

## **And Now What?: An Essay Contemplating a Course for the Second Century of the Washburn University School of Law**

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As the preceding articles have indicated, the Washburn University School of Law has overcome much and prospered greatly in its first one hundred years. A mere recounting of its alumni and their achievements bears witness to that great tradition. We count among Washburn Law alumni Kansas Supreme Court justices, state appellate and trial judges, state legislators, federal district court judges and administrative law judges (including the first African-American federal administrative law judge), U.S. senators and congresspeople, an ambassador, mayors and many other public servants. Washburn alumni have succeeded in fields far from the law, including the worlds of business and public broadcasting. We count among our alumni scores and scores of highly successful lawyers. All of these men and women share one common trait — they are Washburn law school alumni! Each of them attests to the success our law school has enjoyed and to the tradition it has established in its first one hundred years.

Now, the question before us is what lies ahead for Washburn Law in its second century? Answering that question is no easy task. As the physicist Niels Bohr is credited with saying, “Prediction is very difficult, especially of the future.”<sup>1</sup> To understand just how difficult a task prediction is, consider for a moment what the founders of our great law school might have predicted in 1903 for its first one hundred years. Would they have foreseen the effects that two world wars, the Korean Conflict, and the Vietnam War would have on the fabric of our law school? Did they ever contemplate the roles that our graduates would play in *Brown v. Board of Education of Topeka*,<sup>2</sup> perhaps the most important United States Supreme Court decision in the past

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1. Wisdom Quotes, at [http://www.wisdomquotes.com/cat\\_future.html](http://www.wisdomquotes.com/cat_future.html) (last visited June 2, 2004).

2. 347 U.S. 483 (1954). Washburn Law alumni played prominent roles in the Brown litigation. Charles Scott, John Scott, and Charles Bledsoe, three African-American Washburn Law alumni, represented the plaintiffs. The Scotts’ father, Elisha Scott, was the third African-American to graduate from Washburn Law. Bledsoe had joined Elisha Scott’s law firm after passing the bar. Lester Goodell and George Brewster represented the Topeka School Board. Harold Fatzner, another Washburn Law alumnus, represented the State of Kansas. Judge Delmas Hill, a Washburn Law alumnus, was a member of the three-judge panel of U.S. District Court that presided at the trial. In the appeal to the Supreme Court, Washburn alumnus Paul Wilson represented the State. The Topeka Board of Education did not file a brief or present oral argument, but its attorney, Peter Caldwell, another Washburn alumnus, assisted the Kansas attorney general’s office in its preparations.

century? Could they have imagined the destruction that nature would visit on the law school that fateful June day in 1966 when a tornado literally tore apart the law school in a few short moments, scattering the library and its collection over a large swath of land.<sup>3</sup> Would they have predicted the truly incredible outpouring of alumni support that would enable us to rebuild the law school in three short years? Might they have contemplated that one of its graduates, Chief Justice Kay McFarland, would become the first woman to serve in the Kansas Supreme Court's highest chair? Would they have imagined that one of its graduates would assume powerful leadership roles in the United States Senate and that others would represent Kansas in the United States Congress? Would they have predicted that one of its own would be named the ambassador to the nation of South Africa? How likely is it that they would have foreseen the path-blazing role that our law school would play in infusing criminal law with insights derived from psychiatry? Would they have foreseen that our law school would become a leader in legal education's clinical movement? Could they have even imagined that before the end of our first century, lawyers, Washburn law students, and law professors would be communicating and working by computer and the internet or that our law school would assume a leadership role in that technology movement?

I feel certain the answer is no, but we will never know for sure. Their predictions — whatever they may have been — were never memorialized.

We, however, live in the Age of Knowledge. Everything we predict will likely find itself forever rambling around in cyberspace. That reality is sobering and suggests I be cautious in what I write. It is also troubling for I have been advised that one's predictions must sound ludicrous when made if they are to have even the slightest chance of hitting the mark.

So I have tried to take a more cautious — shall we say a “lawyer-like” — route in constructing my statements. Will that help? To paraphrase Scott Adams, creator of the syndicated cartoon Dilbert, there are many methods for predicting the future. For example, you can read horoscopes, tea leaves, tarot cards, or crystal balls. Collectively, these methods are known as “nutty methods.”<sup>4</sup> On the other hand, one can take the approach I prefer — the more scientific approach — the lawyerly approach — in which one puts “well-researched facts into

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3. So far as I can determine, there is no basis in the story that one Washburn law professor tossed his examination papers to the winds the day *after* the tornado struck lest his own students (and he) be subjected the vicissitudes of grading! The tale, however, is one that adds to the richness of the Washburn Law folklore and ought not be debunked entirely.

