

A mendacious report

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The noose is tightening around the collective neck of the University's two law faculties, both of which have endorsed a spurious, misleading report in fighting a legislative mandate to establish night law classes.

That report, authored by some University law professors and deans and circulated to members of the Board of Governors, draws heavily upon an extensive pro-and-con study of part-time legal education conducted two years ago by the prestigious Association of American Law Schools (AALS).

The Rutgers report, however, quotes the con and gives the deliberate impression that the AALS report was arguing against night law classes when in fact most of the AALS findings tend to support part-time legal education.

It is ironic — a better word is sad — to watch members of a profession dedicated to the search for truth use out-of-context statements as support for their positions. If this report had been submitted in a court of law under oath, somebody would have been guilty of perjury.

Despite the integrity gap, events of the last few weeks have made it more and more likely that evening law classes will soon return to the University. Those events include the following:

- Several legislators are hopping mad over the Rutgers delay in starting up night law education. Not a few of them obtained their legal training at night, and the others realize that fighting for increased education opportunities in what essentially is an elitist profession is a political issue that looks good back home.

- Governor Brendan Byrne, in his budget address to the legislature on Friday, said that future enrollment growth in higher education in the state would occur in "part-time, minority, adult, and graduate categories of students. These changes reflect the increased accessibility of higher education and will necessitate the modification of program offerings to meet the needs of a more diversified student population."

- State Chancellor of Higher Education Ralph Dungan said Friday he supported the general concept of part-time legal education, but declined to say what he would do if the Rutgers Board of Governors failed to create a night law school.

- The University on Thursday ordered ten copies of the AALS report, all 490 pages of it, from the AALS headquarters in Washington, D.C. so that individual Board members can read it and then pass judgment on the faculty report.

University President Edward Bloustein has in the past expressed his opposition in general to night legal education. It is thought, however, that the University is trying to find a way to appease the legislature while heeding the sentiments of the law faculties. This could take the form of an experimental part-time day program suggested by one Rutgers law professor.

BUT WHY ARE THE FACULTIES opposing night education?

The Rutgers report, on the basis of the misinterpreted AALS material, talks about a leveling off of demand for legal education, the lack of poor and minority persons accommodated in other evening programs, a higher attrition rate, and so on.

The real real reason, though, might be found in the final Rutgers finding. "For reasons which may have too little foundation but which nonetheless must be considered the establishment of an evening division at one or both schools will lessen the high regard with which **the schools** are now held," (emphasis added), the report says. One cannot help but wonder if the real concern here is whether the faculty would be held in lower esteem, rather than the schools.

High esteem is nice, but it shouldn't get in the way of fulfilling what has been a big void in this state for some years — the lack of opportunity for working adults to obtain legal education.

The Rutgers report reaches different conclusion, but look at what the authors had to do to reach them:

In quoting verbatim an AALS section on the merits of day programs versus night programs, the Rutgers report conveniently leaves out two paragraphs by the dean of the Georgetown Law School lauding his night legal program.

The Rutgers report quotes the AALS study, "The most productive scholars are at the 'A' day schools." (The study ranks schools as 'a,' 'B,' and so on. Newark is 'A,' Camden 'B.')

It then omits the next sentence. "However, there is scant evidence that they would be less productive if occasionally they taught in the evening rather than in the day.

The Rutgers report cites passage after passage of statements by law deans opposing night law schools while ignoring the equally abundant optimistic statements by other deans.

The necessity of night students to work is cited by the Rutgers study as reasons for student fatigue. But the AALS report negates this on the grounds that outside employment by day students is "epidemic."

The Rutgers report notes that only one of the 'A' law schools (Georgetown) has an evening division. It is strange that the Newark law faculty, which has pioneered in experimental clinical education before it became fashionable, should embrace this statement as grounds for not doing it.

Another finding states that demands by students for legal education must be viewed as having reached at least a temporary plateau. If so, then why are seven colleges in the New York area planning to open up new law schools within two years?

Night law students tend to be older and tend not to be poor or member of a minority group, the Rutgers report says in a critical fashion. So what?

The Rutgers report says the quality of instruction must be raised to a level that the state, the University, and the students are entitled to demand. Few people can be found who are now critical of the law schools' quality, and it's a fair bet that the majority of present Rutgers law students would now favor a night division.

Serious arguments against night study can be found in the legislature's wording of its request, which suggested that funds for night legal education should be found out of the allocation to the day division.

But Byrne, in his budget message, spoke favorably of "expanded graduate and professional school opportunities at Rutgers." Given the legislative mandate and the Democratic nature of Trenton, it would appear that additional funding for a night law school would be forthcoming.

And, to set the record straight, some of the findings reached by the AALS study were as follows:

THERE IS LITTLE EVIDENCE that evening students cannot match day students of similar academic capacity in law school. Evening students can be accommodated in clinical education. Evening students comprise a group of persons "with durability and considerable drive to get ahead." Evening teaching was not a problem in faculty recruitment. No evidence exists for believing that creativity is hampered in evening divisions.

If the law faculties must use distortion and misstatement in its arguments, then the case against night law classes cannot be very strong. The Rutgers report should be read, compared with the AALS report, and then for the most part disregarded by those who have to decide the issue. The needs of students and the state, not the needs of the faculty, should come first.