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## Recent Works on the History of U.S. Indian Policy

Tim Alan Garrison

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# TULSA LAW JOURNAL

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## REMARKS

### **RETHINKING THE PROGRAM OF LEGAL EDUCATION: A NEW PROGRAM FOR THE NEW MILLENNIUM**

James P. White\*

I am honored to deliver the fifth annual John W. Hager Distinguished Lecture. I am particularly honored to follow my good friend Judge Guido Calabresi who delivered last year's Hager Lecture.

For one who is in his twenty-sixth year as Consultant on Legal Education to the American Bar Association, the University of Tulsa pays me an honor in inviting me to give a lecture honoring a great law teacher, John W. Hager. As I have observed throughout my years of service, teachers such as John Hager are what makes American legal education so strong and such a model for legal education throughout the world.

As we begin the 21st Century, we the academic lawyers, the practicing lawyers and the judiciary must rethink our program of legal education in the United States and refashion it to reflect the needs and demands of this new century.

As stated in Council of the Section's 1987 report entitled *Long Range Planning for Legal Education in the United States*: "It is always difficult to see the

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future.”<sup>1</sup> A special Committee of the American Bar Association in 1959, for example, perceived a serious problem: Not enough people wanted to be lawyers. “In the face of the country’s ever growing need for lawyers,” the American Bar Association Special Committee on Economics of Law Practice wrote, “the law is becoming a dwindling profession.”<sup>2</sup>

However aggressive our schools and colleges are in searching out able youths and giving them a good education, the supply of exceptional people is limited. Yet far too many of these rare individuals are becoming lawyers at a time when the country cries out for more talented business executives, more enlightened public servants, more inventive engineers, more able high school principals and teachers . . . .<sup>3</sup>

Against these contradictory statements and similar views currently expressed we must assess our past and current programs of legal education while keeping the fundamentals of a program of legal education to which the world looks as a model. Yet, refashioning it in a new way, which is reflective of and thoughtfully aware of our current world in this new century. In our fashioning of a new program of legal education for the new millennium, we must reflect on the history of American legal education.

Until the end of the 19th century, legal education in the United States essentially took place by apprenticeship and self-directed reading. In the early years of the development of this republic, there were essentially three categories of law schools. First, there were those which were modeled after the continental schools of law of the time in which the law schools became a department or chair within the college or university. Thus, legal education was considered as part of general liberal arts education. The first of these chairs or departments was at William and Mary, which was established in 1779. Then came Transylvania University, in Kentucky, established in 1779. As well as, the University of Maryland in 1823 and the University of Virginia in 1826.

The second type of law school that developed in the United States was one which we would now define as a proprietary law school, that is, a law school without connection to any university or college but an independent school. These schools were self-supporting and any income in excess of their actual expenses benefited the proprietors of the school who were normally the faculty of the law school. This is the type of school exemplified by Connecticut’s Litchfield School of Law.

The third type of law school and the type of law school, which became the benchmark for the development of all American legal education, were university law schools. Law schools such as Harvard, established in 1817, and Yale, after its establishment in 1824. These law schools were part of the universities, but they

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1. *Long Range Planning for Legal Education in the United States* (1987) A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 3.

2. *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (1986) A.B.A. Comm. on Ethics and Prof'l Responsibility 6.

3. *Long Range Planning for Legal Education in the United States* (1987) A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 3; quoting Derek Bok, *President's Report* (1983) to the members of the Harvard Board of Overseers.

conducted an educational program similar to the Litchfield model.

The first two varieties of law schools, that is those law schools which provided that the chair of law or law department was part of the liberal arts program within the college or the university and the proprietary school of law, ceased to exist in any significance in that form by the beginning of the last third of the 19th century. Generally speaking, American law schools in this period, the middle to latter part of the 19th century, developed according to a professional and university approach. I believe that we can say until the 1870s legal education in America's colleges and universities was but a small part of an era when lawyer qualifications consisted of apprentice training and education in proprietary law schools, but that American law schools were established during that period of time and survived. Not only did they survive, but they became the model for the development of legal education after the 1870s.<sup>4</sup>

In the latter part of the 19th century and the first several decades of the 20th century, a number of new university law schools were created. For the most part these new university law schools were private, urban universities or rural state universities. These new law schools provided opportunity for upward mobility of many. They have become the backbone and strength of American legal education. The University of Tulsa College of Law and its predecessor institution is one of these. Since 1923 this law school has provided quality legal education for its students.

An objective observation may disclose that having a law school as part of a university has not been entirely smooth or happy relationship. A law school employs a combination of professional and scholarly law faculty who demand university privileges and rights and whom often resist integration. Whereas, from the standpoint of the universities which desire law schools, law schools are classified and seen as a profit center rather than an intellectual center. The divergent viewpoints in the history of the American university and its law schools has often been one of inherent tension.

