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Reflections on Law Schools and the Idea of the University

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Reflections on Law Schools and the Idea of the
University

Thomas E. Baker†""

I always feel honored to be in the company of scholars. You will rec-
nounce, of course, that the title of my talk—if a twenty minute talk deserves
a title—is a genuflection to John Henry Cardinal Newman’s eloquent de-
fense of the grand tradition of a liberal education.¹ Tonight I want to talk
about how I believe a legal education fits within that tradition. Along the
way, I hope to explain a little about how our law school expects to be spe-
cial and unique. I also will try to provide a larger context for understanding
the transformation an institution experiences when a modern university
completes itself with professional schools.

I

First, I want to introduce our College of Law, briefly.

† These are remarks prepared for the Provost’s Dinner for the Faculty Senate at Florida Interna-
tional University, October 3, 2002, during the Annual Faculty Convocation. They are reproduced here
in the format of a speech, not an article. The author and editors conceive them to be worthy of publica-
tion as something of a “state paper” in the early history of the FIU College of Law. They are presented
here only slightly edited and without being comprehensively updated. The views expressed here are
tentative and the views of the author alone.

‡ Thomas E. Baker is a member of the founding faculty of the College of Law at Florida Interna-
tional University.
**Students.** Students always deserve our first attention. We have a diverse, impressive, and noteworthy student body in our inaugural first year class.\(^2\) Let me give you a few statistics:\(^3\)

- Nearly 800 applications (771)
- Selectively admitted only 22% (170)
- 2 out of 3 actually enrolled (113)—a 67% yield is remarkable
- On the first day we had 113 students—63 full-time and 50 part-time students
- Our diversity numbers were an impressive beginning: 4% Asian-American; 8% African-American; 43% Hispanic-American; 45% White
- Most (96%) were Florida residents
- About 60-40 male to female (62% - 38%) overall, but there is a significant difference between the full-time program where the ratio is closer to even male to female (54% - 46%) and the part-time program where the ratio is almost 3 to 1 male to female (72% - 28%)
- 35% (40 students) were FIU undergraduates
- 65% (73 students) came from other universities around the country
- Median LSAT 152 about the national average (151.5)
- Median GPA 3.13 about the national average (3.16)
- 2/3 of our full-time students and 45 of the 50 part-time students had some significant work experience before coming to law school
- Their average age was 26 years for full-time and 33 years for part-time

\(^2\) The statute creating our College of Law entrusts us with this important responsibility to the State of Florida and the legal profession:

The college of law at Florida International University shall be dedicated to providing opportunities for minorities to attain representation within the legal profession proportionate to their representation in the population; however, the college of law shall not include preferences in the admissions process for applicants on the basis of race, national origin, or sex.

FLA. STAT. § 1004.39 (6). Affirming an institutional commitment to diversity while acknowledging that there is still more to achieve in that regard, the Associate Dean for Admissions and Student Services adamantly rejected any suggestion that diversity and excellence are somehow inconsistent goals: “We are today one of the most diverse law schools in America. We do not apologize for our quest for excellence, which includes not only the appointment of an outstanding faculty and the development of a strong, innovative curriculum, but also the achievement of quality and diversity in staffing as well as student enrollment.” Michelle D. Mason, *FIU Stands By Its Recruiting for Law Students*, DAILY BUSINESS REVIEW, Sept. 16, 2002, at A12. *See also* Anita Kumar, *Minority Enrollees Flock to Law Schools*, ST. PETERSBURG TIMES, Sept. 2, 2002, at 18; Tamar Lewin, *Florida Tests Diversity at 2 Law Schools*, N.Y. TIMES, Feb. 15, 2002, at A16; Two New Law Schools Throw Open Their Doors, FLA. BAR NEWS, Sept. 15, 2002, at 1.

