

# Confessions...

## OF A RECOVERING LAW SCHOOL CRITIC

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Law school bashing has long been a popular pastime among judges and lawyers. The typical complaints cover a wide spectrum of perceived failings. Some say law schools are hopelessly mired in traditional pedagogical methodology; others say law schools have experimented promiscuously with trendy, but unproven programs (some doctrinal, some "skills" based) such as law and economics, law and psychology, critical legal studies, and negotiation techniques.

Given the breadth of the criticism, the only certainty is that all of it cannot be true, at least not at the same school at the same time. That said, then what, if any, of the criticism is fair and legitimate? And of special interest to the bench and bar in Virginia, how are the Commonwealth's six law schools coping with the challenges of legal education as we approach the next century?

Believing this question to be worth answering, a group of four lawyers (two academics and two practitioners) assigned themselves the task of spending a day at each of Virginia's six law schools. This article describes the process and summarizes the findings, all through the limited perspective of the author, who emerged from the experience enriched in ways he had not anticipated, and chastened by the realization that much of his own

criticism of law schools had been, alas, unfounded.

### I. GENESIS OF THE LAW SCHOOL VISITATION PROJECT— CONCLAVES I AND II

An intense discussion about legal education in Virginia began at Wintergreen on March 27-28, 1992, and was renewed in Richmond eight months later, on December 4, 1992. The two day Wintergreen conference—Conclave I—was extensively covered by the *Virginia Lawyer* in its July 1992 issue.

Conclave II—like its Wintergreen predecessor—was sponsored by the Virginia State Bar and inspired by the belief of VSB President William R. Rakes that legal education in Virginia could be enhanced, during law school and thereafter. Both Conclaves I and II were comprised of nearly 60 members, including judges, practicing lawyers and representatives from all six law schools in the Commonwealth. Almost all of the participants took part in both the Wintergreen and Richmond meetings.

An early product of the first Conclave was the creation of the new VSB Section on the Education of Lawyers. First on Conclave II's agenda, accordingly, was parental advice to the fledgling Section. With Bill Rakes at the podium, the Conclave (i) consid-

ered the new Section's purposes and bylaws; (ii) talked about how, in the real world, to maintain a continuing dialogue among the academic community, the judiciary and the practicing bar about legal education; (iii) stressed the need for concrete results if the dialogue is to remain credible and, indeed, if it is to continue at all; and (iv) identified substantive issues to be engaged soon by the Section.

Following Conclave II, the Section divided itself into committees, one of which was charged with focusing on education during law school. Its first co-chairs were Tom Guernsey—associate dean and professor at T.C. Williams School of Law—and the author. At one of the early meetings of this committee in 1993, we undertook to define our mission. Since Conclaves I and II were at the time relatively recent events, all of us were aware of the simmering criticism of law schools for not, in the minds of the critics, adequately preparing their students for the challenges that lay ahead. Of particular concern was the perceived lack of so-called "clinical" or "skills" training.

At some point in our discussion, it was suggested that perhaps the critics were unaware of what a contemporary law school curriculum looks like. Someone even ventured the view, gently, that there might be an inverse relationship between the age of any



particular critic and that critic's familiarity with legal education in the 1990's. This led inexorably to an invitation from the academics on the committee to the rest of us to come to all six Virginia law schools and see first-hand what is happening there today. The committee was trapped; so of course we accepted.

All that remained was to find a small group of committee members willing to volunteer to undertake the project. The committee co-chairs had no graceful way out. They were joined by two legitimate volunteers—Joan Martin (a partner with Williams, Kelly & Grier in Norfolk) and Professor Michael Krauss of the George Mason Law School. Thus the visiting team was created with a mixture of law school faculty and administration and members of the private bar (large and mid-size firms).

## II. THE VISITATION SCHEDULE

The visiting team spent nearly a full day at each of our six schools:

School	Visitation Date
T.C. Williams School of Law University of Richmond	April 12, 1994
University of Virginia School of Law	November 15, 1994
Marshall-Wythe School of Law College of Williams & Mary	November 18, 1994
George Mason University School of Law	February 17, 1995
Washington & Lee University School of Law	April 10, 1995
Regent University School of Law	April 21, 1995

## III. VISITATION STRUCTURE AND TOPICS DISCUSSED

No two visits were exactly the same. All, however, included small group sessions with administrators, faculty and students. We sat in on classes and toured the facilities. We were given very helpful overviews of the curriculum. Within this structural framework, the visitation team attempted to touch lightly on as many of the following topics and issues as possible.

