

Dear Professor Malawer:

I recently read the feature on global trade law in the December 2007 *Virginia Lawyer* and was excited to learn about the evolving legal dimensions of global commerce.

I found your article on U.S.-China trade litigation to be especially stimulating and relevant. The violation of the National Treatment Principal alleged by the United States against China in *VAT & Integrated Circuits* reminded me of an international arbitration hearing I participated in before the International Centre for the Settlement of Investment Disputes in December 2005. My research as a legal assistant in this case focused on our firm's claim that the respondent violated article 1102 of the North American Free Trade Agreement with respect to its treatment of our client's services. As you may know, article 1102 obliges the NAFTA parties to treat investors from other NAFTA parties as favorably as domestic investors.

The underlying dynamics of U.S.-China trade are rarely as simple as portrayed in the mainstream media. Your article, while focusing on the legal scope of international trade between the two countries, offers a geopolitical context for a matter of great importance to American interests in the twenty-first century. Clearly, rules and regulations of the global commercial arena will play a critical part in forming attitudes that the United States and China hold toward one another for years to come.

Garrett H. Hooe
Richmond

Dear Editor,

In the February 2008 edition of *Virginia Lawyer* magazine, VSB President Howard W. Martin Jr. expresses a well-meaning and sincere thank you to those lawyers throughout the state who "volunteer their time and energy for bar and law-related activities each year." His pyramid diagram

illustrating the Virginia State Bar volunteer system is educational and informative. However, Mr. Martin has neglected to recognize those nonattorney volunteers who act as lay members on VSB committees donating their time and energy. Lay volunteers are neither mentioned in the body of the article nor represented in the pyramid.

Lay volunteers on VSB committees have the opportunity to provide an important, objective perspective during committee discussions and balance to committee decision making. It also provides the lay volunteer with a very positive insight into the legal profession, the commitment that our Virginia lawyers have towards their clients, and the good work being done by the Virginia State Bar. These have been my experiences during my tenure on the Standing Committee for Lawyer Advertising and Solicitation.

I understand and respect the fact that the primary audience for the magazine is attorneys. However, the membership should be aware of the role that lay volunteers play in the Virginia State Bar.

David R. Selig
Chief Executive Officer, Community Care Network of Virginia Inc.

Mr. Martin's response:

Mr. Selig is absolutely correct about the value of lay volunteers to our system of governance. As my February column mentioned, fifty-nine nonlawyers serve in the bar's disciplinary system alone. Many more serve as the voice of the public on the other committees that carry out the bar's mission. Add the monetary value of the nonlawyers' time to the pyramid, and the estimated yearly contribution of all volunteers is substantially higher than what was shown on the diagram.

Be assured, Mr. Selig, that my gratitude extends to you and to all lay VSB volunteers for your diligent service. The bar could not do its job effectively without you.

Dear Editor:

The March 2008 *Virginia Lawyer Register* includes documentation of the suspension for five years of a (male) lawyer who stipulated to having inappropriately touched or solicited sex in lieu of a fee from six female clients. (And these are the ones who came forward.) Happily for him, a charge of solicitation for prostitution based on taped evidence had earlier been dropped and he was allowed to plead guilty to assault and battery. The five-year suspension, acquiesced in by the bar via its (male) counsel, was approved by a panel of three (male) circuit judges. There is not a word in the suspension order about mandatory mental health counseling and risk assessment prior to reinstatement. And we wonder why in the public eye lawyers are so often rated at the level of pond scum.

Victor M. Glasberg
Alexandria

Letters

Send your letter to the editor* to:
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*Letters published in *Virginia Lawyer* may be edited for length and clarity and are subject to guidelines

available at

<http://www.vsb.org/site/publications/vlawyer/>.

Random Audits of Attorney Trust Accounts

by Howard W. Martin Jr., 2007–08 VSB President



In the last three years, it has come to light that perhaps \$9.5 million of clients' money has been misappropriated by three licensed attorneys in Virginia. I, like many other attorneys and laypersons in Virginia, find this fact very disturbing.

Every person who handles other people's money has the opportunity to misuse or misappropriate that money. This applies to bankers, investment advisers, estate executors and, yes, even to lawyers, who often hold clients' money in their trust accounts (as required by disciplinary rules).

The law is an honored profession. As Senior Lawyers Conference president George W. Shanks reminded us in the February *Virginia Lawyer*, Alexis de Tocqueville, a lawyer by training who toured America in the 1830s, described lawyers' importance to communities, government, institutions, and the order that preserved democracy in local government. Lawyers continue that leadership today in many organizations, and they have the added responsibility of protecting clients and the public from wrongdoing by fellow attorneys.

When it comes to handling other people's money, lawyers are like Ivory Soap's famous motto, "99 and $\frac{4}{100}$ percent pure." Actually, Virginia lawyers are even better than that. In the last ten years, according to the recollections of veterans in the VSB Professional Regulation Department, thirty-six lawyers have been sanctioned for mis-

appropriating clients' money. Out of our twenty-seven thousand active lawyer members, that puts our "percent of pureness" at 99.87 percent. That is a pretty strong indicator of honesty in the legal profession in Virginia.

But I think it is high time that we addressed the 0.13 percent of lawyers who have not been honest.

In 2005 a Virginia Beach lawyer was revoked for misusing clients' money. News accounts reported that between \$2 million and \$3 million in claims have been filed against him by legal and investment clients. He processed at least some of the mishandled funds through his attorney trust accounts, which at one time were overdrawn by at least \$2.5 million. Victims are obtaining judgments against the former lawyer, but they remain uncompensated by him.

Also in 2005, a Collinsville lawyer was revoked after he took clients' money from real estate and investment transactions. A 2005 preliminary report by the receiver placed total claims from clients, investors, and title insurance companies at more than \$3 million. This ex-lawyer is now in prison.

In 2007, yet another lawyer, in Woodbridge, was found to have settled more than 250 personal injury cases to the tune of more than \$3.4 million, according to the receiver's latest tally. The lawyer never told most of the clients that their cases had been

settled. He endorsed the settlement checks and converted the money to his own uses. He has been disbarred and is now in jail.

Trust accounts are the places where lawyers are supposed to keep other people's money. The trust accounts are apt targets for a dishonest person having signatory authority. (Bank robber Willie "The Actor" Sutton said, when asked why he robbed banks, "Because, that's where the money is.") I would submit that clues to the major attorney defalcations described above could have been found in the trust account records of the dishonest attorneys.

There is guidance for how we might detect thievery earlier. Since 1984, the American Bar Association has had a Standing Committee on Client Protection. The committee created the *ABA Model Rule on Financial Recordkeeping*, which delineates the types of financial records that must be maintained by a lawyer. The *ABA Model Rules for Trust Account Overdraft Notification* provide a framework for creating an early warning system to alert disciplinary agencies that a lawyer may be handling client funds in an inappropriate manner. The *ABA Model Rule for Random Audit of Lawyer Trust Accounts* serves as a deterrent to misconduct by allowing lawyer disciplinary agencies to conduct random audits of lawyer trust accounts without requiring a basis to believe that

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Stretching Your Dues Dollar

by Karen A. Gould



The purpose of this column is to advise Virginia State Bar members about the status of the bar's finances: the budget for the next fiscal year, the projection for the future, and the status of a possible bar dues increase.

Historically, the budget has been based on a dues revenue cycle. Dues were set to generate sufficient funds to create a reserve that subsidizes the bar's operations, usually for seven to eight years. A large reserve is created on the front end of the dues cycle, and then is spent down as costs of operations increase. The current dues cycle was planned to last seven to eight years, but it will last longer. Through careful management of resources and increases in nondues revenue, the reserve created as a result of dues last being increased in 2000 will sustain the bar through 2010, based on current projections. The VSB is projected to use \$975,000 from the reserve during 2010. At the end of 2010, the reserve is projected to stand at \$740,434 in the operating account and \$300,000 in the administration and finance account, which is not available for operating expenses. That means our total reserve will be 8.35 percent of our operating expenses — well below an adequate reserve.

The VSB staff worked in January and February on budgets for their departments, committees, and conferences. I have urged the staff to do more with less, to work more efficiently, and to leverage technology to operate at less

cost to Virginia's lawyers, while still providing excellent service. We need to squeeze every penny out of the dues dollar, and we have been looking for the "coins in the couch." We are also mindful, however, of the trust placed in the bar to protect the public, regulate Virginia's lawyers, improve access to justice for all Virginians, and help attorneys be the best they can.

