



Volume 49

1996

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Recommended Citation

Millard H. Ruud, *A. Kenneth Pye - A National Legal Education Figure*, 49 SMU L. Rev. 463 (1996)
<http://scholar.smu.edu/smulr/vol49/iss3/4>

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A. KENNETH PYE—A NATIONAL LEGAL EDUCATION FIGURE

*Millard H. Ruud**

I had the privilege of knowing and working with A. Kenneth Pye in several settings. While others in this collection of tributes will write of Pye's impressive accomplishments in other venues, I have chosen to write about his involvement in national legal education.

A. Kenneth Pye was significantly involved in the three major national legal education organizations—the Law School Admission Council (LSAC), the Association of American Law Schools (AALS), and the American Bar Association Section of Legal Education and Admissions to the Bar (ABA Section). From 1968 to 1970, Pye was a member of the LSAC Board of Trustees. In 1972-73 and again during 1976-77 as president-elect and president, he was a member of the Executive Committee of the AALS. From 1979 to 1982, Pye was a member of the Council of the ABA Section. Kenneth Pye brought to the deliberations of these three important bodies not only an exceptional and analytic mind but also a rich and diverse experience in legal education and university administration.

Kenneth Pye entered legal education in 1955 as a member of the Georgetown University Law Center faculty. At Georgetown, Pye experienced a large law school with complex and far-ranging full and part-time J.D. and graduate programs. He was the first director of its Legal Internship Program, the Prettyman Fellowship, from 1960 to 1961.¹ He became associate dean in 1961 and served in that capacity until 1966, when he joined the Duke University faculty.

In 1966, A. Kenneth Pye joined the Duke University faculty and, in 1968, succeeded Hodge O'Neil as dean. After a year as University Chancellor during 1970-71, Pye returned to the deanship and served in that position until 1974. He was University Counsel from 1971 to 1974. Kenneth Pye returned to the Chancellor position in 1976, serving there until 1982. At that time, Terry Sanford, later a U.S. Senator, was president of Duke. Sanford directed most of his energies to Duke's external affairs,

* John S. Redditt Professor Emeritus of State and Local Government Law, University of Texas School of Law. B.S.L. and LL.B., University of Minnesota 1942, 1947.

1. See generally A. Kenneth Pye, *Legal Internships: Georgetown's Experiment in Legal Education*, 49 A.B.A. J. 554 (1963); A. Kenneth Pye, *Lawyer Intern Program Planned at Georgetown*, 18 LEGAL AID BRIEF CASE 131 (1960).

leaving much of the academic leadership and administration of the university to Pye.

In 1986, Kenneth Pye left Duke to become president and professor of law at Southern Methodist University.

Kenneth Pye's experience with international legal education informed his interests and decisions in this area. In the summer of 1959, he was a visiting professor at Johann Wolfgang Goethe University in Frankfurt. From 1966 to 1967, Pye was the Ford Foundation's Program Specialist for India and a visiting professor at Banaras Hindu University. During 1967-70, he directed the Ford Foundation funded Summer Orientation Program in American Law at Princeton for the AALS. This program briefed foreign lawyers on American law upon their arrival in the United States for graduate study.²

Upon leaving the dean and university counsel's posts at Duke in 1974, Pye enjoyed a sabbatical as a visiting professor at Monash University in Melbourne, Australia. On his return, he was named chair of the Duke University Center on Commonwealth Studies. From 1984 to 1985, he pursued his great interest in the commonwealth countries as a visiting professor at the University of British Columbia.

Although other law teachers and deans have become senior university administrators, only A. Kenneth Pye has brought the knowledge and insights that experience provides to the councils of the three major national legal education institutions.

I. LAW SCHOOL ADMISSION COUNCIL (LSAC)

In the late 1950s, Kenneth Pye became concerned with Georgetown's admission program. To learn more about the Law School Admission Test (LSAT) and admissions, he attended some of the LSAC's annual meetings and, in 1965, joined its Services Committee. Among the committee's concerns were the impact of the military draft on law school enrollment and increased communication with pre-law advisors about legal education and admissions. In April of 1966, Pye participated in a conference on the future of the LSAT program in Washington. The principal items of discussion at the conference were: increased communication among the LSAC, the ABA Section, and the AALS; study of probable demand for legal education and lawyers; summer programs for prospective minority law students; and the use of candidate fees received by the LSAC to fund appropriate research and other activities.

