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## Reflections on Law Schools and the Idea of the University

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# FIU LAW REVIEW

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## **Reflections on Law Schools and the Idea of the University<sup>†</sup>**

*Thomas E. Baker<sup>††</sup>*

I always feel honored to be in the company of scholars. You will recognize, 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 defense of the grand tradition of a liberal education.<sup>1</sup> 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 special 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.

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<sup>†</sup> These are remarks prepared for the Provost’s Dinner for the Faculty Senate at Florida International 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 publication 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.

<sup>††</sup> Thomas E. Baker is a member of the founding faculty of the College of Law at Florida International University.

<sup>1</sup> JOHN HENRY CARDINAL NEWMAN, *THE IDEA OF A UNIVERSITY* (Martin J. Svaglic ed., 1982).

*Students.* Students always deserve our first attention. We have a diverse, impressive, and noteworthy student body in our inaugural first year class.<sup>2</sup> Let me give you a few statistics:<sup>3</sup>

- 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

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<sup>2</sup> 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.

<sup>3</sup> Florida International University College of Law Statistical Data provided by Alma O. Miro, Director of Admissions and Financial Aid as of August 8, 2002 (on file with the author). See generally James R.P. Ogloff, David R. Lyon, Kevin S. Douglas & V. Gordon Rose, *More Than “Learning to Think Like a Lawyer:” The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73 (2000).

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

*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.<sup>6</sup> 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.<sup>7</sup> And I can vouch from personal experience that they are splendid colleagues, people of good will who share a commitment to the *techne* of our craft.<sup>8</sup>

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<sup>4</sup> Hal Dardick, *Seeking Seasoned Students*, CHICAGO TRIBUNE, Oct. 1, 2000, at C22. See generally JAMES V. SCHALL, *What a Student Owes His Teacher*, in ANOTHER SORT OF LEARNING 30 (1988).

<sup>5</sup> 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., *The Use of Law Schools*, in COLLECTED LEGAL PAPERS 35, 37 (1920).

<sup>6</sup> Christopher Columbus Langdell, the originator of the case method of law study, professed to believe:

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.

JOEL SELIGMAN, *THE HIGH CITADEL—THE INFLUENCE OF HARVARD LAW SCHOOL* 37 (1978). See generally Samuel Issacharoff, *The Content of Our Casebooks: Why Do Cases Get Litigated?*, 29 FLA. ST. U. L. REV. 1265 (2002); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991).

<sup>7</sup> The first year founding faculty included: Thomas E. Baker, Sharon R. Barnett, Jorge L. Esquirol, Elizabeth Price Foley, Angelique Ortega Fridman, Aya Gruber, Andrew J. McClurg, Matthew C. Mirow, Scott F. Norberg, Ediberto Román, Leonard P. Strickman, David D. Walter, and Jean G. Zorn. See Faculty and Administration Homepage for the Florida International University College of Law, at <http://www.fiu.edu/law/faculty.htm>. See also Al Branch, *Strickman Tapped as First Dean of New Florida Law School*, MATRIX MAGAZINE, Feb. 1, 2001, at 15; *FIU Names Founding Faculty*, FLORIDA BAR NEWS, Mar. 15, 2002, at 24.

<sup>8</sup> Brett G. Scharffs, *Law As Craft*, 54 VAND. L. REV. 2245 (2001). See generally *Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities*, AALS HANDBOOK 94 (2002).

*Curriculum.* There is nothing more likely to affect the digestion than a dinner speech about law curriculum,<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

- 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.<sup>12</sup>

- 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.<sup>13</sup> The FIU College of Law hopes to contribute to that prominence. Our students will practice law in an increas-

<sup>9</sup> Aptly enough, reforming the law school curriculum has been compared to moving a graveyard. Tom C. Clark, *Teaching Professional Ethics*, 12 SAN DIEGO L. REV. 249, 253 (1975). See generally John O. Mudd, *Academic Change in Law Schools*, 29 GONZ. L. REV. 29 (1993).

