

Trends in Defamation Law: Let the Advisor Beware

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Although most lawsuits brought by students against the institution are grounded upon contract and due process theories, the courts have exhibited a willingness to consider students' suits using tort theories when the students allege claims of defamation. This article examines not only lawsuits where students have sued the institution for defamation but also examines recent changes in the law of defamation that have engendered an increase in litigation and an increase in the risk of liability for faculty and advisors.

When students sue the institution, most ground their suits on theories of contract or due process. The terms of the contract between the student and the institution are typically found in its handbook or bulletin. Also, because a formal contract is rarely prepared, additional terms of the contract may be implied by custom and usage. Students at state-supported institutions often ground their suits on allegations of a denial of constitutionally mandated due process in addition to claims of breach of contract. These students claim that the institution took action against them, either academic or disciplinary in nature, without first according them certain procedures to insure fairness (King & Latourette, 1988). Tort theories of recovery, on the other hand, are less frequently used by students in suits against the institution, except in clear-cut cases where, for example, physical injury resulted from the negligence of its personnel. Fowler (1984) suggests, however, that the student-institution relationship would be more realistically and consistently defined by reliance upon tort theories rather than contract and due process analysis.

Tort cases are civil actions, other than contract claims, for which the law may permit the recovery of damages. Such cases involve the breach of a duty where the wrongdoer may face liability to the injured party for some damage that the wrongdoer is found to have caused (Prosser, 1971). Those who espouse the use of tort law in defining the relationship between the student and the institution propose that, because the relationship is one of trust, it is similar to a fiduciary relationship.

A fiduciary is one whose function it is to act for the benefit of another as to matters rele-

vant to the relation between them. Since schools exist primarily for the education of their students, it is obvious that professors and administrators act in a fiduciary capacity to the students. (Seavey, 1957, p. 1407)

Goldman (1966), also a proponent of the use of tort theory to explain the relationship between the student and the institution, analogizes the relationship to that between doctor and patient or attorney and client. He notes, "All of the elements of a fiduciary relation are present in the student-university relationship. It is no small trust—no small display of confidence to place oneself under the educational mentorship of a particular university" (p. 671).

Notwithstanding the wisdom and logic of using tort theory to analyze the student-institution relationship, the courts generally have not embraced the idea. Even in those instances where students have raised tort issues, the courts either dismissed them or tended to analyze the complaint under contract law or constitutional law principles. In one such case a law student sued the institution for failing to warn her that she was unlikely to complete law school successfully due to poor grades. She charged the institution with breaching its duty to warn her of her impending failure. The court, however, found no such duty and treated her complaint as a matter of contract law (*Maas v. The Corporation of Gonzaga University*, 1980).

To be sure, an examination of the case law reveals that the courts have, on occasion, entertained students' lawsuits when the students charged the institution with the torts of negligence or fraud and misrepresentation. But it also appears from these cases that the institution's conduct was such that the court had no choice but to apply a tort theory; contract and due process analysis simply had no bearing.

Despite the courts' apparent antipathy toward engaging in tort analysis in student-institution disputes, it appears that with regard to the tort of defamation, the courts are somewhat more receptive to hearing students' complaints. Although the case law reveals that students do not often prevail in such suits, the mere fact that courts are willing to listen to students' claims of defamation makes it important that those who

work most closely with students, that is, faculty and advisors, have some understanding of the basic elements of the tort of defamation as well as the case law where students have brought such charges. Moreover, recent judicial decisions involving claims of defamation in the employment setting, often involving recommendations and employment references, as well as claims of defamation in statements of opinion will undoubtedly affect the course of future suits brought by students. This paper examines those cases in which students have brought defamation suits against the institution and recent judicial decisions that have altered the scope of defamation law. Recent changes in the law of defamation have not only engendered an increase in litigation but also increased the risk of liability for faculty and advisors.

Students and Defamation Suits

Of all the tort suits brought by students, those alleging defamation seem to be most prevalent. This phenomenon may be a harbinger. Defamation suits filed by businesses to intimidate their critics have increased markedly (Marcus, 1990a). Moreover, and perhaps more closely related to the concerns of faculty and advisors in academe, the number of defamation suits by employees and former employees against employers has greatly increased (Prentice & Winslett, 1987). The proliferation of these suits has resulted from recent court decisions that have further muddled the already murky waters in which the law of defamation lies. The discussion of these cases found in this paper will serve to illustrate why it is imperative that faculty and advisors establish a procedure to handle any comments made about students.

