

Twenty Years of Change, But Many Issues Remain

by William R. Rakes
Conclave 2012 Vice Chair



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Twenty years ago the Virginia State Bar held a conclave on legal education at Wintergreen in Central Virginia. The conclave was composed of practitioners, judges, and legal academics, and the theme was “Sharing the Responsibility for Legal Education Among the Law Schools, the Bar and the Bench.”

The Wintergreen conclave took place at an interesting time. Judge Harry T. Edwards, of the U.S. Circuit Court of Appeals for the District of Columbia, had published a provocative article earlier that year titled “*The Growing Disjunction Between Legal Education and the Legal Profession.*” He lamented the trend of law professors distancing themselves from the practice of law and directing their scholarship more toward the theoretical and interdisciplinary, and less toward the profession.

A few months after the Wintergreen conclave, the MacCrate Report was issued by the Section of Legal Education and Admissions to the Bar of the American Bar Association. Its emphasis on the teaching of skills and values provided the agenda for conclaves held around the country over the next several years. The Virginia conclave was promoted by the American Bar Association as the model for conclaves held in more than twenty-five states.

A consensus statement issued following the conclave concluded that the principal purpose of the conclave was to create opportunities for the practicing bar, the judiciary, and the legal academy to discuss and reflect on the broad subject of legal education. The objective was to identify areas that could be improved, and to encourage each constituency to offer its unique perspective in the ongoing work of the others.

Education in the law schools, admission to the bar, and continuing education were the main topics then as they remain today. Participants in 1992 concluded that the first year of law school was very successful, but the second or third years

were progressively less successful. They also noted that communication skills, both oral and written, should be emphasized more to address the perception that many law graduates were deficient in this critical area. Admission issues, including the bar exam, were discussed and participants said that more thought should be given to the purpose of the bar examination and whether there are feasible alternate methods of assuring that persons licensed by the commonwealth are at least minimally competent. Conclave attendees were concerned that commitment to lawyer education on the part of law firms and practitioners has been impaired by a more competitive practice environment and increases in the costs of practicing law. There was broad concern that the profession’s emphasis on billable hours and profits has diminished attention to hands-on training and development of new lawyers. The conclave recognized that mentoring had historically been and continues to be a very important ingredient in the development of new lawyers and urged senior members of the bar to make themselves available for advice and consultation to less experienced lawyers.

Changes During the Last Twenty Years

Since the conclave in 1992, we have seen important changes in the practice of law and in the law schools, which provided challenging issues for discussion at the 20th Anniversary Conclave to which this issue of *Virginia Lawyer* is dedicated. Many of the changes have been for the better but some have not.

Continuing Dialogue

A permanent section of legal education of the Virginia State Bar emerged from the recommendations which came out of the Wintergreen conclave. The section is made up of academics, judges, and practitioners, and provides an ongoing forum for discussions and projects related to legal education. Its *Education and Practice* newsletter provides an opportunity for all three branches of the profession to stay abreast of important developments.

Diversity

We have achieved significant advances in diversity during the last twenty years. Minority enrollment in accredited law schools in 1992 was 19,410. In April 2012, it was 36,859, a 90 percent increase. Full-time faculty who are minorities increased during the twenty-year period from 649 to 1,417, a 118 percent increase, while minority deans and administrators increased from 192 to 876, a 356 percent increase. We have also increased the number of women in law school leadership positions as deans or in other administrative posts. In 1992, there were 765 in that category and in 2012 there are 2,436—a 218 percent increase.

Clinical and Skills Training

We have seen significant developments in the availability of clinical and skills offerings in law schools following the MacCrate Report and additions on this subject to the Standards for Accrediting Law Schools. While many students participate in such programs, many do not. There is pressure from some quarters for law schools to turn out graduates who are “practice ready.” The area of clinical education will undoubtedly evolve and will become a larger part of the programs of many law schools. But one size doesn’t fit all. Law schools will determine the markets they serve and determine the extent to which clinical training will be beneficial to their students. In addition to practicing lawyers and judges teaching part-time as adjuncts, many law schools are hiring a substantial number of experienced lawyers as full-time faculty.

While the emphasis on teaching legal writing has increased, there is still the perception (or reality) that not enough is being done.

Law School Economics

There are currently 200 ABA-accredited law schools in the United States. Twenty years ago there were 176. That is not a large increase over a

twenty-year span. The enrollment in 1992 was 129,580 and in the spring of 2012 it was 146,292, a 13 percent increase.

Full-time faculty in accredited law schools in 1992 was 5,635, and in 2012 it was 8,264, a 47 percent increase. Part-time faculty during that period increased from 3,994 to 8,408 for a 111 percent increase. Deans and administrators increased 178 percent, from 1,406 to 3,903.

The increase in law schools, students, and faculty/staff is not that surprising over a twenty-year period. However, the cost of law school and the debt students incur is alarming and is not sustainable. In 1992, the average annual tuition in public law schools was \$4,015. In 2012, it is \$22,115, a 451 percent increase. In private law schools, during the same period of time, tuition increased 185 percent from \$13,730 to \$39,184.

While scholarships available at accredited law schools have topped \$1 billion a year, the way that money is distributed to students is trending away from need-based to merit-based. During the five-year period from 2005-2010, the number of need-based scholarships decreased from 20,781 to 17,610. During the same time, the number of students receiving non-need-based or merit scholarships increased from 31,265 to 39,845. The dollar amount of scholarships for need-based recipients grew \$23 million, from \$120 million to \$143 million, while the non-need-based grew \$231 million, from \$291 million to \$522 million.

