

# CONTENDING WITH A MERGER

*Philip J. McConnaughay\**

I am as enthused by the challenge of this deanship as I have been by any other of my career: helping to integrate one of America's oldest independent law schools with one of America's great public research universities. Each institution brings something extraordinary to the enterprise: from The Dickinson School of Law, its remarkable history; from Penn State University, its world-class academic stature and enormous resources and potential. Precisely because of its remarkable history, however, The Dickinson School of Law also brings a hurdle of sorts to successful integration: an alumni base that is skeptical of the need for a merger that follows more than 165 years of proud and successful independence.

My essay departs somewhat from the conventions that have come to characterize *The University of Toledo Law Review's* excellent annual symposium on leadership in legal education. Most deans tend to focus not on the specific challenges and opportunities that confront their particular law schools, but on helpful principles of governance that can be extrapolated for application anywhere. I have benefitted from these essays, but I'm afraid that my own experience as a dean has been too short (just a year) and too focused for me to make such an offering. Consequently, I chose to write about the challenge that has consumed my attention for the past twelve months and that hopefully will continue to consume it for a few years to come: the goals and impact of integrating The Dickinson School of Law with Penn State. I will suggest that the substantial intellectual resources of a major research university offer an especially important path, given certain developments in law practice and legal inquiry, to excellence and innovation in legal education and scholarship.

## 1 *Some History*

The Dickinson School of Law was already 21 years old in 1855 when Penn State University was founded. It is the oldest law school in Pennsylvania and the fifth oldest in the United States. The first United States Senator from Oregon was a graduate of The Dickinson School of Law. Minnesota's Civil War Governor was a graduate of The Dickinson School of Law. Our first Native American student graduated in 1909. Our first African-American student enrolled in 1911.

Since that time, Dickinson School of Law graduates have included four more governors, two more U.S. Senators, more than 100 federal and state judges (including appointees just this year to U.S. District Courts in Pennsylvania and to the U.S. Court of Appeals for the Third Circuit), and many more top lawyers and civic and business leaders than I possibly could name (although many of their names would be familiar). The first Secretary of the new U.S. Department of

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\* Dean and Donald J. Farage Professor of Law, Penn State University, The Dickinson School of Law. Dean McConnaughay is the first dean appointed by Penn State following its merger with The Dickinson School of Law. He became dean on July 1, 2002.

Homeland Security is our grad (former Governor Tom Ridge '72). The first woman to serve as Chief Judge of the U.S. District Court for the Middle District of Pennsylvania is our grad (Sylvia Rambo '62). The founder of one of the nation's leading law firms led by African-Americans is our grad (Jesse Arnelle '62, who founded Arnelle, Hastie, McGee, Willis & Greene in San Francisco). The first woman President of the Pennsylvania Bar Association is our grad (Leslie Miller '77). The President of AOL Broadband is our grad (Lisa Hook '83). The first elected Attorney General of Pennsylvania is our grad (LeRoy Zimmerman '59). The owner of the New Jersey Nets basketball team is our grad (Lewis Katz '66). And so on.

Why many of our graduates wonder, would anyone want to change anything that might affect this grand tradition?

One of the interesting characteristics of Dickinson Law classes for the first 155 or so years of the law school's existence (i.e., until the 1990s) was the recurrence from year to year of the same mix of differences and similarities among class members. The differences were mainly in economic background; the similarities were geographic and scholastic. A significant number of students in each class were from working class families, often mining families. These students were first-generation lawyers, and frequently first-generation college educated. Many other students were second or third generation college educated, and sometimes second or third generation Dickinson Law. At the same time, almost all of the students had grown-up in Pennsylvania, or in nearby areas of Delaware, Maryland, and New Jersey. Further, and perhaps most significant, almost all of the students were very strong academically.