### A. MISSION OF THE LAW SCHOOL

What do faculty, students and administrators feel the mission of their law school is and should be? How do faculty, students and administrators feel the law school meets this mission? What is the perception of faculty about their role in the preparation of lawyers?

### B. SKILLS AND VALUES

Which of the following skills and values (derived from the ABA's MacCrate Commission report) do faculty, students and administrators feel are covered in their law school's curriculum? Which are covered in required courses?

- Problem solving
- Legal Analysis and Reasoning
- Legal Research
- Fact Investigation
- Communication and Advocacy (written and verbal)
- Counseling
- Negotiation
- Litigation and Alternative Dispute Resolution Procedures
- Organization and Management of Legal Work
- Recognizing and Resolving Ethical Dilemmas
- Provision of Competent Representation
- Striving to Promote Justice, Fairness, and Morality
- Striving to Improve the Profession
- Responsibility to do Pro Bono Work
- Obligation of Community Service
- Professional Self Development

## C. THE LAW SCHOOL AS GRADUATE SCHOOL

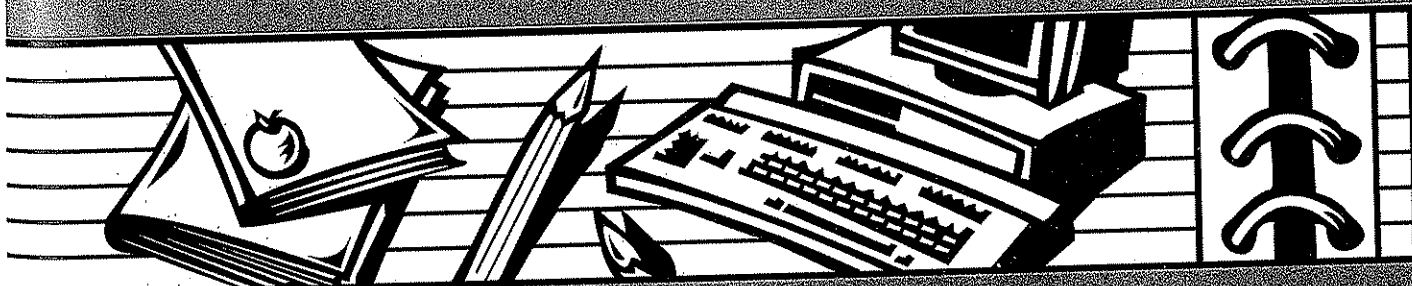
To what extent does the law school perceive itself as committed to a more generalized intellectual inquiry (as compared to professional school training)? Do students, faculty, and administrators agree on this perception? Are students generally satisfied with the education they are getting? Do they feel it is adequately preparing them for the bar and for practice? What is the relative use of different teaching methods and tools (e.g., Socratic, lecture, problems, simulation, clinics)? To what extent does the school encourage participation by adjunct faculty in classes, seminars, and clinics? What type of special or unique programs does the law school offer as a way of meeting its mission?

### D. RESOURCES

Though not on our original outline of subjects to cover, the topic of resources rose to the fore early on. Good intentions, thoughtful planning, and hard work can only carry a school but so far. Their influence on the ultimate product is significantly restrained by the grinding realities of money, physical plant, student-faculty ratio, faculty course loads, geography, and student body demographics.

## IV. COMMUNICATION OF RESULTS

Among the questions we were asked repeatedly along the way was: "What are the four of you going to do to disseminate the fruits of your labors?" The answer is in at least two parts. The first, albeit modest, step was the third Conclave, held last May at the T.C. Williams School of Law. The more substantial vehicle for spreading the word is this special issue of the Virginia Lawyer. It is hoped that those who read this issue will reexamine their views about how we (i) educate our new lawyers and (ii) continue to train and nurture practitioners. These subjects should always be of central concern to the bar.



## V. FINDINGS

It would have been impossible, of course, to comprehend the essence of any law school in a single day, let alone communicate that essence on all six schools in a single, readable, article. Nonetheless, the visitation team left each school with a substantial amount of newly acquired information and a strong sense of how all six schools are both similar and distinct.