As I write this column in early March 2008, the proposed budget for fiscal 2008–09 has been finalized to be forwarded to the VSB Standing Committee on Budget and Finance for review. For the first time in recent memory, the proposed budget shows a slight decrease in expenses, rather than an increase. The bar's revenue is projected to be up by \$289,000. Expenses are projected in FY 2008–09 to be \$12.7 million, and revenue is projected to be \$11.9 million. We still will need to dip into the reserve to meet our operating expenses.

Note that I use the terms "projected" and "approximately." Expenses may be more and revenue may be less, or vice versa. One large unknown budget item every year is the cost of court-ordered receiverships to close out practices due to a lawyer's disability, death, dishonesty, or abandonment. We already know that the bar's budget of \$200,000 for receiverships this year is going to increase because of a large Northern Virginia practice with millions of dollars in defalcations. Receiverships are but

one element of the bar's fluctuating expenses related to its responsibility to protect the public.

The bar's expenses increase every year as a result of fixed costs such as rent, salary increases, and benefits. Despite what many perceive as a large number of new admittees every year, dues revenue increases yearly by only approximately 2.6 percent. We may very well need a dues increase in the next couple of years in order to match revenue to expenses.

Part of the challenge for the bar is to improve the services we offer to our members. The bar's website — <http://www.vsb.org> — contains a wealth of information about the many ways the bar carries out its mission. We hope to make the site even more useful by enabling lawyers to interact with the bar electronically. The ability to certify mandatory continuing legal education attendance and to allow members to update their contact information online will, we hope, be introduced this summer. A recent low-cost improvement to the website changed the color scheme to a lighter and brighter background and moved news items to the top of the home page. If you are not receiving the bar's monthly E-News, please log in to the Member's Area at <https://member.vsb.org/vsbportal/>, enter the E-Newsletter Enrollment link, and select Subscribe. If you need to

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An Overview: A Possible Mandatory Malpractice Insurance Rule

by Darrel Tillar Mason
Chair, Lawyer Malpractice Insurance Committee

The Supreme Court of Virginia and the Virginia General Assembly have requested the Virginia State Bar to examine the issue of whether a mandatory malpractice insurance rule should be imposed on lawyers in private practice in Virginia. In response, the VSB Council directed the Special Committee on Lawyer Malpractice Insurance (LMI) to study the issue and report on its findings.

The committee's first comprehensive report was presented in June 2006.¹ The report summarized the results of ongoing VSB efforts designed to promote the voluntary acquisition of malpractice insurance by Virginia lawyers. In addition, the report identified measures to strengthen the existing certification rule — measures that have been adopted in other states, such as requiring direct disclosure to clients if a lawyer is uninsured. Finally, the 2006 report outlined four possible models for expanding the VSB's efforts if the bar council concluded that current efforts were insufficient to protect the public from the mistakes of lawyers and to protect lawyers from their own mistakes.²

In October 2007, the council debated — without reaching a conclusion — the philosophical issue of whether it is appropriate for the bar to impose a mandatory malpractice insurance rule that incorporates any of the identified models. The council ultimately directed the LMI Committee to develop a specific proposal or proposals so that the council would not be debating an abstract concept. It was anticipated that having an actual proposal would help inform the debate over whether any new insurance rule should be adopted.

Consequently, the LMI Committee went back to work and developed the proposal

outlined in this article. The committee itself has taken no position on whether this proposal should be adopted. Rather, the committee has suggested that, of four identified models, an “open market” model would be most suitable in Virginia if a mandatory malpractice insurance rule were adopted. Under this model, all lawyers subject to the rule would be required to obtain malpractice insurance through the existing commercial market. This proposal would involve renaming and amending current Paragraph 18 Financial Responsibility in the Organization and Government of the VSB. The new title would be Paragraph 18 Mandatory Malpractice Insurance Rule.

Who would be subject to the rule?

If adopted, the rule would require every active member of the Virginia State Bar engaged in the private practice of law who represents clients — individuals or entities — drawn from the general public to be covered by a professional liability insurance policy written by a company authorized by state or federal law to offer such insurance in the jurisdiction in which the member practices.

The proposal is based on the premise that any mandatory malpractice insurance rule, if adopted, should apply to all active members meeting the above description who seek the privilege of holding a Virginia license, regardless of whether the member's practice is full time or part time and regardless of whether the member is located in Virginia or specifically serves Virginia clients. The rule would not apply to associate members, judicial members, disabled and retired members, emeritus members, in-house corporate counsel, or counsel employed by governmental entities. While acknowledging that some

members may allege that compliance with the rule imposes a significant hardship and may result in their inability to practice law in private practice, the LMI Committee concluded it would not be advisable to establish a protocol for obtaining a “good cause shown” waiver.

The committee is sensitive to the need to encourage, not discourage, pro bono representation. It is not the intent to mandate that a member who is not otherwise required to have insurance coverage obtain coverage in order to provide such representation. Efforts are currently under way to ensure that those who wish to offer pro bono representation have access to insurance so that their pro bono clients enjoy the same protection as paying clients.

The corporate organization of insurers may vary; they include mutual companies, risk retention groups, and surplus line carriers. The proposal's only limitation, therefore, is that members obtain insurance from a company generally allowed by law to sell malpractice insurance in the jurisdiction in which the member practices.

How much coverage would a member have to carry?

Under the proposed rule, the policy covering the member would need to provide minimum policy limits of either \$100,000 per claim with a claim expense allowance of at least \$50,000 costs outside the policy limits, or \$200,000 per claim where claims expenses are inside the policy limits. An extended reporting endorsement, or tail coverage, is insufficient to satisfy this coverage requirement.

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Opinion: Private Practitioners Should Have Malpractice Insurance

by Bruce M. Marshall

The following commentary offers the writer's reasons for supporting mandatory malpractice insurance for lawyers who represent the public. A commentary by an opponent of mandatory insurance will be published in the June/July issue of *Virginia Lawyer*.

Whether the Virginia State Bar will require attorneys in private practice who provide legal services to the public to have malpractice insurance has been an issue of debate at the VSB Council since 2005.

This question arose from two independent events. The bar received an inquiry from the Supreme Court of Virginia to examine whether the public is adequately protected when malpractice occurs. Also, a bill introduced in the House of Delegates would have required any uninsured Virginia lawyer who represents the general public to pay \$1,500 annually into a newly created client protection fund. Oversight of the fund's collection and distribution was not addressed in the bill. The bill's sponsor had a constituent with an unpaid judgment that arose from legal malpractice. This proposed bill passed through the House and was being considered by the Senate when the VSB intervened and assured the legislature that we were looking at the issue. The bill was withdrawn, but the House of Delegates then passed a resolution (on a vote of 92–6) to encourage the Supreme Court and the bar to consider some form of mandatory malpractice coverage.¹

With these events, the VSB inquiry began. The Special Committee on Lawyer Malpractice Insurance was directed to study the Court's and legislators' concerns and report its findings. I have had the

pleasure of serving on the committee. It has diligently sought to examine the issue and apprise the council of its progress. The council, at its October 19, 2007, meeting, asked the committee to develop one or more proposals "for mandating malpractice insurance for Virginia attorneys engaged in private practice drawing clients from the general public."

The council, in making this request, had not decided whether it would recommend mandatory malpractice coverage.² It asked for a proposed model that it could examine as a vehicle for debate. That proposal is summarized in an article by Darrel Tillar Mason on page 9 of this publication.

This article sets forth my view that private practitioners should be required to maintain malpractice insurance.³ I am a member of the VSB Council as well as the committee, and I have been engaged for almost thirty years in private practice, representing clients drawn from the public.

Currently, approximately 90 percent of the VSB members covered by the proposal—lawyers in private practice who represent clients drawn from the public—report that they maintain malpractice coverage. Mandated coverage would not affect this overwhelming majority at all. It is the remaining 10 percent, who do not maintain coverage, that would be required to do so in order to be able to continue rep-

resenting clients drawn from the public.⁴ The committee's proposal would require policies with minimum limits—policies that are currently offered by the two predominant malpractice insurance providers in Virginia.⁵ The committee has been assured that there are insurance products for practitioners who have been dropped or refused renewal by their malpractice carriers. These policies will carry a higher premium—perhaps three or four times more expensive.

Let us not forget that we are licensed to provide legal services to the public. That license is a privilege and an honor. With that license comes great power that we wield every day in order to protect the public from the wrongdoing of others. With that power also comes the responsibility to not harm our own clients in the process. As hard as we may try, we are capable of making mistakes that harm our clients. Not even the most vocal opponents to this proposal have argued that people injured by legal malpractice should be left without any possible recovery.