After a few weeks of classes, I am impressed with my students. They are committed to their studies. They are earnest and industrious.\textsuperscript{4} They are good people. They will make good—even great—lawyers.\textsuperscript{5}

\textbf{Faculty.} I am honored to be a member of the founding faculty. It is a talented group of teachers and legal scholars of the first rank. They are experienced in the work of the lawyer’s office as well as experienced in the learning of law.\textsuperscript{6} They have law degrees from a dozen different law schools, including such leading schools as Cornell, Harvard, Wisconsin and Yale, and several have advanced law degrees or the Ph.D. They were award-winning teachers at their previous universities. They have published books with the leading presses and articles in the leading law reviews. They have served at the highest levels of responsibility in the legal profession. In short, each of them was the marquee professor of his or her previous faculty.\textsuperscript{7} And I can vouch from personal experience that they are splendid colleagues, people of good will who share a commitment to the \textit{techne} of our craft.\textsuperscript{8}

\begin{itemize}
\item \textsuperscript{5} Over one-hundred years ago, Oliver Wendell Holmes, Jr., challenged a gathering at his Harvard Law School by declaring that the role and function of a law school is not merely to teach law and to make lawyers but rather “to teach law in the grand manner and to make great lawyers.” OLIVER W. HOLMES, JR., \textit{The Use of Law Schools}, in \textit{COLLECTED LEGAL PAPERS} 35, 37 (1920).
\item \textsuperscript{6} Christopher Columbus Langdell, the originator of the case method of law study, professed to believe:
\begin{quote}
A teacher of law should be a person who accompanies his pupils on a road which is new to them, but with which he is well acquainted from having often traveled it before. What qualifies a person therefore, to teach law, is not experience in the work of a lawyer’s office, not experiences in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law.
\end{quote}
\end{itemize}
Curriculum. There is nothing more likely to affect the digestion than a dinner speech about law curriculum, so I will be brief to highlight just a few of the curricular innovations at the College of Law.

- We have a Full-Time/Day Division over 3 years and a Part-Time/Evening Division over 4 years including Summers.

- The Legal Skills & Values Program combines traditional instruction in legal research and writing along with lawyering skills, like interviewing and counseling, and a component of professional ethics in a three-semester long sequence. Professor Jean Zorn, who served as the director at City University of New York Law School is the director of our LS & V program.

- The Community Service Program will require of our students that they volunteer 30 hours of law-related community service through various placements, externships, and pro bono publico opportunities.

- The Clinical Program will further our students' education in the ethical and effective practice of law by live-client representations under the supervision of faculty.

- The International & Comparative Law program deserves special mention. We recognize that FIU has long been committed to the idea of globalism and has achieved great distinction in the social sciences, international programs, centers and institutes. The FIU College of Law hopes to contribute to that prominence. Our students will practice law in an increas-
ingly globalized professional reality. Their "real world" will be the "entire world." Consider three program particulars: (1) "Introduction to International and Comparative Law" will be a required first year course; (2) every traditional first year course is expected to include a comparative law component that helps students to analyze the law within the larger contexts of social, political, economic, and cultural comparisons; (3) upper level electives will be developed, like Comparative Family Law, International Environmental Law, and International Human Rights Law. One of the first curriculum initiatives is a Joint Degree Program to allow students to obtain a J.D. and a Masters of Latin American and Caribbean Studies. The ICL program is under the able leadership of Professor Jorge Esquirol who was the Director of Academic Affairs at the Harvard Law School Graduate Program and then a professor at Northeastern University before coming to FIU.

These are some of the ways we expect to contribute to the mission of the University. We understand our particular mission this way:

The mission of the Florida International College of Law is to be found in part in the rationale for its creation and in part in the mission of excellence of the great research university, which FIU has become. It is first to serve the citizenry of the State of Florida, in particular South Florida, by providing access to the legal profession through a contemporary program of quality instruction. This includes serving the surrounding urban community through the eventual creation of clinical programs that provide legal services to members of the community who are unable to afford legal representation. This shall be achieved through faculty bringing their expertise to bear on the public policy process and through pro bono efforts of students and faculty.

A component of the academic mission will be to incorporate important developments in the globalization of public and private law, and to train students for those changes by developing faculty expertise and instructional resources among the local bar, many of whose members practice in areas of transnational business and international trade.

