

Education & Practice

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Changing the Dynamics of Legal Education: Now What About that “Professional Responsibility” Class? By Leslie A.T. Haley

By now, the message of the national media is clear: law schools are failing, and recent law graduates lack skills related to effective writing, critical problem solving, business and financial literacy and basic core competencies, as well as professionalism. Current VSB President W. David Harless referred to this as a “crisis” in his recent President’s message in the February issue of the Virginia Lawyer and it was the focus of the Conclave on the Education of Lawyers last spring. Certainly all this talk has been driven by a tough employment cycle, but what we’re seeing in legal education is not unlike what all other levels of our American educational system are undergoing: a drastic re-evaluation in light of 21st century learning and globalization.

In my most recent position as Ethics Counsel with the Virginia State Bar, I spent a significant amount of time writing materials and helping to “educate” lawyers through CLEs and ethics advice, always striving to make materials and hypotheticals relevant to practicing lawyers. Instead of lecturing to practicing lawyers, I would mod-

erate a discussion in which the audience solved a dilemma. As a co-adjunct at University of Richmond I learned first-hand how difficult it can be to integrate book knowledge into the actual dynamics of teaching the course “Professional Responsibility.”

Across the country we are seeing sweeping changes in legal education. Washington & Lee Law School has been prominently recognized recently for their third-year “Experiential Curriculum.” While there is ongoing debate about whether this program is tied to actual success in law school rankings and ratings, students are receiving accolades for practical skills training. Washington & Lee is certainly ahead of the curve, but not the leader in such curriculum changes.

In redefining law school curriculum there have been significant advancements in skills training, however, when I looked at the integration of Professional Responsibility into these innovative clinical teaching settings I found very few examples. Most academics agree that Professional Responsibility as currently taught is a two-hour required course where

uniformly very little emphasis is put on the actual application and implication of “real-world” ethics in the practice of law. Students sit in a classroom and review interesting cases and dialogue regarding matters that are brought before disciplinary authorities or courts that involve a lawyer’s violation of the Rules of Professional Conduct. While I certainly did my best to try to relate these scenarios and cases to real-life practice roles and hypo-

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Chair's Column

**Professor
A. Benjamin Spencer
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In this challenging time for legal education, our Section is committed to developing ideas for improving the training of lawyers.

These are exciting and tumultuous times in legal education. Applications to law school are declining precipitously, making it challenging for law schools to fill their classes with the best students, and creating significant pressure on law school budgets that have heretofore been heavily tuition dependent.

These economic and financial difficulties come at a time when law graduates are facing an extremely daunting legal job market, with full-time legal employment being harder to find as the law services industry contracts and restructures.

Lastly, the economic crisis and the jobs crisis are the context within which law schools continue to face calls to make their programs more relevant to modern legal practice and more successful in preparing students for real world legal practice. Responding to these demands requires the deployment of additional resources that many schools may lack in an environment of eroding enrollments.

What is to be done? Each of the law school deans along with their faculties must identify bold and creative solutions to these challenges consistent with their respective missions and priorities. Many ideas have already been circulated stabilizing/rationalizing faculty and staff size, increasing faculty teaching loads, more partnerships with practitioners to deliver experiential education but it is not my intention to urge any here. Rather, I want to focus on what the role of the Section on the Education of Lawyers will be during this time.

The Section's response to these challenges began with our 20th Anniversary Conclave on Legal Education held one year ago. There we initiated a discussion on what changes need to be made within law schools and beyond within the larger profession to improve the training of lawyers in Virginia. How should the bar exam evolve to better screen for analytical and writing ability? What skills should we be giving new lawyers in addition to traditional legal subjects that are relevant to law practice today? What is the role of the judiciary in helping train and improve our lawyers? How can continuing legal education in Virginia be improved so that it serves its purpose of maintaining the quality and excellence of practitioners throughout their careers?