4. SCOTT ADAMS, *THE DILBERT™ FUTURE: THRIVING ON STUPIDITY IN THE 21ST CENTURY* 3 (1997).

sophisticated computer models”<sup>5</sup> and then applies painstaking, unrelenting logic in analyzing the resulting data. This approach is sometimes known as the “modern approach.” It is “more commonly referred to as ‘a complete waste of time.’”<sup>6</sup> Consider yourself forewarned. What I am about to suggest may be utter nonsense.

What can be predicted about the future of our law school? The one certainty is that we will change. Change is sweeping through higher education. Law schools are no exception. Either we change, or we fall by the wayside. It is that simple.

To understand the kinds of change I have in mind, consider what goes on in every law school in the country. At the risk of oversimplification, the law school is the place where law students learn legal doctrine and theory, the place where they acquire important lawyering skills, and the place where they learn the values of our profession.

While I suspect many law professors would blanch at the assertion that we teach legal doctrine, the truth is that we do, probably more frequently than we would like to admit.<sup>7</sup> And certainly we teach theory. Lots of theory. Legal theory, economic theory, critical race theory, natural law theory, and behavioral psychology theory, just to name a few. For the longest period, we have done so by employing either of two traditional teaching methods — the lecture or the Socratic dialog. Whatever the flaws in those methods — and I am certain many readers can quickly identify one or two — those methods generally have served us well.

By the year 2103, however, the way our successors teach doctrine and theory surely will have changed. It is changing already. Rather than use class time, many of us already use on-line drills and exercises to drive home basic doctrine. We assign articles and other materials via the Web so that our students can access the latest thinking in our profession. We receive student answers submitted electronically and critique them via the Internet. We offer our students access to our thoughts by e-mail and chat room. We even host classes in which students from various law schools participate — either synchronously or asynchronously.<sup>8</sup> And these initiatives are just baby steps. The use of technology will surely accelerate during the coming decades.

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5. *Id.*

6. *Id.*

7. When law professors gather, we tend to disparage those “other law professors” who devote class time to teaching law students legal rules. Somehow we have convinced ourselves that students can master those rules in the privacy of their rooms — or perhaps at a coffee shop of their choosing. That belief, however true it might or might not be, frees us to take on tasks more worthy of the attention of the professoriate — such as publishing.

8. See Peter W. Martin, *How New Information Technologies Will Change the Way Law Professors Do and Distribute Scholarship*, 83 *LAW LIBR. J.* 633 (1991).

The second thing we professors do is teach law students “to think like a lawyer.” By that catchy (and ungrammatical) phrase, we mean that we help our students acquire basic lawyering skills, such as critical thinking, problem solving, persuasive writing, and legal research. Even here we are already beginning to experience the effects of technology. That trend will accelerate as on-line materials and computer-based exercises proliferate.

Even more radical changes in how we teach doctrine and theory may lie just over the horizon. The discoveries that scientists make as they unravel the mysteries of the human brain will dramatically affect teaching methodology and education. Long before the end of this next century, we likely will employ brain-scanning technology to determine just how an individual student learns. We will observe changes in brain activity as we use different teaching methodologies and then — equipped with that knowledge — we will design teaching technology to help that particular student acquire doctrinal knowledge and master theories. It will be an era of designer pedagogy. To be even more provocative, consider the possibility that those old stand-by legal nutshells and course outlines might one day be replaced by data-encoded brain implants or even by a dose of “smart chemicals.”

Similarly, by the end of the next century, we likely will use radical new methods to teach our students lawyering skills. Consider one possibility. Many of my generation grew up watching the program *Star Trek* in all of its incarnations. Is it possible that the students of tomorrow will find themselves in *Star Trek*-like holograph decks where they “experience” live client interactions under controlled settings?

Does this seem ridiculous? Perhaps, but remember when Dick Tracy’s “wristwatch phone” seemed pretty far-fetched? Now we all walk around with cell phones that would make good old Dick green with envy.

Permit me what some might deem to be an even more outlandish speculation. I suspect that long before the end of the next century, the concept of the law school as a physical place — a building housing faculty, students, classrooms and a library — will itself be an antiquated notion.<sup>9</sup> We already see ABA-approved law schools offering on-line LL.M. programs, and Concord Law School, an entirely virtual law school, has graduated its first two classes of students who are eligible to sit for the California bar examination.<sup>10</sup>

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9. The model we now employ can be described as “campus-centric.” See Carol A. Twigg and Diana G. Oblinger, *The Virtual University*, <http://www.educause.edu>.

