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## Law School Histories: A Panel Discussion

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## Law School Histories: A Panel Discussion

*At the Sixty-First Annual Meeting of the Southeastern Association of Law Schools held in Palm Beach, Florida in July 2008, a panel was convened to discuss the researching, writing, and publishing of law school histories. What follows is an edited transcript of the program.*

PROFESSOR ROBERT M. JARVIS (Nova Southeastern University): Good afternoon and welcome. I am your panel organizer and moderator, and today we will be examining a type of scholarship that has grown increasingly popular in recent times—namely, the critical law school history. And to do so, we are very fortunate to have with us a distinguished panel of experts consisting of Professor Michael de L. Landon, author of *The University of Mississippi School of Law: A Sesquicentennial History*;<sup>1</sup> Professor David J. Langum, co-author of *From Maverick to Mainstream: Cumberland School of Law, 1847-1997*;<sup>2</sup> Professor D. Don Welch, author of *Vanderbilt Law School: Aspirations and Realities*;<sup>3</sup> and Linda M. Lacy, Senior Editor of Carolina Academic Press, the publisher of the law school histories of Creighton University, Stetson University, and Valparaiso University. We also have with us Nancy L. Morrissey from Esquire Deposition Services, LLC, who is transcribing the program.

And now, without further ado, I am going to turn the microphone over to Professor Landon, who will be discussing research methodologies, strategies, and techniques. Michael?

PROFESSOR MICHAEL de L. LANDON (University of Mississippi): I have a confession to make right at the outset, and that is that I am not a law professor but a history professor. However, my first book was entitled *The Triumph of the Lawyers: Their Role in English Politics, 1678-1689*,<sup>4</sup> and it eventually led to two commissioned works: *The Honor and Dignity of the Profession: A History of the Mississippi State*

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1. MICHAEL DE L. LANDON, *THE UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW: A SESQUICENTENNIAL HISTORY* (2006).

2. DAVID J. LANGUM & HOWARD P. WALTHALL, *FROM MAVERICK TO MAINSTREAM: CUMBERLAND SCHOOL OF LAW, 1847-1997* (1997).

3. D. DON WELCH, *VANDERBILT LAW SCHOOL: ASPIRATIONS AND REALITIES* (2008).

4. MICHAEL DE L. LANDON, *THE TRIUMPH OF THE LAWYERS: THEIR ROLE IN ENGLISH POLITICS, 1678-1689* (1970).

*Bar, 1906-1976*,<sup>5</sup> and *The Challenge of Service: A History of the Mississippi Bar's Young Lawyers, 1936-1986*.<sup>6</sup>

Given this background, and the fact that I knew the law school pretty well, having both taught there and sat in on a number of classes, I was not too surprised when, just before my retirement in 2000, Dean Samuel M. Davis asked me if I would be willing to write a history of the law school covering the period 1854 to 2004.

I responded by saying that I was interested, and over the next few months I had several meetings with both the dean and Timothy L. Walsh, the law school's alumni and development director. I talked with them about the kind of history they wanted, and I stressed that if I did it, what I wanted to write was an in-depth, heavily researched monograph. Among other things, I showed them Professor Langum's book recounting the history of Cumberland Law School and said that was the sort of history I intended to write, one that would include not just the highs in the law school's history, but also the lows and the ins and the outs. And they were perfectly happy to have that sort of a history written.

Who was going to pay me to write the book? After some discussion, it was agreed that the Lamar Order, the law school's alumni support organization, would pay me what I would have made for teaching two full-time summer school sessions.

So as soon as I retired in 2000, I went to work. I decided to write the book in chronological order, and I promised that I would have it ready as soon as possible after 2004. As things turned out, I completed the final draft in the spring of 2005.

From 2000 to 2003, I read and took notes in the law school library, where I was given a reserved carrel and a lockable file cabinet. Thereafter, when I was ready to begin writing, the library moved me into its stately Eastland Room.

While researching the manuscript, I relied on a variety of primary and secondary sources. With respect to the former, I was very fortunate, or perhaps you might say unfortunate, in that there was a mass of material. Instead of the two or three notebooks I had expected to find, I discovered boxes and boxes.

The law school has its own archives, and in them I found bulletins, faculty minutes, magazines, newsletters, and official reports. I also stumbled across a short pamphlet written by Charles B. Howry,

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5. MICHAEL DE L. LANDON, *THE HONOR AND DIGNITY OF THE PROFESSION: A HISTORY OF THE MISSISSIPPI STATE BAR, 1906-1976* (1979).

6. MICHAEL DE L. LANDON, *THE CHALLENGE OF SERVICE: A HISTORY OF THE MISSISSIPPI BAR'S YOUNG LAWYERS, 1936-1986* (1995).

an 1867 alumnus who eventually became a judge on the United States Court of Claims in Washington, D.C., entitled *Rise and Progress of the University of Mississippi School of Government Science and Law*.<sup>7</sup> It explained how the law school got started and pointed out that the impetus had come from the university's board of trustees, which was made up mainly of lawyers. These men felt it was important to have a local law school to explain and synthesize the distinct legal systems—English common law, Louisiana civil law, and Indian (Chickasaw and Choctaw) customary law—that had contributed to the state's judicial code.

