

**National Conference on Legal Issues in Higher Education  
University of Vermont - October 8-10, 2006**

**“Highlights, Lessons Learned and Applications”**

From an inauspicious beginning, the conference improved exponentially. The General Opening Session was an unexpected disappointment. I had imagined an organized presentation reviewing the major changes in higher education law during the last decade from the title ‘the key legal and policy developments in higher education 1996 – 2006’. The coffee-talk format lacked the structure I had assumed would lay the foundation for the ensuing sessions. After reading works by William Kaplin and Gary Pavela, I anticipated that I would learn more about the recent history of legal issues in higher education in the opening session from such a stellar cast. My initial dread was vanquished in Session One by Wendy White’s passionate presentation on student mental health issues. Each successive session extended my knowledge, left me with questions to ponder and provided practical advice that I will add to my treasure chest of student affairs tools. The applicability of the conference subject matter will allow me to apply new knowledge in my workplace from each session.

Morton Silverman, M.D., opened session one with recent statistics on mental and behavioral disorders in college-aged youth. I learned that about one if five students will suffer from substance abuse induced, mental, or social interface disorders that cause behavior changes that interrupt or complicate their roles as students at some time during college. Some students cope normally with school prior to entering college, but the dramatic and abrupt difference between living at home in high school and going away to college can cause dormant or controlled mental issues to escalate. Dr. Silverman also noted that more and more students are reporting that they suffer from stress related insomnia and depression. Dr. White offered specific

guidelines on preparing to handle mental illness crises and urged us to know about, and use, the resources already available on our own campuses. She directed us to have, and use, policies that protect both the students and the institution when mental health issues disrupt the educational process. Utilizing four case studies, Wendy exemplified her suggestions on dealing with mental health issues by making specific references to real student situations, her stories tied policy to practicum, providing examples to follow, and pitfalls to avoid. At the end of day one, I was impatient to attend the sessions scheduled for day two.

- My campus has a great Counseling Center and our Student Health Facility has a social worker, as well as physicians. Less than a week after this session, I broached the subject of insomnia with a student I sensed was unwell. I walked with her to Student Health where she was diagnosed with, and received treatment for, bulimia. Her sleep deprivation was caused by chemical imbalances, and she is under continuing medical care and involved in counseling.

I attended “Study Abroad: enhancing student learning while limiting liability” in session two because I am the Education Abroad Program advisor for the College of Engineering and because Wendy White was one of the presenters. Christiane Groth, a Risk Analyst for United Educators, opened with statistics indicating that lawsuits involving EAP issues come from both students and staff, with claims in three main areas, in about equal percentages, including: sexual misconduct, bodily injury and breach of contract. Her main themes were: understanding the institution duty and liability, set clear expectations with explicit rules, and have clear and well publicized emergency preparedness plans and prearranged crisis management plans. I learned that the Cleary Act requires reporting of, and publicizing, violations and potential risks at foreign destinations, not just on our home campuses. Wendy outlined a ten part model for assessing

study abroad programs in respect to acceptable legal standards. She then posed six questions that required addressing prior to canceling an abroad program in progress. She again used case studies to exemplify the strengths and weaknesses of waivers and releases, closing with ‘at the very least, if though rarely enforceable – waivers indicate an assumption of risk on the student’s part, identify those risks and indicate that the institution/program takes those risks seriously. Although I am only responsible for advising students academically for studies abroad, I will add awareness counseling to my appointments with my foreign bound students.

- Twelve Engineering students studied abroad at the University of Sussex in the summer of 2006. I am designing a post EAP questionnaire asking about the academic value, cultural learning experience, and day to day realities of the trip, to get feedback directly from my students. I want to develop an Engineering Students Abroad pre-trip meeting to review the Campus EAP emergency preparedness plans, allow the Engineering students to meet each other, and to review the College academic agreements about earning major credit abroad. I would remind them to be respectful and knowledgeable about the laws, rules and customs of their host country and to have a great and productive time.

In session three, Steven McDonald, General Counsel at Rhode Island School of Design, and Willa Antczak, a UVM undergrad, lead us on a whirlwind adventure through some of today’s hottest social communication interfaces and instant message mediums. These non-personal, interpersonal methods of communication dominate the time and creative energy of many current college students. I am a virgin when it comes to virtual communities, from instant messaging, to blogging, into cyberspace and typing in chat rooms - I never wanted to go there even with the protection of a pseudonym and a virus guard. But with Facebook and MySpace

having an estimated 100 million users, college personnel need to be savvy about these channels for communication. Students, both innocently and stupidly, post overly personal, inappropriate, hurtful, and tasteless information, and may also provide evidence of illegal activities on these sites - that is to some extent viewable by complete strangers. On a positive note, Facebook can be used to advertise campus events, be a message center where club members share information and to help college personnel keep pace with our ever changing student populations.

- Because of Mr. McDonald suggestions, I will inform new students at Orientation about the Communications Decency Act and the campus code for internet conduct. I will tell them about *archive.org* and warn them that anything on the internet can be copied and that they need to be thoughtful about what they post, anywhere. I will stress to them that they should assume that anything they ever post online is stapled to their resume, as employers and graduate school recruiters alike seek information about applicants from multiple sources. I will use information directly from this presentation to remind new students that: ‘cyberspace is subject to campus, local, state, federal and international law, just because something is technologically possible does not make it legally permissible, and that free access is not the same as free speech.’ I believe that students need to be constantly reminded to think, to weigh their options, and to imagine possible outcomes before they act or react. Ah, our continuing quest to nurture the whole student.
- Occasionally students disclose information about their Facebook posting to me. These are all appropriate in nature, photos from a field trip or campus club meeting. Since these students would not have heard my new Orientation talk, I

would discuss the casual, immodest, thoughtless and incriminating stuff folks put on this kind of site, I will seize the opportunity to engage the student in a discussion about appropriate content for the internet, and remind them that what seems joking and silly to them can be hurtful and inappropriate to someone else. I will remind them to be thoughtful and cautious in all their actions.