In 1967-68, Pye was involved in planning an Educational Testing Service (ETS) study of admissions of foreign lawyers for graduate study. In the spring of 1968, he agreed to participate in the LSAC's program of law

2. See generally *Roundtable on Foreign Exchanges*, 22 J. LEGAL EDUC. 277, 282-88 (1970) (roundtable comments of Kenneth Pye regarding foreign law student admittance to U.S. graduate programs).

teacher visits to students and faculty at predominantly black colleges and universities.

In June of 1968, Pye was elected to the Board of Trustees of the LSAC at its annual meeting in Montreal. He served as the Board's representative to the Services Committee. This was the beginning of the second year of my three-year term as chairman of the LSAC and the beginning of my working association with A. Kenneth Pye.

During Pye's service the Board of Trustees addressed the following principal issues:

1. *Initiatives to increase minority enrollment.* The LSAC gave tests without charge at predominantly black colleges to encourage interest in legal education. It also offered workshops on admission of minorities. The LSAC researched the use of the LSAT in admission of minority applicants and conducted the first national survey of minority enrollment. Furthermore, the LSAC sponsored visits by law teachers to predominantly black colleges to introduce the possibility of the study of law to students; Pye volunteered for these visits.

2. *Incorporation of the LSAC.* In 1967, the LSAC was incorporated as a nonprofit educational entity under New York law. Its previous legal status was unclear—was the LSAC a committee of ETS, an unincorporated nonprofit association, or what? This formal step declared a separate operational existence for the LSAC.

3. *Use of the LSAT by Canadian law schools.* Canadian law schools expressed interest in using the LSAT. Steps to facilitate this were taken, and Canadian law schools became involved formally in the LSAC.

4. *Management of increased financial resources.* The large increase in demand for legal education, and thus for the LSAT, greatly increased the LSAC's resources. The LSAC took steps to better manage and budget these resources.

5. *Law School Data Assembly Service (LSDAS).* The LSAC established the LSDAS in 1970, providing a centralized transcript analysis service. This permitted small schools to manage and survive the great increase in applications.

6. *ETS Role in setting fees.* The LSAC had previously adopted its budget and recommended to the ETS the amount of the fees. The LSAC took steps to set the fees itself.

7. *LSAC research.* The validity and reliability of the LSAT as a predictor of law school performance, including its use in predicting success for minority students, was the subject of much research. Issues such as assessment of repeater scores, consistency of law school grades, and the like were also addressed.

Pye was an active participant in the Board's work, showing special interest in the fair treatment of test takers and the minority student initiatives. In 1984 and 1985, he served on the Test Development and Research Committee.

The LSAC joined with the ABA Section and the AALS to establish the Joint Task Force on Student Financial Aid, whose primary task was to maintain and improve federal student aid legislation. Pye was joined by John R. Kramer, then dean at Tulane and formerly an associate dean at Georgetown, who was well-acquainted with Congress, especially the House of Representatives. Both Pye and Kramer were well-informed about the financing of legal education and the role of student loans. In a 1984 article, they expressed concern about the impact of a projected decrease in the demand for legal education, and possibly for law graduates, on students with heavy debt and on law school resources.³ Increased demand by students enabled by loans to attend law school had permitted law schools to significantly increase the quality of their staffing and programs. Pye and Kramer approached their task with a pragmatic understanding of the connection between resources and quality. This task force played a critical role in the organization's efforts to address realistically Congress' concerns.

Perhaps it should also be noted that Kenneth Pye served a four-year term on the ETS Board of Trustees in the late 1970s. He considered stopping the Board from constructing yet another building to be one of his greatest contributions to the ETS. Recognizing his talents, he chaired ETS's Finance Committee, and on completion of his term, he was rewarded with a picture of a fictitious new building, designated the A. Kenneth Pye Memorial Building.

II. ASSOCIATION OF AMERICAN LAW SCHOOLS (AALS)

Kenneth Pye served on the AALS Executive Committee in 1972 during the AALS presidency of Richard C. Maxwell of the University of California and in 1973 during the AALS presidency of Maurice Rosenberg of Columbia University. At that time the term of an elected Executive Committee member was limited to two years. The term limit was changed to three years in 1975.

