

How Do We Most Effectively Seek to Educate Lawyers Throughout Their Careers?

by John H. Foote
Conclave 2012 Reporter



John Holland Foote is a shareholder with Walsh, Colucci, Lubeley, Emrich & Walsh, in Prince William. His practice focuses on land use approvals and related litigation. He has appeared in a broad range of complex matters in state and federal courts, both trial and appellate. He is a graduate of LSU, and served as an Army infantry officer in Vietnam. After graduation from UVA Law, he joined the United States Department of Justice Honors Program and was assigned to the White House staff to serve as the third-ranking official of President Ford's Vietnam Era Clemency Program. Mr. Foote currently serves on the board of governors of the Virginia State Bar's Section on the Education of Lawyers.

Moderator W. David Harless introduced the third panel comprising Justice Donald W. Lemons, Fairfax County Attorney David P. Bobzien (who also serves as the chair of the Virginia Law Foundation's CLE Committee), Jacquelyn E. Stone of McGuireWoods, and University of Virginia Professor Richard D. Balnave, for an examination of the continuing education of lawyers. Perhaps the central message of this panel was that it remains critical to provide continuing education (and to pursue it as a lifelong lawyer) in both core competencies and practice management.

Presentations

Mr. Bobzien drew from a University of Wisconsin survey to identify eleven core skills necessary for a good lawyer: communicate effectively in writing; be proficient in legal analysis and reasoning; communicate effectively orally; do computer-assisted legal research; exhibit professionalism, including civility; write legal briefs and memoranda; exercise good professional judgment; treat staff and clients with respect; do traditional legal research; interpret statutes using statutory construction and interpretation; and manage time. A continuing legal education program must provide training in these core skills, even as it attempts to address broader issues of practice and management of both office and life.

He reported that the CLE Committee consulted with the Young Lawyers Division of the Virginia Bar Association whose principal introduction to new attorneys is its "Bridge the Gap" two-day seminar, with substantive concentration in real estate transactions, estate planning and administration, business organization, family law, criminal law and practice, debtors' and creditors' rights, civil litigation, and ethics. Their analysis has suggested, however, that a different model is required that does not dwell excessively on areas that replicate law school. Virginia CLE is therefore rolling out "Backpack to Briefcase, the New Virginia Lawyer." This is a skills-oriented training program involving interaction with seasoned attorneys and judges. It will provide a one-day course, and fifty weeks of unlimited access to substantive Virginia CLE online courses and live webcasts in more than twenty practice areas. It will involve an introduction to the VSB and the VBA, panel discussions on management of expectations, effective communications with other lawyers in your own firm, with opposing counsel and with other outside lawyers. There is to be instruction in client interviewing and communications, writing persuasive legal correspondence, and effective use of technology and social media, including instruction in the ethical implications in the use of such technology. Training will be provided in time management and accounting. A segment will be provided on networking and client development, and an introduction to the resources available to Virginia lawyers. It will provide segments on managing student loans and personal financial planning, and Virginia's MCLE requirements. There will be an introduction to



Panel III addressed the continuing education of lawyers. Panelists (left to right) were Professor Richard D. Balnave, of the University of Virginia; Jacquelyn E. Stone, of McGuireWoods; Supreme Court of Virginia Justice Donald W. Lemons; and Fairfax County Attorney David P. Bobzien. The moderator was W. David Harless, of Christian Barton LLP and president of the Virginia State Bar.

Lawyers Helping Lawyers. The program will close with tips from the bench.

Justice Lemons reflected that we may well be expecting too much of the law schools and that much of the responsibility for professional training necessarily falls on the bench and bar. More training occurs in context after one leaves school and to that end he focused on mentoring and the role of experienced practitioners and judges in the nurturing of good lawyers. Mentoring has exploded in the last decade and has come of age. It has also become more formalized, in part because many young lawyers become dissatisfied with the profession early and leave to do other things. Studies have also shown that solo and small firm practitioners, without access to mentoring relationships, suffer a higher rate of bar complaints and of malpractice action, in part because they often engage in an episodic practice and do not have an opportunity to develop ongoing relationships with clients. There is often no mechanism to resolve client conflicts as there is in firms where there are people to whom one can turn. Mentoring seeks to provide the kind of advice, guidance, and atmosphere for the lawyer who does not otherwise have it.

These programs involve what the justice described as prime movers: organizations, people, or groups that have concluded mentoring is a critical part of the training of the legal profession. He noted that one of their limitations is that they tend to be available in urban areas and not to smaller communities where solo practitioners and small firms may face the greatest need.

The justice described the Delaware requirement in which every law school graduate must complete a five-month clerkship before they may practice. This is a clinical and mentoring combination that can be satisfied while in law school or afterwards, but the mentor must certify that each

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aspiring lawyer has absorbed certain information, and that they are of good moral character and fitness to practice at the Delaware Bar.

Justice Lemons focused on the American Inns of Court, of which he is the president. The Inns exist solely to promote professionalism, civility, ethical behavior, and excellent work product among the American bench and bar and focuses on value- and skill-oriented teaching experiences

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and preferably operates in groups of five, but no fewer than three. The mentoring cycle lasts for one year and involves not only attendance at lectures on skill issues and the basics of practice, but includes regular follow-up throughout that year.

The justice described law school as a foundational experience, but it is to expect too much of a law school to worry about the training of a lawyer during the full course of a career.