Throughout this period, The Dickinson School of Law often was the law school of choice for top students from throughout Pennsylvania and regions nearby. When law schools began recording average GPA and LSAT scores of their entering students, it became clear that these traditional Dickinson students, from the top to bottom of each class, consistently presented academic credentials that were among the top third of law students nationally. These credentials made for very strong classes, year after year. These were hard working, high achieving students before they came to the law school; they were hard working, high achieving students while enrolled at the law school; and they continued to be hard working and high achieving as graduates. In a very real way the excellence of the law school was sustained during its first century and a half by the fact that it enjoyed a steady and abundant stream of top regional students as applicants for admission.

## 2. *The Challenge*

This strong local preference changed swiftly and dramatically beginning in the very early 1990s—so swiftly, in fact, that many of our alumni still are not aware of the change. In 1990, the year before *U.S. News & World Report* began publishing its annual survey of law schools, the law school received its traditionally high number of applications from top regional students and offered admission to fewer than 25% of them. By 1997 just seven years and six *U.S. News* surveys later, the number of applicants had dropped by almost 50% and the law school was offering admission to more than 60% of them. Whether because of *U.S. News & World*

*Report's* annual survey or because stand-alone independent law schools no longer were able to compete as ably for law students, or simply because the nature of competition for law students had changed—whatever the reason—many top students stopped thinking locally when applying to law school, and The Dickinson School of Law lost its traditional sustenance. Fewer and fewer applicants each year presented the law school's traditionally high academic profile. By the late 1990s, the top quartile LSAT and GPA scores of the law school's entering classes had dropped beneath the bottom quartile LSAT and GPA scores of only a decade earlier. The diversity of the student body (a perennial challenge for the law school) plummeted as well. By 2000, there were no black males in the law school's entering class; there were only four black males in the entire student body. The law school's entire minority population was only 7.6% of the student body. The law school continued to strive to fill its seats with achievers, but for an ever-increasing percentage of the student body, superior academic performance no longer was the principal index of that assessment.

### 3 *Penn State University*

Penn State University is one of the world's preeminent research universities; it is one of the handful of research-intensive universities consistently at the top of National Science Foundation statistics on research expenditures. Several of Penn State's graduate departments are, by peer ranking, among the top few in the world; many are among the top ten; all are top tier. Penn State's commitment to the meaningful diversity of its students, staff, and faculty is strong, sustained and continually reevaluated to ensure its improvement. Penn State provides a concentrated, intense, and diverse intellectual community found only at other world-class research universities; its rich and varied cultural resources rival those of the world's great cities. Its worldwide name recognition is high, its football team is great, and until its merger with The Dickinson School of Law concluded in mid-2000, it did not have a law school. It did, however, have a President, Graham Spanier, who wanted a law school, and a Board of Trustees Chair at the time, Jesse Arnelle, who happened to be a graduate of The Dickinson School of Law (Class of '62).

### 4. *The Solution*

Fortunately my predecessor, Dean Peter Glenn, and the law school's Board of Governors, did not let the richness of the law school's proud and independent history obscure their understanding of the jeopardy in which the law school had been placed by the difficulties it began experiencing in the 90s. Just as fortunately Penn State University President Graham Spanier and the Penn State Board of Trustees did not let the law school's recent difficulties obscure their understanding of the law school's rich history or their vision of a law school restored to the academic standards of one of the world's great research universities. The merger was consummated. The task now is to fulfill its considerable promise.

Just as *U.S. News & World Report* may have foretold (and contributed to) the difficulties The Dickinson School of Law experienced during the 1990s as a stand-

alone independent law school, so too it foretells, in my view, the future of the law school as a result of its merger with Penn State: virtually all top 35 or so law schools in the *U.S. News* ranking are units of research-intensive universities consistently at the top of NSF research expenditure rankings; this is not true of most of the other 150 ABA-approved law schools. While hardly validating *U.S. News'* methodology or justifying its effects, this fact does suggest a direct (although not exclusive) relationship between excellence and innovation in legal scholarship and education, on the one hand, and a law school's status as a unit of a world-class research university on the other