It is our responsibility to step up and differentiate ourselves from all other professionals in the commonwealth who have shied away from protecting the public for damages incurred by their mistakes. In so doing, we will discharge our duty to protect the public—even from ourselves.⁶

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Highlights of the Virginia State Bar Council Meeting

March 1, 2008

At its regular meeting on March 1, 2008, in Richmond, the Virginia State Bar Council heard the following significant reports and took the following actions:

Mandatory Malpractice Insurance Proposal

The council voted 44 to 7 to not publish for comment the VSB Special Committee on Lawyer Malpractice Insurance's proposal for mandatory legal malpractice insurance. Instead the VSB will notify Virginia's lawyers about the concepts involved in the proposal. The proposal will be an information item on the agenda for the June 2008 council meeting.

Random Trust Audits and Settlement Notifications

President Howard W. Martin Jr. will ask the Standing Committee on Lawyer Discipline to study the idea of random audits of lawyer trust accounts. His request followed news reports about a Virginia Beach lawyer revoked for misusing clients' money. The VSB Executive Committee approved referral of the matter to COLD. In addition, the issue of notification by insurance companies to clients when cases are settled, rejected by the council in October 2007, will be sent back to the Public Protection Task Force in light of the recent discovery of millions of dollars in defalcations by a Woodbridge lawyer who settled clients' cases without their knowledge and kept their money. Representatives of other statewide bar groups will be added to the task force for the study.

Size of Council — Proposed Rule Change

The number of lawyers in a circuit that triggers an increase in representation on the council would increase from four hundred to five hundred, with the number determined on February 1 of each year, under a proposed rule change approved by the council. The proposal

will be presented to the Supreme Court for consideration.

ALPS Reported to Be in Best Financial Shape Since 2001

Robert W. Minto Jr., president and chief executive officer of ALPS—the bar's endorsed malpractice carrier—reported that the company is in its best financial shape since its association with the VSB began in 2001. Responding to inquiries by bar members about reports that ALPS had been downgraded by insurance evaluator A.M. Best, Minto explained that ALPS received an A-minus (Excellent) rating by A.M. Best in 2003, and it was given a “negative outlook” in 2005 due to perceived deficiencies in its reserves. Its rating has not changed in any respect since 2005, and Minto told the council that ALPS is committed to long-term financial strength. ALPS will be reevaluated by A.M. Best in March, and Minto is hopeful that the “negative outlook” will be replaced by a “stable” finding as a result of that review.

Undisclosed Recordings — Amendment to Rule 8.4

The Supreme Court of Virginia asked that the VSB republish for comment proposed amendments to Rule 8.4, which would clarify that it is not necessarily unethical to permit or engage in undisclosed recordings. Roger T. Creager, chair of the Standing Committee on Legal Ethics, reported that the committee considered the comments and elected to notify the Court in a letter dated February 8, 2008, that the amendments should stand as recommended in the original petition to the Court. The council voted to authorize the bar president to notify the Court of its approval of the ethics committee's position.

Multijurisdictional Practice

Proposed changes to rules 5.5 and 8.5 and new rule 1A:7 are to be presented to the Supreme Court for approval, after having been approved without opposition by the

council on March 1, 2008. The proposed amendment to Rule 5.5 permits practice by non-Virginia-licensed lawyers on a “temporary and occasional basis” under limited circumstances. Legal services provided by a non-Virginia attorney, other than as authorized by the rule, would become a disciplinary matter, as opposed to an unauthorized practice of law matter. Part 6, § I (C) of the Rules of the Supreme Court would be eliminated, and the UPL Committee would deal only with unauthorized practice of law by nonattorneys. The proposed amendment to Rule 8.5 extends the disciplinary authority of the Virginia State Bar to any lawyer who provides or holds out to provide legal services in Virginia, regardless of where the lawyer is licensed. The rule also addresses the choice of law to be applied in disciplinary cases concerning non-Virginia-licensed attorneys. Proposed rule 1A:7 regulates foreign legal consultants and the circumstances under which they can practice law in Virginia. The proposed rule carves out a limited role for foreign legal consultants. An FLC would be permitted to render legal services only in matters involving international law or the law of the foreign nation in which the person is admitted to practice. An FLC could not appear before any Virginia court or hold himself or herself out as a member of the Virginia State Bar.

Fastcase

Ed Walters, president of Fastcase, the bar's provider of free online legal research, reported that almost ten thousand active lawyers in Virginia have logged onto Fastcase. Daily use has nearly doubled since the program became a VSB member benefit in 2006. The service has expanded its capability by offering public records and legal forms on a transactional basis. Fastcase's Authority Check has been improved, although Walters indicated that the Authority Check feature is not a sub-

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University of Richmond Professor Named Professionalism Award Winner by Virginia State Bar



Professor Ronald J. Bacigal receives the 2008 Harry L. Carrico Professionalism Award from Petersburg General District Court Judge Lucretia A. Carrico, the daughter of the former Virginia chief justice for whom the award is named.

Ronald J. Bacigal, a University of Richmond law professor who is a much-consulted authority on criminal law in Virginia and a leading Fourth Amendment scholar, has received the 2008 Harry L. Carrico Professionalism Award from the Virginia State Bar's Criminal Law Section.

The award was presented February 15, 2008, at the section's Criminal Law Seminar in Williamsburg.

"There is no one in the Commonwealth who is called upon more frequently by lawyers, judges, and the media for questions relating to criminal law and procedure, and he has always been willing to dedicate his time to furthering the cause of an efficient and fair system of criminal justice," wrote Professor Robert E. Shepherd Jr., an emeritus professor of law at UR and a longtime member of the section Board of Governors.

Bacigal received a bachelor's degree from Concord University and a law degree from Washington and Lee University. He was a Fulbright Scholar in international law at The Hague, Netherlands. He was a U.S. district court law clerk in Roanoke and an instructor in the U.S. Navy at the Judge Advocate General's School in Rhode Island.

He joined the UR faculty in 1971. He teaches criminal law, criminal procedure, and evidence. He has produced many books and articles, including four principal texts used by attorneys and judges. He twice was recognized as a Distinguished Educator at the university. The State Council of Education gave him its Outstanding Faculty Award in 1990.

"Professor Bacigal has exhibited an unyielding commitment to quality and integrity, along with a dedication to the highest ideals of professionalism at the bench and bar in Virginia and elsewhere," Shepherd wrote.

The professionalism award is named for former Virginia Chief Justice Harry L. Carrico. It recognizes the highest ideals and aspirations of professionalism in the administration of justice in Virginia.

Council Highlights *continued from page 13*

stitute for using *Shepard's*, which is available for a fee through Fastcase. Fastcase has agreed to include retired VSB members as users without additional cost to the bar. The bar is considering adding circuit court opinions and Virginia model jury instructions to the searchable database.

CRESPA Bond Increase

VSBS Executive Director Karen A. Gould reported to the council that Senate Bill 149, which would increase the Consumer Real Estate Settlement Protection Act surety bond from \$100,000 to \$200,000, passed both houses of the General

Assembly without opposition. Sen. Walter A. Stosch introduced the bill after the VSBS Council and the Supreme Court authorized the VSBS to seek the increase.

Memorial to Honor Hill, Robinson, and Other Civil Rights Pioneers



When it is completed in July of this year, the Capitol Square Civil Rights Memorial will pay tribute to those Virginians, including attorneys Oliver W. Hill Sr. and Spottswood W. Robinson III, who fought to end segregation.

In February, donors, students, politicians, and family members and friends of those depicted on the memorial gathered to break ground on the spot where the granite and bronze tribute will stand on the grounds of Virginia's capitol in Richmond. The memorial is scheduled to be installed in July.

Designed by Connecticut artist Stanley Bleifeld, the four-sided memorial will feature eighteen figures. The first panel will depict the students of Robert Russa Moton High School in Prince Edward County, who staged a walkout—led by sixteen-year-old Barbara Rose Johns—to protest the shoddy conditions of their aging, segregated school in April 1951.

The students' court case, *Davis v. County School Board of Prince Edward County*,

The Rev. Curtis W. Harris Sr. greets Virginia Gov. Timothy M. Kaine, Del. William J. Howell, speaker of the Virginia House of Delegates, Virginia Lt. Gov. Bill Bolling, and Secretary of Administration Viola O. Baskerville at the February ground-breaking for the Capitol Square Civil Rights Memorial. Harris, a Baptist minister and member of the Hopewell City Council for twenty-two years, is a civil rights activist who marched in Alabama with the Rev. Dr. Martin Luther King Jr. in 1965 in support of the Voting Rights Act.

was filed by Hill and Robinson. The case eventually was joined with four others to become *Brown v. Board of Education of Topeka, Kansas*, which led to a landmark 1954 U.S. Supreme Court decision that separate educational facilities for black and white students were unequal. That decision paved the way for integration. The Prince Edward case was the only one of the five cases in *Brown* that was initiated by students.

