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Kenneth H. Ryesky

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PART TIME SOLDIERS: DEPLOYING ADJUNCT FACULTY IN THE WAR AGAINST STUDENT PLAGIARISM

by Kenneth H. Ryesky*

“If the average [college] administration were half as careful in insuring the personal satisfactions of its staff as of its students, it doubtless would be more than repaid even in the logics of cost and efficiency. Narrow attitudes are rarely the result of deliberate discrimination, of course, but a good many university heads inadvertently treat the faculty member as if he were a hired hand rather than a partner in the advancement of learning. A large part of the lay public naively thinks that magnificent plants and ample endowments will automatically insure creative work, *irrespective of the social environment.*”¹

I. INTRODUCTION

By all accounts the incidence of plagiarism by students is clearly growing on America’s college campuses.² A substantial factor in this growth is no doubt the negative side effect of ever-developing information technologies such as the Internet.³ The employment by colleges and universities of adjunct faculty members⁴ has likewise been

* B.B.A., Temple Univ., 1977; M.B.A., La Salle Univ., 1982; J.D., Temple Univ., 1986; M.L.S., Queens Coll. CUNY, 1999; admitted to the N.Y., N.J., and Pa. Bars; Attorney at Law, East Northport, N.Y.; Adjunct Assistant Professor, Dep’t of Accounting & Information Systems, Queens Coll. CUNY, Flushing, N.Y.; Adjunct Assistant Professor, Sch. of Business, Yeshiva Univ.

1. LOGAN WILSON, *THE ACADEMIC MAN* 221 (Oxford Univ. Press, 1942) (emphasis added).

2. David A. Thomas, *How Educators Can More Effectively Understand and Combat the Plagiarism Epidemic*, 2004 *BYU EDUC. & L. J.* 421, 425 (2004); Todd Ackerman, *Colleges’ War Against Cheats Goes High-Tech*, *HOUS. CHRON.*, Oct. 6, 2003, at A1.

3. See, e.g., Paul Desruisseaux, *Cheating is Reaching Epidemic Proportions Worldwide, Researchers Say*, *CHRON. HIGHER EDUC.* (Wash., D.C.), Apr. 30, 1999, at A45; Margaret Gibelman et al., *The Downside of Cyberspace: Cheating Made Easy*, 35 *J. SOC. WORK EDUC.* 367 (1999); Nadia Lerner, *More Students Have Cheating on Their Minds*, *MILWAUKEE J. SENTINEL*, Apr. 27, 2003, at 1L; Kim McMurtry, *E-Cheating: Combating a 21st Century Challenge*, *T.H.E. JOURNAL*, Nov. 2001, at 36–37; Amisha Padnani, *Schools Fight Against Copying: Plagiarism on Rise at Jersey Colleges*, *HERALD NEWS* (Passaic Co., NJ), Dec. 6, 2004, at B1.

4. Teaching faculty employed on a basis other than the full-time tenure track are variously

on the increase.⁵

This article will explore the significant implications of adjunct faculty upon academia's efforts to counter student plagiarism in light of the disparities between adjunct faculty and full-time faculty. Following a discussion of plagiarism and its implications in academia, the situation and employment conditions of adjunct faculty will be explored. This article will then discuss the complications and conflicts that impact an adjunct faculty member's ability to detect, penalize, and deter plagiarism by students. Following a discussion of the wider social and legal effects posed by the rising tide of student plagiarism, this article concludes that academia's treatment of its adjunct faculty significantly affects the outcome of any campaign it wages against student plagiarism.

II. ACADEMIC PLAGIARISM AND ITS IMPLICATIONS

Plagiarism is composed of both intentional and unintentional acts that fail to give credit to the original source. The implications in academia go beyond harming the creators of the work to also harming the plagiarizer, whether or not they are caught in the act. This section will discuss the practical, social and cultural aspects of plagiarism in academia, the effects that plagiarism has upon the academy, and how the judiciary has treated plagiarism and those who engage in this practice.

A. What Constitutes Academic Plagiarism

Plagiarism is "[t]he act or instance of copying or stealing another's words or ideas and attributing them as one's own."⁶ The word is derived from *plagiarius*, the Latin word for a kidnapper.⁷ Plagiarism can occur in diverse situations, including but not limited to copyright infringement,⁸ plagiarized text in court papers filed by attorneys or those seeking

designated as "Adjunct faculty," "Part-time faculty," "Contingent faculty," "Special lecturers," or similar terms. See AM. FED'N OF TEACHERS, STATEMENT ON PART-TIME FACULTY EMPLOYMENT 2–3 (1996), <http://wa.aft.org/index.cfm?action=article&articleID=ddb468ab-019c-418d-9383-d6415f1420b9.htm>; see also Univ. of Alta. & Non-Academic Staff Ass'n., [1990] C.L.A.S.J. LEXIS 10670, at *78 (Alta. Labor Adjudication 1990) (referring to non-fulltime faculty as "sessional instructors."). This Article will use the terms "adjunct" or "adjunct faculty" to refer to such individuals.

5. See, e.g., Valerie Martin Conley et al., U.S. Dep't of Educ., NCES 2002-163, Part-time Instructional Faculty and Staff: Who They Are, What They Do, and What They Think (Mar. 1992), available at <http://nces.ed.gov/pubs2002/2002163.pdf>; see also Appeal of Univ. Sys. Bd., 795 A.2d 840, 844 (N.H. 2002) (reciting that number of adjunct faculty members at Keene State College in New Hampshire "increased substantially from fifty-one employees in 1977 to 170 in 1998.").

6. BLACK'S LAW DICTIONARY 1170 (7th ed. 1999).

7. See *id.*

8. *E.g.*, *Sheldon v. Metro-Goldwyn Pictures Corp.*, 309 U.S. 390, 396–97 (1940).

admission to the bar,⁹ and, some fear, in judicial opinions written by the judges themselves.¹⁰ Plagiarism has particular implications in an academic setting,¹¹ specifically, plagiarism committed by students¹² in their coursework at colleges and universities.¹³

Depending upon the rules set forth by the college or university, student plagiarism violations may or may not have an intent requirement.¹⁴ Haphazard or careless research or writing procedures can result in failure to give appropriate citations and thus constitute plagiarism.¹⁵ Moreover, plagiarism need not necessarily entail verbatim copying, and can even be committed through a paraphrase if not properly attributed to the original work.¹⁶

9. *United States v. Bowen*, 194 F. App'x 393, 402 n.3 (6th Cir. 2006) ("While our legal system stands upon the building blocks of precedent, necessitating some amount of quotation or paraphrasing, citation to authority is absolutely required when language is borrowed."); *In re Hamm*, 123 P.3d 652, 661 (Ariz. 2005), *cert. denied sub nom.*, 126 S. Ct. 2300 (2006); *Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Lane*, 642 N.W.2d 296 (Iowa 2002).

10. See Kenneth H. Ryesky, *From Pens to Pixels: Text Media Issues in Promulgating, Archiving and Using Judicial Opinions*, 4 J. APP. PRAC. & PROCESS 354, 406 (2002) (expressing concern that "the convenience with which the textual verbiage may be manipulated and incorporated into a judicial opinion [may] become more salient than the legal reasoning behind the text" in light of *Warden v. McLelland*, 288 F.3d 105, 110 (2d Cir. 2002) (noting that "the District Court issued an opinion that was a minimally modified version of one of defendants' legal memoranda.")).

11. Plagiarism has been described as "an academic offense against intellectual ethics." K.R. ST. ONGE, *THE MELANCHOLY ANATOMY OF PLAGIARISM* 43 (1988).

12. Plagiarism by college faculty members is beyond the ambit of this article though it is also a problem that academia must confront. See, e.g., *Hanifi v. Bd. of Regents*, 46 Ill. Ct. Cl. 131 (1993); *Matikas v. Univ. of Dayton*, 788 N.E.2d 1108 (Ohio Ct. App. 2003). A college's public image and credibility is, of course, very ill served when its own administrators submit plagiarized documents to governmental or academic regulatory bodies. See *Edward Waters Coll., Inc. v. S. Ass'n. of Coll. & Sch.*, 2005 U.S. Dist. LEXIS 39443, at *4 (M.D. Fla. 2005); cf. ERNEST L. BOYER, *COLLEGE: THE UNDERGRADUATE EXPERIENCE IN AMERICA* 184 (1987) ("Integrity cannot be divided. If high standards of conduct are expected of students, colleges must have impeccable integrity themselves.").

13. Student plagiarism is also a problem in the pre-college elementary and secondary schools. See *Haugh v. Bullis Sch., Inc.*, 1989 U.S. Dist. LEXIS 4648, at **1-2 (D. Md. 1989); *Zellman v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 218-19 (Minn. Ct. App. 1999), *appeal denied*, 1999 Minn. LEXIS 512 (Minn. 1999).

14. See *Napolitano v. Trs. of Princeton Univ.*, 453 A.2d 279, 281 (N.J. Super. Ct. Ch. Div. 1982), *aff'd*, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982); *Smith v. Gettysburg Coll.*, 22 Pa. D. & C.3d 607, 610 (Comm. Pl. Ct. Adams Co. 1982); see also JOHN MARSHALL LAW SCHOOL, *STUDENT HANDBOOK 2005-2006*, at 50 (2005), <http://www.jmls.edu/students/Studenthandbook.pdf> ("Intent is not required for a writing to be plagiarized.").

15. See, e.g., *Newman v. Burgin*, 930 F.2d 955 (1st Cir. 1991); *Chandamuri v. Georgetown Univ.*, 274 F. Supp. 2d 71, 78-79 (Dist. D.C. 2003); *Viriyapanthu v. Regents of the Univ. of Cal.*, 2003 Cal. App. Unpub. LEXIS 8748, at **4-5 (Cal. Ct. App. 2003), *reh'g denied*, 2003 Cal. App. LEXIS 1543, *review denied*, 2003 Cal. LEXIS 9824 (Cal. 2003), *cert. denied*, 541 U.S. 1042 (2004).

16. See, e.g., *Newman*, 930 F.2d 955; *Borough of Manhattan Cmty. Coll., Rules and Regulations: Policy on Plagiarism*, <http://www.bmcc.cuny.edu/academics/grades/rules/plagiarism.html> (last visited Dec. 4, 2006) ("Plagiarism is the presentation of someone else's ideas,

The increase of foreign-born individuals in America, immigrants and otherwise,¹⁷ has brought more foreign-born students to our universities and colleges, and has impacted the plagiarism epidemic in America.¹⁸ This phenomenon is, in many instances, a product of diverse and inconsistent cultural norms as to the concept of plagiarism, and not necessarily reflective of any inherent personal unworthiness of foreign-born students.¹⁹ Indeed, the Military Service Academies, which supposedly select from and develop the morally elite of America's youth,²⁰ were known to have had notable problems with academic dishonesty even before the current immigration trend. These problems occurred in prior years when the Service Academies' ranks included few, if any, students of foreign cultural upbringing.²¹ But there is no denying that

words, or artistic/scientific/technical work as one's own creation. A student who copies *or paraphrases* published or on-line material, or another person's research, without properly identifying the source(s) is committing plagiarism.") (emphasis added); *see also* Nichols v. Universal Pictures Corp., 45 F.2d 119, 121 (2d Cir. 1930).

17. *See generally* Office of Immigration Statistics, U.S. Dep't of Homeland Sec., 2004 YEARBOOK OF IMMIGRATION STATISTICS (2006), available at <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2004/Yearbook2004.pdf>.

18. Paula D. Ladd & Ralph Ruby, Jr., *Learning Style and Adjustment Issues of International Students*, 74 J. EDUC. FOR BUS. 363, 366 (1999) ("Faculty members often report, and we have experienced, an unusually high rate of plagiarism among international students [internal citations omitted]."); *see also* Foreign Students at Southern Cal. Found Disproportionately Among Cheaters, CHRON. HIGHER EDUC. (Wash., D.C.), Dec. 11, 1998, at A61.

19. Ladd, *supra* note 18, at 366 ("In some cultures, knowledge is considered to be in the public domain; other cultures believe it is disrespectful to alter an authority's original words."); *see also* PETER K. YU, THE SECOND COMING OF INTELLECTUAL PROPERTY RIGHTS IN CHINA 17-18 (Benjamin N. Cardozo Sch. of Law Occasional Papers in Intellectual Prop. No. 11, 2002); Bryon MacWilliams, *A Clash of Cultures at Moscow State U.: Russians Studying America*, CHRON. HIGHER EDUC. (Wash., D.C.), Sept. 24, 1999, at B4; David Alan Sapp, *Towards an International and Intercultural Understanding of Plagiarism and Academic Dishonesty in Composition: Reflections from the People's Republic of China*, 13 ISSUES IN WRITING 58 (2002); Office of Research Integrity, U.S. Dep't of Health & Human Servs., Handling Misconduct—Inquiry Issues (Jan. 31, 2007), http://ori.dhhs.gov/misconduct/inquiry_issues.shtml ("Foreign students and postdoctoral fellows involved in inquiries and investigations of scientific misconduct have told ORI that certain research policies in the U.S. are different from those in their home countries.").

20. *See* Army Reg. 210-26 ¶ 1-5 (July 26, 2002), available at http://www.army.mil/usapa/epubs/pdf/r210_26.pdf ("The mission of the [United States Military Academy] is to educate, train, and inspire the Corps of Cadets so that each graduate is a commissioned leader of character committed to the values of Duty, Honor, Country [outline tabulations omitted]."); Office of the Sec'y, Dep't of the Navy, SECNAV Instruction 1531.2B (Dec. 29, 2005), available at <http://neds.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01500%20Military%20Training%20and%20Education%20Services/1531.2B.pdf> ("The mission of the Naval Academy is to develop midshipmen morally, mentally, and physically; and to imbue them with the highest ideals of duty, honor, and loyalty.").