The American Bar Association (ABA) was founded in 1878 and one of its first committees at that founding assembly was a Committee on legal education and admissions to the bar. The first ABA assembly adopted the following resolution:

That the Committee on Legal Education and Admissions to the Bar be instructed to report at the ensuing annual meeting, some plan for assimilating throughout the union, the requirements of candidates for admission to the bar, and for regulating on principles of comity withstanding, through the union of gentlemen already admitted to the practice in their own states.<sup>5</sup>

Special attention should be placed upon the term, 'gentlemen.' Law was not yet a

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4. Rev. Edward D., *The Partnership of the Bench and Bar*, 16 CATH. LAW. 194 (1970). "In terms of what was accomplished until the 1870's legal education in the colleges and universities was part of the era of apprenticeship training and proprietary law schools. And, taking the bar as a whole, all types of schools contributed "but a trickle of members of the bar." *Id.*

5. A.B.A., 1878 REPORT OF THE A.B.A. 26.

profession to which women were freely admitted and accepted. Thus, legal education and admissions to the bar was a principle concern of the ABA from its initial creation.

At its second meeting in 1879, the American Bar Association Assembly presented four resolutions from its Committee on Legal Education and Admissions to the Bar.<sup>6</sup> These resolutions dealt with principles of comity for admissions to the bar in various states, the requirement of "at least four well paid and efficient teachers," suggested courses of study and the requirements of three years of study "as qualification for examination to be admitted to the bar."<sup>7</sup> These recommendations were not adopted. The graduates of law schools were still very small number among members of the American Bar, even among the enlightened practitioners and jurists engaged in the establishment of the ABA. Resolutions of this type were too much for the bar to adopt as policy.

In 1893, the association recommended and adopted a resolution that a Section of Legal Education be created.<sup>8</sup> This was the first section of the ABA and was a section to which was delegated a substantial measure of autonomy. This delegation continues to meet to this day. In 1894, the first meeting of the American Bar Association Section of Legal Education was held.<sup>9</sup> The Chairperson of the Section, Henry Wade Rogers reported that 72 law schools were in operation in the United States, and that this number, all but 7 were associated with universities.<sup>10</sup>

In 1921, the following resolutions were adopted by the Section and moved by Chairperson Elihu Root to the House of Delegates for its members adoption.<sup>11</sup> These resolutions were as follows:

1. The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:
  - A. It shall require as condition of admission at least two years of study in a college.
  - B. It shall require its students to pursue a course of three years duration as they devote substantially all of their working time to their studies, and a longer course equivalent in the number of working hours if they devote only part of their working time to their studies.
  - C. It should provide an adequate library available for the use of all students.
  - D. It shall have among its teachers a sufficient number giving their entire time to the school to insure a personal acquaintance and influence with the whole student body.
2. The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar and that

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6. A.B.A., 1879 REPORT OF THE A.B.A. 235-236.

7. *Id.*

8. A.B.A., 1894 REPORT OF THE A.B.A. 351.

9. *Id.*

10. *Id.*

11. A.B.A., 1921 REPORT OF THE A.B.A. 687-688.

every candidate should be subjected to an examination by a public authority to determine his fitness.

3. The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools that comply with the above standards and of those which do not, and to make such publications available, so far as possible, to impending law students.
4. The president of the Association and of the Council of the Section of Legal Education and Admission to the Bar are directed to cooperate with the state and local authorities of the several states the adoption of the above requirements for admission to the bar.
5. The Council of the Section of Legal Education and Admission to the Bar is directed to call a conference on legal education, in the name of the American Bar Association, to which the state and local bar associations shall be invited to send delegates for the purpose of uniting the bodies represented in an effort to create conditions favorable to the adoption of the principles set forth.<sup>12</sup>

It is significant that these resolutions demonstrated a definite effort for the improvement of legal education by raising standards for admissions to the bar. In accordance with the resolutions adopted by the Association a conference was held in 1922 in Washington, D.C., where Chief Justice Taft, spoke to the assembly and said, "the best general education is to be had at our collates and universities. . . . [F]or no learned profession is a thorough and general education more necessary than that of the law."<sup>13</sup> The Conference adopted two general resolutions in addition to those endorsing the standards for the approval of law schools.<sup>14</sup> These additional resolutions were the following:

