TEACHING HIGHER EDUCATION LAW:

A REVIEW ESSAY

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University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

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The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions—with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

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Introduction

Teaching about legal issues in education has a long history in graduate and professional schools of education in the United States, with most courses traditionally having dealt with legal issues as they relate to elementary and secondary educational settings. These "school law" courses have generally been taught by educators with little or no formal legal training who have developed their expertise in law-related matters to meet a perceived need for legally literate teachers and administrators. There are indications in a report prepared by C. Robert Blackmon that by 1972 more than 85% of all schools and colleges of education included at least one course on education law and that by 1982 the number had increased to nearly 95% (Blackmon, 1982).

Perhaps as a result of increased attention to individual rights in the 1960s and 1970s, along with accompanying judicial activism and legislative reform, a much wider variety of courses dealing with law and education is now being taught in educational programs around the country. In the 1980s, for example, courses on law and higher education are well represented among the law-related courses taught in graduate programs of educational administration. Data from Blackmon's survey of 102 major land grant and state universities suggest that perhaps one-quarter of all law and education courses now taught relate to legal issues in higher education. Another quarter of the courses are either more general in scope, treating law and education from primary through post-secondary education comprehensively, or more topically specialized and not directly related to higher education. The remaining half of the courses appear from their titles to deal almost exclusively with legal issues in elementary and secondary education. Although still taught primarily
by educators who have developed an interest and expertise in education law subsequent to their formal graduate school experience, some of these courses are now taught jointly with law school professors, and an increasing number are taught by those who have had specialized training in law or who hold both law degrees and advanced degrees in education. While the absolute number of law and higher education courses is increasing, informal discussions with college and university administrators, along with a gradual increase in student interest, support the conclusion that there is a great deal of enthusiasm for the development of both introductory and more specialized courses in law and higher education as well as in law and education generally. 2

The major purpose of this review is to facilitate the development of courses dealing with law and higher education by presenting a critical assessment of a number of currently available textbooks, supplementary books, and monographs. Because an important aspect of many courses on law and higher education is an assessment of emerging legal issues, text and supplementary materials published before the mid-1970s will not be considered unless they appear to be unique. Personal experience confirms the enormous value of periodic supplements to primary textbooks and the necessity of providing relatively frequent succeeding editions. There is perhaps no area of specialization in higher education where the need for current information and the burden of collecting it is so great. It is desirable for historical reasons, nevertheless, to mention briefly some of the pioneers in the field of law and higher education. It is these authors whose works have been relied upon by those currently writing in the field and whose works will be consulted when future textbooks and supplementary materials are created.
A person who has been called the "undisputed leader" in the field of law and higher education is M.M. Chambers, who wrote *The Colleges and the Courts: Judicial Decisions Regarding Institutions of Higher Education in the United States*, with Edward C. Elliot as first author, in 1936. The initial effort by Elliott and Chambers became a series, authored by Chambers alone, with succeeding volumes published in 1941, 1946, 1952, 1962, 1967, 1972, and 1973. By the time the books published in the 1970s were written, the author had divided the law of higher education into two volumes, focusing on students (1972) and faculty and staff (1973) respectively. *The Colleges and the Courts: The Developing Law of the Student and the College* (Chambers, 1972), contains 21 chapters including the topics of admissions, tuition and fees, exclusion, racial desegregation, freedom of speech and press, due process and discipline, and confidentiality of student records. One year after the volume focusing on students appeared, *The Colleges and the Courts: Faculty and Staff Before the Bench* (Chambers, 1973) was published. It contains twelve chapters including discussions of faculty contracts, tenure, discharge, discrimination, and freedom of speech and association. There is also a chapter on legal issues relating to non-academic personnel, and a separate chapter on the college president, administrators, and board members. In 1976, the author published short updating supplements to both of these books, marking the fortieth year of dedication to a project that includes eight major volumes. The most striking change, from a historical perspective, is that while students were barely mentioned in the earlier volumes, by 1967 nearly a quarter of Chambers' book dealt with student life; by the 1970s an entire book was devoted to legal issues affecting students.
Among other important books published in the 1960s and early 1970s is *College Law: A Guide for Administrators* (1961), written by Thomas Edward Blackwell; *The Courts and Higher Education* (1971), by John S. Brubacher; and *College and University Law* (1972) by Kern Alexander and Erwin S. Solomon. The volume by Blackwell contains eight chapters and is a comprehensive treatment of higher education law. The Brubacher book covers the topics of students, faculty, administrators, academic programs, and tort liability, and assesses the impact of the courts on higher education from the 1960s into the 1970s. The author applauds the principle of judicial non-intervention which allows for institutional autonomy and variety in educational policy-making, but he questions the expansive use of due process to protect civil liberties in areas other than those encompassed by the first amendment. The third volume in this group, by Alexander and Solomon, is a comprehensive textbook/casebook in which nearly 900 cases are mentioned and more than seventy cases are excerpted. It covers the sources of law, the structure and function of the legal system, the legal structure of higher education, religion, finance, tort liability, and immunity in addition to focusing on legal issues of particular relevance to faculty and students. The above volumes, taken together, are a dramatic illustration of the evolution of higher education law from relatively uncomplicated considerations largely based on contract and professional norms to a complex, multi-dimensional field of inquiry.

In assembling and assessing the value of the resources included in this review, it has not been assumed that faculty necessarily will be experts in both law and education. Advantages and disadvantages of using various materials in both introductory and more specialized advanced courses have been considered from multiple points of view. Although excellent materials
undoubtedly exist which have been inadvertently omitted from the following discussion, an attempt has been made to consider as wide a variety of resources as possible.

