

THROUGH THE EYES OF HIGHER EDUCATION ATTORNEYS: HOW DEPARTMENT CHAIRS ARE NAVIGATING THE WATERS OF LEGAL ISSUES AND RISK MANAGEMENT

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I. INTRODUCTION

Sexual harassment complaints. Tenure and promotion denials. Privacy rights. State and federal laws, regulations, and potential penalties. Claims of discrimination based upon race, religion, age, national origin, or disability. Copyright, fair use, patents, and other intellectual property issues. Faculty work performance, non-collegiality, and disciplinary issues. Academic freedom versus management rights. Drug and alcohol abuse. Student discipline and academic misconduct. Adhering to requirements of the Family Educational Rights and Privacy Act of 1974. Plagiarism proliferation. Conflict of interest and commitment. Contracts, policies, and rule-making. Free speech and association rights. Criminal acts and misuse of institutional or grant resources.

What these difficult matters have in common is that they are legally-related problems and issues faced by those working in colleges and universities, and which actually or potentially impact institutional legal liability and risk management efforts.¹ Higher education administrators frequently deal with issues that raise legal and risk management questions, and many programs and services in higher education involve the law or risk management in some manner. "Boon, bane, or something in between," legal considerations have a tremendous impact on the day-to-day operations of universities and

1. See generally WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION: A COMPREHENSIVE GUIDE TO LEGAL IMPLICATIONS OF ADMINISTRATIVE DECISION MAKING* (4th ed. 2007).

colleges—an impact that is likely to continue growing as lawyers, legal requirements, and lawsuits have now become established components of American higher education.²

II. PROBLEM STATEMENT AND RELATED LITERATURE

The volume and complexity of higher education legal issues have increased tremendously in the past few decades.³ Legal issues permeate various levels of leadership and play a significant role in the work of central administration and academic leaders at the college and university dean and department chair levels. While central administration deals with those issues on a macro or organizational level, department chairs and other academic administrators often face them at the micro level through their interactions with faculty and students.

Indeed, one crucial position within the framework of a university's administration is the head of an academic department, generally referred to as a "chairperson" or "chair."⁴ Since chairs need to represent both administrative and faculty perspectives, this in-between status leads to potential conflict and raises questions on how they should act.⁵

Glee Whitsett noted that chairs bring varying levels of administrative and leadership skills with them when they take on their roles as department heads.⁶ For example, a new chair might be appointed directly from the rank of a faculty member, suddenly taking on a supervisory position with authority to direct and manage other faculty members who were previously peer colleagues. Whitsett further pointed out that some chairs hold their department leadership positions for many years and possess considerable experience wielding institutional clout and influence, while others serve as chairs for relatively short periods of time and later return to faculty ranks. Because chairs are mid-level academic leaders, they are often in the center of controversy, conflict, and debate. Thus, a chair frequently

2. STEVEN G. POSKANZER, *HIGHER EDUCATION LAW: THE FACULTY* (2002).

3. Kathleen C. Santora & William A. Kaplin, *Preventive Law: How Colleges Can Avoid Legal Problems*, *CHRON. HIGHER EDUC.*, Apr. 18, 2003, <http://chronicle.com/article/Preventive-Law-How-Colleges/6289>.

4. JOHN W. CRESWELL ET AL., *THE ACADEMIC CHAIRPERSON'S HANDBOOK* (2008); ALAN T. SEAGREN ET AL., *THE DEPARTMENT CHAIR: NEW ROLES, RESPONSIBILITIES AND CHALLENGES* (1993); BARBARA E. WALVOORD ET AL., *ACADEMIC DEPARTMENTS: HOW THEY WORK, HOW THEY CHANGE* (2000).

5. SEAGREN ET AL., *supra* note 4.

6. Glee Whitsett, *Perceptions of Leadership Styles of Department Chairs*, 41 *C. STUDENT J.* 274 (2007).

serves as a facilitator, negotiator, and coalition builder.⁷

Chairs should know what authority they have to direct persons to cease certain conduct, to understand institutional rules, and to understand the extent of their legal powers in their role as department heads.⁸ For many chairs, legal mandates and lawsuit threats in the academic environment are viewed as offensive obstacles to the exercise of experienced academic judgment, leading them to avoid dealing with legal issues. However, the more reasoned approach indicates that the complexities of the law permeate academic life and need to be understood and managed.⁹

Institutions of higher education are also increasingly recognizing the need to integrate risk management into every facet of campus life.¹⁰ Robert Bickel and Peter Lake point out that the range of laws with which institutions of higher learning must comply have become more complicated than they once were, and that courts are imposing business--like responsibilities on them.¹¹ Failing to assess operational risks and to constructively address them with risk management processes can create vulnerability to claims and litigation, which drains contingency funds and stretches limited resources.¹² Kaplin and Lee likewise agree that legal counsel for the institution should be involved in all aspects of risk management.¹³

Indeed, higher education attorneys have expounded upon the need for *proactively* working with and training college and university clients to *avoid* claims and lawsuits, rather than just assisting their clients to *react to and defend against* claims and lawsuits already filed.¹⁴ Preventive law involves both administrators and legal counsel in a continual process of setting legal parameters, pinpointing alternatives to circumvent problems, and sensitizing administrators to legal issues and the importance of recognizing and dealing with them in early

7. Vicki J. Rosser et al., *Academic Deans and Directors: Assessing Their Effectiveness from Individual and Institutional Perspectives*, 74 J. HIGHER EDUC. 1 (2003).

8. ALLAN TUCKER, CHAIRING THE ACADEMIC DEPARTMENT: LEADERSHIP AMONG PEERS (2d ed. 1984).

9. ENHANCING DEPARTMENTAL LEADERSHIP: THE ROLES OF THE CHAIRPERSON (John B. Bennett & David J. Figuli eds., 1990).

10. Elizabeth F. Farrell, *Colleges' Risk Managers Face a Rising Tide of Litigation*. CHRON. HIGHER EDUC., Nov. 16, 2001, at A29-A31.

11. ROBERT D. BICKEL & PETER F. LAKE, THE RIGHTS AND RESPONSIBILITIES OF THE MODERN UNIVERSITY: WHO ASSUMES THE RISKS OF COLLEGE LIFE? (1999).

12. Brett A. Sokolow, *Risk Management in the Community College Setting*, NEW DIRECTIONS FOR COMMUNITY COLLEGES 125, 85-95 (2004).

13. KAPLIN & LEE, *supra* note 1.

14. KAPLIN & LEE, *supra* note 1; Paul Ward & Nancy Tribbensee, *Preventive Law on Campus*, 35 CHANGE 16, 20 (2003).

stages.¹⁵ Noting that since the 1980s, the preventive law approach has become increasingly valuable to higher education institutions, Kaplin and Lee have suggested a teamwork relationship be developed between administrators and legal counsel for preventive law to work best and to make better institutional policy decisions.¹⁶

Despite the abundance of literature regarding risk management, the duties of chairs and their involvement in matters that have legal ramifications, and the role of higher education attorneys, legal concerns have often been virtually ignored by authors writing about the role and duties of chairs. For example, although Seagren et al. studied the chair's role extensively back in the 1990s, legal issues and institutional risk management were not addressed in their checklist of roles and responsibilities of the chair.¹⁷ Although Gmelch and Mishkin, writing at the same time as Seagren et al., expounded about department chairs' functions and needed leadership skills, the role of legal issues or risk management fitting into the broader picture of departmental governance was not readily apparent in the discussion.¹⁸ Walvoord et al., writing a few years after Seagren et al. and Gmelch and Mishkin, discussed how academic departments work and how they change, but omitted how legal issues or risk management can impact department chairs' decisions and actions.¹⁹

Even more obvious is the deficiency of research specifically addressing the questions of how department chairs deal with legal or risk management issues confronting them. For example, in developing their "handbook" for department chairs, Creswell et al. interviewed 200 chairs from seventy colleges and universities and presented fifteen strategies for developing a department, exercising leadership, and reaching out to faculty.²⁰ Yet the impact of legal issues or risk management as to a chair's functions and duties was apparently not a specific factor researched or discussed in this study.