10. For more information about Concord Law School, see <http://www.concordlawschool.com/>.

At first, the concept of our law school as a virtual school, rather than as a fixed-site facility, may seem unlikely. But consider just why law schools — indeed, why universities — came into being in the first place. Here I do oversimplify, but not by much. First, we created books. Then came the libraries to house the books. Next came the scholars drawn to the libraries to study the books. They were followed by students willing to pay to be tutored by those scholars. And finally, there came the rest of the campus to provide the living quarters and other facilities for those who toiled in the libraries.

Does this pattern sound familiar? It ought to. Universities may well have been the first organizations created to meet the need to aggregate capital-intense resources in a single location. Put another way, universities, including their law schools, can be thought of as the first factories. They have survived in their present form as fixed-site institutions primarily because of the need to create geographic proximity between scholars, students, and library.

That need is changing dramatically. We already are witnessing the decline of the factory system, especially in knowledge-based industries. As more and more information becomes available in cyberspace, we likely will see virtual universities and virtual law schools begin to replace brick and mortar law schools. That change is likely to occur long before Washburn Law completes its journey through its next century of development. Indeed, it is not inconceivable that at our bicentennial gala, our successors will speak of the “Washburn University School of Law of Topeka, and Chicago, New York, Paris, Nairobi, and Singapore.” Or maybe they will refer only to the Washburn University School of Law at “washburnlaw.edu.”

If you have been reading carefully, you will have noted that I have not yet written of values. In many ways, the role we play in transmitting values of our profession from one generation of law students to the next IS the most important thing we do at the law school. Consider the admonition of President Theodore Roosevelt, who once wrote, “A vote is like a rifle: its usefulness depends upon the character of the user.”<sup>11</sup> The same is true of a law degree. A law degree in the hands of one who is not prepared to shoulder the responsibilities of our profession is as dangerous as a loaded rifle. No law school can claim greatness if all that it does is equip its graduates with a toolbox full of knowledge and skills.

Every law school must ensure that its graduates continue to promote the values of justice, fairness, and morality, and that those graduates continue to make legal services available to all who need them,

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11. THEODORE ROOSEVELT, *THEODORE ROOSEVELT: AN AUTOBIOGRAPHY* 163 (1913).

regardless of the ability to pay.<sup>12</sup> Those are values that may seem the antithesis of the popular vision of the lawyer, but they are the core values that make us members of a learned profession. They are the values that separate those who hear the music of the law and those who do not.<sup>13</sup> And they are values that we professors must transmit to each generation of law students. Values are and will continue to be the principal goal, the *sine qua non*, of every law school's curriculum. To date, we have relied on the technique of role modeling to meet that challenge. But as technology supplants face-to-face contact, it will become increasingly difficult to rely on role modeling to transmit these values.

Dealing with these changes will not be easy.<sup>14</sup> How are we at Washburn Law prepared to deal with the challenges created by these changes?

Let me assure you. We are prepared to meet them head-on.

Why am I so confident? For three reasons. First, Washburn Law has a long and distinguished track record of innovation. Even before most law schools had identified the need for clinical training, we had established our program. Long before most law schools saw the importance of computer and web technology in legal education, we were onboard. Indeed, in both fields we early assumed leadership roles. We will not relinquish our leadership position.

Second, even now we are pioneering innovative approaches to legal education. Our new centers in advocacy, business and transactional law, and children and family law constitute unparalleled partnerships among alumni, students, and faculty. Our work in transactional law represents one of the first focused efforts to equip law students with the tools that transactional lawyers require. We continue to develop our clinical offering, and we continue to update both our facilities and our technology. Even if a law school's future greatness were simply a function of its physical resources and its programs, I would predict success for our law school.

But there is a third, far more important reason underlying my confidence in our future. In the final analysis, brick and mortar, books and computers, and innovative programming do not comprise a great law school. Its people do. And on that score, we are simply without rival.

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12. *Legal Education and Professional Development — An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. SEC. LEGAL EDUC. AND ADMISSIONS B.

13. Frederick K. Steiner, Jr., *The Music of the Law*, 7 GREEN BAG 2D 167 (2004).

14. Many commentators have expressed concern about the ability of existing educational units to adapt to the changing needs. One aptly describes the problem as the "paralysis paradigm." See Michael Hooker, *The Transformation of Higher Education*, <http://horizon.unc.edu/projects/seminars/Hooker.asp>.

We have a superb faculty. We have always had a superb faculty. And if I had the time to tell you about the new faculty members who will be joining us this fall, you would share my confidence that we will continue to have a superb faculty. Our faculty members are gifted teachers and scholars. They are committed to the success of our students and our law school. While they do not embrace change for the sake of change alone, they do not shy away from it either.

