Legal Knowledge
Episode 2, Season 2 Interview
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Guest: G. Edward White

—Musical Intro —

G. Edward White 00:10
I got the feeling I was going on to an institution that was transforming itself in directions that I wanted, that is becoming more visible in scholarship. Having more people from different places.

—Musical Break—

Randi Flaherty 00:32
Hello everyone, and welcome back to *Legal Knowledge*. I'm one of your hosts, Randi Flaherty.

Loren Moulds 00:37
And I'm your other host, Loren Moulds.

Randi Flaherty 00:39
In this episode today, we sat down with UVA Law professor G. Edward White, he goes by Ted, to discuss his chapter in our book, *Legal Education at the University of Virginia*. In our conversation, we explored the transformation of the Law School from a regional school to a national one, and how Ted's own story, as a member of the law faculty since 1972, fits into that larger transformation.

Randi Flaherty 01:02
Before we dive into that conversation, though, Loren, I'm curious. What do you think of generally when you think of law schools and legal education today?

Loren Moulds 01:10
Well, let's see. Well, first, it's expensive. There's a lot of schools to choose from. There's a variety of ranking systems. And I think the other thing I think about, as a—from a student's perspective, is it's bookended by two really, really stressful exams, the LSAT [Law School

Admission Test] and the bar. In these ranking systems, prestige of certain law schools make admittance to law school a pretty competitive process for students.

Randi Flaherty 01:34
Definitely. And it's not just aspiring students that feel this pressure. It's law faculty, too. So, one thing I think about is law professors these days are expected to produce scholarship, journal articles, monographs, blog posts, even podcast episodes, as well as teach. So, we often see law professors testify in Congress, publish op eds about the state of the judicial or legislative system here in the United States, or even serve as experts in various capacities. So, their reputation as scholars really matters on a broad scale.

Ted's chapter illustrates how all of this professionalization and nationalization of legal education came to be during the twentieth century. So, all the standardization methods you mentioned, Loren, like the LSAT, the ranking systems, are products of a deliberate push from American law schools to transform themselves from local and regional schools to national ones.

Loren Moulds 02:24
Totally. And Ted's chapter is really helpful in situating UVA Law School within this broader story of legal professionalization, nationalization, and diversification during the twentieth century. In this chapter and elsewhere, Ted writes about how law schools during the early twentieth century made specific decisions, such as teaching the case method or bringing in more faculty from different US states in order to appeal to a broader swath of students. Virginia Law, specifically, had to navigate its identity as a southern school. So, how do you interpret that term, Randi, southern?

Randi Flaherty 03:03
I think about a few things. UVA as a predominantly southern law school, which it really was until the early twentieth century, meant, one, a majority of its students hailed from the American South. It meant that many of its faculty came from the South and took their degrees in the South, if not specifically from Virginia. And lastly, many of its graduates went on to work in the South. Then enter Ted White, who joined the law faculty in the 1970s with degrees from Amherst, Yale, and Harvard. And he shared some great stories with us about his initial reactions to joining the faculty here and moving to the city of Charlottesville, which was at the time a fairly remote southern town.

Loren Moulds 03:43

Right. And Ted's perspective as a faculty member on the ground during the tail end of this period was really, really fascinating to listen to. And so, without further ado, let's, let's listen to the clip.

—Musical Break—

Randi Flaherty 04:05
Great. We are here today with Professor G. Edward White. Ted, thank you so much for having us to your house and talking with us about your own history on UVA Law faculty.

G. Edward White 04:14
Well, pleasure to have you. Look forward to it.

Randi Flaherty 04:18
Could you just, for our listeners, just introduce yourself and tell us what your position is at the Law School?

G. Edward White 04:22
Yes, I'm, I'm G. Edward White. I'm the David and Mary Harrison Distinguished Professor of Law. There are three of us that hold that chair. I've been on the law faculty since 1972.