<sup>10</sup> See generally ELIZABETH DVORKIN, JACK HIMMELSTEIN & HOWARD LESNICK, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (1981); JOAN S. HOWLAND & WILLIAM H. LINDBERG, *THE MCCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM* (Conference Proceedings Sept. 30—Oct 2, 1993); REPORT AND RECOMMENDATIONS OF THE TASK FORCE OF THE ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS* (1979); Philip C. Kissam, *Lurching Towards the Millennium: The Law School, The Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965 (1999); Deborah L. Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23 (2000); Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspections: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J. L. ETHICS & PUB. POL'Y 117 (2001); Donald J. Weidner, *The Florida Supreme Court Commission on Professionalism and the Crisis of Legal Education*, 71 FLA. B. J. 64 (1997).

<sup>11</sup> See generally Stephen Wizner, *Can Law Schools Teach Students to Do Good? Legal Education and the Future of Legal Services for the Poor*, 3 N.Y. CITY L. REV. 259 (2000).

<sup>12</sup> See generally Leah Wortham, Dean Hill Rivkin, Philip Schrag, Roger Wolf, Elliott Milstein & Kandis Scott, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337 (1987).

<sup>13</sup> See FIU MILLENNIUM STRATEGIC PLANNING, available at <http://www.fiu.edu/~pie/docs/msp052802/mspdocwhole010603.PDF> (May 28, 2002). See generally M.C. Mirow, *Globalizing Property: Incorporating Comparative and International Law into First-year Property Classes*, 54 J. LEG. EDUC. 183 (2004).

ingly globalized professional reality.<sup>14</sup> 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.<sup>15</sup> 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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<sup>14</sup> See generally Lawrence M. Friedman, *Borders: On the Emerging Sociology of Transnational Law*, 32 STAN. J. INT'L L. 65 (1969); John E. Sexton, *Curricular Responses to Globalization*, 20 PENN. ST. INT'L L. REV. 15, 17 (2001).

<sup>15</sup> “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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> We have an architectural firm, Robert A.M. Stern Architects,<sup>19</sup> and the design of the building has begun.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> Some of us manage to have a personal life too.

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<sup>16</sup> 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).

<sup>17</sup> See generally George C. Christie, *The Recruitment of Law Faculty*, 1987 DUKE L. J. 306; Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997); Carl Tobias, *Engendering Law Faculties*, 44 U. MIAMI L. REV. 1143 (1990).

<sup>18</sup> See generally Peter V. Letsou, *The Future of Legal Education: Some Reflections on Law School Specialty Tracks*, 50 CASE W. RES. L. REV. 457 (1999).

<sup>19</sup> See Homepage of Robert A.M. Stern Architects, at <http://www.ramsa.com/>.

<sup>20</sup> See generally Nicolas P. Terry, *Bricks Plus Bytes: How "Click and Brick" will Define Legal Education Space*, 46 VILL. L. REV. 95 (2001).

<sup>21</sup> See generally SUSAN K. BOYD, THE ABA'S FIRST SECTION—ASSURING A QUALIFIED BAR (1993); REPORT OF THE COUNCIL OF THE AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LONG-RANGE PLANNING FOR LEGAL EDUCATION IN THE UNITED STATES (1987).

<sup>22</sup> 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);

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.<sup>23</sup>

## 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.”<sup>24</sup> He went on to insist law professors had more in common with athletic coaches than with university professors.<sup>25</sup> (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.<sup>26</sup>

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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Ronald H. Silverman, *Weak Law Teaching, Adam Smith and a New Model of Merit Pay*, 9 CORNELL J.L. & PUB. POL’Y 267 (2000).

