SCR#76-106

STATE OF CONNECTICUT

BOARD OF TRUSTEES

FOR THE STATE COLLEGES

P. O. Box 2008 New Britain, Connecticut 06050

TEL. NEW BRITAIN: 203-229-1607 TEL. HARTFORD: 203-566-7373

RESOLUTION

concerning

SETTLEMENT
IN THE CASE OF IRVING STOLBERG
VERSUS PROFESSOR BERTRAM D. SARASON
AND FORMER PRESIDENT HILTON C. BULEY OF
SOUTHERN CONNECTICUT STATE COLLEGE

November 5, 1976

WHEREAS, The Attorney General has recommended that the suit against Professor Sarason and Dr. Buley undertaken by Mr. Irving Stolberg be settled for $3,000, and

WHEREAS, Counsels for the defendants have submitted bills of $1200 each, totaling $2,400.00, be it

RESOLVED, That the Trustees authorize a settlement of this case for $3,000 and that they approve the payment of $2,400 to the counsels for services rendered.

A Certified True Copy:

James A. Frost
Executive Secretary

STATE OF CONNECTICUT

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P. O. Box 2008 New Britain, Connecticut 06050

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November 9, 1976

The Honorable Carl R. Ajello, Jr.
Attorney General
Attorney General's Office
30 Trinity Street
Hartford, CT. 06115

Att: Mr. Bernard F. McGovern
Assistant Attorney General

Dear Mr. Ajello:

As indicated by the enclosed copy of Resolution #76-106, passed on November 5, 1976, the Board of Trustees have approved the settlement of the case of Mr. Stolberg vs. Messrs Buley and Sarason for the amount specified.

The Trustees have asked me to express their gratitude for the expert, efficient, and effective manner in which you handled this matter. It is what we have come to expect of you.

Cordially,

James A. Frost
Executive Director

JAF/b
encl.

STATE OF CONNECTICUT

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October 7, 1976

TO MEMBERS OF THE PERSONNEL COMMITTEE:
Mr. Alvin B. Wood, Chairman
Judge Patricia A. Geen
Mrs. Luva M. Hoar
Mr. Ramon M. Martinez

Enclosed please find a letter dated October 6 and signed by Mr. Bernard McGovern. Attached to it are certain documents relating to the case of Stolberg vs Buley. You will note that the Attorney General is recommending a cash settlement in this case.

The matter will be placed on the Agenda of the Personnel Committee at the meeting to be held on October 18, 1976 at 3:30.

James A. Frost
Executive Director

JAF/b
encl.

State of Connecticut

CARL R. AJELLO
ATTORNEY GENERAL

Tel: 566-4990

Office of The Attorney General
30 TRINITY STREET
HARTFORD 06115

October 6, 1976

Board of Trustees for the State Colleges
P. O. Box 2008
New Britain, Connecticut 06050

Attention James Frost
Executive Director

Re: Stolberg v. Sarason and Buley

Gentlemen:

The above libel suit was commenced in 1970 by Irving Stolberg against Professor Bertram D. Sarason and former President Hilton C. Buley of Southern Connecticut State College. The complaint, a copy of which is attached hereto, alleges that in May, 1968, Dr. Sarason wrote Dr. Buley a letter impugning Mr. Stolberg's moral character. See Complaint, para. 9. Dr. Buley is alleged to have brought the letter to the Board's attention. Assistant Attorney General David Beizer was assigned to represent both defendants and when he left this office, I succeeded him.

During the course of preparation of the case, the defendants related and adamantly adhered to inconsistent versions of the origin of the letter. Ethical considerations compelled the withdrawal of this office from the matter, and the defendants were instructed to seek independent, private counsel pursuant to Sec. 10-235, Conn. Gen. Stat. Copies of my letters of October 18, 1972 to the defendants were sent to Dr. Ritchie. It should be noted that as the statute existed at that time the defendants had an absolute right to retain counsel of their choice and reimbursement therefor as long as they were free of wanton, wilful or reckless misconduct. Drs. Sarason and Buley retained Attorneys Hirtle and McNerney respectively.