Textbooks

While there are many specialized books dealing with legal issues in higher education, ranging from due process to liability to the legal foundations of student personnel services, there are relatively few that treat higher education law in a comprehensive way. The designation of a book as a potential textbook as opposed to a supplementary book or monograph is, of course, somewhat arbitrary. Even though all of the books mentioned in the section on supplementary books could be used as primary texts, depending upon the needs of the students and the purpose of the course, only four books will be discussed in this section: the first two are general and comprehensive and the latter two deal exclusively with the legal issues that most directly affect student life. The books are: Higher Education and the Law by Harry T. Edwards and Virginia Davis Nordin (1979); The Law of Higher Education by William T. Kaplin (1978); Constitutional Rights and Student Life: Value Conflict in Law and Education by Frank Kenerer and Kenneth L. Deutsch (1979); and The Law and the College Student: Justice in Evolution by William G. Millington (1979). Each of these books could be used for an introductory course for graduate students interested in law and higher education, but the first two are perhaps the best currently available for a broad survey course.
The Edwards and Nordin book and the Kaplin book have many similarities and some important differences. Both books were published in the late 1970s and are periodically updated, the first in the form of an annual, softbound cumulative supplement, the second by an occasional companion volume, the latest edition having been published in 1980. They are both relatively long, over 1,000 pages and nearly 700 pages respectively, including supplements; they both contain a detailed table of contents, a table of cases, a subject index, and a substantial bibliography; and they both treat many major issues in law and higher education. The most striking difference between the two principal volumes (including supplements), and the difference with the most salient implications for instructors with diverse teaching styles and educational backgrounds, is that the Edwards and Nordin book is a casebook while the Kaplin book is not. Edwards and Nordin present nearly 100 edited cases interspersed with additional notes, materials, and expository introductions. Kaplin, while including relatively short quotations from more than 100 cases, has organized the body of law related to higher education in expository fashion. The Kaplin book contains selected provisions from the U.S. Constitution, while the Edwards and Nordin book does not, and neither book contains a glossary. While each of the major texts being considered here has strengths and weaknesses, if one were to choose between them, it is likely that the personal predilection of the instructor for a casebook or a textbook would play a large role in the decision. Whichever were selected, the other could serve well to augment the knowledge of the instructor and students of higher education law.
Higher Education and the Law (Edwards and Nordin, 1979) is divided into four major parts: "The College or University as a Legal Entity," "Faculty Rights," "Student Rights," and "Federal Regulation of Higher Education." Part One, dealing generally with the manner in which public and private colleges and universities are created and with the scope and limits of their authority, is a difficult beginning even for graduate students with some prior exposure to law studies. This may stem in part from the authors' desire to present information for both students and legal practitioners, in part from the difficult section on governmental immunity and the liability of public institutions related to constitutional torts, and in part from a chapter entitled "Miscellaneous Issues," most of which could have been included in other sections. A case on federal taxation, for example, should have been placed in Part Four on federal regulation, and a case on freedom of speech and religion in the section on substantive constitutional rights of students. In addition, the occasional lack of sufficient introductory information makes the relevance of some cases unclear and major legal points difficult to discern. In a section dealing with state "sunshine laws," for instance, the reader does not discover until the second case what a sunshine law actually is: a law that public meetings be conducted openly. Although the sub-headings immediately preceding each case often provide a substantive clue, they are not detailed enough to serve adequately as the exclusive introductory mechanism for cases taught at the graduate level. Some of the problems inherent in Part One could be resolved by beginning an introductory course on law and higher education with Part Two. Because its substance--academic freedom, faculty tenure, and collective bargaining--is well-organized and more likely to be
intrinsically interesting to students, it is possible to begin with those issues (following a brief lecture on the substance of Part One), returning later to read selected cases from the earlier section.

The first chapter in the faculty rights section deals with academic freedom. It contains cases involving the scope and limits of freedom of speech, within and outside the classroom, and with freedom of association. Both the merits and the potential difficulties of the case approach to teaching are illustrated by the materials included in this chapter. After a brief introduction on the development of academic freedom, the leading case of *Sweezy v. New Hampshire* is presented. It takes careful reading, however, to get beyond the procedural difficulties encountered in the written opinion to understand the importance the Supreme Court attaches to protecting Professor Sweezy's freedom of speech and political association.

Along with the excitement of reading cases often comes substantial difficulty for even the best graduate students in law-related education courses. These can be mitigated to some extent by textbooks that are well-organized, by brief introductory sections, and by well-excerpted cases. A drawback to the Edwards and Nordin book, remedied to some extent in a second supplement to the main volume (Edwards and Nordin 1980, discussed in the section on supplementary books), is the omission of selections from the Constitution and a glossary. Without careful guidance by the instructor, students may be left wondering just what actually happened when a claim was made that an action violated "due process," or when "the preemptory writ of mandamus heretofore issued" was affirmed or when a "motion for summary judgment was granted." Precisely because a casebook's major feature is edited court opinions and not expository text,
it is especially important to have ready access to explanatory materials. While difficulties are inevitably encountered when reading cases, there is much to be learned about the legal process that is not easily acquired in other ways. Additionally, fascinating stories that heighten motivation often arise in judicial opinions. In one case, for example, students learn that Bertrand Russell was dismissed from his philosophy post at City College of New York because of the "immoral and salacious doctrines" contained in his books; according to the New York trial court, City College had created a "chair of indecency" by hiring the eventual Nobel Prize recipient. A modern day update relating to the refusal to appoint a homosexual male as head of cataloging at a public university is presented in the supplement. Integration of the various cases presented in this and other chapters is largely left to the instructor. Despite these difficulties, however, for many professors, as for the authors of this text, the case approach to teaching about legal issues in higher education is considered the best method available.