The board also was interested in providing the state's citizens with an alternative to northern law schools (particularly the one at Harvard). Not only did it want to make obtaining a legal education more convenient, it was eager to have a school that would be more sympathetic to the region's views on such hot button issues as slavery and states' rights.

I found a number of additional primary sources in the university's main library, including a 1910 catalog that gave the names and present whereabouts of every law school graduate. And the Ole Miss yearbook, which was started in 1897, included lots of pictures of the law school. In fact, with Tim Walsh's help, I was able to obtain a picture of every dean and nearly every building that the law school had occupied.

There even were some old letters written by law students, including several from a son to his parents in Jackson, and others from a young man to his girlfriend in Natchez. Someone later asked me if reading this latter correspondence, which dated from 1911 to 1912, made me feel like a snooper, but my answer was "no" because these letters had been donated to the library by the young woman.

I also consulted a wide range of secondary sources, including a book by Edward Mayes entitled *History of Education in Mississippi*.<sup>8</sup> Mayes had graduated from the law school in 1868, joined the faculty in 1877, and become university chancellor in 1887. Given his background, his survey had quite a bit to say about the law school.

Another very useful text was Professor Steve Sheppard's *The History of Legal Education in the United States*,<sup>9</sup> which enabled me to compare, at different points in time, what was going on in our law school with what was going on in other law schools around the country.

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7. CHARLES B. HOWRY, *RISE AND PROGRESS OF THE UNIVERSITY OF MISSISSIPPI SCHOOL OF GOVERNMENT SCIENCE AND LAW* (n.d.).

8. EDWARD MAYES, *HISTORY OF EDUCATION IN MISSISSIPPI* (1899).

9. STEVE SHEPPARD, *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES* (1999).

It also was very fortuitous that just a few years earlier, our university had celebrated a milestone anniversary, and for the occasion my history department colleague and good friend, David G. Sansing, had written *The University of Mississippi: A Sesquicentennial History*.<sup>10</sup> This work proved very helpful in placing the law school's evolution within that of its parent institution.

I also drew material from a book by Nadine Cohodas called *The Band Played Dixie: Race and the Liberal Conscience at Ole Miss*,<sup>11</sup> which told a lot about the desegregation of the law school in the mid-1960s and the struggle of African-American law students to win concessions from the university administration.

So with all of these terrific sources, I was able to get the history written up, and as I finished each chapter I sent a copy to Professor Sansing and another to Dean Davis for their review and comments. In addition to providing me with valuable feedback, doing so helped keep me on schedule.

In closing, I should mention that Dean Davis took complete responsibility for getting the book published by the University Press of Mississippi, and filling out the copyright paperwork. The law school also arranged two very nice book signings, one in Oxford and the other in Jackson, and otherwise generally handled publicity matters.

PROFESSOR JARVIS: Thank you Michael. Our next speaker is Professor Langum, who will be discussing potential pitfalls. David?

PROFESSOR DAVID J. LANGUM (Samford University): I have been asked to talk about two things: "prickly subjects" and matters about which little or no information can be found.

First, as to prickly subjects. At the time I wrote my book there were very few law school histories available and almost all of them were largely, if not completely, Whiggish pieces in which the vicissitudes of the past led inevitably to the triumphs of the present. I already had published four books on legal history, and I knew that I did not want to write anything like that. I felt it would be bad for me personally and would do little to enhance the school's reputation.

I should take a moment here and explain how I came to write the book. In the late 1980s, with the law school's sesquicentennial approaching in 1997, it occurred to me that no one had ever published a history of the Cumberland Law School. I felt it would be a nice thing to do and that I could do it. So I talked to Dean Parham H. Williams,

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10. DAVID G. SANSING, *THE UNIVERSITY OF MISSISSIPPI: A SESQUICENTENNIAL HISTORY* (1999).

11. NADINE COHODAS, *THE BAND PLAYED DIXIE: RACE AND THE LIBERAL CONSCIENCE AT OLE MISS* (1997).

Jr. and made it clear that I did not want to do a puff piece, one of those “upward and onward” tracts that lack analysis and criticism. What I wanted to write was an objective study just like an outside historian would prepare.

And to my great surprise—well, not exactly surprise, for Dean Williams was a sophisticated man—he thoroughly agreed with me. He understood that an honest history would have more staying power and so that was the kind of book we ended up agreeing I would write.

Because it was too early to work on the book, I concentrated on other projects and generally let the book sit on the back burner. I did, however, speak with Arthur A. Weeks, who had served as dean from 1948 to 1954 and then returned in 1961 to oversee the school’s move from Lebanon, Tennessee to Birmingham, Alabama, where it became part of Howard College (which in 1965 was renamed Samford University). As we discussed the efforts that had been made to keep the school in Tennessee, Dean Weeks talked about all the different religious denominations he had approached regarding possible affiliation. And being from Chicago, and having never heard of some of them (such as the Free Will Baptists), I realized that for the latter part of the book I needed a Southerner to be my co-author, somebody who knew these different organizations and could place them in context. So I brought in my Cumberland colleague Professor Howard P. Walthall.