1. Further, we believe that law schools should not be operated as commercial enterprises, and that the compensation of any officer or member of its teaching staff should not depend on the number of students, or the fees received,
2. Hence, the legal profession has to do with the administration of law and since public officials are chosen from its ranks more frequently than from the ranks of other professions or businesses, it is essential that the legal profession should not become the monopoly of any economic class.<sup>15</sup>

In 1923, the Council of the Section of Legal Education and Admission to the Bar, published for the first time a List of Approved Law Schools.<sup>16</sup> Thirty-nine law schools were listed as complying with the standards of the ABA and were placed in a so-called class "A."<sup>17</sup> Nine schools, which reported to the ABA their intention of complying with the standards in the immediate future, were listed in Class "B."<sup>18</sup>

12. *Id.*

13. A.B.A., 1922 REPORT OF THE A.B.A. 497-498.

14. *Id.*

15. *Id.*

16. *Law Schools Meet Assoc. Standards*, Nov. A.B.A. J. 728 (1923).

17. *Id.*

18. *Id.*

Since 1923, state supreme courts and other bar admitting authorities have encouraged the ABA's accreditation efforts. Although, the vast majority of states rely solely upon ABA accreditation to determine whether an applicant meets the educational requirements for admission to the bar. The public benefits, which result from the centralized accreditation process carried out by the ABA, are both numerous and significant.

*First*, the ABA's accreditation process directly serves the public interest in a competent bar. Law students are provided a legal education which meets at least the minimum standards necessary to provide adequate preparation for the practice of law. Also, because a degree from an approved law school is considered sufficient evident of the legal education necessary to qualify for the bar examination in any state, students are ensured the opportunity to qualify for the practice on a nationwide basis.

*Second*, the role that the ABA plays as a central accrediting body has allowed accreditation to become national in scope rather than fragmented among the fifty states and the District of Columbia. Although the qualifications for the practice of law are determined by the highest courts and legislatures of the states individually, reliance on a nationally recognized accrediting agency relieves individual states from the burden of annually assessing the merits of each applicant's educational qualifications and those of his or her law school. Indeed, graduation from any of the 182 ABA approved J.D. granting law schools satisfies the legal education requirements for admission to the bar in *all* jurisdictions in the United States.

*Third*, law school and university administrators are freed from numerous inspections by teams from multiple jurisdictions with varying standards. The relationship of the ABA with the law schools makes it possible for the ABA to provide the schools with a comparative picture of legal education programs throughout the country.

*Fourth*, the ABA's accreditation process also allows members of the profession and the public to have input, both directly and indirectly, into the system. The ABA Accreditation Committee is composed of members of the judiciary, the practicing bar, the academic community and the non-lawyer public. The standards review process is sensitive to criticism and comment from these groups, and their participation is actively encouraged. Thus, the public benefit of the ABA nationally recognized accrediting process for law schools are numerous. Above all, the profession and the public have assurances that lawyers have been well educated.

Regulation of legal education in the United States is unique among all nations. Under the doctrine of separation of power, authority for bar admissions principally resides in the highest court of each state or admitting jurisdiction.<sup>19</sup>

This result—instilling states and admitting jurisdictions with confidence in the

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19. See James P. White, *Legal Education in an Era of Change: Law School Autonomy*, 1987 DUKE L.J. 292, 295.

requisite qualifications of law school graduates and providing them a standard upon which to rely—is the goal of the ABA accreditation process.

I have reviewed the development of legal education in the United States. I will now turn to a brief review of what legal education entailed and currently entails before presenting my thoughts for a new program of legal education for the new millennium.

Well into the latter part of the Nineteenth Century legal education in American law schools consisted of essentially instruction by the lecture method, not greatly different from the methodology of instruction of an earlier era when law schools were not separate, but were part of the undergraduate college of the university.

In 1870, Christopher Columbus Langdell was named dean of the Harvard Law School and began what is known as the case method instruction.

In the preface to his classic *Selection of Cases on the Law of Contracts*, Langdell defined the conditions which he believed made possible the teach of the law from class discussion of selected cases.

Law considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the evertangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied. But the cases which are useful and necessary for this purpose at the present day bear an exceedingly small proportion of all that have been reported. The vast majority are useless and worse than useless for any purpose of systematic study. Moreover, the number of fundamental legal doctrines is much less than is commonly supposed; the many different guises in which the same doctrine is constantly making its appearance, and the great extent to which legal treatises are a repetition of each other, being the cause of much misapprehension.<sup>20</sup>

As observed in his seminal work on American legal education, Robert Stevens has stated that the Langdellian case method form of instruction became the general mode of instruction in American law schools.<sup>21</sup> As Robert Stevens has observed the Langdell Socratic case method of instruction established large class size with a general paucity of resources for the program of legal education. It was the vast success of Langdell's method too, which established the large-size class. While numbers fluctuated, Langdell in general managed Harvard with one professor for every seventy-five students. The schools attempting to emulate Harvard could barely ask for a 'better' faculty-student ratio. What was more, any educational innovation, which incidentally allowed one man to teach more

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20. James Willard Hurst, *The Growth of American Law: The Law Makers*, 262 Little, Brown and Co. (1950).

