WHAT DOES THE UNIVERSITY NEED A LAWYER FOR?
Or
Introduction to the Law of Higher Education

Charles K. Hobb, General Counsel
Regional University System of Oklahoma
September 30, 2014

in loco parentis

NOT loco parents
Gott v. Berea College
“Forbidden Places”

Beatrice Anthony v. Syracuse University
“Not your typical Syracuse girl”

SHALL I GO BACK TO SCHOOL?

9/26/2014
Joint Statement on Rights & Freedoms of Students

Purpose of the Statement was to enumerate the essential provisions for student freedom to learn.

Age Discrimination in Employment Act (ADEA)
Overview of American Judicial System

Federal
State
Administrative

Legal Issues Facing Institutions of Higher Education

Overview of American Judicial System

Federal
State
Administrative
Legal Issues Facing Institutions of Higher Education

External Sources of Higher Education Law

- Federal and state constitutions
- Federal and state 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

Governance of the Institution

Regents, Administrators, Staff
Scope of Authority
Institutional Liability — Tort and Contract
Personal Liability — Trustees, Administrators, Staff
Risk Management
Legal Issues Facing Institutions of Higher Education

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

Legal Issues Facing Institutions of Higher Education

Institution as a Business

Contracts
Institution as Purchaser
Adequate consideration
Oklahoma balanced budget
Institution as Seller
Institution as Research Collaborator and Partner

Legal Issues Facing Institutions of Higher Education

Federal Regulations

Federal Constitutional Powers and Regulation
Spending Power
Taxing power
Commerce power
Civil rights enforcement power
Legal Issues Facing Institutions of Higher Education

Intellectual Property
- Copyright
- Patent
- Trademark

Legal Issues Facing Institutions of Higher Education

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

Legal Issues Facing Institutions of Higher Education

Campus Safety
- Athletics
- The Internet, Computers, and Acceptable Use Policies
“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
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

You Make the Call

Finding Your Inner Lawyer
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.
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: Remember 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.”

Tip #3: Learn to “Issue Spot”

Familiarize yourself with the hot issues
- Discrimination and/or Harassment (student, faculty, and staff)
- (race, age, gender, transgender, religion, physical/psychological/learning disability, national origin, 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.
Please Complete Evaluation Forms

Clint Eastwood

Please complete the evaluation forms for the movie 'Clint Eastwood'.