With that bit of background, let me return to the question of how to handle matters that are disputed or unflattering. I think there are two things that need to be done. The first is to get an agreement with your dean up front that this is going to be a real book—that is, a serious examination that is not going to sugarcoat hard facts. The second thing to do—and this is something that Howard and I did do—is to pick a place that is somewhat short of the present to stop the analytical history.

Howard had been at Cumberland since 1975, while I had joined the faculty in 1985, the same year as Dean Williams. The university president, Thomas E. Corts, had been on the job since 1983. Thus, Howard and I decided that from 1984 on, matters were too fresh to really be dealt with in the same way as events occurring before that time. We agreed to just briefly summarize them in a short epilogue entitled “Foundation for the Future, 1984-1997.”

Among other advantages, this approach avoided wounding the sensitivities of the present faculty. But I also think it would have made for very bad history to try to bring the book up to the present.

I should point out that to keep ourselves honest, we explained in the preface exactly what we were doing. We told readers that up

through 1983 the book was a serious analytical history, and that they were free to agree or disagree with our interpretations, but that beginning in 1984 it was strictly an “upward and onward” puff piece.

The epilogue became so much of a puff piece that Howard included in it the name of every current faculty member, together with his or her major accomplishment or contribution to the school. After he finished it and gave it to me to review (which was our standard way of working due to the fact that I had more writing experience than Howard), he warned me to be very careful with my editing, because if I took anyone out there were going to be a lot of hurt feelings.

So what did I do? I took out all the names, which caused Howard to sputter and ask me how I could do such a thing. I told him that I could do it because of my Yankee insensitivity and because in time, the book would be better if the names were left out. And that was that.

Okay, on to the second problem I have been asked to address: matters for which little or no information exists. I think the first thing to do is to make sure that there really is no information. This means, in addition to checking your school’s archives, running the names of all of the founders and trustees and faculty members and deans through WorldCat ([worldcat.org](http://worldcat.org)) to see if any institution has their papers. You also should check local newspapers using such databases as *Early American Newspapers* ([newsbank.com](http://newsbank.com)), *Newspaper Archive* ([newspaperarchive.org](http://newspaperarchive.org)), and *ProQuest Historical Newspapers* ([proquest.com](http://proquest.com)). Of course, to do some of these tasks you probably will want to ask your school’s research librarian for help.

If, however, despite your best efforts, it remains impossible to ascertain a specific fact, you should simply say so in your narrative. In other words, even if something is unclear or unknown, you can be clear in your own writing as to what is known and what is not. And after you have done that, you can hazard your best guess by using appropriate qualifiers, such as “probably” or “possibly.”

There is one more subject that I want to bring up, and that is how you make your book interesting and have it avoid becoming simply a lengthy collection of dates and names.

I think there are two things you can do. First, you need to put matters into a larger context. What I mean by this is that you have to explain how your school’s history fits within the tradition of legal education or deviates from it. So you have to show, for each period you are covering, what was going on in legal education, and then compare and contrast it with what was going on at your school. That way you make your book bigger than just your particular school’s story.



The second thing you should do is keep an eye on the students. They are far more interesting than the faculty. So ask yourself, what was the student body doing and thinking, and what was the culture of the times they were living in and preparing to practice in?

For the most part, you can answer these questions by reading between the lines of student newspapers and yearbooks. In the case of my law school, the single best source of finding out what was going on with the students was to read the trustees' minutes, because the trustees were always busy suspending or expelling students for one reason or another.

In Lebanon, Tennessee in the 19th century, most of the infractions were connected, in one way or another, to the consumption of alcohol. But there were other types of violations, and as each new problem arose the trustees made another rule to deal with it. It does not take much of a leap to realize that if the trustees are busy making a rule about a particular type of activity, it is because the students are engaging in that activity.

In closing, allow me to mention that after the book was finished, I published a short essay that described the nuts-and-bolts of writing it. If you are interested, it can be found at 27 *Cumberland Law Review* 1203.<sup>12</sup>

PROFESSOR JARVIS: Thank you David. Our third speaker is Professor Welch, who will be discussing the sort of support that is needed to successfully carry out these types of projects. Don?

PROFESSOR D. DON WELCH (Vanderbilt University): To make my topic more manageable, I am going to divide it into three parts: How do you get support? What kind of support do you need? And what obligations come with accepting such support?

First, how do you get support? I think you get it by presenting your idea as a research project, as a scholarly endeavor, as any other type of serious writing that you want to do. That was the kind of history I was interested in writing and that was the kind of history that my dean, Kent D. Syverud, wanted to see me write. So getting his support proved easy.

Second, what kind of support do you need? The main resource you need is time—lots of time. I first started thinking about writing a history of the Vanderbilt Law School when Mary Moody Wade showed up unannounced at my office one day in 1995. Ms. Wade was the widow of John W. Wade, who had been the dean of the law school

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12. David J. Langum, *Memoir of a Book: Writing the History of Cumberland*, 27 *CUMB. L. REV.* 1203 (1997).

from 1952 to 1971, and during her visit she gave me a box of his personal papers. That box sat unopened in a corner of my office for more than five years, because I suspected—accurately, as it turned out—that when I opened it I was going to want to spend a lot of time with it.

