

PROFESSOR KAPLIN:

His Impact on One Lawyer's Life and Career

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As I reflect upon my career in higher education law, I am struck by the role Professor William A. Kaplin played in shaping it. There were other teachers and professors who influenced and motivated me—my eighth-grade teacher who required us to read a book of our choice once a week, sparking in me a passion for reading I had never had before; my Latin professor, who encouraged me to go to law school—but no one had the same impact upon my career as Professor Kaplin. He not only opened up the world of higher education law for me but also supported me in my efforts to secure employment after law school, mentored me in my early years practicing law, and has inspired my work to this day, almost forty years after I took his course.

My first professional job was in the Washington, D.C. office of the New York State Education Department where I monitored federal education legislation and wrote legislative updates to the New York State Board of Regents for its monthly meetings. While working, I attended law school at night with the goal of attaining a juris doctorate. I had no intention of taking a bar exam, since I did not need a license to practice law to continue in my field.

In my third year of law school at Catholic University, I took a course in higher education law, which interested me because at the time I was actively analyzing federal legislation to amend the Higher Education Act of 1965. This is when I first met Professor Kaplin, who was the course instructor and the author of our textbook, *The Law of Higher Education*. The course was a seminar with just a handful of students; therefore, everyone actively participated. It was one of the most lively and interesting courses I took in law school, and I thoroughly enjoyed it. What I did not expect from the course was how connected I would feel to the subject matter: legal issues on college campuses. I was able to glean how the laws I was monitoring in Congress played out on campus, and I became hooked on the practice of higher education law. Upon completing the course, my new dream was to be an in-house counsel to a college or university, which took me down an entirely different career path, and required me to take a bar exam. I chose New York's. I am grateful for that change in plans, because I have loved my career as a higher education attorney.

After graduating from law school and serving in a federal judicial clerkship, I applied for an attorney position in the Office of General Counsel at the State University of New York (SUNY) in 1990. Professor Kaplin was a reference for me

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and wrote a strong letter of recommendation on my behalf. Given Professor Kaplin's stature in the higher education law arena, I am convinced his letter and support put me in the top pool of candidates and eventually landed me the position. That search was extremely competitive, with well over 100 people applying for the job.

During my early years at SUNY, Professor Kaplin was always available to take my calls for advice, and I relied heavily on his book, *The Law of Higher Education*. One of my first cases involved a student protest that disrupted a commencement after which the students were disciplined by the institution. The students brought an action against SUNY in which they claimed the school had no jurisdiction to discipline them because they completed all their degree requirements. The legal question was whether the institution could discipline students after completing all academic requirements but before receiving their degrees. A case I found in Professor Kaplin's book supported the school's position that it did have jurisdiction to discipline the students, and SUNY was able to obtain a favorable court ruling as a result. In its unpublished decision, the court cited that case I had found as a basis for its ruling.¹

Professor Kaplin invited me to review chapters in one of the versions of *The Law of Higher Education*, and he credited my contributions in his Acknowledgements.² This pleased my supervisor at the time because it not only recognized my work but also highlighted our Office of General Counsel at SUNY. And when it was time for me to leave my job to stay home with my young children, Professor Kaplin was supportive of my decision to pause my career. He understood the tug of my children but encouraged me to keep abreast of higher education legal issues, which I did, and that helped me get back into my career a few years later.

Nowhere was Professor Kaplin's presence felt more than at Siena College, a small Franciscan institution outside of Albany, New York, where I was College Counsel. I was the college's first in-house counsel, and I built my office upon Professor Kaplin's teaching. I literally used the Table of Contents from *The Law of Higher Education* to set up my filing system. When analyzing the many legal issues that crossed my desk, I always started with Professor Kaplin's rubric in mind:

PUBLIC EDUCATION		PRIVATE EDUCATION	
		<i>Secular</i>	<i>Nonsecular</i>
Public Colleges, Universities, and Community Colleges		Private Secular Colleges and Universities	Private Religious Colleges and Universities

Starting with this analysis allowed me to streamline my legal research and provide thoughtful legal advice.

My years of in-house counsel experience provided me the opportunity to move back to SUNY's Office of General Counsel in leadership positions. I became Deputy General Counsel for over eight years and Acting General Counsel for two,

1 Merhige v. Grebstein, No. 5768/90, (N.Y. App. Div. Jul. 23, 1990) (unpublished).

2 WILLIAM A. KAPLIN & BARBARA A. LEE, THE LAW OF HIGHER EDUCATION, at xxvii (3d ed. 1995).

most notably during the beginning of the COVID-19 pandemic. Professor Kaplin's analysis of the interplay between law and policy and his philosophy of how attorneys must work through legal issues in partnership with administrators, who develop and enforce policy, influenced me greatly in my work and drove me to form strong relationships with those at the leadership helm. Those strong bonds helped me tremendously through the beginning days of the pandemic, when it was all hands-on deck, and allowed us to respond quickly and nimbly to crisis situations and external edicts.

Professor Kaplin routinely emphasized the importance of preventative lawyering, which is key to keeping institutional legal risks low. This is a lesson I embraced early in my career, motivating me to stay informed of emerging risks and new case law, statutes, and regulations to assist administrators in developing legally-sound policy, practices, and pronouncements. I recently learned that language I had crafted with administrators at Siena College regarding emergency closings that was placed in the college's academic handbook more than a dozen years ago thwarted a class action lawsuit served against the college in 2024.³ In that lawsuit, the plaintiffs demanded a refund of tuition dollars paid during the COVID-19 pandemic when the college had to physically close and pivot to on-line instruction. After reviewing the language in the handbook, which allowed the college to deliver instruction remotely in the event of an emergency closing due to such circumstances as a pandemic flu outbreak, the plaintiffs' attorneys discontinued the lawsuit.

When I became an instructor of a legal course in a graduate-level program in higher education administration, I used Professor Kaplin's book as the textbook and employed his use of simulations as a tool for instruction. I created real-life scenarios for students to role play in different higher education settings, such as a board of trustees meeting in which a policy was being reviewed and adopted, an employee termination meeting, and a student disciplinary hearing. Those simulations were widely popular with my students. And one of my students contacted me after passing the New York State bar exam to let me know that my course helped her study for the exam, since it covered so many areas of the law.

My tribute is just a small representation of the contributions and impact Professor Kaplin has made in the field of higher education law. His textbook, which has been co-authored by Barbara Lee for several years, and now with additional coauthors, is a ready reference for all higher education attorneys and administrators. Its prose is accessible and understandable. His participation in the National Association of College and University Attorneys, especially in its early years, laid the foundation for the great institution it has become in supporting the higher education legal community nationwide.

In sum, Professor Kaplin was a tremendous mentor, a good friend, and, of course, a giant in the field of higher education law. I will be forever grateful to him, and his shining star will continue to light the way for countless attorneys and administrators who strive to serve their institutions with thoughtful advice, care, and compassion. May he rest in peace.

³ Navarra v. Siena Coll., No. 909016/2024 (N.Y. Sup. Ct. Sept. 9, 2024) (notice of voluntary continuance).