[310] A student failed in a breach of contract suit because he knew at the time of application for a masters degree that there was no guarantee that the application for a joint

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299 Cameli v Pace Univ., 516 N Y S 2d 228 (App Div 1987)

300 *In re* Curto, 517 N Y S 2d 107 (App Div 1987)

301 Lather v Huron College, 413 N W 2d 369 (S D 1987)

302 Panola Junior College v Estate of Thompson, 727 S W 2d 677 (Tex Ct App 1987)

303 Specialty Cabinet Co., Inc v Montoya, 734 P 2d 437 (Utah 1986)

304 Virginia Polytechnic Inst and State Univ v Wood, 360 S E 2d 376 (Va Ct App 1987)

305 *In re* Shamrock Serv., Inc., 514 So 2d 921 (Ala 1987)

306 Roblee v Corning Community College, 521 N Y S 2d 861 (App Div 1987)

307 Case Western Reserve Univ v Friedman, 515 N E 2d 1004 (Ohio Ct App 1986)

308 Board of Trustees of the Univ of Ala. v Calhoun, 514 So 2d 895 (Ala 1987)

309 Brill v Friends World College, 520 N Y S 2d 160 (App Div 1987)

310 Brandt v Schal Assoc., Inc., 664 F Supp 1193 (N D Ill 1987), Brigham Young Univ v Paulsen Constr Co., 744 P 2d 1370 (Utah 1987), Board of Trustees Santa Fe Community College v Caudill Rowlett Scott, Inc., 513 So 2d 206 (Fla Dist Ct App 1987), City Univ of N Y v Finalco, Inc., 514 N Y S 2d 244 (App Div 1987), South Dakota Bldg Auth v. Geiger-Berger Assoc., 414 N W 2d 15 (S D 1987)

degree would be approved.[311] In another case the court ruled that wages paid to the installers of a phone system in existing conduits, or conduits installed by the university, were properly set at the rate for telecommunication installation as opposed to the construction rate.[312] The awarding of contracts from bids were also disputed.[313]

A number of cases involved leases. In one case, the court found that a manager of a property was entitled to his commission in the renegotiations of an old lease.[314] The leasee was held liable for improper drilling resulting in damage to the well on an institution's land.[315] In New York, the court found that the contract for insurance did not cover damage awards for employee related injuries.[316]

Educational Malpractice

While there were no educational malpractice cases this year, a related case found that sovereign immunity extended to a resident physician charged with medical malpractice while in training at the university hospital.[317]

Medical Malpractice

In one case, the court dismissed the patient's suit for breach of contract and fiduciary duty in the implantation of a Dalkon Sheild contraceptive device by a university doctor.[318] Several cases involved charges of negligence in the diagnosis of illness or treatment.[319] In a case involving both malpractice and assault charges in the use of psychiatric treatment and the prescription of drugs, the court ruled in favor of the

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311 Voight v Teachers College, Columbia Univ., 511 N Y S 2d 880 (App Div 1987)

312 C & C Teletronics, Inc v United States W Information Sys., 414 N W 2d 758 (Minn Ct App 1987)

313 Insulation Technologies, Inc v Board of La State Univ and Agricultural and Mechanical College, 504 So 2d 895 (La Ct App 1987), A-Line Equip v Lower Columbia College, 741 P 2d 1057 (Wash Ct App 1987), G M McGrossin, Inc v West Virginia Bd of Regents, 355 S E 2d 32 (W Va 1987)

314 Board of Regents of Univ of Ga v A B & E, Inc., 357 S E 2d 100 (Ga Ct App 1987)

315 State Industrial Comm'n v Harlan, 413 N W 2d 355 (N D 1987), Pen-Nor, Inc v Oregon Dep't Higher Educ., 734 P 2d 395 (Or Ct App 1987), Robinson v City College of Chicago, 656 F Supp 555 (N D Ill 1987)

316 Brooklyn Law School v Aetna Casualty & Surety Co., 661 F Supp 445 (E D N Y 1987)

317 DeRosa v Shands Teaching Hosp & Clinics, 504 So 2d 1313 (Fla Dist Ct App 1987)

318. Bell v Ostergard, 657 F Supp 173 (D N M 1987)

319 Pratt v University of Minn Affiliated Hosp & Clinics, 403 N W 2d 865 (Minn Ct App 1987); Arnson v Superior Court, 236 Cal Rptr 347 (Ct App 1987)

defendant, reasoning that other medical opinions negated the presumption of reliance on the defendant.[320]

Negligence

The lead off case involves a student who suffered injuries from heavy drinking during a fraternity initiation ceremony.[321] The student was forced to drink a pitcher of beer, part of an eight ounce bottle of whiskey and several drinks at a tavern. Approximately fourteen or fifteen hours after passing out, the student had a blood/alcohol content of .25 and subsequently was diagnosed as having a partial disability from neurological damage which hampered arm and hand motions. On appeal the court found that the fraternity had a duty to refrain from requiring initiates to participate in a dangerous act of drinking after intoxicated. The breach of duty gave rise to a valid claim under common law negligence. In another case involving alcohol, a student who had consumed alcohol while at a football game was found negligent when he was injured after he vaulted over a wall and fell thirty feet to a stairway below.[322] The university was not found negligent because it had a policy prohibiting consumption at the stadium but had not enforced it in the case of the plaintiff.

