Higher Education Law 501:  
A Review and Update Of Basic Principles of  
Higher Education Law  

February 16, 2002  
Clearwater Beach, Florida  

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Office for Continuing Legal Education  
Stetson University College of Law  
1401 – 61st Street South  
St. Petersburg, Florida 33707  
Telephone: (727) 562-7830  
Fax: (727) 381-7320  
e-mail: cle@law.stetson.edu
HIGHER EDUCATION LAW 501
Introduction and Overview

Presenters:

WILLIAM A. KAPLIN
Professor of Law
Catholic University of America
Columbus Law School
Washington, D.C.

BARBARA A. LEE
Dean, School of Management &
Labor Relations
Rutgers University
Piscataway, New Jersey

STEVEN G. OLSWANG
Vice Provost
University of Washington
Seattle, Washington

Stetson University College of Law:

PRE-CONFERENCE WORKSHOP
23rd ANNUAL CONFERENCE ON LAW & HIGHER EDUCATION
Clearwater Beach, Florida
February 16, 2002
Workshop I
Higher Education Law 501*

INTRODUCTION AND OVERVIEW

A. The Universe of Education Law

Higher education law -- the specific focus of this Instructional Supplement and the Law of Higher Education text (LHE) -- is part of the broader universe of education law. This universe encompasses not only the law regarding higher and other postsecondary education but also the law regarding "lower" education, i.e., elementary and secondary education (K-12) as well as pre-school education. (For a resource on K-12 education, see W. Valente, Education Law Public and Private (2 vols., 1985).) These "higher" and "lower" sectors can be further divided into public education and private education sectors, as indicated in the illustration below, thus producing a universe of four quadrants: public higher education, public lower education, private higher education, and private lower education. Finally, the private education quadrants can be subdivided yet again into private secular education and private sectarian (or religiously affiliated) education, as the illustration also indicates.

Each sector displayed in the illustration is legally distinct from the other sectors. The boundary lines within the education law universe thus represent important legal distinctions --distinctions undergirding legal analysis of education law problems. Because the applicable sources of law (sec. C below), the legal reasoning, and the result or conclusion reached may differ from one sector to another, it is important to begin analysis of each judicial opinion by determining the sector of the education law universe with which it deals. Similarly, when first approaching a new issue or problem, it is important to ascertain its location within this universe. In a higher education law course, therefore, one would ask: Does this case or problem deal with public higher education or with private higher education? (See LHE § 1.5.) If it is private higher

* These materials, except for Problem B, are taken from William Kaplin and Barbara Lee, Cases, Problems, and Materials: An Instructional Supplement to The Law of Higher Education (Nat'l Ass'n of College and Univ. Attys., rev'd ed., 2001), Parts I and III. Copyright © 2001 by W. Kaplin and B. Lee. May not be reproduced, transmitted, or used other than in conjunction with this Workshop.
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education, then one would ask: Does this case or problem deal with secular higher education or with sectarian/religiously affiliated higher education? (See LHE § 1.6.)
**ILLUSTRATION:**

**THE EDUCATION LAW UNIVERSE**

<table>
<thead>
<tr>
<th>PUBLIC EDUCATION</th>
<th>PRIVATE EDUCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Secular</strong></td>
<td><strong>Sectarian</strong></td>
</tr>
<tr>
<td>Public Colleges, Universities, and Community Colleges</td>
<td>Private Religiously Affiliated Colleges and Universities</td>
</tr>
<tr>
<td>Private Secular Colleges and Universities</td>
<td>Private Religiously Affiliated Elem. Schools, Secondary Schools, and Pre-Schools</td>
</tr>
<tr>
<td>Public Elementary Schools, Secondary Schools, and Preschools</td>
<td>Private Secular Elem. Schools, Secondary Schools, and Pre-Schools</td>
</tr>
</tbody>
</table>
To further expand understanding, one could also ask whether the problem or case would be reasoned or resolved differently (and why) if it had involved private [public] rather than public [private] higher education, or religiously affiliated [secular] rather than secular [religiously affiliated] higher education. These distinctions and their significance in various contexts are emphasized throughout LHE and the materials in this Supplement. Finally, for the broadest perspective, one might ask whether the problem or case would be reasoned or resolved differently if it had involved lower education rather than higher education (see LHE, § 1.3.5., pp. 12-13).

