



## Episode 1,162: The Law Schools Are Run by Crazy People

Guest: Mark Pulliam

**WOODS:** I'm linking to your article today on the show notes page that you wrote, I don't know, probably some weeks ago now, that had to do with the ideological composition of law schools. This is something that we more or less know about, but I don't think people realize just how bad it is. And you used as a springboard for that analysis an incident that occurred not too long ago, in which you had a dean at a law school more or less standing up in defense of the heckler's veto against somebody who had come to give a lecture on, of all things, free speech. Can you fill in the blanks on that episode?

**PULLIAM:** Sure. This was a campus event hosted by the Federalist Society. The law professor who was invited to speak is a young, mild-mannered libertarian scholar who teaches at South Texas School of Law, and he has given a talk at a number of law schools on the importance of campus free speech. And students at the City University of New York law school invited him to come up to their school and address this topic.

And when he showed up, there was a mob waiting for him that was disruptive, loud, carrying signs, chanting. They were standing up in the front of the classroom where he was intending to deliver his lecture. They were blocking the screen that he intended to use for his PowerPoint presentation. And they were chanting a bunch of slogans. One of them had a sign to the effect that the First Amendment represents white privilege, and one of them said – and this is a law student. These are law students who are engaged in this disruption – said, "F\*\*\* the law," which was sort of an astonishing thing for somebody going to law school to have contempt for the subject that they're studying.

And this went on long enough so that most of the people who came there to hear him left, and it went on for a good ten minutes before he was allowed to say anything, and it sort of hamstrung his presentation. And it attracted a lot of media attention, because he took a lot of pictures of it, part of it was videoed, and it went viral because of the irony of somebody being shouted down at a law school trying to talk about the importance of free speech on campus.

But the astonishing thing to me – and I was one of the many people who watched this sort of like you would watch a train wreck, sort of in horror – but then the dean of the law school, instead of coming out and apologizing for the conduct of the students, in effect said they were behaving responsibly, that this was an exercise of their First Amendment rights to engage in the heckler's veto, which I thought just compounded the foolishness of the students' behavior.

But the thing that really got my attention as I was reading the various media accounts of this was that it mentioned that this dean, Mary Lu Bilek, is on an ABA site visit team. And I did a little bit further research, and it turns out that she has a longstanding role with the American Bar Association in its section that has responsibility for reviewing accredited law schools, because they have to be reviewed every seven years to have their accreditation renewed, and also schools seeking accreditation, which led me to write this piece for *Law and Liberty*, kind of remarking on the fact that the lunatics are not only running the asylums; they're in charge of licensing them.

**WOODS:** You then say that you became curious about this, that here you have a publicly funded law school that's always complaining that it doesn't get enough state funding; why is it expending its scarce resources on issues like this and so-called diversity and inclusion as opposed to: let's teach the law? That's the bare minimum reason that we're here. And what you found was that the American Bar Association has made one of the accreditation standards so-called diversity and inclusion, which as we know, really it's a Moloch that can never fully be satisfied. You cannot imagine a point at which they say: all right, we're happy; we've reached our goal; let's everybody pack up and go home. That's just never happening.

**PULLIAM:** Well, one of the things I blog about is higher education, and so I spend a fair amount of my time just cruising the Internet looking at university websites, including my alma mater here in Austin, the University of Texas. And one of the things that you'll notice if you go to the trouble of looking is that every university and now every law school in America has a department of diversity and inclusion. And like a lot of academic bureaucracies, once it gets started, it grows and grows and grows and they tend to be populated with people with dubious credentials earning very high salaries, and they sort of are in charge of riding herd on the rest of the school to increase diversity and inclusion, which is a euphemism for quotas, making sure that certain ethnic and racial classifications are adequately represented.