21. *See, e.g.*, Martin Arnold, *25 More Cadets Quit Air Academy*, N.Y. TIMES, Jan. 23, 1965, at 1 (reporting resignation of Air Force Academy cadets caught in academic cheating scandal); *Midshipman Dismissed: Annapolis Drops Captain's Son for Cheating in Examination*, N.Y. TIMES, Sept. 22, 1951, at 8; Austin Stevens, *West Point Ousts 90 Cadets for Cheating in Classroom*, N.Y.

these diverse cultural norms have in many instances complicated the practical process of defining plagiarism.

B. How Student Plagiarism Corrupts the Academy

Students who successfully plagiarize are often encouraged by the experience to repeat the plagiarism.²² For those students who intend to earn their degrees honestly, the knowledge that one's fellow classmates cheat can only have a demoralizing effect.²³ Student plagiarism, particularly the intentional variety, harms not only the creators of the plagiarized work, but also the academic community as a whole.²⁴ Academic dishonesty, including plagiarism, "undermines the educational experience, lowers morale by engendering a skeptical attitude about the quality of education, and negatively affects the relationship between students and faculty."²⁵ An educational environment that allows plagiarism to flourish unquestioned by the faculty will readily breed cynical attitudes among the students and disrespect for the instructor and the system as a whole.²⁶ Moreover, there can be negative consequences for a faculty member who fails to detect and act upon a student's plagiarism.²⁷ Plagiarism is clearly a valid and pressing concern for the entire academic community.

The sanctions against students found to have committed plagiarism can vary widely.²⁸ They can range from penalties as severe as expulsion from the degree program,²⁹ suspension from the academic program,³⁰ a

TIMES, Aug. 4, 1951, at 1.

22. See, e.g., *Subramaniam v. State Univ. of N.Y. at Binghamton*, No. 99-261, slip op. at 3 (N.Y. Sup. Ct. Dec. 20, 1999), http://decisions.courts.state.ny.us/fcas/fcas_docs/2001sep/0300026111999100sciv.pdf ("[The student's] 'explanation' was essentially that he had cheated before and gotten away with it.").

23. See, e.g., Carolyn Kleiner & Mary Lord, *The Cheating Game*, U.S. NEWS & WORLD REP., Nov. 22, 1999, at 55 (quoting a University of Alabama student: "I realize that it's wrong, but I don't feel bad about it, either, partly because I know everyone else is doing it.").

24. *In re Lamberis*, 443 N.E.2d 549, 552 (Ill. 1982) ("All honest scholars are the real victims in this case. The respondent's plagiarism showed disrespect for their legitimate pursuits. Moreover, the respondent's conduct undermined the honor system that is maintained in all institutions of learning.").

25. MESA STATE COLL., 2005-06 STUDENT AND ACADEMIC POLICIES GUIDE 20 (2005), <http://www.mesastate.edu/main/policies/studenthandbk/2005-2006%20Academic%20and%20Student%20Policies.pdf>.

26. See Edgar F. Daniels, *The Dishonest Term Paper*, 21 COLL. ENGLISH 403 (1960).

27. See *Carton v. Trs. of Tufts Coll.*, 1981 U.S. Dist. LEXIS 11639, at **19-20 (D. Mass. 1981).

28. See Thomas, *supra* note 2, at 429.

29. See, e.g., *McMillan v. Hunt*, 1992 U.S. App. LEXIS 17475, at **1-3 (6th Cir. 1992); *Trahms v. Trs. of Columbia Univ.*, 666 N.Y.S.2d 150, 150-51 (App. Div. 1997); *In re Harper*, 645 N.Y.S.2d 846, 847 (App. Div. 1996); *Ntreh v. Univ. of Tex. at Dallas*, 2000 Tex. App. LEXIS 5228,

delay in the awarding of the academic degree,³¹ academic probation,³² a failing grade in the course,³³ or a failing grade for the assignment.³⁴

Nor is the plagiarizer home free upon the award of the academic degree. Colleges and universities can revoke a degree that is subsequently found to have been based upon plagiarized coursework.³⁵ Those who regularly commit academic plagiarism as students are far more likely to commit other acts of dishonesty after they leave college and enter the workforce.³⁶ As a result plagiarism committed as a student can be grounds for denial of admission to the bar or professional discipline of an attorney,³⁷ and similarly, can form the basis for professional discipline of a physician.³⁸ Acts of academic plagiarism can later cause courts and other tribunals to disbelieve the word of the plagiarizer.³⁹ Additionally, plagiarism and other forms of academic

at **3-4 (2000); see also *Regina v. Cambridge Univ.*, [1999] ELR 404 (Q.B. 1999) (upholding denial of degree to student who plagiarized).

30. See, e.g., *Morris v. Brandeis Univ.*, 2001 Mass. Super. LEXIS 518 (2001); *Sanderson v. Univ. of Tenn.*, 1997 Tenn. App. LEXIS 825, at *6 (1997). The plagiarizing student in *Morris* had engaged in apparently unsuccessful prior litigation in Pennsylvania against Brandeis University in connection with the same events. See *Morris v. Brandeis Univ.*, 764 A.2d 1136 (Pa. Super. Ct. 2000) (affirming unreported disposition by Philadelphia Common Pleas Court after remand from Federal Court by 1999 U.S. Dist. LEXIS 15767 (E.D. Pa. 1999)), *appeal denied*, 766 A.2d 1250 (Pa. 2000).

31. See, e.g., *Napolitano v. Trs. of Princeton Univ.*, 453 A.2d 279, 280-84 (N.J. Super. Ct. Ch. Div. 1982), *aff'd*, 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982).

32. See, e.g., *Tully v. Orr*, 608 F. Supp. 1222, 1224 (E.D.N.Y. 1985).

33. See, e.g., *Braham v. Brown*, 548 N.Y.S.2d 440 (App. Div. 1989); *In re Widdison*, 539 N.W.2d 671, 673 (S.D. 1995).

34. See, e.g., *Tolbert v. Queens Coll.*, 242 F.3d 58, 63 (2d Cir. 2001).

35. See, e.g., *Crook v. Baker*, 813 F.2d 88, 89 (6th Cir. 1987); *Brown v. State*, 711 N.W.2d 194, 196 (N.D. 2006); *Faulkner v. Univ. of Tenn.*, 1994 Tenn. App. LEXIS 651, at **14-15 (Tenn. Ct. App. 1994); see also Robert Gilbert Johnston & Jane D. Oswald, *Academic Dishonesty: Revoking Academic Credentials*, 32 J. MARSHALL L. REV. 67, 75-82 (1998).

36. See Sarath Nonis & Cathy Owens Swift, *An Examination of the Relationship Between Academic Dishonesty and Workplace Dishonesty: A Multi-campus Investigation*, 77 J. EDU. FOR BUS. 69, 69 (2001).

37. *Doe v. Conn. Bar Examining Comm.*, 818 A.2d 14 (Conn. 2003); *In re Lamberis*, 443 N.E.2d 549, 550-53 (Ill. 1982); *In re Application of Valencia*, 757 N.E.2d 325, 327 (Ohio 2001) (preventing student from taking the bar admissions examination); see *Widdison*, 539 N.W.2d at 674, 678-79; see also *In re Zbiegien*, 433 N.W.2d 871, 877 (Minn. 1988) (finding single incident of plagiarism in law school to be a serious matter, but allowing applicant's admission to the bar in light of the totality of circumstances, including academic discipline imposed upon student by William Mitchell College of Law); see also *In re Harper*, 645 N.Y.S.2d 846, 847 (App. Div. 1996); cf. *Radtke v. Bd. of Bar Examiners*, 601 N.W.2d 642, 643-44 (Wis. 1999) (denying bar admission to individual who had committed plagiarism in prior employment as a university lecturer).

38. *Alsabti v. Bd. of Registration*, 536 N.E.2d 357 (Mass. 1989) (revoking physician's medical license for plagiarism committed while he was a graduate student).

39. See *Hanifi v. Bd. of Regents*, 46 Ill. Ct. Cl. 131, 143 (1993) ("Frankly, we do not believe this admitted plagiarizer when he claims his will was overcome and he did not know what he was doing."); *Hawthorne v. Hawthorne*, 676 So. 2d 619, 626-30 (La. Ct. App. 1996) (determining that

dishonesty committed in college can be a basis for denial of a security clearance for certain types of employment in the defense industry.⁴⁰

Complicating matters further is that furnishing pre-written term papers and dissertations to students has become a sizeable industry. Indeed, the term paper has become a commodity which can be sold for cash⁴¹ or other valuable consideration,⁴² notwithstanding the various legislative attempts to control the practice.⁴³ In short, plagiarism has a most corruptive effect upon the university, and upon society as a whole.⁴⁴

C. Judicial Review of the Battle Against Student Plagiarism

Few if any are the cases in which the courts deal with the issue of student plagiarism per se; those cases of student (or, for that matter, faculty) plagiarism subjected to judicial review are almost always couched in terms of denial of due process, defamation, discrimination and/or breach of contract.⁴⁵ Indeed, many student plagiarizers seeking redress for the sanctions imposed upon them by their schools have admitted that they did plagiarize.⁴⁶

mother in child custody dispute was of questionable honesty and integrity in light of, *inter alia*, accusations that she engaged in previous acts of academic plagiarism while a student); *see also In re Bethune*, 165 B.R. 258, 261 (Bankr. E.D. Ark. 1994) (finding that debtor who had, *inter alia*, plagiarized a term paper in college was not a credible witness and denying hardship discharge from student loan debt).

40. *See* SSN: Applicant for Security Clearance, ISCR Case No. 03-08525, 2005 DOHA LEXIS 681, at **5, 14 (Defense Office of Hearings & Appeals April 6, 2005).

41. *See* U. S. v. Int'l Term Papers, Inc., 477 F.2d 1277 (1st Cir. 1973), *vacating and remanding* 351 F. Supp. 76 (D.Mass. 1972) (overturning denial of Postal Service's request for injunction to detain mail of term paper sellers); *People v. Magee*, 423 N.Y.S.2d 417, 419, 421 (Sup. Ct. 1979) (enjoining the selling of term papers); *State v. Saksniit*, 332 N.Y.S.2d 343 (Sup. Ct. 1972) (also enjoining the selling of term papers); *In re Minuteman Research, Inc. v. Lefkowitz*, 329 N.Y.S.2d 969, 970, 972 (Sup. Ct. 1972) (enforcing subpoena against term paper marketer).

42. *See* *State v. Ford*, 397 N.W.2d 875, 877 (Minn. 1986) (reciting that defendant, a high school assistant principal, had written a term paper for a student, apparently as an inducement to an illicit sexual relationship).

43. *E.g.*, CAL. EDUC. CODE §§ 66400–01(2006); CONN. GEN. STAT. § 53-392b (2006); 110 ILL. COMP. STAT. 5/1 (2006); MASS. GEN. LAWS ch. 271, § 50 (2006); N.Y. EDUC. LAW § 213-b (2006); 18 PA. CONS. STAT. § 7324 (2006); TEX. PENAL CODE ANN. § 32.50 (Vernon 2003).

44. *See, e.g.*, Candace De Russy, *Professional Ethics Begin on the College Campus*, CHRON. HIGHER EDUC. (Wash., D.C.), Sept. 19, 2003, at 20.

45. *See* Roger Billings, *Plagiarism in Academia and Beyond: What is the Role of the Courts?*, 38 U.S.F. L. REV. 391, 409–23 (2004) and cases cited therein.

46. *See, e.g.*, *Cho v. Univ. of S. Cal.*, 2006 Cal. App. Unpub. LEXIS 4681, at *2 (Cal. App. 2006); *Subramaniam v. State Univ. of N.Y. at Binghamton*, No. 99-261, slip op. at 3 (N.Y. Sup. Ct. Dec. 20, 1999), http://decisions.courts.state.ny.us/fcas/fcas_docs/2001sep/0300026111999100sciv.pdf; *see also* *Mohamed v. Univ. of Sask.*, [2006] S.J. No. 39, 2006 SKQB 23 (Sask. Ct. Q.B.) (upholding penalty of expulsion from school where student had admitted to committing multiple acts of academic dishonesty in connection with taking examinations).

Courts are reluctant to second-guess a school's disciplinary determinations for plagiarism and other infractions if reasonably fair notice and due process are afforded to the student.⁴⁷ The school need only afford some sort of due process to the student,⁴⁸ such as notice of the charged infraction, the opportunity to present his or her explanation, and a final decision grounded in objectivity.⁴⁹ The proceedings need not be conducted with all of the well-known formalities of a criminal prosecution trial,⁵⁰ and need not entail a verbatim recording or transcript.⁵¹ Indeed, the school's disciplinary procedures and guidelines can even be somewhat vague or ambiguous,⁵² and the mere failure of the school to follow its own promulgated procedures and guidelines does not necessarily deprive the student of his or her due process rights.⁵³

For a student accused of plagiarism, due process includes human evaluation and determination of the plagiarism.⁵⁴ Some institutions use computer scoring programs such as TurnItIn or Plagiaserve to help determine whether plagiarism has occurred, but these programs are far from perfect.⁵⁵ Computer programs can give false positive indications

47. *McMillan v. Hunt*, 1992 U.S. App. LEXIS 17475 (6th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *Woodruff v. Georgia State Univ.*, 304 S.E.2d 697, 698-99 (Ga. 1983); *Gilbert v. Wright State Univ.*, 1991 Ohio App. LEXIS 2990 (1991) ("the causes and procedure for the discipline imposed were made known beforehand to Gilbert and other students through the University's Student Handbook."); *see Sanderson v. Univ. of Tenn.*, 1997 Tenn. App. LEXIS 825, at *2 (1997) (noting that course syllabus set forth the consequences of plagiarism). This also applies to forms of academic dishonesty other than plagiarism. *See, e.g., Lyon Coll. v. Gray*, 999 S.W.2d 213, 216 (Ark. Ct. App. 1999).

48. Due process also applies to schools below the collegiate level, including the public school systems. *See Zellman v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220-22 (Minn. Ct. App. 1999), *appeal denied*, 1999 Minn. LEXIS 512 (Minn. 1999).

49. *Bd. of Curators v. Horowitz*, 435 U.S. 78, 85-86 (1987).

50. *See id.* at 85 n.2; *Mary M. v. Clark*, 473 N.Y.S.2d 843, 844-45 (App. Div. 1984).

