

WILLIAM A. KAPLIN AND *THE LAW OF HIGHER EDUCATION:* A Personal Reflection and Editorial Introduction

JACOB H. ROOKSBY*

In the realm of academic scholarship, special tribute issues like this one serve as an important opportunity to honor the life's work of scholars of transgenerational importance. Such luminaries do not come around often. In our field of higher education law, no one looms larger than William A. Kaplin.

As this special issue reflects, Bill was more than a scholar: he was a mentor, friend, catalyst, architect, colleague, and all-around exceptional human being who touched countless lives, improved innumerable institutions through his work, and left a lasting imprint not just on higher education law, but on the entire sector of higher education itself.

Occasions such as this present the chance to share stories that help contextualize and humanize the person being lauded. It has been my honor to work with the contributors to this special issue—individuals who served as Bill's colleagues, co-authors, and mentees. The collective impact of Bill's professional life is richly rendered here. Ona Alston Dosunmu, writing from the standpoint of NACUA, offers a Biographical Sketch of Bill's exceptional career. A series of Tributes—one by a former student, Sandra Mulay Casey; two by colleagues and fellow legends in higher education law, Peter F. Lake and Laura Rothstein; and one by his longtime co-author, whose name has become nearly inseparable from his in the field, Barbara A. Lee—add personal reflections on Bill's life and impact.

This issue also features two excellent Essays and two substantial Articles. Neal H. Hutchens considers Bill's scholarly legacy and provides valuable historical context. Craig W. Parker reflects on Bill's preventive law philosophy, the seeds of which began at his home institution, The Catholic University of America, and quickly spread across higher education. The issue's two Articles, by William E. Thro and Lawrence White, take stock of developments in the broader world of university general counsel offices and the field of higher education law, and of how Bill's work helped shape both.

For my part, I want simply to convey how much I admired Bill. I first met him not as a person, but as a voice on the page—during law school, when I encountered

* Smithmoore P. Myers Dean and Professor of Law and Leadership Studies, Gonzaga University School of Law. J.D., M.Ed., and Ph.D., the University of Virginia; A.B., the College of William & Mary. Co-author, with William A. Kaplin, Barbara A. Lee, and Neal H. Hutchens, of *The Law of Higher Education*.

the treatise that still, and always will, bear his name. That work became a kind of guidebook to me in my early years on the higher education practice team at McGuireWoods LLP, where I had the good fortune to work after graduation. When I later set off to pursue a career in academia, with particular interest in the legal dilemmas facing colleges and universities, Bill was never far from my reading and research. Still, I never expected to meet him.

That changed in 2013, when I was accepted to participate in the biannual Higher Education Law Roundtable organized by the late, great Professor Michael Olivas at the University of Houston Law Center.¹ The design of the roundtable was for junior scholars to present their works in progress in a seminar-style environment led by Professor Olivas, ably assisted by another senior scholar. Bill Kaplin was a frequent participant—and, as it happened, he was there that year.

The first day of the roundtable ended on a note of shared trepidation. For those who knew Professor Olivas, “tough love” was not a euphemism—it was a method.² His feedback never minced words. And if he found your piece less than engaging, it was not out of the question that you might see him resting his eyes during your presentation.³ Those of us who had yet to present were, to put it mildly, nervous at dinner that night. For us, dinner conversation had the frenetic energy of people awaiting their turn in the arena.

It was at that dinner that I first met Bill Kaplin. Though unmistakably a celebrity in that setting, what struck me most was his humility and self-effacing manner. His comments during the day had been careful and probing, always aimed at the heart of an argument rather than its margins. In conversation, he was encouraging and gracious—a calm and steady complement to Professor Olivas’s more exacting style of critique.

The next day, I presented my work—an empirical piece on the accretion of trademark rights by colleges and universities.⁴ At the time, as a junior professor newly on the tenure track, I had no idea whether it was any good. I only knew that I had nearly been disinvented for submitting it late. When the session ended,

1 Michael was a friend and mentor to many, and I was privileged to learn from him. His ability to command “rockstar” status in two distinct disciplines—law and education—placed him in a league of his own. The *Houston Law Review* published a superb tribute issue to his life and legacy in 2024, two years after his death. See HOUSTON L. REV., Vol. 61, Issue 5 (2024) (available at <https://houstonlawreview.org/issue/10480-vol-61-issue-5-2024>).

2 As one of his former mentees so accurately put it: “Michael’s critiques of written work could be withering, but his praise—when offered—was effusive.” Michael W. Klein, *Afflicting the Comfortable*, INSIDE HIGHER EDUC. (Apr. 25, 2022), <https://www.insidehighered.com/views/2022/04/26/remembrance-michael-olivas-opinion>.

3 *Id.*

4 Michael flattered me by publishing the piece in the monograph series for the Institute for Higher Education Law and Governance that he founded and ran at the University of Houston Law Center. The article was later published in a specialty law review, and a related derivative piece received attention in the *Chronicle of Higher Education*. See Jacob H. Rooksby, *UniversityTM: Trademark Rights Accretion in Higher Education*, 27 HARVARD J. L. & TECH. 349 (2014); Jacob H. Rooksby, *Colleges Need Free Speech More Than Trademarks*, CHRON. HIGHER EDUC. (Feb. 24, 2014), <https://www.chronicle.com/article/colleges-need-free-speech-more-than-trademarks/>.

I exhaled for the first time in what felt like hours. A friend later quipped, “I don’t think he hated it,” referring, of course, to Professor Olivas. But what I remember most is what happened afterward: Bill approached me quietly and asked if I would meet with him once the roundtable concluded.

That conversation marked the beginning of one of the most meaningful professional relationships of my life. Bill spoke to me with the same patience, curiosity, and generosity that characterized his scholarship. He wanted to know what I hoped to do next—and whether I might consider joining him and Barbara on the treatise.

I could hardly believe what I was hearing. My answer, of course, was yes—though I added that the project might benefit from a fourth co-author, my friend whose work and approach to work I deeply respected, Neal Hutchens. Once Bill and Barbara got to know Neal, their answer, too, was an obvious yes.

Our work together, as a foursome, was intense yet all too brief. The consummate professional, Bill was always available—to review drafts, answer questions, or provide feedback. In collaborating with him, one sensed that the treatise was not merely work for Bill; it was a calling, the living expression of his scholarly purpose. How fortunate I was to be in the right place at the right time—to receive his invitation to join a project decades in the making, one that can fairly be called a cornerstone of our field. My career was forever changed as a result.

This special issue of the *Journal of College and University Law* honors Bill’s spirit, his vision, and his enduring impact. It gathers contributions from those who studied with Bill, worked alongside him, and were shaped by his scholarship and kindness—representative of the many whose lives he touched. Together, these Tributes, Essays, and Articles trace the contours of a legacy that continues to inform and inspire the field he helped to build. My hope is that readers will be reminded, as they read these pages, of what so many of us cherished in Bill himself: his integrity, his intellectual generosity, and his enduring curiosity about the world of higher education.