B. The Governance of Higher Education

Early in the study of higher education law, attention should be given to the governance of higher education, that is, the structures and processes by which higher education institutions and systems are governed. Through these structures and processes various "actors" gain and exercise authority over institutional affairs (see LHE §§ 2.1. and 2.2.). The concept of governance can be divided into two categories: internal governance and external governance. Internal governance refers to the structures and processes by which an institution governs itself (see LHE § 1.3.2.). External governance refers to the structures and processes by which outside entities (that is, entities external to the institution itself) play a role in the governance of institutional affairs (see LHE § 1.3.1.). In turn, external governance may be further divided into two sub-categories: public external governance and private external governance. Public external governance refers to structures and processes by which the federal government (see LHE § 7.1.) and state and local governments (see LHE §§ 5.1. and 6.1.) participate in the governance of higher education. Private external governance refers to the structures and processes by which private organizations, such as accrediting associations (see LHE § 8.3.) and athletic conferences (see LHE § 8.4.) participate in the governance of higher education.

A focus on governance, and thus on questions of authority, is important to the study of higher education law -- and to problem solving in higher education law -- because governance structures and processes provide the legal and administrative context in which issues and disputes arise. The typical predicate to a legal problem is an exercise of power, by an actor or actors within the governance structure, that allegedly causes harm to some other party within or
subject to the governance structure. When the power is exercised by a person or organization acting for the institution, and the aggrieved party is a student, faculty member, staff member, or administrator, internal governance is usually the focus of the problem. On the other hand, when the power is exercised by a government agency or private organization outside the institution, external governance is usually the focus. External governance issues can pit government agencies and private organizations against the institution itself as a legal entity, against a captive or affiliated organization of the institution (see LHE § 2.2.5.), or against the institution's students, faculty members, staff members, or administrators.

The two categories of internal and external governance may sometimes overlap, and a problem in one category may sometimes "cross over" to the other. An internal dispute about sexual harassment of a student by an employee, for instance, may be influenced not only by internal institutional policies regarding harassment but also by the external non-discrimination requirements of the federal Title IX statute (see LHE § 4.7.3.). Although a sexual harassment dispute may initially be handled through an institution's internal governance process (e.g., a grievance mechanism), it may later become an external matter if one of the parties sues the other party or the institution in court.

The governance structures and processes for higher education differ markedly from those for elementary and secondary education; thus the basic boundary line in the "Education Law Universe" (sec. A above) is equally applicable to matters of governance. Similarly, the boundary lines between public and private higher education institutions, and between private secular and private sectarian institutions, also indicate parallel distinctions in the governance of higher education. Therefore, just as the law may vary from one sector to another of the education law universe, the governance structures and processes may vary as well. Thus, whenever one is confronting a legal problem (or even reading a judicial opinion), it is well to begin the analysis not only by determining the sector of the universe within which the problem falls, but also by identifying the particular governance structure or process from which the problem arose and through which it might be resolved.
C. **Sources of Higher Education Law**

As a keystone of their internal governance systems, higher educational institutions create "internal law" that delineates authority and rights, and embodies the rules and procedures, by which institutions govern themselves. There are three main sources of internal law: institutional rules and regulations (*LHE* § 1.3.2.1.), institutional contracts (*LHE* § 1.3.2.2.), and academic custom and usage (*LHE* § 1.3.2.3.). Circumscribing this internal law is the external law created by the federal government and state and local governments through their own governance processes (*LHE* § 1.3.1.). The illustration on "The External Law Circumscribing the Internal Law" lists the most common and important sources of external law and shows how they circumscribe, and thus serve to constrain, the institution's internal law. Each ring of law in the illustration is superior to the other rings of law that are further inside and inferior to the other rings of law that are further outside. Thus, in case of inconsistencies among sources of law, the law in the ring farthest from the center will prevail. All sources of external law will therefore take precedence over internal law when the internal law is inconsistent with external law.

These sources of law, and the interrelations among them, are another factor to consider -- along with the education law universe sectors and the governance structures and processes (secs. A & B above) -- when solving problems or reading cases in higher education law. Just as one needs to identify the governance structure or process pertinent to the problem or judicial opinion, one also needs to identify the pertinent source(s) of law that can be used to analyze the problem or that forms the basis for the judicial opinion.
ILLUSTRATION:

THE EXTERNAL LAW CIRCUMSCRIBING THE INTERNAL LAW
D. The Law/Policy Distinction

In addition to the public/private and secular/sectarian distinctions that one must account for in studying higher education law (see sec. A. above), there is also an overarching distinction between legal issues and policy issues. In brief, legal issues are stated and analyzed using the norms and principles of the legal system, resulting in conclusions and advice on what the law requires or permits in a given circumstance. Policy issues, in comparison, are stated and analyzed using norms and principles of administration and management, the social sciences, ethics, and other relevant disciplines; the resulting conclusions and advice focus on the best options available for resolving a particular problem and the best manner of effectuating them.