And so I had done some looking around previously at the University of Texas School of Law and had noticed that since I graduated many years ago, now there's this diversity and inclusion infrastructure, and I kind of scratched my head at the time, wondering, I wonder why that is. But lo and behold, I'm looking at these ABA standards and rules for accreditation, and there is a standard that is called diversity and inclusion, and it more or less requires law schools to have this type of bureaucracy to ensure that students are diverse with respect to gender, race, and ethnicity, and also faculty and staff. And it's not just something that you have to pledge that you're going to make your best efforts; you have to demonstrate through results that you are achieving these goals.

And they go so far as to say that if a law school is located in a state that purports to prohibit consideration of gender, race, ethnicity, or national origin, as is true, for instance, in California and Florida, that is not a justification for a school's non-compliance with Standard 206. So I sort of realized, well, gee whiz, there's something driving certainly the law schools in this direction, and the ABA is the person riding herd on this and they're using this Standard 206 as the weapon, in effect, to obtain compliance.

**WOODS:** I want to ask about the ABA in particular. Is it able to get away with this because of just its overwhelming position with respect to the legal profession, or is there some way that ABA accreditation – what's the role of the state in all of this, is what I'm driving at? It's just we have a private association called the ABA and we have these rules and you don't have to

follow them, but if you don't, you won't get accredited? Or is there the fist of the state beneath the accreditation process in some way?

**PULLIAM:** Well, the fist of the state is always involved whenever you have a monopoly misusing its power, and that's certainly the case here. I think you can look at the ABA and its role in legal education as sort of a case study in both interest group politics run amok and also the evil effects of cartelization, here the legal profession sort of regulating itself to limit competition and to increase its members' power and the money that they're able to earn. The monopoly status has been conferred on the ABA comes from two different sources. The federal government through the Department of Education has made the ABA an official accrediting agency for law schools, which entitles people attending ABA-accredited law schools to be eligible for federal financial aid. And federal financial aid is the driver that basically enables much of the dysfunction in higher education today, because people are not spending their own money and everything costs more than it should and consumers don't really look at the pros and cons because the federal government is loaning them the money, which they may or may not ever have to repay.

The other source of monopoly power comes from the state supreme courts, each of which is responsible for regulating the legal profession in its state. And over the course of 100 years that the ABA has been in charge of regulating legal education, they've managed to get 45 state supreme courts to make graduation from an ABA-accredited law school a condition of eligibility to take the bar exam in those states. So the ABA has a monopoly at both ends of the legal education continuum: in order to receive federal loans to attend law school and in order to be able to take the bar exam after graduating from law school, the ABA has to give its blessing. And so over the course of 100 years, its role and its influence have grown.

And I think your listeners have to remember that there was a time not that long ago in American history where very successful lawyers were able to achieve national acclaim without ever having attended law school. Abraham Lincoln is an example of a lawyer who never attended law school. And you may say that's a long time ago, that's a different era, but even in the 20th century, one of the most distinguished lawyers we had, Robert Jackson, who was an attorney general of the United States, who served on the U.S. Supreme Court, and who was the lead prosecutor at the Nuremberg Trials never attended law school. He studied law with a lawyer in upstate New York, learned enough to be able to pass the bar exam, and had one of the most distinguished careers of any lawyers in the 20th century.

So this notion that we need the ABA to do all of these things to ensure that only competent people are practicing law is a myth, but it's a myth that's become so firmly engrained in the American consciousness that nobody really questions it anymore. And as a result, they're able to get away with all of these things that are I think making a dysfunctional legal education system even worse.

**WOODS:** So if that's its mythical purpose, if we may say that, what is the actual, real-world result of the existence of the ABA? What does it actually accomplish?

**PULLIAM:** Well, you know, the ABA does a lot of different things. It is a left-wing special interest group that purports to be speaking on behalf of the legal profession, but most lawyers I know don't belong. I belonged when I practiced law because my law firm paid the dues, but I quit in the wake of the Clarence Thomas Confirmation battle, when the Senate confirmed eventually Clarence Thomas to the Supreme Court despite allegations being made

by Anita Hill showing that at least a majority of the Senate didn't believe Anita Hill. Well, afterwards, the ABA gave Anita Hill an award, which sort of is an indication that the ABA, the leadership at least, believed Anita Hill and disbelieved Clarence Thomas, which put it at odds with the Senate.