Chapter 7, (faculty tenure) contains an interesting introductory section on the development of the concept of tenure and its purposes. The cases present issues relating to the granting of tenure; changing the conditions upon which tenure will be awarded; what constitutes "cause" for dismissal; and the effect of financial exigency, program reorganization, and faculty retrenchment on tenure provisions. The chapter concludes with the leading cases on the procedural due process rights of faculty. The cases are well-chosen and interesting and provide a good overview of tenure and related issues.
Chapter 8 (collective bargaining) concludes Part Two on faculty rights. It contains materials on unionization and collective bargaining in both the public and private sectors, including cases dealing with the jurisdiction of the National Labor Relations Board (NLRB) and state public employee relations boards. It deals with unit determination in public and private institutions, and with the scope of collective bargaining generally. The chapter introduction makes the public-private distinction regarding control by state and federal law respectively, but the subsequent organization of the chapter does not consistently maintain either the dichotomy or the integration of similar public and private issues. For example, "collegiality" may be a unique characteristic that led the Supreme Court to deny National Labor Relations Board (NLRB) jurisdiction over some faculty groups, but this exception to the general rule might more logically have been included in the section dealing with NLRB jurisdictional issues rather than in a separate section following several cases concerning public institutions. As the authors recognize, a survey text can give only an overview of the complexities involved in the many legal issues related to unionization and collective bargaining.3

Part Three of the text, "Student Rights," contains chapters on the constitutional rights of students, procedural due process, contract law as it applies to student affairs, and miscellaneous student rights issues. The first chapter in the section, Chapter 9, deals primarily with student first amendment rights of freedom of speech, press, and association. The one fourth amendment search and seizure case could have been placed in the final section of miscellaneous cases. Chapter 10, "Procedural Due Process for Students," contains the two leading cases on procedural due process for
disciplinary infractions and for academic deficiencies. The juxtaposition of these cases facilitates the comparison of the different procedures necessary in the two type of situations. An irrebuttable presumption case, largely concerned with substantive due process, is also inexplicably included in the chapter. Chapter 11 explores the creation, alteration, and interpretation of various types of contracts involving students. Because the authors' separation of cases arising in public and private institutions might seem to imply that contract law differs in its application in various settings, the instructor might want to mention the similar application of contract principles in these two settings, perhaps contrasting the differing application of constitutional principles. Most of the cases in the final chapter in Part Three concern issues related to equal protection as they arise in a variety of factual situations. Major equal protection problems concerning racial discrimination and affirmative action are reserved for the last section.

The final major section of *Higher Education and the Law*, Part Four, contains chapters on the impact of federal regulations, constitutional and statutory issues involving desegregation, Title IX's provisions against sex discrimination, constitutional and statutory provisions related to employment discrimination (including separate chapters on affirmative action, age discrimination, and equal pay), statutory protections for the handicapped, the *Family Educational Rights and Privacy Act*, student loans, the copyright law, and a final chapter of miscellaneous issues. The scope of this section is illustrative of the comprehensiveness of the text, and while improvements in organizational and transitional features could be made, *Higher Education and the Law* remains one of the best books available
—when used with its annual cumulative supplement—for a survey course on legal issues in higher education.

The Law of Higher Education by William A. Kaplin (1978) is another major textbook option for those desiring a comprehensive overview of the law's application to higher education. It contains eight chapters, each with several sub-divisions, including an introductory section on the scope, evolution, and sources of education law. The following chapters focus on the authority of administrators and on institutional and personal liability; the institution's relationship with its faculty; the legal status and rights of students; and the institution's relationship with the community, state government, the federal government, and accrediting agencies respectively. Throughout the text, Kaplin points out the special applications of various principles to both public and private institutions where relevant. An appendix of selected constitutional provisions is conveniently included following the major substantive portions of the text.

The companion volume, The Law of Higher Education 1980 (Kaplin, 1980), follows the same format as the main volume and is designed primarily as an up-dating resource. (It is in hardcover, while Edwards and Nordin's annual supplements are in softcover.) Despite the author's suggestion that the companion volume could be used independently, there are far too many references to the main volume to make this a practical option for most purposes.

The first chapter of the main text, "Overview of Postsecondary Education Law," briefly surveys the tradition of institutional autonomy and the corresponding judicial attitude of deference toward many legal issues in higher education. Subsequent topics include: the sources of law, the
potential litigants, and the forums available for dispute resolution; the public-private dichotomy and the relevance of the state action concept; and the importance of the first amendment religion clauses to legal issues arising in public and private institutions. Kaplin follows with issues facing administrators, faculty, and students—subjects that generally elicit a high degree of interest from students. A "Selected Annotated Bibliography" immediately follows each chapter in the text while the supplementary companion book (Kaplin, 1980) includes these bibliographic materials within the text, a device that is more confusing than that adopted for the main volume.

In Chapter II, "The College and Trustees, Administrators and Agents," the author notes the necessity of appreciating the scope and limits of authority and weaves that idea through a discussion of tort, contract, and civil rights liability. Since the law of civil rights liability is rapidly developing, it is inevitable (even in a well-organized expository text such as this one), that the instructor will have to assume much of the burden of integrating new materials. Kaplin aids this integration by reporting new developments in the companion volume and by pointing out where the law is clear and where further developments are likely. While the companion volume is a virtual necessity for the instructor (as is the Edwards and Nordin supplement), emerging issues illustrate the limitations of an occasional up-dating mechanism (as opposed to a yearly one) for those desiring the most current information on legal issues affecting higher education.