Further, there is a dearth of research data about the perceptions of higher education attorneys who work with counsel chairs regarding legal and risk management issues. Only two studies could be identified. In 2005, Richard Ludwick examined the role of legal counsel in the decision---making process of presidents at small, private colleges.²¹ In

15. KAPLIN & LEE, *supra* note 1.

16. KAPLIN & LEE, *supra* note 1.

17. SEAGREN ET AL., *supra* note 4.

18. WALTER H. GMELCH & VAL D. MISKIN, *LEADERSHIP SKILLS FOR DEPARTMENT CHAIRS* (1993).

19. BARBARA E. WALVOORD ET AL., *ACADEMIC DEPARTMENTS: HOW THEY WORK, HOW THEY CHANGE* (Adrianna J. Kezar, ed., 2000).

20. CRESWELL ET AL., *supra* note 4.

21. Richard L. Ludwick, *The Role of Legal Counsel in the Decision---Making*

the same year, Manuel Rupe gathered data on higher education attorneys' perceptions regarding academic freedom and challenges to it.²² While these studies certainly contribute to the body of knowledge regarding higher educational leadership, they focused on subjects other than the spectrum of legal issues impacting higher education governance, leadership effectiveness, institutional legal liability, or risk management.

To this end, the study was designed to obtain input from higher education attorneys—professionals who represent and provide legal services for their college and university clients regarding *their* perceptions and experiences of how adequately chairs are dealing with the multitude of legal and risk management issues confronting them in their department chair roles.²³

Specific research questions included:

- 1) What types of legal issues do higher education attorneys most often provide assistance to department chairs?
- 2) How much time do higher education attorneys spend on such legal issues when providing assistance to

Process of Presidents at Small, Private Colleges (Dec. 2005) (unpublished P.h.D. dissertation, University of Oregon) (on file with Dissertation Abstracts International UMI no. 3201691).

22. Manuel R. Rupe, *Higher Education Attorneys' Perceptions Regarding Academic Freedom and Challenges to Academic Freedom* (Dec. 2005) (Ph.D. dissertation, Western Michigan University) (on file with Dissertation Abstracts International UMI no. 3197564).

23. Importantly, this study was not also sent to department chairs. The reason for not doing so is that this particular research study was to obtain data *only* from higher education attorneys on *their* perspectives and experiences—a particular group that the literature shows is rarely studied quantitatively in the educational leadership field. However, the following recommendation was provided in this study:

As a final recommendation for further research, it would be quite intriguing and beneficial to the field of higher educational leadership to conduct a study that mirrors this one in scope and type of questions, but that instead surveys *department chairs* and *their* views and experiences about seeking legal assistance from higher education attorneys. Such a study could also attempt to discover what differences there might be in department chairs' responses, and if different findings resulted regarding any statistically significant relationships in responses depending upon the variable of unionized faculty or chairs themselves. Comparing the results of such a study to the findings of my study would be quite revealing and constructive to both department chairs and higher education attorneys, leading to a more comprehensive understanding of the others' roles, as well as ideas on how to better interact with each other toward the goal of bettering the colleges and universities they serve.

department chairs?

- 3) What types of legal issues do higher education attorneys see department chairs having the most difficulty handling?
- 4) What types of legal issues do higher education attorneys perceive as having the greatest impact upon institutional legal liability and risk management efforts?
- 5) For what types of legal issues do higher education attorneys believe department chair training is most essential?

III. METHODOLOGY

Our study used a non---experimental, cross---sectional quantitative survey approach with a population of higher education attorneys derived from membership in the National Association of College and University Attorneys (NACUA). NACUA is a national professional organization of higher education attorney members. At the time of the study, NACUA included more than 700 institutions with over 1,600 campuses, represented by over 3,800 attorneys.²⁴ Primarily, NACUA's member institutions are non---profit, regionally accredited institutions of higher education in the United States²⁵, but with a few members from Canada and further abroad.

NACUA gave permission to the researchers to send an electronic email survey and follow up email reminders to other NACUA members through the association's listserv (NACUANET).²⁶ As described on NACUA's website, there were about 2,000 NACUA member attorneys subscribed to this service at the time of the study, and all were sent an email survey request. All types of higher education attorneys were included to obtain a wide range of experiences and perceptions of their relationships with chairs.

The survey instrument was developed by the researchers, and

24. At the time of this article, NACUA reported members as including 700 institutions, encompassing more than 1,800 campuses and 4,100 attorney representatives. See *Membership*, NACUA, <http://www.nacua.org/membership/index.asp> (last visited Dec. 7, 2014).

25. *About NACUA*, NACUA, <http://www.nacua.org/aboutnacua/index.asp> (last visited Dec. 7, 2014).

26. For additional information, see Carol L. J. Hustoles, *Through the Eyes of Higher Education Attorneys: How Department Chairs are Navigating the Waters of Legal Issues and Risk Management* (June 1, 2012) (Ph.D. dissertation, Western Michigan University), available at <http://scholarworks.wmich.edu/cgi/viewcontent.cgi?article=1037&context=dissertations>.

incorporated closed-ended questions, using Likert scales, as well as open-ended inquiries.²⁷ The survey asked participants about their perceptions and experiences regarding seventeen legal issues (thirteen faculty-related and four student-related) confronting department chairs.²⁸ An initial pilot study was conducted with higher education attorneys representing public universities. Confidentiality of individual responses was assured and protected, and all Human Subjects Institutional Review Board (HSIRB) protocols were followed.²⁹

General descriptive statistics were performed to describe the sample that participated in the survey. The ordinal data from the Likert-scaled closed-ended questions were analyzed using descriptive

27. Hustoles, *supra* note 26, at 47.

28. The survey asked participants about their perceptions and experiences regarding 13 faculty-related legal issues and four student-related legal issues confronting department chairs. The faculty-related issues were:

- (a) Sexual harassment by faculty
- (b) Other discrimination claims by faculty (e.g., age sex, race, disability, religion)
- (c) Non-collegiality, intimidation, other interpersonal problems by faculty
- (d) Tenure or promotion issues
- (e) Alcohol or drug abuse by faculty
- (f) Misuse of institutional or grant resources
- (g) Faculty work performance issues (e.g., absenteeism, ineptness, failure to deliver course content)
- (h) Conflict of interest or conflict of commitment (e.g., faculty doing non-college or university work)
- (i) Research misconduct
- (j) Agreements, contracts, and/or grants involving faculty (including contract review)
- (k) Academic freedom or controversial expression of speech
- (l) Intellectual property rights
- (m) Federal and state regulatory compliance.

The student-related issues were:

- (a) Discrimination claims by students
- (b) Grade appeals, academic probation, or dismissal issues
- (c) Family Educational Rights and Privacy Act (FERPA) issues
- (d) Parent complaints and requests.

It may be questioned why athletic legal compliance and risk management issues were not addressed in this study. Based upon the experience of the researcher, Dr. Hustoles, the answer is that department chairs do not normally deal with athletic legal compliance and risk management issues. Rather, athletic compliance issues are ones which other academic administrators and units generally handle. Accordingly, the survey questions were formulated based on those issues that department chairs themselves would generally face in the regular course of their roles and duties.

29. Hustoles, *supra* note 26.

statistics of frequencies, percentages, means, and standard deviations. To address other aspects of our study, multivariate analysis of variance were performed to examine any differences among various demographic groups.³⁰ Open-ended responses were reviewed and categorized.

