
Introduction

After now some dozen years of experience [as a judge] I must say that as a litigant I should dread a lawsuit beyond almost anything else short of sickness and death.

—Learned Hand¹

Our society has always been drawn to the subject of jury trials with a mixture of fascination and fear. Because of court-related stories in both print and visual media, we often tend to associate the jury process with criminal trials. As a school leader in the world of public, private, or parochial education, you are much more likely to get involved in a civil trial; however, you are not immune from involvement in criminal actions. In our profession, the most common civil cases involve liability for alleged constitutional or non-constitutional negligence. A few examples of the hundreds of situations in which school leaders have recently been involved as defendants, plaintiffs, witnesses, or respondents include:

Criminal defendant—sexual assault

Civil defendant—employment discrimination

Criminal plaintiff—coach assaulted by parent

Civil plaintiff—teacher alleging defamation

Character witness—student seeks diversion agreement

Factual witness—administrator passing in hallway when science lab explodes

Respondent to interrogatories—principal required to compile and produce employment records, curriculum guides, test scores etc.

Consulting expert witness—school leaders helping attorneys understand high-stake testing procedures

Testifying expert witness—explaining proper methods of instruction in the use of industrial arts shop equipment

And, as always, hundreds of us find ourselves defendants in negligence suits involving duty, standards of care, improper supervision, maintenance, etc.

“But,” you might say, “I took a course in school law. Isn’t that enough? Why do I need this book?” Certainly, a basic course in school law required for certification/licensure is important, but such courses typically fall far short of providing us with the knowledge, understanding, and confidence to successfully face a lawsuit. Instead, our law courses are primarily concerned with avoiding lawsuits. This approach to avoiding possible litigation may actually adversely affect our programmatic, personnel, and other leadership decision-making processes and actions, as well as our ability to provide the best teaching-learning environment for teachers and students.

This book will assist you in understanding how:

Litigation works and the jury system operates, and what you can do to assist in the process—that is the process of providing the jury with just the facts—to ensure that the merits of what you did right are noted by a jury, regardless of the plaintiffs’ attorneys efforts to make you look like a hapless incompetent

Attorneys work to serve both sides of a dispute by protecting the legal rights of their respective clients. Your job is to support the central focus of this effort by providing honest and forthright information and testimony

You can assist the legal process by being a competent resource in the role of an expert witness

This book describes a classic confrontation between right and wrong. More important, however, whether you are a defendant, plaintiff, or witness, this book can provide you with the tools you need to appreciate and understand:

The special practices of litigation

Its distinctive terminology

The myriad personalities and roles involved

The sometimes intimidating physical environment

Other situations you may encounter in the unfamiliar processes of litigation.

In short, this book will help you view litigation as routine, rather than something that adversely affects your administrative effectiveness in the day-to-day operations of a successful school, and equip you with the confidence you need to focus on students' learning and teachers' teaching, rather than getting mired in efforts to avoid lawsuits at all costs. After all, a lawsuit is often indisputable evidence that you have done exactly the right thing.

When you finish reading this book, we suggest that you place it in your permanent library of "how to" books—in our litigious society you may, unfortunately, need the expertise provided in the near future.

About Section I: A Review of the Legal Environment and the Function of Law

This section briefly reviews the several sources of law and their relationship to the structure and operation of schools and school districts. This review provides the foundation for understanding the manner in which our legal system monitors the education enterprise. When school districts and schools fail to follow the law, or fail to provide a safe place—a place that not only observes the rights of individuals, but also protects those rights—the courts will intervene. Our nation's court systems provide the structure that determines the exact relationship between the individual and the law in question.

About Section II: The Process of Litigation

In this section, you will meet Annie, a third-grade student at Red Ridge Elementary School. Annie was injured in an "accident" during school hours, and her parents filed a suit against the school district that names Annie's principal as one of the defendants. While this hypothetical case centers on eight-year-old Annie, the authors could just as well have chosen a middle school or high school student, or even a teacher, staff member, parent, or school visitor to play the role of plaintiff. This case centers on alleged negligence on the part of the Annie's school and school district, but could very well have

addressed hundreds of other constitutional and non-constitutional liability issues that educators can and do find themselves answering to in a court of law. The purpose of Annie's case is simply to take you through a typical litigation process.

This section then describes the litigation process, discusses key issues in working with an attorney, and explains the unique atmosphere of the courtroom itself. The purpose is to provide you with insights into the world of litigation that can prepare you to face a lawsuit armed with the background knowledge you need to contribute effectively to your own defense.

Finally, this chapter discusses the inevitable stress that participation in a lawsuit entails and provides some sound advice on how to manage that stress.

About Section III: Verdict and Analysis

This section presents the verdict in Annie's case and an examination of the implications for Annie's school principal and the district.

About Section IV: Serving as an Expert Witness

This section discusses the important role expert witnesses can play in the course of a lawsuit by offering relevant opinions that move the case closer to resolution. The primary purpose of an education expert is to help the court understand the proper operation of schools. This chapter provides information and insights that can help you decide whether or not you might be willing to serve as an expert witness.

About Section V: Managing Your Risk of Litigation

This section briefly discusses how you can reduce your potential risk of litigation by understanding and practicing preventive law.

Notes

1. Learned Hand. (1921, November). Address to the Association of the Bar of the City of New York. In *Lectures delivered before the Association of the Bar of the City of New York: Vol. 3. Lectures on legal topics, 1921-1922* (p. 87). New York: MacMillan.