“What does the university need a lawyer for?”

Or

Introduction to the Law of Higher Education

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Shortly after one of my nieces enrolled at the University of Central Oklahoma she and I were having a conversation about my job. When I explained to her what I did her reply was “What does the university need a lawyer for?” Why indeed?

Throughout the nineteenth and much of the twentieth centuries, the law’s relationship to higher education was very different from what it is now. There were few legal requirements relating to the educational administrator’s functions and these requirements were not a major factor in most administrative decisions. Those in the higher education world, moreover, tended to think of themselves as removed from and perhaps above the world of law and lawyers. Kaplin, William A. and Lee, Barbara A., The Law of Higher Education, 5th ed. at 9.

The special higher education environment was also thought to support a special virtue and ability in its personnel. College faculty and administrators (often themselves respected scholars) had knowledge and training far beyond that of the general populace, and they were charged with the guardianship of knowledge for future generations. Theirs was a special mission pursued with special expertise and often at considerable financial sacrifice. The combination spawned the perception that ill will

\(^1\) The views and opinions expressed in this paper and at the presentation of the same are those of the author and are not necessarily the position of the Regional University System of Oklahoma, the Regents or the Administrative Office; nor has there been any effort to obtain or express those positions. The author further reserves the right to argue a different position depending on the then current interests of his client.
and personal bias were strangers to academia and that outside monitoring of its affairs was therefore largely unnecessary. Kaplin & Lee, *supra*, at 9-10.

Where Have We Come From?

For many years the law considered the relationship between a post-secondary institution and a student to be *in loco parentis*. That is, in the place of a parent; instead of a parent; charged with a parent’s right, duties and responsibilities. Black’s *Law Dictionary*. *In loco parentis* then is the legal doctrine under which an individual assumes parental rights, duties, and obligations without going through the formalities of legal adoption. How did this concept play out in the courts?

**Gott v. Berea College**, 156 Ky. 376, 161 S.W. 204 (C.A. Ky. 1913). Mr. Gott purchased and was operating a restaurant across the street from Berea College in Berea, Ky. Each year the Students Manual included a section under the heading “Forbidden Places” which enjoined the students from entering any place of ill repute, liquor saloons, and gambling houses. During the summer of 1911, they added a new class of establishment described as “eating houses and places of amusement” in Berea not controlled by the college. Students were admonished not to enter these establishments “on pain of immediate dismissal.” The college’s rationale for this rule was also stated in the Manual: “The institution provides for the recreation of its students, and ample accommodation for meals and refreshment, and cannot permit outside parties to solicit student patronage for gain.” *Id.* at 205. During the first few days of the Fall semester, a couple of students patronized Mr. Gott’s restaurant and were expelled for violating this rule. This caused a loss of business to Mr. Gott’s restaurant and so he sought an injunction against the college to prevent it from enforcing the rule.

In denying the injunction, the court determined that college authorities stand in *loco parentis* concerning the physical and moral welfare and mental training of the pupils, and was unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose. Whether the rules or regulations are wise or their aims worthy, is a matter left solely to the discretion of the authorities or parents, as the case may be, and, in the exercise of that discretion, the courts are not disposed to interfere, unless the rules and aims are unlawful or against public policy. *Id.* at 206.

**Anthony v. Syracuse University**, 224 A.D. 487, 231 N.Y.S. 435 (N.Y. 1928). Beatrice Anthony was a student at Syracuse University who, in October 1926, was dismissed from Syracuse by the officers without the assignment of any cause. She was simply advised that the “authorities had heard rumors about her; that they had talked with several girls ‘in the house’”—that is, in the house of the Greek letter society of which she
was a member—and found she had done nothing lately, but that they had learned that she had caused a lot of trouble in the house; and that they did not think her the ‘a typical Syracuse girl.”’ Id. at 488-89.

Ms. Anthony sought reinstatement and the trial court agreed. However, the appellate court reversed the decision. When Ms. Anthony registered, she had agreed to comply with the rules and regulations of the university and acknowledged that:

Attendance at the University is a privilege and not a right. In order to safeguard its scholarship and its moral atmosphere, the University reserves the right to request the withdrawal of any student whose presence is deemed detrimental. Specific charges may or may not accompany a request for withdrawal. Id at 489.