<sup>23</sup> See generally Jay M. Feinman, *The Future History of Legal Education*, 29 RUTGERS L.J. 475 (1998); Joan Mahoney, *The Future of Legal Education*, 33 U. TOL. L. REV. 113 (2001); A. Kenneth Pye, *Legal Education in an Era of Change: The Challenge*, 1987 DUKE L.J. 191; John E. Sexton, *Legal Education, Today’s Tomorrow*, 3 GREEN BAG 2d 417 (2000); John E. Sexton, “*Out of the Box*” *Thinking About the Training of Lawyers in the Next Millennium*, 33 U. TOL. L. REV. 189 (2001); Robert A. Stein, *The Future of Legal Education*, 75 MINN L. REV. 945 (1991).

<sup>24</sup> [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.

THORSTEIN VEBLÉN, *THE HIGHER LEARNING IN AMERICA—A MEMORANDUM ON THE CONDUCT OF UNIVERSITIES BY BUSINESS MEN* 211 (1st ed. 1918, reprinted 1965).

<sup>25</sup> “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.*

<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> Thus, a proper understanding of the law has long been part of the traditional liberal education in this country.<sup>29</sup>

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<sup>27</sup> Ruth Bader Ginsburg, *Remarks at the Rededication Ceremony, University of Illinois College of Law, September 8, 1994*, 1995 U. ILL. L. REV. 11. See generally Thomas E. Baker, *Not Another Constitutional Law Course: A Proposal to Teach a Course on the Constitution*, 76 IOWA L. REV. 739 (1991).

<sup>28</sup> 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.

James Wilson, *Lectures on Law*, in 1 THE WORKS OF JAMES WILSON 72 (Robert G. McCloskey ed., 1967). George Wythe, the nation's first law professor, was appointed to the College of William & Mary in 1779 and counted among his students Thomas Jefferson and John Marshall. Howard Schweber, *The "Science" of Legal Science: the Model of the Natural Sciences in Nineteenth-Century American Legal Education*, 17 L. & HIST. REV. 421, 429 n.34 (1999).

<sup>29</sup> 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 come to it, as it were, from a height, 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. 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 they 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.<sup>30</sup> 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).<sup>31</sup> 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.<sup>32</sup> 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.”<sup>33</sup> Certainly, the American culture is a culture rife

<sup>30</sup> See Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1231 (1991).

<sup>31</sup> See The Carnegie Classification of Institutions of Higher Education, at <http://www.carnegiefoundation.org/Classification/index.htm>.

<sup>32</sup> See generally Thomas E. Baker, *A Law Student's Responsibility for a Liberal Education*, 20 TEX. TECH L. REV. 1153 (1989).

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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."<sup>36</sup>

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*.<sup>37</sup> At the invitation the President of Yale University,<sup>38</sup> 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

it cannot be *you* who puts that framework in place, or who chooses it, for prior to its institution the notion of choice could not possibly have a content. Indeed, you couldn't even have a thought if the range of possible thoughts had not already been established and imprinted on your brain before you took your first mental step. Just as you can't have education without authoritative selection, so you can't have consciousness . . . that one's beliefs be shaped by "one's own rational considerations rather than by . . . coercion." What I am saying is that this requirement is incoherent and cannot be met.

Because it cannot be met, the condition liberal education and the First Amendment is supposed to save you from, the condition of being subject to the influences of indoctrination, is the condition you are always and already in. The choice is never between indoctrination and free inquiry but between different forms of indoctrination issuing from different authorities . . .

Stanley Fish, *Children and the First Amendment*, 29 CONN. L. REV. 883, 886-88 (1997). See also Stanley Fish, *Liberalism Doesn't Exist* in STANLEY FISH, THERE'S NO SUCH THING AS FREE SPEECH ... AND IT'S A GOOD THING TOO 134 (1994).

<sup>34</sup> See generally Thomas E. Baker, *Tyrannous Lex*, 82 IOWA L. REV. 689 (1997).

<sup>35</sup> 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.

GRANT GILMORE, *THE AGES OF AMERICAN LAW* 110-11 (1977).