### A. OUR LAW SCHOOLS' FUNDAMENTAL QUALITY

Virginia is fortunate to have six schools of such high quality. Not many states can boast of such abundance. None of our six schools suffers from any detectable stagnation. To the contrary, each is experimenting with new programs. All seem to welcome the challenge of continuing to be innovative.

Quality stands out in any number of ways. All six schools have strong faculties and administrations, solid curricula, and highly credentialed and motivated students. The applicant pool for all six is wide and deep.

All of our schools also continue to offer the customary, baseline courses in their familiar configuration and sequence. In particular, with a few exceptions, the first year academic experience at all six schools is essentially similar.

### B. OUR LAW SCHOOLS' REMARKABLE DIVERSITY

Notwithstanding the similarities, there are some important differences among Virginia's six law schools. Two, in particular, stand out for the unique features of their academic programs. George Mason School of Law emphasizes law & economics throughout its core and upper level elective courses. It also offers "specialty tracks," including Regulatory Law, International Business, Litigation, Corporate and Securities Law and Patent Law, as the focus of students' second- and third-year courses. Regent University School of Law bases its

curriculum on a biblical approach to law and dispute resolution. It also offers career tracks, including Public Law, Family Law, Business/Commercial Law, Litigation and Legal Philosophy/History.

The other four law schools each offer a more conventional curriculum — though each also has specialty programs such as William & Mary's Institute of Bill of Rights Law and the University of Virginia's Institute of Law, Psychiatry and Public Policy and the John M. Olin Program in Law & Economics. The University of Richmond is uniquely able to exploit its near-downtown location to bring in a number of adjunct professors and to create a wide range of externship opportunities. Washington & Lee takes advantage of its small size to ensure that every student is taught in at least one substantive first-year class with no more than 20 students. Three of the law schools offer a full- or part-time post-graduate program in law.

The committee agreed that the diversity of Virginia's law schools adds to the strength of our educational opportunities. Prospective students have a wide range of choices within a small geographic area.

### C. "SKILLS" TRAINING

Though some of our schools embrace the concept of skills training with greater enthusiasm than others, we were struck by the wealth of opportunity at all six schools to participate in a wide variety of what some would say is non-traditional legal education. Any one school's commitment to skills training, however, is not simply a function of deciding, as a matter of educational philosophy, what to do and in what measure. It is a far more complicated process. Many factors come into play, including:

- (i) cost;
- (ii) faculty interest and availability;
- (iii) location  
(e.g., it matters a great deal whether you are in Rockbridge or Arlington County);

- (iv) physical plant limitations;
- (v) adjunct faculty availability; and
- (vi) student body interest.

### D. EXAMPLES OF INNOVATION

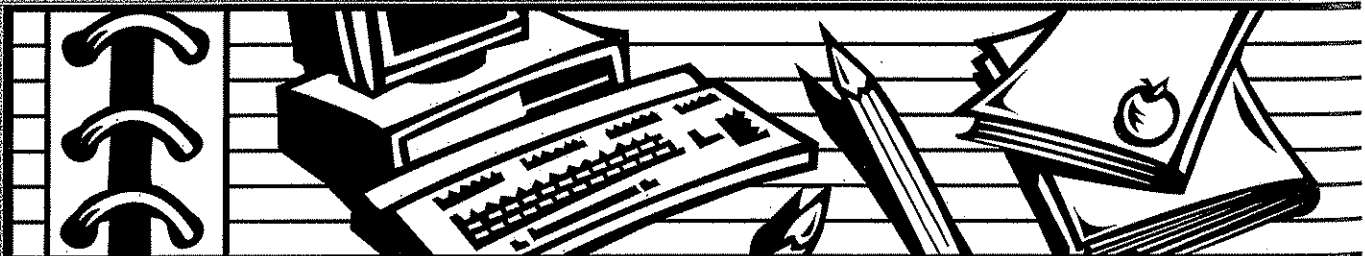
This article is not the place to fully describe all of the exciting new programs at our six law schools. A few examples, however, should provide a flavor for the creativity that is thriving at all of them. Though the programs vary greatly, all result from each school's determination to improve the educational experience through innovation and experimentation within the traditional contours of a three-year regime.