The FIU College of Law maintains its commitment to training lawyers capable of serving the high ideals of the profession in all areas of practice, from criminal and family courts to corporate board rooms, to

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15 "Florida International University is an urban, multi-campus, research university serving South Florida, the state, the nation and the international community. It fulfills its mission by imparting knowledge through excellent teaching, promoting public service, discovering new knowledge, solving problems through research, and fostering creativity." Institutional Mission Statement, FIU MILLENNIUM STRATEGIC PLAN, supra note 13, at 7.
forums for mediation, legislation and regulation, to the Supreme Court of the United States and the International Court of Justice.16

On a personal note, if we seem preoccupied to you—if we seem like we are busy unto ourselves—it is because we very much are so. Imagine if your department did not exist last year and think about all that you would be doing now. Indeed, for many of you, just remember what that was like. This year we will hire new colleagues equal to our number and next year we will hire a third cohort of new faculty.17 In stages, we will approximately double the size of our entering class. There are Faculty-by laws to draft and debate and a student code of conduct to write. We are refining the advanced curriculum.18 We have an architectural firm, Robert A.M. Stern Architects,19 and the design of the building has begun.20 You get the idea. Some days are just one long committee meeting. I wish I could get a blood transfusion from Dean Strickman so I could better keep up.

All of these tasks—which seem like they all have to be done at the same time—are being performed under the watchful eye of the accreditors from the American Bar Association.21 The A.B.A. timeline has already begun to run; we will be working on our formal Self-Study Report from now to Spring 2003 and expect to complete it in March 2003; in August 2003 we will submit a formal request for provisional accreditation; in Fall 2003 the ABA Site Evaluation Team will visit campus; our goal is to receive provisional approval in Summer 2004. In the meantime, of course, we are teaching and grading and engaged in scholarship and attending conferences and the like.22 Some of us manage to have a personal life too.

16 Mission Statement of the College of Law in COLLEGE OF LAW STUDENT HANDBOOK at 5 (2002). The statute creating our College of Law reads in part:

The college of law at Florida International University shall be dedicated to providing opportunities for minorities to attain representation within the legal profession proportionate to their representation in the population; however, the college of law shall not include preferences in the admissions process for applicants on the basis of race, national origin, or sex.

FLA. STAT. § 1004.39 (6).


22 See generally Ruthann Robson, The Zen of Grading, 36 AKRON L. REV. 303 (2003); Marin Roger Scordato, The Dualist Model of Legal Teaching and Scholarship, 40 AM. U. L. REV. 367 (1990);
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I must say that it is always exciting and sometimes daunting. But that is something of an understatement, come to think about it. It is better to say that we feel privileged to be here at the beginning, to be entrusted with such important responsibilities, as we launch this institution into the future.\(^2\)

II

Legal education and liberal education. Some of you may nod in agreement with Thorstein Veblen, the noted social scientist, who at the beginning of the last century objected to the vocational emphasis he perceived in legal education at the time. In his 1918 book, *The Higher Learning in America*, Veblen proclaimed: “[T]he law school belongs in the modern university no more than a school of fencing or dancing.”\(^3\) He went on to insist law professors had more in common with athletic coaches than with university professors.\(^4\) (Come to think of it, perhaps, it is not merely a coincidence that the College of Law debuted this Semester along with the football team.)

I submit to you that Professor Veblen was mistaken about law schools and the modern university and liberal education. I want to try to persuade you that Veblen was mistaken about our University.

First, I hope to gain a goodly number of supporters from the College of Business Administration, the second largest college at our University, to point out the fact that much of Veblen’s book was a diatribe against “schools of commerce.” Second, I trust no one would agree with Veblen that FIU would be better off without the Department of Theater, Dance and Speech in the College of Arts and Sciences.\(^5\)

Getting back to law schools, I would say that Veblen was a better economist than historian. At the founding of the United States, the study of

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\(^3\) [T]he law school belongs in the modern university no more than a school of fencing or dancing. This is particularly true of the American law schools, in which the Austinian conception of law is followed, and it is more particularly true the more consistently the “case method” is adhered to.


\(^4\) “These schools devote themselves with great singleness to the training of practitioners, as distinct from jurists; and their teachers stand in a relation to their students analogous to that in which the ‘coaches’ stand to the athletes.” *Id.*

\(^5\) See Homepage of the Department of Theater, Dance and Speech at Florida International University, at http://www.fiu.edu/~thedan/.
law was regarded as a necessary complement to the establishment and maintenance of a self-governing and free society. For example, James Wilson, a prominent delegate to the Constitutional Convention and one of the six original Supreme Court Justices, insisted that the study of law was the duty of every free citizen when he delivered his famous lectures at the University of Pennsylvania in 1790. Thus, a proper understanding of the law has long been part of the traditional liberal education in this country.