Just as legal issues may arise from sources both internal and external to the institution (see sec. C above), policy issues may arise -- and policy may be made -- both within and outside the institution. Internally, the educators and administrators (including the trustees) make the policy decisions that create what we may think of as "educational policy" or "institutional policy." Externally, legislatures, executive branch officials, and heads of administrative agencies make policy decisions that create what we may think of as "public policy." In either case, policy must be made and policy issues resolved within the constraints of the law.

It is important to focus on this vital interrelationship between law and policy whenever you are analyzing judicial opinions or addressing particular problems. You may ask not only "What are the legal issues presented?" but also "What are the educational policy or public policy issues presented?" The two sets of issues obviously can overlap and intertwine. Lawyers and educators alike may study both sets of issues; neither area is reserved for the cognitive processes of one profession to the exclusion of the other. Yet lawyers and law students may appropriately think about and react to legal issues differently than do educators and education students, and the same may be true for policy issues. There are matters of role and expertise to account for in the process of problem solving and preventive legal planning (see LHE § 1.7.). The policy aspects of a problem may be more the bailiwick of the educator, the legal aspects more the bailiwick of the lawyer. Among the most practical insights that may come from a higher education law course or workshop are these insights concerning roles and the ways in which educators and lawyers may work together on matters with legal ramifications.
E. The Legal System As It Relates to Higher Education Law

Legal issues concerning higher education may arise not only in the courts (trial courts and appellate courts) but also in legislatures and in a wide variety of administrative agencies. Thus the law applicable to higher education may be developed, and legal disputes may be resolved, not only in judicial opinions but also in statutes and ordinances, and in administrative regulations and adjudications. This law development and dispute-resolution, moreover, takes place at all three levels of government -- federal, state, and local. It is thus important for students studying higher education law to have a basic understanding -- in relation to higher education’s concerns -- of the U.S. legal system, the system of courts that is a constituent part of the legal system, the roles of lawyers within the legal system, and the legal materials and research tools by which one accesses the law developed through the legal system.

Chapter I of the *LHE* text, in conjunction with Part I of this *Supplement*, should provide the necessary introductory background on these matters. Most of the legal concepts and information in Chapter I of *LHE* will already be familiar to law students and lawyers, who may use this material for review and to sensitize themselves to the particular concerns of higher education. Students and educators without legal training or background, on the other hand, will find new material in Chapter I -- especially *LHE* sections 1.1., 1.3.3., 1.4., 1.5.1., and 1.7. -- that deserves careful consideration for the light it sheds on the topics listed above.

LARGE-SCALE PROBLEM-SOLVING EXERCISES

Introductory Note

This section of the Instructional Supplement contains large-scale problems, each covering interrelated sets of issues and each probing professional roles and problem-solving skills as well as substantive law. As the Preface suggests, there are various ways in which the instructor or workshop leader may choose to use these problems. Immediately below are a set of "problem-solving directions" and a set of "problem review questions." One or the other of these (or perhaps both) should be suitable for most uses that instructors may make of these problems . . . . These directions and questions make the problems adaptable to groups composed exclusively of education students or educators and groups composed exclusively of law students or lawyers, as well as to mixed groups. These directions and questions should also be transferable to other problems that instructors or participants may devise themselves.

Part I of this Instructional Supplement contains useful background and suggestions for approaching large-scale problems such as those below.

Problem-Solving Directions

It will usually be helpful for students or workshop participants to work through these problems in role. Education students or educators can fill policy-maker and other non-legal roles; law students or lawyers can fill legal roles. For instance, if a provost or other college official is involved in the problem, education students or educators may work through the problem in that role. Law students or lawyers may work through the problem as if they were counsel to the college involved, or as if they were counsel to the person(s) who may have legal claims to assert against the college.