21. Robert B. Stevens, *Law School: Legal Education in America from the 1850s to the 1980s*, 51-64 North Carolina Press (1983).



students, was not unwelcome to university administrators. Although the university-affiliated law schools were slowly put on a nonprofit basis, the Harvard type method of instruction meant that from the first they were expected to be self-supporting.<sup>22</sup>

In the 1930's Jerome Frank argued for a realist approach to the study of law, a law school for lawyers.<sup>23</sup> Yet for most law schools teaching was a version of the case method using casebooks, lectures and the question and answer approach to teaching. With the advent of the New Deal, new courses were developed, advanced taxation, securities regulation, labor law, etc. Yet generally the law school instruction format was little changed from that of the 1920s. Legal education was generally a revenue enhancement for universities as Tulsa's former dean Frank K. Walwer observed in Swords and Walwer, *The Costs and Resources of Legal Education*.<sup>24</sup>

In the aftermath of World War II veterans temporarily swelled the ranks of law students. The GI bill made legal education possible for many who previously would not have had the resources to attend a professional school. Yet law school was essentially a three-year course of study with only moderate change in curriculum or educational approach from the 1920s and 1930s.

In this period both the ABA through its Council of the Section of Legal Education and Admission to the Bar and the Association of American Law Schools placed increased emphasis on Standards. As Dean Erwin Griswold of Harvard observed:

It has long been true in this country, I think, that there have been too many lawyers—and not enough good lawyers. This has not been due to inadequate education in the law schools, but it is more directly referable to standards for admission to law school, which may be too low. And it might be that we should eventually conclude that those who are now endowed by nature with a reasonably high quantum of intellectual ability should not be given the facilities to study law.<sup>25</sup>

In 1968 the Council of the Section of Legal Education and Admission to the Bar began a revision of the 1923 Standards, a process that was not completed until February 1973. The Standards before 1973 stated:

#### THE CURRICULUM AND A SOUND EDUCATIONAL PROGRAM.

The American Bar Association makes no attempt to dictate the law school

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22. *Id.* at 544-45. Toward the end of his account of the history of legal education, Stevens returns to this theme. "In fact, over the last one hundred years, the inherent conflicts in the purposes of legal education have been heavily accentuated by its remarkable underfunding. Even the leading law schools have faculty-student ratios which are unheard of in any marginally acceptable college and unthinkable in any other graduate or other professional school. This underfunding of legal education is probably attributable to the Landellian model—for the case method seemed to work as well with two hundred students as it did with twenty. Indeed Langdell's greatest contribution to legal education is the highly dubious one of convincing all and sundry that law schools were cheap" *Id.* at 534-535.

23. Jerome Frank, *Why Not a Clinical Law School?*, 81 U. PA. L. REV. 907, 908 (1933).

24. See generally Peter de L.Swords and Frank K. Walwer, *The Costs and Resources of Legal Education: A Study in the Management of Educational Resources*, Columbia University Press (1974).

25. See generally Harry First, *Competition in the Legal Education Industry*, 393.

curriculum. Nevertheless, a comprehensive curriculum and a sound educational program in a qualitative sense are essential to approval. Since legal education is intended to prepare the lawyer of tomorrow for his task of dealing with the unknowable problems of the future as well as with the recognized problems of the immediate present, the curriculum should reflect faculty awareness of this responsibility. The curriculum should also reflect the faculty's judgment as to how the stated objectives of the law school are to be and are being achieved. Therefore, the scope and content of the curriculum, past, present and planned, will be given careful consideration as a criterion for the measurement of the over-all quality of the program.

Adequate instruction in the ethics and responsibilities of the legal profession is a primary responsibility of the law schools. A law school should not offer instruction designed primarily as a bar review course either for credit toward graduation or as a non-credit course prior to graduation.