George Mason's "Quantitative Methods" is a required, two-semester, six-credit course covering the basic principles of economics, finance, accounting, and statistics as they are used in case law and other legal contexts. The course teaches first-year students how to apply the basic tools of economic and market analysis to the study, and practice, of law.

T.C. Williams' "Clinical Placement Program" enables the participants to work with regular and adjunct faculty on real legal problems outside the law school, with groups as diverse as the ACLU, Central Virginia Legal Aid, the Attorney General's Office, and the IRS, to name a few. These are four, five or six credit hour courses for third year students.

The University of Virginia's "Principles and Practice" program offers five courses and three seminars that are "team taught" by distinguished faculty and accomplished practitioners. Subjects have included complex insurance litigation, corporate finance, and administrative law. These classes are for second and third year students, and are part of Virginia's response to the curricular challenge of providing a more productive and stimulating experience after the first year.

Regent University offers its students the opportunity to intern with the American Center for Law and Justice, which was formed in 1990 by the



University's founder, Dr. M.G. "Pat" Robertson. This public interest firm advances "pro-liberty, pro-life and pro-family causes [by] engaging in litigation and providing legal services for clients."

At William & Mary, all students are required to participate in the Legal Skills program—a nine credit hour, two-year course of study. This program attempts to address organic issues such as what it means to be a lawyer, what skills are required to be an effective advocate and counselor, how lawyers relate to one another as colleagues and adversaries, and how ethical principles and considerations actually arise in practice.

Washington & Lee has several clinics, externships and practicums intended to enable students to put their newfound skills to use outside the classroom. For example, the Virginia Capital Case Clearinghouse was established by Washington & Lee to help meet the urgent need for effective representation of capital defendants in the Commonwealth. Eleven upperclass students work under the supervision of a full-term tenured faculty member, providing research, writing assistance, and trial level support to lawyers handling capital cases. The VCCC also publishes the Capital Defense Digest four times per year and distributes it to the bench and bar.

E. "INFORMATION GAP AND/OR  
"UNDERSTANDING" GAP

There seems to be a significant lack of knowledge among lawyers and judges about what is happening at law schools today. Perhaps more importantly, there may be a misunderstanding about:

- (i) what a law school should be undertaking to accomplish;
- (ii) how best to do it given the constraints of time, limited resources, and student impatience to get on with life; and
- (iii) to whatever extent after three years of rigorous legal education a new lawyer is not perfectly and com-

pletely ready to practice law, the bench and the bar need to assume greater responsibility for helping young lawyers bridge the gap.

These issues will not soon be resolved, but they should give the Section plenty to think about and work on in the years ahead.

F. CLOSING THOUGHTS

The dialogue between the academy, on the one hand, and the bench and bar, on the other, should continue. It is in our collective interest that the these discussions be frank and vigorous. For them to be constructive, however, they must be informed. The four members of the law school visitation team were privileged to see first-hand what is happening today at Virginia's law schools. We hope that our experience may in some small degree help to stimulate others to participate in the ongoing refinement of how best to train lawyers for the challenges of modern practice. ■



THE COMPETITION

The VSB Conference of Local Bar Associations announces the 11th annual Awards of Merit competition. The Awards of Merit are designed to recognize outstanding projects of local bar associations and to encourage greater service to the bench, bar and public. These awards provide an opportunity to learn from the programs of other bars and to inform the public about some of the excellent work of bar associations in Virginia.

DIVISIONS

All entries are judged according to the size of bar membership in one of five divisions: 50 members or less, 51-100 members, 101-250 members, 251-450 members, and 451 members or more.

CRITERIA FOR JUDGING

All entries are judged according to:

- The degree of innovation and originality
- The scope, importance and duration of benefits derived by the public and/or profession
- Extent of membership participation
- Difficulty in implementing and/or sustaining project

AWARDS

Award of Merit winners will be recognized June 21, 1996, at the Local Bar Breakfast during the VSB Annual Meeting and will be given a plaque and a choice of law books. The VSB will send press releases in advance to local newspapers in the winners' localities.

DEADLINE: Friday, May 10, 1996

For further information please contact: Carole Tyler, Local & Specialty Bar Relations Coordinator at (804)775-0520.