The appellate court determined that a student is not required to enter the university and that the university is not required to accept a person desiring to be a student. Accordingly, a university may limit the effect of such acceptance by express agreement and thus retain the position of contractual freedom. The court reasoned that the contract between the student and the university did not differ in this respect from contracts of employment. Id. at 490-91.

Even the United States Supreme Court weighed in and determined that the attendance at a public post-secondary institution is a privilege. See, Hamilton v. Regents of the University of California, 293 U.S. 245 (1934).

Similar judicial deference prevailed in the institution’s relationship with faculty members. Courts considered academic judgments regarding appointment, promotion and tenure to be expert judgments suitably governed by the complex traditions of the academic world. Judges did not possess the special skill needed to review such judgments, nor, without glaring evidence to the contrary, could they presume that nonacademic considerations might play a part in such processes. Kaplin & Lee, supra, at 10-11

In addition to these traditional hands off attitudes, higher education institutions also enjoyed immunity from a broad range of lawsuits. Public institutions enjoyed governmental immunity and private institutions had a comparable shield as a charitable organization. Kaplin & Lee, supra, at 11.
Outside Influences Necessitating Lawyers on Campus
or
How Did We Get Here?

1944

- The Servicemen's Readjustment Act of 1944 also known as the G.I. Bill, was the law that provided a range of benefits for returning World War II veterans. Benefits included low-cost mortgages, loans to start a business or farm, high school or vocational education, one year of unemployment compensation, but more importantly for our purposes, cash payments of tuition and living expenses to attend college. Benefits were available to every veteran who had been on active duty during the war years for at least ninety days and had not been dishonorably discharged. Combat was not required. By the end of the program in 1956, roughly 2.2 million veterans had used the G.I. Bill education benefits in order to attend colleges or universities.

1952

- The first use of the term academic freedom by the United States Supreme Court occurred in a dissent by Justice William O. Douglas in Adler v. Bd. of Ed. of City of New York, 342 U.S. 485 (1952).

1961

- 42 U.S.C. §1983 originally enacted in 1871 became one of the most powerful authorities with which state and federal courts may protect those who have been deprived of their rights. It was originally enacted a few years after the American Civil War. One of the chief reasons for its passage was to protect southern blacks from the Ku Klux Klan by providing a civil remedy for abuses then being committed in the South.

In 1961 the Supreme Court of the United States articulated three purposes that underlay the statute: "1) 'to override certain kinds of state laws'; 2) to provide 'a remedy where state law was inadequate'; and 3) to provide 'a federal remedy where the state remedy, though adequate in theory, was not available in practice.' " Monroe v. Pape, 365 U.S. 167 (1961).

Now §1983 of the Civil Rights Act provides a way individuals can sue to redress violations of federally protected rights, like the First Amendment rights and the Due Process Clause and the Equal Protection Clause of the Fourteenth
Amendment of the United States Constitution. Section 1983 can be used to enforce rights based on the federal Constitution and federal statutes, such as the prohibition of public sector employment discrimination based on race, color, national origin, sex and religion.

1964

- The Civil Rights Act of 1964 was a landmark piece of legislation in the United States that outlawed major forms of discrimination against racial, ethnic, national and religious minorities and women. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace and by facilities that served the general public.

1965

- The Higher Education Act of 1965 (the "HEA") was legislation signed into United States law on November 8, 1965, as part of President Lyndon Johnson's Great Society domestic agenda. The law was intended “to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education.” It increased federal money given to universities, created scholarships, gave low-interest loans for students. The Higher Education Act of 1965 has been reauthorized numerous times. Typically, before each reauthorization, Congress amends the HEA to provide additional programs, or changes the language and policies of existing programs, or makes other changes to the law.

1967

- Joint Statement on Rights and Freedoms of Students. In June 1967, a committee composed of representatives from the American Association of University Professors (AAUP), the United States National Student Association (now the United States Student Association), the Association of American Colleges (now the Association of American Colleges and Universities), the National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors formulated the joint statement. The document was endorsed by each of its five national sponsors, as well as by a number of other professional bodies. (http://www.aaup.org/aaup/pubsres/policydocs/contents/stud-rights.htm, last visited August 26, 2014).
The purpose of the statement was to enumerate the essential provisions for student freedom to learn.

