

The hypothesis experienced attorneys can be tested on a subjective entry level bar examination to determine whether they are qualified to practice is fundamentally flawed

Jeffrey Russell Remarks Prepared For The

ABA Commission On Multi-Jurisdictional Practice

Ladies and gentlemen of the Commission, thank you for allowing me the opportunity to address this body on this important issue. I will be focusing my remarks primarily on the situation as it presently exists here in California. However, what I wish to say would certainly apply in other states as well.

My name is Jeffrey Russell and I live in San Jose, California. I was born and grew up in Ohio. I graduated from college there and, after service in the Air Force, returned to Ohio to attend law school.

After graduation in 1974, I took and passed the Ohio Bar Examination. My first legal job was as a law clerk to a state trial court judge. A year later, I joined a small firm engaged primarily in civil litigation. After three years, I left to become an Assistant United States Attorney in Cleveland. Thereafter, as a federal criminal prosecutor with what might be considered the largest law firm in the country—the United States Department of Justice—I was transferred to posts in Miami, Los Angeles and, eventually, Department Headquarters in Washington, D.C.

While in Washington, among other things, I was assigned to assist smaller United States Attorney's offices that sometimes lacked sufficient staff to handle large-scale prosecutions. As a result, I tried cases in New Hampshire and Nevada. I also provided prosecution assistance in Baltimore and Philadelphia.

In late 1987, I was sent to San Francisco to initiate a Special Project focusing on money laundering by drug traffickers. The project was later merged with the Department's previously established Organized Crime and Racketeering Strike Force. Ultimately, I became the Organized Crime prosecutor in the San Jose branch office.

In 1995, after twenty (20) years of total federal service (including my pre-law school military service), I exercised the option of taking an "early" retirement.

In the course of my career with the Department of Justice, I conducted at least forty-five (45) trials in seven (7) different United States District Courts. Additionally, I wrote approximately twenty (20) appellate briefs and argued cases in the First, Sixth, Ninth and Eleventh Circuit Courts of Appeal.

In summary, I think it is fair to say that I have experienced more of a "national practice" than the vast majority of attorneys.

Since my "retirement" five years ago, in addition to spending more time with my young daughters than I otherwise would have been able to, I have been working part-time (while the kids are in school) doing "contract" work for various criminal defense lawyers in Northern California.

In that capacity, I have written countless pre-trial motions, appellate briefs and writs filed by these busy lawyers in both federal and state courts. I have also written and personally argued motions and appeals in the federal courts.

In spite of my experience, I am denied the opportunity to practice directly, in my own name, in the California state courts because I am not admitted here. It seems to me safe to suggest that I am much more qualified to practice my specialty—criminal law—than someone who just completed law school and passed the California Bar exam.

Although I have just related my personal story, I would also like to take a few more minutes to simply mention some reasons why I believe multi-jurisdictional practice and universal reciprocity should be recommended by this Commission.

It is my opinion that the entire hypothesis that one can test experienced attorneys on a subjective entry level bar examination to determine whether they are qualified to practice is fundamentally flawed. Many cases turn as much on facts as on the law. Thus experience with developing facts is often a product of just that—experience. For a professional licensing test to be valid, it has to measure the skills necessary to practice that profession. Therefore, to use my case as an example, the fact that I was employed as a federal prosecutor for many years is ample demonstration that I am qualified to practice law. It is simply illogical to assume that an attorney who has successfully practiced law in one jurisdiction somehow becomes incompetent or develops amnesia on crossing a state line. These are the reasons why I believe the vast majority of jurisdictions have adopted reciprocity provisions for experienced attorneys, and this Commission should endorse reciprocal State licensing for experienced attorneys.

Thirty-four jurisdictions now provide some form of reciprocity—with no apparent adverse effects on their legal system.

As we enter the 21st Century, it is time to reevaluate the situation, taking into consideration the tremendous advances in technology, communications and mobility that have occurred over the past half-century.

Thank you.