For each problem, assume that the institution has regular legal counsel whom administrators may consult directly. Counsel does not routinely review every action of the institution, however, nor are administrators expected to routinely consult counsel before making any decision. Since legal counsel's time is a limited resource, the practice is to consult counsel only in selected instances as the administrator's judgment dictates.
For education students or educators playing administrator roles, these questions should fit all problems in this Part:

A. What concerns would you have about the law's potential effect on your ability to deal effectively with the problem presented to you?
B. Would you consult legal counsel? Why or why not?
C. What further steps, if any, would you need to take before consulting counsel or deciding whether or not to do so?
D. If you would consult counsel, what specific questions would you ask and what specific advice or service would you request?

For law students or lawyers filling roles of legal counsel for the institution, these questions should fit all problems (except Problem F) in this Part:

A. Would you advise the administrator(s) that there are substantial legal aspects to the problem, and that you therefore should be involved in the solution of the problem?
B. What specific questions would you ask the administrator, and what further information would you need?
C. What would you advise the administrator regarding how the law constrains his/her decisionmaking on this matter? In light of these legal constraints, what steps would you recommend that the administrator take?
D. What preventive law measures would you suggest to prevent this type of problem from arising again or to make its resolution easier if this type of problem does arise again?

For law students or lawyers representing the person(s) who has been or will be adversely affected by the institution's action, these questions should fit all problems (except Problem F) in this Part:

A. Would you advise your client(s) that he/she has a viable legal claim to assert against the institution?
B. What further information would you need in order to evaluate this claim fully?
C. How would you proceed to raise and press your client's claim? What forum(s) for dispute resolution would you suggest to your client?

**Problem Review Questions**

Whether or not one uses role-playing as suggested above, these questions should provide a useful guide for the class or workshop's review, or individual participants' independent review, of the problems in this Part.

1. What are the legal issues presented by this problem? In what order should these issues be addressed? Which issues are most critical to the resolution of the problem, and why?

2. What are the policy issues (i.e., issues of educational policy, administrative policy, or public policy) presented by this problem? In what ways are these policy issues interrelated with the legal issues?

3. What are the professional responsibility or ethical issues presented by this problem -- for legal counsel? for administrators and educators?

4. Will full resolution of this problem require that the institution involved proceed in a treatment law mode? A preventive law mode? Both? (See *LHE* § 1.7.2.) What are the forums for dispute resolution to which the parties in this problem may resort? (See *LHE*, § 1.1., pp. 2-3, § 1.4.1., and § 1.4.6.) What should be the forum of first resort? (See generally *Year 2000 Supp.*, § 1.4.2.5.) What would be the preferred forum for each of the parties?

5. How might the legal, policy, or professional responsibility issues in this problem have differed had the institution involved been public [or private] rather than private [or public]? (See generally *LHE* § 1.5.) If a private institution, how might these issues have differed had the institution involved been religiously affiliated [or secular] rather than secular [or religiously affiliated]? (See generally *LHE* § 1.6.) Would the forums for dispute resolution have differed depending on whether the institution involved is public, private secular, or private religious?

6. How might the issues, or the forums for dispute resolution, have differed in this problem had it involved a secondary school rather than an institution of higher education?
**Problem A (Rick's Revenge)**

This problem concerns Rick Beach, a senior history major, and Amy Lynn Jensen, Rick's ex-girlfriend, who is a junior political science major. Both Rick and Amy are students at State University, a large public university.

After an extended relationship, Amy broke up with Rick. Rick was devastated and confused. Several weeks after the breakup, Rick decided to establish a Web page that he could use to express his feelings about Amy and the breakup. (The address for the Web page is [http://law.edu/rick/index.htm](http://law.edu/rick/index.htm).) At State University, students have wide-ranging access to university computers and software, and to university computer networks that include gateways to the Internet. Rick has established and maintains a valid university computer access account with his own password, and for some time he has been a regular user of university computer resources. Rick created his Web page using these university resources and his university account. He also accesses his Web page and other Web pages, as do other students, by using university computer resources and his university account. Like other students, however, Rick does frequently use his own personal computer to plug into the university network on campus or to access the network from off-campus by way of the university dial-in service or the university web site.

About a week after Rick's Web page was up and running, the undergraduate school's Dean of Students received a letter from Amy, complaining about the Web page and asking the Dean to shut it down. Amy indicated that she felt threatened and harassed by the existence of the Web page. Soon thereafter, the Dean received calls from other female students who complained about the Web page and indicated that it is offensive, indecent, and demeaning to women.