51. *See Trahms v. Trs. of Columbia Univ.*, 666 N.Y.S.2d 150, 150-51 (App. Div. 1997).

52. *See Hill v. Trs. of Ind. Univ.*, 537 F.2d 248, 250, 252 (7th Cir. 1976).

53. *Flannery v. Bd. of Trs. of Ill. Cmty. Coll.*, 1996 U.S. Dist. LEXIS 17049, at *8 (N.D. Ill. 1996); *see also Hill*, 537 F.2d at 252. *But see Doe v. Columbia Univ.*, N.Y.L.J., June 30, 1995, at 25 (Sup. Ct. N.Y. Co.) (finding that Columbia University's failure to give student written notice of disciplinary charges was a substantial deviation from the University's own rules, and remanding the matter back to the University for a decision consistent with its rules and procedures); *Weidemann v. SUNY Coll. at Cortland*, 592 N.Y.S.2d 99, 99 (App. Div. 1992) (finding that college's deviation from its own rules deprived student of opportunity to rebut charges of academic dishonesty).

54. *See Tripp v. Long Island Univ.*, 48 F. Supp. 2d 220, 222 (E.D.N.Y. 1999), *aff'd*, 201 F.3d 432 (2d Cir. 1999) (professor verified that plagiarism had occurred by consulting sources in the library); Kristin Gerdy, *Law Student Plagiarism: Why It Happens, Where It's Found, and How to Find It*, 2004 BYU EDUC. & L. J. 431, 440 (2004).

55. *See David F. Martin, Plagiarism and Technology: A Tool for Coping With Plagiarism*, 80 J. EDUC. FOR BUS. 149, 151 (2005); John Royce, *Has Turnitin.com got it all Wrapped up?*, TEACHER LIBRARIAN, Apr., 2003, at 26. How plagiarism detection tools affect the intellectual property rights of the students who create the term papers and other assignments is beyond the ambit

when a student properly attributes the source of text quoted verbatim,⁵⁶ and have limited effectiveness with term papers in subjects that entail mathematic, chemical or other symbol-intensive notations.⁵⁷ Accordingly, indications of plagiarism from a non-human computerized evaluation program, standing alone, ought not to suffice and must be followed up with a personal evaluation and identification of the plagiarized passages and materials plagiarized.⁵⁸ A person with appropriate expertise, such as a librarian, may be enlisted to do such an evaluation.⁵⁹ There is much to be said for an objective confirmation by an individual more disinterested than the accuser, and/or documentary evidence showing the source of the alleged plagiarism.⁶⁰

Depending upon the intended consequence to the student, plagiarism can be handled as a disciplinary matter and/or as an academic matter.⁶¹ As reserved as the courts are to involve themselves in school disciplinary matters, academic evaluations and consequences require even less formality, and are given even less scrutiny, than college disciplinary proceedings.⁶²

As a general rule, judicial review of grading disputes would inappropriately involve the courts in the very core of academic and

of this article. See Andrea L. Foster, *Plagiarism-Detection Tool Creates Legal Quandary*, CHRON. HIGHER EDUC. (Wash., D.C.), May 17, 2002, at 37.

56. See Rosalind Tedford, *Plagiarism Detection Programs: A Comparative Evaluation*, COLL. & UNIV. MEDIA REV., Spring/Summer 2003, at 111, 113.

57. See Rosemary Talab, *A Student Online Plagiarism Guide: Detection And Prevention Resources (and Copyright Implications!)*, TECHTRENDS, Nov./Dec. 2004, at 15; cf. Ryesky, *supra* note 10, at 389–97 (discussing problems relating to computerized processing and access of text that entails non-alphanumeric characters and symbols and/or diacritical marks).

58. See *O'Connor v. Coll. of St. Rose*, 2005 U.S. Dist. LEXIS 26205, at **11–12, 22–23 (N.D.N.Y. 2005) (When a professor suspected plagiarism, the student submitted a paper to the department chair, who then used Plagiaserve.com to inspect the paper, and then personally reviewed the paper); Gerdy, *supra* note 54; IPARADIGMS, L.L.C., TURNITIN INSTRUCTOR USER GUIDE 18 (Feb. 6, 2006), http://www.turnitin.com/static/pdf/tii_instructor_guide.pdf (“[TurnItIn’s] Originality Reports are simply tools to help you find sources that contain text similar to submitted papers. The decision to deem any work plagiarized must be made carefully, and only after careful examination of both the submitted paper and the suspect sources.”); see also Anne Herrington & Charles Moran, *What Happens When Machines Read Our Students’ Writing?*, 63 COLL ENGLISH 480 (2001) (discussing the problems of substituting computer logic for human evaluation of students’ writing).

59. See Gail Wood, *Academic Original Sin: Plagiarism, The Internet, and Librarians*, J. ACAD. LIBRARIANSHIP, May 2004, at 237, 239–40; see also *Viriyanpanthu v. Regents of the Univ. of Cal.*, 2003 Cal. App. Unpub. LEXIS 8748, at *3 (Cal. Ct. App. 2003), *reh’g denied*, 2003 Cal. App. LEXIS 1543, *review denied*, 2003 Cal. LEXIS 9824 (Cal. 2003), *cert. denied*, 541 U.S. 1042 (2004).

60. Cf., e.g., *Chalmers v. Lane*, 2005 U.S. Dist. LEXIS 1793, at **28–29 (N.D. Tex. 2005) (reciting that student had right to present evidence before “a neutral fact-finder”).

61. See, e.g., CITY UNIV. OF N.Y., CUNY POLICY ON ACADEMIC INTEGRITY 6–10 (2004), http://www1.cuny.edu/portal_ur/content/2004/policies/image/policy.pdf.

62. See *Bd. of Curators v. Horowitz*, 435 U.S. 78, 88 n.4 (1987); *Regents v. Ewing*, 474 U.S. 214, 225–26 (1985).

educational decision making. Moreover, to so involve the courts in assessing the propriety of particular grades would promote litigation by countless unsuccessful students and thus undermine the credibility of the academic determinations of educational institutions.⁶³

A college's treatment of student plagiarism can arguably have attributes of both a disciplinary proceeding and an academic grade evaluation. While a college's well-articulated imposition of disciplinary consequences will usually not be overturned by the courts, a college that has a rational, objective and well-founded basis for imposing consequences based upon academic performance can withstand judicial scrutiny all the better.⁶⁴

III. THE STATUS AND CONDITIONS OF ADJUNCT FACULTY

Adjunct faculty are an important and growing part of academic institutions. This section will discuss three key issues: first, the increase in employment of adjuncts by academic institutions and the rationale for employing adjunct faculty instead of full-time professors; second, a description of the working conditions faced by many adjunct professors, and finally, a description of the pejoration of the adjunct faculty and the impact this negative behavior has had on adjunct professors and their relationships with students.

A. Employment of Adjuncts

The growth in adjunct faculty among the ranks of American academia is part of a broader trend of increased part-time labor. In 1980, the American labor force consisted of an estimated 82.6 million full-time employees and 16.7 million part-time employees.⁶⁵ By 2003, the estimated statistics were 112.3 million full-time employees and 33.1 million part-time employees.⁶⁶ Doing the arithmetic, the full-time workforce grew approximately 36% during the intervening years, while the part-time workforce grew approximately 98% during the same period. This represents a definitive growth trend of part-time employees in all areas of the American economy, of which academia is a part.

An estimated 43.3% of all American postsecondary instructional

63. *Susan M. v. N.Y. Law Sch.*, 556 N.E.2d 1104, 1107 (N.Y. 1990).

64. *See, e.g., Braham v. Brown*, 548 N.Y.S.2d 440 (App. Div. 1989).

65. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 114TH STATISTICAL ABSTRACT OF THE UNITED STATES 404 tbl.632 (1994).

66. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 125TH STATISTICAL ABSTRACT OF THE UNITED STATES 424 tbl.625 (2006).

faculty members are employed on a basis other than full-time.⁶⁷ From among the private not-for-profit baccalaureate institutions the adjunct faculty contingent amounts to 36.8%.⁶⁸ And as a group, adjuncts are anything but monolithic; there is great diversity in background, qualifications, motivation, and employment conditions.⁶⁹

The traditional rationale for employing adjunct faculty is that it enables the college and students to benefit from the valuable real world experience and expertise of individuals whose situations do not otherwise fit into the traditional full-time faculty mold.⁷⁰ Adjunct status may also be used as a means to keep formerly full-time faculty academically active after retirement (forced or otherwise),⁷¹ to maintain a formerly full-time faculty member's ties with the university in crafting an employment termination settlement agreement,⁷² as a status to enable a full-time university non-teaching employee to teach a course,⁷³ or as a

67. Emily Forrest Cataldi et al., U.S. Dep't of Education, NCES 2006-176, Background Characteristics, Work Activities, and Compensation of Instructional Faculty and Staff: Fall 2003, at 11 tbl.1 (2005), available at <http://nces.ed.gov/pubs2006/2006176.pdf>.

68. *Id.*

69. See, e.g., John C. Duncan, Jr., *The Indentured Servants of Academia: The Adjunct Faculty Dilemma and Their Limited Legal Remedies*, 74 IND. L.J. 513, 515-24 (1999); Conley, *supra* note 5.

70. Knight v. Ala., 900 F. Supp. 272, 302 (N.D. Ala. 1995) ("Adjunct faculty at TSUM serve an important and primary role, bringing to the classroom current practical experience in the real world, combined with academic credentials, which blend effectively to serve the working adult student population at that institution."); Pollis v. New Sch. for Soc. Research, 829 F. Supp. 584, 594 (S.D.N.Y. 1993) (denying preliminary injunction), *relief calculated after verdict for plaintiff*, 930 F. Supp. 899 (S.D.N.Y. 1996), *verdict vacated in part and affirmed in part*, 132 F.3d 115 (2d Cir. 1997) ("Adjunct professors are typically regarded as individuals who have made their primary reputations in other fields or in other places (for example, judges or lawyers teaching as adjunct professors at law schools."); Chang v. Univ. of R.I., 606 F. Supp. 1161, 1227 (D.R.I. 1985) (stating that the University "is prone to hire adjunct or specialized clinical faculty in fields (e.g., nursing, dental hygiene) laden with heavy clinical components"); Javier A. Galván, *Practical Suggestions to Internationalize the General Education Curriculum*, J. HISPANIC HIGHER EDUC. 85, 89 (2006) ("Adjunct faculty who are professionals in the field (e.g. engineering, finance, marketing) also bring current ideas and practical applications to the classroom that have a great potential to benefit the students. These instructors bring reality into an otherwise academic and theoretical environment."); Shawn G. Kennedy, *College Changing Along With the Students*, N.Y. TIMES, Mar. 29, 1981, § 11, at 21 (quoting Jay J. Diamond, a dean at Nassau County Community College: "Many of our adjunct faculty members are lawyers, businessmen and engineers and we consider their expertise and experience valuable . . . They allow us to stay up-to-date.").

71. See Pollis, 829 F. Supp. at 585; Zelnik v. Fashion Inst. of Technology, 464 F.3d 217, 219 (2d Cir. 2006); Matczak v. St. John's Univ., 1979 U.S. Dist. LEXIS 9700 (E.D.N.Y. 1979).

72. See Foote v. Comm'r, 81 T.C. 930, 932 n.4 (1983) ("This agreement provided, in addition to the payments, that the university would provide petitioner with an office through 1979, allow him to use the title 'Adjunct Associate Professor' during that period, seal a report on petitioner which was prepared by a university committee, and require no services or other activities from petitioner beginning Jan. 1, 1977."); Radhakrishnan v. Univ. of Calgary Faculty Ass'n., [2002] 215 D.L.R. (4th) 624, 627 (Alta. Ct. App.).

73. See, e.g., Ridpath v. Bd. of Governors Marshall Univ., 447 F.3d 292, 300 (4th Cir. 2006).

credential to obtain outside financial grants for the college or university.⁷⁴

B. Adjunct Compensation and Job Conditions

Colleges, however, have increasingly been utilizing adjuncts not primarily for their expertise but rather on account of the low price of labor.⁷⁵ This trend towards balancing the college budget upon the backs of the adjuncts has led to many inequities between the adjunct faculty and the full-time faculty. Though individual adjunct faculty situations vary widely, a composite adjunct can be drawn from the practices and parameters of various educational institutions.

Some colleges compensate adjuncts on what amounts to a commission basis, paying them according to the number of students who enroll in the classes they teach.⁷⁶ Some colleges begrudge even the low salaries they pay to their adjunct faculty.⁷⁷ Many colleges do not even offer insurance or retirement benefits to adjuncts.⁷⁸

Adjuncts are often engaged to teach on very short notice,⁷⁹ and their

74. See *Hanis v. Teevan*, [1998] 162 D.L.R. (4th) 414, 419 (Ont. Ct. App.).

75. See, e.g., *NLRB v. Cooper Union for the Advancement of Sci. & Art.*, 783 F.2d 29, 32 n.3 (2d Cir. 1986) (reciting that for financial reasons, the college administration "implemented changes that included . . . reducing the number of full-time faculty through attrition, and increasing the proportion of adjunct faculty"); *Naval v. Herbert H. Lehman Coll.*, 2004 U.S. Dist. LEXIS 26007, at *18 (E.D.N.Y. 2004) ("[CUNY and Lehman College] note that budget constraints motivated the use of adjunct faculty to teach ESL . . . Thus, Lehman concluded that 'it was economically prudent' to employ part-time adjuncts in ESL."); see *Knight*, 900 F. Supp. at 302 ("[Troy State University at Montgomery] saves substantial faculty costs by using adjunct faculty to teach almost half its courses."); Phyllis Bernstein, *Colleges Use More Adjuncts*, N.Y. TIMES, Nov. 17, 1985, § 11, at 25); see also Office of Univ. Relations, City Univ. of New York, *CUNY Productivity Initiative Reaps \$22 Million in Educational Enhancements*, CUNY NEWSWIRE, Jan. 13, 2005, <http://www1.cuny.edu/forum/?p=107> (reporting that CUNY Chancellor Matthew Goldstein highlighted various cost-savings strategies, including the saving of "\$7.49 million via staffing efficiencies, such as leaving positions vacant or replacing full-time staff with part-time staff."). The salary of some Adjunct faculty members has reportedly been as low as \$1,050 per semester in 2004. See *Valetutti v. Valetutti*, 2006 Ark. App. LEXIS 273, at *5 (2006) (reciting that husband's 2004 earnings included "\$1,050 from teaching as an adjunct professor at SAU-Tech for one semester").