## 5 *The Strategy*

Our strategy for the integration of these two great institutions is both obvious and simple: hang tight and never let go of Dickinson's long coattails of history and Penn State's long coattails of academic stature. A simple descriptive slogan now captures our new potential: "*Uniting Pennsylvania's Oldest Law School with One of America's Great Research Universities.*" The impact of this message has been immediate. Within months of the merger we have been able to recruit, in direct competition with some of the nation's top law schools, several internationally distinguished scholars<sup>1</sup> and nationally prominent professional staff.<sup>2</sup> This success, in turn, has influenced prospective students: this year's applicant pool increased by more than 40% over the previous year (to the highest number of applicants in the law school's history), and the diversity of next year's entering class skyrocketed to 22%.<sup>3</sup> My point here is not simply to brag about the law school (although, like all deans, I enjoy that), but to demonstrate the nearly universal assumption of excellence and high academic standing that accompanies major research university

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1. For example, during 2003 alone, Tom Carbonneau, one of the world's top scholars of arbitration law, joined us as our Elsie deRenzo and Samuel P. Orlando Distinguished Professor of Law; Tiyanjana Maluwa, the current Legal Advisor to the U.N. High Commissioner for Human Rights, former Legal Advisor of the Organization of African Unity, and former distinguished professor of law at the University of Cape Town and University of Pretoria Centre for Human Rights, is joining us as our H. Laddie and Linda P. Montague Professor of Law; Carlos Ball, one of the nation's leading scholars of gay rights and the author of the important recent text *THE MORALITY OF GAY RIGHTS* (Routledge 2003), joined us as a Professor of Law; and Julie Goldscheid, the former General Counsel of the nation's largest victim advocacy group, Safe Horizon, and Acting Legal Director of the NOW Legal Defense and Education Fund, joined us as an Assistant Professor of Law.

2. Janice Austin, the Chair of the LSAC Committee on Diversity and former Assistant Dean for Admissions at the University of Pennsylvania Law School and at the University of California, Hastings School of Law, joined us as The Dickinson School of Law's first Assistant Dean for Admissions and Financial Aid.

3. I benchmark our progress on this score against the law school's new peer group, the Big Ten/CIC, and when I see great law schools like those of Northwestern, Chicago, Michigan and Illinois fielding entering classes that consistently are between 20% and 30% diverse year after year after year, I know that high academic standing and meaningful diversity go hand in hand—one is not likely without the other.

status.<sup>4</sup> What's especially exciting for the law school is the substance that underlies this assumption.

Unlike most other graduate disciplines, a law school's curriculum tends to be organized by broadly defined societal problems.<sup>5</sup> For example, law schools offer classes in human rights, antitrust, corporate governance, international law, intellectual property law and medicine, Internet law dispute resolution, law and biotechnology, and so forth. And precisely because of its problem-based organization, the law curriculum (just like law practice) draws naturally and heavily on other disciplines in the pursuit of its inquiries. Many law classes, for example, are enriched enormously by economics-based inquiries, others by cultural or area studies, others by the arts and sciences, others by psychology or industrial behavior, and so forth. The reverse also can be true, even if the relationship is not as deep. Science, engineering and the arts increasingly interface with intellectual property law cultural and area studies and political science with international law, medicine with torts, education with disability law, and so forth. The degree to which university research and industry increasingly are interwoven also suggests multiple cross-disciplinary synergies with law