#### TEACHING METHODS AND A SOUND EDUCATIONAL PROGRAM.

The American Bar Association is interested in both teaching methods and quality of teaching because of their obvious bearing on the effectiveness of the school's educational program. Accordingly, every effort will be made to ascertain the quality of the teaching in the particular school, what teaching techniques are being employed, whether the faculty is aware of the various methods, manners, devices and means of presenting legal materials, and the faculty's reaction thereto. In this connection, information will be sought with respect to actual practices as well as faculty consideration of such matters as class size, materials specified for student use, teaching objectives and teaching methods, student participation in class discussion, experimentation with or consideration of new teaching ideas, type and content of examinations, and the school's practices with respect to the scheduling of classes.<sup>26</sup>

The 1973 Standards provided as follows:

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- (a) The law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar.
- (b) A law school may offer an educational program designed to emphasize some aspects of the law or the legal profession and give less attention to others. If a school offers such a program, that program and its objectives shall be clearly stated in its publications where appropriate.
- (c) The educational program of the school shall be designed to prepare the students to deal with recognized problems of the present and anticipated problems of the future.

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- (a) The law school shall offer:
  - (i) instruction in those subjects generally regarded as the core of the law school curriculum;
  - (ii) training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy;

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26. *Standards for Legal Education and for the Approval of Law Schools*, 1957 A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 17.

- (iii) and provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession.
  - (b) The law school may not offer to its students for academic credit or as a condition to graduation, instruction that is designed as a bar examination review course.
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- (a) The educational program of the law school should provide for:
    - (i) study in seminars or by directed research; and
    - (ii) small classes for at least some portion of the total instructional program.
  - (b) The law school may not allow credit for study by correspondence.<sup>27</sup>

In 1969 the Ford Foundation established the Council on Legal Education for Professional Responsibility (CLEPR). The mission of this Council was to encourage development of clinical legal education in ABA approved law schools. As stated in the CLPER's Fourth, Biennial Report, 1975-76:

In the last biennium CLEPR followed the pattern of grant-making started in the 1973-74 biennium. The odd year, 1975 was used for review or developments in clinical legal education, and the even year, 1976 was used to make grants based on the results of our review. This pattern enables us to double the amount of money available every second year for grants stated and defined priorities, thereby increasing the impact of CLEPR grants. Our desire to make some larger grants comes from the fact that our success story—the growth of law school investments in clinical programs—necessitates some growth in the size of some CLEPR grants if we are to continue to provide leadership in the development of clinical legal education. There was another reason for considering some larger grants. CLEPR wishes to make those who provide money for legal education more aware of the costs of clinical legal education and the need for substantial infusions of money.

While many foundations eschew support of construction and building, we believe that buildings are particularly important right now. They require our support because they are so much an indication of commitment to the future of clinical legal education. When a program or activity already is accepted and non-controversial it is true that someone will come along and pay for a building to house the activity, on condition that the donor's name be carved into the facade.

But right now, clinical education is not yet so well established that it will attract outside money for buildings to house clinics. Also, most people, including lawyers and judges, are unaware of the clinical revolution in the law schools. Hence the importance of having law schools make so tangible a commitment to clinical teaching in the form of a visible physical facility—visible to the faculty, students and others in the university, as well as to alumni, lawyers, judges, legislatures, and the general public. It is a great step forward when a law school undertakes special obligations to erect a place for clinical teaching, saying in effect, "This has to be part

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27. *Approval of Law Schools: American Bar Association Standards and Rules of Procedure, 1973 A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 7.*

of a law school, as well as our classrooms and library, so that we can guide the education of students in our own clinic." We are pleased to have had a good response from law schools and that their interest in physical facilities is growing.

Recognizing that the bar and the bench have not kept up the inauguration and development of clinical teaching in the law schools, we have taken some action to make them aware. We have also done some finger-pointing at the bar and bench because, in our opinion, they have not given adequate attention to the requirements for admission to the bar.<sup>28</sup>

In 1975 E. Gordon Gee and Donald W. Jackson published their detailed study of law school curricula. They studied the 1974-75 catalogs of 127 ABA approved law schools. They concluded in part:

We spoke of the follow the leader syndrome reflected in historical reviews of law school curricula. That syndrome may also be reflected in the data we have analyzed. Since there is a modest decline in the number of specifically required course in law schools, and since the schools most advanced in reducing requirements tend to be schools with higher resource rankings, it may be that the next few years will see the decline in specifically required courses generalized in most American law schools. Such a reduction may or may not be desirable. Desirability depends very much on the objectives of legal education and on an assessment of how those objectives can best be achieved. To put it simply: following the leader is not necessarily a rational way to make policy.

Our conclusions have dwelt on formal law school curricula, but a major point of our study is that one runs the risk of grave error by examining law school curricula in a vacuum. For example, it is probably erroneous to conclude that because law schools have on the average, reduced the number of specifically required courses, the courses actually taken by law students have changed. The best evidence on point would be the actual course enrollment figures, over time, for the law schools we have studied. Lacking that, we can only suggest that bar examinations may play an important role in student course selection. For those students who select courses with an eye to eventual bar examinations, we know that two of the three years of law school are still effectively prescribed. This suggests that any dramatic changes in law school curricula would have to be accompanied by a coordinated change in bar examination practices.