When I finally decided to work on the book the most important thing I did was secure a research leave for a semester from my dean. In my case getting a leave was a little bit tricky because, in addition to being a faculty member, I also am the associate dean for administration. But with Dean Syverud's cooperation, we divided up my tasks among eight other folks, including him, and I was able to get out of the office.

As it turned out, time was a necessity for this project. I was startled to find how much material had been saved over the 125-year history of the university and the law school. During my leave I essentially spent all day, every day in the university archives, going through board of trustees minutes, correspondence, internal memoranda, magazines, reports—in short, everything imaginable and more.

If you are in a university that is as old as mine, if you are in a law school that has as much stuff saved as we do, I think it is really important to have lots of time to dedicate exclusively to the project at the front end. At least for me, I never could have completed the book without this sort of a jump-start.

Once your leave is over, you need time in the office. This particular project took me about four years to write—not including the two years I spent co-writing an article that became the first chapter.<sup>13</sup> So for me, this book was a long-term project.

I found it helpful, once I was back from my leave, to schedule research time on my calendar just like other meetings. During a subsequent semester I was able to get a reduction in my teaching course load, which certainly helped. But it is important to make time and to protect it, especially if you have an initial leave like I did.

Protecting your time brings me to the second resource you need, which is space. I was able to make the most of my leave because I did not go into my office. In fact, I rarely went into the law school building during my leave. I was able to get a locked carrel in the main library that was near the university archives, and thus, it was easy to avoid casual conversations in the hall, especially with those people who ask for a minute and then take an hour. In fact, by staying away I was able

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13. Jon W. Bruce & D. Don. Welch, *Vanderbilt Law School in the Nineteenth Century: Its Creation and Formative Years*, 56 VAND. L. REV. 497 (2003).

to avoid e-mail as well as all of the drama and gossip that occur on a daily basis in a law school.

Once my leave was over and I was back in my office, I needed a place to both read and store the materials I had collected. If you can get a second office when you are engaged in this kind of a project you will find doing so very helpful. In my case, I was able to get a table and an additional bookcase and filing cabinet, and so I had a corner of my office where the project always was out and available, ready for whenever I had time to work on it.

Other kinds of resources you may need are extra research assistants. Frankly, I found research assistants not to be that much help, except as I asked them to look for answers to particular questions. The largest amount of work—going through box after box in the archives—I wanted to do myself. I did not trust their judgment as to what was valuable and what was not, and to the extent my research assistants did go through boxes in the archives, I found I eventually did so again myself.

I also did a lot of photocopying. Thus, one resource you may want is a large photocopy budget. Going through the archives, I photocopied every page that I thought might be useful so as to have it in my office. By following this rule, I did not have to go back to the library when the trail started to go in a different direction. Having all of these copies in my office was tremendously helpful in terms of making the project more efficient.

I did not need travel money, because most of the resources I needed were on campus or were available on the web or through long distance telephone conversations. However, if your law school's history includes a change of locations, you might want to request such funds.

Adequate secretarial support obviously is important. Depending how much or how well you type, it is more important for some than for others. Especially in the early stages of the project, it was helpful to me.

Then there is the question of pay. For me, this was my scholarly activity, so I continued to draw my regular salary and did not expect any additional pay. Those of you who are on nine-month appointments, however, should arrange to get a summer research grant so you are not forced to teach while trying to work on your book.

Lastly, what obligations come with accepting such support? All told, my law school made a substantial investment in this project. So should one be limited in what one can write? My answer is "no." Should one be required to get advance approval for the manuscript?

My answer again would be “no,” at least not if you accept that this is a scholarly work.

If you begin with an intention to make a serious contribution to the literature on legal education, then in my mind there is no reason why this should be treated any differently than any other book or law review article that you would write in terms of supervision or approval from either the law school or the university.

This was not a problem for me. Although I published my book with the Vanderbilt University Press, from the beginning Michael Ames, the director of the press, pushed me to write something that was critical scholarship.

One illustration of this is an argument we had over the title of the book. I began with the working title *Aiming for the Stars*. This idea, which reflected the attitude of the faculty after World War II, came from an interview with Professor Emeritus Paul H. Sanders. Mr. Ames vetoed this title because he thought it sounded too much like a puff piece.

I then asked if I could use the phrase for the book’s introduction, and he was opposed to that as well. We came to a standoff here, which was finally arbitrated by the press’s copy editor, who wisely decided in my favor.

As we continued to look for a title for the book, I suggested *Aspirations and Realities*. Try as I might to convince Mr. Ames that aspirations and realities are two different things, I had a tough time, and it was only after he read enough of the book to realize that I was exposing large gaps between the law school’s aspirations and realities that he relented. Even then, however, he only let me use the phrase as the book’s subtitle.

So from the dean to the university to the press, I never ran into a problem having the book taken seriously. I did find, however, that I imposed limits on myself as to the kinds of materials I was using—a form of self-censorship, you might say.