The Dean reported the matter to the Director of the university's Office of Computer and Technology Services, and asked him/her to investigate. The Director checked to see that Rick had a valid access account, and that he had used his own name and password in establishing the Web page. The Director then read the contents of the Web page and called the Dean back to suggest that "we've got a problem." He/She urged the Dean to access the Web page and "see for yourself." The Dean did so, and did not like what he/she saw. He/She was upset because, in

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* This problem appears as Problem-Solving Exercise G in *Cases, Problems, and Materials* (above). A hard copy of Rick's Web page is included for easy reference.
his/her opinion, the material Rick had developed was highly disrespectful to the women students of the campus and unfair to Amy in particular. The Dean then called Rick to relate to him that “we’ve got a problem.” Rick insisted that there was nothing wrong with his Web site, and that he was “just expressing my feelings,” as well as providing “some entertainment” for the campus. The Dean strongly suggested that Rick come in for a conference, and Rick reluctantly agreed to do so.

Rick was so distressed and concerned about the phone call from the Dean that he called a local attorney who had recently (and successfully) defended a college friend against a charge of speeding. The attorney offered to accompany Rick to the conference with the Dean and also agreed to represent Rick if the University took any disciplinary action against him.

A day or two later, the Dean received a call from Amy, who told him/her that she was going to consult an attorney and that the Dean would be hearing back from her or the attorney soon. The next day, the Dean did receive a call from an attorney who announced that he/she was representing Amy. The attorney was quite clear and firm that his/her client had suffered injury and that her rights were being violated by the university’s acquiescence in the continuing existence of the Web page.

The Dean of Students has asked the Director of Computer and Technology Services to attend the meeting with Rick and has also asked that an attorney from the university’s Office of General Counsel be there. Rick, in turn, has suggested to the Dean that he may bring his own attorney. The Dean does not expect to achieve any final resolution of the issues or any closure at this meeting. His/Her intention is to have an exploratory discussion that will help him/her frame the issues with more specificity and determine how serious they really are. If there is no final disposition at this meeting, as the Dean suspects there will not be, he/she plans to suggest that the parties submit their dispute to mediation. University policies provide for mediation of certain disputes between students, and it appears that this dispute would qualify. The Dean expects to ask Amy whether she is interested in pursuing this alternative.

State University has a written policy on computer use and misuse by members of the academic community. This policy, entitled “State University Policy on Responsible Computer Use” has been in effect since 1998. The text of the policy is included with this problem. The university also has a student Code of Conduct. . . .
In addition to the general questions set out in the Problem-Solving Directions, above, these more specific questions may also be used: (1) If you are General Counsel to the University, how would you advise the Dean on the legal issues this situation may present, and on the strategies to use at the meeting with Rick and his attorney? (2) If you are the Vice-President for Student Affairs, how would you advise the Dean on the policy issues this situation may present, and on the strategies to use at the meeting with Rick and his attorney? (3) If an acceptable resolution is not forthcoming from the meeting, what are the next steps the university should take to resolve the matter -- that is, what next steps with respect to Rick and what next steps with respect to Amy?
STATE UNIVERSITY POLICY ON RESPONSIBLE COMPUTER USE*

I.

General Objectives and Principles

This computer use policy strives to balance the freedoms necessary to accomplish the university's broad mission of research, teaching, and community and public service, with the constraints upon freedom that are necessary for the efficient use of shared computer resources. To establish and maintain this balance, the university and its Office of Computer and Technology Services manages a group of computers, and university networks and related software, to provide the university community with central computing resources sufficient to meet the needs of community members.

Students and other members of the university community may set up university computer access accounts free of charge. By opening such an account, students and other community members can open a gateway to a wealth of computing resources at the university and beyond. Due to the balance of interests that must be maintained, however, access to university computers and networks is a privilege and not a right. Inappropriate use of these computing resources can result in a loss of this privilege. By applying for and establishing an account, students and others agree to abide by all the provisions of this Policy.

The university cherishes the diversity of values and perspectives endemic in an academic institution and is respectful of freedom of expression. Therefore, it does not condone censorship, nor does it engage in the inspection of computer documents and files other than on an exceptional basis.

* Most of this policy is excerpted and adapted from a more extensive policy in effect at Cornell University. The excerpts are used here by permission.
II.

Purposes For Which University Computer Resources May Be Used

The basic premise of this Policy is that legitimate use of university computer resources does not extend to whatever an individual is capable of doing with them. Consistent with the general objectives and principles in Part I of this policy, the university’s computers, software, and networks may be used for the following purposes:

- Teaching and instruction
- Learning
- Research and Scholarship
- Communications
- Extracurricular activities and educational enrichment activities

III.

