

When Students Sue Their Schools

Rising Costs, New Laws May Spur Litigation

BY JONATHAN GRONER

Three students at George Washington University's National Law Center slammed the university with a class action in D.C. Superior Court this spring. The budding lawyers, unhappy with the way the school was divvying up their tuition, asked a judge to force the university to spend more of that money to support the law school rather than stash it in the university's coffers.

They are not alone. While law students have always had grievances against their schools, these days some seem increasingly bent on taking their legal knowledge and turning it on the institutions that taught them.

At Stanford University in Palo Alto, Calif., a law student faced off against a partner in a major San Francisco firm—and succeeded in getting the university's speech code abolished.

At Harvard Law School, a student coalition sued the school for allegedly discriminating against blacks and women in faculty hiring in a suit that reached the highest court in Massachusetts.

A law review student at Fordham University in New York City hauled the school into federal court, complaining that the review's editors butchered his article and violated his "moral rights" and his copyright in his words.

No one knows exactly how much litigation students are bringing against their schools. And some area law school officials report that student-generated suits against the schools have been few and far between.

But several observers of the law school scene say they expect the number of such cases to increase.

"I think what you're beginning to see is a consumer movement in education in gener-



G.W. professor Charles Craver says suits against schools illustrate that students are questioning the value of their education.

al, including in law schools," says Charles Craver, a G.W. law professor who sympathizes with the student suit at his school. "As tuition has increased tenfold in the past 30 years, there is a feeling by students that

"You owe us, the purchasers, more obligations." The question is simply: "Am I getting my money's worth?"

Sid Moore, associate dean at the George Mason University School of Law in Arling-

ton, Va., says that as federal legislation continues to be enacted granting new rights, more law students will try to enforce the

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laws against their own schools. The Americans with Disabilities Act, Moore says, is a prime example of a statute whose contours are unclear and that could well lead to more litigation.

Of course, in order to learn how to take advantage of the judicial system and avoid having their cases summarily dismissed, these students are having to pick up a quick and sometimes painful on-the-job legal education.

"We had to figure this out on our own," says Robert Corry, the Stanford student who brought the successful speech-code case last year. "The procedures were really difficult. It was a good learning experience—fun, but a little scary at times."

"I was careful to file in May of my third year of law school," Corry adds. "I did want to maintain my standing and get good grades."

And in Washington, John Paré, one of the students who is suing the George Washington University, says he has tried unsuccessfully to find a lawyer to take on his cause: forcing the university to live up to American Bar Association guidelines by channeling tuition revenues back to the law school.

"We're appearing pro se, as we have from the beginning," says Paré. "We're on our own."

On Aug. 18, Paré, who has graduated from G.W. and accepted a job as an assistant state's attorney in Florida, appeared at a scheduling conference before D.C. Superior Court Judge Frederick Dorsey to discuss discovery issues and the timing of the judge's ruling on the university's motion to dismiss.

The university turned to a lawyer from a sizable D.C. firm to fend off the students' challenge. Yolanda Gallegos, an associate at D.C.'s Dow, Lohnes & Albertson, faced off against Paré before Judge Dorsey.

"I definitely think the case is going well from my client's perspective," says Gallegos, who has moved to dismiss the case for lack of standing and justiciability and on the ground that insufficient facts were stated to support the claim. Paré responds that he expects the court to rule within a month and to deny the motion to dismiss.

To be sure, the courts have not exactly been overrun with law students rushing to sue their schools. Anthony Morella, who served as outside general counsel to American University for 25 years, recalls only one such suit—an attempt to block a tuition increase a decade ago. (Morella, now general counsel emeritus to A.U., is a partner with D.C.-based Hewes, Morella, Gelband & Lambertson).

But, so far, the suits that have been filed have ranged from generalized claims—such as the G.W. suit, in which the plaintiffs are trying to get an injunction regarding university spending that would be useful not to them but to future students—to suits

that are intended simply to vindicate the rights of the student who is bringing the case.

Moore, the George Mason official, faces some litigation of that type—a complicated set of federal and state claims brought against George Mason by Terence Wolfe, who was ousted in 1994 from his position as a student editor of an on-campus law journal and was later expelled from the law school.

"Sid Moore decided to interfere in the internal affairs of my journal without cause or due process," says Wolfe. "This was an organized lynching."

Moore declines comment on the allegations. But Ronald Forehand, a senior assistant attorney general in Richmond who is representing the school, says Wolfe's claims are frivolous and have been "a horrible waste of taxpayers' money." And the Virginia Supreme Court has dismissed a portion of Wolfe's allegations on the basis of standing and mootness.