I looked at a lot of confidential correspondence and internal memoranda, and I did find myself sometimes feeling like a snoop or a voyeur—like I was invading the privacy of other people, especially as the time got closer to the present.

I went through 125 years of board of trustees minutes, and the understanding when I started at the archives was that I would be allowed to see the minutes up to the first meeting of the oldest living former chancellor. I asked for the minutes in five year increments, and when I was finished with that set I would send them back and be given the next five years.

When I got to where I thought they were going to say, “sorry, no, you cannot have any more,” they instead continued to bring them to me. And to my surprise, I got the minutes all through that chancellor’s tenure. And then I got the minutes all through the next chancellor’s tenure. And then they started giving me the minutes from the tenure of the current chancellor. I think this probably was a mistake, because at some point somebody did say, without any explanation, “you cannot have any more,” but by then I was only about three years from the end.

So I was clearly making use of, and in some cases quoting from, minutes of confidential meetings that no outside parties had ever seen before, and that may have had something to do with how I treated some of the material I saw.

There also were problems with personal knowledge. I had been at Vanderbilt since 1969, when I arrived on campus as a graduate student. I had been at the law school since 1984, when I joined the faculty as associate dean. During that time I had had many individual conversations, some of which were expected to be held in confidence. As associate dean, I had negotiated settlements with faculty members, supervised personnel actions involving staff, and dealt with a number of sensitive student matters and problems. Thus, I worried about what I could say, how I could say it, and how much I could rely on my personal recollections. In most cases, however, I was able to find what I needed in the public record. Of course, my knowledge of the institution often gave me a leg up and caused me to know what records I should be looking for and how I should interpret them once I found them.

The last thing I would like to say is that I met some remarkable people through this project—many of whom died years before I was born—and I felt a responsibility to them and to the institution they had built for how I crafted the book. So while I did not paper over conflicts and controversy, and did not avoid making critical judgments, I tried to do so in a way that was respectful and courteous.

PROFESSOR JARVIS: Thank you Don. Our final speaker is Ms. Linda Lacy, who will be discussing publication issues. Linda?

MS. LINDA M. LACY (Carolina Academic Press): When you have finished with the agony of creation—when all the hours in the library going through boxes and all the months in front of the computer have finally resulted in a manuscript you are ready to share with readers—where do you go to get it published? I think you have three choices.

Sometimes authors choose to self-publish; sometimes they will go to a university press; and sometimes they will come to a commercial press like ours that does a lot of law school publishing. There obvi-

ously are advantages to each approach. But I think that going beyond the self-publishing model gives your book a legitimacy that it might not otherwise have.

In order to interest a publisher in your book, you should follow the suggestions of the previous panelists—that is to say, you should avoid a “pat on the shoulder” book. You want to produce a manuscript that reflects the times that the school has gone through, including its struggles and growth, but that also includes the work that remains to be done.

The first law school history book that we did was Professor Michael Irven Swygert’s *“And, We Must Make Them Noble”: A Contextual History of the Valparaiso University School of Law, 1879-2004*.<sup>14</sup> Publishing a law school history was not something we had thought about doing, and it was not something that we had tried to get into. But when the manuscript was presented to us, we thought it complemented some of the other books on our list—particularly our legal history offerings, but also our law school teaching titles—and we felt that rather than being an anomaly it made a contribution. And we also felt that we could bring two things to Professor Swygert and the law school: strong production values and a marketing program that would put the book in front of the legal community.

With respect to production, a good publisher makes an author’s life easier by copyediting the manuscript, preparing the index, helping select and arrange the photographs (being sure to flag those pictures that are unlikely to reproduce well), coming up with a jacket design that is both eye-catching and conveys the book’s contents at a glance, and choosing paper, ink, and binding that is going to give the book a handsome look and feel. In addition, a good publisher relieves the author of a great deal of paperwork, including applying for ISBN and LC numbers and attending to the formalities of getting the book copyrighted.

In marketing, a publisher can be especially helpful to an author. In addition to having relationships with wholesalers and distributors like Baker & Taylor, Inc. and Ingram Book Company, a publisher can get your book listed on sites such as amazon.com, barnesandnoble.com, and lawbooksforless.com. A publisher also can get your book into the hands of appropriate academic journals, as well as trade magazines such as *Choice* and *Publishers Weekly*. And if they specialize in law book publishing, as we do, they will promote your

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14. MICHAEL IRVEN SWYGERT, “AND, WE MUST MAKE THEM NOBLE”: A CONTEXTUAL HISTORY OF THE VALPARAISO UNIVERSITY SCHOOL OF LAW, 1879-2004 (2004).

book when they exhibit at meetings like this one and others, including those held by the American Association of Law Libraries and the Association of American Law Schools.

There is, finally, the question of cost—how is the publisher going to make back its money plus a reasonable profit? Let me say at the outset that deciding to publish an excerpt from your book in a law review or bar journal, as Professor Welch did with the first chapter of his book, will not affect, either positively or negatively, a publisher's cost calculation or decision to publish.