In a major research university setting, these synergies can be pursued and delivered to law students in a variety of ways. Joint degree programs and research park internships for students are two examples; collaborative research opportunities and cross-disciplinary symposia for faculty are two more. There are other ways as well. Over time, we will be cross-listing in our law curriculum and encouraging our students to enroll (consistent with ABA standards) in non-law classes—taught by leading professors—that are directly relevant to the practice of law and/or to the societal problems our students are likely to confront as jurists and civic leaders. Similarly, we will be encouraging law professors to offer advanced classes outside of the law school—e.g., intellectual property for scientists and engineers, human research principles for medical students and others—not only to enrich the curriculums of our university colleagues, but to enrich the scholarship, teaching and intellectual pursuits of our law professors. We also will be pursuing and making joint appointments with other leading university departments of legal scholars who hold advanced degrees in other disciplines and whose non-law specialties influence their legal scholarship and teaching (and vice versa). Clearly, the potential avenues of collaboration and exchange will be as abundant as our ingenuity

I believe that two developments with which legal education increasingly must contend are likely to benefit particularly from our new research university status. One is the internationalization of law and legal education, the other the increasing relevance to law and legal inquiry of the subject matters of science.

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4. Although my essay obviously emphasizes the advantages of major research university status to a law school's scholarly standing, I do not intend to suggest scholarly renown either as the singular mission of legal education or as the sole path to excellence in legal education.

5. I use the word "problems" here in its sense of questions raised for consideration and solution, not in its sense of sources of distress. Harvey Brooks has made a similar observation about the problem-based organization of professional school curriculums generally. See Harvey Brooks, *Current Criticisms of Research Universities*, in *THE RESEARCH UNIVERSITY IN A TIME OF DISCONTENT* 231, 242 (Jonathan Cole et al. eds., 1994).

With respect to the former, the world has now experienced well over a decade during which geographic and political boundaries no longer constrain in a significant way the flow of commerce or the practice of law. Transnational law practice is commonplace; law harmonization efforts are prolific; and developing nations the world over are moving slowly toward the rule of law. Although the demand for legal services in the United States has contracted somewhat after years of significant growth, the demand for legal services outside of the U.S. is booming and likely will continue to grow as national barriers to trade in services decline. These trends demand that legal education increasingly equip new lawyers with a deep appreciation and awareness of different cultures, different legal traditions, different expectations, and different notions of truth and justice. Duke University President Nan Keohane has observed that major research universities have been “stubbornly” cosmopolitan throughout their history and that they have served as one of “the most effective forces for breaking down parochialism and xenophobia.”<sup>6</sup> I find it difficult to conceive of an educational setting more conducive to the exploration of the internationalization of law and legal inquiry.

At the same time, law and legal inquiry are becoming increasingly science-dependent and interdisciplinary. Courtroom practice today regularly involves scientific proof and counter-proof and extended testimony and evaluation by expert witnesses. Regulatory and policy decisions of great importance to our environment, to our health, and to our security hinge more and more on questions of cutting-edge science and technology. Industries unknown to the world only a decade ago today exploit the advances of basic research in the biological sciences and information technologies, and this development, in turn, has given new dimension and prominence to the law of intellectual property. The National Academy of Sciences recently published a report declaring “A Convergence of Science and Law”<sup>7</sup>. I think that title captures nicely the rich and ever increasing intermingling of these fields.

No curricular or programmatic innovation will ever substitute for the analytical thinking, sound judgment, and high ethics with which our students must approach all of the problems and challenges they will confront as lawyers. But if legal education is going to keep pace with the internationalization of legal practice and the increasing intermingling of science and law, we must endeavor as educators to provide our students with more interdisciplinary classes, more joint degree opportunities, more faculty with cross-disciplinary scholarly interests, more faculty with joint appointments in other disciplines, and more faculty of different nationalities. In my view, a world-class research university is an especially important and conducive environment for the pursuit of these innovations.

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6. Nannerl O. Keohane, *The Mission of a Research University*, in *THE RESEARCH UNIVERSITY IN A TIME OF DISCONTENT*, *supra* note 5, at 153, 170.

7. *A CONVERGENCE OF SCIENCE AND LAW: A SUMMARY REPORT OF THE FIRST MEETING OF THE SCIENCE, TECHNOLOGY, AND LAW PANEL* (National Academy Press 2001).