To the extent that innovations in legal education may be desirable, there is an obvious resource problem. Those schools with greater resources have greater capacity for innovation. Dissemination of innovations requires supportive resources.

Finally, to the extent that innovations are desirable, the schools with lower resource rankings also have less latitude for innovation because of their present structure of required courses.<sup>29</sup>

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28. *Fourth Biennial Report 1975-1976*, Council on Legal Education for Professional Responsibility, 8-9, New York (1976).

29. E. Gordon Gee and Donald W. Jackson, *Following the Leader? The Unexamined Consensus in Law School Curricula*, Council on Legal Education for Professional Responsibility, Inc., 47-49 (1975).

Again, in 1975 the American Assembly Conference Law and Society II issued a final report, which stated in part:

Legal education in the United States varies little from law school to law school. Yet the relationship between current legal education and that which would be best for the training of lawyers of the future needs additional study. A thorough, overall study of legal education, including the post-graduate education of bench and bar, should be undertaken by an independent panel.

If they are to fulfill their function of educating future lawyers to contribute to the solutions of the problems here presented, law schools should give greater emphasis to problems of cost, quality and delivery of legal services, to developing better systems of public legal health and justice, and to the broader responsibilities of lawyers to the society as a whole.

In legal education, the standards for approval of law schools and the qualifications for admissions to the bar should permit experimentation with approaches to legal education, such as a broad variety of types of training of lawyers and of preparation for limited specialization in shorter period of time. Substantial additional financial resources are needed to support adequately legal education of desired quality and innovative development. Title XI of the Higher Education Act, which authorizes funding for clinical legal education should be implemented by appropriation.<sup>30</sup>

In 1987, William B. Powers published *A Study of Contemporary Law Curricula*. In that study he examined the changes that occurred in law school curricula in the preceding ten years. With the exception of increased clinical offerings, he found only marginal curriculum reform or innovation over 1977.<sup>31</sup>

In 1992 the Section published the Report of the Task Force in Law Schools and the Profession: Narrowing the Gap, chaired by Robert MacCrate and commonly referred to as the MacCrate Report. The Task Force concluded:

The Task Force's collective effort has resulted in the recognition that the task of educating students to assume the full responsibilities of a lawyer is a continuing process that neither begins nor ends with three years of law school study. Having reached this conclusion, the Task Force, in Part III of the Report, has identified the roles of law schools and the practicing bar in assisting prospective lawyers as they move along the continuum from applicant to student to qualified lawyer.

Thus, we have concluded that there is no "gap". There is only an arduous road of professional development along which all prospective lawyers should travel. It is the responsibility of law schools and the practicing bar to assist students and lawyers to develop the skills and values required to complete the journey. To identify those skills and values, to describe what law schools and the practicing bar are now doing to advance the professional development of lawyers, and to recommend how the legal education community and the practicing bar can join together to fulfill their respective responsibilities to the profession and the consuming public has been the

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30. REPORT OF THE AMERICAN ASSEMBLY ON LAW AND A CHANGING SOCIETY II at 12 (West 1975).

31. See William B. Powers, *A Study of Contemporary Law School Curricula, Parts I and II*, Office of the Consultant on Legal Education to the A.B.A. (1987).

central mission of this Task Force.<sup>32</sup>

A number of questions stand before us in deciding the future of law school curriculum, such as: first, what is the future of the law school curriculum; second, how is it changing; third, how must it change and fourth, what should be a new program of legal education for the new millennium?

There are a number of forces creating change. Some changes are already occurring, but there are some changes that must occur. Listed, in no particular order of importance, are changes which must occur if American law schools are to fulfill their mission to educate lawyers for a new world that few of us can envisage, but for perhaps ten years in the future.

1. Globalization. The world is shrinking and the practice of law is becoming increasingly similar in many countries, both those with a common law and civil law system. Today lawyers in Tulsa or Enid or even Antlers, Oklahoma represent clients who are doing business throughout the world. Private and public international law, an understanding of different legal systems throughout the world is necessary to prepare one to effectively practice law in this millennium. American law school's increasing foreign summer programs (some 150 in summer 2000), semester abroad programs, cooperative programs of foreign study and individual study abroad are but the beginning of American law schools full integration into the world legal education community.