The case was recently pretried in New Haven. As stated in Attorney Hirtle's enclosed letter of September 17, 1976, Judge Santaniello has recommended that the case be settled for $3,000. Defendants' counsel have requested the Board to approve this proposed compromise. Board approval is necessary at this point in time because a cause of action in libel is predicated upon malice so that an independent settlement by the defendants might preclude reimbursement under Sec. 10-235 due to its aforementioned misconduct proviso.

I recommend this proposed settlement to the Board. There is no real doubt of the authorship of the letter and that its contents on its face constitute libel per se. Thus, the defendants must rely on truth as a defense. Proof of truth has become a significant problem with defense of the second paragraph. Attorney Hirtle points out that the former Joyce Bailey refuses to testify voluntarily. While she could be subpoenaed, the quality of her testimony would be suspect. I myself encountered this problem when I was representing the defendants. Due to a subsequently improved status in life, this witness refused to testify; I have no doubt that if compelled to testify her memory would not be "sharp." Thus it is probable that the defendants could lose this case not because of authorship and publication of false statements, but because the source of proof of the truth had dried up.

It has always been my feeling that while the defendants exercised poor judgment in putting the subject matters in writing without an appropriate documentary foundation and disseminating same to the Board, they were not motivated by malice or ill will.

Additionally, the amount of the proposed settlement is slightly more than a sum which would be termed nuisance value. However, since the plaintiff was accused in the letter of matters reflecting incompetence in his profession and moral turpitude, the defendants are subject to an assessment of general damages, i.e., whatever damages the jury feels the plaintiff entitled to without the necessity of proof of actual loss or damage. Thus a plaintiff's verdict could easily exceed $3,000.

Finally, counsel have submitted bills of $1,200 each. In my opinion these bills are reasonable and should be paid. If a trial must be held, the legal fees which the Board must pay, of course, will be considerably higher unless, of course, the defendants lose.

If there are any questions, I will be pleased to discuss them with you.

Very truly yours,

Carl R. Ajello
Attorney General

By Bernard F. McGovern, Jr.
Bernard F. McGovern, Jr.
Assistant Attorney General

BFM:R

Enclosure

35 ELM STREET
NEW HAVEN, CONN. 06510

P. O. BOX 1855
NEW HAVEN, CT. 06508

Dr. Hilton C. Buley
20 Old Lane Road
Cheshire, Conn. 06410

September 23, 19 76

TO JOHN E. MCNERNEY, ATTY. AT LAW, DR.

Re: Stolberg Vs: Buley, et al

Registration, review and maintenance of file, entry of appearance, study of pleadings of co-defendant, research of law, securing and study of Attorney General's file, drafting and filing answer and special defenses to plaintiff's complaint, trial assignments, pre-trial hearing, Superior Court, New Haven, on Auguat 31, 1976, discussions with plaintiff's attorney, conferences with Dr. Buley, preparation for trial, (court attendance September 1976, entering stipulation for judgment and securing Satisfaction of Judgment)

$1200.00

LAW OFFICES

ROGIN, NASSAU, CAPLAN, LASSMAN & BORDEN

111 PEARL STREET, HARTFORD, CONNECTICUT 06103

TELEPHONE (203) 278-7480

September 23, 1976

Dr. Bertram D. Sarason
6 Oakwood Drive
Madison, Conn.

081437 - 1

PROFESSIONAL SERVICES re Stolberg v. Sarason

Appearance, Review Attorney General's file, Prepare Demurrer and Brief, Short Calendar Argument, Research, Answer and Special Defenses, Trial Claim, Pre-trial Hearing August 31, 1976, Stipulation for Judgment, Judgment and Satisfaction

$1200.00

LAW OFFICES

ROGIN, NASSAU, CAPLAN, LASSMAN & BORDEN

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HARTFORD, CONNECTICUT 06103

TELEPHONE (203) 278-7480

EDWARD S. ROGIN
LOUIS E. NASSAU
JEROME E. CAPLAN
EDWIN A. LASSMAN
ARTHUR M. NASSAU
DAVID M. BORDEN
A. NED ROGIN
ROBERT L. HIRTLE, JR.
STEVEN D. BARTELSTONE
DAVID M. CALL

