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A Primer on the Role of the University's Attorney

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Abstract

This article is a discussion of the role of the University Counsel (sometimes called the General Counsel) as “adviser, officer, administrator, and agent” in the university setting. The article discusses the nature of the “fiduciary duty” in university governance and describes several of the substantive areas of the law with which the University Counsel must become familiar: faculty employment and tenure discussions; share governance; sponsored research; student rights; and the many issues relating to college athletics.

Keywords: University Counsel, Faculty Governance, Sponsored Research, Employment, Student Rights, College Athletics

1. Introduction

Professor Jack Harris Kelly has been a college professor for more than twenty-five years, teaching at a small private liberal arts college in Southern Indiana. Recently, he responded to a job posting in the *Chronicle of Higher Education* and has been scheduled for an interview for the position of University Counsel at Piedmont College, a four year comprehensive university in Maryland, sponsored by the Universalist Life Church.

Professor Kelly has been teaching business law throughout his tenure at Piedmont and is very interested in making a career change to an administrative position. In speaking with the current (retiring) University Counsel over the telephone, Kelly learns that there are several active or potential “legal issues” at Piedmont, including rumblings among several members of the faculty and members of the football team potentially looking to form a union; the fact that the football coach has a five year extension on his contract, but has been publicly named in a “recruiting scandal”; a faculty member has been named by a undergraduate student in a paternity suit; a faculty member in the sciences has been accused of falsifying the data in connection with a research grant; and a sexual harassment suit has been lodged against an athletic department trainer. However, Kelly admits that he really doesn't know much about “school law” and has not thought much about the topic since he took a course on the topic more than 30 years ago in law school. Should he proceed?

This Primer is designed to acquaint Professor Kelly (and readers) with some of the most important legal issues in higher education in preparation for the interview that might determine whether Kelly would accept the position of University Counsel if it were offered to him. The context will be the circumstances existing at Piedmont (and at many American colleges and universities) that will command the University Counsel's attention.

2. What Is Higher Education Law?

As a preliminary point, Dunham (2017) notes that “Higher education law is not a discrete body of law unique to colleges and universities.” Rather, it must be understood that the law of higher education describes how the various substantive areas of the law may be applied to the college and university setting. In this mix, the critical party is often the University Counsel (see McCarty & Thompson, 1976; Kaplin, Lee, Hutchens, & Rooksby, 2013). Bickel (1977) wrote:

“The need for legal counsel became apparent to most college and university administrators in the early nineteen sixties when the federal courts began to redefine and limit the authority of the college or university vis-a-vis its students, initiating the dramatic change in this relationship in *Dixon v. Alabama State Board of Education*.”

In *Dixon v. Alabama State Board of Education* (1961), the court ended the doctrine of *in loco parentis* in relation to colleges and universities which had permitted the university to expel or discipline students without providing at least minimal due process. This change in the system of student discipline presaged many other changes in which the law operates in “the academy.”

Gunz and Jennings (2019, p. 189) note that “The University Counsel will be expected to be an important resource person for many parties or constituents” and will function as:

- 1) Legal adviser within the corporation to its constituents in an individual professional capacity;
- 2) officer of the corporation and member of the senior executive team;
- 3) administrator of the corporation's internal (or "in-house") legal department; and
- 4) agent of the corporation in dealings with third parties, including external (or "outside") counsel retained by the corporation.

3. Areas of substantive Law

Imber and van Geel (2000) note that “educators perform their duties within a network of law—law that both empowers and constrains.” The University Counsel stands as the unique party in the realm of higher education. In general terms, because the law “protects the free speech rights of students and teachers; guarantees them procedural protections when they are disciplined or fired; and prohibits policies that wrongfully discriminate on the basis of race, national origin, gender, disability, or religion,” the University Counsel is the point-person on many of these issues and others discussed below.

What are the some of the most important areas of substantive law that are critical for a University Counsel to understand?

