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THE INTERREGNUM: HOW BEST TO FILL IT

Most law school graduates want more than a diploma. They also want to be licensed to practice law. When law graduates receive their J.D.s, they usually haven't completed the licensing rites for admission to the bar. It follows that an "interregnum" exists between finishing law school and cutting one's way into the bar. During this interim, the authorities holding the final keys to bar membership command the riveted attention of each year's crop of freshly minted J.D.'s.

From the perspective of legal education, how do we best fill the interregnum? What should be done with the riveted attention of freshly minted J.D.'s?

The interregnum is now overrun with expensive review courses designed to restuff blackletter rules into jaded minds and to "game" the impending exams. Then come lengthy written tests that reward effective restuffing and prescient gaming. The present system does call those who really don't have a clue about the law, truly lack analytical ability, or can barely read and write. It also captures those who have severe difficulty taking standardized, timed tests, no matter what their underlying legal ability.

There is, of course, some merit for all would-be lawyers in a final review of blackletter rules. It is also vital to catch people who blatantly lack the capacity to practice. Equally important, the inquiry into character and fitness that accompanies the bar exam is more essential than ever. The body politic recoils from the sheer number of lawyers now in it, growing annually. Our fellow citizens, while often devoted to the lawyers they know, have come relentlessly to denigrate lawyers as a species, usually for assumed character flaws. The bar must take the time and spend the emotional energy to ensure the integrity and stability of each fledgling lawyer approved for service in this milieu. Meaningful scrutiny of character and fitness, enforced by actually excluding those found wanting, is far harder in the real world than it sounds. But that is a subject for another day.

Back to the question at hand, how best to fill the interregnum between law school and bar admission. By this point, it comes as no surprise that my views are radical. Let's begin with a few sweeping assertions.

1. What goes on now as people get ready for bar exams is largely a waste of precious educational time (and of riveted attention). The basic structure, concepts, jargon and blackletter rules of law are engaged in law school. Taking another tour through them during the interregnum lacks sufficient value to justify the time and money spent doing it. Rather, we should rely on graduation from an accredited law school to assuage our concern that new lawyers have a basic sense of the law. It doesn't matter if different law schools provide somewhat different senses of the law. Any accredited school will teach the "core," and there is no conceivable way in 3 years (much less during a bar review cram course) to cover all the laws, regs and cases that matter in today's vast legal order.

2. Indeed, in today's rapidly changing, extremely complicated legal environment, no one in their right mind would try to practice law relying on rules remembered from either law school or a bar exam review course. Often young lawyers must learn "on the job" virtually the entire substance of the small corner of the law they find themselves practicing. Even young lawyers dealing with old line, simple sorts of law still should have stamped on their beings the need to reconfirm everything by research and by recourse to colleagues more experienced. By no stretch of the imagination does law school, much less review for the bar exam, hand anyone the precise "substantive" tools needed to practice.

3. Law schools do, however, make a real run at equipping would-be lawyers with other sorts of tools, "process" tools — the capacity to do legal research, the ability to think and write systematically and rigorously ("like a lawyer"), the basics of advocacy and persuasion, the ability to prepare legal documents (memos and briefs especially), and a sophisticated sense of how our legal system works. These "process" tools — unlike detailed knowledge of the bits and pieces of substantive law studied in school — must remain with lawyers throughout their careers, honed by experience. Otherwise the lawyer will be a sorry practitioner, or worse. Knowledge of particular substantive law comes and goes as needed, but the capacity to do research, to think and write, to persuade, to prepare the papers lawyers prepare, and to understand the legal system — these tools must endure, growing ever sharper over the years. Do most bar exams test to see if would-be lawyers have these tools? Precious little! Bar exam review courses, crafted in the image of the tests they service, don't deal with these tools either. So the interregnum as currently structured focuses on transient matters, largely ignoring what really counts to a lawyer's ability to help clients and society nor bar review courses do much with "threshold practicalities," even though most new lawyers confront the same

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the film, Carmen Jones held in Richmond in 1992, and a performance of the play, A Small World, held in Northern Virginia in 1994.

Most recently, VABWA has begun another yearly project: the 'Take Our Daughters to Work Day,' for which the organization received a Certificate of Merit from the Virginia State Bar's Conference of Local Bar Associations at the state bar's annual meeting in June 1994. 'Take Our Daughters to Work' was a concept originated by the Ms. Foundation for Women to focus attention on girls in their adolescent years when studies indicate many experience lower expectations for their future and lower self esteem than their male counterparts. By observing successful women at the workplace, girls are able to realize the range of career possibilities and life choices available to them.

