

# “Whispers and Concerns About the Lawyers Taking Over”: How Student Affairs Professionals Think About the Growing Need for Legal Education

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Decisions in student affairs often require the integration of multiple knowledge bases (O’Brien, 2018). Although learning and development have historically been core values of the profession (Evans & Reason, 2001), legal demands on student affairs professionals have grown with increasing responsibility for compliance in areas like Title IX and campus speech policies (Kaplin & Lee, 2014; Lake, 2011). While guidelines for relevant legal training exist (American College Personnel Association & National Association of Student Personnel Administrators [ACPA & NASPA], 2015), student affairs professionals come from a variety of educational and professional backgrounds (Wesaw & Sponsler, 2014). Using a focused reanalysis of data derived from a constructivist grounded theory study of legal reasoning in student affairs, we explored how practitioners think about their own training in the law as well as how they perceive colleagues with advanced legal training (e.g., law degrees, participation in continuing education).

## LITERATURE REVIEW

The vast majority of student affairs professionals receive their masters-level and doctoral-level training in higher education or student affairs programs (Wesaw & Sponsler, 2014). Professional standards for these programs suggest they should provide legal training to graduates but also note the field’s long-running

emphasis on student learning and development (ACPA & NASPA, 2015). Although empirical knowledge about legal education and reasoning within the student affairs profession is scant, the limited literature that is available emphasizes the potential incommensurability of legal, developmental, and social justice perspectives in student affairs work (summarized in Ryder, Hastings, Kimball, & Slauzis, 2018). In fact, two of the most important such studies theorize that the “creeping legalism” within student affairs—a focus on following rules rather than on student outcomes—can undermine effective practice (Dannells, 1997, p. 69; Gehring, 2001). However, competency framings of student affairs work do not reconcile potentially contradictory professional imperatives—instead suggesting the alignment of goals across competencies even as empirical evidence suggests divergence in how frequently competencies are used as well as how often they are used in tandem with one another (O’Brien, 2018). As yet, no one has examined how the tension between law, learning, and social justice documented by Dannells (1997) and Gehring (2001) gets resolved in practice.

## METHOD

We used semistructured interviews to explore how student affairs professionals think about the law. We adopted a constructivist grounded theory perspective due to our interest in

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capturing participant meaning making as well as the scant empirical literature base related to the legal reasoning of student affairs professionals. From the outset, our study included questions such as: (a) You've told me a bit about how you think about the law in your work. How did you come to think about it in this way? and (b) What legal training or resources have you found helpful? Midway through the project, we noted participants often described the legal training of others. Thereafter, we began a focused reanalysis and added questions about why participants believed particular administrators possessed legal expertise, how they felt about that expertise, and the training they would need to advance their careers.

We used theoretic sampling to recruit participants based on factors likely to be related to the legal reasoning of participants (Charmaz, 2014). Specifically, we utilized targeted outreach to geographically proximate student affairs professionals as well as postings to online forums to vary participants by institution (14 different four-year institutions), career stage (8 entry-level, 7 mid-level, and 6 senior-level), role (7 different functional areas), and education (primarily including participants with higher education or student affairs degrees but also 2 with law degrees).

We undertook a focused reanalysis of existing and new data. To do so, we used constant comparative analysis (Charmaz, 2014). Therein, we recoded all transcripts from the standpoint of our newly identified focus—generating new open, axial, and thematic codes. As we undertook this reanalysis, we used peer debriefing, triangulation, and discrepant case analysis to enhance trustworthiness.

## FINDINGS

Increasing legal demands require student affairs professionals to balance legalistic and learning-

centered approaches to students (Ryder et al., 2018). Our findings show how these shifts have contributed to: (a) increased pressure to hire practitioners with law degrees; (b) demand for continuing education by student affairs professionals without law degrees; and (c) feelings of disillusionment for those disinterested in the legal dimensions of their jobs.

### Increased Pressure to Hire Student Affairs Professionals With Law Degrees

Participants noted the rising numbers of practitioners with legal training. For example, Mary described the proliferation of lawyers in student affairs leadership at her institution:

Our vice chancellor happens to have a JD. I have a JD. There's a couple other people in our division—my director of student conduct has a JD. And there have been . . . whispers and concerns about all the lawyers sort of taking over student affairs. And I am not a proponent that thinks we need to suddenly have JDs in all these positions. But I do think you need a healthy balance of backgrounds and experiences, whether that's formal legal training or just experience. . . . For example, I'm chairing the search for our Title IX director. You know, all but a mandatory qualification is to have a JD.