3.1. Issues of Governance

Of prime importance to the University Counsel is termed “*governance law*” (Johnson, 2018). “Governance law” begins with an understanding the legal nature of the college or university itself in terms of its creation in relation to the state. Often, governance issues are couched in terms of the meaning of the terms “fiduciary duty” or “fiduciary relationship” (Grierson, 2018). Merker and Peck (2019, p. 13) writes: The concept of fiduciary finds its sources in Roman law. The word ‘fiduciary’ comes from the Latin *fiducia*, which refers to the transfer of a right to a person, who receives it, subject to an obligation to transfer it again at a future time or upon the fulfillment of a certain condition.” In the case of a university, the *right* involves the university’s core responsibilities towards all of the constituents—including faculty, students, administrators, and in some cases third parties such as the federal government in the “granting” process.

In discharging this fiduciary duty in relation to governance issues, the university or college legal counsel will be guided by its corporate charter, or other institutional governing documents, such as articles of incorporation and

by-laws. Other governance issues will revolve around a full understanding of the institutional mission of the college or university in terms of its tax status as either “for profit” (Hentschke, Guilbert, Lechuga, & Tierney, 2010) or its organization as a “not-for-profit” under Section 501(c)3 of the Internal Revenue Code (Trautman & Ford, 2018). The University Counsel would be required to understand the implications of “for-profit” status as it relates to state *open meeting and open records requirements* (Choi & Kim, 2018).

The University Counsel must be fully aware of the relationship of the university or college with its Board of Trustees, individual members of the Board, University officers, and academic and non-academic employees in terms of issues of *indemnification* for any wrongful acts or omissions.

In this regard, Oates (2003, p. 1130) stated that:

“Even the briefest review of the myriad factual disputes that can arise regarding the question of when a university should defend and indemnify faculty members who are sued for acts the faculty members consider related to their job responsibilities compels the conclusion that substantive changes should be made to the way universities answer such questions. The present decision-making process often precludes faculty input. The exclusion of faculty from the process leads to, at a minimum, feelings of mistrust of, and in some cases hostility toward, their university's administration. The damage such conflicts can do to the relationship between faculty and administration warrants changes in the process of how universities decide whether to provide a defense and indemnity to faculty members.”

A thorough review of principles associated with the doctrine of “*respondeat superior*” relating to the potential liability of the university for both civil and criminal acts of employees would certainly be in order (Sheley, 2019).

3.2 Faculty Issues

A second area of substantive law relates to *faculty*, including the legal nature of the *faculty employment contract*. The University Counsel must be thoroughly schooled in the various types of faculty contracts utilized at Piedmont: tenure track; term; instructor; lecturer; faculty associate; adjunct (see, e.g., Zhang & Liu, 2010). As a faculty member, Kelly is probably well aware of issues relating to promotion and tenure (Lee, 1991; Mahat & Tatebe, 2019) — in fact Kelly has served on numerous departmental, college, and university Rank and Tenure Committees at his current institution. However, as University Counsel, Kelly will be required to delve into the unique culture of Piedmont as to its understanding of the proper balance between teaching, research, and service expected at Piedmont (see Coates, Odell, & Pike, 2007; McKiernan, Schimanski, Nieves, Matthias, Niles, & Alperin, 2019; Niles, Schimanski, McKiernan, & Alperin, 2019).

The job of University Counsel will require a thorough understanding of sensitive issues relating to academic freedom in terms of evaluating candidates for promotion and tenure and reappointment. Piedmont appears to be operating under what is termed as “shared governance” (Mortimer and McConnell, 1978; Taylor, 2010; Leach, 2010; Stensaker & Vabo, 2019). As an institution organized under the authority of the Universalist Life Church, the principle of “shared governance” is closely associated with the Supreme Court’s views expressed in *National Labor Relations Board v. Yeshiva University* (1980) where Yeshiva University had successfully argued that the faculty should not qualify as “employees” under the National Labor Relations Act of 1935, as they had sufficient “supervisory authority” (Hunter & Shannon, 2015a).