In 1997 the Section sponsored a program entitled "Opportunities and Challenges for Lawyers and Legal Educators in a World Without Borders." In that program Professor Deborah Rhode observed:

Obviously, much of that trend is driven by the economics of both American legal practice and transnational commercial practices. This country is turning out lawyers at the world[s] fastest rate, and the opportunity to export some of them is certainly desirable for many local competitors. But there are also other benefits that lawyers perceive in globalization that have to do with the status of being affiliated with foreign offices. There [is] an obvious cachet that comes from having an office in Beirut. Other benefits include opportunities to receive referrals on international business and to learn from lawyers from other practice contexts.

At the same time, of course, there are reasons for resistance to globalization, some legitimate and some—how shall we put it—less legitimate. The argument for a national system of licensure and education stresses things like the need for competence, discipline and protection of the host country's legal practices from the disruption that comes from a lot of outsiders with only a kind of vague grasp of the basics. There are also economic reasons for resistance that I don't need to dwell on in this room. Turf battles occur at every conceivable level—among courts, among bar organizations, among accrediting institutions, among national legislatures. At issue is who should have the right to control the terms of legal practice.

There are also some more subtle costs of globalization. As the world becomes more

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32. *Legal Education and Professional Development: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap.*, A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 8 (1992).

international, more economically driven, a lot of things can fall by the wayside. One concern that many have expressed is that lawyers who are practicing in other countries may not have adequate investment in bar organization and involvement in bar *pro bono* or professionalism projects. Foreign lawyers may see little need for involvement in domestic concerns like the distribution of legal services for which organizations such as the ABA can claim a distinguished record.<sup>33</sup>

Tulsa's Comparative and International Law Center and its existing and contemplated programs demonstrate this school's commitment and action with respect to globalization of the legal profession.

2. Technology. In the past ten years we have seen the fax, email, the cell phone and on-line access to legal research change the life of not only lawyers but the general public. The computer has become the staple of life, replacing to a significant degree the telephone and clearly the letter. Where will this technology take us in the next ten years? The CD Rom is fast becoming obsolete, streaming in the current method, but will it last? Are computer laboratories in law schools fast becoming dinosaurs? What effect will the consolidation of legal publishing houses into two international companies have on the cost of the delivery of new electronic transfer of information?

This past fall the ABA Section sponsored a program on distance learning. The program was a survey of what is occurring at law schools under ABA temporary guidelines for distance education and suggest what will occur. Clearly effective distance learning of the type offered by Britain's Open University has a significant cost factor with its requirement of one on one tutor student learning experience in addition to use of video, internet and other distance learning media.

Technology does not yet permit education for entry into a profession to be purely via the Internet. But will technology someday be perfected to permit quality legal education totally through the medium of distance learning?

3. The changing nature of the American population. When President Franklin Delano Roosevelt began his remarks to the Daughters of the American Revolution, "My fellow immigrants", he was speaking of an American population greatly different than that of today and clearly different than that of the next twenty years. How do we attract, retain and gain entry to the legal profession of more persons of color. ABA President Paul has made that a focal point of his administration, but how can schools effectively respond to this challenge. And what can the organized bar do to assist law schools in this endeavor?

4. The changing nature of the American law student body. The traditional law student, the Caucasian male, has steadily declined in percentage of law school enrollment since 1971.<sup>34</sup> In Fall, 1999 women were approximately 48% of total law school enrollment and within three years, I believe, will be in a majority.<sup>35</sup> Have law school attitudes reflected this changing nature of the student body and

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33. *Occasional Paper #9: Opportunities and challenges for Lawyers and Legal Educators in a World Without Borders*, A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 6 (1997).

34. ABA STATISTICAL REPORT (1999).

35. *Id.*

hence of the legal profession? Are women fully integrated into both the student body and the professorate? Has the change in the composition of the student body brought about change in the way we look at and use law?

5. Multidisciplinary Practice. In 1999, the ABA Commission on Multidisciplinary Practice recommended that the Model Rules of Professional Conduct be amended, subject to certain restrictions, to permit a lawyer to partner with a non-lawyer even if the activities of the enterprise consisted of the practice of law and to share fees with a non-lawyer.<sup>36</sup>

We know that the Big Five accounting firms are increasingly hiring a number of lawyers, 5000 worldwide by one firm and that many small or sole practitioners would like an association with an accountant, a financial planner, a social worker, a land use planner and other non-lawyer specialties. Are law schools adjusting their course of study to reflect this reality of the changing world of practice? In my view they must.

6. Communication skills. Increasingly law schools are told that the communication skills of its graduates are lacking, and law faculty find that entering students lack those oral and written communication skills necessary for the successful practice of law. While lack of these skills may be the result of poor educational standards in secondary and undergraduate education, law schools are and must do more to develop these skills necessary for the practice of law.