Law partners Hill and Robinson, who became the first black chief judge of the U.S. Court of Appeals for the District of Columbia Circuit in 1981, will be depicted on the fourth panel of the memorial.

The second panel will feature the likeness of the Rev. L. Francis Griffin, who was nationally known as the "fighting preacher." When Prince Edward County

schools shut down in 1959 rather than desegregate, Griffin helped create training centers for black children and place hundreds of students in schools around Virginia and across the country.

A quote from Thurgood Marshall, the first black U.S. Supreme Court justice and one of the litigators in *Brown*, will be featured on the third panel, along with the depiction of individuals of different races walking into the future together.

For more information about the Capitol Square Civil Rights Memorial, including architects renderings of the statue and information about how to make a tax-deductible donation, visit <http://www.vacivilrightsmemorial.org>.

—Sandy Adkins



Robert Minto Jr., president and chief executive officer of ALPS Corp., presents a check for thirty thousand dollars to James E. Leffler, executive director of Lawyers Helping Lawyers. The funding, which will help Lawyers Helping Lawyers aid legal professionals who cope with addiction and mental illness, came from the risk management budget of the Virginia State Bar Special Committee on Lawyer Malpractice Insurance. ALPS, the bar's endorsed legal malpractice carrier, provides the VSB's risk management funding.

Electronic Filing Now an Option in the Fourth Circuit *System Will Become Mandatory June 1*

Lawyers now can file documents electronically in the Fourth U.S. Circuit Court of Appeals.

The system became available April 1, 2008. Electronic filing will be voluntary until June 1, when it becomes mandatory with the following exceptions:

- Case-initializing documents, including petitions for review, mandamus, or permission to approach (filed in paper form)
- Appendices (paper)
- Formal briefs (filed in both electronic and paper forms)
- Documents exceeding size limitations set by the court (paper)
- Criminal Justice Act and other vouchers (paper)

Details and Administrative Order 08-01, which governs the case management and electronic filing system, are posted at <http://www.ca4.uscourts.gov/pdf/cmecf/noticeofproposedadministrativeorder0801.pdf>.

In Memoriam

Penrose Lucas Albright
Arlington
February 1925–November 2007

Philip Joseph Bagley III
Richmond
November 1941–November 2007

Michele Scott Bellizaire
Woodbridge
May 1954–February 2008

Joseph C. Carter Jr.
Richmond
June 1921–January 2008

Robert Benoit Ellert
St. Augustine, Fla.
May 1921–August 2007

William E. Fulford
Norfolk
July 1910–December 2007

Geraldine Ribar Keyes
Scottsdale, Ariz.
December 1921–July 2007

Charles Richard Martin
Springfield
October 1941–February 2008

Robert E. Norman
Blue Bell, Pa.
September 1928–September 2005

Hon. Nelson T. Overton
Hampton
February 1928–January 2008

Charles Paul Padgett Jr.
Mesa, Ariz.
March 1940–November 2007

Bruce H. Roberson
Tampa, Fla.
March 1941–December 2007

William J. Rhodes Jr.
Franklin
December 1930–February 2008

Edwin G. Shaffer
Wytheville
September 1923–August 2007

K. McFarlane Smith
Arlington
February 1927–January 2008

Frank James Zanin
Virginia Beach
February 1941–December 2007

Local and Specialty Bar Association Elections

Bristol Bar Association

Robert Lucas Hobbs, President
Eric Wagaman Reeher, President-elect
Colette Marie Wilcox, Secretary-Treasurer

Chesapeake Bar Association

Christopher Howard Falk, President
Brian Kenneth Miller, Vice President
Lori Beth Klinghoffer Galbraith, Secretary
David Jason Whitted, Treasurer
Kimberly Hughes Phillips, Executive Officer

Danville Bar Association

David Wayne Pugh, President
Wells Huntington Byrnes Sr., Vice President
Michael James Newman, Secretary
Stacy Danielle Allocca, Treasurer

Franklin County Bar Association

George I. Vogel III, President
Melissa P. Keen, Vice President
Arthur J. Donaldson, Secretary
John T. Boitnott, Treasurer

Fredericksburg Area Bar Association

Robert Brandt Goodall, President
Dale Edward Adams, President-elect
Sunny Marie Clemons, Secretary
Marcel Dabriel Jones, Treasurer
John James Good Jr., Assistant Secretary
Michael Edward Levy, Assistant Treasurer

Hampton Bar Association, Inc.

James Robert Harris III, President
Patrick B. McDermott, President-elect
Crystina Marie Kowalczyk O'Brien, Secretary
Terry Noland Grinnalds, Treasurer

Rockbridge-Buena Vista Bar Association

Lawrence Lloyd Muir Jr., President
Donald Jackson Ellis, Vice President
Shawna Jean Cheney, Secretary-Treasurer

Russell County Bar Association

Wade Trent Compton, President
Martha Ellen Puckett, Vice President
Brian Keith Patton, Secretary-Treasurer

The Prince William County Bar Association Inc.

William Elmer Jarvis, President
Barry Alan Zweig, President-elect
Jeanice Bowden Wiethop, Secretary
Jonathan Stuart Rochkind, Treasurer
Richard Hamilton Boatwright, Director
Mark Thomas Crossland, Director
Megan Eileen Kelly, Director
Petula Cherise Alston Metzler, Director

Virginia Association of Criminal Defense Lawyers

Kristie Lee Kane, President
William Todd Watson, President-elect

Carolyn Virginia Grady, Vice President
Cynthia Ellen Dodge, Secretary
David Leonard Heilberg, Treasurer
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Raising the Bar: *Virginia Lawyer* and vsb.org Make Changes

Beginning with the June/July 2008 issue, *Virginia Lawyer* will have a new design and improved content.

The changes have already begun. We're using different paper stock, and we are reorganizing content to save printing and postage costs. On the Web, the Virginia State Bar home page (<http://www.vsb.org>) sports a new color scheme and displays bar news and events more prominently.

More improvements are coming to provide you with information that lawyers need. We'll report more about what the bar staff and volunteers do. We'll have timely notice of changes that affect legal practice and office management. Theme issues will have more general interest. Our design will be more readable and inviting.

Additionally, the August/September *Virginia Lawyer Register* will be

reduced in size. It will serve as a directory to more detailed documents published on the website.

Your input has helped make these changes possible. Please keep the feedback coming. Send your critiques and ideas to Rodney Coggin, Editor, Virginia State Bar, 707 E. Main St., Ste. 1500, Richmond 23219; coggin@vsb.org; (804) 775-0585.

Family Law Attorney Edward D. Barnes Recognized for Lifetime Achievement

Edward D. Barnes, a family lawyer in Chesterfield and the founding chair of the National Center for Family Law at the University of Richmond, has been named the 2008 recipient of the Lifetime Achievement Award, presented by the Virginia State Bar's Family Law Section.

The award recognizes persons who have demonstrated excellence and integrity and have made a substantial contribution to the practice of family law in Virginia. The 2008 award will be presented during the section's annual Family Law Seminar on April 25, 2008, in Richmond.

Attorneys who nominated Barnes for the award emphasized his contributions to continuing legal education and to his alma mater, the University of Richmond School of Law. That service was recognized by the school in 2006, when it gave him its Alumni Award.

Nominations also praised his professional leadership through the VSB Family Law Section, the American Academy of Matrimonial Lawyers, and the Metro Richmond Family Law Bar Association.

He also is a fellow of the London-based International Academy of Matrimonial Lawyers. He has been a lawyer for almost thirty-seven years.

Barnes's partner, Lawrence D. Diehl, singled out the formation of the National Family Law Center as a crowning achievement. Barnes developed the concept with Rodney A. Smolla, then of UR and now dean of the law school at Washington and Lee University. Barnes made a significant financial commitment to the center's funding. He now serves as chair of its board of directors, made up of Virginia and national leaders in family law.

"This is a mammoth undertaking with national significance reaching beyond the administration of family law in the Commonwealth of Virginia," wrote attorney Donald K. Butler of Richmond.

The national center hosted its debut conference in September 2007. The center will conduct research, participate in development of public policy and law that affect families, and provide clinical experience to UR students and legal services on family



law issues to low-income people in the Richmond area. Starting in September 2008, UR law students can opt for a certification in family law through the center.

Barnes is founder and chief executive officer of law firm Barnes & Diehl PC. He received a bachelor's degree from East Carolina University in 1966 and a law degree from UR in 1972. He was a first lieutenant in the U.S. Army Corps of Engineers from 1966 to 1969.

Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB website for free and low-cost pro bono trainings and volunteer opportunities:

http://www.vsb.org/site/pro_bono/resources-for-attorneys

Virginia State Bar Publications

The Virginia State Bar publishes pamphlets and handbooks on law-related issues for Virginia's lawyers and citizens. Please note that some are available in bulk quantities, and others only in single copies. All publications can be found on the VSB website at <http://www.vsb.org/site/publications>.

Benchmarks

No judicial changes were reported by the Supreme Court of Virginia since the list in the February 2008 edition of *Virginia Lawyer* magazine. The General Assembly is scheduled to take up judicial appointments and reappointments when it reconvenes on April 23, 2008.

Lawyer Who Brought Legal Services to Cancer Patients Will Receive Award for Pro Bono Work

Phyllis C. Katz, a Richmond attorney who cofounded the Legal Information Network for Cancer (LINC), will be given the 2008 Lewis F. Powell Jr. Pro Bono Award by the Virginia State Bar.

The award is bestowed by the VSB's Committee on Access to Legal Services to recognize dedication to development and delivery of pro bono services that benefit poor and underserved persons in Virginia. The award was named for a late U.S. Supreme Court associate justice from Richmond.

During two personal bouts of cancer, Katz "discovered that there were hundreds of patients in Central Virginia in a similar battle for whom the legal complexities of diagnosis, treatment, and survival were daunting, and who were not getting adequate legal advice due to ignorance, confusion, and/or financial condition," wrote C. Thomas Ebel, then-president of Sands Anderson Marks & Miller, which nominated her for the award. Katz practices in the firm's local government law practice group.

Katz and Ann C. Hodges, a University of Richmond law professor, founded LINC to

provide legal counsel to persons in that situation. Twelve years later, LINC has ninety volunteer attorneys throughout the state, Ebel wrote. More than three thousand low-income cancer patients have been guided through the crisis brought about by their cancer diagnosis.

Since Katz came to Virginia in 1978, her many other civic commitments include serving on boards for Housing Opportunities Made Equal, the Institute on Philanthropy at the UR School of Continuing Studies, Commonwealth Catholic Charities, the Massey Cancer Center at Virginia Commonwealth University, the YWCA of Richmond, and the American Cancer Society. Since 1997, she has taught classes in VCU's Especially for Nonprofit Organizations program and a course on nonprofit law at the UR School of Law.

"Few attorneys ever achieve this record in a lifetime . . .," Ebel wrote. "Over the decade she has worked beside me, she has remained a guiding light for pro bono work, and a number of our attorneys have found inspiration in her example, joining organizations around the state as pro bono



counsel and dispensing expert legal advice without charge."

Katz holds a bachelor's degree in political science from Rutgers University, a master's in urban and regional planning from Ohio University, and a law degree from UR.

The Powell Award will be presented during the VSB's Pro Bono and Access to Justice Conference on May 22, 2008, at the Washington and Lee University School of Law in Lexington.

Student Pro Bono Award Goes to George Mason University Law Student

Ashley R. Brott, a student at the George Mason University School of Law, has been selected to receive the Virginia State Bar's 2008 Oliver White Hill Student Pro Bono Award.

The award, named for a late Virginia civil rights litigator, recognizes a law student's commitment to uncompensated or minimally compensated pro bono work and other public service. It is bestowed by the VSB Committee on Access to Legal Services.

Brott is the first GMU student to have won the Hill Award.

Brott developed the LSNV-GMU Intake Initiative, a student-led program that helps Legal Services of Northern Virginia conduct intake interviews of applicants for legal assistance. Brott publicized the program, trained new volunteers, and supervised their work. She recruited about thirty volunteers who each pledged thirty-five hours to pro bono during the 2007-08 school year.

"The task may have seemed insurmountable to some — particularly to a full-time law student — but Ms. Brott was passionate about the need to motivate students and determined to tackle the job," Annamaria Nields, assis-



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Housing & Economic Development Partnerships Between Academia, Legal Services, and the Private Bar



**Thursday & Friday,
May 22–23, 2008**

Washington and Lee University
School of Law, Lexington VA

6.0 CLE (1.0 Ethics) Credits Pending Approval

Cosponsored by the VSB Special Committee on Access to Legal Services and the VSB Section on the Education of Lawyers. **Cost: \$35 for CLE text materials, lunch, & refreshments.** This event will be of special interest to the law school community, civil legal advocates, and attorneys curious about expanded reduced-fee and pro bono service opportunities.

REGISTRATION FORM

May 22–23, 2008 Pro Bono & Access to Justice Conference Washington & Lee University School of Law, Lexington, VA. Please fax (804) 775-0501 or mail this form to Joy Harvey, Virginia State Bar, 8th & Main Building, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Please reserve a space for me at the May Pro Bono & Access to Justice Conference. I have indicated below the sessions I plan to attend. Approval is pending for the Friday sessions for a total of 6.0 MCLE credits (including 1.0 ethics hours). Kindly assist our planning efforts by checking the events you expect to attend.

Thursday, May 22, 2008

7:30–9:30 PM **Pro Bono Awards—Ceremony & Reception**, Washington & Lee, School of Law, Lexington, VA

Friday, May 23, 2008—(CLE)

- 8:30–9:00 AM Registration
- 9:00–9:05 **Welcome and Introductions**
- 9:05–10:35 **Ethics/Professionalism Lecture**—The Evolving Role of Clinical Legal Education
- 10:35–10:45 Break
- 10:45–11:45 **Panel on Economic Development Partnerships**
- 11:45 AM–12:15 PM **Normative Expectations:** Cultural Literacy & Document Translations
- 12:15–1:00 Box Lunch Break with with Separate Hosted Interest Group “Tables”
- 1:00–2:30 **Predatory Lending & the Housing Crisis:** Point/Counterpoint Part I
- 2:30–2:40 Break
- 2:40–4:45 **Predatory Lending & the Housing Crisis:** Point/Counterpoint Part II

NAME (Please print or type)

FIRM/AFFILIATION

ADDRESS

TELEPHONE

E-MAIL

Enclosed is the required \$25 registration fee for CLE text materials.

I will pay the required \$25 registration fee at the door.

I would like to order the optional lunch (\$10). Regular Vegetarian

If you wish to receive lunch, please check the box (even if you will be paying at the door) so that we may plan accordingly. If you do not order lunch, you may wish to bring a bag lunch as there are no restaurants nearby. For additional information, including ADA Access matters, please call VSB at (804) 775-0522 or 775-0548.

Fairfax Bar Recognizes Pro Bono Contributors

The Fairfax Bar Association presented its pro bono awards in February. The awards and recipients were:

James Keith Public Service Award —

Michael S. Dingman, a partner in the Falls Church office of Reed Smith LLP, was recognized for fifteen years of pro bono and public service work. Since January 1, 2004, he has logged almost 170 hours of pro bono time assisting poor clients at Legal Services of Northern Virginia—more than any other Fairfax attorney. He has represented individuals in uncontested divorces and other personal matters, and he has assisted clients in housing disputes since the Fairfax Bar's Pro Bono Program started its landlord-tenant panel in the 1990s.

Dingman also represents clients through the Christian Legal Services Pro Bono Program, negotiates leases and other

agreements for the Chantilly Youth Association, and has provided litigation services to RJP Housing, which develops residences for low-income people.

Pro Bono Lawyer of the Year —

Timothy J. Lyden, a partner in the McLean offices of Hogan & Hartson since 2000, has focused on helping residents of the Eleanor Kennedy Homeless Shelter in Fort Belvoir. He regularly visits the shelter to provide legal advice, referral, and extended representation. He and other attorneys have handled Social Security administrative hearing representations, immigration follow-up, Section 8 housing issues, lost retirement income matters, and assistance in obtaining criminal, birth, and drivers records.

Pro Bono Law Firm of the Year —

Cooley Godward Kronish LLP stepped in when the Fairfax Bar started a program

to provide free legal assistance by transactional and corporate lawyers to small emerging businesses with limited financial means. Cooley's Reston office also has represented immigrants in asylum cases and poor persons with litigation issues. The firm established nonprofits and assisted them with taxes, zoning, leasing, and other issues. In 2007, Reston office attorneys donated about four thousand hours to pro bono matters.

Pro Bono Paralegal of the Year —

Nrupa Jani has volunteered since 2006 at the Herndon Neighborhood Resource Center through the Fairfax Bar Pro Bono Program's neighborhood outreach. She interviews clients, analyzes their legal issues, and provides interpreting services for Spanish-speaking clients. Jani works for the American Institute for Research in Washington, D.C.