76. See *Saulsbury v. St. Mary's Univ.*, 318 F.3d 862, 864 (8th Cir. 2003).

77. See *Commonwealth v. Miller*, 466 A.2d 791, 792 (Pa. Commw. Ct. 1983) (reciting that Millersville State University had made written offer to an adjunct of \$2,139.47 for the semester, but, after the teaching assignment was completed by the adjunct faculty member, claimed a mathematical error, that the total pay should have only been \$809.36, and after paying the adjunct \$1,623.46 demanded that she return \$814.10). Cf. *Valetutti*, 2006 Ark. App. LEXIS 273, at *5 (Adjunct salary at SAU-Tech amounted to \$1,050 for a semester).

78. See, e.g., *Tubergen v. W. Piedmont Cmty. Coll.*, 2004 U.S. Dist. LEXIS 6955, at *8 (W.D.N.C. 2004); *Davis v. Maryville Coll.*, 1989 U.S. Dist. LEXIS 13982, at *4 (E.D. Mo. 1989).

79. See, e.g., *Cleveland v. Prairie State Coll.*, 208 F. Supp. 2d 967, 973 (N.D. Ill. 2002) (reciting that an Adjunct was interviewed for a job just 4 days before the start of a semester); see *Davis*, 1989 U.S. Dist. LEXIS 13982, at *4 ("Adjunct professors are hired on a semester by semester

conditions and employment status can change from one semester to the next.⁸⁰ Sometimes their employment is based upon oral contracts of indefinite terms and/or dubious enforceability.⁸¹ Adjuncts are often not availed access to the grievance process and can be terminated at will for any reason or for no reason.⁸² Additionally, adjuncts' teaching engagements can be cancelled with little advance notice.⁸³ Enjoying no right to reappointment from semester to semester,⁸⁴ "[a]djuncts are not discharged, they simply are not rehired if a course or section they were teaching is not offered at any particular time."⁸⁵ They are frequently among the first victims of a college's funding reductions or budgetary cutbacks.⁸⁶

As can be expected, the economic consequences of the adjunct's low wages impact their personal lifestyles. During a given semester, many adjuncts have teaching engagements that necessitate significant travel and/or maintenance of a second residence in order to perform their teaching and professional duties.⁸⁷ The adjunct faculty member's uncertainty of continued long-term employment, coupled with the impecunious compensation, does not place the adjunct in good stead to obtain a cooperative apartment or other housing.⁸⁸

Other more basic privileges and benefits are also denied to adjunct faculty. "The adjunct professor has no voice in departmental matters, does not vote on tenure, and may or may not be welcome at departmental

contract basis and teach one or two courses.").

80. See *Young v. McLeod*, 841 So. 2d 268, 269 (Ala. Civ. App. 2002); *Kendall v. Dowling Coll.*, 2006 N.Y. App. Div. LEXIS 8262 (2006).

81. See *Lawrence v. Providence Coll.*, 1994 U.S. App. LEXIS 33637 (1st Cir. 1994); *Hardy v. Jefferson Cmty. Coll.*, 2000 U.S. Dist. LEXIS 22607, at **2-3 (W.D. Ky. 2000), *aff'd*, 260 F.3d 671 (6th Cir. 2001), *cert. denied sub nom.*, *Besser v. Hardy*, 535 U.S. 970 (2002); see also *Googerdly v. N.C. Agric. & Technical State Univ.*, 386 F. Supp. 2d 618, 621-22 (M.D. N.C. 2005), *remanded to state court* 2006 U.S. Dist. LEXIS 63048 (M.D. N.C. 2006) (reciting that the University attempted to renege on a 4-year appointment letter given to faculty member having previous adjunct position and claimed that plaintiff "was always an adjunct professor and [the University] had decided not to renew his nine-month adjunct professor contract for the 2002-03 school year").

82. See *Collins v. Colo. Mountain Coll.*, 56 P.3d 1132, 1135-36 (Colo. Ct. App. 2002).

83. See *Dixon v. Bhuiyan*, 10 P.3d 888, 890, 892 (Okla. 2000).

84. See, e.g., *Naval v. Herbert H. Lehman Coll.*, 2004 U.S. Dist. LEXIS 26007, at *18 (S.D.N.Y. 2004); *Prigmore v. Miracosta Cmty. Coll. Dist.*, 2004 Cal. App. Unpub. LEXIS 5429, at *4 (Cal. App. 2004).

85. *Hefli v. Comm'n on Human Rights & Opportunities*, 1993 Conn. Super. LEXIS 126, at *7 (2003).

86. See, e.g., *Daugherty v. First Tenn. Bank*, 175 B.R. 953, 956 n.3 (Bankr. E.D. Tenn. 1994).

87. See *Robertson v. Comm'r*, 190 F.3d 392, 393-94 (5th Cir. 1999).

88. See *Chapman v. 2 King Street Apartments Corp.*, 2005 N.Y. Misc. LEXIS 1731, at *10 (Sup. Ct. 2005) ("Adjunct faculty and especially part time adjunct faculty, are well known to be paid poorly and in any event, the Directors, with nothing more, could reasonably ignore speculative statements of future jobs.").

meetings.”⁸⁹ He or she typically does not serve on any faculty committees⁹⁰ and is limited in his or her ability to conduct sponsored research.⁹¹ Colleges often limit adjunct faculty access to the buildings and/or classrooms in which they teach classes,⁹² provide their adjunct faculty with limited (if any) office space,⁹³ and limit or totally deny adjuncts library privileges⁹⁴ or access to computer facilities or e-mail accounts.⁹⁵ And, being effectively at-will employees, adjuncts are largely powerless to speak out for improvement of their condition, much less take action, without very severe consequences.⁹⁶

89. *Pollis v. New Sch. for Soc. Research*, 829 F. Supp. 584, 594 (S.D.N.Y. 1993).

90. See *Davis v. Maryville Coll.*, 1989 U.S. Dist. LEXIS 13982, at *4 (E.D. Mo. 1989); *Waring v. Fordham Univ.*, 640 F. Supp. 42, 46 (S.D.N.Y. 1986).

91. See *Annett v. Univ. of Kan.*, 371 F.3d 1233, 1236, 1238–39 (10th Cir. 2004).

92. See, e.g., DENNIS W. WHITE, IRVINE VALLEY COLL., FACULTY HANDBOOK 2005—2006, at 9 (2005), <http://www.ivc.edu/instruction/2005-2006FacultyManual.pdf> (“Adjunct faculty cannot request keys [to classrooms].”); see also *In re Tuohy*, DTA No. 818430 (N.Y. Tax App. Trib. Feb. 13, 2003), <http://www.nysdta.org/Decisions/818430.dec.htm> (“[T]here was no access to the building for petitioner until after 4:30 P.M. each school day.”).

93. See, e.g., *Davis*, 1989 U.S. Dist. LEXIS 13982, at *4 (reciting that Adjunct faculty at Maryville College are given no office space); *Tuohy* (N.Y. Tax App. Trib.) (reciting that adjunct faculty member was provided “an office with six desks and one bookcase for the ten professors and adjunct faculty” by Pace University and no office space at all by Iona College); DEP’T OF SCIS. COMPREHENSIVE PLANNING COMM., JOHN JAY COLL. OF CRIMINAL JUSTICE, REPORT TO THE COLLEGE COMPREHENSIVE PLANNING COMMITTEE ON PHASE II SPACE REQUIREMENTS FOR THE DEP’T OF SCIENCES (Spring 2000), <http://web.jjay.cuny.edu/~phase2/asmentrep/cpreport.html> (“Over 50 adjunct faculty share the 3 adjunct offices available to the [Sciences] Department making the offering of office hours unpredictable. Most adjunct faculty have no discernable work areas.”); see also Ann M. Skelton, *The Part-Time Seduction*, N.Y. TIMES, July 31, 1983, at CN20 (stating, by an Adjunct faculty member, that “[n]o part-time faculty member receives a key to our office”).

94. See, e.g., Health Professions Div. Library, Nova S.E. Univ., Circulation Policies (Sept. 21, 2006), <http://www.nova.edu/cwis/hpdlibrary/circpol.html> (“HPD and NSU Faculty are permitted an unlimited number of renewals, while Adjunct Faculty are not permitted renewals.”); Terry Nikkel, Dalhousie University Libraries, Eligible Users of Dalhousie University Libraries’ Proxy Service (Aug. 12, 2003), <http://www.library.dal.ca/remotedal/dalhousie%20libraries%20proxy%20policy.pdf> (“Alumni and adjunct faculty may not use the proxy service to access electronic library resources.”).

95. See *Faculty Rights Coal. v. Shahrokhi*, 2005 U.S. Dist. LEXIS 16227, at *4 (S.D. Tex. 2005), *reconsideration denied*, 2005 U.S. Dist. LEXIS 16293 (M.D. Tex. 2005), *affirmed*, 2006 U.S. App. LEXIS 27212 (5th Cir. 2006); KENNETH H. RYESKY, INFORMATION & INSTRUCTIONAL TECHNOLOGY: BRINGING ADJUNCT FACULTY INTO THE IT FOLD (Nov. 14, 2003), available at ERIC, Document No. ED490813 (monograph from Conference presentation, *Instructional/Information Technology in CUNY*); Anthea Tillyer, *Educational Technology and ‘Roads Scholars,’* ACADEME (Amer. Ass’n. of Univ. Professors), July/Aug. 2005, available at <http://www.aaup.org/publications/Academe/2005/05ja/05jatill.htm>; Susie Coggin, *Adjunct Professor Resigns Position*, GW HATCHET, May 3, 2001, <http://www.gwhatchet.com/media/storage/paper332/news/2001/05/03/news/2001/05/03/News/Adjunct.Professor.Resigns.Position-75282.shtml> (reporting that an Adjunct at George Washington University had no computer in his office and had to drive 45 minutes to his home in order to access course administration materials).

96. *Carleton Coll. v. NLRB*, 230 F.3d 1075, 1083 (8th Cir. 2000) (Bright, J., dissenting): “Because Diekman refused to back down in his pro-organization views in the September 5 meeting

It is further noted that while adjunct faculty members are underpaid and denied many of the rights and privileges given as a matter of course to full-time faculty, the authorities have no qualms over saddling adjunct faculty with restrictions on supplementing their livelihoods outside of academic employment.⁹⁷ Moreover, many aspects of the tax laws are stacked against the adjunct faculty member, including the ability to allocate time spent at more favorably situated home computer facilities⁹⁸ and the ability to claim deductions from gross income for expenses incurred while teaching.⁹⁹

Professional personnel have more complex ties with their employment situation than the typical hourly factory production worker and cannot be successfully managed in the same way.¹⁰⁰ Any organization populated by scientific and/or professional personnel must be managed through techniques and principles that address specialized higher-order needs and the desires of its employees.¹⁰¹ Yet, colleges and universities have come to ignore, if not invalidate, the specialized needs and support requirements of certain employees whose employment is supposed to be of a scientific or professional nature, instead viewing adjuncts and their supporting accoutrements as just one more operating cost to be minimized. And so, the substandard recompense for adjunct labor has expanded to the provision of substandard working conditions and substandard access to essential services and information.

in the way that his colleagues did, he received no contract. The College only needed one example to keep the adjuncts in line for the future. Diekman was that example.

As a result of this decision, the adjunct faculty of Carleton College and others similarly situated will hesitate to make any waves by attempting organized efforts to improve their conditions in opposition to the entrenched administrative and regular, tenured faculty.”

Id., see also Duncan, *supra* note 69, at 535–85.

97. See, e.g., Op. Haw. State Ethics Comm’n 517 (Dec. 15, 1983), <http://www.hawaii.gov/ethics/opinions/AO517.HTM> (“[T]he restrictions discussed above applied equally to part-time and full-time faculty members.”).

98. See, e.g., *Tuohy* (N.Y. Tax App. Trib.), see also *Tuohy v. Procaccino*, 378 N.Y.S.2d 810 (App. Div. 1976).

99. See *Potter v. Comm’r*, 68 T.C.M. (CCH) 248 (1994) (finding that adjunct faculty member was an employee for tax purposes and therefore subject to the 2% floor on miscellaneous itemized deductions per I.R.C. § 67); see also I.R.C. §§ 62(a)(2)(D) and 62(d)(1) (allowing teachers of grades Kindergarten through 12 to deduct out-of-pocket expenses for school classroom supplies and educational materials but not including college-level instructors among those eligible to claim the deduction).

100. EDWIN B. FLIPPO, *PRINCIPLES OF PERSONNEL MANAGEMENT* 11–12 (2d ed., McGraw-Hill 1966).

101. KEITH DAVIS, *HUMAN BEHAVIOR AT WORK: HUMAN RELATIONS AND ORGANIZATIONAL BEHAVIOR* 343–59 (4th ed., McGraw-Hill 1972).