You may not appreciate just how unique that attitude is in law schools. Legal educators have rarely been mistaken for change agents. Change is painful. Change is uncertain. Change is uncomfortable. We all know that. Law professors have traditionally resisted change with both feet planted squarely in the past. Why should we change? If something worked for Socrates, why not for us? For most faculties, past success is reason enough not to embrace change. But not our faculty. Time and time again, they have demonstrated the courage to change. And I am confident they will continue to do so.

Our staff is second to none. Everyone who has ever dealt with our staff members knows they possess that rarest combination of personal attributes — congeniality and competence. You find both in every office and workplace in our building. Try finding that at other law schools.

Here I must pause to add some praise for our technology staff. As I have emphasized earlier, technology will play a key role in the future of legal education. Allow me to assure you that you will find no better technology staff anywhere. They are the very best technology team in any law school in the country. Early on we assumed leadership in the technology field — consider their creation, WASHLAW — because they had the foresight to anticipate the role technology would play in education. They had the drive to become leaders in the field. Because of their dedication, we need not be concerned that somehow the emerging technology of tomorrow will foil our plans.

We have great students as well. They come from all parts of our country and from foreign countries. They bring with them the same talents and commitment that marked the generations of students who preceded them. To be sure, each generation of students differs from its predecessors. Those differences will continue but not at the loss of ability, work ethic, or achievement!

We are part of a great university — a university that, under the leadership of the Board of Regents and President Jerry Farley, is making great strides in improving its programs and enhancing its reputation. They are committed to our success. President Farley is a staunch, tireless supporter of our law school. His drive alone will propel us to even greater accomplishments.

But most importantly, we have loyal and supportive alumni and friends. They rightly demand greatness of us, and they take a special pride in our success.

Alumni pride is obvious by the incredible support they provide us. Allow me to be frank. When I came on board as dean a little over two years ago, I viewed Washburn Law's centennial as more than a reason for celebration. I saw it as an opportunity to enhance our national reputation. And I knew we would need to increase our endowment to do so. But seven months ago, I was more than a bit concerned. The economy was lagging. The projections by professional fundraisers throughout the nation were gloomy. I silently hoped that somehow we could break the \$1,000,000 mark in our fundraising drive during this first year of our Centennial celebration. Doubt, not optimism, was the watchword of the moment.

For a time my thought was "let's keep this simple this year; we do not want to fall flat on our faces." But my staff told me I was wrong. They told me to plan big. They assured me that our alumni and their loyalty would surprise me.

I am glad I listened to them. Our Centennial gala was packed. It was without question the most splendid event I have attended in my quarter century in legal education. Our alumni have been incredibly generous in their support. Our annual alumni phonathon set a record this year, bringing in more than \$160,000 in cash and pledges. Against all odds, we broke not only the \$1,000,000 mark in our Centennial fund, but also the \$2,000,000 mark as well. Imagine that. More than \$2,000,000 in gifts and pledges raised in just seven months! We have only just begun. Before we close out our Centennial celebration in May 2006 when the first class of this second century graduates, we will have broken all records for fundraising. We will be well-prepared to meet the challenges of the next century. For that I must thank our alumni everywhere I meet them.

To our alumni, allow me to say, "Thank you for your support, and here I speak not only of your financial support. You help us in so many ways. You participate in our programs. You mentor our students. You help us recruit highly qualified students. You model for all the world what it means to be a Washburn lawyer. You are terrific."

As many have written, the future belongs to those who make it. Washburn Law has enjoyed a glorious past. It has established a record of success of which we are justifiably proud. At the same time, it has earned a national reputation for innovation. Be assured that we at Washburn Law will build on our successes. We recognize that "good

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is the enemy of great.”<sup>15</sup> We will not permit our past excellence to keep us from future excellence. You can count on that.

Earlier I shared with you a quote from President Theodore Roosevelt. Let me close with a simple, eloquent quote from another Roosevelt, this time First Lady Eleanor Roosevelt. She once said, “The future belongs to those who believe in the beauty of their dreams.”<sup>16</sup>

In 1903, Washburn University President Plass, Robert Stone and his Founding Committee, and Dean Ernest Conant, the law school’s first dean, dreamed of establishing a leading law school at the university. Against great odds, they succeeded.

During this Centennial celebration we celebrate their dream. During our Centennial celebration we set the course for our future. During this Centennial celebration, we dare to dream great dreams. The future belongs to us, to Washburn Law, for we — in the words of Mrs. Roosevelt — “believe in the beauty of our dreams.”<sup>17</sup>

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15. JIM COLLINS, *GOOD TO GREAT: WHY SOME COMPANIES MAKE THE LEAP . . . AND OTHERS DON’T* 1 (2001).

16. This quote has traditionally been attributed to Eleanor Roosevelt but no original written source for the quote is known. Paula Lustbader, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F.L. REV. 839, 839 n.1 (1997).

17. *Id.*