Student Award *continued from page 20*

tant dean for academic administration, wrote in a nomination letter.

Brott, who was raised in Santa Fe, New Mexico, holds a bachelor's degree in Spanish literature from the University of Colorado, and she is fluent in Spanish and French. An interest in conflict resolution led her to law school. Scheduled to graduate this May, she is considering international work, perhaps for a nonprofit that focuses on democracy building or legal reform.

The Hill Award will be presented during the VSB's Pro Bono and Access to

Justice Conference on May 22, 2008, at the Washington and Lee University School of Law in Lexington.

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misconduct has occurred. This work by the ABA has been partially responsible for eleven states thus far adopting a random trust account audit process.

Attorney defalcations seriously damage the reputation of the legal profession in Virginia. Members of the public have suffered devastating losses due to the dishonesty of a tiny minority of Virginia lawyers. Lawyers subsidize repayment of lost money through the Clients' Protection Fund. What one bad lawyer does affects all of us. Are we, as members of the bar, going to ignore the issue, or are we going to try to take steps to reduce or eliminate the problem?

I do not know what the right course of action is. But there are certainly a number of steps that we might implement. Maybe the answer is random audits or reviews of lawyer trust accounts. We would have to look at whether such a program in Virginia would be effective and what it would cost.

Maybe random audits are not the answer. Maybe we need to require law

firms to provide periodic certified public accountant verifications that the trust accounts are in order. Maybe we need to beef up our continuing legal education offerings, including the program "The Devil Wears Green," on the management of trust accounts. Maybe we need to ensure that every law firm in Virginia has and uses basic trust account software, such as the program being developed by the VSB's endorsed malpractice insurance carrier, ALPS, that will soon be available for distribution free or at a nominal cost. Maybe we need to refine and improve the trust account investigation procedures used by the bar's Professional Regulation Department. Maybe we ought to use a law firm's first trust account overdraft as the automatic trigger for an audit.

Again, I do not know what our ultimate course of action ought to be. But I believe we must be proactive. We simply must put the clients and the public first. I believe the first thing we need to do is to study the situation and consider the potential solutions.

At a meeting of the VSB Executive Committee on February 29 in Richmond, I outlined some of the facts set forth above and asked the committee to endorse my request for a study of the problem by the bar's Standing Committee on Lawyer Discipline. I proposed to ask COLD to research the experience in other states that employ an audit process, to consider the ABA guidance on the matter, to research the history of offenses in Virginia, to engage the local bars and other statewide bar associations in the conversation, and to estimate the cost and effectiveness of any recommendations. The executive committee unanimously endorsed the proposal to send the question to COLD for study and recommendations. We should all be interested in what COLD concludes and what recommendations it proposes. I will keep you posted. ☺

Executive Director's Message

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update your e-mail address with the bar so you can receive the E-News, submit the change in writing to **membership@vsb.org**.

Although not directly related to the subject of the budget, the online Member Directory now has more than three thousand VSB members who have opted in. Please register for the

Member Directory so a colleague or a member of the public can reach you more easily. It is easy to make the change: you just log in to the members area at **<https://member.vsb.org/vsbportal/>** and opt in to the Member Directory.

Our goal is be more user-friendly to our members and fulfill the VSB's mission as set by the Supreme Court, while

using our resources economically. I invite your questions and comments on this or any other topic. My e-mail address is **gould@vsb.org**. Also, if you would like the president or the executive director to attend a meeting of your local bar, we would be delighted to do so. ☺

The Golden Rule

by George W. Shanks

The law is the embodiment of society's collective wisdom and experience in the ethical treatment of its members. No precept is more fundamental than the golden rule. Various stated, it has been recognized by the world's great religions, philosophies, and philosophers over the four thousand years of recorded history. It bears repeating, in the words of Pittacus of Mytilene, one of the rule's earliest adherents: "Do not to your neighbor what you would take ill from him."

Acting as an advocate is always a balancing act between a client's legitimate objectives and an attorney's place in the universe. As soon as your client's representation takes you beyond the doors of your office, how you represent your client and how you behave yourself become factors in your professional persona. Your behavior will color your practice and your image held by colleagues, the courts, and the clients you will represent in the future, all for better or for worse. The more clients you have, the more time you practice, and the more contentious your causes, the more the golden rule needs to be your watchword.

The Senior Lawyers Conference has studied, discussed, debated, and pontificated over the perceived problems surrounding collegiality and professionalism that confront modern lawyers. We are no closer to a quick fix. But we can commend to our colleagues the suggestion that each day, before setting out on the challenges du jour, you reflect upon the soundness of the golden rule. Resolve that your efforts will be ennobling to the profession as well as beneficial to your causes.

This issue of *Virginia Lawyer* contains some of that collective wisdom and experience. Frank O. Brown Jr., the SLC's publications editor, has assembled a remembrance of Ken McFarlane Smith — the quintessential personification of the golden rule — written by Smith's good friend, Virginia State Bar President-elect Manuel A. Capsalis; articles by Jack Burtch, immediate past chair of the SLC, and Rob Walker; and Brown's own history of the SS *Quanza* and a Virginia lawyer's role in saving souls from persecution in war-torn Europe. The articles make worthwhile reading. May they enrich your practice and brighten your day.



George W. Shanks, chair of the Virginia State Bar's Senior Lawyers Conference, practices civil litigation and municipal law with Miller, Earle & Shanks PLLC in Luray. He is a member of the VSB Executive Committee and immediate past chair of the VSB Conference of Local Bar Associations. He received his undergraduate degree from Indiana University and his law degree from Temple University.

Ken McFarlane Smith: A Remembrance

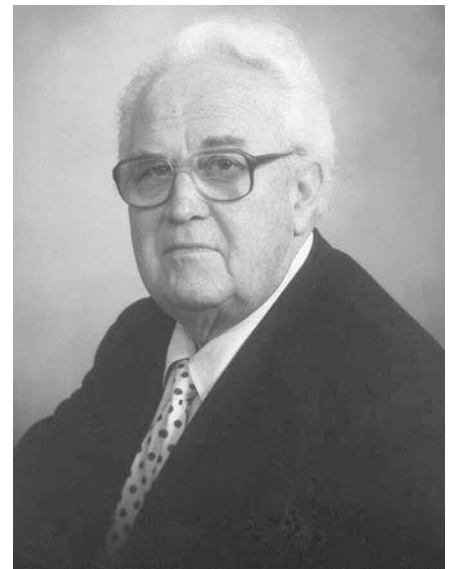
by Manuel A. Capsalis, Virginia State Bar President-elect

Whether it be a fellow attorney, a clerk, or anyone else who encountered Ken, what was most remembered was his upbeat nature and his dignity.

My lasting memory of Ken McFarlane Smith took place at the seventy-fifth anniversary celebration of the Arlington County Bar Association in May 2001. In preparing for the event, we on the planning committee decided that the best way to celebrate the history of the association was to honor those whose careers spanned much of its duration—those who had served in the legal profession at least fifty years. During a wonderful formal event, eleven individuals were recognized. Ken was one of the honorees.

In the bar association's office is a photograph of the honorees together with then-Chief Justice Harry L. Carrico. What I remember most about that evening were the smiles on the faces of Ken and the others, which the photograph beautifully captures. The camaraderie and respect among the honorees were palpable. These were individuals recognized not only for their longevity, but for their accomplishments over a half-century in public service. It was a privilege to be in their presence.

Particularly wonderful about honoring these individuals was the fact that many were still vibrant and active members of the bar. For honorees such as Ken (and



Betty A. Thompson, Earl E. Shaffer, and Senior Justice Charles S. Russell, to name a few), you knew there were many important tasks ahead and much more public service to fulfill.

Ken and the other honorees proved true the adage that the past is prologue to the future. In celebrating the history of their careers, we also celebrated what is profoundly good and honorable about our profession. We celebrated the role of the public servant and the preservation of the Rule of Law, personified in Ken and the others. To honor them was to recognize the dignity of what each had accomplished and the blueprint they gave us to continue on.

Ken's passing on January 20, 2008, is a loss that cannot easily be measured. He wrote a regular column in the *Arlington Bar Journal* recounting the history of the bar. His memory and ability to capture a period in time and place were remarkable. Ken ensured that the history of the Arlington legal community was dutifully preserved.

To say that Ken was a community leader is an understatement. In addition to main-

taining an active legal practice, he served as a substitute judge for more than forty-five years. He was actively involved in the Arlington County Bar Association and the Arlington County Bar Foundation. He was a fellow of the Virginia Law Foundation and served on its board of directors. He received the Virginia State Bar's Tradition of Excellence Award and the William L. Winston Award—the highest honor bestowed by the Arlington County Bar.