Purposes For Which University Computer Resources May Not Be Used

The university’s computers, software, and networks may not be used for the following purposes:

- E-mail Abomining, i.e., the transmission of a crippling number of files across the network, which transmission causes a disk to fill up, the network to bog down, or an e-mail application to crash.
- Sending hoax messages or forged messages, including messages sent under someone else’s network ID or someone else’s password.
- Launching a computer virus.
- Soliciting sales, advertising or selling a service, or otherwise engaging in commercial or profit-making activities.
- Any activity or action that violates the university’s Student Code of Conduct.
• Any activity or action that violates federal, state, or local laws.

Mere breaches of network etiquette ("netiquette") are not in and of themselves violations of this Policy. Examples of such breaches might be rude behavior, impolite behavior, heated arguments, or failing to stick to the topic in postings to discussion lists, chat rooms, or news groups. The university expects that the community of users will foster compliance with etiquette norms and will work out ways to handle breaches of etiquette on its own. The university itself cannot control etiquette.

IV.

Enforcement

Questions regarding this policy and its application may be directed to the Office of Computer and Technology Services or to the Office of the Dean of Students. Complaints regarding alleged violations of this policy may be directed to the Dean of Students or to the Judicial Programs Office. In addition, the Dean of Students has established a mediation program to provide for resolution of disputes between students or between students and university administrators.

Adopted May 7, 1998 by the
Office of the Vice President for Student Affairs
RICK'S REVENGE

By Rick Beach

Now, in the age of the Internet, there's one sure way to get rid of the frustration of rotten relationships. Tell the whole world about the people you "thought" were your friends. So, for that purpose, I've created my "Rick's Revenge" website.

A lifetime inductee to my website is my former girlfriend, AMY LYNN JENSEN.

Here's What Amy Did

Apparently I'm a vanishing breed: a male willing to make a commitment. So, for three years I devoted myself to Amy - caring for her, talking with her, fixing her 1978 Honda, listening to her endless problems with her parents - ultimately becoming the best friend she could want, and giving her a great sex life besides!

So, how did Amy respond?

After lapping up my affection like her Honda burned oil, Amy decided she was "bored." "Our relationship has grown as far as it can," she bleated, in the psychobabble women often substitute for conversation.

Somehow I thought relationships were a kind of commitment, not a form of "growth."

How did Amy make her announcement to dump me? By e-mail, just before the Christmas holidays! My calls to her home weren't returned, and my e-mail messages weren't answered. Does that pass the maturity test?
Either Amy has reverted to the emotional development of an 8-year old, or she actually "enjoys" tormenting her victims.

**So, I've Decided to Take Action**
Foolishly, I became dependent on Amy. She is the only person I could share my feelings with. Now, she is the person I have the strongest feelings about - mostly resentment! So, I'm using this website to tell her off, and to ease some of my anger with her, so I don't do something worse.

Creating this website is also a good way for me to alert Amy's future victims about what kind of person she is - especially how she likes to toy with other people's emotions.

**First, you might like to take a look at Amy:**

Her e-mail address is: XXAmylj.sue.edu

Click here if you want to send her a message, telling her what you think about how she treated me.

Also, reflecting upon Amy (whom I regard as a credit to her gender), I'm preparing a list: "100 reasons why a penguin is a better companion than a modern American woman."
Number one: penguins are warmer!
Click here to add to the list.

Finally, I've developed "The Relationship Game," using Amy as the main character. Fill in the blanks with your thoughts about Amy. Feel free to be as gross as you want. (We already know, for example, that "bitch" would fit nicely in the first blank):

This ________ was totally ________ in dumping Rick. What Rick should do to Amy now is ________. What Amy can do now for Rick is ________. If Amy doesn't, Rick can get back at Amy by ________. Another "growth" experience for Amy might be ________. A good way to prevent Amy from getting "bored" again should be ________.

Please feel free to send your answers to Amy as well.

There are so many cute and clever ideas on this page that I have decided to copyright them. Violate my copyright and I'll sue - or, worse - set you up with Amy.
**Problem B (Professor Angell's Agenda)**

Andrea Angell is a tenured professor in the women's studies department at Placid State University. Professor Angell is an outspoken advocate for women's rights, and views her professional mission as the eradication of sexist oppression in America. She is committed to producing students who will follow in her footsteps. She has attracted many admiring students, and an equal number of those who are critical of her ideology.