- Freedom of access to higher education
- In the classroom
  - Protection of freedom of expression
  - Protection against improper academic evaluation
  - Protection against improper disclosure
- Student records - academic and disciplinary records should be separate
- Student affairs
  - Freedom of association
  - Freedom of inquiry and expression
  - Student participation in institutional government
  - Student publications
- Off-campus freedoms of students
  - Exercise of rights of citizenship
  - Institutional authority and civil penalties
- Procedural standards in disciplinary proceedings
  - Standards of conduct expected of students
  - Investigation of student conduct
  - Status of pending final action
  - Hearing committee procedures

- Age Discrimination in Employment Act of 1967 (ADEA) prohibits employment discrimination based on age with respect to persons who are at least 40 years of age. It did permit institutions of higher education to require mandatory retirement for tenured faculty. However, the Act was amended in 1987 to be effective as of January 1, 1994, wherein mandatory retirement for faculty, whether tenured or not, became unlawful.

- First case where academic freedom is adopted by a majority opinion of the U.S. Supreme Court in Keyishian v. Bd. of Regents of the Univ. of the State of New York, 385 U.S. 589 (1967).

1969

- Tinker v. Des Moines Ind. Community School Dist., 393 U.S. 503 (1969). During the Vietnam era, junior and senior high school students were suspended from school for wearing black armbands to protest the war. The Supreme Court found that the school had violated the students’ right to freedom of speech: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” This right is not unlimited, however. A school may protect its educational function by
stopping speech that presents a “material and substantial” disruption to the work of the school.

1970

- Kent State

Richard Nixon was elected president of the United States in 1968 based in part on his promise to bring an end to the war in Vietnam. During the first year of Nixon's presidency, America's involvement in the war appeared to be winding down. In late April of 1970, however, the United States invaded Cambodia and widened the Vietnam War. This decision was announced on national television and radio on April 30, 1970 by President Nixon, who stated that the invasion of Cambodia was designed to attack the headquarters of the Viet Cong, which had been using Cambodian territory as a sanctuary.

Protests occurred the next day, Friday, May 1st, across United States college campuses where anti-war sentiment ran high. Kent State University was no exception and, in addition, another rally was called for noon on Monday, May 4th. Things took a turn for the worse on Friday night and the National Guard was called onto campus. On Monday the order to disburse was met with angry shouts and rocks and the Guardsmen were ordered to disburse the rally. Unfortunately, four Kent State students died and nine were wounded.

1971

- Twenty-sixth Amendment to the United States Constitution adopted on July 1, 1971. Section 1 of the Amendment states: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”

1972

- March 1972 Title VII of the Equal Employment Opportunity Act was made applicable to state and local government.

- On June 23, 1972, the HEA reauthorization is enacted which includes Title IX, now codified at 20 U.S.C. §§1681-1688.
No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

- On June 26, 1972, the United States Supreme Court rendered a **unanimous** opinion, in the case *Healy v. James*, 408 U.S. 169 (1972), stating that members of the Students for a Democratic Society (the SDS) had been unconstitutionally deprived of their First Amendment right to freedom of assembly when a group was denied permission to form on the campus of Central Connecticut State College in New Britain, Connecticut.

1973

- Rehabilitation Act of 1973 was enacted September 26, 1973. Section 504 of the Rehabilitation Act created and extended civil rights to people with disabilities. Section 504 has provided opportunities for children and adults with disabilities in education, employment and various other settings. It allows for reasonable accommodations such as special study area and assistance as necessary for each student.

1974

- Family Educational Rights and Privacy Act of 1974 (FERPA or the Buckley Amendment).

1976

- The 1976 amendments to the HEA require the university to give all students and prospective students information about the academic program and standards that must be met, as well as accreditation information. Costs and refund policies must be listed. Detailed information about financial aid must be provided, including information on how to contact the university's financial aid officer. Exit counseling must be made available to those who have incurred student loans.
Plaintiffs brought negligence action arising out of automobile accident which allegedly occurred following annual college sophomore class picnic at which driver had become intoxicated. The legal drinking age in Pennsylvania was twenty-one years but the great majority of the students drinking at the picnic were sophomores of either nineteen or twenty years of age.

The picnic, although not held on college grounds, was an annual activity of the sophomore class. A faculty member who served as sophomore class advisor participated with the class officers in planning the picnic and co-signed a check for class funds that was later used to purchase beer. The advisor did not attend the picnic, nor did he get another faculty member to attend in his place. Flyers announcing the picnic were prominently displayed across the campus. They were mimeographed by the college duplicating facility and featured drawings of beer mugs. Approximately seventy-five students attended the picnic and consumed six or seven half kegs of beer.

Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students. Whatever may have been its responsibility in an earlier era, the authoritarian role of today's college administrations has been notably diluted in recent decades. Trustees, administrators, and faculties have been required to yield to the expanding rights and privileges of their students. By constitutional amendment, written and unwritten law, and through the evolution of new customs, rights formerly possessed by college administrations have been transferred to students. College students today are no longer minors; they are now regarded as adults in almost every phase of community life. For example, except for purposes of purchasing alcoholic beverages, eighteen year old persons are considered adults by the Commonwealth of Pennsylvania. They may vote, marry, make a will, qualify as a personal representative, serve as a guardian of the estate of a minor, wager at racetracks, register as a public accountant, practice veterinary medicine, qualify as a practical nurse, drive trucks, ambulances and other official fire vehicles, perform general fire-fighting duties, and qualify as a private detective. Pennsylvania has set eighteen as the age at which criminal acts are no longer treated as those of a juvenile, and eighteen year old students may waive their testimonial privilege protecting confidential statements to school personnel. Moreover, a person may join the Pennsylvania militia at an even younger age than eighteen and may hunt without adult supervision at age sixteen. As a result of these and other similar developments in our society, eighteen year old students are now

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1979

identified with an expansive bundle of individual and social interests and possess discrete rights not held by college students from decades past. There was a time when college administrators and faculties assumed a role In loco parentis. Students were committed to their charge because the students were considered minors. A special relationship was created between college and student that imposed a duty on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college. The campus revolutions of the late sixties and early seventies were a direct attack by the students on rigid controls by the colleges and were an all-pervasive affirmative demand for more student rights. In general, the students succeeded, peaceably and otherwise, in acquiring a new status at colleges throughout the country. These movements, taking place almost simultaneously with legislation and case law lowering the age of majority, produced fundamental changes in our society. A dramatic reapportionment of responsibilities and social interests of general security took place.

Regulation by the college of student life on and off campus has become limited. Adult students now demand and receive expanded rights of privacy in their college life including, for example, liberal, if not unlimited, partial visiting hours. College administrators no longer control the broad arena of general morals. At one time, exercising their rights and duties In loco parentis, colleges were able to impose strict regulations. But today students vigorously claim the right to define and regulate their own lives. Especially have they demanded and received satisfaction of their interest in self-assertion in both physical and mental activities, and have vindicated what may be called the interest in freedom of the individual will. In 1972 Justice Douglas summarized the change:

Students who, by reason of the Twenty-sixth Amendment, become eligible to vote when 18 years of age are adults who are members of the college or university community. Their interests and concerns are often quite different from those of the faculty. They often have values, views, and ideologies that are at war with the ones which the college has traditionally espoused or indoctrinated. **Healy v. James**, 408 U.S. 169, 197, 92 S.Ct. 2338, 2354, 33 L.Ed.2d 266 (1972) (Douglas, J., concurring).

Thus, for purposes of examining fundamental relationships that underlie tort liability, the competing interests of the student and of the institution of higher learning are much different today than they were in the past. At the risk of oversimplification, the change has occurred because society considers the modern college student an adult, not a child of tender years.

Id. at 138-140 (internal footnotes omitted).
During the early morning hours of April 5, 1986, a male student at Lehigh University gained access to a female student’s room in a Lehigh residence hall. He gained access to her room by proceeding through three propped-open doors, each of which should have been locked. Jeanne Ann Clery was tortured, raped, sodomized and murdered in her room. Her killer was a drug and alcohol abuser, a Lehigh student whom Jeanne had never met. He was convicted and sentenced to death.

Lehigh officials publicly passed off Jeanne's torture and murder as an aberration. The college produced a report which concluded that there was no negligence on the part of the university and that its present safety policies were complete. This, despite the administration's knowledge of prior violent crimes on the campus and, that there had been 181 reports of propped-open doors in Jeanne's residence hall in the four months prior to her death.

After learning that Lehigh had unilaterally absolved itself of blame in Jeanne's death, Jeanne’s parents turned to the courts, suing the college for negligent failure of security and failure to warn of foreseeable dangers on campus. In 1988, Lehigh settled and agreed to materially enhance security on its campus. Her parents then founded Security On Campus, Inc., the first national, not-for-profit organization dedicated to the prevention of criminal violence at colleges and to assisting campus victim nationwide. See, www.securityoncampus.org.