"It's been a nightmare trying to deal with this guy," says Forehand, who regularly represents three Virginia state institutions of higher education. "Every once in awhile you get someone like Terence Wolfe, who somehow got in to the school. Now he's where he belongs, which is out."

Whether or not Wolfe succeeds in his state court contract claims and his federal civil rights arguments, he has managed to get state attorneys to devote considerable time to fending off his arguments. Forehand says he has been in federal court in Alexandria, Va., every Friday for months to deal

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Robert Corry was a third-year law student when he launched a legal challenge to Stanford University's speech code.

The Student Bar Association of the George Mason University School of Law would like to congratulate the following students who have recently received judicial clerkships:

Federal Court Clerkships

Robert Levy (1995)

The Honorable Douglas Ginsberg
 U.S. Court of Appeals for the District of Columbia Circuit

The Honorable Royce Lambeth (Fall 1994)
 U.S. District Court of Washington, DC

Duncan MacRae (1995)

The Honorable Corad K. Cyr
 U.S. Court of Appeals for the 1st Circuit

Paul Tetreault (1995)

The Honorable H. Emory Widener Jr.
 U.S. Court of Appeals for the 4th Circuit
The Honorable Daniel H. Huyett, III (1994)
 Eastern District, Pennsylvania

John Turner (1996)

The Honorable E. Grady Jolly
 U.S. Court of Appeals for the 5th Circuit

Laura Fraedrich (1995)

The Honorable Pauline Newman
 U.S. Court of Appeals for the Federal Circuit

Christopher Anulewicz (1996)

The Honorable William M. Acker, Jr.
 U.S. District Court for the Northern District of Alabama

Barry Parsons (1995)

The Honorable William O. Bertelsman
 U.S. District Court for the Eastern District of Kentucky

Beverly Frank (1996)

The Honorable Jillyn K. Schulze
 U.S. District Court for the District of Maryland

Lindsay Bray (1995)

The Honorable Robert H. Cleland
 U.S. District Court for the Eastern District of Michigan

Marla Radinsky (1995)

The Honorable Thomas P. Griesa
 U.S. District Court for the Southern District of New York

Scott Samuels (1996)

The Honorable Raymond J. Broderick
 U.S. District Court for the Eastern District of Pennsylvania

William Loeffler (1996)

The Honorable D. Brooks Smith
 U.S. District Court for the Western District of Pennsylvania

Randall Perdue (1995)

The Honorable James H. Michael, Jr.
 U.S. District Court for the Western District of Virginia

Kimberly Dailey (1995)

The Honorable Richard B. Kellam
 U.S. District Court for the Eastern District of Virginia

Tara Schoff (1995)

The Honorable Barry Poretz
 U.S. District Court for the Eastern District of Virginia

Howard Shipley (1996)

The Honorable Claude M. Hilton
 U.S. District Court for the Eastern District of Virginia

Raymond Pring (1995)

The Honorable Blackwell N. Shelley
 U.S. Bankruptcy Court for the Eastern District of Virginia

David Codevilla (1996)

The Honorable Loren A. Smith,
Chief Judge
 U.S. Court of Federal Claims

Joanna Crane (1995)

The Honorable Diane Gilbert Weinstein
 U.S. Court of Federal Claims

Dean Brockbank (1995)

The Honorable Moody R. Tidewell, III
 U.S. Court of Federal Claims

Amy Miles (1995)

The Honorable Robert H. Hodges, Jr.
 U.S. Court of Federal Claims

Rose Wells (1995)

The Honorable Laurence S. Margolis
 U.S. Court of Federal Claims

State Court Clerkships

Celeste Hebert (1995)

Supreme Court of Virginia

Timothy Sampson (1995)

The Honorable Rosemarie Annunziata
 Virginia Court of Appeals

Lisa Murphy (1995)

Virginia Circuit Court, 4th Judicial Circuit

Wesley Russell (1995)

Virginia Circuit Court, 4th Judicial Circuit

Melissa Austin (1995)

The Honorable Marcus Williams
 Virginia Circuit Court, 19th Judicial Circuit

John Byrnes (1995)

The Honorable J. Howe Brown, Jr.
 Virginia Circuit Court, 19th Judicial Circuit

Amy Rouleau (1995)

The Honorable Jane Marum Roush
 Virginia Circuit Court, 19th Judicial Circuit

DeLisa Kilpatrick (1995)

The Honorable William B. Chandler
 Delaware Court of Chancery

Kellye Clarke (1995)

The Honorable Lee F. Satterfield
 District of Columbia Superior Court

Geneva Vanderhorst (1996)

The Honorable Noel Anketell Kramer
 District of Columbia Superior Court

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with discovery issues in the Wolfe case.