HAROLD BORDEN
1924-1973

September 17, 1976

'76 SEP 21 AM 10:27

Attorney General

Bernard F. McGovern, Jr.
Assistant Attorney General
30 Trinity Street
Hartford, Connecticut

Re: Stolberg vs. Sarason
Superior Court, New Haven County

Dear Mr. McGovern:

On August 31, 1976 a pretrial hearing was had in the Superior Court for New Haven County. Judge Angelo Santaniello presiding. At the pretrial hearing plaintiff was represented by Michael Sulzbach, Esq. of the firm of Tyler, Cooper, Grant, Bowerman & Keefe. Dr. Bertram D. Sarason was represented by myself and Dr. Hilton C. Buley was represented by Attorney John McNerney. There was much discussion about the case and it resulted in a recommendation by Judge Santaniello that the case be settled for the sum of $3,000. Procedurally the judge recommended that a request be made to the Attorney General's Office to the Board of Trustees for State Colleges requesting that the Board approve the judge's recommendation. Upon such approval the parties will enter into a stipulated judgment.

Judge Santaniello has postponed the trial date in the case until September 21 pending a decision by the State Board.

Attorney McNerney has authorized me to make this request on behalf of Dr. Buley and our client jointly.

Attorney McNerney and I are prepared to try the case, however, we have a problem with a witness who was formerly Joyce Bailey of the Art Department of Southern Connecticut State College. Miss Bailey was quoted in Dr. Sarason's letter to Dr. Buley, and she is now refusing to testify in the case because she

has left the college staff and has married. We are concerned that if she is forced to testify under subpoena, her testimony may not be satisfactory.

I would appreciate it if you would consult with the Board of Trustees in this matter and advise us of their decision.

Very truly yours,

Robert L. Hirtle, Jr.

RLH/fm

cc John E. McNerney, Esq.

TO THE SHERIFF OF THE COUNTY OF NEW HAVEN, HIS DEPUTY, OR EITHER CONSTABLE OF THE TOWNS OF NORTH BRANFORD AND CHESHIRE WITHIN SAID COUNTY, GREETING:

BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to summon BERTRAM D. SARASON, of the Town of North Branford, County of New Haven, and State of Connecticut, and HILTON C. BULEY, of the Town of Cheshire, County of New Haven, and State of Connecticut, to appear before the Superior Court to be held at New Haven, in and for the County of New Haven, on the second Tuesday of July, 1970, said appearance to be made by said Bertram D. Sarason and Hilton C. Buley or by their attorneys by filing a written statement of appearance with the clerk of said court on or before the second day following said return date then and there to answer unto IRVING STOLBERG of the Town of New Haven, County of New Haven, and State of Connecticut, in a civil action, wherein the plaintiff complains and says:

1. The plaintiff, Irving Stolberg, is a resident of the Town of New Haven, and is and has been engaged for several years in the profession of college teaching. From September of 1966 through June of 1969, plaintiff was a member of the faculty at Southern Connecticut State College and served in the capacity of Assistant Professor of Geography.

2. At all times pertinent hereto, defendant Bertram D. Sarason was a member of the faculty at Southern Connecticut State College and served in the capacity of Professor of English.

3. At all times pertinent hereto, defendant Hilton

Sarason made certain statements concerning the plaintiff. Defendant Buley thereupon asked defendant Sarason to put said statements in writing. Defendant Sarason agreed to do so.

5. Thereafter, and during May of 1968, defendant Sarason prepared a document containing statements concerning plaintiff and submitted that document to defendant Buley. A copy of said document is annexed to this complaint as Exhibit A. Defendants Buley and Sarason understood, and had reason to believe, that the contents of said document would subsequently be disclosed to various other persons, including but not limited to members of the Board of Trustees for the State Colleges of the State of Connecticut.

Proof?

6. Defendants Sarason and Buley acted in concert in connection with the preparation of said document alleged above for subsequent disclosure and publication of its contents to others and for the purpose of damaging the reputation of and defaming plaintiff.

7. Thereafter, and on June 4, 1968, defendant Buley caused the contents of said document alleged above, and copies thereof, to be published to the members of the Personnel Committee of the Board of Trustees for the State Colleges, and other persons present at a meeting of said committee held in Hartford on that day.