As a first step in addressing some of these issues, the Section has created a task force focused on legal writing. This group, chaired by Senior Justice Elizabeth Lacy of the Virginia Supreme Court, is focusing on studying how law schools, law firms, CLE providers, judges, and bar examiners around the country are doing things that improve the writing of lawyers. This information will help the task force develop a set of recommendations for how we can pursue that same goal within Virginia.

Going forward, the Section will focus attention on other areas important to improving the quality of legal training in Virginia during law school and beyond. We welcome the participation and support of all who are interested in helping with this effort. ✧

Changing the Dynamics of Legal Education...

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theticals, it's a difficult task when you've got a classroom of students who can't relate to the hypothetical situation because they've never held a client interview, they've never had to speak to opposing counsel or stand before a judge and question a witness, they've never had to try to figure out what to do when a client lies to them, or better yet, they've never had a client walk in their office and tell them they killed someone!

When I started at the VSB in 1998 I was anxious about my ability to advise lawyers on application of our Disciplinary Rules without more formal training. I quickly learned that my varied civil and criminal practice background combined with some research and analysis gave me a solid sense of the practical application of ethics rules to the everyday dilemmas lawyers were facing. While I admit that all ethics lawyers face conundrums from time to time, the majority of ethics issues are routine and recurring in nature and relative to issues and circumstances I had witnessed as a practicing lawyer. But to "teach" ethics education in a classroom setting with a large number of students is difficult because there is virtually no published "case" law and no practice models.

Lawrence C. Marshall, a professor at Stanford Law School, puts it in great perspective: "Professional Responsibility is notoriously difficult to teach, in part because it is typically the only required course after first year. Yet, it is certainly one of the very most relevant courses any student will take as hardly a day goes by in a lawyer's life without an ethical issue arising. Lawyers frequently fail to spot these issues altogether, or, if they do, are not versed in analyzing them. Students

need to learn not only the relevant substantive law and think about broader ethical issues, but also become acutely sensitized to the ways in which these issues arise and the methods through which they can be resolved."

In 2007 I was honored to serve on a panel at the ABA's Center for Professional Responsibility's annual program in Chicago. One of the other panelists, Dennis Curtis, is a professor at Yale who pioneered the concept of clinical education at Yale in the 1970s. Professor Curtis directs a clinical course in which students work with Connecticut's State Disciplinary Counsel to prosecute lawyers who violate rules of professional conduct. According to Curtis, "poor communication, unclear fee agreements, conflicts, lack of diligence, unexplained delays and simple incompetence are the common fare of the disciplinary process. Students are stunned at times by what they experience, and internalize the professional obligations of lawyers in a way that could not happen without their clinical experience. These programs raise the consciousness of students about what professional responsibility really means."

While Yale offers more than 20 different clinical placements for their students, just two years ago, under the direction of Lawrence Fox, they instituted a second clinic, the "Ethics Bureau," that focuses on providing pro bono ethics counseling and opinions to lawyers, as well as advice on asserting ineffective assistance of counsel claims to the public when counsel is engaged in ethical misconduct. Additionally, they offer ethics advice to non-profits. Fox notes that "this is the first course of its kind. It will provide a valuable service not otherwise available and an opportunity for our students to understand the real-life dimensions

to the professional responsibility obligations of lawyers."

At Stanford Law, the Professional Responsibility course requires students to serve as an Ethics Committee and resolve problems arising in real time within Stanford's law clinics. Issues are debated and discussed and then a formal decision of the Ethics Committee is reached and recommended to the student associates and their professors.

At Indiana University Maurer School of Law, Bill Henderson leads a class in The Legal Profession that was redesigned in 2009. In addition to the typical study of the "law of lawyering," the course helps students identify the career that will best suit them, based on the discovery of their personal and professional strengths, attributes, and values. It is a mandatory first year course in spring semester carrying 4 credit hours.