Instead, what most publishers will be looking for with this type of book is an upfront order—that is, a minimum guarantee. Most law school histories—including all of the ones we have done—arrive at the publisher's office with such a guarantee. Thus, the law school or the university (perhaps aided by a wealthy donor or the alumni foundation) agrees that upon publication, it will buy a specific number of copies. To this amount—which normally ranges between 1500 and 2500—we add more copies—usually 250 to 500—which are then kept on hand to sell as individual orders come in.

Almost always, the timing of the book, and therefore the timing of the guaranteed order, coincides with some event at the law school, most usually, as we heard from Professors Landon and Langum, an anniversary of some significance. However, in the case of Professor Swygert's book, an upcoming visit to the Valparaiso campus by former President George H.W. Bush was the primary motivation.

Of course, there will be other instances in which a law school will want to buy the book in large quantities, such as when it is about to start (or finish) a major fundraising drive and the book will be used to solicit (or reward) donors. Likewise, a law school might decide to give a copy to every incoming student, or to every graduating senior, as a way to build school spirit and pride and encourage future giving.

Allow me to wrap up by noting that the authors we have dealt with have ranged from professional historians, to alumni, to faculty members. Each author brought a unique perspective to their project, and the finished manuscripts varied a good bit in style and substance, but each book has made a positive contribution to the history of the legal academy and we look forward to publishing more law school histories in the future.

PROFESSOR JARVIS: Thank you Linda. And now, I believe we are ready for questions from the audience. Would someone like to start us off?

PROFESSOR JAMES A. McLAUGHLIN (West Virginia University): I have a question for Professor Welch. You said you met a lot of

remarkable people while writing your book. Could you expand on that thought?

PROFESSOR WELCH: Good question. To me, the most surprising part of the project was how connected I became with people I had never met and only read about. In fact, one day, when I was sitting alone in my carrel reading minutes from the 1930s, there was a notice that a law school faculty member had died. And when I read it, I let out an audible gasp. And it struck me—here was a fellow I had not known, but who I knew had been dead for decades, and yet reading about his passing was like hearing for the first time about the death of a friend. That's how connected I had become to some of these figures. And it was not just the faculty—I found myself developing attachments to the students and the staff and even the trustees.

When you read about the things these people did, in times much more difficult than anything we have faced—through the world wars and the Great Depression—looking at how the faculty devoted their professional careers, as well as their personal lives, to building the school—that was just amazing to me, and made me very appreciative of what they had done, and how much folks like me owe them and have benefited from what they struggled to achieve.

PROFESSOR McLAUGHLIN: A follow-up question, if I may. Did you find any journals or memoirs?

PROFESSOR WELCH: I did not find any such items, but I did come across a substantial amount of correspondence and personal papers. And as I mentioned, I was astonished by the number of boxes I had to wade through. But it was really a delightful experience to get to know these people, and how they thought and how they lived.

PROFESSOR JARVIS: I saw someone else with their hand up.

DEAN IAN HOLLOWAY (University of Western Ontario): I have a question for Professor Langum. David, one of the interesting things about your book is that it is co-authored, yet it reads with one voice. Now, you told us that you wrote the first half and Professor Walthall wrote the second half. I am wondering if you can talk about the actual process you used to blend the two narratives and whether, in hindsight, the book is more your voice or more Howard's voice?

PROFESSOR LANGUM: I think it probably tends to be more my voice than Howard's voice, because at the time we were working on the book I had more writing experience than Howard. Because of that, we agreed that as he finished each of his chapters, he would give them to me and I would edit them.

Because you have brought up the topic of collaboration, let me just say a word or two about it. If two people are going to write a book



together, I think it is very important to prepare a detailed outline at the start, so that each person knows what is going to be covered, and the order things are going to appear in. And then, I think you should set a chronological dividing point.

So in the case of our book, I took everything up through 1919, and Howard took everything from 1920 on. Of course, picking a date is easy. What is hard is working up the outline, which is needed not only because there are going to be events that straddle the dividing date, but because you have to make sure that you are both on the same page in terms of the approach you are taking.

Thus, Howard and I agreed that all of our chapters would be arranged in a similar pattern, and would cover three main topics— institutional history, curriculum, and students. We did not slavishly follow this order in every chapter, but we did make sure that by the end of each chapter all three subjects had been discussed.

PROFESSOR JARVIS: I see another hand up.

DEAN DAVID F. PARTLETT (Emory University): I have two questions, with the first being for Ms. Lacy. I presume that you require a certain volume of books to be purchased to make this an economically viable enterprise, and I am wondering what the minimum number is that you need to sell back to the institution.

MS. LACY: I do not think there is any set minimum, especially because so many factors go into figuring out the cost of a book, including its length, jacketing (*i.e.*, whether it is a hardcover or soft cover), use of color, number of proof alterations, and deadline (because if the book is needed very quickly, it may be necessary to pay for expedited handling at the printer).

In addition, it is a truism in the publishing world that the more books you print, the more the price comes down for each book. Thus, if you print 500 copies, the printer is going to charge you “X” per book, but if you print 2000 copies the quoted price may be as much as 50% less on a per unit basis.

All in all, however, I would say that a law school would have to commit to buy at least 1000 copies to make the project viable.

