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Letters

Professor comments on lawsuit

With respect to the news story concerning Buyukmihci vs University of California et al (*JAVMA*, Nov 15, 1991, p 1245), I hasten to point out that I filed the lawsuit because I believed my First Amendment rights were being violated. The question of whether "... the collective faculty, and not individual instructors, have full and final control over the content and courses of the curriculum" was of "greatest significance in the settlement" or "was easily the dominant issue in the suit," as expressed by Executive Vice Chancellor and Provost Larry Vanderhoef in a UC-Davis news release, had virtually nothing to do with the legal issues being tried. A federal judge agreed with me and granted a preliminary injunction against the university in November 1989.

The resolution of the lawsuit in August 1991 was not a "settlement," as characterized by Dr. Vanderhoef. It was a judgment against the university. This judgment, now a federal court order, has the same legal significance as if a jury or the judge had established guilt during trial.

Nedim C. Buyukmihci, VMD
Davis, Calif

Dr. Vanderhoef responds:

People who must deal directly with the animal rights issue face three major frustrations. First, the movement has within it elements of religious fervor that urge people, often in harassing fashion, to change their behavior, even though that behavior is entirely legal. Second, society's laws do not seem to impede the activities of the extremists in the group. A few years back, for example, the University of California at Davis lost, at a cost of $5 million, a partially completed veterinary diagnostic laboratory to fire, set by people who left their spray-painted signature—"ALF." Third, tactics that use misleading innuendo and untruths of commission and omission are considered entirely appropriate means to achieve the movement's ends.

Dr. Buyukmihci describes the resolution of his lawsuit as having the same legal significance as if a judge or jury had established guilt during trial. This is completely misleading. There was no trial or any findings of fact or guilt by a judge or jury. Rather, the University agreed to settle the matter by having a judgment on specified terms entered by the court. Dr. Buyukmihci agreed to these terms in order to settle the case.

Dr. Buyukmihci also states that the issue of whether the collective faculty, rather than individual instructors, have full and final control over the content and courses of curriculum had nothing to do with his lawsuit. Instead, he asserts that his claims were based on the first amendment, and that a federal judge "agreed with [him]." In fact, one of Dr. Buyukmihci's principal contentions in his lawsuit was that he had been removed as a course leader improperly. A central part of the dispute over his removal was whether he was removed for refusing to teach the course in the manner required by the collective faculty, or whether he was removed for exercising his first amendment rights. Obviously, these issues are not mutually exclusive. On this point, as on most of the issues raised by Dr. Buyukmihci, the court declined to issue any injunctive relief, in effect siding with the University until there could be a trial on the merits. We have denied and continue to deny that there has ever been any violation of Dr. Buyukmihci's first amendment rights.

One final bit of sad commentary. One might ask why the University agreed to settle when it was in the strong position described in the preceding paragraph. First, the law, as it stands, requires that the accused pay the entire attorney's fees of the plaintiff if even just one fraction of one of the several allegations is determined by a jury to be correct. Therefore, as we deliberated going to trial, we had to assume that it was highly likely that we would have to pay Dr. Buyukmihci's attorney's fees (which were considerable, by the way—bearing no relation to the amount that was gained for the client). Second, it was determined that, even if we prevailed on 90% or more of the issues, the trial would cost the University a tremendous amount in defense costs. The