The vice president for academic affairs has just received a letter signed by fifteen students (from a class of thirty) complaining about Professor Angell course, “Theories of Feminism.” A letter from Rusty Becket, a professor in the American Studies department, supported the student complaints. Both the students and Professor Rawls have demanded that Professor Angell be fired.

The student allegations are as follows:

1. Professor Angell assigned class readings that ridiculed the Catholic Church because of its opposition to abortion.
2. Professor Angell clashed with a male student in class when the student criticized her statements about male patriarchy. According to the student, Demure refused to give him a final grade for the course until the student apologized in writing for his “wrong-headed views.”
3. Professor Angell gave a talk at a neighboring college in which she stated that rape on campus would disappear if all male students and faculty were given a 9:00 p.m. curfew.
4. Professor Angell stated in class that Professor Becket’s latest book was “overtly sexist” in its criticism of feminist theory and that Becket had plagiarized the work from essays written by sophomores in his Introduction to American Studies course.

*This problem is adapted from Gary Pavela, “A Balancing Act: Completing Claims for Academic Freedom,” *Academe*, November-December 2001, pp. 21-25. Copyright © 2001 American Ass’n of University Professors. Used with permission of the author. May not be reproduced, transmitted, or used other than in conjunction with this Workshop.*
5. Professor Angell regularly responded to comments from students (especially male students) with whom she did not agree by labeling the comments "more bullshit from the resistance."

6. Professor Angell did not allow students who had an average on class quizzes of "C" or below to complete student evaluation forms, stating that students with low grades "weren't intelligent enough to evaluate the course or my teaching." [University policy requires that all students provide written comments on all courses each term; these evaluations are used in personnel decisions and post-tenure review evaluations.]

Professor Becket's letter covers approximately the same ground, although he has an additional complaint. Professor Angell published an article in a professional journal that expanded on the statements she had made in class about Professor Becket's recently published book. Because the article accused him of plagiarism, which he insists is untrue, he has been removed from consideration as a finalist for an endowed chair in American Studies at Placid State University. The chair of the selection committee has read the article and believes that, whether or not it is true, Becket is "too controversial" a candidate for the endowed chair.

The vice president for academic affairs wrote to Professor Angell, enclosing a copy of both letters and asking for a written response. She received her response the next day, in which Angell stated that all matters addressed in the letters involved academic freedom, and were protected by her tenure contract and the First Amendment. Angell also stated in the letter that "I recently received the highest possible merit increase because of my excellent scholarship and teaching. I believe that speaks for itself."

Two days after the vice president received Professor Angell's response, he opened the student newspaper and noticed letter to the editor criticizing the Chair of the University Board of Trustees for his "Neanderthal views about women and his denial of fair pay to the female custodial staff." The letter encouraged the female custodial staff to file a class action lawsuit against the University and the Board Chair for pay discrimination. It was signed by Professor Angell.
How should the vice president respond to the letters from the students and Professor Becket, Professor Angell’s response, and the Board Chair’s likely concern about the letter to the editor?
**Problem C (The Student Mental Disorders Problem)**

State University, a public institution, has a large and diverse student body of 9,000 undergraduates and 4,000 graduate students. To maintain behavioral standards on the campus, State U. has a written disciplinary code called the *Code of Student Conduct*. It also has a Mental Health Policy that applies to students who have, or whom administrators suspect of having, mental health problems that manifest themselves on campus. The policy is appended to this problem.

Not infrequently, administrators of State U. are confronted with situations that may call for application of the Mental Health Policy. Usually such situations arise because another student or faculty member, or sometimes a parent, has complained about the behavior of a particular student. The University is now facing two such cases, the circumstances of which are set out below. The responsible administrators must determine what action to take in each of these cases.

I. **Dennis and the False Prophets**

Dennis, a resident student, frequently sits in the middle of the residence hall in a yoga position and stares at everyone who passes. He sometimes burns incense, chants, and calls for strength to rid the world of pagan religions and false prophets. At other times he has gone door-to-door telling other residents that they are false prophets. There are painted signs on the bathroom doors stating that “the end is near for false prophets.” Most of the residents on the floor have become nervous and fearful. Many of them have complained to the Resident Advisor.