<sup>36</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 270 (J.P. Mayer ed., 1988). See, e.g., *Bush v. Gore*, 531 U.S. 98 (2000).

<sup>37</sup> JAROSLAV PELIKAN, *THE IDEA OF THE UNIVERSITY—A REEXAMINATION* (1992). Professor Pelikan's book self-consciously revisits John Henry Newman's classic book. See *supra* text accompanying note 1.

<sup>38</sup> 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](http://www.edisonproject.com/overview/ov_schmidt.html).

legal education in the United States.<sup>39</sup> 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.”<sup>40</sup> 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.”<sup>41</sup> 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.”<sup>42</sup> This is how the law school carries forward the grand tradition of the liberal education.<sup>43</sup> This is what the law school and the university have to gain from each other.<sup>44</sup>

### 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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<sup>39</sup> See generally ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983); Craig Evan Klafter, *The Influence of Vocational Law Schools on the Origin of American Legal Thought*, 37 AM J. LEGAL HIST. 307 (1993).

<sup>40</sup> PELIKAN, *supra* note 37, at 105.

<sup>41</sup> *Id.* (quoting EDWARD H. LEVI, POINT OF VIEW: TALKS ON EDUCATION 38-39, 121(1969)).

<sup>42</sup> *Id.* See generally David R. Barnhizer, *Prophets, Priests, and Power Blockers: Three Fundamental Roles of Judges and Legal Scholars in America*, 50 U. PITT. L. REV. 127 (1988).

<sup>43</sup> See generally James O. Freedman, *The Law as Educator*, 70 IOWA L. REV. 487 (1985).

<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> “Law and Economics” and “Law and Literature” and “Legal History” are just some examples of the “Law and

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<sup>45</sup> *Academic Polices and Regulations*, FLORIDA INTERNATIONAL UNIVERSITY COLLEGE OF LAW STUDENT HANDBOOK, Rule 2107, Joint degree students (2002).

<sup>46</sup> *Id.* at Rule 2106 (Students enrolled in courses in another graduate program).

<sup>47</sup> *Id.* at Rule 2105 (Students visiting foreign law schools).

<sup>48</sup> *See generally* Kathleen M. Sullivan, *Foreword: Interdisciplinarity*, 100 MICH. L. REV. 1217 (2002).

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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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<sup>49</sup> See generally THOMAS E. BAKER & JOHN F. STACK, JR., *AT WAR WITH CIVIL RIGHTS AND CIVIL LIBERTIES* (Rowman & Littlefield Publishers, Inc. 2006).

<sup>50</sup> See Homepage of the Frederic C. Levin College of Law at the University of Florida, at <http://www.law.ufl.edu/information/about.shtml>.

<sup>51</sup> 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.<sup>52</sup> (Our distinguished guest speaker at this year's Faculty Convocation, Dean Stanley Fish, provided a jacket blurb.)<sup>53</sup>

This book takes the "big picture" of the American university. President Rhodes devotes an entire chapter to our subject this evening titled "Transforming Professionalism."<sup>54</sup> 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

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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.

Alfred C. Aman, Jr., *Protecting a Space for Creativity: The Role of the Law School Dean in a Research University*, 31 U. TOL. L. REV. 557, 557 (2000).

<sup>52</sup> FRANK H.T. RHODES, *THE CREATION OF THE FUTURE: THE ROLE OF THE AMERICAN UNIVERSITY* (2001).

<sup>53</sup> "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/fblurbs.htm>.

<sup>54</sup> 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."<sup>55</sup>

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."<sup>56</sup> 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."<sup>57</sup>

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."<sup>58</sup>
- "Professionalism has caused knowledge itself to be seen as a commodity, a product to be purchased and applied."<sup>59</sup>
- "Professionalism has diminished the influence of the liberal arts themselves, and, in turn, reduced public discourse and diminished professional practice."<sup>60</sup>
- "Professionalism has shifted the allegiance of the faculty away from the university."<sup>61</sup>
- "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*."<sup>62</sup>
- "Professionalism has caused the loss of an implicit set of moral assumptions that once provided an educational framework for the curriculum."<sup>63</sup>

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-

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 31.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 34.