Considering the great number of higher education attorneys in NACUA, the response rate may initially be perceived as low. The invitation to participate in the survey, with two follow up invitations, were just three single messages among the many received by higher education attorneys each day. As noted earlier, higher education attorneys have a wide variety of tasks and issues to deal with on a daily basis, and it is difficult to keep up with all the demands of their clients.³¹ Thus, some attorneys, with so many other professional responsibilities and tasks, simply may not have had the time or inclination to participate in this survey. Moreover, the study had the constraints of specific time limits in which to respond. This may not have worked for some of the NACUA attorneys' schedules. In addition, NACUANET subscribers have the option of disabling their accounts so they can post and search messages, but will not receive messages. Thus, the precise number of NACUANET subscriber higher education attorneys who saw and considered the invitations to participate in the survey is not known.

Nevertheless, researchers also have concluded that low response rates alone are not necessarily suggestive of bias.³² Rather, "low" rates of return are *not* biasing when respondent characteristics are representative of non-respondents.³³ Due to the commonalities of the duties and responsibilities of higher education attorneys, the respondent characteristics in this study arguably are representative of the non-respondent attorneys.

IV. RESPONDENT DEMOGRAPHICS

Responses were received from 297 higher education attorneys from across the United States, representing about a 15% response rate if indeed all 2,000 attorneys within the listserv actually received the

30. *See id.*

31. SANTORA & KAPLIN, *supra* note 3; Kathleen C. Santora & Edward N. Stoner, *What Would You Do?* 35 CHANGE 44 (2003).

32 Linda J. Sax et al., *Assessing Response Rates and Nonresponse Bias in Web and Paper Surveys*, 44 RESEARCH IN HIGHER EDUCATION 409, 409-432 (2003) (citing J.A. Krosnick, *Survey Research*, 50 ANN. REV. PSYCHOL. 537, 537-567 (1999), & D.A. Dillman, *The Design and Administration of Mail Surveys*, 17 ANN. REV. SOCIOL. 225, 225-249 (1991)).

33. Sax et al. *supra* note 32, at 412.

survey.³⁴ Table 1 shows the geographic regions for the respondent attorneys throughout the United States, revealing that the largest groups of participants were from the East North Central Division 3 (21.5%) and from the South Atlantic Division 5 (23.9%).³⁵

A. Table 1: Higher Education Attorney Respondents by Geographic Region

Region	N	%
(1) New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)	27	9.1
(2) Middle Atlantic (New Jersey, New York, Pennsylvania)	35	11.8
(3) East North Central (Indiana, Illinois, Michigan, Ohio, Wisconsin)	64	21.5
(4) West North Central (Iowa, Nebraska, Kansas, North Dakota, Minnesota, South Dakota, Missouri)	21	7.1
(5) South Atlantic (Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia)	71	23.9
(6) East South Central (Alabama, Kentucky, Mississippi, Tennessee)	8	2.7
(7) West South Central (Arkansas, Louisiana, Oklahoma, Texas)	29	9.8
(8) Mountain (Arizona, Colorado, Idaho, New Mexico, Montana, Utah, Nevada, Wyoming)	20	6.7
(9) Pacific (Alaska, California, Hawaii, Oregon, Washington)	20	6.7

34. Hustoles, *supra* note 26, at 59.

35. *Id.* at 60.

Country other than the United States	2	0.7
Total responding to this demographic question	297	100.0

Attorneys were asked to report approximately how many years they practiced as a higher education attorney. Responses ranged from under one year to over forty years, and included: 0---7 years (30.3%), 8---15 years (27.8%), 16---23 years (21.3%), 24---31 years (13.8%), and 32 or more years (6.8%).³⁶

Respondents were also asked to indicate the capacity in which they served as higher education attorneys most often in the past three years. Results included: Attorney serving in an in---house General Counsel office (85.5%), Outside legal counsel in a private law firm or practice (5.7%), Attorney at college or university serving in a non---attorney role (4.4%), Attorney serving in a State system (2.4%), and Attorney serving in an Attorney General Office/Department (2.0%).³⁷

Finally, respondents were asked to identify the different types of higher education institutions they represented most often in the past three years. The greatest number and percentage of those whom responded served public four (4) year doctoral/research institutions (44.6%), followed by not---for---profit private four (4) year doctoral/research institutions (24.3%), public four (4) year institutions (non---doctoral, non---research) (13.2%), not---for---profit private four (4) year institutions (non---doctoral, non---research) (9.5%), and public two (2) year institutions (7.1%).

V. LEGAL ISSUE RESULTS

For each of the seventeen issues, respondents were asked to rate them for five aspects: how *frequently* they provide such assistance to department chairs; *the amount of* time spent on such assistance; issues for which department chairs have the *most difficulty*; issues perceived as having the *greatest impact* upon institutional legal liability and risk management efforts; and issues for which higher education attorneys believe department chair training is *most essential*.

A. Frequency of Legal Assistance

Survey participants were asked to estimate the frequency (i.e., how often) yearly they provided legal assistance for their institutions' department chairs. A 4---point Likert scale was utilized ranging from

36. *Id.*

37. *Id.* at 61.

1 being never to 4 meaning very frequently (12+ times per year). Table 2 summarizes the resulting data, as ranked from highest to lowest means.

Responses showed that contracts and grants was the faculty---related issue attorneys worked on most frequently for chairs ($M = 3.0$), followed closely by the issue of state and federal compliance ($M = 2.87$). Higher education attorneys reported that they worked least frequently for department chairs regarding the faculty---related issues of misuse of institutional or grant resources ($M = 1.66$), research misconduct ($M = 1.63$) and alcohol or drug abuse ($M = 1.60$).

Participant higher education attorneys indicated that FERPA questions were the student---related issue that they worked on most frequently with department chairs ($M = 2.70$).

1. Table 2: Frequency of Legal Assistance to Department Chairs

Rank	Issue	N	N (%)				SD	M
			[1]	[2]	[3]	[4]		
<i>Faculty Issues</i>								
1	Contracts/ Grants	295	32 (10.8)	68 (23.1)	64 (21.7)	131 (44.4)	1.1	3.00
2	State/Fed Compliance	293	24 (8.2)	89 (30.4)	81 (27.6)	99 (33.8)	.98	2.87
3	Intellectual Property	293	44 (15.0)	137 (46.8)	60 (20.5)	52 (17.7)	.95	2.41
4	Discrimination	292	52 (17.8)	163 (55.8)	68 (18.2)	9 (3.1)	.72	2.12
5	Interpersonal Problems	289	61 (21.1)	154 (53.3)	61 (21.1)	13 (4.5)	.77	2.09
6	Performance Problems	292	61 (20.9)	155 (53.1)	65 (22.3)	11 (3.8)	.76	2.09
7	Tenure and Promotion	291	72 (24.7)	149 (51.2)	55 (18.9)	15 (5.2)	.81	2.04
8	Conflict of Interest	292	64 (21.9)	173 (59.2)	42 (14.4)	13 (4.5)	.74	2.01
9	Sexual Harass/ Faculty	292	68 (23.3)	191 (65.4)	30 (10.3)	3 (1.0)	.61	1.89

10	Academic Freedom	293	76 (25.9)	188 (64.2)	25 (8.5)	4 (1.4)	.62	1.85
11	Misuse of Resources	294	114 (38.8)	167 (56.8)	13 (4.4)	0 (0.0)	.56	1.66
12	Research Misconduct	293	125 (33.4)	154 (52.6)	12 (4.1)	2 (0.7)	.60	1.63
13	Alcohol or Drug Abuse	289	124 (42.9)	160 (55.4)	3 (1.0)	2 (0.7)	.55	1.60

Student Issues

1	FERPA questions	294	33 (11.2)	94 (32.0)	96 (32.7)	71 (24.1)	.96	2.70
2	Grade/academic issues	294	60 (20.4)	135 (45.9)	83 (28.2)	16 (5.4)	.82	2.19
3	Harassment by students	294	51 (17.3)	155 (52.7)	73 (24.8)	15 (5.1)	.77	2.18
4	Parent complaints	293	70 (23.9)	130 (44.4)	74 (25.3)	19 (6.5)	.86	2.14

Note. Likert Scale = [1] Never, [2] Occasionally (1-5 times/year), [3] Often (6-11 times/year), [4] Very Frequently (12+ times/year).