28 The science of law should, in some measure, and in some degree, be the study of every free citizen, and of every free man. Every free citizen and every free man has duties to perform and rights to claim. Unless, in some measure, and in some degree, he knows those duties and those rights, he can never act a just and independent part.


29 If then I am arguing, and shall argue, against Professional or Scientific knowledge as the sufficient end of a University Education, let me not be supposed, Gentlemen, to be disrespectful towards particular studies, or arts, or vocations, and those who are engaged in them. In saying that Law or Medicine is not the end of a University course, I do not mean to imply that the University does not teach Law or Medicine. What indeed can it teach at all, if it does not teach something particular? It teaches all knowledge by teaching all branches of knowledge, and in no other way. I do but say that there will be this distinction as regards a Professor of Law, or of Medicine, or of Geology, or of Political Economy, in a University and out of it, that out of a University he is in danger of being absorbed and narrowed by his pursuit, and of giving Lectures which are the Lectures of nothing more than a lawyer, physician, geologist, or political economist; whereas in a University he will just know where he and his science stand, he has taken a survey of all knowledge, he is kept from extravagance by the very rivalry of other studies, he has gained from them a special illumination and largeness of mind and freedom and self-possession, and he treats his own in consequence with a philosophy and a resource, which belongs not to the study itself, but to his liberal education.

NEWMAN, supra note 1, at 114, 125-26 (Knowledge Viewed in Relation to Professional Skill). John Henry Newman had studied law for a short time and was something of an admirer of the legal profession. See Matthew C. Mirow, Roman Catholicism on Trial in Victorian England: The Libel Case of John Henry Newman and Dr. Achilli, 36 CATH. L. LAW. 401 (1996) ("[W]hat a wonderful gift it is to be a lawyer!" Id. at 408 n. 33, quoting Letter from John H. Newman to Edward Badeley (Nov. 13, 1851), in 14 THE LETTERS AND DIARIES OF JOHN HENRY NEWMAN at 423 (Charles S. Dessain & Vincent F. Blehl eds., 1963)). In marked contrast, Thorstein Veblen’s rhetoric focused the analysis of the dismal science against the legal profession:

The profession of the Law is, of course, an honourable profession, and it is doubtless believed by its apologists to be a useful profession, on the whole; but a body of lawyers somewhat less numerous, and with a lower average proficiency in legal subtleties and expedients, would unquestionably be quite as serviceable to the community at large as a larger number of such men with a higher efficiency; at the same time the would be less costly, both as to initial cost and as to the expenses of maintenance that come of that excessive volume and the retardation of litigation due to an extreme facility in legal technique on the part of the members of the bar.

Veblen, supra note 24, at 211-12.
Nor was Veblen even the slightest farsighted to see into the future. Today, there really is no serious debate about whether a law school “belongs” in the idea of the modern university. Indeed, what would it mean to ask whether there “should” be a law school at Harvard, Yale, Stanford, Chicago, and Columbia? What about the prestigious state universities, like Cal-Berkley, Texas, Michigan, and Virginia? The more relevant question is how those institutions would be regarded if they did not have prominent law schools. By my unofficial count, over 60% of the schools on the list of the Carnegie Foundation Doctoral Research Universities—Extensive, have law schools (60 of 101 public schools and 34 of 50 private schools). Personally, I am proud to be able to say that now this includes FIU.

Indeed, I would go so far as to argue that a legal education has evolved into a quintessential liberal education. Professor Leo Strauss, of the University of Chicago, offered this definition: “Liberal education is education in culture or toward culture. The finished product of a liberal education is a cultured human being.” Certainly, the American culture is a culture rife

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33 LEO STRAUSS, NATURAL RIGHT AND HISTORY 1 (1953). Stanley Fish is skeptical of the claims of liberal education, which he maintains is philosophically incompatible with the freedom of choice that is supposedly at the core of the First Amendment, especially in the context of public education. His argument deserves a lengthy quotation here in the margin:

The idea then is that the right kind of education, faithful to the First Amendment, gives you practice in making up your own mind about values and agendas, while the wrong kind of education captures your mind and binds it to values and agendas that go unexamined. The problem with this idea is that it is itself an agenda informed by values that are themselves unexamined and insulated from challenge. The name of the agenda is “free and open inquiry” and despite that honorific self-description, it is neither free nor open because it is closed to any line of thinking that would shut inquiry down or route it in a particular direction. It is closed, for example, to most forms of religious thought (which it will stigmatize as dogmatic) or to any form of thought that rules some point of view—for instance that the Holocaust did not occur—beyond the pale and out of court. To put it in way that may seem paradoxical: openness is an ideology in that, like any other ideology, it is slanted in some directions and blind (if not down-right hostile) to others.

