

### Educating Lawyers in Virginia in the 21st Century

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Richmond

Chief Justice Cynthia D. Kinser stated at the recent conclave on legal education that:

“By contributing our respective insights and experiences, together we can ensure that the legal profession in Virginia, through education, is always equipped with the tools necessary to ensure that every person who seeks legal representation in this commonwealth receives quality representation.

“We together share a responsibility for the education of attorneys. Together we are more knowledgeable and skilled in how to educate attorneys than we would be separately. And together, we can improve the legal profession that serves all the citizens of this commonwealth.”

It is the responsibility of all members of the bar to improve the legal profession and to ensure that Virginia lawyers are competent and ethical, and serve the public.

I have practiced law in Virginia, New York and New Jersey, for more than fifty years and have been admitted pro hac vice in more jurisdictions than I recall. I have worked as a staff attorney for a federal agency, as an assistant United States attorney, as a senior attorney for one of the nation's major corporations, as an attorney with a small law firm, and as a single practitioner. I have practiced nearly every type of law from antitrust to workers compensation. I have briefed and argued appeals in many federal and state appellate courts throughout the nation, and tried many cases in federal and state courts in Virginia and elsewhere. I also have two sons who graduated from Virginia law schools in the not too distant past, so I believe I am aware how law is currently being imparted to our prospective

lawyers. I, therefore, feel qualified to add my thoughts to the dialogue on educating lawyers in Virginia.

Early this past spring, I ran into a neighbor at the supermarket. He told me that his daughter was planning to get married to an outstanding young man who was graduating from law school, but that he was very worried for his daughter. He said the young man owed more than \$150,000, and had no job offer. I am aware that the predicament of that young man is typical for recent graduates, rather than the exception. The cost of the bar examination, including the cram course, living expenses, bar exam fees and transportation to Roanoke would be in excess of another \$7,000.

The bar needs to re-evaluate how we are developing lawyers, and at what cost, and to consider how we can do better. The profession is governed by the American Bar Association, the Virginia legislature and the Supreme Court of Virginia. Therefore, we need to carefully examine the changes that can be made within the requirements of those regulatory organizations to better and more efficiently develop lawyers at substantially less cost and to serve the public need.

I have questioned whether the bar examination is essential to producing competent attorneys. Some states do not require that graduates of their state-approved law schools sit for a bar examination. If it were eliminated in Virginia there would be an immediate saving of at least \$7,000 for each applicant.

Only about two-thirds to perhaps three-fourths of the students pass the July exam. So a minimum of 25 percent of the deeply indebted students are rejected by our bar examiners each July. Only about half of the next February applicants pass. Many ethically qualified law school graduates, who have invested thousands of dollars and are certified by our law schools as competent, are never admitted.

Our bar examiners, in good faith, believe they are protecting the public. But I can say without equivocation that

nothing I crammed for and was tested on in any bar examination was significant to me or any clients in all of the years I have practiced. I have never heard a lawyer say otherwise.

The Virginia State Bar should mandate that law schools develop entry-level, ready-to-practice lawyers, based on standards set by the ABA and the state bar. The bar examiners should, of course, certify candidates to the Supreme Court for admission to the bar. This includes supervising the multi-state professional responsibility exam and carefully examining the applicants' character. The law schools should be responsible for ensuring the competency of lawyers, not the bar examiners.

The bar examiners and many members of the profession honestly feel that it is the role of the bar exam to protect the public. I do not agree and do not think the bar exam is capable of fulfilling that responsibility. It is impossible to test on the many areas that would be necessary to begin to meet this broad objective. Cramming for the test — using the profiteers that thrive on our hapless applicants — is the stressful unpleasant task of every law school graduate. Twenty-five percent will fail. We can do better. Let's get rid of the bar exam.

Law schools and the state bar should assure that all law graduates understand law office management and the sanctity of trust accounts, and how they are managed. It is also essential that graduates have training in client development and the economics of legal practice. Public service should be emphasized throughout law school in every course. I do not feel that a course load of fifteen hours per week is sufficient to cover all needed subjects. I realize the tremendous amount of reading required under the Socratic Method, and believe that law schools are committed to this type of teaching for the near future. For that reason, I would add required interactive courses. Student advance preparation would be required for the courses. There would be no examinations. They would

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be led by volunteer judges and professionals, and would cover such subjects as the federal and state court systems, the jury system, ethics, public service, pro bono obligations, office management, client development, trust management, civil procedure, legislation and regulation, and financial instruments.