Among the significant issues addressed by the AALS Executive Committee during Pye's term in 1972 and 1973 were the following:

1. *Limiting tenure.* There was growing support for limiting the percentage of a school, college, or university's faculty that may be tenured; however, the Executive Committee opposed this position. Kenneth Pye agreed with the committee, but he recognized that guidelines may be appropriate.

2. *Character tests.* The American Bar Association proposed that law schools evaluate the moral character and fitness of applicants by administering tests and questionnaires in the admission process in order to avoid

3. A. Kenneth Pye & John R. Kramer, *Solvency and Survival After the Boom—A Different Perspective*, 34 J. LEGAL EDUC. 462 (1984); see also A. Kenneth Pye, *Legal Education in an Era of Change: The Challenge*, 1987 DUKE L.J. 191, 192-95 (1987); A. Kenneth Pye, *Legal Education Past and Future: A Summer Carol*, 32 J. LEGAL EDUC. 367, 369, 377, 379 (1982).

the unfit from entering the profession. This was vigorously opposed by the Executive Committee because, among other things, the idea was not feasible and ignored the character development that occurred in law school.

3. *Law faculty as members of a university-wide collective bargaining unit.* The Executive Committee believed that as professionals it may be inappropriate for law faculty to so organize and concluded that it would be unwise for the faculty to be part of a university-wide unit. Membership in a university-wide unit would likely eliminate important differences in treatment of law faculty, such as earlier attainment of tenure and a more competitive salary structure.

4. *Support of affirmative action.* The AALS had filed an *amicus curiae* brief with the Supreme Court of Washington in *DeFunis v. Odegaard*.⁴ Having thus committed itself, the Executive Committee determined it also should file an *amicus curiae* brief with the United States Supreme Court.

5. *Impact of significant increase in demand for legal education.* ABA President Robert W. Meserve appointed a special Professional Utilization Committee to study the impact of the increasing demand for legal education on the legal profession and the client public. President Richard C. Maxwell appointed a committee to consider the potential impact on legal education.

6. *Organization of the Society of American Law Teachers (SALT) and interest in the law teacher campaign to seek impeachment of President Richard M. Nixon.* Upon a motion by Pye, the Executive Committee determined that the impeachment issue had no connection with legal education and so for the AALS was *ultra vires*. Though a number of the activities proposed for SALT (originally called the American Association of Law Teachers) were presently performed by the AALS, there may have been a need for a law teacher's organization to take political positions. The AALS directed its staff to cooperate with SALT.

7. *Teacher Insurance and Annuity Association's use of different mortality tables for women and men in computing annuity payments under its defined contribution plan.* The Executive Committee sought revisions ensuring that men and women received equal monthly annuity payments.

8. *Revision of copyright law.* The Executive Committee sought protection of "fair use" for classroom purposes.

9. *AALS sections.* Procedures for operation and support of AALS sections were strengthened.

10. *Rules of procedure for the AALS House of Representatives.* These were clarified and revised to facilitate discussion of legal education.

4. 507 P.2d 1169 (Wash. 1973) (allowing affirmative action by a university), *vacated as moot*, 416 U.S. 312, *prior judgment reinstated*, 529 P.2d 438 (Wash. 1974) (holding that the issue had broad support and could be considered even though moot).

11. *Procedures of the Committee on Academic Freedom.* These procedures were revised to reduce delay and provide assistance to a complainant.

12. *Participation of law teachers in the programs of the National College of State Judiciary.* Resources were sought to provide the law teachers with more than room and board in recognition of their important effort.

13. *Multi-State Bar Examination (MBE).* The Executive Committee expressed concern that the MBE's exclusive use of multiple-choice questions might chill law school use of other forms of examination.

14. *Council on Legal Education Opportunities (CLEO).* AALS joined in obtaining adequate federal funding for CLEO.

Kenneth Pye chaired an AALS committee on Judicial Selection and was designated the Executive Committee's liaison with the AALS Committee on Government Relations.

Concerned with the significant portion of law school revenue that was diverted to other university purposes and related issues, the Executive Committee asked Pye to confer with the president of the University of San Francisco to seek a remedy. Pleading a fiscal emergency threatening the very existence of the university, the university sought AALS understanding and promised to mend its ways. Pye's consummate understanding of university finance and the impact of allocation of resources on quality education is amply manifested in the Executive Committee minutes on this matter.