The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses. Compliance is monitored by the United States Department of Education, which can impose civil penalties, up to $35,000 per violation, against institutions for each infraction and can suspend institutions from participating in federal student financial aid programs.
1987

- Age Discrimination in Employment Act of 1967 (ADEA) is amended to now prohibit mandatory retirement for faculty. Previously, institutions of higher education could require mandatory retirement policies. However, with this amendment to the ADEA institutions, began looking at performance based evaluations and post-tenure review.

1990

- ADA—Americans with Disabilities Act prohibits discrimination based on disability.

1998

- HEA amendments added provisions whereby students convicted of a federal or state offense involving possession or sale of a controlled substance will be ineligible to receive student aid for specified periods of time. This reauthorization of the HEA also amended the Age Discrimination in Employment Act to allow institutions of higher education to offer tenured faculty voluntary early retirement incentive plans that are in part age-based.

2008

- ADAAA—Americans with Disabilities Act Amendments Act overrules certain Supreme Court decisions interpreting the ADA\(^2\) as well as rejected some EEOC regulations. The ADAAA also expressed Congress’ intent “that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.” (P.L. 110–325, §§ 1 and 2, 122 Stat. 3553, 3556 (Sept. 25, 2008)).

- HEOA—Higher Education Opportunity Act. The U.S. Department of Education issued a Dear Colleague Letter outlining the major changes to programs authorized under the HEA, the new programs which were authorized, and the changes made to other laws. This letter was 219 pages long. [http://www2.ed.gov/policy/highered/leg/hea08/index.html](http://www2.ed.gov/policy/highered/leg/hea08/index.html) (last visited August 26, 2014).

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2011-2014

- On April 4, 2011, U.S. Department of Education issued a Dear Colleague Letter http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf which was a 19 page single spaced document and purports to supplement the January 2001 Guidance http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf that was a 48 page single spaced document. These documents discuss the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. Due to the number of requests for technical assistance the OCR determined that we could benefit from additional guidance concerning our obligations and on April 29, 2014 issued a 46 page Questions and Answers on Title IX and Sexual Violence. http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf

Legal Issues Facing Institutions for Higher Education

In 2013, William A. Kaplin and Barbara A. Lee published their Fifth Edition of The Law of Higher Education. In the preface they state: “[i]n the years since publication of the fourth edition and then its supplement, many new and newly complex legal concerns have arisen on U.S. campuses—from the implications of the Internet for teaching and research, to continuing conflict about affirmative action in admissions and financial aid, to the application of institutional nondiscrimination policies to student religious organizations, to the clash between faculty and ‘institutional’ academic freedom, to the rights of intercollegiate athletes, to name a few. Indeed, it is difficult to identify any other entities—including large corporations and government agencies—that are subject to as great an array of legal requirements as are colleges and universities.” Kaplin & Lee, supra, at xxviii. We have moved from in loco parentis to students as consumers of education.

- The American Legal System

  American Judicial System
  - Federal
  - State
  - Administrative

External Sources of Higher Education Law
  - Federal and state constitutions
  - Statutes
  - Administrative rules and regulations
  - State common law
  - Foreign and international law

Internal Sources of Higher Education Law
  - Institutional Rules and Regulations
Institutional contracts
Academic custom and usage
Different Types of Higher Education Institutions
Public Colleges and Universities
Private Religiously Affiliated and Secular Institutions
Community Colleges

➢ Governance of the Institution

Regents, Administrators, Staff
Scope of Authority
Institutional Liability—Tort and Contract
Personal Liability—Trustees, Administrators, Staff
Risk Management

State Creation of State Higher Education Institutions
State Charter and Licensure of Private Institutions
State Regulation of Out-of-State Institutions
State Regulation of Higher Education

➢ Faculty and the Institution

Contracts of Employment
Employment Discrimination
Affirmative Action in Employment
Promotion & Tenure
Academic Freedom

➢ Students and the Institution

Admissions
Financial Aid
Student Conduct
Academic and Disability Support Services
Student Protests and Demonstrations
Student Organizations & Greek Life
Student Press
Student Housing
Athletics
Student Records
Campus Security
The Institution as an Employer