Defamation is the tort of invading one's interest in one's reputation and good name. A statement is defamatory if it harms the reputation of the individual by lowering that individual in the opinion of the community or by deterring third parties from associating or dealing with that individual. In order to bring a case grounded upon a claim of defamation the plaintiff must show (a) that the defendant used defamatory language concerning the plaintiff, (b) that the language clearly identified the plaintiff, (c) that the defamatory language was communicated or "published" by the defendant to a third party, (d) that the plaintiff was damaged by the statements, and (e) that the defendant has no defense to the charge of defamation. Defamation

takes either a written form (libel) or an oral form (slander). Principal among the defenses to a charge of defamation are (a) that the statement is true or (b) that the plaintiff consented to the publication of the statement or (c) that the defendant was protected by a privilege, either absolute or qualified, in engaging in the defamation (Prosser, 1971). Although all three of these defenses may be vital to advisors who find that they are defendants in a defamation suit, it is the latter two that have been most often relied upon in defending against defamation suits brought by students. In fact, a review of the case law suggests that it is the defense of privilege that most often absolves an institution's personnel from liability for defamatory comments. But, even when the courts do not find that the defense of privilege is germane, they nonetheless exhibit great deference to academic prerogatives. To illustrate, a student brought suit against his instructor who, upon being hit in the face with a pie during a class, immediately accused the plaintiff of being the perpetrator. Subsequently, the professor forbade the student from attending his class, had the student ejected from the building, and in the presence of others accused the student of attempting to blackmail him. The plaintiff, a former prison inmate, sought damages for mental anguish, humiliation, depression, and distress. The student charged the professor with the tort of outrageous conduct; it is not apparent why the student did not include a defamation charge. The court dismissed the student's suit, finding that the professor acted under provocation and was not necessarily aware that the plaintiff was innocent of the pie-throwing incident and that the blackmail accusation, although excessive, was the result of "a sudden, unjustified, and humiliating attack." The court also found that the professor was justified in excluding the student from subsequent classes because he believed the plaintiff was indeed his attacker and because he was entitled to take measures to prevent further disruption (*Goldfarb v. Baker*, 1977, p. 569). In another case, a student sued the institution for defamation when, during the course of a judicial hearing, a committee member referred to the student as a "pathological liar." The court found for the institution on the basis that there was no evidence that the speaker was expressly authorized or directed by the institution to make the statement (*Life Chiropractic College v. Fuchs*, 1985).

Judicial deference to the institution is even

more pointedly exhibited when the court is able to establish a basis for a "privilege" defense. There are two types of privilege: absolute and qualified. An absolute privilege generally protects the communicator under all circumstances, even when the statements are in fact defamatory. An absolute privilege typically applies to statements made by members of Congress on the floor of Congress, to official papers filed in court proceedings, and to statements made by judges and attorneys during the course of a trial. A qualified privilege does not guarantee such broad protection. It protects the communicator from liability so long as the communicator acts in good faith and has not abused or exceeded the privilege (Lusk, Hewitt, Donnell, & Barnes, 1982). The courts generally recognize a qualified privilege for faculty and advisors. It is not without precedent, however, for a court to find that faculty and advisors are protected by an absolute privilege in a suit for defamation. In one case a student enrolled in a postdoctoral program sued the institution and several of its faculty for, among other things, defamation. He claimed that certain faculty made written statements about their unfavorable evaluation of his supervised clinical performance and "published" these evaluations when they were placed in his official student file. Although the court noted in its opinion that the issue of defamation in the student-teacher context is one that courts traditionally have not been asked to address, it nonetheless rendered a strong decision in favor of the faculty. By analogizing the student-institution relationship to that between employee and employer, the court found that the faculty were protected from the student's defamation charges by an absolute privilege. The court enunciated a three-pronged test which it held would confer an absolute privilege upon the communicator. Specifically, the court stated that the faculty would be protected by an absolute privilege if (a) there was implied consent by the student, (b) the statements complained of were relevant to the purpose that was the object of the consent, and (c) the statements were broadcast only to those with a legitimate interest in the subject matter. Although the student contended that he never authorized the faculty to discuss their evaluations of him, the court found that the institution's literature and the student's previous experience established his notice that his work would be evaluated and that the evaluations would be communicated to the chairperson of the training program as well as other

training faculty (*Kraft v. W. Alanson White Psychiatric Foundation*, 1985). Notwithstanding this court's holding that an absolute privilege protected the faculty from the student's defamation claim, the more typical judicial finding would have been that the faculty are protected by a qualified privilege. The court in this case was able to support its application of an absolute privilege by finding an implied consent by the student premised upon the institution's literature and the prior experience of the postdoctoral student. Because the level of sophistication of the student clearly had some bearing on this court's conclusion that an absolute privilege existed, it would not be wise for faculty and advisors to rely on an absolute privilege. Most students may not be deemed to have sufficient experience in the academic setting to assure the court that they know or should know that information about their work and abilities may be shared with others who have a legitimate interest in the subject matter.

