

INTRODUCTION

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Welcome to this special edition of the *Journal of College University Law*. On this 50th Anniversary of the National Association of College and University Attorneys, we look at the dominant issues that have defined the past, present and future practice of higher education law. This historic waypoint for NACUA is a time to reflect upon the Association, as Kathleen Santora has done in her thoughtful foreword, and upon our profession, as our distinguished authors do in the pages that follow. It is also a time to reflect upon the unique history of the *Journal* itself.

The origins of the *Journal* trace back to the 1962 monograph, “Proceedings of the Annual Conference of the Association,” where NACUA collected the papers presented at its first meetings. In 1966, the Association moved towards a more scholarly format, starting the *College Council* as an annual and semi-annual publication. Seven years later, NACUA started the *Journal* as we know it today. The West Virginia University College of Law published the *Journal* for its first thirteen years and then, in 1986, the *Journal* moved to its current home at the University of Notre Dame Law School. Despite all of these changes over nearly four decades, the purpose of the *Journal* has remained the same. As NACUA’s thirteenth president observed in the *Journal’s* 1973 inaugural edition, the goal has been to “enhance the service of the Association to the law and to our real principal, American higher education.”¹

The *Journal’s* commitment to scholarship has been long and complete, and the numbers demonstrate how steady this commitment has been. For the last 37 years, the *Journal* has published approximately 22,000 pages of nearly 800 scholarly articles in almost 140 numbered volumes. Averaging three volumes per year and 200 pages per volume, the *Journal* has become the source of our profession’s highest scholarship for close to 4,000 subscribers.

This edition honors, celebrates, and continues the *Journal’s* excellent reputation. Written by the lions of our profession, the articles here address the key issues that continue to define our work: judicial deference, board governance, regulatory compliance, academic freedom, affirmative action, and disability accommodations. The volume begins with an introduction by Barbara Lee who identifies the leading legal, social, and technological changes that have moved the practice of higher education law over the past

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1. Norman L. Epstein, *Preface*, 1 J.C. & U.L. i (1973).

50 years. Judith Areen then traces the evolution of the role of governing boards in higher education, analyzing the primary ways in which such boards are held to account, and offering recommendations on how our boards can best meet their essential responsibilities.

Robert O'Neil turns our readers' attention to the evolution and application of judicial deference to academic decisions, assessing whether the continuing encroachment on such deference can be withstood. Stephen Dunham examines the origins of, and reasons for, government's pervasive regulation of colleges and universities; the net balance of such regulatory costs and benefits; and the myriad of compliance issues challenging counsel across all facets of operation. Tracing the arc of academic freedom over the last half century, Larry White next argues that courts "know academic freedom when they see it," but are either unwilling or unable to provide a unitary, coherent or even useful meaning. Laura Rothstein then tracks the development of disability accommodations in higher education, focusing on student disabilities and identifying the societal benefits of this important area of law.

James Shekleton turns to look back at how academic freedom, civil rights and civil liberties have fallen into conflict and how, looking ahead, restrictive equal protection jurisprudence will not meet potential demographic demands. Mary Ann Connell tightens the focus of civil liberties on race and desegregation, recounting the history of higher education desegregation from the pre-*Brown* days until now, and offering her ever-insightful analyses and reflections. And finally, Jonathan Alger picks up where Ms. Connell leaves off, exploring the evolution of the legal rationales underlying the use of race-conscious measures in higher education, and suggesting both lessons learned and implications for the future.

In publishing this special edition, we have benefitted from the leadership of members Martin Michaelson, William Thro, and Marc Cardinali; faculty editor John Robinson; and NACUA's Director of Legal Resources, Karl Brevitz. Together, these distinguished attorneys have thoughtfully developed and guided this project from start to finish, and we appreciate their work.

We may all take pride in the ongoing commitment of NACUA and the *Journal* to time-honored scholarship. To be sure, we live in a day when the immediacy of communication tests our capacity to reflect thoughtfully, and when an overload of information challenges our capacity to understand deeply. Still we should all hope that, 25 or even 50 years from now, when NACUA celebrates its 75th or even 100th anniversary, our successors may look back upon what we have done here and see what our *Journal* authors, editors and readers have known for decades: that an ongoing commitment to truly thoughtful scholarship is not just its own reward, it is essential to the provision of thoughtful and effective counsel.