Now, to say that openness is an ideology is not necessarily to criticize it, much less reject it, but merely to deprive it of one of its claims. Openness (or free inquiry) may still be the ideology we choose, but if my analysis is right, we cannot choose it as an alternative to ideology . . . .

. . . If exposure is indoctrination, in the sense that an idea introduced into the mind becomes part of its equipment, one of the lenses through which and with which the world is processed and configured, then the declared goal of liberal education, the goal of preparing students for “autonomous decisions making,” is not achievable and in fact has been rendered unavailable in the moment of consciousness. Indeed, if you think about it, the requirement that people be allowed “to form their own opinions, beliefs, concepts, hypotheses” makes no sense. You cannot form a belief in a vacuum, in the absence of an already-in-place framework of norms, distinctions, and hierarchies. And
with law. Some may believe that we have too much law, but the rule of law is the foundation of our society and the legal system is prominent to the point of dominating the culture. Alexis De Toqueville’s oft-quoted prediction has become a hackneyed observation: today “[t]here is hardly a political question in the United States that does not sooner or later turn into a judicial one.”

I am a lawyer, at least in theory (pun intended). We lawyers appeal to written authorities to fashion our arguments. My highest written authority that a legal education is properly a liberal education is a book by Jaroslav Pelikan, Sterling Professor of History at Yale University titled, THE IDEA OF THE UNIVERSITY—A REEXAMINATION. At the invitation the President of Yale University, Professor Pelikan, who was the recipient of the Jefferson Award of the National Endowment for the Humanities, delivered a series of lectures on “The Future of the University” as part of the celebration of the Yale tricentennial and those lectures became the book. I recommend the book to anyone who is interested in this evening’s themes.

Indeed, Professor Pelikan writes an amicus curiae brief that helps me make my case. He reminds us of the broad developments in the history of

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[35] Law reflects but in no sense determines the moral worth of a society. The values of a reasonably just society will reflect themselves in a reasonably just law. The better the society, the less law there will be. In Heaven there will be no law, and the lion will lie down with the lamb. The values of an unjust society will reflect themselves in an unjust law. The worse the society, the more law there will be. In Hell there will be nothing but law, and due process will be meticulously observed.
[38] Benno C. Schmidt, then President of Yale University and the former dean at the Columbia University School of Law is now the Chairman of the Board of Directors of the Edison Project. See Homepage of Edison Schools Project, at http://www.edisonproject.com/overview/ov_schmidt.html.
legal education in the United States. At first, legal education was understood to be an integral part of a liberal education at the university. Then legal education moved away from the university to a system of apprenticeship in which fledgling lawyers "read law" in law offices under the tutelage of practicing attorneys. But then, Pelikan notes, "the American law schools, one at a time, began their migration back to the university—which, after all, they had helped to create."

Today, he observes that the worst case scenario is for the law school to become a professional ghetto on campus, to the detriment of both the law school and the university but he insists that need not be so. Professor Pelikan quotes Edward H. Levi, who was both President of the University of Chicago and the dean of its law school, to insist that "the professional school and the university need each other." Professor Pelikan believes that a law school that concentrates exclusively on the current practices of the profession is doomed to fail as a law school as well as in its greater mission. To be a successful law school, to be a worthy part of the university, a law school must be concerned with the "world of learning" and, at the same time, the law school must be a bridge between the world of learning and the "world of problems to be solved." This is how the law school carries forward the grand tradition of the liberal education. This is what the law school and the university have to gain from each other.