Notably, as a lawyer hired by another lawyer, Mary thought of a law degree as an “all but a mandatory qualification” in the Title IX director search she is chairing. In framing the search in these terms, Mary does not fully examine the extent to which hiring processes might tend to prefer those who hold similar dispositions and knowledge to those making the decisions.

Another participant provided a concrete example of just that phenomenon. Although most new student affairs professionals have at least some prior undergraduate paraprofessional or assistantship experience, Roy described being able to move from a law firm

into student conduct with no professional student affairs experience. He noted that the Vice Chancellor, whom he knew from law school, had recommended he apply for the position. Moreover, although Mary herself expressed disillusionment with the idea of a legal takeover of the profession—noting “I am not a proponent that thinks we need to suddenly have JDs in all these positions”—her comments reflect a deeper discomfort among participants about the relative values of student development and the law in shaping student affairs practice. For example, Charles mirrored the sentiments of several other participants in noting that he perceived senior administrators with legal degrees as the “people who run the place.” Framed in this way, the need to communicate with other administrators who framed decisions in legal terms provided a key incentive for hiring student affairs professionals with law degrees or legal training.

### **Demand for Continuing Education by Student Affairs Professionals Without Law Degrees**

As legal knowledge has become an increasingly important part of student affairs work, practitioners without a law degree feel increasingly compelled to develop legal competence. For example, Gabrielle noted that the Dean of Students and Assistant Vice President were the people who “generally and historically” were seen as the ones to go to when there is a legal dimension to a problem. Her comment reflects the widespread belief among our participants that the importance of legal knowledge increases as student affairs professionals advance in their careers. For our participants, that knowledge could be obtained in several different ways. One way to approach legal issues, as described by Hassan, was to recognize that one person “doesn’t need to know everything, but they at least need to surround themselves with people who can augment

their understanding.” By drawing from expert knowledge of the law available in the workplace, participants felt they could learn the information relevant to their professional responsibilities. At times, however, that on-the-job training proved onerous. That was the case for Elliot, who took students to a trampoline park and learned a valuable lesson when one was injured: he now makes sure to design events that do not put the institution at risk.

Participants also drew on their prior educational experiences to better understand the law. Most, but not all, participants who had a graduate degree in higher education or student affairs described taking at least one legal issues course; however, in describing these courses, participants noted they left them feeling unprepared to deal with the law. For example, Charles says about his graduate school experience that “most of the training is pretty conceptual . . . most of my [law-related] training around dealing with particular issues—again, I would use the example of issues around Title IX—have come through professional organizations.” Participants also noted struggling to apply the highly abstract but seemingly straightforward approaches to legal issues presented in coursework to their specific but messy encounters with legal issues in their professional lives. For example, Jacob noted: “The law and ethics that we went over in class . . . were relatable to higher ed, but not as relatable to this position specifically.” Like Charles, many participants noted that specific workshops or training programs related to their functional responsibilities had provided the most valuable legal education they had received. Still, some participants expressed their need for more legal education: for example, Beth reported considering part-time law programs while Jacob spent considerable time designing a self-directed legal education as he sought future institutional leadership opportunities.

## Feelings of Disillusionment for Those Disinterested in the Legal Dimensions of Their Jobs

Although all the participants in our study acknowledged the apparent increase in the importance of the law to their student affairs practices, their responses to this increased influence varied. The strategies described above—recognizing the increased pressure to hire those with law backgrounds and seeking out additional preparation—both represent at least tacit acknowledgements that creeping legalism would remain a core part of the student affairs profession. Some participants—including some of those who also acknowledged the pervasiveness of creeping legalism and sought to adapt to it in their own careers—found this development to be a negative one for the student affairs profession and sought to resist it actively. Describing a perspective grounded in the law as an insufficient and potentially detrimental tool in their effort to support students' learning, some participants argued that the way that colleges and universities responded to the law ended up prioritizing institutional concerns above student well-being. In contrast to these two points of view, Charles stated:

I would be using more of a humanistic lens than a legalistic lens. . . . The Legal Affairs folks might say, "You don't need to follow up with that student again on that complaint"; whereas I would say . . . "We're going to do it anyway in order to best address the developmental needs of that student," even though I understand from a legal perspective it's not something we have to do.