The third chapter, on college and university faculty, deals with the relevance of contract law, labor relations law, employment discrimination law, and constitutional law. There is a good overview of unionization and
collective bargaining, a clear discussion of the many federal statutes regulating employment, and concluding sections on procedural due process, academic freedom, and financial exigency.

Chapter IV, in addition to traditional sections dealing with the principal constitutional rights of students, contains sections on admissions, financial aid, housing, and records. First amendment rights of speech, press, and association are well covered, as is the student's right to be free from unreasonable search and seizure. A special section on athletics deals with issues of discrimination and with the student athlete's relationship with private regulatory associations.

The last four chapters of The Law of Higher Education deal with the external environment, focusing on institutions' relationships with the community, state government, federal government, and accrediting agencies. The impact of external legal or regulatory authority, related to such issues as local government taxation, state chartering and licensing, federal employment regulation of employment discrimination, and private accreditation standards and sanctions, is thoroughly discussed in an expository manner. Cross-references to related sections are provided, important cases are noted, and the topics are well-documented. Another feature of the Kaplin book is illustrated by the sections on "dealing with the federal government" and "dealing with accrediting agencies." The author provides specific procedural suggestions that have the potential, if followed, to smooth relationships and prevent serious problems from arising.

Either the Edwards and Nordin or the Kaplin book would be a good choice for a comprehensive course on law and higher education at the
graduate school level. The first is the more challenging of the two because of the inherent difficulty of reading cases, the lack of ready access to a glossary and to constitutional provisions, and the need to integrate the materials presented and develop summaries and conclusions. The possible advantage of the Kaplin book in the latter regard can be illustrated by the discussion following presentation of the case of Weber v. Kaiser Aluminum and Chemical Company. Because the Weber case approved a private, voluntary, quota-based plan designed to increase the number of minority workers in Kaiser's craft workforce, its implications for understanding Regents of the University of California v. Bakke (which expressly rejected a quota system but allowed racial criteria to increase minority admissions in a postsecondary education program) merit attention. Kaplin gives this attention by noting that Weber applied only to private employers, while public institutions of higher education would also be bound by constitutional principles such as those discussed in the Bakke case. In the Edwards and Nordin book, these and other implications must be inferred (from the thirty pages of selections from the Bakke opinion) by instructors and students themselves.

While the Edwards and Nordin book is more difficult to use, the Kaplin book will continue to be less up-to-date and possibly more cumbersome to deal with (because of succeeding serial companion volumes) unless a different method is adopted to accommodate emerging legal issues. The advantage of the softcover supplements provided by Edwards and Nordin is that they allow for the cumulative inclusion of more recent information on a yearly basis; therefore, only the main text and the most recent supplement are necessary. For example, the power of Congress to remedy
discrimination by placing limitations on the expenditure of federal funds was approved by the Supreme Court in a 1980 case. The Kaplin 1980 companion volume indicates the Supreme Court's "expected decision," while Edwards and Nordin devote extensive attention to the case in a note in the 1982/83 Supplement. The Law of Higher Education by Kaplin, however, would be an excellent book to recommend to a student who wanted to read independently in the area of higher education law. The case quotations are well-selected; legal terms are clarified; and the author analyzes and interprets the law. Because both texts cover all major topics in law and higher education, it seems reasonable to assume that preference for a casebook or a textbook would largely govern a choice between them for purposes of a graduate course on higher education and the law.

Two additional books, both published by West Publishing Company in 1979, can profitably be compared by those instructors of law and higher education who would like to teach a more narrowly focused course on legal issues as they affect college and university students: Constitutional Rights and Student Life: Value Conflict in Law and Education by Frank R. Kemerer and Kenneth L. Deutsch and The Law and the College Student by William G. Millington. Although both are modified casebooks, the first contains almost three times as many edited cases as the second. Nevertheless, at close to fifty cases, the Kemerer and Deutsch book still has fifty percent fewer cases than does the Edwards and Nordin main volume. Both books contain selections from the U.S. Constitution, a table of cases, a bibliography, a glossary, and an index. Kemerer and Deutsch have included appendices dealing with briefing cases and legal research, while Millington has included four substantive appendices related to various federal
statutory provisions. At approximately 700 pages, the larger Kemerer and Deutsch book is perhaps a third longer than the Millington book; there are important substantive differences as well.

The most important difference in coverage relates to the fact that, in dealing with student life, the Kemerer and Deutsch book devotes considerable attention to cases arising in pre-collegiate educational settings. Nearly fifty percent of the principal cases have fact patterns deriving from elementary/secondary educational settings, twenty-five percent from the higher educational context, and twenty-five percent from other contexts. In contrast, most of the principal cases in the Millington book concern college and university students. This difference alone suggests that the Kemerer and Deutsch book might be more appropriately considered for a general, introductory course on law and education. However, because of its length, comprehensiveness, and the attendant possibility of selective coverage, it is not inappropriate to consider its use where the focus is higher education as well; much can be learned about constitutional principles from their application in a variety of settings. The authors have provided an instructor's manual and a free, yearly, paper supplement for use by professors and students. No up-dating mechanism is available for the Millington book.

The introductory comment to *Constitutional Rights and Student Life* (Kemmerer and Deutsch, 1979) was written by David L. Bazelon, a highly respected federal court of appeals judge. He sets the tone for the book by pointing out that law is far from being an objective set of standards that guides behavior and resolves controversy. The law, in a general sense, is a "part of the struggle to achieve a more just society," and is inherently
interwoven with the most fundamental principles and values of a particular social system. The importance of the context within which the legal system functions is reflected in the purposes of the book which are, according to the authors, to examine the development and present status of constitutional rights, along with their particular application to student concerns, and to encourage the consideration of "basic value questions."