He was deeply committed to his beloved church. He was president of the Baptist General Association and for many years served on the board of directors of the Virginia Baptist Foundation. He taught Sunday school for more than two decades. Somehow he also found time to serve as a bell ringer and board member for the Salvation Army. He was a member of the Kiwanis Club for more than fifty years and was chair of the Arlington Kiwanis Foundation. Most importantly, he was a loving husband and father and a doting grandfather.

It is insufficient to say Ken was a successful attorney. Make no mistake about it, he was. Ken was a remarkable person, which is what helped make him a successful attorney. He practiced law with a profound respect for his honored profession. To him, it was a calling.

Without fail, whenever I had the opportunity to spend time with Ken, he was always encouraging. In the days since his passing, as I have spoken with many others who knew him, everyone has said the same. Whether it be a fellow attorney, a clerk, or anyone else who encountered Ken, what was most remembered was his upbeat nature and his dignity.

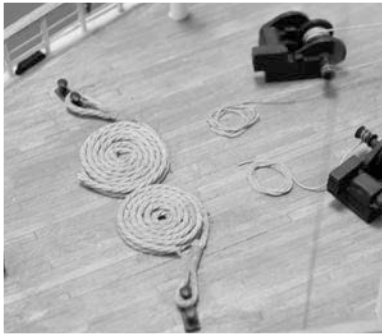
It seems to me that the wonderful lesson of Ken's life, which spanned eight decades, is that every day counts. It is a lesson easily forgotten in the constant struggles and demands of the legal profession. We are constantly reminded that our primary commodity is our time, which many of us are required to mark in increments of tenths of an hour. We are judged

by all that is deemed necessary to maintain the bottom line. Many are left to wonder, to what end?

Ken figured it out. As Jackie Robinson once said, "A life is not important except in the impact it has on other lives." Ken lived a tremendously important life. He was a profoundly committed public servant, and he was fiercely proud of his profession. His life should be remembered as an inspiration of what can be accomplished. Ken proved that one person can make a difference.

To those of us privileged to have known Ken McFarlane Smith, I believe the greatest honor to his memory would be to live by his example and to remember that every day really does count.

May his memory be eternal.



Jacob L. Morewitz, Eleanor Roosevelt, and the Steamship *Quanza*

by Frank Overton Brown Jr.

In May and June of 1940, more than three hundred thousand British and French soldiers had been evacuated to England from the European continent at Dunkirk, barely escaping in a motley flotilla of watercraft. By this time, Germany had invaded Austria, Belgium, Czechoslovakia, France, Holland, Luxembourg, and Poland. Europe was awash with refugees. Officially, Portugal was a neutral noncombatant.

In 1940, Jacob L. Morewitz was a forty-four-year-old successful, highly respected admiralty lawyer, who practiced in the firm of Morewitz and Morewitz in Newport News. He had graduated in 1916 from Richmond College (now the University of Richmond), which at that time had a law department, in which a professorship of law had been endowed in 1890 by the family of the late T.C. Williams Sr.

Morewitz had passed the bar in his junior year of college. He practiced law with his wife, Sallie Rome Morewitz. Eleanor Roosevelt, a significant public figure in her own right, was the fifty-five-year-old wife of Franklin Delano Roosevelt, who was in the last two months of his reelection bid for an unprecedented third term as president of the United States, which in 1940 had a decidedly isolationist point of view regarding the war in Europe. The SS

Quanza was an eleven-year-old, 6,636-ton, coal-fired ship that measured 418 by 53 feet, with twin screws. She usually sailed from Lisbon, Portugal, to ports in South Africa. The trans-Atlantic voyage was unusual for her.

Three hundred seventeen refugees—most of them Jewish—had chartered the *Quanza* to transport them from Lisbon, Portugal, to New York and Vera Cruz, Mexico. All had obtained what they believed to be the proper documentation for their entry or transit.

In her autobiography, *Beyond the Chestnut Trees*, Maria Bauer, one of the *Quanza's* passengers, who was traveling to New York with her parents and her new husband, described the ship's departure from Lisbon to New York. It sailed on a sunny morning, August 8, 1940. It was hurricane season in the Atlantic, and for many of the passengers on the *Quanza*, there were stormy seas ahead.

Passengers recalled a diet of sardines and days of constant seasickness. Accommodations were stifling and spare. But there was relief in escaping from war-torn Europe and hope for new lives in freedom. One of the passengers, Malvina Schamroth—an eleven-year-old girl traveling to New York with her mother, her sister, and her aunt—described sleeping

on the deck at night to escape the oppressive conditions below. They were to meet her father, who had gone on ahead, in New York.

Amid great fanfare, the *Quanza* arrived in New York on August 19. There were excited family members and friends there to greet the ship, and great interest by news organizations. There were celebrities on board the ship who received a lot of press attention. In all, on August 20, 1940, just under two hundred passengers were permitted to disembark in New York, including Maria Bauer and her family. But Malvina Schamroth, her mother, her sister, and her aunt were not permitted to leave the ship, although Mr. Schamroth was permitted to come onto the ship once to bring food and clothing to them.

The *Quanza* left New York on August 21, bound for Vera Cruz with one hundred twenty one passengers, all of whom hoped to disembark there. Before departure, kindly crew members rigged a chair and pulley system to lower Malvina's three-year-old sister down to where she could be kissed goodbye by her father. Malvina recalls today how her little sister cried.

As the *Quanza* made its way down the East Coast in transit to Vera Cruz, there was a flurry of activity on the part of private citizens and refugee advocates and organizations requesting that the Mexican government admit the remaining one hundred twenty one passengers to Mexico.

When the ship reached Vera Cruz, the Mexican government admitted thirty-five of the refugees, but denied entry to eighty-six, because it found that their visas, which had been issued by the Mexican consul in

A detailed model of the SS *Quanza*, which features miniature lifeboats, light fixtures, coils of rope on the deck, and anchors, is part of the collection at the University of Richmond's William Taylor Muse Law Library. The model was built by Martin Meyer of Chicago, Illinois, and given to the library in July 2006, where it is on display along with an explanation of the steamship's significance in legal and political history. Special thanks to Timothy L. Coggins, associate dean for library and information services and professor of law, for granting the photographer access to the *Quanza* model.

Lisbon, were not in order. Rabbi Stephen S. Wise, president of the American Jewish Congress in New York and a member of President Roosevelt's Advisory Committee on Political Refugees, met with Secretary of State Cordell Hull and Assistant Secretary of State Breckenridge Long and contacted his friend, Josephus Daniels, U.S. Ambassador to Mexico to seek help for the *Quanza* refugees.

Ambassador Daniels, who was sympathetic to the plight of the refugees, wrote to Rabbi Wise on September 6: "I took matter up with authorities but could do nothing. They are adamant. Ship with passengers has gone to Nicaragua where it is reported but not officially that passengers will be received."

On the same date, Hull sent a telegram to the American Legation in Managua, Nicaragua, informing that the *Quanza* was en route to a Nicaraguan port with eighty-one or eighty-two Jewish refugees who had been denied admission to Mexico. Hull concluded his telegram with the request: "Please telegraph tonight if possible a report on the facts in the case in order that the Department may inform Rabbi Wise who has inquired regarding the matter." In fact, the *Quanza* was not en route to Nicaragua, but was en route to Norfolk, Virginia, to take on coal before heading back to Europe.

The *Quanza* arrived at Norfolk on Wednesday, September 11, to take on coal, which would take about eleven hours, and then would be on her way. A meeting between Jacob L. Morewitz, Esquire, and the SS *Quanza* was about to take place.

The Richmond College yearbook of 1916 said of Jacob L. Morewitz: "Keen of brain he is always ready to get into an argument on some mooted question of law. He is never bluffed by a Prof. and sometimes in his arguments with them he comes out on top. He is possessed of a nineteen-carat brain and that invaluable ability to sit

down and stick to it. Passed the State bar at the end of his Junior year and before long we expect to hear of him winning some cases in Newport News. He can talk on any subject, and with a fluency of speech and earnestness of manner that those who listen believe he really does know something of what he says."

These qualities are evident as one reads the court reporter's transcripts in the case.

"If I do not stop to help this man, what will happen to him?"

In the language of admiralty law, Morewitz, who had been contacted by a New York business associate of one of the families on board, filed on behalf of four of the *Quanza's* passengers, a libel against the ship itself in the U.S. District Court in Norfolk.