B. Amount of Time Spent on Legal Assistance

Because the *number* of times higher education attorneys work with clients on any given issue does not necessarily equate to the *amount* of time spent on that same type of issue, survey participants were also asked to estimate the average amount of time yearly they spent providing legal assistance for their institutions' department chairs.³⁸ A 4-point Likert scale was utilized ranging from 1 being no time, to 4 being an extensive amount of time (over 150 hours per year). Table 3 summarizes the resulting data, as ranked from highest to lowest means.

Responses again showed that contracts and grants (M = 2.98) and federal and state compliance (M = 2.87) were those for which the most time was spent. Those faculty-related issues that required the least amount of their time were research misconduct (M = 1.79) and alcohol or drug abuse (M = 1.63).

Regarding student-related issues, participants reported similar

38. *Id.* at 68.

amounts of time working for chairs on FERPA questions ($M = 2.41$), discrimination or harassment by students ($M = 2.34$), and grade appeals, academic probation, and dismissal ($M = 2.25$). The attorneys reported that parent complaints and requests took the least amount of their time ($M = 2.02$), with 69 (24.4%) and 147 (51.9%) indicating that these student issues took “no time” or “minimum time” per year.

1. Table 3: Annual Number of Hours of Time Spent on Legal Assistance Provided for Department Chairs

Rank	Issue	N	N (%)				SD	M
			[1]	[2]	[3]	[4]		
<i>Faculty Issues</i>								
1	Contracts/ Grants	285	26 (9.1)	61 (21.4)	91 (31.9)	107 (37.5)	.98	2.98
2	State/Fed Compliance	283	26 (9.2)	75 (26.5)	92 (32.5)	90 (31.8)	.97	2.87
3	Discrimination	283	48 (17.0)	111 (39.2)	103 (36.4)	21 (7.4)	.85	2.34
4	Intellectual Property	283	48 (17.0)	120 (42.4)	85 (30.0)	30 (10.6)	.88	2.34
5	Sexual Harass/ Faculty	282	60 (21.3)	127 (45.0)	87 (30.9)	8 (2.8)	.78	2.15
6	Tenure and Promotion	282	70 (24.8)	124 (44.0)	74 (26.2)	14 (5.0)	.84	2.11
7	Performance Problems	283	60 (21.2)	142 (50.2)	72 (25.4)	9 (3.2)	.77	2.11
8	Interpersonal Problems	283	60 (21.2)	142 (50.2)	73 (25.8)	8 (2.8)	.76	2.10
9	Conflict of Interest	284	57 (20.1)	167 (58.8)	50 (17.6)	10 (3.5)	.72	2.05
10	Academic Freedom	283	73 (25.8)	177 (62.5)	29 (10.2)	4 (1.4)	.63	1.87
11	Misuse of Resources	283	102 (36.0)	143 (50.5)	32 (11.3)	6 (2.1)	.72	1.80
12	Research Misconduct	281	115 (40.9)	119 (42.3)	37 (13.2)	10 (3.6)	.80	1.79

13	Alcohol or Drug Abuse	281	121 (43.1)	145 (51.6)	14 (5.0)	1(0.4)	.60	1.63
<i>Student Issues</i>								
1	FERPA questions	284	32 (11.3)	125 (44.0)	106 (37.3)	21 (7.4)	.79	2.41
2	Harassment by students	285	48 (16.8)	113 (39.6)	103 (36.1)	21 (7.4)	.84	2.34
3	Grade/Academic Issues	284	57 (20.1)	118 (41.5)	90 (31.7)	19 (6.7)	.85	2.25
4	Parent complaints	283	69 (24.4)	147 (51.9)	60 (21.2)	7 (2.5)	.75	2.02

Note. Not all participants responded to all items. Likert Scale = [1] No time, [2] Minimal Amount of Time (1–25 hours/year), [3] Modest Amount of Time (26–150 times/year), [4] Extensive Amount of Time (over 150 hours/year).

C. Department Chairs’ Level of Difficulty with Legal Issues

Survey participants were next asked to rate the level of difficulty they perceived department chairs have in dealing adequately with legal issues involving faculty and students. A 6---point Likert range scale was utilized: 1 meaning not a difficult time through 6 being extremely difficult. Respondents were asked to choose “not applicable” only if they had never provided legal counsel to chairs on that particular legal issue. Ranked from highest to lowest means, Table 4 summarizes the resulting data.

The ranked means show that the four faculty---related legal issues with which attorneys believed chairs had the most difficulty were related to state and federal compliance (M = 3.74), non---collegiality interpersonal problems (M = 3.56), discrimination (other than sexual harassment) (M = 3.60), and sexual harassment by faculty (M = 3.41).

The student---related legal issue attorneys believed chairs had the most difficulty with was discrimination and harassment by students (M = 3.41).

1. Table 4: Chairs’ Level of Difficulty with Legal Issues

R a n k	Issue	N	N (%)						SD	M
			[N/A]	[1]	[2]	[3]	[4]	[5]		

1	State/Fed Compliance	273	19 (7.0)	8 (2.9)	25 (9.2)	52 (19.0)	72 (26.4)	64 (23.4)	33 (12.1)	1.6	3.74
2	Interpersonal Problems	274	44 (16.1)	9 (3.3)	12 (4.4)	29 (10.6)	66 (24.1)	64 (23.4)	50 (18.2)	2.0	3.66
3	Discrimination	274	42 (15.3)	5 (1.8)	14 (5.1)	40 (14.6)	64 (23.4)	77 (28.1)	32 (11.7)	1.9	3.60
4	Sex. Harassment by Faculty	275	47 (17.1)	6 (2.2)	20 (7.3)	31 (11.3)	55 (20.0)	75 (27.3)	41 (14.9)	2.0	3.56
5	Performance Problems	275	47 (17.1)	3 (1.1)	27 (9.8)	44 (16.0)	52 (18.9)	72 (26.2)	30 (10.9)	1.9	3.41
6	Intellectual Property	275	37 (13.5)	12 (4.4)	28 (10.2)	60 (21.8)	67 (24.4)	48 (17.5)	23 (8.4)	1.8	3.25
7	Conflict of Interest	275	35 (12.7)	10 (3.6)	44 (16.0)	58 (21.1)	58 (21.1)	53 (19.3)	17 (6.2)	1.7	3.17
8	Contracts/ Grants	275	19 (6.9)	17 (6.2)	46 (16.7)	81 (29.5)	75 (27.3)	31 (11.3)	6 (2.2)	1.4	3.07
9	Tenure and Promotion	274	51 (18.6)	8 (2.9)	26 (9.5)	51 (18.6)	79 (28.8)	44 (16.1)	15 (5.5)	1.8	3.06
10	Academic Freedom	272	55 (20.2)	15 (5.5)	37 (13.6)	58 (21.3)	66 (24.3)	29 (10.7)	12 (4.4)	1.8	2.74
11	Research Misconduct	272	70 (25.7)	26 (9.6)	39 (14.3)	29 (10.7)	42 (15.4)	40 (14.7)	26 (9.6)	2.1	2.63
12	Alcohol/ Drug Abuse	269	81 (30.1)	15 (5.6)	30 (11.2)	39 (14.5)	42 (15.6)	39 (14.5)	23 (8.6)	2.1	2.58
13	Misuse of Resources	272	63 (23.2)	18 (6.6)	55 (20.2)	42 (15.4)	47 (17.3)	37 (13.6)	10 (3.7)	1.8	2.53

Student Issues

1	Harassment by students	273	48 (17.6)	4 (1.5)	18 (6.6)	48 (17.6)	58 (21.2)	67 (24.5)	30 (11.0)	1.9	3.41
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2	FERPA questions	27 2	36 (13 .2)	15 (5.5)	51 (18.8)	78 (28.7)	65 (23.9)	19 (7.0)	8 (2.9)	1.5	2.77
3	Academic Issues	27 3	43 (15 .8)	15 (5.5)	55 (20.1)	73 (26.7)	57 (20.9)	26 (9.5)	4 (1.5)	1.6	2.66
4	Parent complaints	27 4	57 (20 .8)	12 (4.4)	44 (16.1)	67 (24.5)	67 (24.5)	20 (7.3)	7 (2.6)	1.7	2.59

Note: Likert Scale = [Not Applicable ("N/A")]; [1] Not difficult – [6] Extremely difficult.