Obviously if the court found that the faculty were protected by an absolute privilege, then it is clear that the faculty were also operating under a qualified privilege. Moreover, it appears that the court could have reached the same conclusion with regard to the faculty had it chosen to apply the more traditional qualified privilege. As noted earlier, a qualified privilege requires a showing that one was acting in good faith in carrying out one's responsibilities and that communications were made only among those having a common interest in the substance of the communications (*Johnson v. Educational Testing Service*, 1985). Clearly, this is a less onerous standard to meet than that required for qualified privilege. Any evidence of bad faith or maliciousness, however, will cause the communicator to lose the privilege and its protections (*Crook v. Peacor*, 1984). In one such case a prospective employer wrote to the college president requesting information about a graduate. The inquirer sought confirmation of unofficial information concerning the job applicant's failure to complete his course of study and his expulsion. In his reply, the president not only responded to the queries in the letter but also indicated that the student had been arrested and put in jail for stealing a typewriter. The president also said:

He was one of the most unsatisfactory students we have ever had and we feel that you will be very much disappointed should you give him a place in your organization.

You understand . . . how delicate these matters are and we give you this information in strict confidence but we felt like you should know the facts. We assure you we regret very much that it is necessary for us to make such a report on the young man. (*Lattimore v. Tyler Commercial College*, 1930, p. 362)

The student never stole a typewriter, nor was he ever in jail. Upon learning of the contents of the letter, the student complained to the president. The president agreed to retract the apparently false information. However, in a subsequent letter to the prospective employer the president said:

You wrote and asked me for a report of a young man from Jacksonville and I gave you the report as near as I could ascertain it and passed the information to you in confidence because we did not want to wound the feelings of those interested. . . .

I regret very much that you saw fit to cause Mr. Lattimore to feel unkindly towards us for writing you in regard to the matter. We had no intention of causing any hurt to grow out of the matter, but handled the proposition in what we thought was a business-like manner and we hope you will be able to convince Mr. Lattimore likewise. (*Lattimore v. Tyler Commercial College*, p. 363)

Because there was evidence to show that the president had been convinced of the falsity of the statements in his first letter at the time he wrote the second letter, the court found that the second letter provided sufficient evidence for a jury to infer that the president was motivated by malice. The court held that a communication motivated *in any degree* by malice would deny one the protection afforded by a qualified privilege. Moreover, the court held malice to include "ill-will, bad or evil motive, or such gross indifference to the right of others as will amount to a willful or wanton act" (*Lattimore v. Tyler Commercial College*, p. 363). In another case a student brought defamation charges against an official who had been investigating a work-study fraud. The student became involved in the investigation when he claimed that he had received a W-2 form for earnings as a student-worker for a period of time when he was no longer working there. The official conducting the investigation, however, accused the student of a variety of unrelated crimes, including stealing lab equipment. He also called the student a liar, claimed he was in trouble with the Internal Revenue Service, and made other derogatory

remarks. Many of these remarks were made to persons who had no involvement with the investigation. Moreover, he continued to make and publish these remarks when the institution's security department disclosed that the discrepancy was caused by an embezzler in the investigator's own department. The court, while noting the qualified privilege that protects communications to proper persons, nevertheless upheld the jury's award of \$200,000 to the student. The court held that the investigator could not use the privilege as a cloak for venting private malice (*Melton v. Bow*, 1978).