When A. Kenneth Pye served as president-elect and president in 1976 and 1977, respectively, several issues faced the Executive Committee, including:

1. *ABA accreditation of programs training legal assistants.* The Executive Committee was doubtful about the need for accreditation of legal assistant programs. The committee was concerned that accreditation would blur the distinction between it and the approval of law schools. Pye urged that the AALS's opposition not be so adamant as to impede cooperation with the ABA on other matters.

2. *Establishment of a faculty recruitment conference held separate in time and place from the AALS annual meeting.* The Executive Committee noted how this change improved the annual meeting and directed improvements in the conference to serve the interests of candidates and law schools.

3. *Idaho proposal to remove tenure requirements from ABA Standards.* The Executive Committee opposed removal, and Pye urged negotiation with Idaho representatives.

4. *Underemployment of law graduates and the increased number of graduates.* The Executive Committee issued a statement informing potential law students of these problems and affirmed their right to choose

legal education.⁵ Pye noted a substantial need for legal services and an inadequate delivery system.

5. *Continued funding of CLEO programs.* The Executive Committee joined efforts to secure continued funding and improvements in the programs.

6. *Western Association of Colleges and Schools accreditation of free-standing proprietary law schools.* The Executive Committee opposed the accreditation and informed deans in affected states of the problem. Western Association had no legal education specific standards. Many might believe that accreditation by Western Association was the substantial equivalent of ABA and AALS accreditation.

7. *American Council on Education (ACE) agreement on copyright law guidelines that would drastically reduce "fair use" for classroom purposes.* The Executive Committee endorsed letters to Rep. Robert W. Kasstentmeier by Professors Leo J. Raskind and Robert Gorman urging full "fair use." Pye noted that the ACE was concerned with interests of university administrators and frequently overlooked those of university teachers.

8. *Clinical Legal Education: funding by Council on Legal Education for Professional Responsibility (CLEPR); joint ABA-AALS project for Guidelines for Clinical Legal Education; funding of Clinical Education under Title XI.* The Executive Committee sought and obtained funding for the Conference. Pye stressed that the objective of the clinical programs should not be provision of legal services to the indigent at low cost; rather, the clinical programs should offer an important method of instruction and professional development.⁶ The Conference should not prescribe an orthodoxy but should examine different modes of clinical education. Funding for Title XI and grants for clinical legal education programs should be sought on the basis of education—education in professional skills and responsibility and of problems of the poor. Continued funding of CLEPR by the Ford Foundation was supported. The guidelines were adopted with the understanding that they be guidelines and not accreditation rules.

9. *Proposed accreditation fee.* The ABA proposed that a \$500 annual accreditation fee be imposed on approved law schools to support accreditation activities of the ABA section. The change in the IRS Revenue Ruling that made income of the American Bar Endowment subject to tax had created an ABA funding crisis.

The Executive Committee, upon Kenneth Pye's motion, opposed the concept of an annual fee in order for a law school to retain approval. Pye noted that the difference between adequate and inadequate funding of

5. See generally Pye, *Legal Education in an Era of Change: The Challenge*, *supra* note 3.

6. See A. Kenneth Pye, *Law School Training in Criminal Law: A Teacher's Viewpoint*, 3 AM. CRIM. L.Q. 173, 180-81 (1965) (manifesting a perceptive understanding of purposes and means of law teaching).

the ABA section was less than one percent of the ABA annual dues income. It was noted that approved schools paid a significant portion of the cost of the accreditation program by paying a fee and by paying the travel expenses of site evaluators. Concern was expressed that fee income could be used to support programs other than accreditation activities of the ABA section. If it were a fee-for-service program, schools should be able to decide which services they would buy.

10. *Model Professional School Admissions Fraud Act: LSAC request for AALS endorsement.* The Executive Committee endorsed the draft act in principle but expressed reservations. Pye and others questioned whether the conduct subject to the act should be made a crime. Should it make a difference whether the impersonation or other conduct is done for pay?

11. *Establishment of placement bulletin listing openings in law schools.* The Executive Committee directed that law school positions, law-related positions in the university, and law research positions with nonprofit organizations be listed in a placement bulletin. The bulletin would be distributed to schools at no cost. Subscriptions also would be offered. Pye noted that the latter would permit a dissatisfied young teacher to seek relocation without going public and so harming his or her current position.