D. Potential Adverse Impact on Liability and Risk Management

Survey participants were asked to rate the level of adverse impact they believed chairs' failure to adequately account for legal concerns for faculty---related legal issues could have on institutional legal liability or risk management efforts. A 6---point Likert scale was utilized: 1 being "no adverse impact" through 6 being an "extremely adverse impact." Ranked from highest to lowest means, Table 5 summarizes the resulting data.

The faculty---related legal issues attorneys believed could have the most adverse impact were sexual harassment by faculty (M = 4.96), discrimination (other than sexual harassment) (M = 4.89), and state and federal compliance (M = 4.88). The top student---related legal issue was discrimination or harassment by students (M = 4.92).

1. Table 5: Potential Adverse Impact on Institution's Legal Liability or Risk Management Efforts

Rank	Issue	N	N (%)					SD	M	
			[1]	[2]	[3][4]	[5]	[6]			
<i>Faculty Issues</i>										
1	Sexual Harassment by Faculty	249	6 (2.4)	4 (1.6)	21 (8.4)	38 (15.3)	73 (29.3)	107 (43.0)	1.2	4.96
2	Discrimination	249	6 (2.4)	4 (1.6)	22 (8.8)	42 (16.9)	81 (32.5)	94 (37.8)	1.2	4.89
3	State/Federal Compliance	250	6 (2.4)	9 (3.6)	21 (8.4)	36 (14.4)	78 (31.2)	100 (40.0)	1.3	4.88
4	Misuse of Resources	245	9 (3.7)	20 (8.2)	24 (9.8)	38 (15.5)	63 (25.7)	91 (37.1)	1.5	4.63
5	Research Misconduct	244	13 (5.3)	25 (10.2)	31 (12.7)	59 (24.2)	50 (20.5)	66 (27.0)	1.5	4.25
6	Contracts/	247	7	22	52	65	65	36	1.3	4.08

	Grants		(2.8)	(8.9)	(21.1)	(26.3)	(26.3)	(14.6)		
7	Tenure and Promotion	248	11 (4.4)	23 (9.3)	50 (20.2)	74 (29.8)	48 (19.4)	42 (16.9)	1.4	4.01
8	Intellectual Property	249	9 (3.6)	30 (12.0)	54 (21.7)	76 (30.5)	53 (21.3)	27 (10.8)	1.3	3.86
9	Alcohol or Drug Abuse	243	57 (20.1)	167 (58.8)	50 (17.6)	10 (3.5)	50 (17.6)	10 (3.5)	1.4	3.67
10	Interpersonal Problems	249	7 (2.8)	44 (17.7)	57 (22.9)	78 (31.3)	43 (17.3)	20 (8.0)	1.3	3.67
11	Conflict of Interest/ Commitment	249	10 (4.0)	38 (15.3)	65 (26.1)	82 (32.9)	27 (10.8)	27 (10.8)	1.3	3.64
12	Performance Problems	249	7 (2.8)	53 (21.3)	62 (24.9)	71 (28.5)	40 (16.1)	16 (3.6)	1.3	3.53
13	Academic Freedom	246	15 (6.1)	55 (22.4)	62 (25.2)	68 (27.6)	30 (12.2)	16 (6.5)	1.3	3.37
<i>Student Issues</i>										
1	Harassment by students	247	3 (1.2)	8 (3.2)	21 (8.5)	39 (15.8)	79 (32.0)	97 (39.3)	1.2	4.92
2	Academic Issues	246	6 (2.4)	36 (14.6)	73 (29.7)	78 (31.7)	35 (14.2)	18 (7.3)	1.2	3.63
3	FERPA questions	248	15 (6.0)	62 (25.0)	82 (33.1)	44 (17.7)	31 (12.5)	14 (5.6)	1.3	3.23
4	Parent complaints	246	9 (3.7)	67 (27.2)	84 (34.1)	49 (19.9)	23 (9.3)	14 (5.7)	1.3	3.21

Note. Likert Scale = [1] No Adverse Impact - [6] Extremely adverse impact.

E. Essential Areas for Chair Training Given Limited Resources

Survey participants ranked how essential chair training is for various legal issues in order to help reduce legal liability and improve risk management efforts. A 6---point Likert scale was utilized: 1 as “not essential” through 6 as “extremely essential.” With means of 5.46 and 5.36, respectively (close to the top ranking of “extremely essential”), the two faculty---related legal issues most essential for chairs to receive training were related to discrimination: sexual harassment by faculty and discrimination other than sexual harassment. In fact, 167 (65.7%) and 146 (57.7%) of those responding rated these issues a “6” (extremely essential). The top student---related legal issue also was discrimination or harassment by students (M = 5.27). Table 6 summarizes all resulting data, from highest to lowest mean.

1. Table 6: Essential Issues for Chair Training to Reduce Legal Liability and Improve Risk Management

Rank	Issue	N	N (%)						SD	M
			[1]	[2]	[3]	[4]	[5]	[6]		
<i>Faculty Issues</i>										
1	Sexual Harassment by Faculty	254	1 (0.4)	0 (0.0)	9 (3.5)	27 (10.6)	50 (19.7)	167 (65.7)	.87	5.46
2	Discrimination	253	1 (0.4)	0 (0.0)	10 (4.0)	3 (12.3)	65 (25.7)	146 (57.7)	.90	5.36
3	State/Fed Compliance	252	1 (0.4)	8 (3.2)	26 (10.3)	47 (18.7)	74 (29.4)	96 (38.1)	1.1	4.88
4	Misuse of Resources	252	9 (3.7)	20 (8.2)	24 (9.8)	38 (15.5)	63 (25.7)	91 (37.1)	1.3	4.63
5	Research Misconduct	253	7 (2.8)	16 (6.3)	35 (13.8)	60 (23.7)	61 (24.1)	74 (29.2)	1.4	4.48
6	Tenure and Promotion	253	6 (2.4)	9 (3.6)	47 (18.6)	61 (24.1)	67 (26.5)	63 (24.9)	1.3	4.43
7	Conflict of Interest/ Commitment	252	6 (2.4)	24 (9.5)	45 (17.9)	74 (29.4)	60 (23.8)	43 (17.1)	1.3	4.14
8	Interpersonal Problems	252	3 (1.2)	21 (8.3)	49 (19.4)	87 (34.5)	50 (19.8)	42 (16.7)	1.2	4.13
9	Contracts/ Grants	252	4 (1.6)	15 (6.0)	29 (11.5)	57 (22.6)	64 (25.4)	83 (32.9)	1.2	4.11
10	Intellectual Property	252	6 (2.4)	19 (7.5)	54 (21.4)	81 (32.1)	58 (23.0)	34 (13.5)	1.2	4.06
11	Performance Problems	253	3 (1.2)	33 (13.0)	58 (22.9)	75 (29.6)	49 (19.4)	35 (13.8)	1.3	3.94
12	Alcohol or Drug Abuse	249	13 (5.2)	37 (14.9)	59 (23.7)	72 (28.9)	32 (12.9)	36 (14.5)	1.4	3.73
13	Academic Freedom	254	18 (7.1)	40 (15.7)	75 (29.5)	64 (25.2)	27 (10.6)	30 (11.8)	1.4	3.52
<i>Student Issues</i>										
1	Harassment by students	255	1 (0.4)	4 (1.6)	16 (6.3)	32 (12.5)	52 (20.4)	150 (58.8)	1.1	5.27
2	Academic Issues	253	5 (2.0)	24 (9.5)	61 (24.1)	79 (31.2)	49 (19.4)	35 (13.8)	1.3	3.98
3	FERPA questions	254	6 (2.4)	36 (14.2)	62 (24.4)	65 (25.6)	50 (19.7)	35 (13.8)	1.3	3.87