The nine chapters of *Constitutional Rights and Student Life* are organized into three major parts. Part One outlines the legal basis of public and private education at all levels, and the structure and function of the federal and state court systems. It elucidates the complexity of legal issues relevant to education by exploring the role of the various constituencies with an interest in education, the multiplicity of societal value positions, and the varied judicial approaches to resolving educational controversies. The section contains helpful figures illustrating the relationship between federal and state courts, the various legal sources of student rights, and the ideological variables involved in judicial decision-making. Part Two uses substantive selections from more than twenty cases to illustrate the development of first and fourteenth amendment rights for students, and then places this evolution in larger societal perspective. Part Three concerns the right of privacy in school and society, and contains a brief reconsideration of the role of educational, political, and judicial institutions in resolving fundamental educational problems of freedom, justice, and equality. While *Constitutional Rights and Student Life* is most appropriate for an introductory graduate or undergraduate course on law and education
generally, with the addition of a few higher education cases, it could be used for an introductory course on law and higher education as well.

The book most similar to the Kemerer and Deutsch book, because of its focus on legal issues relating to students, is *The Law and the College Student* (Millington, 1979). Following an introduction on the sources of law, resources for legal research, and procedures for briefing cases, the author divides the materials provided into five major parts. The procedural due process case of *Dixon v. Alabama* is used as a major focal point in Part One to illustrate the changing nature of the judiciary's relationship with both public and private higher education. Part Two, "Procedural Guarantees," begins with issues of statutory, institutional, and judicial procedural fairness, and concludes with an examination and comparison of judicially developed procedural standards in the educational and criminal justice systems. Part Three covers first amendment protections of freedom of speech, press, and association; and Part Four deals with equal protection in the context of desegregation, admissions, and discrimination based on sex and handicap. The concluding section, Part Five, treats a miscellany of issues related to tort, contract, malpractice, and the right of privacy (including the Family Educational Rights and Privacy Act). The generally expository nature of *The Law and the College Student* allows a large amount of information to be conveyed in a textbook that is relatively short by comparison to many texts on law and education. The lively, informal tone adopted by the author may make it interesting to some students, although that same feature may not appeal to all.

Of the four books considered in this section, *The Law and the College Student* (Millington, 1979) and the more comprehensive *The Law of Higher
Education (Kaplin, 1978) are most suitable for those preferring an expository approach to legal issues; Constitutional Rights and Student Life (Kemerer and Deutsch, 1979) and Higher Education and the Law (Edwards and Nordin, 1979) will appeal most to those who desire a casebook approach. With the possible exception of the Kemerer and Deutsch book, which is probably more appropriate for an introductory course, all could be used for either introductory or advanced courses on law and higher education, with the Edwards and Nordin book requiring more effort on the part of both students and instructor. When an introductory course is intended to deal with issues in primary and secondary education as well as in higher education, the Kemerer and Deutsch book deserves special consideration.

While the books noted in this section represent a diversity of approaches to teaching legal issues as they relate to higher education, a review of the materials presently available suggests a special need for reflection on the best methods for keeping textbook materials current. There is also a need for a comprehensive casebook especially created for introductory courses on law and higher education at the graduate level; and there will always be a need for new editions and for new approaches to understanding the law of higher education.

Supplemental Books and Monographs

In this section a variety of different types of materials will be reviewed, including loose-leaf "casebooks," yearbooks, collections of essays, and monographs. Some seek to present a brief overview of legal issues on higher
education; some are quite specific in coverage; others deal with educational policy issues that are only tangentially related to higher education law. The one feature they have in common is that while they are not comprehensive treatments of all major legal issues in higher education, they may prove to be useful supplements for a number of specialized purposes.

Legal Handbook for Educators (1978), by Patricia A. Hollander, comes closer than any single book reviewed in this section to comprehensive coverage of legal issues in higher education. Although somewhat out-of-date, it is nevertheless an especially concise (198 pages) and practical overview, focusing nearly exclusively on higher education law. The paperbound volume deals with such issues as the sources of law; the legal structure of education; due process; tort and contract liability; student recruitment, admission and financial aid; student freedom of speech and association; faculty recruitment, employment, tenure, and termination; and institutional funding. An appendix containing summaries of twenty-four federal statutes is a unique contribution to the literature of higher education. Legal Handbook for Educators is an excellent book that merits revision. It should be used with caution pending a new edition.

Two commercial summary services are The College Student and the Courts (1977) and The College Administrator and the Courts (1978). While either or both could be used as texts for graduate courses in law and higher education, their cost alone makes them more practical for inclusion in college and university library collections as supplementary reading and research resources for students, faculty, and administrators. Both volumes are published in a loose-leaf format, outlining judicial decisions of special importance to higher education until mid-1977. The cases are selected to illustrate the development
of the law as it relates to higher education and are presented in substantial summaries giving the facts, issues, resolution, and reasoning of the courses; however, the volumes are unlike traditional casebooks in that they do not present case excerpts. The summaries are arranged topically by chapter and are preceded by brief introductory overviews of the subjects considered. Each book is supplemented quarterly, allowing for the addition of approximately sixty cases per year. The supplements, which average approximately ten pages in length, contain a table of contents, case summaries, and notes on new legal developments. A detailed three-part yearly cumulative index is included (color-coded to facilitate access) which lists all cases alphabetically, by general topic and by particular subject. The supplements generally contain the most important cases decided in the quarter preceding publication, so that the information available is from cases reported between three and six months earlier.