7. Specialization. Most law schools have, I believe, correctly resisted programs of specialization for students do not know what their future practice might be. However, contemporary legal systems are characterized by an immense quantity and complexity of laws, which I believe, makes legal specialization inevitable and hence, provides the impetus for law schools to develop curricular specialties. Modern practice of law is made up of many diverse practitioners doing widely different work.

8. Professionalism. In suggesting a new program of legal education. I wish to emphasize that American legal education must maintain the qualities of dignity, courtesy and propriety. Dignity is essential for the respect we show each other. Courtesy underpins the conduct of debate and the tolerance of dissent. Propriety relates to the honest conduct of ones actions as a lawyer, a public profession. The quality of life as a lawyer relates to the sense of professionalism that lawyers possess and demonstrate. I would stress that the system of quality as a protection for the consuming public remains the profession's great responsibility. Law schools must do more to instill a sense of professionalism in students.

9. Interdisciplinary practice. Increasingly lawyers look to and rely upon other disciplines to resolve their clients problems. Experts from outside the profession must be used to assist the lawyer in addressing and resolving the client's problem. Creative approaches to interdisciplinary resolution of a client's problem must be utilized. Problems must be framed so as to permit the broadest

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36. *Reports With Recommendations To The House Of Delegates*, A.B.A. COMMISSION ON MULTIDISCIPLINARY PRACTICE: REPORT TO THE HOUSE OF DELEGATES, 1 (Aug. 1999).



array of possible solutions. I note in the Tulsa College of law catalog that this approach is used in such courses as international energy and natural resources law, international environmental law and health law.

10. Problem Solving. At the recent conference, *The Lawyer as a Creative Problem Solver* held at California Western School of Law and co-sponsored by the American Bar Association Section of Legal Education and Admissions to the Bar the following attributes were advanced for a lawyer of the 21st century-the lawyer as a designer, bridge builder, gladiator, problem solver, transformation agent and preventer of problems. Statistics reveal that the vast majority of legal cases, both civil and criminal are resolved before an actual trial.<sup>37</sup> Thus, I believe that law schools must serve as a catalyst to transform the profession so that the law students of today are trained to be the problem solvers of tomorrow, not the litigators of the present.

11. Curriculum innovation and integration. Law schools must experiment with new approaches to the delivery of legal education. Too often the traditional curriculum, the skills curriculum, and the writing curriculum are totally separated and not integrated. Why should not a first year contracts course have drafting, and client advising as part of the course? The Langdellian approach to such a course must be changed to give today's law school graduate the integrated knowledge and skills necessary for practice in the 21st Century.

Regretfully law schools and law faculties are often resistant to change. Change means a new approach, a new way of doing things, an end to an existing pattern of teaching and research. I was heartened to note the following statement in your law school catalog:

A Curriculum for the 21st Century

Law is a vehicle to facilitate national and international business, to safeguard rights, and to reconcile differences through counseling, discussions, negotiations, and problem solving. In keeping with this perspective, we see our mission as education and training on legal issues, whether the student intends to go into general practice, be a litigating attorney, specialize, pursue another profession, or secure new skills for their present role as a scientist, educator, businessperson, manager, government official, or interested citizen.

To further these goals, the University of Tulsa College of Law has adopted a curriculum for the 21st century.

Our curriculum includes an excellent general background in the positive use of the law and also provides studies that focus on one or more specialties. Students also will be able to participate in a first-year intraschool simulated negotiation competition. The curriculum reflects one of our historic strengths: a collegial school where students get to know professors and share experiences with colleagues both formally and informally. The changes also indicate our emphasis on a hands-on

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37. Introductory Materials, *THE LAWYER AS A CREATIVE PROBLEM SOLVER*, California Western School of Law, February 24-26, (2000).

approach to learning law.<sup>38</sup>

I urge the faculty to seize the opportunity and make change. Do not be afraid and do not think the American Bar Association *Standards for the Approval of Law Schools* inhibit curricular change because they do not.

As Roscoe Pound writing in the 1935 *Annual Review of Legal Education* observed:

[T]he American law school must be an academic institution. That is, it must each in the atmosphere and by the methods and with the aims of a university. But it must also be a professional school, training for a profession which has an authoritative technique and authoritative ideals and standards.<sup>39</sup>

Pound's view of the American law school continues to describe our mission and responsibility as we approach the 21st century. It is a mission for which we must provide the best in legal education. We must be innovative and creative as we fashion our programs of legal education for this new millennium.

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38. 1999-2000 Catalog, University of Tulsa College of Law at 4.

39. *Annual Review of Legal Education*, 1935 A.B.A. SEC. OF LEGAL ED. AND ADMISSIONS TO THE BAR REP. 4.

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