And that's when I realized that the ABA is nothing but a liberal special interest group. And if you compare the policy positions that the ABA takes, and they have a conference of delegates that meets every year, and they have in effect a political platform, it's indistinguishable from the ACLU. Every controversial legal issue and some that aren't even legal issues, they're purely political issues, they take the point of view that would be considered to the left. And so not only are they to the left of center of the American public; they're left of the legal profession, and the legal profession as a whole is left of the American public.

But that's fine, because people can listen to or ignore the ABA as they wish. They can join or refuse to join the ABA as they wish. The other thing that the ABA does is it, from time to time, plays a role in rating the president's judicial nominee to the federal bench, and this becomes particularly important when you have Supreme Court nominations. And some Republican administrations, to their credit — and George W. Bush, one of the courageous things he did was he basically said: I'm not going to pay any attention to your ratings anymore because they're frankly not credible. It used to be that presidents would elect the ABA-vet nominees before he made them official, and George W. Bush said, I'm not going to do that any longer.

But with respect to legal education, I think this is where their influence is the most nefarious because it is the least visible. And also, it has the least to do with their true mission, which is to ensure the integrity of the legal profession. And what they have done with their regulation of law schools is turn them into dysfunctional social justice academies that exhibit all the worst characteristics of higher education generally, but to a further degree.

For instance, faculty compensation. The average law professor makes several times what the average college professor makes, even though they work probably less hard. And so in effect, the ABA, by insisting on the use of full-time faculty, by insisting on ridiculous student-faculty ratios, by insisting on tenure and other things, have created this monstrosity of overpaid law professors, which drives of course tuition higher. And so tuition has gone up 200 or 300% in the last 20 years at most law schools, and students now typically have to borrow huge amounts of money to attend law school. They graduate with \$100-150,000 in debt into a job market that is worth today — the ABA doesn't have anything to do with that, but they really are enabling a legal education system that is disserving, utterly disserving the students.

**WOODS:** All right, before we continue this disturbing tale, let me pause to say a brief word to my business owners and indeed would-be business owners.

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All right, let's get back to it.

**PULLIAM:** But the worst thing they do has to do with this diversity and inclusion, and I can talk about that using George Mason University as an example. Now, George Mason law school is a very good law school. George Mason was initially a branch of the University of

Virginia, went independent, and has a highly acclaimed campus. Has one of the best law and economics programs in the nation. It has a very good law school that has been ABA accredited for a very long time.

And because it is one of the few conservative law schools, which doesn't mean that every single person who teaches there is conservative, but that they have a critical mass of conservative thinkers on their faculty, in the early 2000s, they had a policy that was, in order to maintain the quality of the school, they were going to have high admissions standards, which they would enforce across the board. And as a result, they only had about 6% of their student body were minorities.

So the ABA sent one of its site teams out – and this is like the health inspector; this Mary Lu Bilek would have served on a team like this – and they were visiting George Mason in advance of its renewal of its accreditation. And they said: well, we don't like your numbers. You're not doing enough to have a diverse and inclusive student body. And George Mason's response was: well, we have a terrific outreach program, we try our very best to encourage qualified minority applicants to seek admission. And the ABA said: well, that's not good enough; you have to do more. So they hired an assistant dean in charge of outreach, and they increased their outreach efforts, which cost money, which then gets translated into higher tuition.

And the ABA came back a year later and they had doubled their numbers. And the ABA said it's still not good enough. And so they went and even tweaked their admission criteria some to let in some minorities who would not have otherwise met the admission standards, and the ABA came back a year later and said: you're still not doing good enough. And by this time they had tripled the percentage of minorities in their incoming class. And they said: overall, you're doing well, but you do not have enough African Americans. And only when the ABA told George Mason that you are not going to get your accreditation renewed unless you increase the number of African Americans in your entering class did they lower their admission standards enough to be able to accommodate that dictate. And then the ABA said, okay, fine, we'll give you your renewal, but we're going to be watching you for next time.