While these Professional Responsibility classes are innovative, they are few and far between, and only a handful of live-client clinics exist in which the practice area itself is Ethics. Of the twenty-seven law schools that have joined Educating Tomorrow's Lawyers Consortium which emanated from the Carnegie Report, only Stanford and Indiana incorporate skills-based teaching in their mandatory classes on Professional Responsibility.

Data show that lawyers who have achieved great success possess not only a deep understanding of substantive law, but also traits such as character, judgment, integrity, communication and empathy. I hope that as legal education radically changes, we will integrate the doctrine of Professional Responsibility into experiential learning and live-client clinics. ✧

Work of the ABA's Standards Review Committee

By Thomas A. Edmonds

As many in legal education know, the Council of the Section of Legal Education and Admissions to the Bar is the group within the American Bar Association having responsibility for adopting standards for approval of American law schools, interpreting those standards, and utilizing the standards to grant provisional and full approval to law schools that have demonstrated compliance. This authority comes by delegation from the U.S. Department of Education.

The Council has, in turn, created a Standards Review Committee, which regularly considers and proposes to the Council changes in the standards. Periodically, the committee is requested to undertake a comprehensive review of the standards and make more extensive recommendations for updating and changing the standards. Such a comprehensive review and proposed re-write is now underway, and I have had the privilege of serving on the committee during this work.

The committee was asked last year to give expedited consideration to revisions in Standard 509 relating to consumer information provided by law schools. The standard was strengthened significantly to require more complete and accurate information about such things as admissions data,

employment outcomes and conditional scholarship retention statistics, and to make it clear that schools can be sanctioned for violating the requirements of the standard. The changes recommended have already been adopted by the Council and appear in the 2012-2013 edition of the standards.

The committee continues to work on other significant matters. It is quite likely that the committee will recommend requiring approved schools to develop, implement and evaluate learning outcomes that are expected of its students during their legal education. Law schools that are part of universities have likely already moved in this direction as a result of accreditation requirements imposed on their parent institutions by their regional accrediting bodies. There will be required learning outcomes related to traditional substantive and procedural areas, skills training, legal analysis and writing, and professional responsibility, with the schools free to develop additional learning outcomes reflecting the mission of the particular school. Each law school will be required to use a variety of both formative and summative assessment methods to measure and improve student learning in light of the adopted learning outcomes, and to provide more regular feedback to its

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Thomas A. Edmonds is currently a Distinguished Visiting Professor at Charleston School of Law. Edmonds serves on the ABA's Accreditation Standards Review Committee. He was the Executive Director of the Virginia State Bar for a number of years and was Dean of the University of Richmond School of Law from 1977-87.

CONTRIBUTIONS

SECTION ON THE EDUCATION OF LAWYERS

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Lexington**

**The College of William & Mary
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students about their performance in individual course offerings and across the curriculum. These changes, if finally recommended by the committee and adopted by Council, will be a challenge for law schools in view of their student/teacher ratios and large class sizes, and many law schools will have to give much thought to how they will modify their curricula and evaluation processes in order to comply.

There has been discussion for years about eliminating the provision in the standards that approved law schools require applicants to take a valid and reliable admission test, and several schools have requested and been granted a variance from this requirement. Many colleges and universities have departed from the practice of requiring undergraduate applicants to take the SAT or ACT. Nevertheless, after much debate, discussion and interaction with the Law School Admissions Council, the committee has decided to recommend retention of the standard and its requirement, with an alternative for Council's consideration should it wish to delete the standard.

Another major area where work is still in progress is how to deal with Standard 405 relating to the required professional environment in approved law schools. The present standard has been read by many in legal education to require that law schools have a tenure system for traditional full time doctrinal faculty members, but as clinical legal education and legal

writing programs have developed in recent years and become staffed more regularly by full time faculty members, different security of position and governance participation rights have been accorded to these colleagues at many law schools. Discussion thus far in the committee has centered on developing several alternative versions of Standard 405 for consideration by the Council, including a proposal that would largely carry forward the present language and permissible distinctions, and one requiring all full time faculty to be treated the same in these areas regardless of their academic field or teaching methodology.

