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Legally Speaking: If You Can't Teach 'Em, Sue 'Em

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By John G. Browning

There are some strange things afoot within the ivory towers of academia. For example, a recent perusal of the University of California-Berkeley Law School's faculty Web site listed "Test Dummy" among the names of its many legal scholars.

The mistake led some bloggers to post pictures of a crash test dummy and make humorous comments about the university's odd choice for a teaching slot (my personal favorites were posts imploring the dummy to dress better - "Dude, buy a suit" - and wondering why Berkeley would hire someone who's evidently bad at tests).

Elsewhere, in a sign that "American Idol" truly has left an indelible imprint on our culture, several prestigious law schools have announced a new approach to legal scholarship that Randy, Paula and Simon would love. Under the auspices of Rutgers Law School, Cornell Law School and the University of Pennsylvania Law School, criminal law scholars will compete, not for a recording contract, but for a book contract with Oxford University Press.

Instead of the usual method of sending their thoroughly researched papers to student editors at law reviews and journals, professors will log onto a Web site ("Criminal Law Conversations," open to any full-time law professor) and give a summary of their thesis to which four to 10 scholars will respond with a critique, finishing with a reply by the original law professor. Topics include the insanity defense, entrapment, and the role of minority jurors.

The concept is simple: receive enough votes, and you can defend your ideas criticism against from the judges, but if you receive too few votes, you are kicked off this online stage. One hundred and twenty legal scholars have so far signed on to the project, and Cornell law professor Stephen Garvey hails this "light speed" approach to scholarship.



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"Scholars already are excited by the give-and-take, and the papers and critiques will make these issues more accessible to students and others," he says. The "contest" will take place over a 10 month period, culminating in the publication of a book from Oxford University Press. I personally can't wait for the first critique that begins "Yo, dawg, I just wasn't feeling your take on jury challenges and the Batson doctrine."

But test dummies and "Ivy gone Idol" approaches aside, an even stronger trend is emerging: teachers suing their students. At Dartmouth College, English instructor Priya Venkatesan announced plans to sue the students who were so unreceptive to her literary theories of narrative that the result was, as Ms. Venkatesan describes it, a hostile work environment.

"My students were very bully-ish, very aggressive, and very disrespectful" she says. "They'd argue with your ideas." (Silly me - I thought that kind of discourse was a part of the whole point of college in the first place).

After a student dared to disagree with Ms. Venkatesan's theories on "ecofeminism" and to support his arguments with empirical evidence, the lecturer lambasted the students' behavior as "fascist demagoguery" before proceeding to cancel classes for a week.

Ms. Venkatesan then sent emails to the members of the class citing her claims of "intellectual distress" and threatening the lawsuit. From having read some of the emails and observed Ms. Venkatesan's lack of mastery over the English language, I'd say her students are better off without her.

The case of University of Arkansas (Little Rock) law professor Richard Peltz presents a more complex set of issues. Peltz is a professor of torts and constitutional law, has authored a book on freedom of information, and is well-regarded as an expert on freedom of speech whose work has been cited by the Arkansas Supreme Court. In 2005, Professor Peltz was exercising that very freedom of speech during a constitutional law lecture on affirmative action. Peltz displayed a satirical article from humor publication The Onion about the death of Rosa Parks (entitled "Now We Can Finally Put Civil Rights Behind Us"), and made comments about friends who weren't admitted to law school because of affirmative action.

According to African-American law students who later complained about his "hateful and inciting speech," Peltz purportedly promised

to give black students who scored as highly as white students an extra point on the final exam. The issue was resolved in 2005, but the claims were reopened in 2007, after Peltz voiced support for a law review editor who faced allegations that the organization was racist for not appointing any black students to its editorial board (according to the law school's admissions Web site, the school has 440 students, and 30 percent of the 2007 incoming class was "of color").

Professor Peltz maintains that since 2005, he has been the subject of false accusations around the law school and throughout the Arkansas legal community. In a Sept. 13, 2007, e-mail to another professor, Peltz wrote "I am treated as a pariah. I am presumed guilty of the defamatory charges that have been leveled against me by students...Students' defamatory allegations, which the dean permits with impunity, are taken as gospel truth, and I am spat on."

Peltz filed a grievance against the law school in June 2007, alleging a hostile work environment. Peltz felt abandoned by the school's administration, saying in an email to another professor "Who has come to my defense? No one. Certainly not the dean. I have been hung out to dry."

Finally, enough was enough for Professor Peltz. In late April, he filed a nine page defamation lawsuit, naming two of his former black law students (Valerie Nation and Chrishuana Clark), the school's black law student association, as well as the state's black law association (the W. Harold Flowers Law Society) and its president, attorney Eric Buchanan.

Peltz, who is seeking unspecified damages, maintains that the lawsuit was necessary to save his reputation, since the law school had failed to address "outrageous and defamatory accusations" that "debilitated me in my ability to do my job." Although Professor Peltz has been removed in the wake of the lawsuit from certain courses that he previously taught, he is scheduled to teach a full course load in the fall 2008 semester.

Legal observers have pointed to certain obstacles with Peltz's lawsuit. Among other issues, Arkansas's libel law requires that the defamatory statement be a statement of fact that is false, and not merely an opinion. If the accusations of racism can be characterized as based in opinion and not fact, then it might not legally be defamatory at all.

But there is an even bigger problem - a lawsuit filed by a professor who teaches freedom of speech could actually have the effect of limiting speech on campus.

According to Jonathan Knight, the director of programs on academic freedom and tenure at the American Association of University Professors in Washington, D.C., "The community of higher education prides itself on the give and take of academic discourse and a lot of leeway for saying some very strong things. Freedom of expression is an essential quality for an institution of higher learning, and so defamation suits are for that reason quite unusual."

Harvey Silverglate, a co-founder of the Foundation for Individual Rights in Education, considers it "shocking" that a professor of constitutional law would sue "rather than rely on academic freedom in an effort to explain why his views on affirmative action are not racist."

I'm not quite as shocked as Mr. Silverglate. With the advent of "speech codes" prohibiting offensive speech about race, religion, and sex - codes that are in effect at an estimated 90 percent of American colleges and universities - free speech has actually been restricted in higher education. College administrators who intended to protect women, minorities and religiously diverse students from discomfort have instead stifled any and all ideas that they don't consider to be politically correct.

When the "P.C. police" run amok, should we really be surprised when, in order to protect their rights under the First Amendment, individuals turn to the Seventh Amendment?

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