<sup>59</sup> *Id.* at 35.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 36.

<sup>62</sup> *Id.* at 37.

<sup>63</sup> *Id.*



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.”<sup>64</sup>

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

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.<sup>70</sup>

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<sup>64</sup> *Id.* at 38.

<sup>65</sup> *Id.* at 41.

<sup>66</sup> *Id.* at 42.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *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.”<sup>71</sup> 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.<sup>72</sup>

#### 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<sup>73</sup> 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.<sup>74</sup>

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

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<sup>71</sup> *Id.*

<sup>72</sup> “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.*

<sup>73</sup> 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](http://news.fiu.edu/releases/2005/06-29_stanley_fish.htm).

<sup>74</sup> NEWMAN, *supra* note 1, at 391.



## The University of the Future Has Already Arrived

*Stanley Fish*<sup>†</sup>

In the class I am now teaching at the University of Illinois at Chicago, only two of the students are white males, two more white females and the other thirteen a mixture of African Americans, Hispanics, Asians, Africans, Indians, Pakistanis. The languages they command other than English total at least ten; the cultures they represent some multiple of ten, given that many of them belong to families that are themselves international in composition. Welcome to the University of the Twenty First century. That is, welcome to both my university and yours.

In fact it might be said that your university and mine are engaged in a friendly competition. When I asked Provost Rosenberg to tell me about Florida International's self-conception and ambitions, he told me that the goal, already in the course of being realized, was to build an institution that is both a relevant force in the urban community and a top-level public research university. For a moment I thought I was in an echo chamber listening to my own words coming back at me. For that's exactly what I say whenever I go out into the community and speak on behalf of UIC. Here's my stump speech, short version: There are great educational institutions located in cities, but they are not truly urban. Columbia University sits in New York, Emory in Atlanta, Harvard in Boston, Johns Hopkins in Baltimore, Rice in Houston, UCLA in Los Angeles; but their respective relationships to those cities might be characterized as indifferent, or adversarial, or detached or defensive or at best neighborly. These universities are in the city, but not of the city. This is not true of another group that includes (among others) the University of Toledo, The University of Pittsburgh, Wright State University, The University of Cincinnati, and The University of Houston. In varying degrees, these schools acknowledge and embrace their urban location and regard it as at once a laboratory and an opportunity. But they are not world-class research institutions—Pittsburgh is the closest—and do not regularly compete for faculty and graduate students with the likes of Yale, Harvard, Stanford, Duke and Michigan. What this means, I continue, is that there exists the possibility of doing something no institu-

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<sup>†</sup> Davidson-Kahn Distinguished University Professor of Humanities and Law, College of Law at Florida International University.

tion has ever done—be at once unashamedly urban and academically incandescent—and that, I conclude, is what the University of Illinois at Chicago should be doing and is already to a large measure doing. With the appropriate differences—differences generated by the differences between Chicago and Miami—I could give the same cheerleading talk about Florida International. The similarities are almost eerie—schools only about thirty years old, one originally located in an old air field, the other on a decaying pier that is now an up-scale tourist attraction; both moving quickly from a fledgling school with few advanced programs to the status of Research University and an ever larger volume of sponsored research; a student body marked by incredible diversity—anchored in one case by a large Hispanic population, in the other by an almost thirty percent cohort of Asian Americans; innumerable partnerships with city and state agencies, an increasingly energetic venture tech effort, a deep concern with the problems of the public school systems, and last but certainly not least, a shared taste for big time athletics and the recognition they bring.

