

A Few Suggestions for Steps Forward: Writing, Training, Mentoring, and Money

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Conclave 2012 Chair



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When the first Conclave on the Education of Lawyers in Virginia took place in 1992, the road ahead for the legal profession seemed paved with opportunity, not difficulty. We lawyers were on a roll. Our 20th Anniversary Conclave occurred in more austere times. Each pillar of the profession — the legal academy, practicing bar, and bench — confronts a need common to all facets of the American economy these days: how to continue to perform with excellence but at less cost. We lawyers are not on a roll in the early 21st century, and our way forward is unclear.

Despite this (or perhaps because of it), the sense of community at our recent conclave — the sense of our all being in it together — was strong, indeed far stronger than at conclave 1992. Law deans and professors, practicing lawyers, and judges in 2012 all saw a need to work together for the lifelong pursuit of legal education.

Participants in conclave 2012 carried on a rich, often sharply pointed conversation about how best to move forward, and they did so with almost no finger pointing or defensiveness, and no suggestion that either law schools, or law firms, or courts should pull the laboring oar while the others coast on theirs. There was consensus that the lifelong education of our learned profession takes sustained effort by everyone, whether law professor, practicing lawyer, or judge.

Any gathering as collegial and productive as the 20th Anniversary Conclave generates a profusion of suggestions about remedial steps and promising initiatives. Often such a wealth of ideas paralyzes us. So much is suggested that focus falls on nothing, with predictable results. Failure to home in on a very small number of potential

steps forward leads to lots of talk, no action. Very promising proceedings bear little fruit.

Let me suggest a few ways in which the 20th Anniversary Conclave might avoid this fate. By no stretch of the imagination do these ways embody the only important ideas to emerge at the conclave. If even one of these conclave 2012 emphases resulted in a concrete step forward for the education of lawyers in the commonwealth, however, this could have a galvanizing effect on the pursuit of other good ideas. Successfully taking one step forward does sometimes spur a sustained forward march.

What if the VSB Section on the Education of Lawyers were to choose one of the ideas about to be noted, propose how to implement it with roles for law schools, law firms and departments, and courts, and then rally support for implementation via bar associations, starting with the State Bar? That just might work.

FIRST, what if we took on legal writing? Its sad state is a constant source of frustration and hand-wringing at conclaves and other gatherings of lawyer leaders. Let's see if something remedial

might actually be done before the next conclave meets in some future year. What might reasonably and realistically be asked of law schools — that they focus each and every student on the basics of good legal writing, provide enough well qualified teachers genuinely committed to the mission to get the job done for each student, and perhaps even certify in some fashion that each student has

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in fact mastered the basics? Then what might be asked of bar examiners — that they require as a mandatory aspect of bar passage a demonstrated capacity to handle the basics of legal writing? What might be asked of law firms and departments — a meaningful period of apprenticeship for new lawyers, including emphasis on legal writing, and an abiding firm-wide commitment to good writing made manifest in concrete ways? And what might be asked of judges — sustained pushback against the misuse of facts and authority in papers filed with them, and a willingness to intervene and seek help from the organized bar when confronted with lawyers incapable of writing? There is nothing talismanic about any of what’s just been sketched, and it’s all at a high level of generality. The proverbial devil awaits in the details. But the Education of Lawyers Section could sort them out. It is clear that if we are to improve legal writing in the commonwealth, we all must have skin in the game — law deans and professors, law firms and law departments in corporations, agencies and non-profits, and judges.

SECOND, there was concern at the conclave about whether MCLE too narrowly restricts the sorts of skills training that might reasonably qualify for credit, and there was concern about the difficulty of getting credit-bearing courses to the far reaches of the commonwealth. These seem like matters ripe for relatively easy resolution if the Education of Lawyers Section were to focus the pursuit.

THIRD, what about law firms and departments in Virginia getting seriously into the mentoring and apprenticeship business? There was strong interest at the conclave of this possibility and discussion of useful models elsewhere. Such a regime could have wonderful effects for the young apprentices as well as the firms and departments. The need is especially great in an era when much mentoring that used to occur has fallen prey to high billing rates, the press for billable time, and the reluctance of clients to have young lawyers anywhere near them if they come with their meters on.

FOURTH, cost is a growing hurdle that law schools must learn to jump if they are to continue to command students of the sort they want. An element of cost is incurred to study for the bar. What might law schools, with the aid and comfort of the organized bar, practicing lawyers, and judges, do to lessen this burden? Would it be feasible for all law schools, even the most elite, to provide an elective credit-bearing survey course focused on likely bar subjects in the final term of law school, expressly to help students review and remember? Could law schools provide their own bar preparation courses in the summer at materially less cost than the norm for commercial courses, relying on a few of their own professors and others drawn from firms and the bench?

Let me end with one last thought that also commanded consensus at the conclave. Law is a calling at least as much as it is a living, a business. We lawyers can do an enormous amount of good for society, and in so doing we can find great satisfaction. But it’s hard to do much good or find much satisfaction if we ignore the calling aspect of our profession. Perhaps this is the idea on which the Education of Lawyers Section might focus its implementing thoughts for the lifelong learning of lawyers. Even the most grizzled and disenchanted legal dog is not beyond reach of a calling if only he or she could be brought face to face with its seductive power. This takes education.