Randi Flaherty 04:34
Before we dive into these questions, which of course relate to the history of the Law School and your own history, I have to note that we are recording this interview in your home. And this house was owned in the 1850s by John Barbee Minor, who served as a law professor from 1845 to 1895. So, I was wondering, how did you discover that connection?

G. Edward White 04:54
It was really somewhat fortuitous. I had just gotten tenure, and Susan had gotten a job in Charlottesville, so we were planning on staying. So, we bought it. In the process of buying it, there's a title search that goes on with the houses, and the title search indicates the former owners. And together we discovered that John Minor had been the original owner of this house. In fact, he had built it for his daughter to live in. The house actually goes back to just about the time that he began at the Law School. We think the house was actually built before he went into academics, maybe around 1840 or 1841.

Randi Flaherty 05:33

That's really fascinating. Okay, I want to jump into your story. Joining the UVA law faculty, which you joined in 1972. And I want to start before you got to UVA Law. Can you take us through your educational career up through your own law school experience?

G. Edward White 05:48
So, I went to Amherst and I enjoyed Amherst very much, and I majored in American studies. Having graduated, I was uncertain as to what to do. Now, at that time, the arts and sciences market was quite promising. The sort of boom in higher education taking place in the 1950s and early '60s had generated a lot of positions at arts and sciences departments. So, going to graduate school, getting a PhD, and then going on to the arts and sciences market was not the risky situation that it currently is. So, I went to graduate school in American studies just because I had majored in American studies. And I went to Yale and got my PhD in 1967. And I was living with law students. And so, I thought as I finished up my dissertation, maybe I'd go to law school. So, I went to law school and then almost immediately thought, well, I would really enjoy being a law professor. There were two problems with that. One was, I wanted to—I'd decided after my first year that what I wanted to do was legal history. It sort of matched up with my PhD background, but also there just weren't a lot of legal historians in law schools. And so, I thought it was a promising field to make a contribution as a junior professor. But the law schools weren't really all that receptive to legal historians at that time. Legal academy was still dominated pretty much by a combination of realism and process theory, neither which spent much time with history. So, that was actually a drawback when I went on the market, eventually, as a legal historian. But the other thing that I didn't understand was I wasn't going to get any credit in the law school market for having a PhD. Today, that would be not the case at all.

The other thing was, if I wanted to go into law teaching at an elite level, I'd have to credential myself in the ordinary way. That is, I'd have to do well in law school and then get a clerkship. I found that a little bit disconcerting, because it meant I'm going to have to spend even more time [laughs] preliminary to getting a job. But I, after law school, I thought about this. I really was reluctant to clerk. And I took a job with the American Bar Foundation for a year and did some writing, and thought maybe that would be sufficient to get me on the law school market. But it wasn't. Then I thought, well, why don't I just apply for a Supreme Court clerkship? I thought it was very much of a long shot, but I went and applied. In those days you didn't need a prior clerkship, so I just applied. So, I was at the Bar Foundation and the director of the Bar Foundation, Dallin [H.] Oaks at the time, now very high up in the Mormon church, was a former clerk to [Chief Justice Earl] Warren. And I got to know Dallin and Dallin said he would recommend me to Warren. Warren had just retired.

Randi Flaherty 08:33
You clerked for him from 1971 to 1972. So, yes, I was wondering what lessons you took from that experience.