The College Student and the Courts contains twenty-five chapters covering topics such as admissions, financial aid, housing, due process, search and seizure, and freedom of expression. The College Administrator and the Courts does not deal with the student-institutional relationship, but rather contains ten chapters on topics such as public and private colleges and universities, selection and retention of faculty and staff, equal employment opportunity, affirmative action, and tort liability of institutions. Both volumes contain introductory materials on the structure of the legal system and on federal constitutional and statutory law. Each contains an appendix of selected federal statutes and regulations and a short glossary. They are excellent reference sources for both students and faculty, and would provide a good starting point for legal research projects.
An Introduction to the American Legal System: A Supplement to Higher Education and the Law by Edwards and Nordin (1980), is a sixty-five page booklet that can easily and profitably be used independently of the authors' text and supplements on higher education law. Intended to provide a brief, non-technical overview of the United States legal system, its seven short chapters outline the structure and function of federal and state court systems, the theory and process of judicial review, how to read and understand judicial opinions, and the legislative and administrative sources of law. (The U.S. Constitution is included in an appendix.) The description of the federal law-making process contained in Chapter 6 is a concise and unique contribution among law-related materials reviewed in this article.

From 1977 through 1981, the National Organization on Legal Problems of Education (NOLPE) published yearly editions of The Yearbook of Higher Education Law, edited by D. Parker Young. The organization and substantive coverage of all of the yearbooks is similar, containing seven chapters which include the broad topics of governance, finance, property, liability, employees, collective bargaining, and students. In the 1978 and succeeding volumes the topics of governance and finance, which had originally been dealt with in two chapters, were combined into a chapter on governance; and the topic of collective bargaining, which had originally been included in the chapter on employees, was made a separate chapter. A more detailed description of the contents is given at the beginning of each chapter, allowing for the addition of new topics or for slight changes in focus reflecting the substance of the year's judicial decisions. Each chapter begins with an introductory overview summarizing the substantive content and noting similarities and differences in the emerging case law compared with previous years. The yearbooks contain thorough
documentation in chapter footnotes, detailed indexes, and alphabetical tables of cases listing the approximately 250-350 cases reviewed in each volume.

The purpose of the NOLPE yearbooks was to chronicle, summarize, and analyze all reported state and federal cases covering higher education law from the previous year; each year, several authors collaborated in the analyses of topics. The volumes collectively constitute an important historical resource dealing with annual developments in higher education law from the mid-1970's through 1980. Although The Yearbook of Higher Education law has been discontinued in its comprehensive format, NOLPE's annual Yearbook of School Law (e.g., Piele 1982) now contains a more concise, separate chapter on new legal developments in higher education that will be a continuing feature.

A book by E. Edmund Reutter, Jr., The Supreme Court's Impact on Public Education (1982), is an approximately 200 page historical overview of about 175 Supreme Court decisions related to education at all levels. Arranged topically in eighteen chapters, information concerning higher education is interwoven with issues related to pre-collegiate education in chapters with titles such as "Federal Legislation Affecting Education," "Teachers Rights: Discriminatory Employment Practices," and "Liability for Civil Rights Violations." The author's purpose in the first seventeen chapters is to analyze Supreme Court decisions; in the last chapter, Reutter speculates on the manner in which education law has evolved and on the way in which the members of the Court have dealt with the complex issues they have had to consider. Reutter discusses the increased involvement of the Supreme Court in educational matters since World War II, the times when the Court has overruled itself on issues of relevance to education, and the major themes that have run through the legal literature. The book contains a table of cases, an index, and several appendices, making it
useful for research, independent reading, and as a supplementary text for courses on law and higher education.

There are at least two books which focus on concerns of particular interest to private institutions of higher education. The first is *Church and Campus: Legal Issues in Religiousy Affiliated Higher Education* (1979), by Philip R. Moots and Edward McGlynn Gaffney, Jr. The book examines legal issues of property ownership and control between religiously affiliated institutions and their sponsoring religious bodies, and includes such topics as ascending liability, public financial assistance, academic freedom, employment policies and practices, student admissions and discipline, and legal questions resulting from governmental regulations. The discussion of the structural relationship between the institution and its sponsoring religious organization provides a basis for understanding the concept of ascending liability. The book is well organized; the presentation of chapters is logical and clear; and the legal analyses are sound and based on thorough investigation, with supportive and illustrative cases cited throughout. Either as a supplementary text or a resource guide for college administrators in religiously affiliated college settings, *Church and Campus* is recommended.

