

1983

Plagiarism at Princeton: An Academic Judgment or a Disciplinary Procedure

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Repository Citation

Devins, Neal and Weeks, Kent M., "Plagiarism at Princeton: An Academic Judgment or a Disciplinary Procedure" (1983). *Popular Media*. 12.

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Lex Collegii

A LEGAL NEWSLETTER
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PLAGIARISM AT PRINCETON: AN ACADEMIC JUDGMENT OR A DISCIPLINARY PROCEDURE

Over the past few years, litigation between students and the universities they attend has become a matter of course. Students have turned to the courts to protect their rights and to check administrative discretion. For better or for worse, universities are made more accountable to the rule of law.

Yet, despite this alleged injection of legal norms into university life, courts have almost uniformly upheld academic and disciplinary dismissals of students. Underlying these decisions is a judicial presumption that the relationship between student and university is unique:

Transcending that bare relationship is the understanding that the student will abide by the reasonable regulations both academic and disciplinary, that the student will meet the academic standards established by the faculty, and that the university on the successful completion of studies will award the degree sought to the student. (Napolitano v. Princeton University, 1982.)

The parameters of this quasi-associational, quasi-contractual relationship are the subject matter of a lawsuit involving Princeton University and Gabrielle Napolitano, a student whose diploma is being withheld for a year due to a finding by a university committee of a plagiarism violation.

Factual Background

Gabrielle Napolitano, an outstanding student at Princeton, was accused of

plagiarising a term paper in a Spanish literature course during her senior year. The assignment was to write in Spanish a critical analysis of one of the works read for the course. Napolitano met with the professor to seek approval of her topic on the last day of classes before the Christmas recess. At this meeting, the professor suggested that Napolitano refer to a particular secondary source, which was an interpretation of the work which Napolitano had selected as the subject for her term paper. The professor in that course alleged that Napolitano knowingly submitted a term paper which was nothing more than a mosaic of excerpts from this single secondary source. In support of this allegation, the professor pointed to thirty-seven places where Napolitano used the exact language of the secondary source without attribution. The professor also noted that Napolitano had signed a pledge attesting to the originality of her work. Counterbalancing this allegation of intentional deceit, Napolitano stressed the fact that the professor recommended that she use the secondary source in question. Because of this, Napolitano felt that the professor would anticipate her heavy reliance on this source. Additionally, Napolitano claimed that it would be extremely unlikely that any student would intentionally plagiarize from a source with which the professor had already demonstrated her familiarity. Finally, Napolitano pointed to the fact that she had expressly cited the source in question on six occasions.

Napolitano was found guilty of plag-

iarism by the university's Faculty-Student Committee on Discipline. The committee voted to withhold Napolitano's diploma for one year. Napolitano unsuccessfully appealed this decision to the president of the university. Napolitano then instituted an action against the university. She claimed, among other things, that: (1) the Committee on Discipline was biased against her because she was limited in her use of character witnesses and was not permitted to cross-examine the professor; (2) the committee failed to follow its own procedures because it did not make the requisite finding of "specific intent to pass off the work of another's"; (3) she was improperly denied the right to outside legal counsel at her hearing; and (4) her punishment was unfair given both her excellent record and the supposedly educative nature of disciplinary punishments.

The *Napolitano* case was first heard by the Mercer County Chancery Court. That court initially ordered that the university's Committee on Discipline rehear the case to determine whether Napolitano intentionally sought to deceive her professor. Upon rehearing, the Committee on Discipline affirmed its earlier ruling and the university's president denied Napolitano's appeal. The trial judge upheld the finding of intentional plagiarism. The judge also upheld the penalty imposed by the committee although he personally felt it too severe, because "to upset Princeton's decision I would have to find that Princeton could not in good faith have assessed the penalties. . . ."

Ms. Napolitano appealed this decision to the Appellate Division of the Superior Court of New Jersey. That court affirmed the trial court's decision on October 13, 1982. Ms. Napolitano decided not to appeal that decision to the New Jersey Supreme Court.

Academic Evaluations vs. Disciplinary Procedures: Varying Standards of Review

Courts, for the most part, are unwilling to intervene in decisions by colleges and universities concerning grades, academic evaluations, or academic dismissals of students. On the other hand, courts will apply a stricter standard of review over matters of discipline. Disciplinary dismissals or suspensions are those based on violation of the college's behavioral norms or rules of conduct. The rationale behind this varying standard of review was stated in *Tedeschi v. Wagner College*, 1980:

Matters involving academic standards generally rest upon the subjective judgment of professional educators, courts are reluctant to impose the strictures of traditional legal rules. Though such matters are subject to judicial scrutiny, the issue reviewed in such a case is whether the institution has acted in good faith.