Although malice to any degree, as one court noted, will defeat the protections of a qualified privilege, and rightly so, it is more likely that the failure to restrict communications to the proper persons will cause faculty and advisors to face serious liability than will issues of blatantly malicious conduct. Presumably few faculty and advisors are motivated by malice in engaging in communications about students. As the case law reveals, in most instances where the defense of qualified privilege is raised in suits for defamation in the academic arena, the issue as to the privilege's application, and hence protection, hinges upon to whom the communications have been made. Indeed, the courts will look at the parties to whom the communications have been made as one element in determining allegations of malicious intent. The courts, however, do require evidence of malice. It will not be presumed. General allegations of malice, without any facts supporting the proposition, will not convince the court to pierce the veil of protection afforded by the qualified privilege. And the traditional judicial deference to academic prerogatives coupled with the court's requirement of concrete facts supporting allegations of malicious intent make it particularly difficult for students to prevail in defamation suits where the conduct of personnel is not extreme, outrageous, and outside of the traditions and goals of higher education. Moreover, under the current case law, where the faculty or advisor can illustrate the reasonableness of a communication to a third party, it appears that the courts will liberally apply the qualified privilege. In one case where a student was dismissed for indecent exposure, the student brought suit for libel when the president, in response to the student's parents' inquiry, wrote to them about the reasons for the student's dismissal. The court found that the president's letters were protected by a qualified privilege because they were **state-**

ments made in good faith, without malice, based upon reasonable grounds, in answer to an appropriate inquiry, and in the protection of his own interest or the performance of a duty to society (*Baskett v. Crossfield*, 1921). In another case where the dean reported only to a mother that her daughter had a venereal disease, the dean was protected by a qualified privilege even though his information turned out to be false (*Kenny v. Gurley*, 1923). Similarly, in another case a recommendations committee, comprised of faculty members and academic advisors, sent a letter to medical schools that a student had applied to. The committee had been formulated to assist students in preparing their applications to medical schools. It requested that students submit letters of recommendation. Included in the plaintiff-student's letters of recommendation was one from his mother, a professor at the institution. The letter failed to reveal her relationship to him. At the suggestion of the committee, the student withdrew the letter from his file. Subsequently, the committee also discovered that the student had enrolled in two classes that met at the same time. He received a grade of A in both of them, but he never attended one of them. His mother taught the class he never attended. In the letter that the committee wrote concerning this student, it indicated its refusal to rank the student and stated its "doubts about his suitability for a profession that values personal integrity." When the student was subsequently denied admission to all the medical schools he applied to, he sued the institution and the committee for libel. In light of the student's record, however, his allegations of malice levied against the defendants, without any additional supporting facts, were insufficient to defeat the qualified privilege accorded the faculty and advisors (*Goldman v. Wayne State University*, 1986).

Although statements concerning the reputation of the individual are at the very core of defamation suits, not every student who claims in a lawsuit that the institution has injured the student's reputation brings a suit premised upon the law of libel or slander. Legal counsel to the litigating students, perhaps mindful of the deference to the qualified privilege accorded academicians by the courts, sometimes rely upon constitutional arguments, primarily related to due process, in their challenges. In one case, for example, where a medical school notified an association of medical schools that a student's academic dismissal was predicated upon the

student's lack of intellectual capacity and his insufficient course preparation, the student sued, claiming that the institution's action denied him a constitutionally protected liberty interest. The court, concerned that the student's future in the medical profession could be stigmatized by the institution's action, held that the student should have been given an opportunity to contest such an allegation. The student's success in this case was predicated upon a claimed constitutional deprivation and not upon an allegation of defamation (*Greenhill v. Bailey*, 1975). When an institution's actions have a deleterious impact upon a student's good name, reputation, honor, or integrity, the courts appear to be somewhat more receptive to engaging in a review of the institutional action on the basis of constitutional law rather than tort law, at least at state-affiliated institutions. This is despite the fact that a person's good name, reputation, honor, and integrity are at the heart of the tort of defamation. This phenomenon is most likely related to the court's awareness that to liberally permit defamation suits against faculty and advisors would have a profound chilling effect on the entire educational process because judgments about students are made and communicated to various constituencies all the time. Moreover, even in those cases where students have been successful in arguing their cases on constitutional grounds, the courts have not suggested that advisors and faculty cannot engage in making judgments that will affect the student's reputation, but rather the courts have found that the student may be entitled to be heard on the judgment before it is finalized.

Current Trends in the Tort of Defamation

In one recent decision, a court faced with a defamation suit filed by a student used case law involving employee defamation claims against employers in reviewing the student's complaint (*Kraft v. W. Alanson White Psychiatric Foundation*, 1985). The obvious similarities in the two relationships suggest that courts may continue to develop the law of defamation in the student-institution relationship by referring to developments in the law of defamation in the employee-employer setting. Consequently, it is important that advisors and faculty be aware of some recent trends in the employment setting that may result in greater liability exposure for defamation for those engaged in the academic setting.