*Public Policy and Private Higher Education* (Breneman and Finn, 1978), is a compilation of essays focusing on the politics and economics of private higher education. As a supplemental resource for a course on law and higher education, those chapters which deal with state and federal policies are the most relevant. They include: Chapter Four, "Federal Politics" by Lawrence E. Gladieux and Thomas R. Wolanin; Chapter Five, "Federal Options for Student Aid" by Robert W. Hartman; Chapter Six, "Federal and State Tax Policies" by Emil M.
Legal Outlook: A Message to College and University People (Spiva, 1981) is a brief publication, consisting of ninety-one pages. The work succinctly sets forth contemporary legal issues confronting the major segments of the higher education community. The softbound volume is organized into three sections, providing a "legal outlook" to students, faculty, and administrators respectively. Not intended as a comprehensive text, this work provides a general overview and introduction to a variety of current legal decisions impacting upon higher education. The intent of the study is to highlight contemporary court decisions that affect the interrelationships of the three segments of the higher education community. Thus, Part I briefly reviews the Rehabilitation Act of 1973 and the first, fourth, and fourteenth amendment rights of students, and includes brief summaries of illustrative cases for each topic area. Part II is directed to faculty and other professional staff and includes such topics as tenure rights, collective bargaining, first and fourteenth amendment rights, and sex discrimination. Relevant cases are cited liberally although not discussed in great detail. Part III is directed to college and university administrators and focuses on the issues of equal employment and equal educational opportunity. The appendixes include an outline of federal and state court systems and a summary of court cases cited in the text. In his summary, the author emphasizes that the study is not comprehensive, and that the cases cited illustrate only a sample of the hundreds of contemporary issues adjudicated since 1976. Nevertheless, the work fulfills its intent of presenting a legal overview for college and university people.
Four supplementary books treat issues of particular relevance to the relationship between the institution and its students. The first, Student Affairs and the Law (1983) is a collection of six essays, edited by Margaret A. Barr, which is intended to inform student affairs administrators about some of the most important legal implications of their work. Topics considered include the sources of law affecting higher education, due process in disciplinary and academic situations, contractual agreements between students and their institutions, and institutional regulation of student organizations. The final two chapters are designed to prevent legal problems from arising. They outline how institutions can use attorneys as advisors as well as advocates and conclude by presenting additional sources of information and assistance. The book contains a short glossary, a listing of cases, and a comprehensive index.

The Legal Foundations of Student Personnel Services in Higher Education (Hammond and Shaffer, 1978) is a collection of essays covering such topics as the consumer-institutional relationship, the first amendment in higher education, privacy, civil rights legislation, student discipline, and student personnel staff liability. Directed to the student personnel professional, the intent of the book is to identify legal issues in the field in a non-technical manner. A glossary of legal terms, a bibliography with a listing of cases mentioned, and an index follow.

A Legal Overview of the New Student as Educational Consumer, Citizen, and Bargainer, by Robert A. Laudicina and Joseph L. Tramutola (1976), is written with an awareness that college students are knowledgeable about their rights as students and consumers. This work provides a comprehensive and useful resource for administrators who are learning to cope with new demands to "rule by contract" instead of administrative fiat. The contemporary
student-institutional legal relationship is explored in the many areas of
college life where the students' rights and legal status must be considered.
Topics include admissions, financial aid, housing, students in the classroom,
confidentiality, and student organizations. Case examples are frequently
provided.

The Law and the Student in Higher Education (1976), by D. Parker Young,
is a brief publication of the National Organization on Legal Problems of
Education (NOLPE). This monograph is a useful reference for both college
administrators and students. The style is succinct and non-technical, yet court
cases and references are frequently cited. This monograph is the first of the
NOLPE-sponsored monographs on school law which deals specifically with higher
education. Fairly comprehensive in its scope despite its modest length, the
topics covered include the relationship between student and institution;
freedom of expression; due process, both procedural and substantive; suspension
and expulsion; search and seizure; residence hall regulations; athletics;
liability involving students; and Title IX. While not a recent publication, it
nevertheless contains a useful summary of major issues in higher education law
through the mid-1970s.

There are several good books dealing with more general subject matter
concerning higher education law. Public Universities, State Agencies, and the
Law: Constitutional Autonomy in Decline (Glenny and Dalglish, 1973) is an
investigation of the effect of the constitutional status of a public
institution on its autonomy. The Glenny and Dalglish study compares the degree
of autonomy enjoyed by educational institutions holding constitutional status
with those holding statutory status. The study focuses on the state
universities of four states whose constitutions have granted them
constitutional status and on an equal number of state universities whose legal base is purely statutory. The first section of the study examines constitutional status, including a history of its development. The legal status of statutory institutions and the lesser degree of autonomy they enjoy is also considered in this section. Despite the publication date of 1973, several of the sections remain especially timely because of recent increases in state governmental regulation. Some of the topics considered in this section include the power of the governor, control by state agencies, funding management and budget controls, and the legal authority of coordinating boards. As a resource to provide a fuller understanding of the legal status of public institutions of higher education, this paperbound volume of 193 pages is recommended. Appendix A lists the cases cited in the text and Appendix B cites selected provisions from various state constitutions.

**Liability: Legal Liabilities in Higher Education--Their Scope and Management** (1976) is authored by an attorney, Ray J. Aiken, J.D. (Section I) and insurance experts, John F. Adams and John W. Hall (Section II). The motivation for this work was the relatively recent advent of a variety of damage suits against colleges and universities due, in part, to the equal opportunity movement and to student consumerism. The book represents a study of the legal issues involved in various kinds of damage suits, as well as the steps which college and university officials can take to protect themselves and their institutions.

Section I of Liability is written from a legal perspective, is generally technical in style, and contains detailed case examples. The author outlines various problems, presents theories of liability, and discusses allocating liabilities between institutions and their personnel. Additional chapters deal
with contracts, the substantive categories of tort liability, and indemnification and insurance more generally. Although the author cautions interested institutions that this work does not replace legal counsel, the concept of institutional liability is presented completely and thoroughly. A table which includes cases cited, constitutional provisions, statutes cited, public laws cited, regulations, texts, and articles follows Section I. Procedures for minimizing exposure to liability within the context of higher education are described in Section II.