Kelly learns that there is also a controversial proposal from Piedmont’s Vice President for Academic Affairs that would move Piedmont to a system of “post-tenure” review” in the future (see Wood & Johnsrud, 2004). As Basu (2012) noted “The phrase “post-tenure review” can mean different things to different people. To some, ‘post-tenure review’ raises the issue of whether a professor’s tenure will continue. To others, it is a process of evaluating performance to provide valuable feedback.” Hanover Research (2012) reported that post-tenure review may also seek to “reward faculty receiving post-tenure review with salary increases, while negative reviews are met with

concrete improvement plans for faculty.” It will be important to thoroughly understand Piedmont’s Faculty Guide in terms of these issues.

3.3 Research Issues

A third area of substantive law, according to Dunham (2017), is the law as it relates to *research*, including institutional research grants, “sponsored research,” and contracts with outside parties and entities. At the same time, Piedmont has established close relationships with many corporate partners and receives significant amounts of corporate support. Research funding is a major source of University budgets and Kelly learns that Piedmont is a major recipient of federal research funding. Compliance issues with federal regulations and guidelines include an understanding of “conflicts of interest” by individual researchers, research misconduct (which according to Resnik (2019) might include “sexual harassment, sabotage, deceptive use of statistics, and failure to disclose a significant conflict of interest (COL)), reporting and accountability issues, and human subject research (Marchant, 2005; Grady, 2018). University classifications according to the “*Carnegie Classification for Institutions of Higher Education*” (2018/2019) are largely based on expenditures for sponsored research activities. Piedmont is currently classified as “*Master's Colleges and Universities: Medium programs (M2)* are medium programs that awarded 100–199 masters-level degrees.”

The federal government spent \$116 billion on research and development (R&D) in 2017, an amount equal to about 0.6 percent of U.S. gross domestic product. Quoting Hourihan and Parkes, Science News Staff (2018) note that the research spending increase negotiated by the Trump Administration and the House of Representatives for 2018 resulted in the largest increase in Research and Development expenditures in more than a decade.

Information on expenditures for key science agencies indicates the following (Science News Staff, 2018):

- “The National Institutes of Health (NIH) in Bethesda, Maryland, receives a \$3 billion, 8.3% increase to \$37 billion. Included is an additional \$414 million for Alzheimer’s disease research, for a total of \$1.8 billion, and a \$27 million boost, to \$543 million, for clinical and translational science funding.”
- The National Science Foundation (NSF) in Alexandria, Virginia, would get \$7.8 billion, a 3.9% or \$295 million increase. The agency’s research account would grow by about 5%, to \$6.3 billion. The bill notes “this strong investment in basic research reflects the Congress’ growing concern that China and other competitors are outpacing the United States in terms of research spending.”
- “The Department of Energy’s Office of Science in Washington, D.C., would receive \$6.26 billion, an \$868 million increase. That is roughly a 15% increase, rather than the 15% cut the White House proposed. Lawmakers also rejected Trump’s proposal to eliminate the Advanced Research Projects Agency-Energy, and instead gave it a \$47 million boost, to \$353 million.”
- “A \$457 million, 7.9% increase for NASA science programs, to \$6.2 billion. The bill increases the agency’s planetary science program by some 21%, or \$382 million, to \$2.2 billion. NASA’s earth science programs remain flat at 2017 levels, but the bill rejects the proposed elimination of several earth science missions and maintains funding for the troubled Wide Field Infrared Survey Telescope. Overall, NASA gets \$20.7 billion, \$1.1 billion above 2017.”
- “Spending at the National Oceanic and Atmospheric Administration in Silver Spring, Maryland, would grow by \$234 million, to \$5.9 billion overall.”
- “The National Institute of Standards and Technology in Gaithersburg, Maryland, would get \$1.2 billion, \$247 million above 2017 levels.”
- “The U.S. Geological Survey in Reston, Virginia, gets \$1.1 billion, \$63 million above 2017 levels. The bill preserves the agency’s eight climate science centers; the White House had proposed cutting that number in half.”
- “Research programs at the U.S. Department of Agriculture in Washington, D.C., would grow by \$33 million, to \$1.2 billion.”
- “The budget of the Environmental Protection Agency in Washington, D.C., remains flat at \$8.1 billion, as lawmakers rejected deep proposed cuts.”