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4	Parent complaints	252 13 65 72 64 20 18 1.3 3.27 (5.2) (25.8) (28.6) (25.4) (7.9) (7.1)

Note. Likert Scale = [1] Not Essential - [6] Extremely essential.

VI. DISCUSSION AND FINDINGS

Viewing all aspects of this study as a whole, Table 7 provides an encompassing “at a glance” look at these variables in context of their rankings for both faculty--- and student---related issues. For this table, the faculty---related and student---related variables are presented in a single list to reveal the totality of these factors from the perspectives of the higher education attorney respondents.

Due to the enormous financial and other damaging consequences that legal liability and insufficient risk management can have on an institution, the table focuses *first* on data relating to attorneys’ views on the level of *potential or actual adverse impact chairs’ failure to adequately account for legal concerns could have on institutional legal liability or risk management efforts*. The rank and means in this category are ranked from highest to lowest adverse impact, with “1” being the highest potential adverse impact and “17” being the lowest for the variables. The variables for the other four categories of data are also presented in this order.

A. Table 7: At a Glance: Comparing All Issues by Ranks and Means

LEGAL ISSUE	Rank (Means)	Rank (Means)	Rank (Means)	Rank (Means)	Rank (Means)Time
F is Faculty-Related Issue S is Student-Related Issue	Adverse Impact on Liability or Risk Mgmt. ^a	Essential for Chair Training ^b	Chairs' Level of Difficulty ^c	Frequency of Legal Assistance ^d	Spent on Legal Assistance ^e
F-Sexual Harassment by Faculty	1 (4.96)	1 (5.46)	4 (3.56)	13 (1.89)	6 (2.15)
S-Discrim./Harass. Student Claims	2 (4.92)	3 (5.27)	6 (3.41)	6 (2.18)	4 (2.34)
F-Discrimination (non- sex.har.)	3 (4.89)	2 (5.36)	3 (3.60)	8 (2.12)	4 (2.34)
F-State/Federal Compliance	4 (4.88)	4 (4.88)	1 (3.74)	2 (2.87)	2 (2.87)
F-Misuse Inst./Grant Resources	5 (4.63)	5 (4.63)	17 (2.53)	15 (1.66)	13 (1.80)
F-Research Misconduct	6 (4.25)	6 (4.48)	14 (2.63)	16 (1.63)	14 (1.79)
F-Contracts/ Grants	7 (4.08)	10 (4.11)	9 (3.07)	1 (3.00)	1 (2.98)
F-Tenure and Promotion	8 (4.01)	7 (4.43)	10 (3.06)	11 (2.04)	8 (2.11)
F-Intellectual Property Rights	9 (3.86)	11 (4.06)	7 (3.25)	4 (2.41)	4 (2.34)
F-Alcohol or Drug Abuse	10 (3.67)	15 (3.73)	16 (2.58)	17 (1.60)	15 (1.63)
F-Non-collegiality Problems	11 (3.67)	9 (4.13)	2 (3.66)	9 (2.09)	9 (2.10)
F-Conflict of Interest/Commit.	12 (3.64)	8 (4.14)	8 (3.17)	12 (2.01)	10 (2.05)
S-Grade appeals, prob., dismissal	13 (3.63)	12 (3.98)	13 (2.66)	5 (2.19)	5 (2.25)
F-Problem Work Performance	14 (3.53)	13 (3.94)	5 (3.41)	10 (2.09)	7 (2.11)
F-Academic Freedom/ Speech	15 (3.37)	16 (3.52)	12 (2.74)	14 (1.85)	12 (1.87)
S-FERPA Questions	16 (3.23)	14 (3.87)	11 (2.77)	3 (2.70)	3 (2.41)
S-Parent Complaints/Requests	17 (3.21)	17 (3.27)	15 (2.59)	7 (2.14)	11 (2.02)

^a Likert Scale = [1] No Adverse Impact – [6] Extremely adverse impact

^b Likert Scale = [1] Not Essential – [6] Extremely essential

^c Likert Scale = [1] Not difficult – [6] Extremely difficult

^d Likert Scale = [1] Never, [2] Occasionally (1–5 times/year), [3] Often (6–11 times/year), [4] Very Frequently (12+ times/year).

^e Likert Scale = [1] No time, [2] Minimal Time (1–25 hours/year), [3] Modest Time (26–150 hours/year), [4] Extensive Time (over 150 hours/year)

B. Findings by Variables

Within this section, each of the seventeen variables are addressed in the order they appear in Table 7, discussing their relative rankings and comparing these findings to what others have *observed* regarding these issues in the literature. Note that such observations by others were usually not based on formal research per se, but the expert observations of those in the field.

The legal issue of *sexual harassment by faculty* was ranked by respondent attorneys as the *top* issue not only having the most actual or potential adverse impact upon legal liability or risk management efforts (mean of 4.96) but also being the most essential for chair training (mean of 5.46). (Note that sexual harassment is one type of discrimination). This finding is not surprising, as it supports observations by Kaplin and Lee that sexual harassment has recently been given considerable attention and that it usually/ordinarily violates both state law and federal law (Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972).³⁹

Following close behind with means ranging from 4.89–5.27, the second and third top legal issues having the most actual or potential adverse

impact upon liability or risk management efforts, as well as most essential for chair training, were *student claims of discrimination and harassment* and *faculty---related discrimination other than sexual harassment*. This likewise is an understandable finding, considering the extensive number of claims and litigation resulting from these issues and it is supported by the tremendous amounts of legal cases in the courts and governmental agencies, as well as information and guidelines provided by the U. S. Equal Employment Opportunity Commission.⁴⁰ The finding is further buttressed when taking into account the numerous types of discrimination, including based on race, color, sex, national origin, disability, and religion.⁴¹

Respondent attorneys rated these three discrimination---related legal issues highest in their concerns regarding institutional adverse impact, liability, and risk management, and fairly high for level of difficulty

39. KAPLIN & LEE, *supra* note 1; Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (Jul. 2, 1964) (codified as amended in scattered sections of 2 U.S.C., 28 U.S.C., and 42 U.S.C.); Title IX of the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235, 20 U.S.C. §§ 1681-88 (2012).

40. *Laws & Guidance*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <http://www.eeoc.gov/laws/index.cfm> (last visited Dec. 7, 2014).

41. *Discrimination by Type*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <http://www.eeoc.gov/laws/types/index.cfm> (last visited Dec. 7, 2014); KAPLIN & LEE, *supra* note 1.

(mean of 3.56). Yet, incongruously, the means for the other two categories (1.89 and 2.15) reflected that these issues were relatively low as to the frequency and amount of time they spent providing legal assistance for chairs.