Students were also involved in other negligence claims against institutions. In California, a widow brought a negligence claim against the institution in the drowning of her husband during the final dive in a scuba diving class.[323] The appeals court, reversing the lower court, ruled that the waiver signed by the student did not include negligence on the part of the college. A Florida court reversed and remanded a case where a student drowned at a university owned lake after renting a canoe and a life jacket.[324] The appeals court found a valid common law duty which was breached. No instruction or warnings were given nor was a life guard on duty at the dock where the canoes were dispensed, but those precautions were taken at the sailboat dock. However, an institution was not found negligent in the injuries received by a child who was injured when he pushed on and shattered a glass panel in a storm door at the entrance to his campus apartment.[325] The plaintiff alleged that the university was negligent because they replaced the screen, which had been repeatedly pushed in by his children, with a glass panel. The court

320. Lackey v. Bressler, 358 S.E. 2d 560 (N.C. Ct. App. 1987)
321. Quinn v. Sigma Rho Chapter of Beta Theata Pi Fraternity, 507 N.E. 2d 1193 (Ill. App. Ct. 1987)
322. Allen v. Rutgers State Univ., 523 A 2d 262 (N.J. Super. Ct. App. 1987)
323. Scroggs v. Coast Community College Dist., 239 Cal. Rptr. 916 (Ct. App. 1987)
324. Brown v. Florida State Bd. of Regents, 513 So. 2d 184 (Fla. Dist. Ct. App. 1987)
325. Bolkhir v. North Carolina State Univ., 355 S.E. 2d 786 (N.C. Ct. App. 1987)

found negligence could only be shown if there was proof that the glass panel was defective since the glass panel was standard for those types of storm doors.

Several cases involved negligence brought by those outside the institution. In an Alaska case remanded on appeal, the contractor claimed negligence resulting in economic loss when the university failed to adequately brace a trench where the contractor was to work.[326] The loss claim is for time spent away from his company when employees were injured when the trench collapsed. In another case, the court reversed and remanded a summary judgment in favor of the university in the negligence claim of a pedestrian injured when she was pinned against a wall by an auto and the wall collapsed.[327] But a negligence claim over a one inch rise in the concrete at the entrance of a building alleged to be the cause of a fall was dismissed based on the concept of plain view.[328]

Indemnification

In North Carolina, the court found that the insurance policy allowed for coverage under a malicious prosecution claim, but public policy prohibited coverage under punitive damages claims arising out of intentional torts.[329] The case involved the employer obtaining a restraining order against an employee in a dispute over control of a "thermotron" received as a gift from Japan.

In another case, the insurance company brought a third party action against the university and a contractor to recover damages it paid out as part of a settlement. The insurance company claimed that the university pilot was negligent in the crash of the helicopter. The court found the claim barred by the eleventh amendment.[330]

Antitrust

The Supreme Court refused to hear a case that the circuit court had affirmed.[331] The case involved the court's finding that the failure of the American Chiropractic Association's denial of accreditation of a college of "straight chiropractics" did not violate antitrust statutes.

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326 Mattingly v. Sheldon Jackson College, 743 P 2d 356 (Alaska 1987)

327 Teider v. Little, 502 So. 2d 923 (Fla. Dist. Ct. App. 1987)

328. Emory Univ. v. Duncan, 355 S.E. 2d 446 (Ga. Ct. App. 1987)

329. St. Paul Mercury Ins. Co. v. Duke Univ., 670 F. Supp. 630 (M.D.N.C. 1987)

330. Firemens Fund Ins. Co. v. Bell Helicopter Textron, 667 F. Supp. 583 (E.D. Tenn. 1987).

331. Sherman College of Straight Chiropractic v. American Chiropractic Ass'n, 654 F. Supp. 716 (N.D. Ga. 1986), *aff'd*, 813 F. 2d 349 (11th Cir. 1987), *cert. denied*, 108 S. Ct. 160 (1987).

Patent and Trade Mark

In a dispute over the filing date of a patent, a university professor lost an appeal of a decision by the United States Patent and Trademark Office which awarded priority of invention to a Japanese inventor.[332] A Minnesota court, affirming a lower court,[333] found no basis for error in the courts original decision granting the licensor, the university, an award of royalties and fees from the licensee under a patent licensing agreement.[334] In a case where the national fraternity prevailed in a trademark claim against a local former chapter of the fraternity, the court denied an award of attorney's fees where there was no intent to violate the trade mark or become involved in deception.[335]

332 Griffith v Kanamaru, 816 F 2d 624 (Fed Cir 1987)

333 *See* The Yearbook of School Law 1987 at 271, Regents of the Univ of Minn v Medical, Inc , 382 N W 2d 201 (Minn Ct App 1986), *cert denied*, 382 N W 2d 201 (Minn Ct App 1986), *cert denied*, 107 S Ct 307 (1986)

334 Regents of the Univ of Minn v Medical Inc , 405 N W 2d 474 (Minn. Ct App 1987), *cert denied*, 108 S Ct 495 (1987)

335 Kappa Sigma Fraternity v Kappa Sigma Gamma Fraternity, 659 F Supp 117 (D.N H 1987)