It turns out that Piedmont has “special ties” with the NIH, the NSF, and the Department of Science and received more than \$9 million in research support from the federal government during the 2017-2018 academic year. Unless the issue of potential falsification of research data (Nurunnabi & Hossain, 2019) is satisfactorily resolved, future ties with the federal government may be put into jeopardy.

In general terms, the University Counsel must understand if there are any unique circumstances or restrictions relating to research that may be imposed by a college or university because of its institutional mission which may be dictated by its religious affiliation (Bean & Wilson, 2019; Gilliat-Ray, 2019). As noted earlier, Piedmont is sponsored by the Universalist Life Church, generally recognized as a conservative “Christian” school.

3.4 Employment Considerations

A fourth area involves an understanding of *employment law* relating to academic, administrative and other support staff, athletic personnel, and of course, faculty. University Counsel must be thoroughly aware of issues relating to all forms of employment discrimination, sexual harassment (Cantalupo & Kidder, 2018), and obligations under various federal and state statutes relating to affirmative action (Green, Apuzzo, & Benner, 2018; Tucker, 2018). Issues relating to unionization and collective bargaining must be considered as well. Maitland and Rhoades (2001, p. 27) noted that “Faculty participation is critical on employment decisions, teaching loads, non-teaching responsibilities, and on academic issues such as grade alterations, and textbook selection.” Whether these and other issues will be resolved through a formal process of unionization and collective bargaining or through channels of “shared governance” will be critical. Such issues may not only relate to faculty, but also to staff and even to graduate students as well (Rowland, 2001).

Professor Kelly learns that the graduate students in the School of Business are unhappy with their work-loads and assignment of non-academic clerical tasks (Hunter & Shannon, 2015b). Epstein (2005, p. 157) noted the multiple roles filled by graduate students and the fact that “university administrators are relying upon graduate students more than ever before as a cost-effective way to operate institutions of higher learning” which might impel them to seek unionization. Epstein (2005) quoted a cross-section of graduate assistants who stated “We are teaching classes, grading papers, advising students, and performing work which is critical to the educational mission of this institution— and we’re entitled to the same rights as any other group of workers.”

Kelly is generally aware that the issue of “unions” for certain members of athletic teams has been seriously raised before the National Relations Board, where the Regional Director of the National Labor Relations Board had determined that the scholarship players at Northwestern were “employees” of the University and were entitled to collective bargaining rights under the National Labor Relations Act (*Northwestern University and College Athletes Players Association*, 2015) (Pollack & Johns, 2015; see also Hunter & Shannon, 2016). Although ultimately the NLRB had declined to exert its jurisdiction in the case (Strauss, 2015), reaffirming that “college athletes are primarily students,” Kelly learns that a story has surfaced in the student newspaper that several members of the Piedmont football team have discussed forming a union to protect their rights as student athletes.

3.5 Student Rights

A fifth area law involves specific students’ rights under the Piedmont Student Life Handbook (Mawdsley, 1996), and perhaps on the basis of broader constitutional rights (see Methner, 2019). Issues relating to student rights and responsibilities are quite varied and include student discipline; relations between “town and gown,” where “universities are looking beyond their campuses, reconceiving of neighborhoods as assets rather than liabilities” (Ehlenz, 2018); student organizations, including fraternities and sororities at Piedmont which has an extensive “Greek system.” The University Counsel must be aware of general concerns that have been raised regarding the American fraternity system, which revealed rampant “manslaughter, rape, sexual torture, [and] psychological trauma” (see Parks & Parisi, 2019, p. 2); affirmative action in admissions and financial aid (Tucker, 2018); issues relating to campus sexual assault in relation to Title IX (see Racklin, 2019); and other compliance issues.

Issues relating to student discipline may implicate the United States Constitution, perhaps involving the First Amendment (Whittington, 2019), due process, equal protection of the law, and also may be equally relevant for faculty and staff who may be subject to a claim of a violation of Piedmont policies.

