

Olivas, Michael A. *Suing Alma Mater: Higher Education and the Courts*. Baltimore: The John Hopkins University Press, 2013. 221 pp. \$32.95 paperback (ISBN 978-1421409238)

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Higher education is constantly in the media and, unfortunately, a lot of what reaches the general public has to do with legal issues. Many of those issues have even ended in the U. S. Supreme Court, becoming landmark cases that have changed not only views and policies in higher education but also on society as a whole in areas as important as race, gender, and religion. Therefore, it is not surprising that there is growing literature on higher education and the law. Some of the most recent and notable examples of those books are *The Trials of Academe: The New Era of Campus Litigation* by Amy Gajda, *Higher Education Law: Policy and Perspectives* by Klinton W. Alexander and Kern Alexander, *The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making* by William A. Kaplin and Barbara A. Lee, and *Higher Education Law in America*.<sup>1</sup>

Now enters Michael A. Olivas with *Suing Alma Mater*. Olivas is the William B. Bates Distinguished Chair of Law at the University of Houston Law Center and director of the Institute for Higher Education Law and Governance. He was already known as the author of the casebook, *The Law and Higher Education: Cases and Materials on Colleges on Court*.<sup>2</sup>

Olivas's new opus is divided into nine chapters. The first is an overview of higher education law in the United States, followed by an informative chapter on the number and nature of cases that have reached the U. S. Supreme Court, and a third chapter on how cases reach the Supreme Court. The rest of the chapters

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1. Amy Gajda, *The Trials of Academe: The New Era of Campus Litigation* (Cambridge, MA: Harvard University Press, 2009); Klinton W. Alexander and Kern Alexander, *Higher Education Law: Policy and Perspectives* (New York: Routledge, 2011); William A. Kaplin and Barbara A. Lee, *The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making*, 5th ed. (San Francisco: Jossey Bass, 2013); Center for Education and Employment Law, *Higher Education Law in America*, 15th ed. (Malvern, PA: Center for Education & Employment Law, 2014).

<sup>2</sup> Michael A. Olivas, *The Law and Higher Education: Cases and Materials on Colleges in Court*, 3rd ed. (Durham, NC: Carolina Academic Press, 2006).

focus on landmark cases, and the book ends with a conclusion, copious endnotes, and an extensive bibliography.

*Suing Alma Mater* opens with an analysis of the trend of increasing legalization of the academy and discusses the dangers for postsecondary education of trying to be either totally immune or subject to constant and strict surveillance by the legal system. For many readers some of the decisions by the courts are difficult to understand on face value. He mentions, for example, *Hacker v. Hacker* in which a father who had agreed to pay for her daughter's college tuition while she was attending the University of California at Los Angeles refused to continue doing so when she transferred to the Neighborhood Playhouse in Manhattan. His daughter sued but the judge sided with the father because, according to the court, the New York institution did not meet the definition of a "college" (it was not a degree granting institution). Yet, there have been many cases in which institutions not labeled as colleges were considered to be so while others that very much functioned as colleges were not accepted as institutions of higher education by the courts.

What we need to keep in mind—Olivas reminds us—is that "higher education is highly contextual, and cases from a variety of other subject matter often will have bearing on college law" (12).

Olivas also discusses the position taken by state institutions of higher education on the issue of sovereign immunity, a legal doctrine by which the sovereign or state cannot commit a legal wrong and is immune from civil suit or criminal prosecution. He makes clear that although this position is significant it is not absolute. This is an important point because one of the most serious sociological issues surrounding higher education in the United States is its sense of insularity from society and such a legal shield makes such a sense even more pronounced.

Some of the most interesting information contained in the book comes out of statistical analyses. For example, and to the surprise of many, we learn that faculty members brought about a third of the litigation against postsecondary institutions while students only bring about 15 percent of the cases to court.

Faculty will be surprised to learn that despite the fact that they can be (and in many cases they are) unionized, the National Labor Relations Board (NLRB) decided in 1951 that colleges would not fall under their jurisdiction if their mission was "non commercial in nature," something that all institutions of higher education, except for the for-profit ones, claim to be. Further in the *NLRB v.*

*Yeshiva University* case the U. S. Supreme Court decided in 1980 that faculty members are supervisory personnel, reaffirming the original NLRB stance.

Another interesting lesson from this book was to learn that private institutions of higher education afford fewer legal rights to the students than public ones with most constitutional rights extending only to students in the latter. As a consequence of this, colleges and universities have broad authority over students' lives and affairs keeping them under tight institutional control. This is an important point that counters a notion that now has become in vogue in some circles: that students are "customers" and should be treated as such.

One more interesting legal conclusion is on the concept of academic freedom. Contrary to popular belief this concept is not absolute, but "rather vests faculty with establishing and enforcing standards of behavior to be reasonably and appropriately applied in evaluations" (17).

An important argument by Olivas is that given the increasing legalization of society, if colleges and universities do not police themselves others will. Therefore, the author tells us that these institutions should be more proactive in designing their own compliance and implementation strategies.

An important piece of information provided by the book is about the number of cases involving higher education that have ended up in the U. S. Supreme Court: more than 120 so far (on average two to three per year in the last fifty years and the book lists them all). An interesting conclusion of analyzing these cases is that (a) many of them involved religious claims and (b) that in general plaintiffs rarely win. Yet, most cases involving higher education are never decided by the Supreme Court because the justices deny the *writ of certiorari*, that is, the Court declines to hear the case.

Olivas pays special attention to the increasing number of lawsuits brought by what he calls "purposive organizations," usually non-profits with a political agenda. Many of those organizations follow the model created by the American Civil Liberties Union or the National Association for the Advancement of Colored People but are conservative in nature. According to the author, some of these organizations, such as the Alliance Defense Fund, have virtually specialized in bringing cases against postsecondary institutions on issues such as religious liberties, family values, and the sanctity of human life. According to Olivas these groups are responsible for the increase in the Supreme Court docket since cases presented by those organizations have a higher likelihood to be accepted than when brought to Court by other means.

I found much of the information in this book useful and the in-depth analyses of the major cases discussed very illuminating. My only problem with the book is that despite the fact Olivas claims that the book was written “for nonspecialist readers” (p. x), it is not clear whether he means the general public or lawyers not specialized in higher education law. For example, sometimes he cites cases assuming that the reader knows what the case was about and, even worse, he uses legal terminology or references complex legal procedures that will probably be familiar only to a lawyer.

I also wished that the final section titled Conclusion had been a more general summary of the wealth of information presented in the previous pages. Still, I think this book will become a standard reference in this area written by someone who, without a question, is one of the top authorities on the subject.