The Networking Lunch was a delightful opportunity to make new friends and to discuss one of several pre-arranged topics; I was seated with two psychologists, one lawyer, one professor, one Cultural Center counselor and two students from my APU cohort. I wish that this feature of the conference had been better advertised, as only half tables were occupied. The company, the conversations and the food were all memorable. I basked in my connection with Liz Monge and Cecy Santiago as they described the programs they have designed and facilitate, advocating for student rights while nurturing student responsibility; they both create learning experiences that integrate scholarship with personal growth, cultural awareness and community pride. One of the psychologists disclosed that she was ‘just burned out’ after 14 years in college health centers and was pursuing a Ph.D. in Psychology so that she could move away from counseling and into teaching. She talked about how differences between cultures affect the manifestations of, and appropriate interventions for, various mental illnesses. The lawyer concurred that our college experiences were much different than what students experience and expect today. Her example was that in the late 1980s, she had studied abroad in Siberia. There were no cell phones, mail and telephone service was intermittent and it took a number of days to get to Moscow. Her parents thought this was a wonderful adventure and had few worries about their daughter’s safety, sadly liability issues for studies abroad have escalated tremendously in the last twenty years. Unfortunately, our discussion on domestic verses international diversity

was cut short due to time constraints, but in one short hour, stories were told, lessons were learned, friendships were forged.

Session five was titled No College Student Left Behind: an analysis of the recommendations of the Secretary of Education's Commission on the Future of Higher Education. Lawrence White, J.D. presented a lesson in politics, government vision and government waste as well as a synopsis of the 'No College Student...' document. The key issues are accessibility, affordability and accountability. Accessibility will be expanded by strengthening K-12 preparation, redesigning mechanisms to measure high school students' workforce or college preparedness, and by combating adult illiteracy through awareness and extended programming. Financial aid reform, new funding, and outside consultants will increase the affordability of higher education. Integrating major information systems, offering states incentives to collect data on student outcomes and involving accreditation boards in setting results-based standards are the proposed mechanisms to provide accountability for higher education funding. An infusion of cash, cost containment, and a reliable way to measure outcomes are each required to provide a better education, to more people, while using all resources responsibly.

- This session reinforced my commitment to help community college students complete the preparation for their Engineering major prior to starting at the University. Escalating costs, burgeoning student populations and dwindling resources, make preparing to transfer into a four-year institution in engineering major very difficult. It is not uncommon for an engineering transfer student to take 3.5 years to complete their degree. I hope to see the first cohort to benefit from my pre-matriculation counseling applying for transfer admission in Fall

2007, many of them will be capable of graduating in just 2 years. If the hundreds of thousands of dollars Margaret Spelling spent on the Commission on the Future of Higher Education can be reduced to one duplexed page, it is individuals like us who will keep higher education afloat.

My grand perceptions of William Kaplin and Gary Pavela were restored in session six where they showcased their wit and wisdom while weighing the risks of risk management. They urged that we adopt a broad view of risk with four key management categories: avoidance, control, transfer and retention, while keeping in mind that our responsibility is to protect employees, students, guests and the institution itself. Comprehensive risk assessment and preventative planning are critical. The following are suggestions directly out of the session powerpoint presentation. I will reflect on and follow many of these steps in everyday practice, not just during a crisis.

- See people as individuals
- Listen before deciding
- Try to understand the origin of fear and anger in others and ourselves
- Manage with Integrity
- Consult with colleagues
- Confer with legal counsel sooner than later
- Use progressive discipline and proportionate sanctions
- Follow your own rules and don't hesitate to change them
- Learn about the law
- Offer appropriate apologies when they are due

\* I had to deal with a student suicide threat the week after the conference. I was able to calmly react using some of the above advice, I followed our campus policies, and the student is receiving ongoing medical attention.

Charles Carletta's presentation on 'privileged communications in student life' was a delightful conclusion to the conference. He reaffirmed many of my beliefs and suggested many practices that I adopted as a parent and use as a university advisor. Very few professions enjoy true "confidential relationships" in legal terms. Lawyers, clerics, spouses, and medical practitioners are the only professions protected/required by law to keep confidences. Student advisors should never promise confidentiality, rather agree to only disclosing information as necessary. Always call the parents if you believe the student is a risk to themselves or to others. Tell your public safety personnel. Tell your supervisor, document all your actions, conversations, and advice. Never forget that your responsibility is to the whole community, not just to the individual student.

- Remind faculty that they do not have the right to share information about a 'troubled' student with other faculty (liable for slander). The Dean of Students needs to be informed and will investigate the situation, if telling other faculty is appropriate, the Dean will take that responsibility.

\*\* This issue came up last week when a professor publicly accused a student of cheating on lab assignments using an instructor solution guide. I discussed the incident with my Dean, who followed through with training for the professor and a report to Judicial Affairs about the student.

After an intense 20 hours of Legal Issues class time, weeks of reading, research for completing assignments, personal contemplation and group discussions, the conference wove together most of the major concepts of the course. Case studies, personal experiences relayed by

leaders in the field, discussing alternate points of view, and just being immersed in legal topics for four days, greatly furthered my understanding and interest in legal issues in higher education.

I hope to have the opportunity to return to the Legal Conference in the future.