3.6 Issues Relating to Athletics

Special attention will be required in looking at issues relating to Piedmont's extensive athletic programs, especially in connection with its championship Division II football and women's basketball and lacrosse programs. Kelly must understand the nature of the debate revolving around "paying" college athletes for their participation in excess of their athletic scholarships (Johnson & Acquaviva, 2012; Kilburg, 2018). Kelly must also understand issues relating to compensating athletes for using their "likeness" or "characteristics" on athletic equipment sold in the University bookstore or through its on-line sales promotions (Murphy, 2018). Edelman (2018) commented that the NCAA Basketball Commission had issued its "shameful report on college basketball that failed to grant college athletes the immediate right to license their names, images and likenesses for money," repeating the mantra of the NCAA that "To preserve the character and quality of the 'product,' athletes must not be paid."

With the video game industry "growing with new products and technology and could be worth nearly \$138 billion" at the end of 2018 (Ell, 2018), Kelly must understand issues relating to the display of athletic photos, characteristics, etc. on video games (Matzkin, 2001) for which a Piedmont Athlete is seeking compensation in violation of the athlete's "right of publicity" (Fitzgerald, 2011; Bearman, 2012; Anderson, 2019), and recent NCAA legislation to compensate certain athletes for the "full cost of attendance" (O'Brien, 2015; Bradbury & Pitts, 2017), at least partly in response to *O'Bannon v. NCAA* (2014).

In the larger context of the debate that will most assuredly continue, Kelly must completely familiarize himself with the implications of *O'Bannon v. NCAA* (2014), in which a federal judge ruled that the NCAA's practice of barring payments to athletes violated antitrust laws. In *O'Bannon*, Judge Wilkin ordered that schools should be allowed to offer full cost-of-attendance scholarships to athletes, covering cost-of-living expenses that were not currently part of NCAA scholarships. Judge Wilken also ruled that college be permitted to place as much as \$5,000 into a trust for each athlete per year of eligibility. Although the NCAA's policy did not extend to athletes competing at the Division II level, the University Counsel will nonetheless be required to consider the "equities" raised in *O'Bannon* and college policies in light of the reality of athletic department and university budgets.

Kelly will also need to carefully study NCAA rules and regulations relating to recruiting of athletes and NCAA compliance requirements (Behan, 2018; Bennett, 2019) in light of recent scandals that may be penetrated into the Piedmont athletic program.

4. Concluding Comments

In recent years, other issues will assuredly come to the attention of the University Counsel involving intellectual property and technology transfer, data security, and privacy. The University Counsel would be expected to be knowledgeable in relation to patents, trademarks, and licensing (Garon, 2018). The University Counsel may also become involved in business and professional contracts, real estate transactions, zoning and permitting questions, fund raising, and implications relating to gift and estate taxes.

Because the constituents of the University Counsel range from employees, staff, faculty, students, and guests of the university, or third-party vendors or contracting parties, the University Counsel is perhaps the one individual on the college or University campus who must be truly a "Renaissance man or woman." These are no "silos" in which the counsel can operate.

One question remains: Given all the issues raised and question still unanswered, is Kelly still interested in the job?