Other matters being addressed include requirements for schools opening separate locations, the process for variance requests by schools from a requirement of the standards, physical facilities, library requirements in the digital age, and the dynamics of the relationship between a law school and its parent university or governing board. Several chapters of the proposed revised standards have already been presented to the Council and largely approved, and others will be presented at the next meeting of the Council. Much work remains to be done, however, and the committee will continue with its regular quarterly meetings until all the issues have been addressed and recommendations developed for review and consideration by the Council. ✧

Reveley Named as 2013 Recipient of Rakes Leadership in Education Award

The Section is pleased to announce that the second recipient of its William R. Rakes Leadership in Education Award for 2013 is **W. Taylor Reveley III**, President of the College of William & Mary. In announcing the award recipient, Section chair Ben Spencer remarked, "Taylor truly deserves this award for his lengthy and ongoing contributions to legal education in Virginia both while in private practice and in academia."

Reveley helped organize the first Conclave on the Education of Lawyers in Virginia in 1992 while he served as managing partner of Hunton & Williams. He then served as Dean of the Marshall-Wythe School of Law at the College of William & Mary until he became President of the College in 2008. In April 2012,

Reveley served as Chair of the Twentieth Anniversary Conclave on the Education of Lawyers in Virginia which was underwritten by a grant from the Virginia Law Foundation. This extraordinary event was a huge success that will lead to efforts to reform and improve the training of lawyers in Virginia hopefully for years to come.

The **Rakes Leadership in Education Award** was established by the Section in 2012 to honor William R. Rakes, of Roanoke. The inaugural award was presented to Bill Rakes at a reception sponsored by Gentry Locke Rakes & Moore in conjunction with Conclave 2012. Details on the criteria for the award and the nomination process are available on the Section's website. ✧

Faculty News

George Mason

- ◆ Judge Douglas H. Ginsburg will join the George Mason law faculty as professor of law beginning in July of 2013. Judge Ginsburg, who is currently a professor of law at New York University School of Law, will continue also to serve as senior circuit judge of the United States Court of Appeals for the District of Columbia Circuit. Judge Ginsburg is a graduate the University of Chicago Law School.

Regent

- ◆ The American Bankruptcy Institute has named Regent Law professor Scott Pryor the Robert M. Zinman ABI Resident Scholar for the spring 2013 semester

University of Richmond

- ◆ Meredith Harbach was promoted to Associate Professor of Law.
- ◆ Jack Preis and Jessica Erickson received tenure and were promoted to Professors of Law.
- ◆ Noah Sachs received a Fulbright grant that will allow him to spend his sabbatical next spring in India.
- ◆ Wendy Perdue was selected to serve on the AALS Executive Committee and Board of Governors of the VBA.

University of Virginia

- ◆ Ashley Deeks joined UVA in the fall of 2012 as an associate professor of law after two years as an academic fellow at Columbia Law School. She received her J.D. from University of Chicago Law School.
- ◆ Jessica Lowe also became an associate professor of law after several years at Princeton University, where she was completing a Ph.D. in American legal his-

tory. She has held a number of fellowships, including an Andrew W. Mellon Foundation Fellowship and a Princeton University Center for Human Values Graduate Prize Fellowship. She received her J.D. from Harvard.