PROFESSOR JARVIS: Linda, when you talk about a school buying 1,000 copies, is it paying list price or is it getting the copies at a discount? In other words, how much money does the law school really have to come up with?

MS. LACY: Again, it varies tremendously, especially when you get into very long books, like our history of the Stetson law school, which runs approximately 750 pages. But I would say that we are talking about paying somewhere between \$10 and \$15 per book, so a law

school should figure on about \$10,000 to \$15,000. Of course, the cost of everything—including paper, ink, and shipping—have skyrocketed during the past 12 to 18 months, so it would be best to figure on the higher end of things. These prices obviously are substantially below the book's list price.

PROFESSOR LANGUM: If I could just add an observation from my own experience. In the case of our book, Cumberland agreed to buy 500 copies from the University of Georgia Press at 50% off the list price. Additionally, Howard and I agreed to waive our royalties on those sales.

PROFESSOR JARVIS: Dean Partlett, I believe you said you had a second question?

DEAN PARTLETT: Yes, thank you. This question is for Professor Welch, although I also would be interested in hearing from Professors Landon and Langum. Don, I wonder if you could tell us more about how you integrated the law school's story with the university's story—that is, how you achieved a good balance and put matters into their proper perspective and context?

PROFESSOR WELCH: In 1985, a Vanderbilt professor named Paul K. Conkin wrote a book called *Gone with the Ivy: A Biography of Vanderbilt University*,<sup>15</sup> and while it generally ignored the law school, I did read it to get more acquainted with the university's growth and evolution.

In my book, I found it useful at certain points to set out the conflicts that arose between the law school and the university. For example, in the 1920s Chancellor James H. Kirkland told the board of trustees that the law school either had to be endowed or had to be allowed to die, and it helped to know that during the prior decade the university had closed the ministry and pharmacy schools and stopped accepting applications to its Ph.D. program. So this was a serious threat, and one that could not be fully appreciated without knowing the university's history.

Most of the time when I was seeking context, however, I was looking at what was going on in legal education, particularly in terms of accrediting law schools and licensing graduates to practice law. And while there were many accounts of what was going on in legal education across the nation, I spent a lot of time trying to find out what was going on in legal education in the South, which was very different and without which I would have missed the real story.

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15. PAUL K. CONKIN, *GONE WITH THE IVY: A BIOGRAPHY OF VANDERBILT UNIVERSITY* (1985).

PROFESSOR LANGUM: If I could just echo Don. In Cumberland's case, setting its history against the history of legal education was very important because Cumberland was a maverick. Long after other schools had adopted Harvard's case method system and had gone to a three-year curriculum, Cumberland was still using the recitation system and holding fast to its one-year curriculum. What that meant was that the school generally was becoming unable to compete even as it continued to attract students from around the country who wanted to graduate in the shortest time possible.

PROFESSOR JARVIS: I believe there is a question over here.

PROFESSOR LYDIE N. PIERRE-LOUIS (Saint Thomas University): I have noticed that many law school histories are written by faculty members who have been teaching for a very long time, and I therefore am wondering whether a junior person should even consider this type of project. I do think we could bring a fresh perspective to such a book, but perhaps the lack of institutional knowledge is too much of a handicap.

PROFESSOR JARVIS: That is a great question. Don, do you want to start us off?

PROFESSOR WELCH: Although I do not think it would be impossible for a junior person to write his or her law school's history, I do think the lack of institutional knowledge would make the task more difficult. I have no doubt that having been around Vanderbilt for forty years made it easier for me to know what to look for. So just having that general background gives you a tremendous advantage.

In addition, it helps to be close to retirement. I now am at the point where I do not really care what people say or think about my work, and that gave me a lot of freedom when it came to writing the book. Indeed, I do not think I would have written it twenty years ago.

PROFESSOR LANGUM: I think a junior faculty member could do it, assuming he or she had tenure—that would be important. But I would suggest that a junior faculty member—or really, anyone thinking of writing this kind of book—should first get some experience doing legal history, in part to get a feel for the sources that have to be consulted, and in part to learn how to weave together an institution's story in a way that is both interesting and meaningful.

PROFESSOR LANDON: I would agree that it helps to have been around the institution you are writing about. I had been at the University of Mississippi for thirty-five years when I was asked to do my book, and as I mentioned, I had spent quite a bit of time at the law school as both a student and a professor. In addition, Doris, my first wife,

attended the law school, so I had seen it from all angles, and I think that really did help me.

However, there are other ways to go about getting the necessary background. When I first started to work on my book, there were several senior professors, as well as one retired professor, who shared their perspectives with me, and I found their insights about the law school very useful.

MS. LACY: I think a younger scholar could write this sort of book, but it would be very different from what a more senior faculty member would write. Indeed, it would be very different from what that younger scholar would write later in his or her career. And while there certainly is an advantage in having been around a place for many years, if the younger scholar was an alumnus of the school, or had a degree in history, or was very experienced in using archival materials, those factors would positively impact his or her ability to produce a credible work.