References

- Anderson, G. (2019). NCAA votes for athlete payment. *Inside Higher Ed* (October 30, 2019). Available: <https://www.insidehighered.com/news/2019/10/30/college-athletes-permitted-be-paid-name-image-likeness>
- Basu, K. (2012). Post-tenure blues. *Inside Higher Ed* (March 2, 2012). Available: <https://www.insidehighered.com/news/2012/03/02/what-does-post-tenure-review-really-mean>
- Bean, T. & Wilson, R.F. (2019). When academic freedom collides with religious liberty of religious universities. *University of St. Thomas Law Journal* 15: 442-487.
- Bearman, T. (2014). Intercepting licensing rights: Why college athletes need a federal right of publicity. *Vanderbilt Journal of Entertainment and Technology Law*, 15: 85-116.
- Behan, S. (2018). Financial corruption and bribery in NCAA athletics. *Proquest Dissertation Publishing* (Utica College) 10933036. Available: <https://www.proquest.com/products-services/dissertations>
- Bennett, J.T. (2019). *Intercollegiate athletics, Inc.: How big-time college sports cheat students*. London, U.K.: Routledge.
- Bickel, R.D. (1977). The role of college or university legal counsel. *Journal of Law and Education*, 3(1): 73-80.
- Bradbury, J.C. & Pitts, J.D. (2018). Full cost-of-attendance scholarships and college choice: Evidence from NCAA football. *Journal of Sports Economics*, 19(7): 977-989.
- Cantalupo, N.C. & Kidder, W.C. (2018). A systematic look at a serial problem: Sexual harassment of students by university faculty. *Utah Law Review*: 671-729.
- Carnegie Foundation (2018/2019). 2018 classification update. Available: <http://www.carnegieclassifications.iu.edu/downloads/CCIHE2018-FactsFigures.pdf>
- Choi, J.M. & Kim, Y-S. (2018). A study on 50 states' open meeting act in the United States. *The Korean Journal of Archival Studies*, 57: 35-73.
- Coates, H.J., Odell, J.D., & Pike, C. (2007). Upskilling the promotion and tenure process: Training administrators for responsible use of research impact metrics. *IUPUI Scholar Works*. Available: <http://www.iupi.edu> (presented at Transforming Research, Providence, R.I.).
- Dunham, S. (2017). What is higher education law? *Association of Governing Boards* (AGB), 25(3). Available: <https://agb.org/trusteeship-article/what-is-higher-education-law/>
- Edelman, M. (2018). 9 reasons to allow college athletes to license their names, images and likenesses. *Forbes.com* (May 11, 2019). Available: <https://www.forbes.com/sites/marcedelman/2018/05/11/9-reasons-to-allow--college-athletes-to-license-their-names-images-and-likenesses/7faf00eb5488>
- Ehlenz, M.M. (2018). The university and its neighborhood: A study of place-making and change. *Journal of Urban Affairs*, 41(6): 776-794.
- Ell, K. (2018). Video game industry is booming with continued revenue. *CNBC.com* (July 18, 2018). Available: <https://www.cnn.com/2018/07/18/video-game-industry-is-booming-with-continued-revenue.html>
- Epstein, R.A. (2005). Breaking down the ivory tower sweatshops: Graduate student assistants and their elusive search for employee status on the private university campus. *St. John's Journal of Law and Communications*, 20: 157-198.
- Fitzgerald, D.B. (2011). Ed O'Bannon shines a light upon student-athletes' of publicity. *Primerus.com*. (April 19, 2011). Available: <https://www.primerus.com/business-law-articles/ed-obannon-shines-a-light-upon-student-athletes-right-of-publicity-624201.htm>
- Garon, J.M. (2018). Ownership of university intellectual property. *Cardozo Arts and Entertainment Law Journal*, 36: 635-673.
- Gilliat-Ray, S. (2019). *Religion in higher education*. London, U.K.: Routledge.
- Grady, C. (2018). Ethical principles in clinical research. In *Principles and practice of clinical research* (Fourth Edition). Tampa, Fla.: Elsevier Inc.
- Green, E.L. Apuzzo, M., & Benner, K. (2018). Trump officials reverse Obama's policy on affirmative action in schools. *New York Times* (July 3, 2018). Available: <https://www.nytimes.com/2018/07/03/us/politics/trump-affirmative-action-race-schools-htm>
- Grierson, E.M. (2018). Trust and fiduciary relationship in education: What happens when trust is breached? *Educational Philosophy and Theory*, 50(2): 203-211.
- Gunz, S. & Jennings, M.M. (2019). University legal counsel: The role and its challenges. *Notre Dame Journal of Law, Ethics and Public Policy*, 33: 177-220.
- Hanover Research. (2012). Post-tenure review best practices. *Hanover Research Report*. Available: <https://www.hanoverresearch.com/post-tenure-review-best-practices>
- Hentschke, G.C., Lechuga, V.M., & Tierney, W.G. (eds). (2010). *For-profit colleges and universities: Their markets, regulation, performance, and place in higher education*. Sterling, Va.: Stylus Publishing, LLC.
- Hunter, R.J. & Shannon, J.H. (2015a). It Is time to revisit the Yeshiva decision: The myth of "shared university governance." *International Review of Social Sciences and Humanities*, 9(1): 193-207.