III

But "Professor Baker," you might be thinking—if you are still awake and thinking about something besides your drive home tonight—"all that sounds rather lofty and suspiciously self-laudatory but rather vague, even for a lawyer. What does it mean for you and me? What does it mean for

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40 PELIKAN, supra note 37, at 105.
41 Id. (quoting EDWARD H. LEVI, POINT OF VIEW: TALKS ON EDUCATION 38-39, 121 (1969)).
44 As institutions the law schools and the universities confront each other with their own way of doing things . . . When I was a law school dean I had to say, or so I thought, that law and law schools were of the greatest importance to the larger community and to the universities of which they are part. Now that I am in a sense free, I find that what I said was true. I had not fully realized, however, how intertwined the roles of law school and university were, nor had I appreciated that so much of the humanistic tradition is kept alive in the professional course of liberal arts which is the law. And that is the sense of values, which while so frequently formally eschewed, helps give the law schools their distinction. It is good to hope that the values and ways of life of law schools and universities gain from each other.

EDWARD H. LEVI, POINT OF VIEW: TALKS ON EDUCATION 121 (1969) (The Law School within the University).
the Florida International University and the College of Law? What are the questions we should address together, now that there is a law school on our campus?” I want to briefly identify some immediate implications. But I want to take the long view, as well, to raise some bigger implications.

A

What are some of the more obvious, more immediate implications that we can expect? Well, there will be another physical structure built on campus of course: the building for the College of Law will be over by the Panther Arena. However, what is true about a University is also true about a law school: the institution is about people—not bricks and mortar—it is about students and faculty and alumni.

Students. We will attract our share of gifted and talented students to study at the University. They will come here from colleges and universities all over Florida, from other states, and from other countries. It also would be a good thing if we can persuade some of the best and brightest of FIU graduates to stay with us for an additional three years. Our students will be on campus to study at the College of Law but they will be students of the University. Some of them will enroll in various joint-degree programs that are anticipated and thus they will be graduate students in other departments.45 Many of them will take advantage of our College of Law policy that authorizes students to receive up to six hours of credit towards their J.D. degree for graduate level classes taken in another graduate program in the University.46 Likewise, we would expect some graduate students to enroll in law courses that relate to their university studies. Some of our students will travel abroad to study at foreign law schools and bring back their experiences.47 Students from other countries will come here to study law. Our law students will contribute pro bono publico to the larger community through their participation in the Community Service Program and the Clinical Program I mentioned. Their student organizations will host speakers and sponsor programs. They will contribute to the synergy that is FIU.

Faculty. Law is a separate method of intellectual inquiry and analysis, although it is not a monolithic discipline and it follows a syncretism that is highly opportunistic. Law professors teach law courses but the interdisciplinary potential is obvious enough.48 “Law and Economics” and “Law and Literature” and “Legal History” are just some examples of the “Law and

45 Academic Polices and Regulations, FLORIDA INTERNATIONAL UNIVERSITY COLLEGE OF LAW STUDENT HANDBOOK, Rule 2107, Joint degree students (2002).
46 Id. at Rule 2106 (Students enrolled in courses in another graduate program).
47 Id. at Rule 2105 (Students visiting foreign law schools).
fill-in-the-blank” offerings that one finds in the typical law school curriculum. These courses present the opportunity for team teaching for faculty. Likewise, the arena of scholarship will provide opportunities for collaboration with faculty colleagues in different disciplines. For example, my friend and colleague John Stack in the Political Science Department has invited me to help with a symposium to be held next Semester on civil rights and civil liberties during the threat of a crisis like the war on terrorism.49 We will bring some of the leading constitutional scholars in law and political science to campus for our program. Just as each of you is an expert on your subject, the members of the law faculty will participate in the national conversation through their writings and lectures. What can be said about you will also be true for the law faculty: for a significant number of people in the United States and abroad, what they know about FIU will be based on the work of these scholars. We will engage in the kinds of extended teaching that you do: helping inform the press and the public about the issues of the day. We are interested and engaged in community affairs and how people and organizations deal with their differences and address issues of public policy. We will be advisors and participants in governmental circles, helping to set the agenda and shaping laws and policies. Like you, the law faculty also will strive to be good citizens of our University with all that that entails for service in the Faculty Senate and on university committees et cetera.