The Residence Hall Director spoke to Dennis, who simply stared at the Director and proclaimed “I don’t talk to those who belong to pagan religions. You are a devil and a false prophet. Your end is near.” The Director informed Dennis that others in the hall were nervous, could not study or sleep, and were even afraid to use the bathroom at night. Dennis did not respond, and left the Director’s office.

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* This problem appears in part as Problem-Solving Exercise A, and in part as Problem-Solving Exercise B, in *Cases, Problems, and Materials* (above).

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The day after the meeting with the Director, Dennis was observed placing a sign on another student's room door that said, "You are a false prophet and you cannot be allowed to continue your false ways. I commit my blood to put an end to your fake prophecies." There was blood smeared on the sign. The same day the Director received a bloodstained hunting knife in the mail with a note that said "You are a false prophet."

The Director has now come to the Vice-President for Student Life for advice.

2. Joe Doe and his Student Teaching Assignment

Martin Chalk is the dean of the State University's School of Education. He has been advised that a senior, Joe Doe, is having difficulties with his student teaching assignment. Doe plans to be an elementary school teacher and is in the middle of a twelve-week student teaching assignment in a local elementary school. He cannot be certified to teach in the state without completing his student teaching assignment.

Joe's student teaching supervisor is Professor Mary Mack. Professor Mack has approached Dean Chalk, stating that "Joe Doe shouldn't be near kids—he's crazy." When asked to elaborate, Professor Mack stated that Joe will not listen to her suggestions, is overly affectionate with the children in his class, has difficulty maintaining order in class, and refuses to follow the prescribed lesson plan. She said that her "professional integrity" does not permit her to continue as Joe's supervisor.

The Dean met with Joe and discussed his difficulties with Professor Mack as well as a history of difficult relationships with other faculty in the School of Education. The Dean suggested that Joe seek professional help to ascertain the source of his difficult relationships with faculty and his seeming inability to take direction. Joe objected, saying "Mack thinks I'm crazy, but I'm not—she's just old fashioned and is threatened by new ideas." Nevertheless, the Dean prevailed upon Joe to go to the University's counseling center. Joe reported back to the Dean that he had been diagnosed with bipolar disorder and was told that, in addition to medication, he must be "protected" from situations in which his work would be criticized or in which he would have to be closely supervised. Joe demanded an "accommodation" that involved removing Professor Mack as his supervisor and substituting the elementary school principal (who is not on the University faculty, nor is she an adjunct professor), providing him a "curriculum consultant" at University expense to help him prepare lesson plans, and providing him a full time teacher's
aide who will maintain class discipline. No other classes in the elementary school have teacher’s aides.

Not surprisingly, the school principal refused to supervise Joe and also refused to provide a teacher’s aide. No other faculty in the School of Education were willing to supervise Joe. There are no funds to hire a curriculum consultant. The Dean needs to make a quick decision, because if Joe is to graduate on time and to be certified as a teacher, he must complete his twelve-week assignment on time. Joe has stated that if he is removed from the student teaching assignment, he will sue the University, the school, Professor Mack, the Dean, and anyone else he can think of. The dean has come to the Provost for advice.
State University Mental Health Policy

I. The University considers the maintenance of good mental health to be a critical aspect of the educational experience. To assist students in this regard, the University maintains a Counseling Center on campus that is staffed with mental health professionals and available to students 24 hours a day.

II. The Dean of Students may refer a student to the Counseling Center for evaluation whenever the Dean believes that the student is suffering from a mental disorder that is adversely affecting his or her academic performance or behavior on campus.

III. A student will be subject to involuntary administrative withdrawal from the University, or from University housing, if the Provost determines that the student suffers from a mental disorder that is adversely affecting his or her academic performance or behavior on campus in a way that is prejudicial to the institution or to other members of its student body.
State University Policy on Off-Campus Educational Activities

1. Any student who wishes to receive academic credit for an off-campus educational activity (such as an internship, a student teaching assignment, or a clinical assignment) must obtain written approval from the instructor of the course and the department chair or dean.

2. The sponsoring organizations for each off-campus internship, student teaching assignment, or other such activity must be approved in advance by the department chair and the dean.

3. Internship and student teaching supervisors who are not members of the State University faculty must be approved in advance by the department chair and dean.

4. Students participating in a required internship or student teaching assignment must receive a grade of "B" or better in order to fulfill program requirements.

5. An internship or student teaching assignment must extend for the full twelve weeks of the semester in order to qualify for academic credit.