As noted earlier, there has been a dramatic

increase in the number of defamation suits filed by employees against employers. Prentice and Winslett (1987) report that suits against employers constitute up to one third of all defamation suits brought to the courts. Most of the suits are brought by former employees who are disgruntled about the references given to prospective employers by former employers. Solomon (1990) reports that in one recent case \$25 million was awarded to a former employee against his employer, John Hancock Insurance Company, and that a survey conducted by the National Association of Corporate and Professional Recruiters found that 41% of companies have written policies against giving out anything about current or former employees other than confirmation of employment. The reluctance by corporate America to provide references for employees is due not only to the threat of litigation but also to the staggering success rate enjoyed by employees in maintaining these suits. Geyelin (1989) reports that in one study employees recovered damages in 78.9% of all defamation claims filed against former employers. It is not only in the employment setting that defamation suits have proliferated in recent years. A University of Denver study found that landlords, real estate developers, and companies are fighting their critics with multimillion-dollar defamation suits. These so-called intimidation lawsuits are geared to silence critics through long, expensive litigation (Marcus, 1990a).

Further complicating matters in the employment setting is the recent trend supporting defamation suits where the publication of the defamatory comments is not made by the defendant but by the plaintiff. As noted above, defamation suits require that the defamatory comments be published or communicated by the defendant to some third party. However, under the doctrine of compulsory self-publication, the defendant may be found liable for defaming the plaintiff even where the defendant has not communicated the comments to anyone other than the plaintiff, and the plaintiff has, in fact, revealed the statements to third parties. In one such case four employees brought suit against their former employer and recovered \$515,000 on the ground of compelled self-publication. The employees were fired by Equitable Life Assurance Society when they refused to adjust their travel expense vouchers. The company fired them for "gross insubordination" but never gave out that information. The former employees successfully argued in the defama-

tion suit that they were forced to reveal to other employers that they had lost their jobs and to repeat Equitable Life's slander (Copeland, Turque, Wright, & Shapiro, 1987).

False impressions about the plaintiff created by the defendant can also result in defamation liability. In an increasing number of cases public figures are suing publications on the ground that an article created a false impression despite the fact that each statement, when taken individually, is true. Although the courts have ruled both ways on these cases, the courts appear, nonetheless, increasingly receptive to entertaining this type of suit (Marcus, 1990b).

And recently the United States Supreme Court ruled that the United States Constitution does not grant special immunity from libel suits based on expressions of opinion. In its decision the Court said that there is no "wholesale defamation exemption for anything that might be labeled 'opinion.'" The Court further explained:

If a speaker says, "In my opinion John Jones is a liar," he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the **speaker states** the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact. Simply couching such statements in terms of **opinion does not dispel** these implications; and the statement, "In my opinion Jones is a liar," can cause as much damage to reputation as the statement, "Jones is a liar." (*Milkovich v. Lorain Journal*, 1990, pp. 2705-2706)

Judicial decisions in cases involving employees and employers, as well as decisions on false impressions, compulsory self-publication, and expressions of opinion, clearly suggest that the law of defamation is continuing its evolution as "an oddity of tort law" (*Gertz v. Robert Welch, Inc.*, 1974, p. 349). With the surge in litigation on every front, including student-institution disputes, and with the increasing frequency of defamation-based suits, it is imperative that advisors and faculty develop and adhere to a procedure for dealing with any communications related to students.

Procedures for Guarding Against Defamation

Advisors and faculty should always be guided by caution when passing along any information

on an identifiable student. Careless conversation, gossip, angry words, and unsubstantiated opinions must be avoided (Schubert & Schubert, 1983). Faculty and advisors should never presume that anything more than a qualified privilege will be accorded their communications about students and should understand the rights and responsibilities that attend the qualified privilege. Because truth is a defense to any action where defamation is alleged by the plaintiff, advisors and faculty should carefully document and confirm all relevant facts that they may communicate about a student. However, because students' privacy rights are protected by state and federal law (Gehring, 1987), the defense of truth in a defamation suit may be of little use when the suit is grounded upon another cause of action, such as violation of a federal law. The law recognizes under the qualified privilege that it is necessary in an academic setting for various communications to be made about students among parties who have a legitimate interest. When there is doubt, however, as to the legitimacy of the recipient's right to receive the communication, it is recommended that the advisor or faculty member withhold communication pending clarification of its legality. Matters related to emergencies or imminent dangers will, of course, be more liberally construed by the courts if challenged as outside the protection of the qualified privilege. Consent by the student to the communication will also generally defuse a subsequent suit for defamation. Although some courts have recognized an implied consent, as discussed earlier, where there is any doubt as to the appropriateness of a communication concerning a student, obtaining the student's prior written consent is advisable. This is especially true when dealing with communications with prospective employers and academic institutions such as graduate and professional schools. Faculty and advisors may also wish routinely to insist that all students who solicit letters of reference waive their right to see these letters. If this procedure is applied to all students who seek recommendations, then students will not view the requirement with suspicion and concern. Moreover, students might be apprised that these confidential letters of reference will likely carry more weight with the recipients than those the students may eventually have access to.