A portion of the tuition charged at many, if not most, law schools goes toward scholarships for top-ranked applicants and students. Critics say the top of the class is being educated on the backs

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of lower-ranked students. Those critics assert that this behavior is stimulated by the schools’ quest for higher rankings of which student test scores and grades play a significant role.

As law school costs have increased, the availability of federally guaranteed loans has increased as well. A large number of law school graduates begin practice with law school debt in the range of \$100,000 to \$250,000, and many have undergraduate debt as well. This puts enormous



pressure on graduates to find jobs that will permit repayment of those loans. It puts pressure on employers as well, and many jobs will not support the repayment of such debt.

The availability of student loans has permitted law schools the luxury of balancing their budgets as the debt load of students escalates.

The Current Jobs Market

The student debt problem is exacerbated by the current legal jobs market. Law schools are graduating about 45,000 people per year and there are legal jobs available for only about 25,000. Law graduates claim they have been led into debt by the false promises of employment and high salaries. The economy has had an enormous impact on law firms and the demand for newly-minted lawyers has substantially weakened. While applications to law school have decreased in the last few years, the number of admittees has not been significantly reduced.

Employers are complaining that law graduates have not been trained to practice law and clients will not pay for new lawyers to learn at their expense. The litany of complaints about law schools and the costs of a legal education would suggest that structural changes should be considered.

The Need for a Lower-cost Model

Personnel costs are the single greatest item in a law school's budget. The current model is for law professors to divide their efforts (about 50/50) between legal research/scholarship and teaching. Some have suggested that not every law school needs a faculty doing both research and teaching;

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instead, many law schools could reduce costs (and faculty by as much as half) by focusing on turning out lawyers rather than scholarship. The question is whether there is any need for all law professors to turn out law review articles. Research-oriented law schools could remain as they are and practice-oriented law schools could be staffed mainly by experienced lawyers who are focused on preparing their students for the prac-

tice of law. The profession needs a better balance between teaching and scholarship, and all schools doing both is not sensible from a cost standpoint.

Impediments to Change

The main impediments to change in law schools are the traditions of tenured faculty governance, the ABA Accreditation Standards, and the *U.S. News & World Report* rankings.

The power to make meaningful change in a law school resides in the tenured faculty with leadership from the dean. Change is slow because a consensus is necessary. It takes a strong dean and a willing faculty to effect meaningful change. Washington and Lee should be commended for the significant restructuring of its third-year program. This kind of innovation is rare but was done within the existing ABA Standards.

Accredited law schools are required to offer an education that is "consistent with sound legal education principles," the prime purpose of which is to "maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession." (See Standard 101). Unfortunately, some standards have little direct relation to the overriding principle quoted above. And it is without question that some standards add to the costs imposed on the students. The standards require, for example, that most instruction be offered by full-time faculty and that the dean be a tenured member of the faculty. These requirements significantly reduce the ability of a school to rely heavily on experienced practitioners and judges who may be better able to teach courses in their areas of expertise. The standards also allow only a small part of a legal education to be provided by distance-learning technologies. But if a school can demonstrate that it can deliver a sound legal education substantially through distant faculty members, it is hard to understand why such a program would be prohibited by the standards.

A further impediment to meaningful change is the annual rankings published by *U. S. News & World Report*. Admission rates, LSAT scores, grade point averages, student/faculty ratios, and employment data all play a role in the rankings. The *U.S. News* rankings apply the same criteria to all law schools, which promotes the one-size-fits-all concept. The *U.S. News* rankings during the last several years has had a great impact on admissions, scholarship, increases in numbers of faculty, and other important factors.

Special Presentations During Conclave 2012

The Conclave Planning Committee arranged to have three special speakers participate in the 20th Anniversary Conclave on Legal Education.

On Sunday Evening, April 22, David Yellen, dean at Loyola University Chicago School of Law, and William D. Henderson, professor at the Indiana University School of Law in Bloomington engaged in a spirited debate. Both have lectured and written extensively on legal education and the changing economics and structure of the legal profession. Their presentation was titled “Is there a Crisis in Legal Education?” They focused their point-counterpoint discussion on the following issues:

- Are there too many law schools and law students?
- Why is law school so expensive?
- How good a job are we doing at educating students for what they need in the practice of law; are lawyers doing a good enough job communicating what they want in training for law students?
- Are there dramatic changes coming in legal education?

John E. Montgomery, dean-emeritus and director of the Center for Professionalism, of the University of South Carolina School of Law, was the featured luncheon speaker on Monday, April 23. Montgomery focused his remarks on the increasing importance of mentoring in the legal profession, especially in the face of waning professionalism, civility and public respect for the legal profession.

Complete transcripts of these presentations may be found on the 20th Anniversary Conclave webpage of the Virginia State Bar’s website.



Dean Emeritus John E. Montgomery, director of the Nelson Mullins Riley & Scarborough Center for Professionalism of the University of South Carolina School of Law, was the featured speaker during lunch on Monday.



William D. Henderson of the Mauer School of Law, University of Indiana, Bloomington, and David N. Yellen of Loyola University Chicago School of Law. They spoke at the dinner Sunday night. Topic was “Is there a crisis in legal education?”

There must be a better way. Schools should define their markets and be judged on their success in training lawyers for that market. Practice-oriented schools will not mirror research-oriented schools. Each will focus their resources on what they do best.

To Be Continued

Legal education in the United States is the envy of the world. We have a great profession and

do an enormous amount of good for society. However, the law schools, practicing bar, and judiciary all have important issues to address and resolve. I have believed for many years that it is important for the three branches of our profession to work together on legal education issues affecting the profession. Some of those issues have been considered at legal education conclaves and progress has been made. Let us continue the dialogue for the improvement of the profession.