The very closely ranked fourth and fifth legal issues for both adverse impact and importance of chair training with a mean of 4.88 was *state and federal compliance*, and with a mean of 4.63, *misuse of institutional or grant resources*. These findings are supported by others who have expounded on how institutional compliance requirements in many areas have steeply increased in recent years,⁴² together with how auditors, governmental agencies, and the public have been scrutinizing and challenging research and other expenditures of colleges and universities.⁴³ The frequency and time spent by attorneys for state and federal compliance rated second highest (with means of 2.87 in both categories), yet in contrast was very low (means of 1.66 and 1.80) for misuse of institutional or grant resources.

The legal issue of *research misconduct and faculty plagiarism* rated sixth highest in concern by respondent attorneys for adverse impact and being essential for chair training (means of 4.25 and 4.48). This still fairly high concern for institutional adverse impact on liability and risk management, together with perceived need for chair training, is supported by others, including Kaplin and Lee.⁴⁴ They have pointed out that research misconduct can lead to termination of tenure, employment discipline or dismissal, dilution of the public trust, and consequences to the institution itself.⁴⁵ Nevertheless, once more, attorneys reported much lower rankings as to chairs' level of difficulty (mean of 2.53) and frequency and time spent on assistance (means of 1.63 and 1.79) for the research misconduct and plagiarism legal issue.

Contracts, agreements, and grants (including contract review) (means of 4.08 and 4.06) was the next highest ranked for actual or potential adverse institutional impact and chair training. Notably, this legal issue was rated *first* for frequency and time spent in legal assistance (means of 3.00 and 2.98). The literature supports this

42. Stephen S. Dunham, *Government Regulation of Higher Education: The Elephant in the Middle of the Room*, 36 J.C. & U.L. 749 (2010); Jennifer E. Kirkland, *Creating Effective Compliance Programs at Smaller Institutions or on a Limited Budget: Models and Procedures* (Nov. 2009), available at <http://www.highered.compliance.org/compliance/resources/xv---09---11---11.doc>.

43. Lynn Mcguire, *Federal Research Grant Funding at Universities: Legislative Waves from Auditors Diving into Overhead Cost Pools*, 23 J.C. & U.L. 563 (1997); *Higher Education Law at a Glance*, NACUA, <http://www.nacua.org/messages/higheredlawataglance.pdf> (last visited Oct. 9 2014).

44. KAPLIN & LEE, *supra* note 1.

45. *Id.*

finding, since chairs are involved in numerous types of contractual issues, and potential financial or other legal consequences for institutions can ensue due to chairs' entering or breaching contracts, or failing to meet grant obligations.⁴⁶

Next, the legal issue of *tenure and promotion* was ranked eighth with a mean of 4.01 on potential adverse impact for legal liability and risk management, and seventh (mean of 4.43) for essentialness of chair training. The finding is not unexpected with the abundant literature about this issue as it applies to chairs with criteria for tenure and promotion varying among institutions, and with probable legal challenges to negative decisions in which chairs play a significant role.⁴⁷ Attorneys report "middle ranges" of means (from 3.06 for chairs' level of difficulty, to 2.04 and 2.11 for frequency and time spent) though.

The legal issue involving *faculty alcohol or drug abuse* was ranked tenth for potential adverse impact on liability and risk management efforts (mean of 3.67), with a similar mean of 3.73 for essentialness of training. This could be anticipated considering the legal ramifications and compliance requirements for the institution pointed out by others.⁴⁸ Apparently chairs do not find this to be the type of legal issue for which they seek legal counsel, however, since respondent attorneys rated this issue relatively low for chairs' level of difficulty (mean of 2.58), frequency of legal assistance (mean of 1.60), and amount of time spent on legal assistance (1.63).

The legal issue of *faculty non---collegiality and interpersonal problems* was ranked the same as for alcohol and drug abuse, also with a mean of 3.67 for adverse impact, and was actually ranked higher (ninth) with a mean of 4.13 as its being essential for chair training. Interestingly, it ranked *second* for attorneys' views on the difficulty of this issue for chairs. This finding is supported by the work of others such as Weeks, who related that fractious relationships can become so serious that they develop into major differences regarding curriculum and program philosophy, and if left unaddressed, can lead to serious harm to the department, faculty, students, and the institution.⁴⁹ Connell, Melear, and Savage also argue that collegiality should be considered for all important employment decisions, due to the contractual and other

46. BENNETT & FIGULI, *supra* note 9; KAPLIN & LEE, *supra* note 1.

47. See DANIEL W. WHEELER ET AL., THE ACADEMIC CHAIR'S HANDBOOK (2d ed., 2008); KAPLIN & LEE, *supra* note 1.

48. David J. Figuli, *Legal Liability: Reducing the Risk*, in ENHANCING DEPARTMENTAL LEADERSHIP: THE ROLES OF THE CHAIRPERSON 141 (John B. Bennett & David J. Figuli eds., 1990); KAPLIN & LEE, *supra* note 1.

49. KENT M. WEEKS, MANAGING DEPARTMENTS: CHAIRPERSONS AND THE LAW (1999).

legal issues that arise from inability to get along and work well with colleagues.⁵⁰ This issue was ranked in the middle range (means of 2.09 and 2.10) as to attorneys' frequency and time spent on legal assistance.

The legal issue of *faculty conflict of interest and of commitment* was not far behind in rankings similar to collegiality problems in all categories, with means of 3.64, 4.14, 3.17, 2.01, and 2.05, respectively. Thus, this issue sits in middle ranges of survey responses. Considering the rise of research collaborations and potential for faculty personal financial gains and divided loyalties leading to increasing awareness, need to handle conflicts of interest and commitment and the potential debilitating effects and legal consequences, this issue was obviously not overlooked in the eyes of higher education attorneys.⁵¹

Student grade appeals, academic probation, and dismissals was another legal issue also in the middle ranges of rankings in the first three categories (means of 3.63, 3.98, 2.66, 2.19, and 2.25, respectively), yet it was the *fifth* highest issue that attorneys reported for frequency and time spent on legal assistance. As Tucker noted, with students frequently lodging complaints with chairs due to matters that affect their academic success or failure, there could be substantial legal risk in chairs' dealing with these matters informally or outside of institutional procedures and rules.⁵² Considering the vast number of students in each college and university, each with an individual set of circumstances and plea, the findings from the survey as to attorneys' views for this legal issue are quite understandable.

The issue of *faculty work performance problems* was ranked a little less important in the eyes of participant attorneys as to adverse impact on legal liability and risk management (mean of 3.37), essentialness for chair training (mean of 3.94), frequency of legal assistance (mean of 2.09), and time spent on legal assistance (mean of 2.11). Attorneys reported a higher level of difficulty of chairs, though, ranking it fifth with a mean of 3.41. This finding is consistent with the observations of Boice, who described the problems chairs have in "coping with difficult colleagues" and providing suggestions to chairs in this regard.⁵³ The disparity of rankings seem to reflect that attorneys recognize or have had discussions with chairs regarding issues with problematic faculty in their departments, but that these matters do not seem to cause

50. Mary Ann Connell et al., *Collegiality in Higher Education Employment Decisions: The Evolving Law*, 37 J.C. & U.L. 529 (2011).

51. KAPLIN & LEE, *supra* note 1.

52. TUCKER, *supra* note 8.

53. Robert Boice, *Coping with Difficult Colleagues*, in *ENHANCING DEPARTMENTAL LEADERSHIP: THE ROLES OF THE CHAIRPERSON* 132 (John B. Bennett & David J. Figuli eds., 1990).

nearly as great of impact on potential legal liability or risk management, or take up as much time in providing legal counsel.

The issue of *academic freedom and faculty speech controversy* was also ranked toward the lower end in rankings, but in the middle ranges of means in responses by attorneys (means of 3.37, 3.52, 2.74, 1.85, and 1.87). The literature reflects wide ranges of views on the scope and meaning of academic freedom.⁵⁴ Rupe previously conducted a nationwide research survey of higher education attorneys seeking and reporting their views on academic freedom, illustrating the importance of this legal issue.⁵⁵ Thus, it is not surprising that this issue falls in the middle ranges of rankings relative to attorneys' views in all five categories of questions.