Suspension or expulsion for causes unrelated to academic achievement, however, involve determinations quite closely akin to the day-to-day work of the judiciary. Recognizing the present day importance of higher education to many, if not most, employment opportunities, the courts

have, therefore, looked more closely at the actions of educational institutions in such matters.

The *Tedeschi* case is exemplary of the court's willingness to intervene in disciplinary matters. In *Tedeschi*, a student was suspended for disciplinary reasons without the benefit of a hearing as provided for in the college's rules. New York's highest court ordered that *Tedeschi* be reinstated, at least until she was dismissed according to appropriate university procedures. The court indicated that when a university has established a procedure, it must substantially observe that procedure.

In stark contrast to *Tedeschi*, the New York Supreme Court refused to intervene in an academic matter in which a student was failed for a grade of 69.7 when 70 was the passing grade for the course. The court claimed:

This judicial reluctance to intervene encompasses controversies including academic standards. This policy of judicial restraint is founded upon sound considerations of public policy. When an educational institution issues a diploma to one of its students, it is, in effect, certifying to society that the student possesses all of the knowledge and skills that are required by the chosen discipline. An educational institution is not required to confer a diploma before the student has demonstrated competence in accordance with the institution's academic standards. (McIntosh v. Borough of Manhattan Community College, 1980.)

In a similar vein, the First United States Circuit Court of Appeals in *Lyons v. Salve Regina College*, (1977) let stand a college dean's decision to disregard a recommendation—as being merely advisory in nature—by a grade appeal committee and to deny Lyon's appeal of a failing grade.

Plagiarism: An Academic or a Disciplinary Matter?

There is no conclusive authority on whether plagiarism is an academic or a disciplinary matter. Plagiarism occurs in an academic setting and, indeed, relates to the essence of an academic degree. On the other hand, plagiarism has aspects of a behavioral norm; in other words, students shall not represent the works of another as their own.

Princeton University defines plagiarism as: "The deliberate use of any outside source without proper acknowledgement. Outside source means any work, published or unpublished, by any person other than the student." Princeton also requires its students' work to be original, as evidenced by the pledge that must accompany all submissions. Apparently, professors at Princeton have great discretion in determining whether a student submitted nonoriginal work. This is borne out by the fact that a Princeton professor, who testified on behalf of Ms. Napolitano before the Committee on Discipline, argued that he would not have viewed the Napolitano paper as being plagiarized because she made reference to the secondary source in question. At the same time, Prince-

ton's student handbook thoroughly delineates general requirements for the acknowledgment of academic work, including quotations, paraphrasing, the use of ideas and facts, and footnotes and bibliography. These careful delineations suggest that the boundaries of permissible and impermissible conduct ought to be fairly well known to both students and professors.

Neither Princeton University nor Ms. Napolitano argued that plagiarism ought to be viewed as an academic offense. Yet the appellate court characterized it as such. For that court characterized the problem as "one involving academic standards and not a case of violation of rules of conduct." Consequently, that court held that the university's actions ought to be scrutinized under the deferential academic decision-making standard.

The Analytical Framework: Contract And Private Association Rationales

Courts will generally limit their review of private university academic and disciplinary decision-making to a determination of whether a university abided by its own regulations. The basis of this analytical framework is a merger of the law of associations with the law of contracts.

There is little doubt as to the applicability of contract doctrine to the university-student relationship:

The student comes to the academic community (the university) seeking to be educated in a given discipline. The student pays a tuition which might, in some instances, represent a contractual consideration. The university undertakes to educate that student through its faculty and through the association of other students with that student and the faculty. (Napolitano, 1982)

But the courts are unwilling to apply rigidly the law of contracts to the student-university relationship. In *Slaughter v. Brigham Young University*, (1975) the Tenth U.S. Circuit Court of Appeals, for example, held the trial court in error for its strict application of commercial contract doctrine to the university's expulsion of a graduate student for academic dishonesty. Similarly, Princeton stated in its brief before the appellate court:

Education contracts are unique and should not be mechanistically construed, but should permit the university to exercise sufficient discretion to properly exercise its educational responsibility.

This uniqueness derives primarily from the similarities between the relationship of a university to its student and the relationship of a private association to its members. This law, as recognized by the appellate court in *Napolitano* quoting from another New Jersey case, requires that:

Courts ordinarily ought not to intrude upon areas of associational decision involving specialized knowledge. . . . Private associations must have considerable latitude in rule-making in

order to accomplish their objectives and their private law generally is binding on those who wish to remain members. (Higgins v. American Society of Clinical Pathologists, 1968)

Consequently, courts generally will not intervene in internal university decision-making. Instead, they will merely require the university to abide by its own procedures. And if the matter at stake is an academic determination, the courts will even be deferential in their review of whether the university abided by its procedures.