G. Edward White 08:41
So, Warren went back on the court for another year, the 1969-70 term. But then, [President Richard M.] Nixon came into office and appointed Warren [Earl] Burger and Warren retired. In retirement, Warren was interested in two things. He wanted to write his memoir, and he didn't want his law clerks working for the current court. Warren was very concerned that the Burger Court was going to come into office and start reversing all the Warren Court precedents, and so he didn't want his clerk affiliated with that. It was not a conventional clerkship at all. Warren was a very deceptive person, I don't mean that pejoratively. Just in person, initially, he was very charming and informal and pleasant, accessible. And your impression of him was that, you know, he's a real easygoing, sort of pleasant person. But he really wasn't. He was a very demanding boss and very smart. And he loved to argue. He loved to win the argument. What he wanted me to do, and other clerks to do, was oppose the argument he was making but, in the end, lose it. My time with Warren was quite uneven. I did a lot of work for him, but it was mainly drafting speeches. Warren went around and made speeches of various kinds, accepted invitations to give lectures. So, I would write a draft. Warren would call me in and, and we'd have two copies. He'd begin reading my draft and he'd go through it line by line. And he'd stop after practically every word and say, No, no, no, no. And then he'd begin to make handwritten corrections. And so, we'd finish whatever it was, and then he'd go through it and read it all over again. And [laughs] he'd say something like, well, that sounds much better, or we're really getting somewhere. And Warren hated writing. He wasn't a gifted writer. He didn't particularly like it, so he would commission whoever was around to get him started by writing some draft, and then he would just use the draft as a sort of sounding board for his own ideas. So, my year was pretty much all about that. It was just an unusual clerkship, but I couldn't have ended up here without it.

Randi Flaherty 10:47
So, in 1972, then, you went out, sounds like a back on the job market. And and I was wondering if if you could walk us through the landscape of legal education at that moment and, and what was happening in the legal academy?

G. Edward White 11:01
My experience on the entry level market was shaped by two things. One, I wanted to do legal history. And as I said earlier, most institutions were not enthusiastic about that. So, I

presented myself as a as a Supreme Court law clerk who had an interest in doing legal history. The other thing was that my my wife, Susan, who had been working at the Library of Congress while I'd been clerking, wanted to go to law school. We decided to go on the market, as, in effect, a two-career couple where the law schools would have to make a decision about Susan's candidacy at the same time they did with mine. Monrad [G.] Paulsen was the dean at at Virginia. Paulsen was married to a doctor, Elsa Paulsen, who was on the UVA medical faculty. Monrad had come down from Columbia [University], and I guess Elsa had also accompanied him. I guess she was practicing medicine in New York. So, Monrad was experienced with the idea of having a professional spouse and having two careers and having that affect decisions. So, he was very, unlike virtually everyone else I interviewed, he was very receptive to the idea. That's why we ended up here. I had never been in Charlottesville before the interview. I can't say Virginia was top on my list.

Randi Flaherty 12:28
I wanted to ask you about that, because it sounds like you wanted to to teach at an elite level. You've mentioned elite law schools, and I'm wondering, in 1972, what were the elite law schools? What did that landscape look like?

G. Edward White 12:40
It was a smaller sample than we would think of today. Harvard, Yale. Columbia. Penn. Chicago. Stanford. Berkeley. That would—Michigan. I applied to all those places.

Randi Flaherty 12:52
And what did it mean to be elite? I mean, today we think of rankings. What did it really mean?

G. Edward White 12:58
Of course, that the US News and World Report rankings weren't present. It was almost word of mouth. That is, it was just a perception that if you were thinking about practicing law but you weren't you weren't necessarily committed to a geographic locality, you just wanted to go to a place which would give you a lot of options, that these schools were better for that. They had more prestige within the bar generally.

Randi Flaherty 13:28
And where did UVA sit in this?

G. Edward White 13:31

I don't, I don't think UVA was particularly high. You know, I mentioned, the schools I mentioned, I would say UVA might have been mentioned occasionally in, in that group, but not always. And it was thought of, I thought of it as southern. And I remember the first, when I came down to interview for a job, the first person I interviewed was Neill [H.] Alford [Jr.] (1947). He's a very able, smart person, but he had a very strong southern accent. And I remember in my first interview with him asking me questions and I thought, oh my God, [laughs] you know, this is the South. I hadn't really focused on that. And Charlottesville, when we first came in 1972, was a pretty small southern town. I mean, there weren't, there weren't a lot of restaurants there. The faculty entertained in their houses most of the time. Social life was largely centered in the University. But, but it was a bit of a, it was a bit of a, a transition for us.