As a practical matter, however, I am not sure that a younger scholar would have—or could get—the time needed to do the research. Younger scholars often are not eligible for leaves, and even when they are, they usually are involved in so many other things—community service, university service, law school service, raising a family, not to mention still learning how to teach their courses—that they often find it hard to complete book-length treatments.

PROFESSOR JARVIS: Linda, in evaluating a manuscript, would the age and experience of the author make a difference to you?

MS. LACY: No, not at all. As long as the research was solid and the writing was good, it would not make a difference how junior or senior the author was.

I should point out, however, that what *will* make a difference is how the law school feels about the manuscript. Obviously, if a school is not happy with the text—for whatever reason—and therefore refused to give us a guaranteed order, that would be problematic.

PROFESSOR JARVIS: Interesting. Yes?

ADJUNCT PROFESSOR JUDITH A. JARVIS (Nova Southeastern University): In doing your research, did you ever feel that the law school or the university had sanitized or otherwise whitewashed the archives?

PROFESSOR JARVIS: And in answering that question, I wonder if the panel also would discuss what a researcher should do if his or her school has no archives or only very limited archives. Does there come a point where the project simply cannot be done?

PROFESSOR WELCH: Given some of the stuff I found in the Vanderbilt archives, I cannot imagine that there was any sanitizing.

As for the second question, I would say that if the archives are non-existent, a project like this is a great way to get them established. Indeed, if the law school is willing to spend some money, it should be possible to contact retired faculty, administrators, and alumni and get them to donate items so that the archives can become a valuable repository.

Moreover, even if your school has no archives, its story can be found in the documents of third parties, such as court reports, newspapers, and accrediting agency records. So I would say that every law school's history can be written, although some histories are easier to write than others.

PROFESSOR LANDON: I certainly did not get the sense that anything had been purged from the University of Mississippi's archives. Indeed, in the late 19th century the undergraduate newspaper often ran unflattering stories about the law school, and those were all in the archives.

PROFESSOR JARVIS: Yes?

PROFESSOR McLAUGHLIN: I am curious about how one turns the law school's curriculum into interesting reading. Certainly you do not want to simply have lists of the courses that were taught each year.

PROFESSOR LANGUM: I think the main thing to do is to see how your school's curriculum fits into the mainstream of legal education. As I mentioned, Cumberland continued to use lectures and recitation long after other law schools had switched to the case method. And as Professor Landon pointed out, Professor Sheppard's book is an excellent source for finding out what other law schools were doing at different points in time. Of course, Robert Stevens's classic study—*Law School: Legal Education in America from the 1850s to the 1980s*<sup>16</sup>—is another invaluable guide.

PROFESSOR LANDON: I must confess that I dealt with the curriculum by compiling lists, with a separate one for each decade through the 1920s.

PROFESSOR JARVIS: Linda, let me ask you a question. From a publisher's standpoint, are you hoping for a book that is filled with gossip and scandals and therefore is highly marketable, or does the fact that you are getting a guaranteed order from the law school mean that the normal marketing considerations do not come into play?

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16. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (1983).

MS. LACY: As a general matter, there are not a lot of sales beyond the guaranteed minimum. There are some library sales and some sales to individuals, but these tend to be quite small.

I do think it is important for a book to examine the “sticky” issues so that it is a balanced view, but at the same time I would not want a book that just focused on who was sleeping with whom. And, of course, a book that was really slanted in that direction would, in all likelihood, have a very difficult time getting the law school to agree to pay for its publication.

PROFESSOR LANGUM: I do not think you could really write a muckraking book of a law school, and I was not suggesting that when I talked about the Cumberland board of trustees expelling students for drinking and other infractions. But it is important to show the reader the social climate and the culture of the times, for that has a definite impact on any law school.

PROFESSOR JARVIS: We probably have time for one more question before the next panel needs to begin setting up. Yes?

DEAN HOLLOWAY: This is a question for the author members of the panel. What, if anything, would you have done differently in writing your books?

PROFESSOR JARVIS: Or perhaps, to slightly rephrase the question, what general advice would you give to would-be authors?

PROFESSOR LANDON: That is a tough question. Overall, however, I would have to say that I would not really change anything about my book or the process I used to write it.

PROFESSOR LANGUM: I also do not think I would have done things differently. First of all, it was not a long experience. Howard and I started doing the research and writing the book in 1993 and got the proofs in the fall of 1996, so the schedule was the same as for my other books. It was not a long, agonizing experience, and took about as much work as any other serious book that a law professor might sit down to write.

PROFESSOR WELCH: I actually got a letter the week after the book came out telling me that I had misidentified two of the people in one of my photographs. Other than that, however, the book pretty much turned out as I had hoped, and I really would not go back and change anything.

PROFESSOR JARVIS: Linda, is there any advice you would give to somebody who is thinking about approaching a publisher and proposing this sort of book?

MS. LACY: I would say that they should come and talk to us as soon as they decide to do the project so that we can give them a sense

of whether they are on the right track from an organizational standpoint and whether their deadline looks realistic. In addition, talking early can really help in terms of developing a marketing plan for the book.

PROFESSOR JARVIS: And with that, our time is up. Thank you so much for attending our program, and, of course, many thanks to our wonderful panelists.





**COMMENT**