C. The Pejoration of Adjunct Faculty

Like the proverbial camel's nose under the tent, the low wages paid to adjunct faculty members have been followed by other ill effects in academia. Universities, having economized on adjuncts' salaries, took the next step by cutting back on other amenities. Impecuniously compensated and bereft of many of the traditional trappings of academia, the basic worthiness of the adjunct was thus left open to question. The deprecation and denigration of adjunct faculty is already in full swing.¹⁰² Full-time academicians and administrators have now branded adjuncts as inferior,¹⁰³ and, as documented in at least one literature search, the scholarly writings frequently use adjectives and metaphors that border on the detractory to describe adjunct faculty.¹⁰⁴

Much of the contempt for adjuncts is patent and obvious, as exemplified by an anonymous poster on an Internet discussion group:

The current trend of adjuncts and part-timers trying to take over the faculty union is scary. We have a group of individuals who for one reason or another could not make it. Nobody has a childhood dream of becoming an adjunct faculty. You become one because you were unsuccessful in the

102. See, e.g., George Van Arsdale, *De-Professionalizing a Part-Time Teaching Faculty: How Many, Feeling Small, Seeming Few, Getting Less, Dream of More*, AM. SOCIOLOGIST, Nov. 1978, at 195 (Nov. 1978); Linda R. Robertson, et al., *The Wyoming Conference Resolution Opposing Unfair Salaries and Working Conditions for Post-Secondary Teachers of Writing*, 49 COLL. ENGLISH 274, 276 (1987) (stating that "demeaning status is visited upon [adjunct faculty], or at least abetted, by their tenured colleagues."); see also CUNY ASS'N OF SCHOLARS, PARITY FOR ADJUNCTS? THE NEW THREAT TO ACADEMIC STANDARDS, at I5 (May 6, 2002), <http://www.nas.org/affiliates/cunyas/parity.html> (viewing with disdain certain union proposals to provide adjunct faculty with, *inter alia*, desks, computer access, filing cabinets, and the inclusion, in the proposed paid office hour, of time spent responding to student e-mails).

103. Robert E. Roemer & James E. Schnitz, *Academic Employment as Day Labor*, 53 J. HIGHER EDUC. 514, 527-28 (1982); Demetrios Louziotis, Jr., *The Role of Adjuncts: Bridging the Dark Side and the Ivory Tower*, REV. OF BUS. (St. John's Univ.), Winter 2000, at 47, 51; see also Michelle A. Waters & E. Anne Bardoel, *Work-Family Policies in the Context of Higher Education: Useful or Symbolic?*, 44 ASIA PACIFIC J. OF HUMAN RESOURCES 67, 76 (2006) (reporting perceived managerial attitudes in academia that part-time faculty "do not work as hard."); Eric L. Wee, *Professor of Desperation*, WASH. POST, July 21, 2002 (Magazine), at W24 ("When they get 375 applicants for a single job, they need some way to weed people out. If someone's been an adjunct for a while, a search committee starts wondering what's wrong with them. It may not be fair, but it's how things work."); Bill Rodgers, *'Part-Time' Faculty Raise Concerns*, THE JAMBAR (Youngstown State Univ.), May 4, 2006, <http://media.www.thejambar.com/media/storage/paper324/news/2006/05/04/Pageone/partTime.Faculty.Raise.Concerns-1924133.shtml> (quoting Angela Jancius, YSU Assistant Professor of Sociology: "The job market can block them from entering a career. Once you get categorized as adjunct faculty it's hard to get out again.").

104. See Grace Banachowski, *Perspectives and Perceptions: The Use of Part-Time Faculty in Community Colleges*, 24 CMTY COLL. REV. 49, 57-58 (Fall 1996), available at ERIC, Document No. EJ554320 (noting, in the scholarly literature, the use of terms such as "the academic underclass," "a corps of unregulated personnel" "anchorless street-corner men," "invisible and expendable," "necessary evil," "cheap fix," and "dangerous addiction" to refer to adjunct faculty).

competition and you have no other choice. Now, these individuals who could not make their way to the main lobby through the street entrance and were able only to get to the basement through the side door are trying to force themselves to the main elevator in order to get to higher floors. When we hire a new full time faculty, we open the competition to young individuals who proved themselves and are promising. We will never agree to treat years of adjunct teaching as a criterion for natural advancement to full time lines.¹⁰⁵

Even those who espouse and sincerely believe in respect for adjunct faculty take a condescending view of the adjunct's worthiness and commitment.¹⁰⁶ For example, the statement that "professors with a reputation for being active researchers and contributing to their discipline's knowledge base will be significantly more effective than will adjunct faculty in shoring up the confidence of skeptical student consumers who are unsure of the core quality and potential value of their education"¹⁰⁷ presupposes that an adjunct faculty member necessarily does not engage in scholarly research and publication, a clearly unfair and fallacious generalization.¹⁰⁸

The pejoration of adjunct faculty has gone from the personal to the institutional. Such institutional anti-adjunct attitudes were apparent in an e-mail memo sent to York College CUNY personnel from the College's Computer Services Department when the campus telephone directory was revised: "The telephone directory is ready to be distributed from room AC-1H04. Only one person from each department will collect the

105. Posting of Anonymous233702 to <http://academic.brooklyn.cuny.edu/history/johnson/pscdues.htm> (May 22, 2001, 8:53 AM GMT), available at <http://web.archive.org/web/20020618234535/http://academic.brooklyn.cuny.edu/history/johnson/pscdues.htm>. This article leaves to someone's future law review article or lawsuit the issue of whether the reference to "young individuals" as full-time faculty candidates constitutes an admitted violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. (2000).

106. See, e.g., Daniel Politi, *Grade Inflation on the Rise at American U.*, THE EAGLE (AM. UNIV.), Feb. 5, 2001, available at LexisNexis, University Wire (quoting American University full-time professor Ed Smith to the effect that "[e]ven though adjunct faculty members are mostly fully qualified to teach their classes, they are not as committed to academics as tenured faculty").

107. A. Parasuraman, Reflections on Contributing to a Discipline Through Research and Writing, 31 J. ACAD. OF MKTG. SCI. 314, 314 (2003).

108. The author of this article, an adjunct faculty member, has contributed to his discipline's knowledge base with more publications to his credit than many full-time faculty members, see, e.g., *Sorrentino v. U.S.*, 171 F.Supp.2d 1150, 1154 n.3 (Dist. Colo. 2001), *decided on merits*, 199 F. Supp. 2d 1068 (Dist. Colo. 2002), *rev'd as to the result*, 383 F.3d 1187 (10th Cir. 2004), *cert. denied*, 126 S.Ct. 334 (2005) (citing Kenneth H. Ryesky, *Analysis of the Split Authority on Proof of a Postmark Under Internal Revenue Code § 7502*, 21 U. DAYTON L. REV. 379 (1996)); *In re Stella Gordon*, N.Y.L.J., Mar. 2, 1994, at 26 col. 3 (Sur. Ct. Nassau Co.) (citing Kenneth H. Ryesky, *Ma Bell's Legacy: Artifacts in Decedents' Estates from the Forced Divestiture of American Telephone and Telegraph*, 8 J. SUFFOLK ACAD. L 1 (1992)). Many of the author's fellow adjuncts are even more prolific in their scholarly research and publication.

booklets and distribute them. Part-time personnel cannot have one. This is only for full-time employees. Thank you.”¹⁰⁹ Though the proclaimed prohibitions against possession of the document by adjunct faculty and other part-time personnel were quickly lifted and an apology to the adjuncts tendered,¹¹⁰ the minor misadventure was indicative of some deep-seated institutional biases against adjunct faculty.¹¹¹

Accordingly, the cumulative and synergistic effects of low adjunct wages, unprofessional working conditions, and the invalidation and deprecation of the adjuncts professionally and personally have widened the chasm between adjunct and full-timer, resulting in the adjunct becoming what amounts to a second-class college employee.¹¹²

Illustrative of this academic caste system¹¹³ is the lament of Adamantia Pollis, a formerly tenured full-time faculty member at the New School for Social Research who was relegated to an adjunct position after forced retirement at age 70.¹¹⁴ Pollis claimed, *inter alia*, that as a result of her demotion in status, “I will lose the computer services that I have been making use of. I will lose library privileges. . . I do not have access to any of the facilities or fringe benefits that regular faculty do, so I don’t have library, computer center, or research assistance.”¹¹⁵ While those contentions were disputed by both her Provost and Department Chair,¹¹⁶ neither they nor anyone else from the New School gainsaid Prof. Pollis’s contention that “[T]he position of

109. E-mail from Computer Services, York Coll. CUNY, to York Coll. Employees (Oct. 4, 2005) (on file with author).

110. E-mail from Computer Services, York Coll. CUNY, to York Coll. Employees (Oct. 6, 2005) (on file with author) (“The Office of Computer Services would also like to take this opportunity to apologize to all adjunct and part-time staff members for any slight that may have resulted from previous correspondence regarding this subject.”).

111. See E-mail from Ronald C. Thomas, Dean, York Coll. CUNY, to Janice Cline, Chapter Chair, York Coll., Prof’l Staff Cong./CUNY (Oct. 5, 2005) (on file with author) (“The notice sent to the college community regarding the distribution of the telephone directories was based on past policy and practice, both of which have since been changed.”).

112. See, e.g., Piper Fogg, *For These Professors, ‘Practice’ is Perfect*, CHRON. HIGHER EDUC. (Wash., D.C.), Apr. 16, 2004, at 12 (“Most professors who are not on the tenure track, largely adjuncts, receive lower pay and fewer benefits than their tenured colleagues, creating a growing group of second-class faculty members.”).

113. See, e.g., Erik Lords, *Part-Time Faculty Members Sue for Better Pay and Benefits*, CHRON. HIGHER EDUC. (Wash., D.C.), Oct. 15, 1999, at A16 (quoting attorney for adjunct faculty member: “The colleges are clearly trying to cut corners to save money. But what they’ve done is create an artificial caste system where they believe the people they are treating badly deserve it.”); see also Michael Shenefelt, *Pity the Serfs at Our Medieval Universities*, N.Y. TIMES, Jan. 13, 1989, at A31 (comparing the situation of adjuncts vis-à-vis full-time faculty with the feudal lords and serfs of Medieval Europe).

114. Pollis v. New Sch. for Soc. Research, 829 F. Supp. 584, 585 (S.D.N.Y. 1993).

115. *Id.* at 594.

116. *Id.* at 595.

adjunct professor is far less prestigious a position than a full-time professorship on the faculty. An adjunct professor is not a fully participating member of the faculty.”¹¹⁷

Indeed, while denying Pollis’s motion for a preliminary injunction against the New School, Judge Haight was skeptical enough to qualify his denial with a stern caveat:

My denial of plaintiff’s motion for a preliminary injunction puts an end to this Court’s limited subject matter jurisdiction prior to issuance of an EEOC right to sue letter. But it is easy enough to hypothesize materially different circumstances. If Pollis reports for duty in the fall as an adjunct professor with the additional responsibility of mentoring or supervising candidates for master’s and doctoral degrees sufficiently advanced in their work, and encounters a denial of office space reasonably necessitated by her responsibilities, a denial of full library privileges, a barring of the door to the computer facilities, and a pretense on the part of the institution telephone switchboard that Pollis is no longer affiliated with the New School, or any combination of these deprivations (which Provost Walzer gave the Court to understand should not be anticipated), then the Court might well take a different view of the matter. Certainly Pollis, in such circumstances, could revive the Court’s limited subject matter jurisdiction, and apply again for preliminary injunctive relief.¹¹⁸

Perhaps Judge Haight was aware that many colleges and universities, administrators, and full-time faculty members abuse their adjuncts.

Pollis herself personally observed the low esteem in which many full-time faculty hold adjuncts. Having been a full-time academic of world class stature and reputation, and having other family members who are full-time academics,¹¹⁹ Adamantia did not take well to her conversion to adjunct status, contending that “it is insulting and degrading to be listed as an adjunct.”¹²⁰ The image and status of the

117. *Id.* at 594.

118. *Id.* at 601–02.

119. Adamantia Pollis’s brother, Prof. Nicholas Pollis, testified in the proceedings. *Id.* at 592, 596–97. Nicholas Pollis is now an emeritus faculty member (and obviously a formerly long-serving full-time faculty member) of the Department of Public & Environmental Affairs at the University of Wisconsin—Green Bay. Dep’t of Pub. & Envtl. Affairs, Univ. of Wis.—Green Bay, Emeriti, <http://www.uwgb.edu/pea/faculty/emeriti.htm> (last visited Mar. 7, 2007). Nicholas Pollis is apparently married to Carol A. Pollis, a Dean Emerita at the University of Wisconsin, Green Bay. See Nicholas P. Pollis & Carol A. Pollis, *Reference Groups and Human Rights*, SOCIAL JUDGMENT AND INTERGROUP RELATIONS (Donald Granberg & Gian Sarup, eds., 1992), at 245; see also *Large Property Transactions*, WIS. STATE J., May 5, 2005, at F2 (reporting property conveyances, including, *inter alia*, “123 West Washington LLC to Pollis, Nicholas & Carol, 123 W. Washington Ave., \$406,800”).

120. See *Pollis*, 829 F. Supp. at 594.

adjunct is such that some tenured full-time professors apparently view the task of evaluating the performance of an adjunct as one of low priority if not demeaning.¹²¹ Nor are adjuncts necessarily supported by the college administration when they attempt to maintain order and discipline in their classrooms.¹²²

College is not the only institution that participates in the pejoration of adjunct faculty. The diverse interests of adjunct and full-time faculty can lead to conflicts of interest where adjuncts and full-timers are members of the same faculty labor union.¹²³ Born of these inherent conflicts, the faculty unions contribute their share to the deprecation of adjuncts.¹²⁴ Illustrative of this is the so-called “9/6 rule” in the labor agreement between the City University of New York (“CUNY”) and the Professional Staff Congress CUNY union (“PSC-CUNY”) which provides:

Adjunct Lecturers or Adjuncts in other titles . . . shall not be assigned a total of more than nine (9) classroom contact hours during a semester in one unit of The City University of New York. In addition, such adjunct may be employed to teach a maximum of one course of not more than six (6) hours during a semester at another unit of The City University of New York.¹²⁵

The 9/6 rule was placed into the labor agreement not at the insistence of the CUNY negotiators but at the behest of the former leadership of the union¹²⁶ which supposedly asserts the interests of all CUNY faculty

121. See *Davenport v. Bd. of Trs.*, 2005 Cal. App. Unpub. LEXIS 9615, at *16 (2005), *reh'g denied* 2005 Cal. App. LEXIS 1832 (2005), *review denied*, 2006 Cal. LEXIS 1327 (2006).