The student---related legal issues of *Family Education and Privacy Act (FERPA) questions* and *parent complaints and requests* for the most part fall toward the lower end of rankings and means, with the exception that attorneys reported that FERPA questions were the *third highest* issue in the frequency and amount of time they spent assisting chairs.⁵⁶ This anomalous finding is actually not that surprising when considering that chairs generally know about, but do not fully understand, the intricacies of students' federal privacy rights concerning their educational records. Also, the interpretation of FERPA has changed over time with U.S. Department of Education enforcement actions and issuance of advisory letters, and the courts issuing rulings about FERPA.⁵⁷ Respondent attorneys apparently recognized that the adverse impact on liability and risk management efforts is not as severe as it is for the other legal issues. Chairs, though, apparently seek assistance from attorneys on FERPA matters fairly often, perhaps due to parental demands and complaints about their children's academic status that chairs realize they should not be discussing.

C. Other Findings between Legal Issue Variables and Categories

Results of responses for any particular type of legal issue can be viewed in relation to any of the other legal issues, and also specifically

54. *1940 Statement of Principles on Academic Freedom and Tenure*, AMERICAN ASS'N OF UNIV. PROFESSORS (10th ed. 2006), available at <http://www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm>; AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, POLICY DOCUMENTS AND REPORTS (THE REDBOOK) (10th ed. 2006), available <http://www.aaup.org/reports---publications/publications/redbook>; KAPLIN & LEE, *supra* note 1; TUCKER, *supra* note 8; WEEKS, *supra* note 49.

55. Rupe, *supra* note 22.

56. Family Educational and Privacy Act of 1974, 20 U.S.C. § 1232g (2012).

57. KAPLIN & LEE, *supra* note 1.

in relation to any of the survey question categories. Listed here are some of these findings between variables and categories that we found especially noteworthy.

For example, before commencing this study, we would have hypothesized that the legal issues that took up most of attorneys' time in assisting chairs would have been the same ones they viewed as having the most adverse effect on liability and risk management, or for which they felt chairs needed the most training (such as legal issues involving discrimination). Nonetheless, our data revealed striking differences in the eyes of higher education attorneys among those issues that they reported *in frequency and time in providing legal assistance*, compared to those issues that had the *most potential or actual adverse effect on legal liability or risk management* and those for which they believed *chairs needed the most training*. For this study, the issues reported by higher education attorneys as being highest in the frequency and amount of *time to assist department chairs* were issues of: (1) agreements, contracts and grants (including contract review) involving faculty, (2) state and federal compliance, and (3) FERPA questions. In contrast, the top three faculty---related legal issues that attorneys reported as having the highest adverse impact on institutional legal liability or risk management efforts, as well as how essential it was for *chairs to receive training*, were (1) sexual harassment by faculty, (2) discrimination and harassment claims by students, and (3) discrimination other than sexual harassment, with the very close fourth category of state and federal compliance.

A second interesting comparison finding was that the top three legal issues attorneys reported *chairs found to be the most difficult* were (1) state and federal compliance, (2) faculty non---collegiality and interpersonal problems, and (3) discrimination other than sexual harassment. This would seem to indicate that chairs struggle hardest with not only issues that involve stringent legal mandates, but also those that involve the personal interrelationships of, and problems stemming from, the faculty in their departments.

A third interesting comparison is that attorneys ranked misuse of institutional or grant resources as fifth highest in the categories of *most adverse impact* and *essentialness for chair training*, yet relatively low for *level of difficulty and time spent on legal assistance*, and for *frequency of legal assistance*. Does this signify that chairs were handling these legal issues better than attorneys may have otherwise expected due to their complexity and potential financial and public scrutiny ramifications?

Fourth, similar ratios were found relative to research misconduct. Attorneys ranked this issue sixth in terms of *institutional adverse impact* and *the need for chair training*, yet they ranked it quite low in

terms of chairs' *level of difficulty and time spent on legal assistance*, and *frequency of legal assistance*. Does this signify a lack of comprehension by chairs on just how problematical research misconduct can be for the college or university? Or does it mean that chairs are doing well in recognizing and dealing with issues of research misconduct in their departments? Or does it mean that there just are not that many issues of research misconduct that confront chairs?

A fifth item of note is that, notwithstanding how important the issues of academic freedom and "free speech" are to faculty members, it ranked toward the bottom for all categories in attorney responses.⁵⁸ Does this mean that chairs, having one foot in the role of faculty member and the other as administrator, are of the same mind as the faculty in their department, thereby resulting in few legal controversies in attorneys' institutions regarding these issues? Or does it mean that the time of higher education attorneys is stretched so extensively in doing "triage" in responding to all the legal issues and client problems in their institutions, academic freedom and speech controversy are of a lesser priority for them?

A sixth comparison worth noting is that besides FERPA issues, attorneys ranked the student---related legal issue as to grade appeals, probation, and dismissals relatively high for the time and frequency spent working for chairs, yet much lower for *institutional adverse impact* and for how essential it was to train chairs for this issue. Could this mean that chairs are not utilizing limited attorney time as effectively as they should, or that chairs instead should be consulting other university administrators for assistance for these student academic legal issues?

Seventh, attorneys ranked the issue of intellectual property rights as fourth for *frequency and time spent providing legal assistance*, and that this legal issue ranked seventh in *chair difficulty*. Still, their rankings also showed rankings in the bottom half of issues relative to *adverse impact on liability or risk management* and for *essentialness for chair training*. Is this, then, another issue on which chairs' confusion or lack of knowledge leads to taking a disproportionate amount of attorney time in consultation when their time would be more effectively directed to assisting and training on other issues with higher adverse impact on legal liability or risk management efforts? All of the above observations and questions, and many more, could be fertile ground for future research.

58. 1940 *Statement of Principles on Academic Freedom and Tenure*, *supra* note 54; POLICY DOCUMENTS AND REPORTS (THE REDBOOK), *supra* note 54.

VII. CONCLUSIONS

As noted previously, the legal and risk management considerations with which higher education administrators must frequently deal have a significant impact on the operations of colleges and universities.⁵⁹ In these times of economic challenges and budget cuts on every level, it is extremely important for higher education institutions to work with legal counsel to proactively prevent claims and lawsuits, rather than just reacting to and expending large amounts of financial and human resources in defending against them.⁶⁰ Our study provides additional information from the higher education attorneys who observe and provide assistance to one of the most crucial academic administrative positions on campus—that of the department chair.⁶¹

This study's findings could be used to help administrators and attorneys explore ways in which department chairs could be more effectively supported by the attorneys who serve them. For instance, training could be provided on those issues that attorneys nationwide are reporting as top issues, including sexual harassment by faculty, other forms of discrimination, discrimination and harassment claims by students, and state and federal compliance issues. Such findings could thus be used in practicing preventive law, reducing institutional potential legal liability, and improving risk management efforts by way of identifying those issues that are most essential for chair training.

In short, this study adds new additional bricks to the educational leadership wall of knowledge. Our data, obtained from the largely untapped research resource of higher education attorneys, can catalyze thinking and discussion within institutions as to ways that higher education attorneys might assist in developing new or more effective ways to enable academic administrators to be successful in their respective leadership roles.

59. KAPLIN & LEE, *supra* note 1; POSKANZER, *supra* note 2.

60. KAPLIN & LEE, *supra* note 1; WARD & TRIBBENSEE, *supra* note 14.

61. CRESWELL ET AL., *supra* note 4; SEAGREN ET AL., *supra* note 4.

APPENDIX

Conceptual Framework for Study: Perceptions and input from higher education attorneys on department chairs dealing with institutional legal issues and risk management.