Perhaps the law reviews, because of the prestige of the editors' position and the aspirations of their contributors, tend to foster litigation. The Fordham case, like Wolfe's, was also filed by a disgruntled law review editor. In that case, which was decided in Fordham's favor July 12, student Jerry Choe sued the school on the ground that the *Fordham International Law Journal* printed an article he wrote on U.S.-Japan trade with dozens of substantive and typographical errors.

He claimed copyright violations under the Lanham Act and breaches of his "moral rights."

But U.S. District Judge Michael Mukasey of the Southern District of New York rejected his claim, finding that the article was run by the journal in a form clearly similar to Choe's version and that the concept of "moral rights" in a literary work is not enforceable in federal courts.

Essentially, Mukasey ruled, one can't make a federal case out of a bunch of typos. Choe's lawyer has filed a notice of appeal to the U.S. Court of Appeals for the 2nd Circuit.

"Fordham tried to make some reasonable accommodation to Choe," says David Rigney of New York's Lankenau Kovner & Kurtz, who represented the school in the case and has done work for Fordham in the past. "It's not unusual for Fordham to be sued by one of its graduates. But these efforts at accommodation did not succeed, and he sued."

Unlike Choe, who was looking after his own interests, some students sue their schools in a bid to vindicate broader constitutional rights.

'LIBERAL' POLICIES CHALLENGED

Stanford's Corry, a conservative who is now a staff attorney at the Pacific Legal Foundation in Sacramento, Calif., asserted that the university's speech code—which prohibited racially offensive remarks—chilled free expression and violated the First Amendment. Arguing on his own behalf while he was still taking constitutional law classes, he bested litigator David Heilbron, a partner at San Francisco's McCutchen, Doyle, Brown & Enersen who led a team of four lawyers.

Since Stanford is a private university, not a state school, Corry had to develop some very sophisticated arguments to convince the judge that the First Amendment applied. "I was taking con law with [noted scholar] Kathleen Sullivan at that time," says Corry. "Sullivan didn't work on the case, obviously, but her course work was very helpful."

And since law schools are perceived by many conservatives to be bastions of liberalism that cater excessively to minorities, it's not just speech codes that have come under attack.

In another nationally publicized case, Cheryl Hopwood and three other would-be law students who had applied to the University of Texas in Austin sued the university for allegedly rejecting them because they were white. They had been beaten out by minority applicants who benefited from affirmative action.

A year ago, U.S. District Judge Sam Sparks awarded only nominal damages to the plaintiffs and declined to order them admitted to the school, while at the same time finding that the university had violated their civil rights. The case was argued before the U.S. Court of Appeals for the 5th Circuit on Aug. 8 and is widely expected to go to the U.S. Supreme Court.

Although the case was eventually taken up by the Washington, D.C.-based Center for Individual Rights, the impetus behind it

Yolanda Gallegos (near right) faced off with former G.W. student John Paré (far right) in a suit challenging G.W.'s allocation of law students' tuition money.



came from Steven Smith, a young Texas lawyer who happened to be a recent graduate of the University of Texas law school—

the school that he sued on behalf of the original plaintiffs.

The Harvard case, filed in 1990, also had

major racial implications—but the student plaintiffs lined up on the other side. They argued that women and minorities were disproportionately excluded from tenure-track faculty positions and that as a result, they as students were denied the benefits of an integrated education.

That case arose amidst the racial and ideological turmoil at Harvard Law School in the early 1990s and was eventually dismissed on standing grounds: The highest court of Massachusetts ruled that since the students were not past, present, or prospective employees of Harvard, they lacked standing to pursue their claim.

But whatever law schools do in the coming years, and whichever side of the racial divide they take, at least one observer thinks they will face more litigation from students.

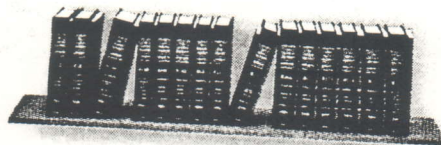
Says George Washington's Charles Craver: "Students say: 'We paid \$21,500 for a year of law school, and what did we get?' In some ways, this is only the tip of the iceberg."

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