Finally, in light of the Supreme Court's recent ruling on opinions, it is crucial that faculty and advisors, who are continually called upon to ex-

press opinions on students, make studied statements based upon and supported by firsthand knowledge and documented information.

Although it cannot be gainsaid that the institution faces a level of judicial accountability previously unknown in academe, the courts remain essentially true to the deference accorded to academic prerogatives. So long as faculty and advisors operate in good faith and within the boundaries of the law, there is every indication that the courts will remain reluctant to intervene in academic affairs.

References

- Baskett v. Crossfield, 228 S.W. 673 (Ky. 1921).
Copeland, J. B., Turque, B., Wright, L., & Shapiro, D. (1987, February 16). The revenge of the fired. *Newsweek*, pp. 46-47.
Crook v. Peacor, 579 F. Supp. 853 (E.D. Mich. 1984).
Fowler, G. A. (1984). The legal relationship between the American college student and the college: An historical perspective and the renewal of a proposal. *Journal of Law and Education*, 13, 401-416.
Gehring, D. D. (1987). The legal limitations on statements made by advisors. *NACADA Journal*, 7(2), 64-68.
Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).
Geyelin, M. (1989, September 7). Fired managers winning more lawsuits. *The Wall Street Journal*, p. B1.
Goldfarb v. Baker, 547 S.W.2d 567 (Tenn. 1977).
Goldman v. Wayne State University, 390 N.W.2d 672 (Mich. App. 1986).
Goldman, D. (1966). The university and the liberty of its students—A fiduciary theory. *Kentucky Law Journal*, 54, 643-682.
Greenhill v. Bailey, 519 F.2d 5 (8th Cir. 1975).
Johnson v. Educational Testing Service, 754 F.2d 20 (1st Cir. 1985).
Kenny v. Gurley, 95 So. 34 (Ala. 1923).
King, R. D., & Latourette, A. W. (1988). Judicial intervention in the student-university relationship: Due process and contract theory. *University of Detroit Law Review*, 65, 199-258.
Kraft v. W. Alanson White Psychiatric Foundation, 498 A.2d 1145 (D.C. App. 1985).
Lattimore v. Tyler Commercial College, 24 S.W.2d 361 (Tx. 1930).
Life Chiropractic College, Inc. v. Fuchs, 176 Ga. App. 606, 337 S.E.2d 45 (1985).
Lusk, H., Hewitt, C., Donnell, J., & Barnes, A. (1982). *Business law and the regulatory environment* (5th ed.). Homewood, IL: Richard D. Irwin.
Maas v. The Corporation of Gonzaga University, 27 Wash. App. 397, 618 P.2d 106 (1980).
Marcus, A. D. (1990a, February 21). Intimidation lawsuits creep up on critics. *The Wall Street Journal*, p. B1.

- Marcus, A. D. (1990b, May 15). False impressions' [sic] can spur libel suits even if news media get the facts right. *The Wall Street Journal*, p. B1, B7.
- Melton v. Bow, 247 S.E.2d 100 (Ga. 1978).
- Milkovich v. Lorain Journal Co., 110 S.Ct. 2695 (1990).
- Prentice, R. A., & Winslett, B. J. (1987). Employee references: Will a "no comment" policy protect employers against liability for defamation? *American Business Law Journal*, 25, 207-239.
- Prosser, W. L. (1971). *Law of torts* (4th ed.). St. Paul, MN: West Publishing.
- Schubert, A. A., & Schubert, G. W. (1983). Academic advising and potential litigation. *NACADA Journal*, 3(1), 1-11.
- Seavey, W. (1957). Dismissal of students: Due Process. *Harvard Law Review*, 70, 1406-1410.
- Solomon, J. (1990, January 4). Reference preference: Employers button lips. *The Wall Street Journal*, p. B1.
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