- ◆ Richard Bonnie, director of UVA's Institute of Law, Psychiatry and Public Policy an expert in mental health and criminal law, testified Jan. 24 before a panel convened by Connecticut Gov. Daniel Malloy to recommend policy reforms in the wake of the deadly Sandy Hook Elementary School shooting.
- ◆ A comprehensive set of rules governing evidence in Virginia trials drafted by a University of Virginia law professor was recently signed into law. UVA Law Professor Kent Sinclair, a former federal magistrate judge, has been working for more than 18 years to have the state adopt the Virginia Rules of Evidence, which apply to all civil and criminal trials in Virginia.
- ◆ Dan Ortiz argued before the U.S. Supreme Court on behalf of a Supreme Court Litigation Clinic client who allegedly faced discrimination in her job and sought to sue her employer, Ball State University in Indiana.

Washington and Lee

- ◆ Prof. Lyman Johnson was elected chair of the AALS Section on Agency, Partnerships, and LLCs.
- ◆ Prof. A. Benjamin Spencer was elected the American Law Institute. In addition, he was appointed by the President of the National Conference of Bar Examiners to the Civil Procedure Drafting Committee.
- ◆ Prof. Tim Jost has been named a contributing editor for Health Affairs, the nation's leading health policy journal. Jost has been a regular contributor to the Health Affairs blog, authoring over thirty posts on the Affordable Care Act covering implementation issues and legal challenges.

William & Mary

- ◆ Dudley Warner Woodbridge Professor Charles H. Koch, Jr. (1944-2012) was posthumously honored by the Law School as recipient of the John Marshall Award. The Koch Memorial Symposium on Administrative Law was held at the Law School in March.
- ◆ Sarah L. Stafford, the Paul R. Verkuil Distinguished Professor of Public Policy, Economics, and Law

was named director of the W&M Thomas Jefferson Program in Public Policy.

- ◆ Professor Michael Stein was one of nine inaugural recipients of the Henry Viscardi Achievement Award, chosen in March by a committee chaired by former U.S. Senator Robert Dole. In December, President Obama announced Stein's appointment to the U.S. Holocaust Memorial Council. ✦

News and Events Around the Commonwealth

Regent

- ◆ Beginning in June 2013, Regent students can enroll in a two-year Accelerated Juris Doctor (J.D.) degree program, shaving a year off of a traditional program. Accelerated program students will follow the traditional ninety-hour J.D. course requirements, simply in a compressed format. Accelerated degree students will also be required to complete a law-practice externship as a part of the accelerated program.

University of Richmond

- ◆ Supreme Court Justice Elena Kagan visited UR in the fall for a conversation that aired on C-SPAN with Dean Perdue about her career and the court.
- ◆ The National Center for Family Law at the University of Richmond School of Law presents "State of the Family 2013: The Divorcing Brain" on September 15 and 16, 2013, with keynote by Stephanie Coontz, Director of Research and Public Education for the Council on Contemporary Families and professor at The Evergreen State College.
- ◆ The U.S. Court of Appeals for the Fourth Circuit visited UR Law on March 20 to hear three cases, including a First Amendment election ballot issue.

University of Virginia

- ◆ Third National Conference on Genetics, Ethics and the Law will take place on May 22, 2013. Sponsored by the law and medical schools and the American Society of Human Genetics, the event is targeted at medical geneticists, genetics researchers, genetics counselors, physicians, nurses, allied healthcare providers, and medico-legal counselors and regulators. The conference will explore the legal and bio-ethical implications of novel genetics and genomics from American and global perspectives, through a series of lectures, workshops and case discussions.

Washington and Lee

- ◆ The U.S. Court of Appeals for the Fourth Circuit visited W&L Law on March 22 to hear three cases, including a dispute between the U.S. Dept. of Education and the state of South Carolina on federal funding for special education.

William & Mary

- ◆ In 2013, The Law School will host the 26th Annual IBRL Supreme Court Preview on September 27-28, the 10th Annual Brigham-Kanner Property Rights Conference on Oct. 17-18, and the 59th Annual Tax Conference on Nov. 6-8. ✦

MEMBER RESOURCES AREA ELECTRONIC NEWSLETTERS FOR SECTION MEMBERS

<http://www.vsb.org/site/sections/educationoflawyers>

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