122. See *Dixon v. Bhuiyan*, 10 P.3d 888, 890 (Okla. 2000).

123. See Keith Hoeller, *The Proper Advocates for Adjuncts*, CHRON. HIGHER EDUC. (Wash., D.C.), June 16, 2006, at 11.

124. See Doug Collins & Keith Hoeller, Letters to the Editor, *Second-Class Treatment for Adjuncts in Faculty Unions*, CHRON. HIGHER EDUC. (Wash., D.C.), Dec. 16, 2005, at 17 (two separate Letters to the Editor, discussing the conflicts inherent when the same union represents both Adjuncts and full-time faculty members).

125. Agreement between the City Univ. of N.Y. & the Prof'l Staff Cong./CUNY § 15.2 (July 6, 1998), <http://www.psc-cuny.org/PDF/contract96-00.pdf>. At the time this article was written, the so-called “9/6 rule” provision remained effective per the belatedly-negotiated extension memoranda to the Feb. 1, 1996 through July 31, 2000 contract. Memorandum of Econ. Agreement for a Successor Agreement Between the City Univ. of N.Y. & the Prof'l Staff Cong./CUNY (Aug. 1, 2000), <http://www.psc-cuny.org/moaeco.doc>; Memorandum of Agreement for a Successor Agreement between the City Univ. of N.Y. & the Prof'l Staff Cong./CUNY (Nov. 1, 2002), <http://www.psc-cuny.org/ContractRatification06/MemorandumOfAgreement06.pdf>. The provisions of the expired contract are effectively continued pending negotiation of a successor agreement. See N.Y. CIV. SERV. LAW § 209(a)(1)(e) (McKinney 2006).

126. See Prof'l Staff Cong., City Univ. of N.Y., Resolution For Dialog on Adjunct Workload Restrictions (Sept. 30, 2004), <http://www.psc-cuny.org/dassembly.htm> (“Whereas, the PSC-CUNY contract allows adjunct faculty to teach no more than 9 contact hours at one CUNY unit, and one course of up to 6 hours at another CUNY unit in any semester, a rule which dates back to the

(including adjuncts).¹²⁷ The PSC leadership pejoratively views adjunct faculty in a manner similar to old admiralty law's view of seamen:

[Seamen] are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees. They are considered as placed under the dominion and influence of men, who have naturally acquired a mastery over them; and as they have little of the foresight and caution belonging to persons trained in other pursuits of life, the most rigid scrutiny is instituted into the terms of every contract, in which they engage.¹²⁸

The negative attitudes towards the competency and worthiness of adjunct faculty have infected the students, who perceive that adjuncts are just not capable of delivering quality education.¹²⁹ Such negative attitudes have further metastasized to the news media, if not the public at large. Inherent in a condescending *New York Times* editorial exhorting the Legislature "to ensure that a decent proportion of classes are taught by actual professors rather than pathetically underpaid part-timers" is an assertion that adjunct faculty are neither competent nor worthy instructors.¹³⁰

Though some elements of the judiciary may accord respect and esteem to adjunct faculty,¹³¹ significant numbers in academia view

previous PSC administration.") (emphasis added).

127. The author is a member of PSC-CUNY.

128. *Harden v. Gordon*, 11 F. Cas. 480, 485 (C.C.D. Me. 1823) (No. 6047).

129. See, e.g., Art Student Union & Student Graphic Design Ass'n, Letter to the Editor, *Printmaking Position Needed*, UNIV. CHRON. (St. Cloud State Univ.) (Mar. 3, 2003), <http://www.universitychronicle.com/media/paper231/news/2003/03/03/Opinions/Letters.To.The.Edit or-385312.shtml>:

[The Printmaking] program requires special expertise at a level that adjunct faculty cannot provide. It is essential to preserving the integrity of the art department that the search for a probationary printmaking professor be re-authorized. Art majors, like students in other programs this university prides itself on, are here to earn a professional degree. When this is no longer possible, SCSU can expect to lose students (and money) to other universities that are still committed to providing decent training and preparation in this field.

130. Editorial, *Playing Governor Knows Best*, N.Y. TIMES, Apr. 14, 2006, at A20.

131. See, e.g., *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 576 F. Supp. 34, 61 (N.D. Cal. 1983), *rev'd* 896 F.2d 412 (9th Cir. 1990) (approving school desegregation consent decree providing, inter alia, a program for "an academic laboratory school model in conjunction with a selected university," and "[c]onsider the appointment of selected teachers at the school to part time or adjunct roles on the university faculty so that the university can gain from its close collaboration with the school."); *Lenihan v. City of N.Y.*, 640 F. Supp. 822, 828 (S.D.N.Y. 1986) (weighing favorably an attorney's adjunct adjunct law faculty position in fixing attorney fees); *Associated Imps., Inc. v. ASG Indus., Inc.*, 1984 Del. Ch. LEXIS 483, at **22-23 (Del. Ch. 1984) (weighing adjunct faculty position favorably in qualifying an expert witness). Adjunct college teaching activity

adjuncts with indifference at best, and, more frequently, with scorn, contempt and derision.

IV. ADDRESSING STUDENT PLAGIARISM FROM THE ADJUNCT FACULTY VANTAGE POINT

The working conditions of adjunct faculty members impact their ability and inclination to join the battle against student plagiarism. Some of the ways in which the adjunct's employment situation affects the degree and quality of an adjunct's participation in the counter-plagiarism effort are presently discussed.

A. Detecting Plagiarism

It is axiomatic that the course instructor, who has the primary if not sole contact with the students' writings, is the best and most likely detection point for plagiarism.¹³² The practices and policies of many colleges and universities, however, impede the ability of many adjunct faculty members to detect the plagiarism of their students. Inadequate office space¹³³ does little to foster the orderly detection of plagiarism, and, worse yet, limitations placed upon adjuncts' library and/or computer access privileges actually impede the detection of plagiarism.

Other factors include short grade submission deadlines, which can discourage faculty from properly screening and evaluating term papers for plagiarism.¹³⁴ Such short deadlines obviously have a disproportionate effect upon faculty who have inferior office, library or computer resources at their disposal and who by and large tend to be adjuncts.¹³⁵

Moreover, where a college uses a proprietary plagiarism detection service such as TurnItIn, inequities among different classes of faculty in

has been weighed as a mitigating factor in imposing discipline upon errant attorneys, *see, e.g.*, *Schneider v. State Bar of Cal.*, 739 P.2d 1279, 1287 (Cal. 1987); *In re Wernick*, 515 N.Y.S.2d 784, 787 (App. Div. 1987), *aff'd in part, rev'd in part*, 852 F.2d 1290 (9th Cir. Cal. 1988), *rev'd*, 896 F.2d 412 (9th Cir. Cal 1990), and as a positive factor in the rehabilitation of a suspended attorney, *see In re Anonymous*, 19 Pa. D. & C.4th 183, 186–87, 191 (Disciplinary Bd. 1993), *petition granted sub nom. In re Scianna*, 627 A.2d 1175 (Pa. 1993).

132. *See, e.g.*, Thomas, *supra* note 2, at 428.

133. *See* Skelton, *supra* note 93, CN20; *supra* text accompanying note 93.

134. Univ. of Alta. & Non-Academic Staff Ass'n., [1990] C.L.A.S.J. LEXIS 10670, at *34–35 (Alta. Labor Adjudication 1990) (reciting an alleged incident in which the pressures upon the Sessional Instructors to quickly turn in the student grades effectively precluded giving appropriate attention to suspected plagiarism by students); *Institutions Weigh Consequences if Faculty Miss Grade Deadlines*, ENROLLMENT MGMT. REP. (LRP Publ'ns), Dec. 1998.

135. *See supra* notes 93–94 and accompanying text.

the provision of that service likewise erect a roadblock to discovering the student plagiarists. An institution that avails its faculty of anything less than full service to *all* faculty members necessarily subjects its adjuncts to the whims and budgetary largesse of the individual departments. Adjuncts who desire the proprietary plagiarism detection service are required to underwrite its expense from their own pockets if the college has not seen fit to include the same in its budget.¹³⁶ Even the unintentional exclusion of adjunct faculty members from the information channels can impede their participation in established anti-plagiarism routines and programs.¹³⁷

Many colleges' policies and practices thus have the effect of hindering the detection of student plagiarism by adjunct faculty. This hindrance is counterproductive because the adjuncts' situation cannot be kept long concealed from the students, who are less likely to engage in plagiarism if they believe, perceive, or speculate that their plagiarism will not go undetected.¹³⁸

B. Sanctions Against Plagiarism

Once student plagiarism is detected by the cognizant faculty member, a decision must be made regarding what actions, if any, will be taken against the student. The employment conditions of the faculty member can impact this decision. Where official policy requires that the cognizant faculty member take steps such as filing reports or apprising other college officials,¹³⁹ the faculty member may well be reluctant to do so if such procedures would likely be inconvenient.¹⁴⁰ The adjunct's situation may render this factor particularly salient. If, for example, the plagiarism is discovered at the end of the semester and the faculty member will either not be returning to campus or his or her engagement

136. See IParadigms, L.L.C., TurnItIn Pricing, <http://www.turnitin.com/static/price.html> (last visited Mar. 13, 2007) (describing various progressively-priced licenses to use the TurnItIn plagiarism service, ranging from licenses for the individual instructor to multi-campus licenses).

137. See, e.g., Letter from Michael Snodgrass, Chair, Undergraduate Curriculum Committee, Ind. Univ.-Purdue Univ. Indianapolis, to John McCormich, President, Sch. of Liberal Arts Faculty Assembly, Ind. Univ.-Purdue Univ. Indianapolis (2003), <http://liberalarts.iupui.edu/facultyassembly/downloads/ucc2002-03annualreport.pdf> ("Among the most common reasons that requests were returned for revisions and reconsideration were . . . a lack of or poorly articulated policies regarding absenteeism and plagiarism. Many of these were submitted by adjunct or visiting faculty who may not have been made aware of these guidelines by department chairs.").

138. See David F. Martin, *Plagiarism and Technology: A Tool for Coping With Plagiarism*, 80 J. EDUC. FOR BUS. 149, 151 (2005).

139. See, e.g., CITY UNIV. OF N.Y., *supra* note 61, at 5–6, 8–11.

140. See, e.g., Larry A. DiMatteo & Don Wiesner, *Academic Honor Codes: A Legal and Ethical Analysis*, 19 S. ILL. U. L.J. 49, 71 (1994).

for the succeeding semester is still uncertain, the faculty member may well opt to ignore the student's plagiarism. This is not very far fetched, given the instability of adjunct employment from semester to semester at many institutions.¹⁴¹

Even where the adjunct's continued employment is not at issue, the time and scheduling of a college process such as a disciplinary hearing may well be a factor if the adjunct has other professional or personal obligations. Even more basic is the question of compensation for the time spent in the process. If, for example, the college or university emphatically insists that "[a]djunct faculty are hourly employees who are paid for their service based on the Hourly Faculty Salary Schedule,"¹⁴² is the adjunct faculty member who prepares for and attends the disciplinary hearing then paid additional remuneration at the scheduled hourly rate for such work?¹⁴³ Some college administrators apparently find this to be a touchy issue and are reluctant to enunciate definitive policy one way or the other.¹⁴⁴

Exacerbating the situation are the demonstrated instances where the faculty member's attempts to penalize plagiarism are superseded by the higher level administrators who should be supporting the faculty, such as one notorious 2002 incident in the Piper, Kansas high school.¹⁴⁵ There Ms. Christine Pelton resigned her position after it became clear that she could no longer effectively teach her classes.¹⁴⁶ Some adjuncts contend that their departments do not wish to be bothered with pursuing sanctions against plagiarizing students,¹⁴⁷ and at least one former adjunct has

141. See *supra* notes 80–86 and accompanying text.

142. SKYLINE COLL., FACULTY HANDBOOK 23 (2005), http://www.smccd.edu/accounts/skyfaculty/Faculty_Handbook05.pdf.

143. See Manfred Philipp, Remarks at The Two Hundred Ninety-Fourth Plenary Session of the University Faculty Senate of the City University of New York (Mar. 25, 2003), <http://www.soc.qc.cuny.edu/ufs/march2503mins.htm> ("One of the concerns I have is how adjunct faculty are supposed to interact with this system. These people are paid on an hourly basis . . . and if they're involved in a hearing process obviously they don't have time.").

144. *Id.* ("In one of the meetings of the executive administrators I asked an appropriate administrator that question [regarding the disciplinary process in the case of a student suspected of plagiarism] and how it would be done with adjuncts and he said, 'I have no idea.'").

145. Jodi Wilgoren, *School Cheating Scandal Tests a Town's Values*, N.Y. TIMES, Feb. 14, 2002, at A1.

146. *Id.*

147. In response to the author's inquiry to an internet listserv adjunct discussion group, several adjunct faculty members expressed beliefs that attempting to impose discipline upon student plagiarizers would cause them to be branded as troublemakers by their departments and administrations. Typical was this comment from an adjunct (whose identity the author now protects): "I NEVER refer the student to the head of the department or the dean. That sets in motion an incredibly unpleasant, time-consuming, and hazardous (for an adjunct) procedure. Administrators do not see faculty who bring plagiarizers to them as anything other than trouble makers." E-mail from [identity protected] to PTCUNY listserv, Re: Attitudes towards Plagiarism (January 29, 2006) (on

contended that his efforts to penalize a plagiarizer cost him his job.¹⁴⁸ The clear message from academia that it did not wish to be burdened with anything above the minimum expense of supporting its adjunct faculty resulted in the willingness of many adjuncts and others to believe such messages (with or without actual foundation) and behave accordingly.¹⁴⁹ Nor is the situation simplified or expedited by the wide variance in rules and procedures from one institution to another or even among different campuses of the same institution.¹⁵⁰

C. Deterring Plagiarism

Preventing plagiarism is obviously far preferable to having to deal with it after it has occurred. Some of the most effective deterrents to student plagiarism and other forms of academic dishonesty are peer pressure and social norms among students,¹⁵¹ including the belief that academic dishonesty is likely to be detected if he or she commits it.¹⁵² College administrations must foster and facilitate such values and beliefs among the student body through consistent policies and support of the faculty.¹⁵³

A college's disparate treatment of its adjunct faculty can promote neither consistency nor support. If an adjunct faculty member is not provided with the plagiarism detection resources given to full-time faculty, then his or her students are effectively given reason to doubt that their plagiarized papers will be detected. Even absent such extreme,

file with author). See also Alison Schneider, *To Many Adjunct Professors, Academic Freedom is a Myth*, CHRON. OF HIGHER EDUC. (Wash., D.C.), December 10, 1999, at A-18 (quoting P. D. Lesko, Executive Director of the National Adjunct Faculty Guild: "[Adjunct faculty members] are terrified of being rigorous graders, terrified to deal with complaints about the course materials, terrified to deal with plagiarists.").