Professor Balnave agreed that though a student spends three years in law school, a practice may last thirty-five and more years, and there are now many different models of continuing education. He agreed that some lawyers, especially at the commencement of a practice, very likely need substantive training in how to manage a challenging witness, or how to conduct an effective deposition, and could benefit from programs such as those offered at the Trial Advocacy College at UVA. Others need more generalized or, alternatively, more specialized training and it is the need of the practicing bar and the goals that we seek to achieve that properly determine our methods, and not the other way around. One of his principal concerns, however, is that many lawyers simply do not know what they do not know, and there is a need to provide grounding in substantive areas defining what one needs to know if one practices in such areas as family or criminal law. While such programs need not teach about evidence, trial techniques, or forensics, outlines of the basics are needed to communicate an ade-

quate understanding of a practice area as a starting point.

He described the Critical Issues Summit, a cooperative effort between the ALI/ABA and the Association for Continuing Legal Education. He focused on two specific suggestions. The first is whether states should, in granting credit for courses, demand a description of the specific objectives of the course, its learning objective. This would assist the practitioner in making an informed choice when looking at the large array of possible continuing education programs. The second is whether credit should be granted for non-substantive continuing programs, for such areas as information technology or law office management. He observed that most of the disciplinary complaints against lawyers are office-management related involving such matters as trust funds, neglect, and a lack of proper conflict-checking mechanisms, and yet there is no credit given for training in these areas.

Ms. Stone described how McGuireWoods has developed its in-house CLE programs. She acknowledged her firm's obligation to Thomas E. Spahn, who has taught not only his firm's lawyers, but almost all Virginia lawyers. McGuireWoods now offers 150 to 200 programs each year for which each of its departments is responsible. They focus on practice skills development for which Virginians do not necessarily obtain credit and there is a first-year orientation program, and ongoing training in business development, communication skills, work styles, transactional writing, risk management, leadership and management skills, writing to clients, negotiations skills, delegation and work allocation, and accounting and finance. The firm sponsors retreats for junior and mid-level associates. It has a program for advanced legal editing given by an outside consultant. The firm also focuses on work-life balance and management of stress, as well as pro bono and community service. All new associates at McGuireWoods are assigned a pro bono matter, and encouraged to continue such work. The firm gives credit for that work to recognize its importance, and so that young lawyers are not penalized in the world of maximization of the billable hour. Young lawyers become involved in new practice areas and early responsibility, and obtain a clear sense of the need to

manage a client's expectations, and have direct client interaction.

The firm has a built-in mentoring system where every attorney is assigned a supervising partner who is responsible for helping with the necessary tools to develop practice, learn areas of practice, and meet other lawyers. The program is established in the first two years of a lawyer's career and the key to its success is that it is affirmatively encouraged and monitored in order to measure its effectiveness. People are tasked with the management of these programs, and the firm has a director in charge of professional development and attorney training, and managers who focus on professional development and the resources available. As lawyers advance there is additional training on skills development in areas such as the giving and receiving of effective feedback, leadership development, project management, and techniques of successful mentoring.

Discussion and Suggestions

Sharon D. Nelson offered that one group not heard from was the law student. She said that students with whom she has spoken are discouraged and even angry about their legal education, and she noted that there are about fourteen suits against law schools alleging deceptive promises. She criticized what she understood to be occurring with post-graduation employment numbers, to the effect that some schools are reporting higher employment numbers than they achieved, and that there are schools that have hired their own graduates to increase their numbers. Dean Paul Mahoney said that at UVA there is a fellowship program for students that go into governmental or nonprofit organizations. UVA recognizes that it can dramatically improve the chance of a student obtaining a permanent position if he or she gets a subsidized position, so the law school funds a full year of work. It has experienced a tremendous rate of success in obtaining permanent jobs for participants.

There were several suggestions for possible changes to CLE rules to permit more nontraditional courses in practice management and professionalism. Justice Lemons noted that some states provide CLE credit for mentors and their protégés as an inducement for participation in such programs.

Chief Justice Cynthia D. Kinser observed that there had been insufficient discussion of how to overcome Virginia's geographical barriers to CLE. A lawyer from Lee County must go to Roanoke for programs, and it may take two days. The conclave should address how to bring lifelong career training to the lawyers in areas where they represent and serve about seventy percent of Virginians. She said that the bar must find better ways to train lawyers from Lee County to the Eastern Shore. It is not sufficient to talk only about the substantive elements of offerings, but also about how to make them convenient and accessible. Thomas Strassburg, the executive director of Virginia CLE, reported that they now have more than 200 substantive programs online. While that may not be an ideal means of legal education, the presentations are very good. There are also live, interactive webcasts. The CLE board is aware that live interactivity is important, so there is the four-hour requirement. But the interactive webcasts do provide additional opportunities for rural areas and are available at any computer. Lee Livingston, former chairman of the MCLE board, decried the demise of live CLEs, and hoped that it remained possible to preserve a space where people come together to study, so that the bar could lean against the atomization of our culture. Mr. Harless said that it was the charge of our several state organizations to ensure that the opportunities the chief justice referred to are available not only electronically but live. He said that there had been a time when one could attend a live program in Abingdon, but no longer.

Concern was expressed that the student with substantial debt should not have to pay for continuing legal education. Yet another supported the concept of a phased admission process and suggested that lawyers might obtain a provisional certification, for one or two years under supervision of a licensed attorney, and then complete a final exam before independent practice.

In closing, Professor Balnave said that when he is teaching clinical courses his principal focus is not so much on technical skills, but rather on evidence of judgment and how decisions are made.