So we're both on our way, not quite mature, growing so quickly that the infrastructure is always playing catch-up, healthy and vigorous adolescents too coltish even to know how audacious their ambitions are. But the game is not yet won, and there are obstacles that have to be negotiated and dangers that must be kept in mind. One danger is the danger of forgetting who and what you are and allowing yourself to fall into the trap of wanting to be something else. Some years ago I visited a school in Virginia that prided itself, quite correctly, on the traditions of its region and structured its curriculum accordingly. But there was a new President in town who had come from the main Campus of the University and whose self-announced strategy was to make this perfectly fine school into the Charlottesville of the county. Bad idea, first because it is unrealizable—transplants may work in the human body, but not in the body of an institution—and, more importantly, because the goal is unworthy and even ludicrous. Would any adult man or woman want to have to say when asked where do you teach, “I teach at the Harvard of North Dakota” or “I teach at the Stanford of Arizona” or “I teach at the Princeton of Arkansas”? It's so undignified, so much a mark of insecurity, so pathetic.

A somewhat different but related danger for a school that is a part of a state system is flagship envy; in my case envy of the University of Illinois at Urbana, in yours envy of the University of Florida at Gainesville. Flagship envy is a losing proposition, a non-starter, both because there are certain achievements—100-year-old football traditions, secret societies—you will never match, and others—perhaps the same ones—you shouldn't want to match. Most important of all, you don't want to forget that you are an urban university, not a university in the middle of a cow pasture or a university that is the only game in a bucolic little town that looks like the set of a 1940s MGM musical. You're in Miami, you're in Chicago, which doesn't

make you either better or worse than Gainesville and Urbana—although I'll bet that given choice the residents of the latter two would be happy to migrate to the Big City—but different; and it is that difference, and the value it adds to the state's educational system, that should be emphasized when you ask for additional resources: not "we're almost as good as Urbana and Gainesville"—a version of "I teach at the Princeton of Arkansas"—but we do something no other institution does, and we do it well, and you need us to do it.

One more danger in the same territory is the danger of wanting to "improve" the student body. Here the driver will be U.S. News and World Report rankings, which pay particular attention to ACT and SAT scores, retention rates, rates of alumni giving, average time of degree completion, and the like. By these measures, the students we typically teach will fall short, and accordingly there will be a temptation to raise admission standards so that students of a "better kind" will populate our classrooms. Resist it. The students who come to us are intelligent, ambitious, serious, and, at times, rough edged. They may not have been to many cocktail parties or attended many summer tennis camps, or spent a week or two each year in Paris; and a certain lack of sophistication and social experience will likely cost many of them more than a few points on some standardized tests. But that's why they're ours; that's why they're so eager; that's why they're so grateful and so wide-eyed at the vistas opening up before them. If they display a lack of polish, that same lack inoculates them against complacency and boredom. If they don't always come to class on time, or come to class, or finish in four years, it's because they are living real lives, holding real jobs, and comporting themselves like real people. They are smart, but they are not privileged and that is why they consider it a privilege to be here. The students I teach at UIC are quite unlike the students I taught at Duke, but the comparison is not always flattering to those at the more prestigious institution. I shall never forget what one of my law students at Duke said about the Duke undergraduates. He said, "They all look as if nothing bad had ever happened to them." That's not the way my current students look, and I'll bet your students don't look that way either. They look like America—all of it.

Remember who you are, don't try to be someone else; don't exchange the students you have for students who don't need you. These pieces of advice are hardly profound, but they may, I think, be useful at those moments when you are tempted to exchange the goals that brought you here for goals that, however laudable, belong to another enterprise.

But no piece of advice, no matter how pointed or commonsensical will do you much good if you fail to remember one other: don't give in to the pressures of politics.