—Musical Break—

Randi Flaherty 14:58
So, in 1972, when you joined the faculty, there was an article in the law school student newspaper, the *Virginia Law Weekly*, at the time that was sort of introducing you to the student body, and it cited you as saying that you decided to come in part due to and this is a quote, "A sense of excitement and promise at the Law School, a sense that is very important to an institution." What did you mean by that?

G. Edward White 15:23
Monrad Paulsen had become dean. He had come from Columbia. He was the first non-Virginian to be dean at at Virginia. He was a accomplished scholar, and I think he was hired with a mandate to add positions to the faculty and add people who were, who were not in the mold of Virginia graduates mainly interested in teaching. I got to know Monrad shortly after coming and it was very clear that he wanted me to do scholarship. I signed a book contract to do the American judicial tradition, my first year I was in teaching, and Monrad was delighted with that. And so, I think what I meant was I got the feeling I was going on to an institution that was transforming itself in directions that I wanted, that is becoming more visible in scholarship, having more people from different places.

Randi Flaherty 16:25
It sounds like UVA embraced your interest in legal history. Did you feel that they were encouraging you to do legal history work?

G. Edward White 16:35

Yes. Cal [Calvin] Woodard was on the faculty and Cal was a legal historian. And Cal and I founded a faculty workshop group in legal history, several of whose members were people in the history department. We sort of wanted to get legal history started as as a serious intellectual endeavor for faculty members. There was one barrier to that. There was a so-called cultural requirement that all students had to take before they graduated, most of which were legal history or jurisprudence courses. The result was that if you taught a legal history course, you'd have a whole lot of people in the class who were taking it because of the cultural requirement. I had, when I started teaching legal history, I would have one hundred fifty students, most of whom were not taking the course because of any abiding history interest in the subject, but because it satisfied a cultural requirement. So, I would have students in class and they would bring copies of the *Cavalier Daily* and sit in the back and read [laughs] while I was lecturing. Cal and I lobbied for several years to abolish the cultural requirement, because we we thought it sort of cheapened the offering. And we were, we were eventually successful. By then within the academy generally, legal history was really getting established. Legal history between 1970 and 1980 really took off in the legal academy, in both in terms of hiring juniors who were legal historians, producing legal history scholarship. I kind of have felt that my age cohort was really on the ground floor in getting American legal history started in.

Randi Flaherty 18:31
And it seems to have really continued at UVA as core to its branding as a law school. I want to move to to teaching, also. What did you teach at the Law School in your first years?

G. Edward White 18:44
You were expected to teach a first-year course, which we don't do anymore. We will do it if somebody is interested, but that's a pretty heavy load to dump on to an entry level person, because teaching first-year students in a in a basic course, you're typically not teaching somebody in a field that you know very well. That was certainly my case. I decided to pick Torts, because I liked that—I disliked that less than I disliked the other offerings. And I was not a, I was not a successful teacher initially. I, I was one step ahead of the students. There was a course in the legal process that, I had taught the legal—I had taken the legal process course, which was taught on mimeographed materials from Harvard Law School. Henry [M.] Hart [Jr.] and Albert [M.] Sacks had created the materials. And they were circulated. They were actually mimeograph. The, you got a mimeographed copy of the Hart and Sacks materials, and you taught from that.

Randi Flaherty 19:47

Well, I'm fascinated by the mimeographed sheets from Harvard, and I know you've written elsewhere about this change in this time from the legal process to law and, and classes, curricula really following that trajectory. Sounds like that's what you're talking about with your own experience. I also know that from your chapter that you've written for this volume, you start off with with Dean [William Minor] Lile (1882) of a UVA Law School, sort of championing the old lecture and textbook model and really resisting the case method. And then the Law School, as you talk about going towards the 1960s, embracing the case method and the Socratic method that was being used in the classroom in other law schools. And so, I'm wondering, when you entered the classroom at UVA Law in the 70s, how familiar did it feel to you, to your own law school experience?

G. Edward White 20:33
The Socratic method at Harvard was, in many classes, taught quite severely. That is to say, people were very closely cross examined on case analysis, with the professors often not being particularly kind in their responses. I didn't want to do that when I started teaching. I wanted to teach Socratically, but I didn't want to teach it in that fashion.