8. Thereafter, and at various times during 1968 and January and February of 1969, defendant Buley caused the contents of said document alleged above, and copies thereof, to be published further by placing said document or copies thereof in a file to be distributed to and read by members of the Committee for

9. Said document alleged above, published as alleged above, contained the following words concerning the plaintiff:

> "Let me begin then with a letter from him dated January 15, 1967 (the date is an error; he meant 1968) in which he submitted an article of ten pages for the Connecticut Review. In that letter he stated, "I have intended to submit it for the past couple of weeks, but you seem to have been very busy". One part of the statement is a downright untruth. I had spoken to Mr. Stolberg on the campus at least four times in the past six weeks in which conversations he told me he had a 57 page article for the Connecticut Review. When, in early January, he asked if I had his 57 page article -- which, of course, I never received -- he said that it must have been lost. I asked him if he had a duplicate; he replied in the negative. I then suggested that he rework from whatever notes he had and submit as promptly as possible a revised version. What I received on January 15th was a ten page article with one footnote. In checking his work I found that he had done no more than elaborate on material to be found in any encyclopedia -- such as the Encyclopedia Britannica. Accordingly I sent him a letter of rejection. The conclusion I then reached on March 12th, the day of my letter, was that Mr. Stolberg was untruthful, unreliable, and devious. (I am enclosing copies of our correspondence).
>
> Shortly thereafter, I received a telephone call from Miss Joyce Bailey of the Art Department who, like Mr. Stolberg, has been prominent in advancing "liberal causes". Let me add that I am myself sympathetic to some of these causes. But, Miss Bailey's purpose was to seek advice in what has come to be known as the "Stolberg cause". Her liberal leanings inclined her to be sympathetic toward him; his personal behavior to her made it difficult for her, if not impossible, to advocate the movement in his behalf. From her frank admission, Mr. Stolberg represented himself as deeply affectionate toward her and, during this time he took some of her possessions, including two original paintings which he never returned. On several occasions he came to her apartment accompanied by another female to whom he attempted to make love in Miss Bailey's presence, and on one occasion he attempted -- according to Miss Bailey -- to seduce a seventeen year old Hillhouse High School student. I told Miss Bailey that she was under no obligation to assist a man like Mr. Stolberg, and I attempted to explain to her that his public representation of himself as an idealist was a coverup for a man fundamentally sadistic and disturbed."

10. Said publications were false and malicious. → Sufficient for qualified privilege

11. Said publications were made to many of plaintiff's professional colleagues, associates, and superiors.

12. As a result of said publications, plaintiff has suffered and will suffer damage to his personal and professional reputation and to the respect and esteem in which he has held in the professional community in which he is engaged; plaintiff has further been subjected to ridicule, embarrassment, insult, and humiliation; and plaintiff has further suffered and will suffer pecuniary losses and the loss of substantial professional advantages, in that he suffered the termination of his employment at Southern Connecticut State College resulting in lost earnings and the loss of future earnings and the loss of privileges and promotions which would have accrued to plaintiff had his employment at Southern Connecticut State College not been terminated.

The plaintiff claims $120,000 compensatory and punitive damages.

Charles A. Pulaski, Jr. of Branford, Connecticut, is recognized in the sum sufficient of $200. to prosecute, etc.

Of this writ with your doings thereon make due return.

Dated at New Haven, Connecticut, this 1st day of June, 1970.

/s/ Louis M. Winer
Commissioner of the Superior Court

Please enter the appearance of:
Tyler, Cooper, Grant, Bowerman & Keefe
205 Church Street
New Haven, Connecticut 06509
-Attorneys for Plaintiff-

New Haven, Connecticut
May 16, 1968

Dr. Hilton C. Buley, President
Southern Connecticut State College
New Haven, Connecticut

Dear President Buley:

On Tuesday, May 14, 1968, at approximately 1:45 p.m., I had a conversation with Mr. Irving Stolberg in the presence of Mr. John Gallagher, the Assistant Dean of Students at Southern Connecticut State College. Mr. Stolberg's remarks were most intemperate, and I feel it my moral obligation to report them to you. But first, I had better provide you with the background which justified my side of the conversation with him. That is to say, I told Mr. Stolberg, in the course of the conversation, that I believed you were perfectly within your rights to terminate his employment, particularly as he did not have tenure, and I advised him strongly to accept your decision with good grace. Behind my remarks was the conviction that Mr. Stolberg did not have a future here and that he was not a proper person to be a member of this faculty.