Here the danger comes in two forms, external and internal. External political pressures come from the usual places and the usual suspects—

politicians, legislators, parents, trustees, corporate industry, and donors. Each of these groups will press what it thinks to be a legitimate claim. Politicians will say, nothing is more important than the education of our children and it's our responsibility as elected officials to make sure that it's done right. Legislators will say, we make the laws and we pay for the buildings and fund the salaries, and we should be able to dictate how things are done. Parents will say, well we pay too, and they're our kids and we should have some input into what they learn. Regents or Boards of Trustees will say we are obliged by statute to sign off on everything you in the universities do, and we're not going to be rubber stamps for overeducated professors with fancy ideas. Captains of industry will say, you want us to hire your students, then fill your curriculum with the courses we will find relevant to the work we will hire them to do. And donors will say, if you want our money, dance to our tune.

Not unreasonable positions, but you can't listen to them for a second, because if you do, you will have forsaken your job and taken on another that is not yours. And what is your job—and mine? Very simply, to identify materials worthy of academic study and to study them with a view toward arriving at an accurate account of what they are and what they mean. Of course, to say that is not to settle things, for the question of what is and is not worthy of academic study admits of no easy answers; but as long as that question and not another is framing the debate, the arguments that emerge will be the right ones; you can argue that a proposed object of study is trivial or that it is culturally significant; you can discuss its affiliations with other projects already established in the curriculum; you can ask what would research into these materials look like, and if research seemed not to be part of the picture, you could say that however interesting these matters are, they are not of academic interest. And all of this will be quite different from the discussions you would open yourselves up to if you took seriously the concern of the non-academic constituencies I listed earlier. That is, you won't be debating whether a proposed course or program will please members of the legislature, or conform to what parents want, or be likely to attract donors, or make sense to corporate CEOs, or be seen by the powers that be as a contribution to civic virtue.

This last is a particularly sensitive issue in the wake of 9/11. In the rush to find an explanation for a national catastrophe, some have taken the easy way out and blamed the professors. Whether it's a scurrilous pamphlet like the Lynne Cheney-inspired "Defending Civilization: How Our Universities Are Failing America And What Can Be Done About It"<sup>1</sup> or Bill Ben-

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<sup>1</sup> AMERICAN ASSOCIATION OF TRUSTEES AND ALUMNI, DEFENDING CIVILIZATION: HOW OUR UNIVERSITIES ARE FAILING AMERICA AND WHAT CAN BE DONE ABOUT IT (2001), available at [www.goacta.org/publications/Reports/defciv.pdf](http://www.goacta.org/publications/Reports/defciv.pdf) (last visited Jan. 5, 2006).

nett's "Why We Fight: Moral Clarity and the War On Terrorism"<sup>2</sup>, or a slew of magazine pieces and op-eds, the argument is the same: civic virtue had declined, the colleges and universities are at fault, and the solution is to teach American History, American Literature, and American Everything in the right way, that is, in the way prescribed by those self-identified morally clear seers who alone are capable of leading us out of the darkness of post-modernism, cultural relativism, black studies, latino studies, gay and lesbian studies and Elvis studies. But it is not the business of the universities to teach American history in a patriotic way or in a hyper-critical way or, for that matter, in any way, if by "way" you mean ideological or political direction. It is the business of the universities, if they are performing as universities, to teach the truth about American history or American literature or French philosophy; and while there will be endless disputes about what the truth is, those disputes will be appropriately academic because they will be driven by that prime academic goal. In a recent New York Times op-ed James Murphy of Dartmouth College made the point concisely: "civic education," education aimed at inculcating a certain set of patriotic values, is "subversive of the moral purpose of schooling."<sup>3</sup> And what is that purpose? ". . . the acquisition of traits that lead us to be conscientious in the pursuit of truth," traits like "thoroughness, perseverance, intellectual honesty" and "enthusiasm for the pursuit of knowledge."<sup>4</sup>