Randi Flaherty 21:02
Do you remember your first day teaching, at all, your first classes?

G. Edward White 21:07
I don't, I don't remember the absolute first day. I do remember an incident from my first year that is indelible. When I started, the faculty was also supposed to be administering the legal writing program. You were supposed to supervise people for while they were writing their briefs. I found that awful because the brief writing was horrible, and I sort of didn't know what to do about that.

Randi Flaherty 21:35
I wondered if we could return to Charlottesville. You mentioned it a couple times, but I, Charlottesville is obviously the home of UVA and the Law School. What was Charlottesville like when you arrived?

G. Edward White 21:47
From Susan's and my perspective, it was a small southern town. For example, [laughs] we—you'd go into a gas station and fill up gas and the people, or anywhere, you know, you go into, you go into a store and they'd say, Y'all come back. And I thought, why are they saying that, [laughs] you know, what does that mean? And then people on the street would

actually, strangers on the street would say hello to you. And you know, we really weren't used to that. I grew up in New York. I was not used to that sort of thing at all.

Randi Flaherty 22:24
It makes me wonder, too, just thinking about Charlottesville and, and UVA's location in the center of Virginia. What is the role of of place, of setting, in shaping the culture of the Law School, the trajectory of the Law School?

G. Edward White 22:41
I think it's very important. I think we have struggled institutionally ever since I've been here with the fact that we are a, basically we are an elite law school in a small town. So, that's a that's a disadvantage in recruiting. It's also, to some extent, a disadvantage in recruiting students. There's no other law school, there's no other comparable law school that faces that problem exactly. That problem of place. I mean, Michigan is in Ann Arbor, but Michigan is very close to Detroit. Stanford and Berkeley are very close to the Bay Area. You know, even Duke is in the Research Triangle area. So, we have a you know, that's unique. On the other hand, the experience of living in in this town, I think is kind of unparalleled in the sense of it's far less expensive, particularly in terms of housing, than comparable cities. So, it's got a lot of advantages. And a lot of people who come here in the same way I did, just kind of randomly on the market, end up loving it and wanting to stay. And we're among that group. I mean, we've, you know, I've had opportunities to go elsewhere and I really never seriously considered them. Everybody on the faculty will say at this point, the Law School is incredibly supportive of their work and a very collegial place to to to be on the faculty.

Randi Flaherty 24:17
So, this brings me to my final concluding question, which is just throughout your tenure here at UVA Law, how has the Law School grown its national stature?

G. Edward White 24:28
I think the principal thing it's done is to change the tilt of its appointments process to deemphasize regional affiliation and to encourage people on the faculty, to reward people on the faculty that do scholarship, and to create a culture that encourages them to do so. You can't be a leading law school in today's academy if you don't have faculty that are visible scholars, whose work is noticed and and admired by others. So, you have to create an environment where you hire people that can do that and when—and encourage them to do it. And that's, and Virginia has, has successfully done that over the course of my career.

Randi Flaherty 25:20

Well, thank you so much, Ted. It's been it's been wonderful to hear about your own story and how it's intertwines with the history of UVA Law.

G. Edward White 25:25
Well, I've enjoyed it a lot. Thanks.

—Musical Break—

Blake Cabral 25:35
Legal Knowledge is a product of the University of Virginia Law Library Special Collections team. Randi Flaherty, head of special collections and legal historian, and Loren Moulds, head of digital scholarship and preservation, served as interviews. Music and production by me, Blake Cabral, with editorial contributions from Addie Patrick and Jane McBrian. The *Legal Knowledge* podcast features interviews with contributors to our book *Legal Education at the University of Virginia: Tradition and Transformation*, published by University of Virginia Press.

You can listen to season one online at legalknowledgepodcast.com or wherever you get your podcasts. Join us next time as we continue to explore the history of legal education at the University of Virginia. Thank you for listening.

—Musical Outro—