Contracts
- At-will doctrine
- Sources, scope and terms of the contract

Other Employee protections
- ADAAA—Americans with Disabilities Act Amendments Act
- FLSA—Fair Labor Standards Act
- ERISA—Employee Retirement Income Security Act
- FMLA—Family Medical Leave Act
- Immigration
- Workers compensation
- Unemployment compensation
- Whistleblower protection
- USERRA—Uniformed Services Employment & Reemployment Rights Act

Personal Liability of Employees
  Tort
  - Negligence
  - Defamation
  Contract
  Constitutional

Nondiscrimination and Affirmative Action in Employment
  Sources of Protection
  - Title VII
  - Equal Pay Act
  - Title IX
  - Section 1981
  - ADA/504
  - Age Discrimination
  - Constitutional prohibitions

Protected Classes

The Institution as a Business

Contracts
  Institution as Purchaser
  - Adequate consideration
  - Oklahoma balanced budget provisions
  Institution as Seller
If state institution, do you have the authority to sell state property?
Institution as Research Collaborator and Partner

- Federal Power and Regulatory Requirements
  Federal Constitutional Powers and Regulation of Higher Education
    Spending power
    Taxing power
    Commerce power
    Civil rights enforcement power
  Federal Taxation
  Federal Aid to Education Programs
  Civil Rights Compliance

- Research and Intellectual Property Issues
  Copyright
  Patent
  Trademark

- Town-Gown Relationships
  Zoning & Land Use
  State Taxation
  Relationship with Local Police
  Community Access to Institution Property
  Community Activities of Institution Employees and Students

- Campus Safety

- Athletics

- Internet, Computers, and Acceptable Use Polices
SO WHAT DOES A LAWYER DO FOR THE UNIVERSITY?
or
LAWYERS: A USER’S MANUAL

DEDICATION

- "Could you just take a quick look at this [15-page, 8-point font, form] contract [that's been on my desk for the last three months, but that I haven't read] and let me know whether it's OK [before the vendor comes in 30 minutes from now to pick it up]?"
  
  — Numerous clients who will for their and my protection remain anonymous
You Make the Call

- The good news:
  - The law gives us considerable discretion
  - We get to make a choice
- The bad news:
  - The law gives us considerable discretion
  - We *have* to make a choice
- Not making a choice *is* making a choice, to accept the status quo

Decisions, Decisions

- Law
- Risks
- Benefits
- Costs
- Values
- Relationships
- Public Relations
- Practicalities
- ...
Advice and Consent

- Lawyers give advice, not orders
- Administrators make decisions and choices
- Can (may) I do X?
- How can (may) I do X?

Lawyers don't make your decisions.
Lawyers help make your decisions better.

CONCLUSION

The first rule of the American Bar Association Model Rules of Professional Conduct states: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Applied to higher education, competent representation means preventive advice. A higher education lawyer must keep his or her college aware of judicial decisions, legislation, and regulations that influence its activities and operation and then must help create or revise policies and practices in response. Campus counsel must also identify future issues and provide advice guidance to deal with them. In addition, preventive law required other people throughout the institution to involve counsel regularly in their activities before any legal crisis occurs. Bickel, Robert D. and Ruger, Peter H., “The Ubiquitous College Lawyer”, The Chronicle of Higher Education, June 25, 2004.
FOUR TIPS TO HELP REDUCE THE RISK OF HAVING TO TALK TO YOUR LAWYER

Tip #1: Find the Rules and Follow Them

Where are the Rules?
- State and Federal Laws and Regulations
- Ethics Commission
- Regents’ policies
- University Policy and Procedure
- Faculty, staff and student handbooks
- Department Policies

Tip #2: The Modified Miranda Warning

“Everything that you say (and write) can (and will) be used against you in (and out of) a court of law.”

This includes emails, especially emails: all emails can be copied, pasted, saved and forwarded AND they last forever.

Tip #3: Learn to “Issue Spot”

Familiarize yourself with the hot issues
- Discrimination and/or Harassment (student, faculty, and staff)
  - (race, age, gender, transgender, physical/psychological/learning disability, national origin, religion, sexual orientation, political)
- Personnel Matters
- Compliance
- Procurement/Purchasing/Contracting
- Retaliation and Whistle Blowing

Tip #4: Call for Help

Some people operate on the theory that it is easier to ask for forgiveness than it is to get permission. However, after an adverse jury verdict, forgiveness may involve you having to get out your personal checkbook.

CAVEAT: Following these tips will not guarantee that you will never be sued, that no grievance will be upheld against you, or that you won’t turn grey.