The Case of the Maligned Bridgebuilder

BY MITCHELL A. TYNER

Jack Bridgebuilder has served on your engineering faculty at Hometown Adventist College for six years. He's never been a classroom whiz, but he tries. Recently you've been getting complaints from his students about his teaching ability, so you decide to slip in and observe one of his classes.

During the class Mr. Bridgebuilder asks various students to explain the correct approach to a certain problem. You observe that they don't have a clue about what to do with it. You suggest that Jack explain it himself and discover that he doesn't understand it either. After class, Jack tells you that some of his students are more intelligent than he is and that he feels very unsure of his ability to teach.

The following spring Bridgebuilder's teaching contract is not renewed. He files suit against both you and the college, and you begin to wonder if your actions are legally defensible.

In the last issue, this column noted the unnecessary discomfort of denominationally employed teachers who read of lawsuits by students against schools on free speech grounds, such as censorship of an article from a student newspaper. Such suits allege violation of constitutionally protected rights. However, these rights are guarantees against state action, not private action. So private schools, which are not state instrumentalities, are not subject to constitutionally required restrictions.

But that does not mean that such schools—and their staff members—cannot be sued. They may be, and are with increasing frequency. Commonly these suits involve the termination of employment, such as that described above, which was adapted from a case now in litigation.

At one time, American employers were free to terminate employees for a good reason, a bad reason, or no reason at all. The employment-at-will doctrine said that, absent a contract to the contrary, the employment relationship was terminable at the will of either party. In recent years, various state courts have substantially eroded that doctrine, and with it the employer's right to terminate employees. These landmark decisions tend to fall into one of four overlapping categories:

1. *Implied Promises of Job Security.* Several courts have held that employers have destroyed their claim to the employment-at-will doctrine either by promising employment for a certain length of time or by promising that employment would be terminated only for certain reasons.

Did you or any denominational spokesman ever lead Jack Bridgebuilder to believe that short of moral turpitude he would always be needed in Seventh-day Adventist schools? Can he show that such promises were made or even implied to other similarly placed employees?

2. *Judicial Enforcement of Personnel Policies and Rules.* Many courts have required employers to abide by their own rules. Personnel policies and employee manuals can often be given contractual enforceability.

Does Hometown Adventist College's employee manual state that in instances of alleged professional incompetence, the department faculty will investigate and make recommendations to the administrator in charge of academic affairs, who will then recommend action to the college president, who will take the matter to the Board of Trustees for a final decision on contract renewal? If you said it, you'd better do it. Even without a printed policy, if Jack Bridgebuilder can prove that certain procedures were routinely followed and generally known, and that he relied on those procedures, you may have a problem.

3. *The Public Policy Exception.* Courts have long held that employment-at-will does not extend to employment decisions that run contrary to clearly articulated public policy. Typically, this involves the termination of a "whistle-blower" (one who refuses to go along with the illegal activities of an employer), or an employee who exercises a legally recognized right (such as filing a worker's compensation claim) or satisfies a legally recognized duty (such as serving on a jury).

In a sense, this category includes claims that the termination was discriminatory based on the protected categories of race, age, sex, religion, or national origin. But these claims are based on violation of specific

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statutes, not on unjust dismissal. Note that such statutes typically exempt religious institutions only from charges of discrimination based on religion, not from those based on the other categories. Religious institutions are generally considered to have great latitude in requiring personal adherence to doctrinal norms and terminating employees not in harmony with such standards (such as an unmarried woman who becomes pregnant), but this latitude is the subject of much current litigation.

4. The Implied Covenant of Good Faith and Fair Dealing. The exception which may swallow the whole employment-at-will rule is this implied promise to deal fairly. Starting in the mid-1970s, several state courts have held that the traditional common-law notion that the parties to a contract are required to treat each other fairly and in good faith applies to employee terminations.

Christian administrators already have a moral duty to treat employees fairly, to act consistently, and to show good faith. But if that isn't sufficient motivation, the law now makes a similar requirement.

Does Jack Bridgebuilder have any grounds to complain that another teacher is still employed who is even less competent than he, but who also happens to be the brother-in-law of the secretary of the Board of Trustees? Are you subject to allegations of inconsistency in dealing?

There is no foolproof way to avoid litigation. A disgruntled employee can often piece together rumors with his imagination and make enough of a case to at least get to court. But some precautions are obvious. If you make a promise, be prepared to keep it. If you formulate a policy, be sure it's carried out. If you establish rules, enforce them evenhandedly and impartially. Remember in dealing with every employee or subordinate that your purpose is to represent God and His church, not just to avoid litigation. □

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expression of human self-centeredness is pride (pp. 54, 55). This is surely correct in regard to men, who are, at least in Western cultures, socialized to compete and win. But it may not be equally true for women, who are socialized to serve and please, and for whom temptations to passivity and self-depreciation may be greater than the temptation to self-assertion.

Dudley's emphasis on the necessity of individual thinking about values may thus be especially important for the moral education of young women. In this connection, incidentally, Carol Gilligan's book *In a Different Voice* (1982) argues that the moral reasoning of girls is different from that of boys.

Passing on the Torch is a very good book—good for teachers at every level, for parents, for pastors, for Sabbath school personnel, and for anyone else who cares about the young people who are the future of the church. If it gets the wide reading it deserves, the whole church will benefit.—Fritz Guy. □

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able income per capita, the report said.

"The study, commissioned by the American Council on Education (ACE), raises the possibility that the steep increases may be temporary rather than a long-term trend. . . .

"The report presents no conclusions about whether tuition increases will continue to soar, but it urges the higher education community 'to intensify its efforts to identify the causes of tuition inflation and to seek solutions.' . . .

"One of the authors, American Enterprise Institute resident fellow Terry Hartle, said that he thinks that tuition increases will return to the lower rates of the past. . . . The rate of tuition increases will have to level off, said ACE President Robert H. Atwell, because potential students would be driven away. 'The middle class will, at some point, get balky,' he said. . . .

"The study—written by Hartle and Arthur Hauptman, a Washington higher education consultant—rejects [U.S. Education] Secretary Bennett's argument that the availability of federal student aid has fueled the increase in college prices. When federal aid tripled during the 1970s, tuition was rising more slowly than inflation, according to the report. . . .

"Hartle pointed out that, despite the rising price tag, public support for higher education has increased since 1978. 'Americans value a college degree,' he said. 'People think it is worth it and continue to buy it. Whether they will continue to do so . . . is an open question.'"—Reported by Barbara Vobejda in *The Washington Post*, February 28, 1987, p. A2.

True Value of Reading

"To read without reflecting is like eating without digesting."—Edmund Burke (1719-1797). □