Louis similarly noted a legal perspective cannot be the only lens in interactions with students: "It's not just about giving legal advice; it's about understanding how a student is going to work through the process." Both practitioners note that a legal approach does

not address a student's developmental needs, and that action beyond what is dictated by the law is needed.

While Charles and Louis portrayed a legal lens as simply insufficient, Gabrielle noted the law presents an obstacle in her interactions with students: "What are ways in which . . . legalities . . . have gotten in the way? . . . You can no longer talk to the student." She later added that when speaking with students "there are times when I feel really cold, because I feel like I need to say or do something." Gabrielle adds that her compulsory silence is in the best interests of the university but not the student. Brad went a step further explaining that even when the law is intended to protect students, and not an institution, it can be damaging to students: "Many federal policies [are] designed to support and protect students . . . by well-meaning folks not necessarily in day-to-day practice and so the implementation of . . . those [policies] can be counterproductive for student well-being." Notably, when participants described the law in these terms, they often did so in a way that suggested that they felt powerless to resist its encroachment on their work and its pervasive influence on contemporary colleges and universities.

## DISCUSSION

By inserting legal reasoning into interactions with students that might once have been shaped solely by a desire to support holistic learning and development (Evans & Reason, 2001), the growing importance of the law may have fundamentally reshaped the nature of student affairs practice (Ryder et al., 2018). In this study, we show that this shift has consequences for how student affairs professionals think about the educational backgrounds of their colleagues and project their own educational futures as well. More specifically, our findings demonstrate that many practitioners feel

uneasy with the growing influence of lawyers in student affairs—at the same time that they recognize their own need for legal knowledge, whether obtained via formal education or via on-the-job training. As Charles noted in his interview with us, if lawyers are the “people who run the place,” student affairs professionals must have legal knowledge and be conversant in legal reasoning to have a seat at the table when decisions are made. Simply acting according to the “best interests” of students may no longer be sufficient justification for practice when legal risk mitigation provides the countervailing logic; that is, to continue to be advocates for student learning, all student affairs professionals may need to think as lawyers do.

This creeping legalism also provokes considerable discomfort. Additional research is needed to determine the precise fissures along which this conflict of values plays out. A field-wide census documenting the educational backgrounds of student affairs professionals at all stages of their professional careers would help to generate empirical information about the apparent increase in the number of lawyers in the field. Case studies of graduate programs as well as longitudinal qualitative studies of graduate students and new professionals would help generate new understandings of when and how student affairs professionals obtain their legal training. This sort of empirical information could function as a catalyst for conversations about values within the student affairs profession. Absent an ongoing conversation about how to reconcile apparently conflicting values, the sort of tension revealed by this study will persist.

Likewise, our findings reflect a student affairs profession encountering a complex array of ever-increasing regulatory requirements. The law provides an important external pressure on practice, but others—among them accountability demands, budgetary pressures,

and the panoptic public outrage of the internet age—also likely exert a profound impact on the work of student affairs professionals. Additional research that to help determine how regulatory demands—including the law—shape student affairs practice is much needed.

## CONCLUSION AND IMPLICATIONS

Our findings reveal how student affairs professionals think about legal education. New legal responsibilities coupled with the codification of professional student affairs competencies have led to feelings of unease among our participants. To address this unease, all student affairs professionals require ongoing, applied legal training. Augmenting factual knowledge of the law with instruction and practice in legal reasoning—both within graduate preparation programs and in ongoing professional development—would assist in reconciling the legalistic and learning-focused work of student affairs.

Likewise, providing more opportunities for ongoing legal education that emphasizes not just the “what to do” but also the “why to do it” would strengthen practitioners’ capacities to apply legal reasoning in their work and to advance in their careers. These trainings should take place at both the institutional and field levels. Finding ways to blend graduate programs in student affairs with legal education—perhaps through dual-degree or hybrid programs—would also recognize the reality that some future practitioners pursue law degrees with intentions to follow a career in student affairs. Connecting these individuals with the philosophical values of the student affairs profession during their graduate training would be highly desirable.

Finally, our work reveals a real tension present on several of the campuses where our participants practice. Ongoing cultural work

is needed within student affairs divisions to ensure that the practitioners who work therein understand each others' points of view and how that understanding shapes their work with students. Doing this culture work is consistent with the student affairs profession's interdisciplinary origins and emphasis on inclusivity. It also offers the potential to strengthen practice focused on both student development and legal training by more intentionally attending to the connections between the two. Collectively, these findings and implications highlight the need to explore to the interplay between academic training, professional development, and student affairs practice in future research.

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