12. *Affirmative action: ABA Assembly resolution condemning "reverse discrimination"—the Bakke⁷ case.* The Executive Committee, upon Kenneth Pye's suggestion, considered the ABA Assembly resolution as directed at quotas rather than goals, and the AALS objective in admissions as greater participation of minorities in law schools and the legal profession. The Executive Committee directed that an *amicus curiae* brief be filed with the United States Supreme Court in the *Bakke* case. The AALS accepted the invitation of President J. W. Peltason of the American Council of Education to join LSAC in preparing an analysis of *Bakke* and its implications for colleges and universities, many of which did not have in-house counsel.

13. *Liaison Committee for Medical Education (LCME).* The Bureau of Consumer Affairs and the Federal Trade Commission (FTC) objected to the continued recognition by H.E.W. of the Liaison Committee for Medical Education as a nationally recognized accrediting agency because the American Medical Association is a partner of the American Association of Medical Colleges in the Liaison Committee on the ground that the practicing profession would be guided by its selfish economic interest in accrediting medical schools. The Executive Committee directed that the FTC be informed that categorically barring involvement of a professional organization with economic interests, no matter whether there is any evidence of bias, is unsound. If there is evidence of discouraging the accreditation of additional professional schools, for example, governmental

7. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

action may be justified. Peer review, which the FTC position precluded, is an essential element of voluntary accreditation.

The Antitrust Division, Department of Justice, in its 1995 draft of a consent decree concerning the ABA's alleged violation of the Sherman Act, seeks a remedy that places the ABA Section under detailed supervision by the ABA Board of Governors, its three-person committee, and the ABA counsel. Increased involvement of practitioners in accreditation is sought—a remedy contrary to the government's position in 1977 in the LCME case.

14. *Immediate past president position established.* The Executive Committee recommended, and the House of Representatives adopted, an amendment establishing the additional office.

15. *AALS-ABA Statement of Impartiality and Propriety in Law School Accreditation.* The ABA Section/AALS Executive Committee developed the joint statement to deter conflict of interest in the accreditation process.

16. *Revision of rules of procedure for Committee on Academic Freedom and Tenure (CAFT).* CAFT procedures were reexamined to provide for someone in the process who sought a mediated settlement. A strictly judicial approach was found to lead to delays in disposition of the settlement.

17. *Professional Development Program.* A two-week Law Teaching Clinic was presented in 1977 at the McGeorge School of Law. Scheduled for the summer of 1978, the program was supported by fees paid by the schools. The Professional Development Committee was established as a standing committee. A program of one and one-half to two-day weekend workshops on course subjects, as well as teaching methods, was also established with attendance fees supporting the programs. Workshops were association rather than section projects.

In January of 1978, I wrote Chancellor Kenneth Pye to thank him for his service and my opportunity to work with him. An excerpt from that letter well states my assessment of his service as president:

The Association was most fortunate that you were its President at this particular time. The Association is at a point in its history in which it must both understand the perspective of the university administration and have credibility when it speaks on behalf of legal education to the university administration. Your excellent service as a law teacher, dean and university administrator have given you a perspective that few if any presidents of our Association have had and a university administration position from which to speak to your colleagues at that level about legal education.⁸

8. Letter from Millard H. Ruud to A. Kenneth Pye (Jan. 17, 1978) (on file with author). See A. Kenneth Pye, *What's Wrong with our Universities?—An Additional View*, 14 HARV. J.L. & PUB. POL'Y 335 (1991) (manifesting a profound understanding of a university's role and the relation of resources wisely used to perform that role effectively). Pye's article is, in part, a response to Harvard President Bok's famous essay at page 305 of the

III. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (ABA SECTION)

A. Kenneth Pye was a member of the ABA Section's Accreditation Committee during 1974-75 and 1975-76, while Dean E. Clinton Bamberger Jr. of the University of Maryland and Judge George N. Leighton of Chicago were chairpersons of the Section. This is the Section's most important committee and requires the most work and thought of its members.

Chancellor Kenneth Pye was elected to a three-year term on the Council at the Association's annual meeting in 1978, and he served through the 1980-81 year. The ABA Section was chaired during these three years by Dean Samuel D. Thurman of the University of Utah; Lawrence Newman, a New York City Practitioner; and President Willard L. Boyd of the University of Iowa.