Now, the tragedy in this is that, as Richard Sander and Stuart Taylor have documented in their book, *Mismatch*, when you admit into a law school minorities who are not equipped to compete at the same level as other students in the class, you actually hamper their academic performance, and those students do worse in such an academic environment than they would had they been admitted into a school with a peer group more representative of their academic background qualifications. And a lot of them drop out, and the ones who don't drop out fail the bar exam in higher numbers. And this is after they've incurred \$100-150,000 in debt.

And lo and behold, we are seeing this phenomenon across the country with students who have graduated from a three-year course of study from an ABA-accredited law school failing the bar exam in record numbers. In fact, over the weekend, a news report came out from California that announced the results of the February application of the bar exam in California. Only 27.3% of the students who took the bar exam passed it, which was the lowest pass rate in history in California. So instead of improving the quality of legal education, I would submit that the ABA through these diversity dictates have actually worsened it and have greatly increased the expense in the process. It is a complete failure of regulation.

**WOODS:** That answered one of the questions I was going to follow up with, which is: what's the big problem with diversity and inclusion? Those sound like innocuous enough terms. Now, by the way, of course we know that that's the tactic the left uses. They take innocuous-sounding terms and then they use them as bulldozers to destroy everything in their path. But of course, your point is that even on their own terms, it's not at all obvious that you're benefiting the very people who are supposed to be benefited by these programs. So really what's going on here is an ideological putsch at these institutions.

Now, I want to ask you before we wrap up if you could share a little bit about a professor from your alma mater. Even though you may not have studied under him, you know him and have chronicled his life, and that is Professor Lino Graglia. And I fear many of my listeners will not be familiar with him, but my friend and coauthor Kevin Gutzman studied under him and just thinks the world of him. He seems to have been a one-man juggernaut against this whole ideological trend, and I'd like you to say a few words about him.

**PULLIAM:** Well, Lino Graglia has been teaching at the University of Texas School of Law for over 50 years. I did a profile of him on my blog, *Misrule of Law*, if your listeners are interested. And Lino has been a stalwart opponent of racial preferences in admissions in higher education and against busing when busing was an initiative that was being promoted by the Supreme Court, and he paid a heavy price for that in terms of his career. President Reagan was intending to nominate him to a vacancy on the Fifth Circuit, and the ABA, as we talked about, came out very strongly against him, condemned him as somebody who was unfit for the bench, who lacked judicial temperament, etc., which is all their buzzwords for holding policy positions we disagree with. And as a result, Reagan never did put him on the Supreme Court or on the Fifth Circuit.

And then in the late '90s, he made some remarks trying to explain why certain ethnic groups didn't do as well academically as others, and he was intending to compare Hispanics with either the Jewish Americans that he intended college with at the City College of New York or Asians, and he simply said that some cultures do not place as much importance on academic achievement as others, which is almost a self-evidently true statement, yet he was denounced by everybody at UT, a majority of his peers on the faculty, the administration of the university. It's really shameful.

**WOODS:** Yeah, Mark, apparently we're to believe that every culture places the mathematically precisely equal emphasis on education. What a preposterous thing to believe. And the thing is it seems to me probably a good chunk of the people who professed to be outraged knew in their heart of hearts this is the most obvious, commonplace observation somebody could make.

**PULLIAM:** Well, and this shows exactly what's wrong with the bastardization of diversity inclusion. What we have in the law schools today and to a lesser extent in higher education as a whole is it's become a liberal echo chamber. And we only have one point of view represented, we have a complete lack of intellectual balance, that Lino Graglia is the only conservative, true conservative on the UT Law faculty. And when he retires at the end of this year. He will not be replaced by anybody like him. And the number of true outspoken conservatives in legal academia today you can probably count on one hand.