148. Patricia Keith-Spiegel et al., *Why Professors Ignore Cheating: Opinions of a National Sample of Psychology Instructors*, 8 ETHICS & BEHAVIOR 215, 222-23 (1998); Alison Schneider, *Doggedness Cost Him His Job, Professor Says*, CHRON. OF HIGHER EDUC. (Wash., D.C.), June 12, 1998, at A14.

149. See, e.g., Keith-Spiegel, *supra* note 148 ("Stories circulate about . . . unsupportive administrations that reverse the instructor's claims for reasons that appear to smack of expediency rather than a commitment to upholding institutional integrity.").

150. See, e.g., Karen Kaplowitz, Remarks at The Two Hundred Ninety-Fourth Plenary Session of the University Faculty Senate of the City University of New York (Mar. 25, 2003), <http://www.soc.qc.cuny.edu/ufs/march2503mins.htm> ("Adjuncts teach at many colleges, and if colleges have different policies and practices [regarding dealing with student plagiarism] . . . the adjuncts themselves and the faculty often don't know what the practice and policy is.").

151. See, e.g., Donald L. McCabe & Linda Klebe Trevino, *Academic Dishonesty: Honor Codes and Other Contextual Influences*, 64 J. HIGHER EDUC. 522, 534 (1993).

152. See Martin, *supra* note 138, at 152.

153. See STEVEN B. DOWD, *ACADEMIC INTEGRITY—A REVIEW AND CASE STUDY* 11-17 (1992), available at ERIC, Document No. ED349060).

hostile and negative attitudes towards adjuncts by full-time faculty and administrators, such attitudes will in all likelihood be perceived by the students. The students thus receive the mixed message that while their adjunct instructor has been assigned to teach the course, he or she is not really a worthy academic. Such conflicting sentiment, even if unintentional, can only undermine whatever support the college administration tries to avail its adjunct faculty.

At this point, some discussion regarding Donald R. Cressey's "Fraud Triangle" theory is pertinent.¹⁵⁴ In his studies of convicted embezzlers, Cressey found that the three requisite elements for fraud are (1) pressure, (2) opportunity, and (3) rationalization.¹⁵⁵ Removal of any or all of these elements precludes (or at least greatly reduces the propensity for) the occurrence of fraud.¹⁵⁶ The "Fraud Triangle" theory can be and has been applied to other types of dishonesty, including academic and scientific misconduct.¹⁵⁷

Certain trends and developments, when analyzed from a "Fraud Triangle" perspective, paint an ominous picture as far as plagiarism deterrence is concerned. Where, for example, college athletic departments aid, abet, and encourage plagiarism by student athletes,¹⁵⁸ the triune elements of pressure, opportunity and rationalization are all unequivocally present, thus almost guaranteeing that plagiarism will

154. See DONALD R. CRESSEY, *OTHER PEOPLE'S MONEY*, 30, 34 (1953). Though several scholars have written of "Cressey's Fraud Triangle," e.g., Robert J. Dosch & Jacob R. Wambsganss, *The Blame Game: Accounting Education Is Not Alone*, 81 J. EDUC. FOR BUS. 250, 251 (2006); Charles A. Malgwi & Carter C. Rakovski, *Behavioral Implications of Evaluating Determinants of Academic Fraud Risk Factors*, paper presented at American Accounting Association, 2006 Annual Meeting, (Aug. 6-9, 2006) (copy on file with author); James Tackett et al., *A Criminological Perspective of Tax Evasion*, 110 TAX NOTES 654 (Feb. 6, 2006), Cressey's book does not appear to use the specific phrase "Fraud Triangle" to refer to theory he propounded (though he reputedly used the terminology in orally-delivered remarks).

155. CRESSEY, *supra* note 154.

156. *Id.*

157. See, e.g., Mark S. Davis & Michelle L. Riske, Abstract, Preventing Scientific Misconduct: Insights from "Convicted Offenders," in OFFICE OF RESEARCH INTEGRITY, DEP'T OF HEALTH & HUMAN SERVICES, ABSTRACTS: ORI RESEARCH CONFERENCE ON RESEARCH INTEGRITY (Nov. 2000), at 1, http://ori.hhs.gov/documents/conference_abstracts_2000.pdf ("The purpose of this study-in-progress is to explore from a social psychological perspective the etiology of scientific misconduct and its resulting stigma. Using Cressey's notion of a non-shareable problem, we posit that researchers who engage in misconduct may have a problem . . ."); Malgwi & Rakovski, *supra* note 154.

158. See *Jackson v. Drake Univ.*, 778 F. Supp. 1490, 1492-93 (S.D. Iowa 1991) (reciting that university athletic coaching staff provided term papers for student athletes to submit in their courses); see also Patrick Reusse, *Line Up to Blast Integrity of Sports*, STAR TRIBUNE (Minneapolis), Mar. 13, 1999, at 1C ("A woman named Jan Gangelhoff claims to have written hundreds of papers that were submitted by [University of Minnesota] Gophers basketball players during the Clem Haskins era.").

occur.

The advancement of the Internet and other information technologies has obviously multiplied the opportunities to commit plagiarism.¹⁵⁹ Moreover, technologies have transformed the norm for copying large blocks of text from a letter-by-letter typewriter affair to a matter of a few mouse-clicks.¹⁶⁰ Plagiarism has become easier to rationalize when it is accomplished through what have become simple and routine actions.

All else being equal, faculty use of the same technologies to detect plagiarism can serve the dual purpose of making rationalization of the plagiarism more difficult and giving basis for the students to perceive a lesser opportunity. Unfortunately, as described above, adjunct faculty members are often effectively denied meaningful and unobstructed access to the relevant technologies. This increases opportunities, and, when known to the students, certainly facilitates rationalization. It is easier to rationalize plagiarism when the particular faculty members against whom the plagiarism is directly committed are treated as second-rate *Untermenschen* instead of full-fledged faculty by the college administration and by their full-time tenured colleagues.¹⁶¹

Plagiarism and other issues in information technology are best addressed through a concerted and inclusive approach throughout the institution.¹⁶² Yet, as we have seen, adjunct faculty members, who at some institutions constitute a majority of the teaching personnel,¹⁶³ have not been included or recognized as full-fledged participants in the academy. It is clear that academia's treatment of its adjunct faculty has

159. See, e.g., Cynthia Townley & Mitch Parsell, *Technology and Academic Virtue: Student Plagiarism Through the Looking Glass*, 6 ETHICS AND INFO. TECH. 271, 272 (2004) (noting that the internet "makes plagiarism easier than ever before"); Sara Rimer, *A Campus Fad That's Being Copied: Internet Plagiarism Seems on the Rise*, N.Y. TIMES, Sept. 3, 2003, at B7.

160. See, e.g., Donald L. McCabe, *It Takes a Village: Academic Dishonesty & Educational Opportunity*, LIBERAL EDUC., Fall 2005, at 26, 28, available at <http://www.aacu.org/liberaleducation/le-sufa05/le-sufa05feature2.cfm> ("[F]our out of every five students who reported they had cheated on a written assignment acknowledged that they had engaged in some form of Internet-related cheating—either cut-and-paste plagiarism from Internet sources or submitting a paper downloaded or purchased from a term-paper mill or Web site.").

161. See Peter Brandon Bayer, *A Plea for Rationality and Decency: The Disparate Treatment of Legal Writing Faculties as a Violation of Both Equal Protection and Professional Ethics*, 39 DUQ. L. REV. 329, 364 (2001) ("Wishing for a vulnerable target of authority upon which to vent their anxiety, students often direct the accumulated hostility of the entire semester toward the only teachers from whom they have received grades, and who, by coincidence, are the least prestigious faculty, thereby all the more accessible as scapegoats.").

162. See Lesley Farmer, *Building Information Literacy Through a Whole School Reform Approach*, KNOWLEDGE QUEST, Jan./Feb. 2001, at 20; Randal MacDonald & Jude Carroll, *Plagiarism—A Complex Issue Requiring a Holistic Institutional Approach*, 31 ASSESSMENT & EVALUATION IN HIGHER EDUC. 233 (2006).

163. CATALDI, *supra* note 67.

stymied the deterrence of student plagiarism, whether by the adjunct faculty members themselves or otherwise.

V. SOCIAL AND LEGAL IMPLICATIONS

Several trends now collectively impact student plagiarism. As mentioned above, these include the development of information technologies which facilitate the copying of information,¹⁶⁴ America's changing demographics,¹⁶⁵ the increasing numbers of adjunct faculty in academia, the disparity of employment conditions among these adjunct faculty members and between adjuncts and full-timers,¹⁶⁶ and the enhanced role of collegiate athletics.¹⁶⁷ These are not the only trends that play into the mix, however.

Consistent with America's growing litigiousness over the past few decades,¹⁶⁸ there has been an upswing of litigation surrounding instances of schools' actions against students for plagiarism,¹⁶⁹ including retaliatory litigation alleging defamation in connection with the discipline of the student.¹⁷⁰ Factors feeding this trend include a greater willingness on the part of the courts to second-guess the due process afforded the student,¹⁷¹ together with the curiosity of legal academicians

164. See *supra* notes 159–160 and accompanying text.

165. See *supra* notes 17–19 and accompanying text.

166. See *supra* notes 75–101 and accompanying text.

167. See, e.g., U.S. General Accounting Office, Publ'n No. GAO-01-297, *Intercollegiate Athletics: Four-Year Colleges' Experiences Adding and Discontinuing Teams* (March 2001), available at <http://www.gao.gov/new.items/d01297.pdf>; see also Brad Wolverton, *College Presidents Call for Increased Disclosure of Athletics Spending*, *Chron. Higher Educ.* (Wash., D.C.), Nov. 10, 2006, at 37.

168. See, e.g., U.S. v. Grant, 52 F.3d 448, 449 (2d Cir. 1995) ("Courts today are under enormous pressure to accomplish the huge volumes of work which our litigious society places on them."); *Treppel v. Biovail Corp.*, 2005 U.S. Dist. LEXIS 2737, at *26 (S.D.N.Y. 2005) ("In our litigious society, threatening to sue a large bank, whose employee may have contributed to your loss of millions, and possibly billions, of dollars, would rarely, if ever, be considered extreme behavior."); *Edwards v. Centex Real Estate Corp.*, 61 Cal. Rptr. 2d 518, 529 (Cal. App. 1997) ("In the present litigious society, there is always at least the *potential* for a lawsuit any time a dispute arises between individuals or entities."); *Vradenburg v. Prudential Prop. & Cas. Ins. Co.*, 914, 622 N.Y.S.2d 623, 624 (App. Div. 1995) ("In today's litigious society, it seems that a lawsuit is reasonably foreseeable whenever an injury occurs."). Compare *Adler v. Duval County Sch. Bd.*, 250 F.3d 1330, 1350, (11th Cir. 2001), *cert. denied*, 534 U.S. 1065 (2001) ("Even in our litigious society, no one sues about student participation in graduation ceremonies.") with *Goodman v. Crew*, 658 N.Y.S.2d 370 (App. Div. 1997) ("The petitioner Paige Goodman and fellow student Lisa Camilleri were both named valedictorians of the 1996 graduating class of Bayside High School. Goodman thereafter commenced this proceeding pursuant to CPLR article 78, contending . . . that she alone should be valedictorian.").

169. See Billings, *supra* note 45, at 428, and cases cited therein.

170. E.g., *Childress v. Clement*, 44 Va. Cir. 169, 169 (1997).

171. See, e.g., *Lightsey v. King*, 567 F. Supp. 645 (E.D.N.Y. 1983); *Doe v. Columbia Univ.*,

to explore the rights of the student.¹⁷²

Full-time faculty have long been reluctant to deal with plagiarism for fear of litigation.¹⁷³ The trend of increasing plagiarism and its related litigation, together with the typical disenfranchisement of the adjunct faculty member, can only enhance such fears on the part of America's adjunct corps. By excluding the adjuncts from the social and academic circles of the academy, the schools that employ them are leaving themselves open to inconsistent adherence to policies and procedures, thus opening the door to more litigation.

Broader and taller than plagiarism-related litigation concerns are the effects of plagiarism upon the legal profession itself. Law reviews and similar student-edited scholarly publications have played a key role in shaping the law in America.¹⁷⁴ "Law reviews are indispensable resources for judges and their clerks, whether or not the judge's opinion actually cites the article or student note that proved helpful in the preparation of the opinion."¹⁷⁵ Accordingly, no good can come to the American legal system if the law students who write and produce the scholarly legal publications accept, tolerate, or practice plagiarism.¹⁷⁶

"The ability to be truthful under pressure is crucial to the successful practice of law, and a finding of intentional plagiarism casts serious and

N.Y.L.J., June 30, 1995, at 25 (Sup. Ct. N.Y. Co.).

172. E.g., Curtis J. Berger & Vivian Berger, *Academic Discipline: A Guide to Fair Process for the University Student*, 99 COLUM. L. REV. 289 (1999); Fernand N. Dutille, *Students and Due Process in Higher Education: Of Interests and Procedures*, 2 FL. COASTAL L.J. 243 (2001).

173. Richard J. Hardy, *Preventing Academic Dishonesty: Some Important Tips for Political Science Professors*, 9 TEACHING POLITICAL SCI. 68, 71 (Winter 1981/1982).

