

Conclave on the Education of Lawyers in Virginia

Wintergreen
March 27–28, 1992

Consensus Statement

A Conclave on the Education of Lawyers in Virginia was held at Wintergreen, Virginia, on March 27–28, 1992. The Conclave was sponsored by the Virginia State Bar and underwritten by a grant from the Virginia Law Foundation. The Conclave was composed of 56 members and included judges, practicing lawyers, and the deans and representative faculty members from all six law schools in Virginia. Special guest participants were Talbot "Sandy" D'Alemberte, President of the American Bar Association, and Professor Robert Gorman of the University of Pennsylvania Law School, Immediate Past President of the Association of American Law Schools.

The theme of the Conclave was "Sharing the Responsibility for Legal Education Among the Law Schools, the Bar, and the Bench." The Conclave focused on the kinds of education and training available to members of the Bar in Virginia at every stage of their careers—from entry into law school and immediately following graduation, to their achievement of senior status—and how those educational and training experiences can be enhanced.

This statement was considered at the closing session of the Conclave and reflects a consensus of the attendees. However, it should not be assumed that every participant subscribed to every statement or recommendation included herein.

I. Creating a Closer Relationship Among the Academy, the Practicing Bar, and the Judiciary on Legal Education Issues.

A principal purpose of the Conclave was to bring together on equal terms, representatives of the Virginia law schools, the practicing bar, and the judiciary to discuss and reflect on the broad subject of legal education. One objective was to identify areas which can be improved, and to encourage each constituency to offer its unique perspectives in the ongoing work of the others. For example, the practicing bar and the judiciary might make more of a con-

tribution in the development and teaching of certain courses in the law schools, and members of the academic community can be of greater assistance to the practicing bar and bench in developing and conducting quality continuing legal education programs and experiences. The Conclave participants noted that deans and professors from the law schools, members of the judiciary, and practicing attorneys are all members of the legal profession and that there is much to be gained by more interaction and closer cooperation.

The Conclave urges each component of the legal profession to develop and suggest ways it can interact with the others in the education arena for the benefit of the profession as a whole.

II. Education in the Law Schools.

We are fortunate to have in Virginia law schools of high quality and great diversity. It is recognized that the six Virginia law schools have differences as well as similarities. The schools differ in their defined missions and goals; financial resources, including alumni support; access to new faculty and vulnerability to raiding by other schools; the academic achievement, experience, aspirations, and employment focus of their students; and their influence over important decisions by their respective universities. Thus, it would be unrealistic to suggest that each school should embrace the same set of proposals or recommendations. What the Conclave hopes for is the ongoing identification of interesting proposals for collaboration which may appeal to and be embraced by those schools which conclude that such proposals will strengthen the educational experience they offer their students.

The Conclave considered in general the types of courses and programs made available to students during their law school experience. While there was general agreement that the primary task of the law schools is to teach students how to think and analyze, a task which they perform quite effectively up to a point, there was also

wide agreement that instruction at the upper levels is less successful than in the first year, for two reasons. (1) Upper level instruction sometimes fails to confront the more substantive issues that practitioners encounter today, because it may be insufficiently focused on research and writing skills, problem solving and transactional analysis. And (2) it fails to fully engage student attention because instruction often continues to be provided in very large classes utilizing traditional methodology. A consensus emerged that core courses can be covered in substantially less than the full three years of law school. Each law school, consistent with its own mission and goals, the composition of its student body, and its resources, should consider, if it has not already done so, focusing the upper level curriculum more sharply on problems confronted by practicing lawyers, utilizing to the extent practicable techniques such as problem solving and transactional analysis in small group settings.

The degree to which curriculum reform can take place will be directly affected by funding levels and the allocation of resources to and within each law school. A very high student-faculty ratio makes it difficult for most law schools to offer small seminars or practice-related classes. Ways should be developed for the bar to assist the law schools in their funding efforts, especially for innovative pilot projects. Among the areas which could be considered are working to gain financial support in the legislature, among law firms and in the business community; helping to develop full-time and adjunct faculty resources from the practicing bar; encouraging the creation of professorships to be underwritten by law firms or businesses; and raising funds from alumni.

A recent study by the American Bar Foundation indicates that oral and written communication skills can be taught effectively in law school, and that the students surveyed felt that law schools are not placing enough emphasis on this important area. Some law schools in Virginia are emphasizing communications courses, particularly courses in writing. The law schools are encouraged regularly to reevaluate and further improve their communication skills programs.

The continued and further involvement of leading practitioners in the teaching mission of the law schools is highly desirable and should be encouraged. Including such practitioners could strengthen and enhance the law school educational experience for many students, as well as provide opportunities for team teaching and other interaction with the traditional faculty.

Concern and interest were voiced about the bar examination and its relationship to the educational process. More thought and study should be given to the purposes served by the bar examination, whether the examination as presently structured is an appropriate method of testing the minimum competence of persons seeking a license to practice law in Virginia, whether modifications to the examination would increase its overall effectiveness, and whether there are feasible alternate methods of assuring that persons licensed by the Commonwealth are at least minimally competent to serve the legal needs of the citizens of Virginia.

III. Continuing Legal Education/Maintaining Competence.

In 1986 the Supreme Court of Virginia adopted a rule requiring each active member of the Virginia State Bar to complete annually a specified number of hours of study—currently 12 hours, two of which must be in ethics. The Supreme Court has also mandated a two-day professionalism course during the first year after a lawyer's admission to the bar. The principal Virginia sources of quality CLE on an ongoing basis are programs sponsored by Virginia CLE, a nonprofit organization operated under the auspices of the Virginia Law Foundation, and seminars and workshops provided by various statewide and local bar associations.

Concern was expressed 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. All lawyers should have a high level of commitment to continuing legal education as an essential element of maintaining competence. There is a need for more widely available CLE opportunities, which could include expanded in-house programs in law firms, the inclusion of lawyers from small firms and sole practitioners in some larger firm programs, and the cooperative development of programs by small firms and sole practitioners acting together or through their local bar associations.

There was also broad concern that the profession's current emphasis on billable hours and profits has served to diminish needed attention to hands-on training and development of new lawyers. The Conclave recognized that mentoring has historically been and continues to be a very important ingredient in the development of new lawyers; and senior members of the bar are urged to make themselves more available for advice and consultation to less experienced lawyers, both in their own firms and in their legal communities. Local bar associations, with the assistance of the Virginia State Bar Conference of Local Bar Associations, are encouraged to establish and promote mentor programs.

There is an important role for the law schools in post-admission education. Some law schools in Virginia and elsewhere have offered summer programs for practicing lawyers which are in greater depth than the typical one or two-day CLE offering. Other law school courses, such as evening or weekend offerings, should also be considered.

The Report of the Commission on the Future of Virginia's Judicial System recommends the establishment of additional mandatory continuing legal education programs for all judges. (Recommendation 6.2) This recommendation has been endorsed by the Judicial Council of Virginia. The law schools and the practicing bar can make a significant contribution to the judiciary in helping to design and implement such programs.

IV. Future Considerations.

The value of this Conclave lies in the fact that problems and opportunities in both the law school educational experience and continuing legal education have been identified for further examination and study by the law schools, the practicing bar, and the judiciary. Ways will be devised to encourage cooperative programs, projects, and efforts relating to legal education, including pursuit of the ideas contained in this statement. The Conclave further recommends that a second Conclave on the Education of Lawyers in Virginia be held at an early date to further explore and develop the themes of this gathering.

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