Alumni. The University of Florida College of Law was founded back in 1909 and has produced prominent members of the bench and bar for generations. It touts the fact that its graduates have been leaders in business and government at the state and national level.50 In the year 2095, we will be just as old as UF is today. Long before then, however, we will be able to say the same thing about our graduates. Most of the students in this year’s inaugural class will still be practicing law 40 years from now. Over the next 40 years, that many FIU graduating classes will join their ranks. I have been teaching for only 20 years and I am proud of my former students who have made a difference. Some of them have been prominent and visible leaders in the profession and in society, legislators, judges, business and community leaders. Others have worked more quietly but skillfully and ably to make a difference in the individual lives of their clients. We can expect to be just as proud of our FIU College of Law alumni, if we do our part when they are our students.51

50 See Homepage of the Frederic C. Levin College of Law at the University of Florida, at http://www.law.ufl.edu/information/about.shtml.
51 Most people think that law schools train lawyers, but what we really do is educate lawyers. These are related projects in theory, but in practice, they can involve different constituencies,
B

In the course of this evening’s conversation, perhaps we should take the opportunity to take the long view of professional education and what it means for the university. To that end I will invoke the authority of a leading light of the academy and a book I happened upon during my preparation: THE CREATION OF THE FUTURE: THE ROLE OF THE AMERICAN UNIVERSITY by Frank H.T. Rhodes, President Emeritus of Cornell University. 52 (Our distinguished guest speaker at this year’s Faculty Convocation, Dean Stanley Fish, provided a jacket blurb.) 53

This book takes the “big picture” of the American university. President Rhodes devotes an entire chapter to our subject this evening titled “Transforming Professionalism.” 54 He views the advent of the university law school as merely part of a larger process of “professionalization” that has occurred in modern American higher education. President Rhodes’ point is that the concerns for the phenomenon of professionalization are not strictly limited to the law schools and medical schools. After all, colleges of business and schools of journalism, among others, share the characteristic of being “professional schools.” This phenomenon does not begin suddenly when a university gets a law school. President Rhodes writes about professionalization as a larger challenge to the tradition of a liberal education.

Painting with the broad brush of history, President Rhodes describes how undergraduate colleges were assimilated into the university, with the attendant efforts to preserve the core tradition of the liberal education. But around the same time, the institution of the university took on two functions that fundamentally changed the nature of higher education: the function of

resources, not to speak of pressures, constraints and different conceptions of the role of legal education. To be sure, law schools must embrace the goal of training lawyers, but legal education means more than the acquisition of skills, information and techniques. Lawyers’ skills are best formed in the context of a broad-based education that places law at the center of the curriculum, as a means but also an end. As a means to an end, educating lawyers is intrinsically valuable to students as future lawyers. As an end in itself, a law curriculum also educates scholars, citizens and individuals. Educating lawyers takes an engaged and creative faculty with a wide range of commitments to professionalism as lawyers, teachers and research scholars. Focusing on training alone undermines those commitments and their interrelatedness.


53 “An engaging blend of history, anecdote, analysis, and recommendations. THE CREATION OF THE FUTURE is noteworthy for being at once comprehensive and detailed in its consideration of problems, solutions, and opportunities. The chapter on the cost of higher education is itself worth the cost of the book, and more.—Stanley Fish, Dean, University of Illinois at Chicago.” Id. at back jacket. For a collection of Fish blurbs, see The Stanley Fish (Unofficial) Resource Page, at http://www.mv.helsinki.fi/home/kniemela/blurs.htm.

54 RHODES, supra note 52, at 30.
graduate education to train the ranks of the professoriate plus the function of conducting basic research for society. Consider for a moment how many graduate level programs we have on our campus and how much basic research is being done by our university faculty. President Rhodes' worry is that this rise in professionalism in American higher education can be harmful to the tradition of the liberal education. He quotes the cynical bromide: "'A college becomes a university . . . when the faculty ceases to care about the students.'"  

President Rhodes does repeat the conclusion of my earlier argument, namely that "'[t]he association of the professional schools with colleges of arts and sciences reflects the conviction that each has something to contribute to the other.'" This is true, he explains, because "'[t]he challenges of life and the needs of society defy traditional disciplinary boundaries, and the collective expertise of the campus is an asset of growing value that is widely acknowledged, though not yet fully utilized.'"  