The Council dealt with the following significant issues during these three years:

1. *Skills training for law students.* Chief Justice Warren E. Burger expressed concern about the quality of advocacy in the federal district courts. In response, the ABA established a committee, chaired by federal district Judge Edward Devitt, to study the matter. Among other things, that committee recommended that law schools be made to require a course in trial advocacy. Following the historic accreditation practice of eschewing course requirements, the Council instead proposed amending the Standards to require approved law schools to *offer* students "at least one rigorous writing experience" and instruction in "professional skills."⁹

2. *Excessive "overhead" charged by the university.* The Accreditation Committee reported an increase in the number of instances in which income generated from law school tuition and other law school sources was being retained by its university. The Council, concerned about the disabling effect this was having on the ability of law schools to present a sound program of legal education, strengthened the Standards to discourage this practice. University presidents were not pleased.

3. *Accreditation of Graduate Programs.* The addition of an LL.M. or J.S.D. program required a Council determination that its establishment by a law school would not impair its J.D. program. Should the ABA Section accredit the graduate program by use of substantive requirements? Pye expressed doubts about the need to change the practice, and no change was made during this period.

4. *Course requirements for bar eligibility.* The Council vigorously opposed steps taken in Indiana and South Carolina to require the study of specified subjects as a prerequisite to eligibility for the bar examination. It considered sufficient the widespread practice of announcing the bar

same journal. See Derek Bok, *What's Wrong with Our Universities?*, 14 HARV. J.L. & PUB. POL'Y 305 (1991).

9. AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standards 302(a)(ii),(iii).

examination subjects on which applicants would be tested. Regulation of courses that must be studied interfered unnecessarily with student choices. As an indication of the proposal's error, Kenneth Pye noted that South Carolina required a course in insurance law, a subject not offered by Duke and not taken by many students at other schools. The Indiana and South Carolina approach did not spread, and those states subsequently modified their rules.

5. *Clinical legal education.* In view of the dissatisfaction expressed by a number of clinical teachers about their circumstances, a Committee on Clinical Education was established. Federal funding for increased clinical education was sought and obtained. The Committee sought \$150,000 for a study of clinical education. The Council had considered a \$3600 study. Kenneth Pye suggested additional questions on the ABA annual questionnaire and a review of recent site evaluation reports in order to yield the information sought without special funding. Pye was always reluctant to spend money unnecessarily.

6. *Equal opportunity: non-discrimination; religious institutions.* Standard 211 concerning equal opportunity and non-discrimination was strengthened. It was recognized that a law school with a religious affiliation or purpose could take those factors into account in admission and retention of students and employment of staff.

The Council sought improved opportunities for the disadvantaged in legal education and the profession, expressed concern about *Bakke*, and sought increased support for CLEO.

7. *Affirmative action.* Standard 212 adopted affirmative action. The Council cooperated with the LSAC in early recruitment of minorities and establishment of programs to assure their retention in law school.

In 1989, A. Kenneth Pye, then President of Southern Methodist University, was appointed to the ABA Section Committee to Study the Law School Approval Process, chaired by Dean Henry Ramsey, Jr. of Howard University School of Law. Its recommendations resulted in significant and wide-ranging improvements in the procedures used to accredit law schools by the ABA.

Dean James P. White, the Consultant on Legal Education to the American Bar Association since 1974, has written:

The world of legal education lost a giant with the death of A. Kenneth Pye. More than any other legal academic he knew and understood the finances of law schools and their parent universities and the financial implications for quality legal education. He knew the delicate balance between the financial needs of the parent institution and the demands for educational quality at the law school. He knew what made a law school an institution of quality and was not fooled by schools where pretensions were more evident than facts. He was a friend and mentor whose wise counsel I sorely miss.¹⁰

10. Letter from Dean James P. White to Millard H. Ruud (Dec. 1, 1995) (on file with author).

Oscar Wilde defined a cynic as “[a] man who knows the price of everything and the value of nothing.”¹¹ A. Kenneth Pye certainly was not a cynic. But he did know the cost of quality legal and university education, and he valued its worth.

11. OSCAR WILDE, *LADY WINDEMERE'S FAN* Act I (1892).