Legal Issues Raised in *Napolitano*

In challenging the university's action, Ms. Napolitano raised a number of legal issues. Where does the decision-making authority lie? Is a student at an independent university entitled to be represented by counsel at university proceedings? Is the university's plagiarism determination accurate? Is the punishment appropriate?

Ms. Napolitano alleged that the trial court—not the University Committee on Discipline—should have determined whether she intentionally sought to pass off the work of another as her own. Ms. Napolitano asked the court to alter its view of the allegedly special quasi-contractual, quasi-associational relationship between a university and its students and argued that courts ought to recognize that "higher education at private universities is big business" and thus be willing to engage in greater oversight of university affairs.

The appellate court rejected this argument. It held that the student-university relationship is unique: "We must give substantial deference to the importance of institutional integrity and independence." Consequently, the appellate court held that decision-making authority in this matter was appropriately lodged with the university's Committee on Discipline.

This conclusion was buttressed by court decisions, such as *Slaughter* and *Tedeschi*, which recognized that a court could do no more than require a university to abide by its own procedures. In *Slaughter*, the court went so far as to claim that:

School discipline problems must first be resolved in the school and by its constituted authorities. This is a function of the educational process and has always been considered a basic element. The student places himself in the school community and traditionally those with immediate supervision plus one or more in an administrative position, or combined position, enforce the rules of discipline. This has to be the starting place at least.

Ms. Napolitano alleged that her hearing before the university's Committee on Discipline was necessarily biased against her because she was not permitted to have outside counsel represent her. In support of this position, Napolitano pointed to *Ryan v. Hofstra University*, (1971) a case in which New York's Supreme Court ordered the reinstatement of a student expelled for dis-

ciplinary reasons because Hofstra's policy only permitted use of counsel employed by the university. In *Ryan*, the court stated:

The university's interest in limiting counsel is only administrative and not clear. . . . The only colorable administration interests in limiting counsel can be the fear of publicity harmful to it or the student, undue stress on legal technicality, or overly extensive attack on it by a lawyer unfeeling for the administration's problems. These are not nearly justification to deny free choice of counsel to a student literally fighting for his academic life.

Countering *Ryan*, Princeton pointed to the fact that at an independent institution a student was not entitled to counsel for each academic or disciplinary dismissal. Furthermore, it pointed out that in *Gabrilowitz v. Newman*, (1978) the United States First Circuit Court of Appeals held that even a *state* university student did not have a right to counsel during a disciplinary procedure unless there was related criminal charges pending against the student. In *Gabrilowitz*, the court recognized that "most courts have declined to grant students the right to counsel in disciplinary proceedings," because "academic institutions have a significant interest in the promulgation of procedures for the resolution of student disciplinary problems."

The trial and appellate courts in *Napolitano* rejected the "right to counsel" allegation. For both courts, judicial intervention on this matter was precluded because of the university's authority to formulate its own substantive rules of conduct and to specify the procedural rights of students accused of violations of a rule. Independent institutions have not been required to allow counsel unless their own rules permit this type of representation.

The issue of whether plagiarism is an academic or a disciplinary matter is significant in determining whether a court should upset a plagiarism conviction. Ms. Napolitano claimed that plagiarism is strictly a disciplinary matter and thus the courts were required to review carefully her conviction. The appellate court, however, applied a deferential standard of review by holding that plagiarism is an academic judgment.

Ms. Napolitano alleged that her punishment was far too severe considering her past record, the nature of the alleged plagiarism, and the history of past treatment of students with similar offenses and backgrounds. As was the case with the plagiarism determination, the court refused to intervene. The trial judge, despite his personal disagreement with the university's action, held that:

The proper role of a court is to permit organizations to govern their own affairs unless the Court's intrusion is warranted by conduct so egregious as to constitute a breach of the agreement between the parties. . . . To upset Princeton's decision I would have to find that Princeton could not in good faith have assessed the penalties it did against plaintiff, but I cannot do

so, considering my understanding of the proper role of the courts.

The appellate court affirmed this determination. On this issue, the weight of precedent clearly speaks in favor of judicial deference to university disciplinary discretion.

The Significance of *Napolitano*

The most troubling aspects of the *Napolitano* case are not easily amenable to satisfactory judicial resolution; namely, what constitutes plagiarism and what sorts of penalties should be imposed in plagiarism cases. Because of this, the courts are likely to defer to the rule-making authority of colleges and universities. College and university administrators ought to delineate clearly what is plagiarism and what are the penalties so that students are aware of the standards and college and university officials abide by them. Otherwise, students will properly sue colleges and universities for breaching their own procedures.

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—Kent M. Weeks

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