But if these desirable traits are threatened by the political pressures exerted by non-academic outsiders, they are no less threatened by academic insiders, and especially by those insiders who have taken to literal heart the oft-repeated lesson of the last thirty years, the lesson that everything is political. It is under the umbrella of that mantra that some faculty members and administrators pursue admittedly partisan agendas in the university: they know in advance what the answer to any disputed question must be; instead of insisting on a fidelity to old values they make a litmus test of new ones and make a theology out of concepts like "diversity" and "inclusiveness"; they cannot imagine an intellectually responsible defense of positions they have personally rejected; and in one famous or infamous incident they write course descriptions and append to them the warning that conservative students will not be welcome and should go elsewhere for instruction. These and other practices are justified by the conviction that notions like objectivity, neutrality and disinterestedness do not hold up under scrutiny because they presuppose a value-free zone from which politics can be excluded. The counter-assertion is that there is no such zone; that values are

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<sup>2</sup> WILLIAM J. BENNETT, WHY WE FIGHT: MORAL CLARITY AND THE WAR ON TERRORISM (2002).

<sup>3</sup> James Murphy, *Good Students and Good Citizens*, N.Y. TIMES, September 15, 2002, §4 at 15.

<sup>4</sup> *Id.*



everywhere and everywhere disputed; and that therefore politics are already in the academy and there is not even the possibility of keeping them out.

This is a bad argument, not in its premises but in its conclusion. Where it goes wrong is in its failure to distinguish between two notions of politics, one very general and the other very specific. The general notion of politics follows from the fact I have already noted: every arena of human inquiry and endeavor is the location of conflicts of values; no position you take—whether it be a position on the wisdom of waging war in Iraq or on the true authorship of Shakespeare’s plays—will be universally acceptable; every position rests on contestable assumptions; everything is political. But that very general sense of the political does not undermine or invalidate the differences between the political activities appropriate to different spheres of action. If you are engaged in partisan politics you will be doing the right things when you vote your political preferences, lobby for or against particular policies, and support candidates because they promise to work for causes you believe in. But if you are engaged in the politics of academic life—just as political but differently so—you will be acting badly if your votes in tenure meetings track your political convictions, or if you apply a political test to the authors included in your syllabus, or put your research in the service of a political agenda. You will be acting correctly if you vote for or against a promotion because you believe (as some of your colleagues may not) that the candidate’s approach is outdated or too narrow; you will be acting correctly if you exclude from your syllabus authors who, in your judgment, are not quite central to the issues you want to address, even though your colleague down the hall might be building her course around just those authors; you will be acting correctly if you push a new area of study because you believe, in opposition to some of your best friends, that an important path of inquiry has not yet been explored. When you do these and similar things you will surely be acting politically—given the general truth about the human situation you could do nothing else. You will not, however, be acting as an agent of one political philosophy or party but as a committed member of the party and community of academic inquiry.

The point is finally simple, although often resisted or not seen. There is a politics of truth seeking, bounded and defined by the history of intellectual debate, and there is also the politics of elections, campaign contributions and marches on Washington; but they are different politics unfolding from different imperatives and if you confuse them, you will be in danger of losing hold of your enterprise and forgetting what makes it distinctive, and because distinctive, worthy of your dedication and affection. Even though the enterprise—the enterprise of the academy—is necessarily political in the most general sense of that word, it is not and should not be political in the sense that would make it a self-conscious extension of ward politics, either Chicago or Miami style. And moreover, if you guard against the conflation of the two kinds of politics and maintain the integrity of your

project from the inside you will be in a better position to stand firm against the inevitable incursions from the outside.

Well enough of preaching. I of course believe everything I just said and I hope you believe it too and put it into practice. But even if you don't, even if you embrace some of the actions I have described as dangers, your future will not fail to arrive because there is already so much energy devoted to bringing it about. In one of those moments when something had happened that left me discouraged and wondering whether the great adventure was over, a wiser colleague, and a veteran of many years at UIC, said, "Don't worry; there have always been bumps along the road, but basically this place is unstoppable." Well, I say to you here what you already know: this place—Florida International University—is unstoppable.