But President Rhodes is careful to identify what he sees as some of the costs of the phenomenon of professional education and the impact it has had on the university. I can only outline his list of concerns:

- "'Professionalism has tended to shift student interest from pursuing an education to getting a job.'"  
- "'Professionalism has caused knowledge itself to be seen as a commodity, a product to be purchased and applied.'"  
- "'Professionalism has diminished the influence of the liberal arts themselves, and, in turn, reduced public discourse and diminished professional practice.'"  
- "'Professionalism has shifted the allegiance of the faculty away from the university.'"  
- "'Professionalism has diminished what was once a common concern for the well-being of the individual student, reflected in the earlier 'pastoral' role of the faculty—embodied in the phrase in loco parentis.'"  
- "'Professionalism has caused the loss of an implicit set of moral assumptions that once provided an educational framework for the curriculum.'"  

I was relieved, when I first read his list of what professionalism had caused, to note that President Rhodes did not blame cancer or global warm-
ing on professionalism, at least not directly. More seriously, President Rhodes insists that he is not "arguing against professional education itself" but rather he is arguing "against its reduction to narrow job training." 64

President Rhodes includes in his chapter on professionalism a series of recommendations, which I will read off for your consideration:

- "Universities and the professions should pause to examine the assumptions, requirements, and outcomes of professional education." 65
- "Universities should bring the liberal arts, with the broad human concerns they represent, inside the tent of professional courses and programs." 66
- "Universities should require that all committees for faculty recruitment and promotion have one or two members from outside the particular discipline or profession represented." 67
- "Universities should provide incentives for such cooperation." 68
- "One simple and inexpensive place to start might be the introductory courses." 69

Y'all have been citizens of the university all your adult lives, most of you since you were students yourselves. Listen to President Rhodes's *cri de coeur*. Does this sound familiar or desirable:

Today's university has no acknowledged center. It is all periphery, a circle of disciplinary and professional strongholds, jostling for position, and surrounding a vacant center. Among the members of the neighboring fiefdoms, there is little meaningful contact. The humanities, which once inspired and anchored all the rest, are rich in learned clamor and dispute, but provide no coherent vision and address few significant questions. Yet the great themes for which they stand—the overarching issues of experience and meaning, of significance and purpose, of freedom and responsibility, of fidelity and truth—have never been more significant or more relevant. Meanwhile the learned professions each ply their craft—efficient and effective, but unengaged with, and sometimes unresponsive to, the wider issues and concerns of the clients they serve. Exhaustively trained, exquisitely skilled, they perform their various functions and exercise their various skills, each constrained and isolated with the enveloping cell of their own professional education. 70

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64 Id. at 38.
65 Id. at 41.
66 Id. at 42.
67 Id.
68 Id.
69 Id.
70 Id. at 44.
"The challenge of the American university," in the words of President Rhodes, "is to recreate that comprehensive community, to restore that vanished dialogue." I believe that challenge, our challenge, is not only for the sake of the university, but for the sake of the society the university serves in so many important and essential ways.

IV

Conclusion. My preliminary remarks are at an end. My understanding is that we are to have a conversation about these themes and that Dean Fish will begin the discussion. In closing, I want to paraphrase how John Henry Newman ended his last lecture on the idea of the university—delivered at a professional school—and say that I am personally grateful for the opportunity to join with all of you in what Newman called "the arduous, pleasant, and hopeful toil" that goes into building a great University.

Thank you Mr. Provost for my assignment tonight. Thanks to all of you for your time and attention.

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71 Id.

72 "A society may be endangered, not only by too little professional expertise, but also by too much, if that expertise is unguided by serious reflection on the goals and priorities of the society it seeks to serve." Id.

73 Stanley Fish, Dean of the College of Liberal Arts and Sciences, Professor of English and Criminal Justice at the University of Illinois at Chicago and Distinguished Visiting Professor at the John Marshall Law School (2000-2002) http://www.uic.edu/depts/engl/faculty/fish.html (faculty biography page). Last year, the FIU College of Law had the good fortune of having Dean Fish accept an appointment to join the faculty as the Davidson-Kahn Distinguished University Professor of Humanities and Law. He will begin teaching in the Spring Semester 2006. Andrew Mytelka, Stanley Fish Signs Deal to Teach at Florida International U., CHRONICLE OF HIGHER EDUCATION, June 13, 2005; Press Release: Leading Professor Stanley Fish to Join FIU Law Faculty, http://news.fiu.edu/releases/2005/06-29_stanley_fish.htm.

74 NEWMAN, supra note 1, at 391.