- Hunter, R.J. & Shannon, J.H. (2015b) What the NLRB giveth, the NLRB taketh away: Contrasting views concerning graduate student unions. *International Journal of Arts and Humanities*, 1(3): 59-72.
- Hunter, R.J. & Shannon, J.H. (2016). Is the Northwestern case a real “game changer” for intercollegiate athletics: A non-decision decision? *Western State Law Review*, 43: 155-198.
- Imber, M. & van Geel, T. (2010). *Education law* (Fourth Ed.). New York: Routledge.
- Johnson, D.A. & Acquaviva, J. (2012). Point/counterpoint: Paying college athletes. *The Sport Journal* (Gale Academic Onefile), 15(1). Available: <http://thesportjournal.org/article/pointcounterpoint-paying-college-athletes/>.
- Johnson, D.M. (2018a). University governance: Structures, roles, and responsibilities. In *The uncertain future of American public higher education*: 157-174. London: Palgrave Macmillan.
- Johnson, D.M. (2018b). Intercollegiate athletics: Challenges to the academic mission. In *The uncertain future of American public higher education*: 105-121. London: Palgrave Macmillan.
- Kaplin, W.A., Lee, B.A., Hutchens, N.H., & Rooksby, J.H. (2013). *The law of higher education: A comprehensive guide to legal implications*. New York: Wiley.
- Kilburg, T. (2018). Should division I college athletes receive compensation in excess of their scholarships? *Major Themes in Economics* (University of Northern Iowa, Department of Economics), 20(1): 1-47.
- Leach, W.D. (2010). Shared governance in higher education: Structural and cultural responses to a changing national climate. *Social Science Research Network* (SSRN) (August 1, 2010). Available: https://papers.ssrn.com/sl3/cf_dev/absByAuth.cfm/?per_id=426661
- Lee, B.A. (1991). Improving faculty employment decisions. *Thought and Action*, 7(1): 73-87.
- Mahat, M. & Tatebe, J. (2019). Demystifying the academic promotion process. In *Achieving academic promotion (Surviving and thriving in academia)*: 3-27. Bingley, U.K.: Emerald Publishing Limited.
- Maitland, C. & Rhoades, G. (2001). Unions and faculty governance. *Almanac of Higher Education*: 27-33.
- Marchant, G.E. (2005). Human genetic sampling: Ethical, legal, and social considerations, property rights and benefit-sharing for DNA donors? *Jurimetrics*, 45: 153-178.
- Matzkin, M.G. (2001). Gettin’ played: How the video game industry violates college athletes’ rights of publicity by not paying for their likenesses. *Loyola Los Angeles Entertainment Law Review*, 21: 227-252.
- Mawdsley, R.D. (1996). Litigation involving higher education employee and student handbooks. *West’s Education Law Quarterly*, 5(4): 588-606.
- McCarty, F.W. & Thompson, W.N. (1977). The role of counsel in American colleges and universities. *American Business Law Journal*, 3: 287-310.
- McKiernan, E.C., Schimanski, L.A., Nieves, C.M., Matthias, L., Niles, M.T., & Alperin, J.P. (2019). Use of journal impact factor in academic review, promotion, and tenure evaluations. *PeerJ Preprints* (April 9, 2019). Available: <https://peerj.com/preprints/27638>
- Methner, S.E.G. (2019). A Catholic university approach to campus speech: Using constitutional academic freedom to hold the tension of free speech, inclusive diversity, and university identity. *University of St. Thomas Law Journal*, 15: 358-417.
- Merker, C.K. & Peck, S.W. (2019). *The trustee governance guide*. London: Palgrave-MacMillan
- Mortimer, K.P. & McConnell, T.R. (1978). *Sharing authority effectively*. San Francisco: Jossey-Bass.
- Murphy, S. (2018). Bring your own trademark: Compensating college football players through trademark royalties. *Boston College Intellectual Property and Technology Forum*. Available: <http://www.bcipptf.org>
- Niles, M.T., Schimanski, L.A., McKiernan, E.C., Alperin, J.P. (2019). Why we publish where we do: Faculty publishing values and their relationship to review, promotion and tenure expectations. *bioRxiv*. Available: <https://www.biorxiv.org/content/biorxiv/early/2019/07/21/706622.full.pdf>
- Nurunnabi, M. & Hossain, M.A. (2019). Data falsification and question on academic integrity. *Accountability in Research*, 26(2): 108-122.
- Oates, K. (2003). Professor defend thyself: The failure of universities to defend and indemnify their faculty. *Willamette Law Review*, 39: 1063-1130.
- O’Brien, T. (2015). Prepare to handle the new world of ‘full cost of attendance’ (Abstract). *College Athletics and the Law*, 11(12): 4.
- Parks, G.S. & Parisi, S. (2019). White boy wasted: Race, sex, and alcohol use in fraternity hazing. *Wisconsin Journal of Law, Gender and Society*, 34: 1-37.
- Pollack, S.D. & Johns, D.V. (2019). Northwestern football players throw a “Hail Mary” but the National Labor Relations Board punts: Struggling to apply labor law to the academy. *Virginia Sports and Entertainment Law Journal*, 15: 77-109.
- Racklin, M. (2019). Title IX and criminal law on campus: Against mandatory police involvement in campus sexual assault cases. *New York University Law Review*, 94: 982-1018.
- Resnik, D.B. (2019). Is it time to revise the definition of research misconduct? *Accountability in Research*, 26(2): 123-137.

