AN INTRODUCTION TO

LAW

LAW

STUDY

AND

LAWYER'S

ROLE
Welcome to the world of law students and lawyers. We assume that you are either a law student or are interested in law and legal education. It is our task to introduce you to law study and its relationship to law practice.

Nearly all law schools suffer from a form of institutional “schizophrenia.” They have as their primary goals both the traditional educational and research functions of the university and the need to prepare law students in three short years to actually perform as functioning lawyers. This is the dichotomy between education and training. In all candor, we confess that these goals can be contradictory. Despite their importance in practice, some forms of professional preparation can be so devoid of intellectual content that it would be inappropriate to include them in university education. This is not true, we believe, however, of most of the skills necessary for the competent practice of law.

Legal research and writing and appellate practice have long been recognized as valid and necessary topics of academic study as well as fundamental skills needed by practicing lawyers. We believe that other skills, including interviewing, negotiating, counseling, alternative dispute resolution, and trial practice are of similar importance. This belief is reflected throughout the pages that follow along with our deep conviction that every component of practice must be ethical and that every component of law study requires consideration of relevant ethical issues. To the degree that law study takes account of the realities of actual law practice, we believe that it is enriched just as preparation for law practice ought not to take place without careful consideration of not just legal rules but also their history and academic rationale. Although our perspective is not shared by all law faculty, as some prefer to leave most “skills” education for post law school activities, our view shapes the materials that follow and should be kept in mind while perusing them.

2. Knowing where to file various legal documents is essential, for example, but normally inappropriate for law school instruction.
An Introduction to Law

With only a few exceptions lawyers begin as law students and are shaped by the content and nature of legal education. Based on the introductory week of the Legal Skills Program of William and Mary's Marshall-Wythe School of Law, this book has been written to mirror to the degree possible a thorough one week introduction to the study of law. It should supply you with the same information and assist you in developing the same skills that law students should learn and master in such a program.

Let us then suppose that this is your first day in law school. You are seated in a large lecture room or auditorium with the rest of your new colleagues. You are understandably somewhat anxious. The movies you have seen and the books that you have read have made you uneasy. Law school must be a cutthroat demanding environment. At the same time, you may feel unsure of your motivation in becoming a lawyer. Like others, you no doubt have many reasons for your decision to come to school. Your idealistic reasons may, however, seem foolish as you look around and eavesdrop on some of the remarks made by your peers.

The President of the university and the Dean have both welcomed you. You have laughed at the obligatory jokes, and wondered what the rest of the day will bring. Next is the keynote speaker. Justice John Charles Thomas of the Virginia Supreme Court rises to address you. With a strong, forceful voice that carries with it absolute conviction, he begins:

Our nation is built on the rule of law. Long ago as a people, we rejected the authority of kings, the whims of Princes, the iron grip of dictators, and concluded that the best way to provide for the development of full human potential was to make law supreme. Thus, law is the lifeblood of America. You are taking the first steps to becoming servants of the law. It will not be easy. Yet it is of utmost importance.

When our Constitution was written no one had any idea that courts and lawyers would become so much involved in running the nation. Article I of the Constitution, which concerns the legislative branch, is very long and involved setting forth the ages of office holders and a great many other details about that branch of government. Article II, which concerns

3. Some states like Virginia permit individuals to "read law," to effectively apprentice themselves to practicing lawyers in lieu of law school. Like law students, these individuals must also take the bar examination.

4. The remarks that follow are an edited version of the keynote address given by the Honorable John Charles Thomas at the Marshall-Wythe School of Law, College of William & Mary in Virginia on August 14, 1989, © 1989 by John Charles Thomas. All rights reserved. This material is reproduced with the permission of the author. No further reproduction may be made of it, in whole or in part, except by permission of the author.

The Beginnings

the executive branch, is a little less detailed but explicit enough. Article III, which concerns the judiciary, brings up the rear; it appears to have been but an afterthought. It is written as if the drafters were almost finished writing about the branches of government when someone said, "oh by the way" the judicial power of the United States shall be vested in a Supreme Court and such other inferior courts as the Congress may from time to time establish. Article III of the Constitution contains no age requirement, no geographical requirement, no educational requirement, no citizenship requirement, it contains no detail at all. Nothing.

From the structure of the Constitution and the key role of lack of representative government as a catalyst to the revolution, it is plain that the preeminent branch of government was supposed to be the Congress. There the people were to bring their problems; Congress was to debate the great issues; then Congress was supposed to pass legislation which remedied the problems. But things did not evolve that way.

The Supreme Court ruled that it had the power to say whether a law complied with the Constitution and from that day forward — first slowly, now at a rapid pace — courts and lawyers became ever more involved in resolving the problems of the nation. If you listen closely, you will find that our citizens even talk in the language of law and of the courtroom. They forever say that they have a "right" to do something or have something:

- women's rights
- civil rights
- fetal rights
- environment rights
- minority rights
- seniority rights
- victims rights

To talk of rights is to talk courtroom talk because courts have told the citizens that if the citizens possess a right then the courts are duty-bound to fashion a remedy because the violation of a right for which there is no remedy means that the right is meaningless.

Our citizens found out, probably in the late 40's and early 50's, that the place to go for the resolution of difficult issues was court. They found out that they got no "run around" in court; no tabling the matter, no study commissions, no committee deadlocks that resulted in complete inaction. The citizens found that at court, when you pay your money' and say the right things, you will get an answer.

5. The financial implications of our current system for the delivery of legal services is
That's where you come in, learning how you say the right thing, learning to make the legal system respond to the legitimate needs of clients. You will learn many things while you are here. You will learn the intricacies of the basic legal subjects and others which are esoteric. But the most important thing you must bring to the law is something we cannot teach you: that is a sense of honor, of justice, of the right. These are things which we hope you have developed at the knees of your parents and grandparents, in the company of members of your faith, as you faced the challenges of life. If you have no moral compass, if you have come to this place in an effort to find ways to twist the law to improper purposes, we do not want you among us.

A lawyer is to our society as a doctor is to your physical body. Lawyers hold the lifeblood of America in their hands, molding and shaping things that can affect the whole nation. Even a little case, in a little town, in an out-of-the-way court can go on to establish great legal precedent. We want the very best among us to be servants of the law. To engage in this kind of work you must have a moral compass set on finding the right and rejecting the wrong. You must know where the line is and you must not cross it.

If you are here to make money, that goal will not sustain you. What you are about to undertake is too challenging to be supported by such a slender reed. You must have come to learn; you must take studying seriously. You must not seek to advance yourself by denigrating others. You must seek excellence for yourself and demand it in others.

Learning the law is an all consuming process; it is not for the faint hearted. The language of the law will be new; the teaching approach will be new; the volume of work will exceed your wildest projections. Learning the law is meant to be tough because it is meant to be a weeding out process. You are being evaluated to determine whether you will be allowed to participate in the critical cases of a problem plagued society.

Though it will be tough, I have a secret for you, I know that if you truly learn how to swim you will not care whether the water is 10 feet deep or 10,000 feet deep. You will not care because you will be swimming on the top. I know that if you truly learn the law you will not fear competition nor complex problems.

I fully expect that when I see you later as lawyers you will be practicing in a way which adds lustre to this institution; you will be at the forefront; you will rise to the top. Good Luck.

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a matter of crucial importance and merits your ongoing consideration. As Justice Thomas recognizes, even court appearances entail expense. Legal rights are of little importance to those who cannot afford to claim them. Society may choose to make aspects of legal appearance or representation free for individuals in some or all cases. Cost to someone, however, is unavoidable, and who must pay the bill and when is a difficult policy decision.