Let me begin then with a letter from him dated January 15, 1967 (the date is an error; he meant 1968) in which he submitted an article of ten pages for the Connecticut Review. In that letter he stated, "I have intended to submit it for the past couple of weeks, but you seem to have been very busy". One part of the statement is a downright untruth. I had spoken to Mr. Stolberg on the campus at least four times in the past six weeks in which conversations he told me he had a 57 page article for the Connecticut Review. When, in early January, he asked if I had his 57 page article -- which, of course, I never received -- he said that it must have been lost. I asked him if he had a duplicate; he replied in the negative. I then suggested that he rework from whatever notes he had and submit as promptly as possible a revised version. What I received on January 15th was a ten page article with one footnote. In checking his work I found that he had done no more than elaborate on material to be found in any encyclopedia -- such as the Encyclopedia Britannica. Accordingly I sent him a letter of rejection. The conclusion I then reached on March 12th, the day of my letter, was that Mr. Stolberg was untruthful, unreliable, and devious. (I am enclosing copies of our correspondence).

...Bailey of

admission, Mr. Stolberg represented himself as deeply affectionate toward her and, during this time he took some of her possessions, including two original paintings which he never returned. On several occasions he came to her apartment accompanied by another female to whom he attempted to make love in Miss Bailey's presence, and on one occasion he attempted -- according to Miss Bailey -- to seduce a seventeen year old Hillhouse High School student. I told Miss Bailey that she was under no obligation to assist a man like Mr. Stolberg, and I attempted to explain to her that his public representation of himself as an idealist was a coverup for a man fundamentally sadistic and disturbed.

It is with this background in mind that I spoke to Mr. Stolberg on May 14th in the College Cafeteria in the presence of Mr. Gallagher. I advised Mr. Stolberg to resign from the College and to seek employment elsewhere. He said he was going to stay to fight for the cause. I attempted to persuade him on the ground of prudence that wherever he went he would find something objectionable in administration and that he would simply repeat his experience at Southern Connecticut elsewhere, that the wisest course for him to take was to devote himself to his personal profesional obligation and not to divert his energies into "good causes". I argued that he spent at least 50 hours a week on such extra curricular matters; he limited the time to 20 hours a week. I told him that his business was to get a Ph.D., a permanent job, and a wife. He replied that he was going to stay here "to fight Dr. Buley". He said that he was going to have the College blackballed by AAUP. He said he was going to organize the students and faculty against Dr. Buley. He said that Dr. Buley was a weak man and was vulnerable, that he knew that Dr. Buley was ill and that if this fight meant that Dr. Buley would be killed he did not care. He proposed to have Dr. Buley dismissed from his position by bringing charges against him wherever possible. I told Mr. Stolberg that Dr. Buley was perfectly within his rights in dismissing a nontenured employee, that Mr. Stolberg's fantasy of causing Dr. Buley to lose his position was absurd, and I reiterate that he should devote himself to his professional work. Mr. Stolberg replied that the AAUP would back him up, that there was a movement in the AAUP to apply new standards to protect nontenured employees and that he was going to appeal to the AAUP personnel in Connecticut and in Washington. I again replied that Dr. Buley was absolutely within the law and that, in my opinion, very far from being stringent towards our faculty, that Dr. Buley was far more lenient and liberal than I would be with certain faculty members. Amazingly enough, he conceded this point.

May 16, 1968

I write this letter because I am personally convinced that an individual like Mr. Stolberg has no place on our college faculty. You will observe that I made this judgment some weeks before word was released that you did not intend to give him tenure. Therefore, I can communicate to you what I have written above with no feeling of partisanship in this current controversy. At the expense of seeming egostic -- which is not my intention -- my mind was made up about Mr. Stolberg even before your decision was reached -- and it was a right decision.

Sincerely,

Bertram D. Sarason

Bertram D. Sarason
Professor, Department of English