- Rowland, J. (2001). "Forecasts of doom": The dubious threat of graduate teaching assistant collective bargaining to academic freedom. *Boston College Law Review*, 42: 941-966.
- Science News Staff. (2018). Trump, Congress approve largest U.S. research spending increase in a decade. *ScienceMag.org* (March 23, 2018). Available: <https://www.sciencemag.org/news/2018/03/updated-us-spending-deal-contains-largest-research-spending-increase-decade>
- Sheley, E.L. (2019). Tort answers to the problem of corporate mens rea. *North Carolina Law Review*, 97: 773-841.
- Stensaker, B. & Vabo, A. (2019). Re-inventing shared governance: Implications for organizational culture and institutional leadership. *Higher Education Quarterly*, 67(3): 256-274.
- Strauss, B. (2015). N.L.R.B. rejects Northwestern football players union. *New York Times* (online) (August 17, 2015). Available: <https://www.nytimes.com/.../nlrb-says-northwestern-football-players-cannot-unionize.html>
- Taylor, M. (2012). Shared governance in the modern university. *Higher Education Quarterly*, 67(1): 80-94.
- Trautman, L.J. & Ford, J. (2018). Nonprofit governance: The basics. *Akron Law Review*, 52: 971-1042.
- Tucker, E. (2018). President Trump to revoke Obama-era policy using race in school admissions. *Associated Press* (July 3, 2018). Available: <https://www.kktv.com/content/news/President-Trump-to-rescind-Obama-era-guidance-on-affirmative-action-487232091.html>
- Whittington, K.E. (2019). Gender equality and the First Amendment: Free speech and the diverse university. *Fordham Law Review*, 87: 2453-2474.
- Wood, M. & Johnsrud, L.K. (2004). Post-tenure review: what matters to faculty. *Review of Higher Education*, 28(3): 393-420.
- Zhang, L. & Liu, X. (2010). Faculty employment at 4-year colleges and universities. *Economics of Education Review*, 29(4): 543-552.

CASES

- Dixon v. Alabama State Board of Education. (1961). 294 F.2d 150 (5th Circuit Court of Appeals).
- National Labor Relations Board v. Yeshiva University. (1980). 444 U.S. 672 (United States Supreme Court).
- Northwestern University and College Athletes Players Association (CAPA), Petitioner. (2015). Case 13–RC–121359, 362 NLRB No. 167 (National Labor Relations Board).
- O'Bannon v. NCAA. (2014). 7 F. Supp. 3d 955 (United States District Court, Northern District of California); 802 F. 3d 1049 (9th Circuit Court of Appeals); 2016 U.S. Lexis 5146 (2016) (cert. denied) (United States Supreme Court).