In addition to the required interactive classes, elective courses would still be offered on many of these subjects. However, all law students would be required to take the basic interactive classes. I feel the state bar should work with the law schools to develop and implement this effort.

The third year should consist entirely of clinical training. I think that what is now the third-year practice certificate should be granted at the end of the first year. Hopefully, the Supreme Court would agree. I believe that 150 hours of pro bono or authorized public service should be included in the third year, and required for admission to the bar of all law graduates.

Five years ago, the Carnegie Foundation issued its report on educating lawyers.<sup>1</sup> The study emphasized the need for reforming law school curriculums to increase training in the areas of ethics and professionalism and to develop the responsibility for public service. The study quoted the American Bar Association MacCrate report of the mid-1990s, which reads:

Providing additional classroom coverage of professional issues will not be an easy task. Law school curriculum reform is a tedious and often frustrating task and seems to work best when modest changes are made at the margin by adding one or two additional courses. If the proponents of the need for increased law school training in ethics and professionalism are right, however, an effort equivalent to that which led to the increase in clinical legal education in the 1970s and the increased emphasis on skills train-

ing in the 1990s is required. The aim of this effort should be to elevate the twin concepts of the practice of law as a public service calling and the development of the capacity for reflective moral judgment to the same level as legal knowledge and traditional legal skills. This is indeed an ambitious goal. (American Bar Association, 1996).

In my view, the MacCrate report correctly notes that law school curriculum reform is slow and modest. In fact, the basic curriculum is pretty much the same as when I attended law school more than a half century ago. In my judgment, there is a critical need for change. The Washington and Lee School of Law model is an excellent step forward. Professionalism can best be developed in an environment where the student is working or interning as a professional during the third year of law school, as Washington and Lee now requires.

The Carnegie report recommends an integrative strategy for legal education wherein law schools teach lawyering skills and professionalism. I agree. Law schools can accomplish these goals bringing together experienced practitioners, judges and regulators with their faculty, and can develop integrated curriculums that include all aspect of professionalism. The University of Richmond's Downtown Center is an outstanding model for developing professionalism. However, the program is voluntary.

The Washington and Lee third-year model, under the leadership of professors A. Benjamin Spencer and Mary Z. Natkin, is a visionary and much needed program. The University of Richmond model, developed and implemented by Tara L. Casey, is also outstanding and should be required for all University of Richmond students.

I am mindful of the issue of ratings and the power of the *US News and World Reports*, as well as costs. It is my view that changes can be made within the constraints required by the ABA and the *US News and World Reports* ratings

competition to meet the challenges, and at affordable costs. Some of the thoughts I have expressed above, such as requiring non-credit courses and seminars and more efficient use of the third year, would address many of the concerns.

Writing skills are essential. All law graduates should be required to complete and pass a course in legal writing. In this computer age, more and more young people are absolutely unable to communicate in writing, and certainly unable to prepare a lengthy persuasive document. Law students should be able to write before they reach law school, but unfortunately, that is not the case in too many situations. A mandatory legal writing course would solve this concern.

With all of this in mind, I offer the following suggestions for the bar examiners.

1. Assume that all applicants will pass the bar examination the first (and only) time.
2. Make available to all applicants on the Internet the following:
  - A. Specifically what the bar exam will cover (not the questions, but the substance in enough detail to permit the applicants to study and pass).
  - B. Detailed text materials covering all areas included in the examination, at minimum expense.
3. Grade the applicants in a manner that will enable all who study to pass.
4. In the event that there are some applicants who fail, the bar examiners should provide counseling and re-examine those individuals on the subjects they failed. If an applicant satisfactorily passes 24 or 25 of the required 27 subjects, and meets the bar examiners' standards for "protecting the public" in those areas, why should the applicant be re-examined on the subjects he or she has passed?

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# Letter to the Editor

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Ultimately, there should be a 100 percent pass rate for all who graduate from an approved law school. Since the bar examiners believe their role is to protect the public, they should at a minimum accept a dual mission of protecting the public and assisting law graduates to become lawyers.

We must do a better job in developing young lawyers at a substantially lower cost. It is the responsibility of all of us, as the chief justice stated, to improve the legal system that serves Virginia. I have tried to present some ideas that I do not think will impose on the law schools' faculty concerns, or competition for prestige.

- 1 William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee Shulman, "Educating Lawyers, Preparation for the Profession of Law." The Carnegie Foundation for the Advancement of Teaching, John Wiley and Sons Inc. 2007.

## Letters

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