174. See McKenna v. Ortho Pharmaceutical Corp., 622 F.2d 657, 662-63 (3d Cir. 1980), cert. denied sub nom. 449 U.S. 976 (1980) ("Additionally, federal courts may consider scholarly treatises, the Restatement of Law, and germane law review articles particularly, it seems, of schools within the state whose law is to be predicted.") (internal citations omitted); Shine v. Childs, 382 F. Supp. 2d 602, 611 n. 6 (S.D.N.Y. 2005) ("The idea of probative similarity was first suggested in a law review article, and later adopted by our Circuit."); *In re Granite Partners*, 208 B.R. 332, 336 (Bankr. S.D.N.Y. 1997) ("Any discussion of section 510(b) must begin with the 1973 law review article authored by Professors John J. Slain and Homer Kripke . . ."); Sprung v. Negwer Materials, Inc., 775 S.W.2d 97, 114 (Mo. 1989) (Welliver, J., dissenting) ("Nanette Laughrey's publication of her serial law review articles discussing Rule 74 triggered this Court to appoint one more committee, a Special Ad Hoc Committee charged with revising Rule 74. . . The Court . . . adopted the [Committee's] recommended revised rule effective January 1, 1988."); see also J. MYRON JACOBSTEIN ET AL., LEGAL RESEARCH ILLUSTRATED 334-37 (6th ed., 1994); Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 787-90 (1985).

175. Judge Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1137-38 (1995).

176. See Bridget Stratton, *Ex-Law Student Contrite as He Admits Plagiarism*, DAILY IOWAN, June 25, 2002, available in LexisNexis, University Wire (reporting that former law student admitted writing a plagiarized law review article that appeared when he was editor-in-chief of the publication).

substantial doubts on a student's ability to practice successfully."¹⁷⁷ Indeed, as previously discussed, plagiarism committed as a student is a basis for professional discipline for lawyers, if not denial of bar admission altogether.¹⁷⁸

Moreover, if plagiarism and other dishonest habits learned and perfected on the college campus do indeed carry forward into the business environment,¹⁷⁹ then this cannot help but impact several areas of the American law which are dependent upon honesty and ethics of the individual. The securities markets, for example, are regulated through a scheme of self-regulation overseen by the Securities and Exchange Commission.¹⁸⁰ The sound and proper functioning of the exchanges upon which the securities are traded depends very vitally upon ethics and integrity of the participants.¹⁸¹

"The United States is a unique country in the context of tax administration because of the extent to which people willingly pay the taxes they owe to federal, state and local governments."¹⁸² Given that the overwhelming majority of American households are affected by the Income Tax, the taxation system depends not only upon the honest habits of the attorneys who represent taxpayers,¹⁸³ but also "upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability,"¹⁸⁴ not only to the taxation

177. Kevin J. Worthen, *Discipline: An Academic Dean's Perspective on Dealing with Plagiarism*, 2004 BYU EDUC. & L.J. 441, 447-48 (2004).

178. See *supra* note 37 and accompanying text.

179. See *supra* note and accompanying text.

180. 15 U.S.C. §§ 78(a) et seq. (2000).

181. *Holloway v. Peat, Marwick, Mitchell & Co.*, 879 F.2d 772, 781(10th Cir. 1989), *vacated & remanded*, 494 U.S. 1014 (1990), *reaffirmed on reconsideration*, 900 F.2d 1485 (10th Cir. 1990), *cert. denied following reconsideration on remand*, 498 U.S. 958 (1990). See also Onnig H. Dombalagian, *Demythologizing the Stock Exchange: Reconciling Self-Regulation and the National Market System*, 39 U. RICH. L. REV. 1069 (2005); John H. Walsh, *A Simple Code of Ethics: A History of the Moral Purpose Inspiring Federal Regulation of the Securities Industry*, 29 HOFSTRA L. REV. 1015 (2001).

182. *U.S. v. Kloda*, 133 F. Supp. 2d 345, 347 (S.D.N.Y. 2001).

183. See, e.g., *Pecoraro v. Comm'r*, 58 T.C.M. (CCH) 1323 (1990) ("The ability of the Tax Court to function effectively and properly adjudicate the controversies brought before it is in large part dependent on the honesty and integrity of the attorneys and other representatives who appear before us.").

184. *U.S. v. Bisceglia*, 420 U.S. 141, 145 (1975), *partially superseded by statute*, 26 U.S.C. § 7609, *as stated in* *Schulz v. I.R.S.*, 395 F.3d 463 (2d Cir. 2005); see also *Richey v. Stewart*, 1984 U.S. Dist. LEXIS 16240, at **7-8 (S.D. Ind. 1984) ("It is abundantly clear that federal income taxation relies heavily on the honesty of individual taxpayers and their voluntary self-assessment. A reading of the Internal Revenue Code could never lead one to the conclusions that only volunteer need report their income and pay taxes thereon."); *Cowarde v. Comm'r*, 35 T.C.M. (CCH) 1066 (1976) ("Our tax system is set up so that it is dependent on the honesty and integrity of the taxpayer."); *DiLando v. Comm'r*, 34 T.C.M. (CCH) 1046 (1975) ("A cornerstone in our system of

authorities but also to the employers who withhold taxes from their paychecks.¹⁸⁵

The health care system requires that physicians and other providers of health care provide honest and forthright information to public and private insurers regarding their patients.¹⁸⁶ Likewise, much rides upon the integrity of government employees¹⁸⁷ and participants in social security programs.¹⁸⁸ The bankruptcy system's sound function is likewise highly dependent upon honesty and accuracy on the part of the debtor, and the attorneys involved.¹⁸⁹ It is obvious, then, that deficiencies in the academic integrity of America's college campuses have the potential to wreak significant negative impacts upon the law in America, as college graduates who have become accustomed to accepting and committing plagiarism infuse the professions and the workplaces of America.

VI. CONCLUSION

Adjunct faculty members have collectively, if not individually, become fixtures at America's colleges and universities. Though any initiative involving the management of adjunct faculty members is fraught with significant financial issues, remuneration dollars are just one of the adjuncts' hierarchy of personal needs that must be met by the university.¹⁹⁰ And though remuneration policies weigh heavily in employee satisfaction, other personal needs must likewise be addressed in order to integrate the adjuncts as functional members of the academic social system.¹⁹¹ Indeed, there are measures that the university can effectively implement even when increased salaries are genuinely and truly not a viable option.¹⁹²

tax collection is the reliance on the honesty and integrity of the individual taxpayer because the system relies on self-assessment and payment by the taxpayer.”)

185. *U.S. v. Malinowski*, 347 F. Supp. 347, 352 (E.D. Pa. 1972), *aff'd*, 472 F.2d 850 (3d Cir. 1973), *cert. denied*, 411 U.S. 970 (1973).

186. *See U.S. v. Hodge*, 259 F.3d 549, 555–57 (6th Cir. 2001), and cases cited therein.

187. *Truitt v. Phila.*, 70 A. 757, 761 (Pa. 1908) (Elkin, J., concurring) (“[T]he efficiency of the service depends upon the integrity, faithfulness and capacity of the individuals who perform the service and these are personal qualities which cannot be given anyone by legislation, nor can any act of assembly make a man efficient if nature or personal habits have otherwise decreed.”).

188. *U.S. v. Carey*, 368 F. Supp. 2d 891, 894 (E.D. Wis. 2005) (“[S]ocial security programs depend on the honesty of the participants, and when someone takes advantage, as defendant did, both the taxpayers and those with genuine needs suffer.”).

189. *In re Kestell*, 99 F.3d 146, 149 (4th Cir. 1996).

190. *See A. H. Maslow, A Theory of Human Motivation*, 50 PSYCH. REV. 370 (1943).

191. *Id.*

192. *See WILSON, supra* note 1, at 141 (discussing the practice, during the Great Depression,

If adjunct faculty are criticized as “[coming] in from other places with no commitment to the college,”¹⁹³ it is because the colleges have done little to merit such a commitment. Much must be and can be done to integrate adjunct faculty as committed members of the academic community,¹⁹⁴ not the least of which are basic rights to certain conditions of employment and due process. These rights are commonly associated with learned professional employees,¹⁹⁵ but are all too frequently denied to adjunct faculty.¹⁹⁶

There is a clear imperative for America’s colleges and universities, individually and collectively, to systematically confront the student plagiarism in their midst. Such a confrontation must be broadly rooted in academic integrity as a social norm throughout the institution,¹⁹⁷ which necessitates participation by and inclusion of all faculty, both full-time and otherwise.¹⁹⁸

The social interaction between professor and student is an important factor in the educational process.¹⁹⁹ Professors who are reluctant to see this relationship turn confrontational may shy away from effectively enforcing the rules against student plagiarism.²⁰⁰ Adjunct faculty

“of giving ‘dry raises,’ or promotions without increase of salary,” which “rendered a modicum of satisfaction to those who were due salary increases.”)

193. ERNEST L. BOYER, *COLLEGE: THE UNDERGRADUATE EXPERIENCE IN AMERICA* 137 (1987); see also Politi, *supra* note 106 and accompanying text; *Hearing on Cybersecurity Education: Meeting the Needs of Technology Workers and Employers: Hearing before the H. Comm. on Science*, 108th Cong. 6 (July 21, 2004) (Statement of John Baker, Director of Technology Programs, Johns Hopkins University), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:94834.wais.pdf (“[Part-time] faculty often . . . [m]ay have only some allegiance to the program and/or institution.”).

194. Patrick Tompkins, *What We Talk About When We Talk About Faculty*, 7 *INQUIRY* (Va. Cmty. Coll. System) 44–46 (2002), <http://www.vccaedu.org/inquiry/inquiry-spring2002/i-71-tompkins.html>; Dennis Bricault, *Penny Wise and Pound Foolish? The Financial Implications of Adjunct Faculty* (Nov. 1998), <http://campus.northpark.edu/esl/adjunct.html>.

195. See, e.g., Agreement between Suffolk County Cmty. Coll. & Faculty Ass’n of Suffolk County Cmty. Coll. (Sept. 1, 2001–Aug. 31, 2005), <http://www.fascc.org/docs/contract.pdf>. The provisions of the expired contract remain in effect pending negotiation of a new agreement. See N.Y. CIV. SERV. L. § 209(a)(1)(e).

196. See *supra* notes 75–100 and accompanying text.

197. Tricia Bertram Gallant & Patrick Drinan, *Organizational Theory and Student Cheating: Explanation, Responses, and Strategies*, 77 *J. HIGHER EDUC.* 839 (2006). See also Macdonald & Carroll, *supra* note 162.

198. See Macdonald & Carroll, *supra* note 162, at 242.

199. See, e.g., Thomas H. Benton (a pseudonym), *Don’t Call Me Thomas*, *CHRON. HIGHER EDUC.* (Wash., D.C.), Jan. 20, 2006, at 1; Jay Parini, *Teacher and Friend*, *CHRON. HIGHER EDUC.* (Wash., D.C.), Jan. 6, 2006, at 11.

200. See, e.g., Rebecca Moore Howard, *Forget About Policing Plagiarism. Just Teach.*, *CHRON. HIGHER EDUC.* (Wash., D.C.), Nov. 16, 2001, at 24; see also Joseph K. Cavanaugh, *What Did You Get? A Faculty Grade Comparison*, 14 *QUAL. ASSURANCE IN EDUC.* 179, 185 (2006) (concluding that educational institutions’ use of student evaluations to determine Adjunct faculty

members who are accepted both professionally and socially by their fellow faculty are obviously more likely to accept the social consequences of enforcing academic honesty policies. Unfortunately, many adjuncts, having been socially and professionally abused, excluded and ostracized by the full-time faculty and administration, often identify more with their students than with their full-time colleagues.²⁰¹

Though ethics and morality-based arguments have been asserted for the better treatment of adjunct faculty,²⁰² even from a practical standpoint it is imperative that colleges accord better professional treatment and status to their adjuncts.²⁰³ If plagiarism is to be effectively countered, then adjunct faculty members must be integrated into the academic social systems as functioning and well-interacting members,²⁰⁴ and not platooned as expendable and disposable labor. The academy's treatment of its adjunct faculty members and the roles that adjunct faculty are encouraged and permitted to play in any academic integrity initiative will be a major factor in any such initiative's success. These efforts will thereby determine in no small measure the future course of American higher education, American law, and American society at large.

performance induces Adjuncts to assign higher grades to students).

201. Several researchers have found some sort of correlation between non-tenured faculty status and grade inflation. See, e.g., Boualem Kezim et al., *Is Grade Inflation Related to Faculty Status?*, 80 J. EDUC. FOR BUS. 358 (2005); Melanie Moore & Richard Trahan, *Tenure Status and Grading Practices*, 41 SOCIOLOGICAL PERSPECTIVES 775 (1998). Though the specific parameter does not seem to have been directly studied in depth, the observation by Kezim, Pariseau, and Quinn that at their particular small private institution "the percentage of grades in the A category (A and A-) did not indicate the same dramatic climb as seen in the Ivy League universities," Kezim, *supra* note 201, at 362, may well be rooted in the treatment and status of adjunct faculty at the respective schools. Quantitative statistical research and inquiry to test such speculation is beyond the scope of this article.

202. E.g., Wilson D. Miscamble, *The Corporate University*, AM. (Nat'l Catholic Weekly), July 31, 2006, at 14, 17 ("And as a matter of urgency, [Catholic colleges] should take the lead in American higher education in providing just compensation for adjunct faculty.").

203. See, e.g. Ruth Fagan-Wilen et al., *The Support of Adjunct Faculty: An Academic Imperative*, 25 SOCIAL WORK EDUC. 39 (2006).

204. Cf. Judy A. Johnson et al., *Out of Sight—Out of Mind: The Importance of Integrating Adjunct Faculty into an Educational Administration Department*, Paper Presented at 55th Nat'l Council of Professors of Educational Administration (August 7–11, 2001), available at ERIC, Document No. ED471806 (discussing general desirability of integrating adjunct faculty into the social structure of an academic department); *Integrating Adjuncts into the Community through Professional Development, Support*, ACADEMIC LEADER, July 2005, at 1.