Grievance Arbitration Procedure: Legal and Policy Guidelines for Public Schools, Community Colleges, and Higher Education was written by Robert John Munro and published in 1980. This work is a thorough study and examination of the function of the grievance arbitration process in the application of the contract as well in resolving personnel-management conflicts. According to the author, the purposes of the study are twofold: to analyze grievance arbitration policy and procedure in public education and to recommend guidelines appropriate to the improvement of these procedures. The work is limited to the identification of legal opinions, federal and state statutes, and arbitration awards that refer specifically to the grievance arbitration procedure. This
book contains useful definitions of terms, a treatment of the historical
development of grievance arbitration in both the private and public sectors,
and a chapter describing grievance arbitration procedure. In addition, Chapter
Five deals with the constitutional issues of relevance to public education
employees involved in the grievance arbitration process. It considers due
process requirements, civil rights violations, the right to arbitration, and
the right to representation, as well as the prohibition against harassment for
use of grievance arbitration procedures. For those involved with
personnel/management issues, this study provides a useful and thorough guide.

There are several recently published books that deal with the issue of
governmental regulation of higher education. Three of them are collections of
essays which provide a range of perspectives on the costs and benefits of
governmental regulation. The first is *Bureaucrats and Brainpower: Government
Regulation of Universities* (Hatfield and Seabury, 1979), a collection of essays
written by conservative scholars. A major theme of the book is the common
complaints of business and academy regarding governmental regulation. Different
perceptions of how governmental regulations affect the operations as well as
the autonomy of universities are given by the various authors. Specific areas
considered include governmental policy on affirmative action; increased control
of research on human subjects; regulation of the natural sciences, health, and
safety; and the impact of all of these regulations upon the integrity of the
university.

A second book on this topic is *Governmental Regulation of Higher
Education* (Hobbs, 1978), a collection of essays or "value statements" that
focus on the positive and negative aspects of government regulation. Viewpoints
ranging from those of the university president to the university affirmative
action officer to the government's lawyer are included. The question throughout is whether governmental regulation of higher education is "actually necessary or merely inevitable."

The third book of essays on governmental regulation is The University and the State (Hook, 1978), a collection of papers exploring the relationship of the university to the state. The papers are divided into the following sections: "The Government as Patron of Higher Education;" "The Costs of Education;" "Government Regulation and Academic Freedom;" and "The University and the State: Claims and Expectations." Like the previous two volumes mentioned, this collection of essays would provide excellent supplementary reading on the subject of government and its relationship to the university.

One of the most recently published books on this topic, Higher Education and the Unholy Crusade Against Governmental Regulation by Harry T. Edwards (1980), is a brief work countering the argument of the costs, both monetary and non-monetary, of governmental regulations which have been imposed for the purpose of achieving social justice. Edwards argues against critics of such regulations, asserting that they have overstated their case regarding the degree to which these regulations have interfered with the traditional goals of higher education. Attention is given to court opinions which have addressed the conflict between governmental regulation and the institution's desire to preserve its autonomy. Specific topics include employment discrimination, procedural due process for faculty, procedural due process for students, and the Rehabilitation Act of 1973.

The most recent publication in the area of governmental regulation is a Carnegie Foundation essay, The Control of the Campus: A Report on the Governance of Higher Education (1982). Although both public and private higher
education are considered, the report emphasizes governance in public universities. Included are the results of a national survey describing the administrative level at which effective decisionmaking takes place in different types of institutions, the history and tradition of regulation and governance in American higher education, and governance influences which extend beyond the campus. The last section of the report provides a summary of the preceding chapters and makes recommendations in a chapter called "A Governance Framework for Higher Education."

Conclusion

Having had the opportunity to review a variety of law-related materials over a period of several months, the conclusion is inescapable that an unprecedented effort is being made by individuals and organizations, in some cases accelerated by significant competition, to create new and better resources for the study of law and higher education. Although the number and variety of books in this specialization does not approach the number and variety available in elementary/secondary education law, there has been substantial improvement in the last twenty years. Even a brief look at listings in The Chronicle of Higher Education, Books in Print, and other bibliographic listings, will reveal that many works are presently available which are suitable for use in courses on higher education and the law.
The increased availability of resources for use in higher education law courses is not likely to abate in the 1980s. Despite recent efforts at all levels of government, but particularly at the federal level, to simplify legal relationships between colleges/universities and the social and political institutions with which they interact, there appears to be a continuing and growing need for educators and administrators to know how the law affects their work. In addition, students have become sophisticated consumers of education who expect the law to facilitate relationships between them and the educational personnel with whom they come in contact. The legal sophistication of students and the need to provide thorough and effective law-related education for administrators is reflected, in turn, in the development of courses dealing with legal issues in higher education. Despite the relative lack of textbooks comprehensive enough for broad survey courses, the resources mentioned in this article (along with others not included) illustrate the increased wealth of materials presently available to faculty and students who are teaching and learning about how the law affects higher education.
Notes

1. Blackmon's sample was drawn from among those universities which had graduate programs in educational administration approved by the National Council for Accreditation of Teacher Education.

2. This need was reaffirmed at the 1982 and 1983 conventions of The National Organization on Legal Problems of Education, where a large group of education law professors met in special sessions to discuss the teaching of law and education courses and to form a network for the exchange of information and ideas.

3. Edwards is a labor scholar; the Edwards and Nordin text contains a particularly thorough analysis of collective bargaining and a substantial list of references.

4. Kaplin is a scholar on the accreditation process, making his review of this topic a particularly authoritative contribution to the literature of law and higher education.

5. Edwards and Nordin's 1982/83 supplement was available in early 1983.

6. Additional bibliographic resources include: Law Books 1876-1981 (R.R. Bowker) and Law Books in Print (Glanville Publishers) and their respective supplements.
REFERENCES

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Introduction


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Textbooks


Supplementary Books and Monographs


Conclusion

Books in Print (R.R. Bowker).