And so the ABA goes to great lengths to promote diversity and inclusion, but they're not talking about intellectual diversity or intellectual inclusion; they're talking about racial and

ethnic quotas, and the last thing they want is intellectual diversity. And when you crowd out any opposing point of view, the remaining voices sort of turn into a mob and there is no check, there is no constraint, and it turns into just over-the-top rhetoric and groupthink. And it's a real shame that that has happened, and if it doesn't turn around, law schools will continue down this road of just becoming social justice academies and places where people become indoctrinated to become activists. Like this City College of New York, that's pretty much what they do. They specialize in promoting social justice warriors, and the last thing society needs is more of those.

**WOODS:** What's Graglia's area of specialty in the law?

**PULLIAM:** He traditionally taught constitutional law and antitrust, and the shameful thing about – constitutional law is generally taught as a first-year course, and so when you're in your first year of law school, there are certain courses that you have to take: property, torts, contracts, constitutional law. And you are assigned whoever you are assigned. You don't get to pick.

And so with the advent of affirmative action and with this advent of hypersensitivity to everything having to do with diversity and inclusion, some black students objected to being assigned to Lino Graglia's class because Lino Graglia taught constitutional law in a way that sort of pushed back against some of the case law dealing with preferential admissions, busing, these sensitive areas, and those students were allowed to opt out of this class. And finally he became controversial enough that the dean of the law school took him out of the rotation for teaching constitutional law at all, even though he was considered one of the nation's leading scholars in that field. Again, this is at the same time that they are purporting to promote diversity and inclusion. They're silencing the only voices in legal academia questioning this orthodoxy in the area of constitutional law.

**WOODS:** One last thing. Obviously he wrote articles for law reviews, but did he ever write a book?

**PULLIAM:** He wrote a book, *Disaster by Decree* –

**WOODS:** That's right.

**PULLIAM:** – on the busing phenomenon. And a lot of people have forgotten about busing, but the remarkable thing is that the Supreme Court has been on many crusades over the course of the last 50 or 60 years, and most of them, once they got on a bandwagon, they never turned back. The one area in which they did draw back was busing, and a lot of it was done under Warren Burger, who was a Republican appointee as Chief Justice, and the federal courts, the Supreme Court said the Constitution required local school districts to assign students so that you had racial balance in all schools, regardless of residential housing patterns, which was hugely controversial. But nevertheless, they persisted until Lino wrote this book, and it was like somebody taking a pin and pricking a balloon, and all of the intellectual force of this entire body of law disappeared and the Supreme Court eventually dropped the whole busing body of law like a lead balloon. And so I think that's one of his lasting achievements, is almost single-handedly turning the tide on a disastrous body of Supreme Court doctrine.

**WOODS:** And then finally, tell me about *Law and Liberty*, which is over at [LibertyLawSite.org](http://LibertyLawSite.org).

**PULLIAM:** *Law and Liberty* is a project of the Liberty Fund, which is a longstanding classical liberal foundation located in the Indianapolis area, and they have cataloged books devoted to liberty and they put on academic conferences. And one of the things they've done under the auspices of Richard Reinsch, who's the editor, was they've created this blog where they try to present a version of legal analysis that is free of the left-wing groupthink that's so dominant everywhere else. So you have national scholars opining on legal topics and constitutional law topics from a libertarian, a conservative, and a classical liberal point of view, and if you have listeners who are amenable to that point of view, I would highly encourage them to read it. There's fresh content there every day, and it's not just about legal analysis; they do occasional movie reviews, stuff dealing with the popular culture. It's quite an engaging site.

**WOODS:** Well, I appreciate your time and your important work over there. I'll definitely link to the *Law and Liberty* work that you're doing over at [TomWoods.com/1162](http://TomWoods.com/1162). I'm also going to link to your original article that sparked this whole thing. And sometimes I want to check people out before I have them on, so I forwarded you along to Kevin Gutzman. I said, "Do you know this guy?" And he came over with he agreed with everything you said and if anything he's understating how bad it is [laughing], and I thought: all right, great, great, we'll do it. So [LibertyLawSite.org](http://LibertyLawSite.org) is what all you people interested in the law and its perversion should be checking out, and Mark, thanks so much again.

**PULLIAM:** It was a pleasure, any time.