For this project, the members of VABWA have not limited the word "daughters" to its literal interpretation. Over the past three years they have taken girls to work from Summer Hill Elementary School in Richmond, the J.E.B. Stuart High School in Falls Church; Mosby Middle School in Richmond; and the Calvary Community Church Elegant Ladies Ministry in Hampton. A typical day includes a morning spent at the workplace, which can vary from large and small law firms to state and federal judicial chambers, and is followed by an afternoon of mock trials. Members and girls also attend a luncheon which, says Carrington, "is in a place where the girls would normally have little opportunity to visit, such as an executive dining room of a bank." The success of this project is evident by the large number of VABWA members who participate and the girls themselves, who actively take part in the mock trials and at workplace activities.

Like other specialty bars, VABWA also endorses judicial candidates, features prominent guest speakers, and above all, provides a sense of community among its members. "VABWA membership offers comaraderie, mentoring for the younger women in the group, and a chance to communicate about the similar experiences we share based on race and sex. Add to this our many worthwhile community projects," says Carrington, "and you have a small, but first rate bar association".

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Setting the Record Straight...

The December 1995 issue of the Virginia Lawyer, featured an article on the Old Dominion Bar Association. The article stated that Judge James R. Spencer was the first African American federal court appointment from Virginia.

In response to the article we received a letter stating that the first court appointment was Robert H. Cooley, III, who was appointed federal magistrate to the Eastern District of Virginia in 1976. From 1976 to 1981, Mr. Cooley presided over trials and other federal matters in Richmond, Fort Lee, Alexandria and Hampton Roads.

Although Judge Spencer holds the distinction of being the first Black District Judge in Virginia, Mr. Cooley holds the distinction of being the first African American federal court appointment.

We are pleased to set the record straight.

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issues and hurdles that others before them have confronted. What would help a new lawyer through the first six months on the job if he or she is a fledgling judicial clerk? A starting associate in a small, middle size or big law firm? A new member of a corporate or governmental law department? Or a single practitioner whose shingle just went up? What helps new lawyers swim not sink, when they're thrown into the water? Now obviously, significant differences exist not just among these various sorts of jobs, but also within the realms of judicial clerkships, big firms or whatever. But there are also common issues and hurdles confronted by just about everyone across all types of jobs, and within particular sorts of jobs. These common aspects could be engaged in a focused, first class, brief fashion during the interregnum. Everyone would benefit, including the first employers of the fledglings.

We have the riveted attention each year of a group of freshly minted J.D.'s who are going to spend significant time and money, after law school, to cut their way finally into the bar. Why not turn this time and money to a truly superior review of the "process" tools just sketched? Then why not test to see if each would-be lawyer has an effective grasp of these tools? If not, no license! New lawyers should not be unleashed on the body politic without these tools, no matter how many blackletter rules they can temporarily regurgitate on command.

Practical means already exist to test "process" knowledge. They involve the "performance testing" or "PT" approach, described in Tom Guernsey's article in this month's issue. In short, the test taker is given a practical legal problem to solve, along with research materials needed to reach a solution (plus some extraneous materials). The test taker must draft the appropriate legal documents, for instance, a memorandum to a client. The "PT" approach has been used successfully to supplement several states' bar exams, including Virginia's. It can be done. Admittedly, as with the investigation of character and fitness, the way would not be easy, nor the burden light, to move heavily toward the testing of "process" knowledge. A lot of startup effort would be required. But the educational rewards would more than justify the effort.

An easy subtheme of a new emphasis on "process" would be an unprecedented attempt to help would-be lawyers with threshold practicalities. This too would not be easy. For instance, precisely which practicalities should be taught? How would we ensure that the teaching was meaty and organized, not just anecdotal? Again, the challenge could be met.

It is well to end with confession. People who haven't struggled with the realities of particular situations can be very free with their diagnoses and remedies. I haven't struggled with the realities of the Virginia bar exam. There are certainly considerations unmentioned here bearing directly on the desirability and feasibility of what's been suggested. I write with the happy abandon of one largely unburdened by the facts.

It is also important to mention my confidence in the people now charged with Virginia's bar exam. Their performance, year in and year out, is of the highest caliber, achieved at real personal sacrifice to those involved. My interregnum thoughts beat an altogether different drum. Virginia's system isn't broken. But we might to be able to make it even better by a change in focus. We might be able to increase dramatically the educational firepower of the interregnum. ■