

# Justice Kagan Educates UR Law Students on the Ways of the Court

by Gordon Hickey

Thurgood Marshall called her “Shorty” when he was having a good day and “Knucklehead” when he was having a less-than good day.

That was one of the passing revelations from Supreme Court Associate Justice Elena Kagan during an hour-long presentation at the University of Richmond on September 20, 2012. She spoke earlier in the day at a Richmond Bar Association luncheon.

Kagan and law school Dean Wendy Perdue spoke in a conversational format in front of about 200 students and faculty in the Merhige Moot Courtroom. Kagan’s comments—entertaining, informative, and even instructional—were clearly aimed at those law students.

When Perdue rattled off the list of the many high-profile jobs Kagan had before being named to the Court, Kagan joked “I can’t keep a job. ... This job, I’m keeping.”

When Perdue pointed out that Kagan’s father was a lawyer and asked her whether she had always wanted to be a lawyer herself, Kagan answered, “I don’t think I really did want to be a lawyer.... I didn’t think what my father did was very interesting.”

By the time she was in law school, though, she knew she belonged. Evidence suggests she was right.

President Barack Obama appointed her to the Court in 2010. She had been serving as the 45th solicitor general of the United States. The first case she argued in that position was *Citizens United*. It was also the first case she ever argued before any appellate court.

Kagan was born in New York, N.Y. She received her bachelor’s degree from Princeton University, her master of philosophy degree as a Daniel M. Sachs Graduating Fellow at Worcester College

at Oxford University, and her law degree from Harvard Law School.

Early in her career, she served as a law clerk to Judge Abner Mikva of the U.S. Court of Appeals for the District of Columbia and then as a law clerk to Supreme Court Justice Thurgood Marshall. She was an associate in a Washington, D.C., law firm. She has been a professor at the University of Chicago Law School and a professor and the dean at Harvard Law School. She was associate counsel to President Bill Clinton and then served as deputy assistant to the president for domestic policy and deputy director of the Domestic Policy Council.

Kagan provided an interesting glimpse into how the Court goes about doing its job, describing what documents the justices have in front of them when they’re on the bench—bios of the lawyers, including a list of the cases they had previously argued—and how the first votes on the cases are handled. As the most recently appointed justice, she always votes last.

She also talked about how she goes about writing her opinions and about how she works hard to avoid legalese and to make the opinions understandable to a broad audience. “If you can write an opinion that anybody can understand you make it even more useful,” she said.

She also said she is not a fan of concurring opinions. It is better for everyone, including lawyers, when the Court reaches consensus on a case.

The comment about Marshall, whom Kagan described as “the greatest lawyer of the 20th century,” came as she was commiserating with a student who was having trouble speaking into a microphone that was a little taller than



Supreme Court Associate Justice Elena Kagan (right, top photo) and University of Richmond Law School Dean Wendy Perdue were introduced in the Merhige Moot Courtroom at UR. Justice Kagan mingled with students and other guests, and signed autographs, outside the law school after the event.

Photo credit: Kim Lee Schmidt

she was. Kagan joked that she has the same problem.

But the student’s question was about the value of having women in important positions in the legal profession.

Kagan noted how difficult it was for Justices Sandra Day O’Connor and Ruth Bader Ginsburg to move up in the profession when they did. Now, she said, things have changed enormously and for the better. She said it was a great thing that there are three women on the Court. Nine might be a little out of reach, she allowed. But five? Why not?

# Nascent Georgian Bar Association Using VSB as Example as it Establishes Ethics Office

by Gordon Hickey

Georgia is a relatively new independent country with an even newer Georgian Bar Association that is working on how to support and regulate lawyers.

A delegation from Georgia arrived in Virginia September 19 to study how the Virginia State Bar operates and to learn how some of the policies and procedures here might be adapted for use in Georgia.

Georgia declared its independence from the USSR in 1991, but didn't have a bar association until 2005. In Georgia, lawyers are called advocates and are regulated by a General Assembly, which elects members of the Executive Board, Ethics Commission, and Audit Commission. The ethics code was adopted in 2006.

The rules for advocates are continuing to evolve. For example, the GBA just started continuing legal education, with six hours required this year. That will gradually increase to twelve hours in 2014.

The three-member delegation comprised Ekaterine Gasitashvili, chairperson of the GBA Ethics Commission; Tamar Khubuluri, a member of the GBA Ethics Commission; and Irina Lortkipanidze, the bar development and institutional strengthening specialist with East West Management Institute Judicial Independence and Legal Empowerment Project. They met on September 24 with VSB President W. David Harless and other lawyers at Christian & Barton.

The discussion there revolved around concerns over conflicts of interests and value of the GBA.

Harless noted that conflicts are a serious concern for Virginia lawyers and perhaps even more troublesome for law firms, where a conflict with one associate can eliminate the entire firm. He also said that perhaps the greatest value



The delegation from Georgia met on September 24, 2012, with VSB President W. David Harless and other members from the Christian & Barton firm to discuss the bar, lawyer ethics, disciplinary procedures, and other issues. Attending were Cliona Robb, of Christian & Barton and a district committee member; R. Braxton Hill IV, a former VBA-YLD president and a district committee member; Ekaterine Gasitashvili, chairperson of the Georgian Bar Association Ethics Commission; Harless; Tamar Khubuluri, a member of the GBA Ethics Commission; Roman Lifson, litigation partner at Christian & Barton; Irina Lortkipanidze, the bar development and institutional strengthening specialist with East West Management Institute Judicial Independence and Legal Empowerment Project; James Edward Betts, managing partner at Christian & Barton; and Kathryn R. Montgomery, VSB deputy bar counsel.

lawyers get from their bar dues is the right to self-regulation. "If we were not self-regulated we would be regulated by a government bureaucracy."

In addition to the meeting at Christian & Barton, the delegation attended a professionalism course, met with lawyers from the Professional Regulation Department, Supreme Court Justice William C. Mims, Virginia Bar Association President Hugh M. Fain III, Thomas E. Spahn of McGuire Woods, and VSB Executive Director Karen A. Gould; and attended a Legal Ethics Committee meeting and a Disciplinary Board hearing. They also did a bit of sightseeing.

The Georgians decided to come to Virginia, according to Gasitashvili, because Washington & Lee University Professor James E. Moliterno has been working with the GBA to develop its ethics regulations and legal ethics opin-

ion office. Lortkipanidze said the delegation was in Virginia "to support the GBA ethics commission and to meet our counterparts in the State Bar." She said the GBA was using the VSB and its website as an example.

Lortkipanidze also praised VSB Ethics Counsel James M. McCauley for his assistance and for the work he did to organize the delegation's visit.

McCauley returned the compliment. "They should be commended for their hard work and efforts to establish a fair system of self-regulation for the legal profession of the Republic of Georgia," he said. "Much of their procedural rules have been drafted using the VSB's rules as a benchmark. It has been a privilege and exciting experience to have as guests representatives of the Georgian Bar Association who are so dedicated to establishing the rule of law in their country."