A libel is somewhat analogous in admiralty to a motion for judgment in a civil action. In this case, it had the effect of attaching the ship, and it prevented the ship from leaving the jurisdiction unless a bond set by the presiding judge was posted. The basis of the claim was that there had been a breach of contract in that the four passengers had not been delivered to Vera Cruz in accordance with their contract. The amount of the suit was one hundred thousand dollars. U.S. District Judge Luther B. Way set the bond at five thousand dollars, for which the ship's agent had to wire to Lisbon to obtain approval.

According to historian Doris Kearns Goodwin in her book *No Ordinary Time — Franklin and Eleanor Roosevelt: The Home Front in World War II*, Eleanor Roosevelt was at the presidential retreat at Hyde Park, New York, when she learned of the refugee situation with the *Quanza*. She used her considerable powers of persuasion with her husband to convince him to intervene.

In 1938, Pres. Roosevelt had established the President's Advisory Committee on

Political Refugees, and James Grover McDonald was its chair. Roosevelt authorized Solicitor General Francis Biddle, Assistant U.S. Attorney Henry M. Hart Jr., and Edward Prichard Jr., special assistant to the U.S. Attorney General, to evaluate the legal status of the *Quanza* and its passengers. They opined that, in accordance with executive orders issued in June 1940, the passengers had the right to apply for visas in the usual way. Roosevelt then authorized Long to develop a plan in consultation with James Grover McDonald of the advisory committee and Marshall Field III of the U.S. Committee for the Care of European Children (of which Eleanor Roosevelt was honorary head).

The plan, which was summarized in a memorandum dated September 12, 1940, from Lemuel B. Schofield, special assistant to the attorney general, to Irving Wixon, deputy commissioner of the Bureau of Immigration and Naturalization, stated: "The Honorable Breckinridge Long, Assistant Secretary of State, has today informed the Department of Justice (Mr. Prichard) that the State Department will waive visas for aliens aboard the SS 'Quanza' in the following cases: 1. Children; 2. Aliens holding valid visas for other countries than the United States; 3. Bona fide political refugees whom the President's Advisory Committee on Political Refugees will certify for admission. (This certification can be by telephone, to be confirmed by telegram.)"

The plan required that a representative of the advisory committee go to Norfolk for purposes of the certifications regarding political refugees. George L. Warren, executive director of the committee, designated staff member Patrick Murphy Malin as the committee's representative. In addition, Malin was asked by the U.S. Committee for the Care of European Children to act as its representative at Norfolk.

In his after-action memorandum to Warren dated September 27, Malin reported on the process by which the Board of Special

Inquiry had conducted the examinations of the passengers on board the *Quanza* September 12–14. At the conclusion of each examination, the Board of Special Inquiry reported to Malin the name of the passenger, the country issuing his or her passport, and the details of the visa. Malin then telephoned this information to Elliott B. Coulter, acting chief of the Visa Division of the Department of State, at his office in Washington, D.C., for Coulter's inquiry to the appropriate embassy or consulate regarding the "confirmability" of the visas.

Malin reported:

In one way or another—by Mr. Long's original memorandum, Mr. Coulter's telephone conversation with me in Washington, or Mr. Coulter's reports over the phone to me at Norfolk—the visas of thirty-five persons were confirmed.

It does not follow that the remaining forty-six persons held invalid visas, but simply that as of the time when the examinations were occurring aboard the *QUANZA* [sic] those other visas could not be confirmed. Of the remaining forty-six persons, five were named by me as coming properly under the procedure of the U.S. Committee for the Care of European Children, which had also asked me to represent it in Norfolk.

The remaining forty-one persons were all, much to my surprise, found by the examination under oath before the immigration inspectors to come within the President's Advisory Committee procedure, according to the terms of its administration included in the original exchange of letters between the Committee and the Department of State and Justice and the circular instructions concerning the procedure issued by the Department of State to American diplomatic and consular offices abroad.

On receiving this information from the immigration inspectors concerning the forty-one persons not admissible as the holders of confirmed visas or as persons covered by the United States Committee for the Care of European Children, I formally certified them for the President's Advisory Committee on Political Refugees, and the immigration inspectors granted them admission also.

Malin reported that of the total of eighty-one passengers admitted on September 14, 1940, "Of the 35 persons admitted as holders of confirmed visas, 18 were men over 18, 1 was an unattached woman, 4 were children under sixteen, 2 were children 16 and 17, and 10 were wives, daughters, etc. Of the 5 persons admitted under the United States Committee for the Care of European Children, 3 were children under 16 and 2 were mothers. Of the 41 persons admitted under the President's Advisory Committee Procedure, 20 were men over 18, 3 were unattached women, 3 were children under 16, 2 were children 16 and 17, and 13 were wives, daughters, etc. Of the total of 81 passengers admitted, therefore, 38 were men over 18, 4 were unattached women, 10 were children under 16, 4 were children 16 and 17, and 25 were wives, daughters, etc."

On February 5, 2008, I spoke by telephone with the former Malvina Schamroth, who is now seventy-nine years old and lives in New York. She recalled disembarking from the *Quanza* on September 14, 1940: "It was around midnight when my mother,

my aunt, my sister, and I got off the ship. We were the last ones. I remember that my first impulse was to kiss the ground, but I didn't do it. I'm not sure why I didn't kiss the ground, but when I think about it, I still get goose bumps. I still feel that feeling today."

Eleanor Roosevelt died in 1962. The SS *Quanza* was scrapped in 1968. Jacob L. Morewitz died in 1983.

Memory is vital in learning the values taught by the conduct of those who have gone before us, because their examples enable us to set our own courses in life—courses that affect the lives of many people.

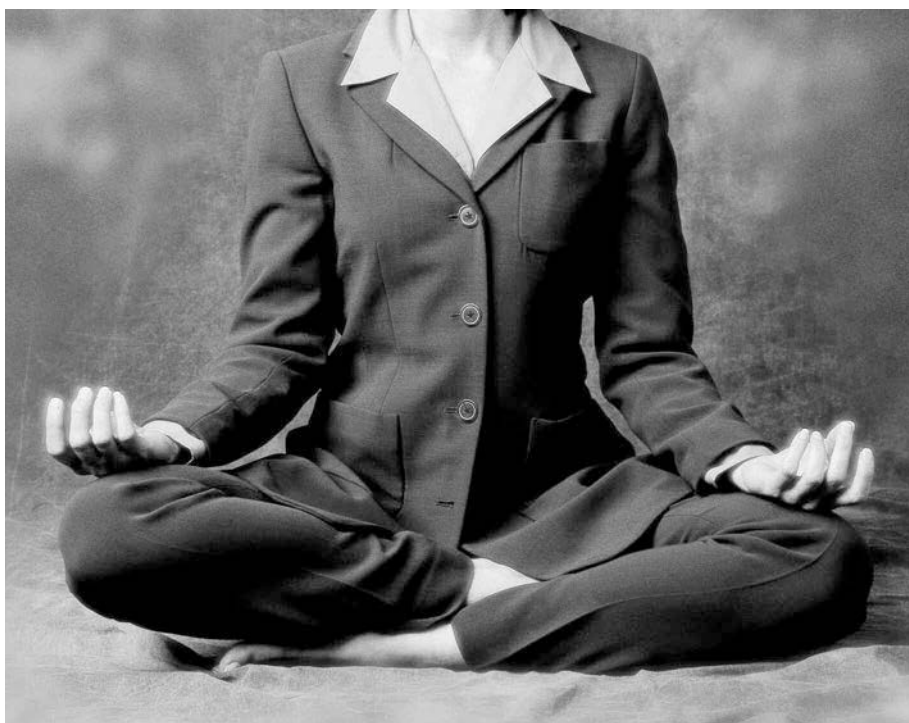
One of the aspects of taking any action is that the results of the action are realized prospectively and evaluated in retrospect. So we remember the family of T.C. Williams Sr., who, in 1890, endowed the professorship of law at Richmond College that provided Jacob L. Morewitz with the opportunity for the legal education that honed his considerable intellectual gifts. And we remember Jacob L. Morewitz, who used his experience, legal skills, creativity, and concern for others through the law of admiralty in the U.S. District Court for the Eastern District of Virginia—Norfolk Division to hold the *Quanza* in Norfolk long enough to enable the refugees to be given the chance to receive visas and to be admitted to this country.

Quanza continued on page 35



Oliver Mills

Frank Overton Brown Jr.'s private Richmond practice concentrates on estate and trust planning, estate and trust administration, and related tax matters. He is the editor of the Virginia State Bar *Senior Lawyer News*, past chair of the VSB Senior Lawyers Conference, and a former member of the VSB Council. Brown is a fellow of the American College of Trust and Estate Counsel and the Virginia Law Foundation, a charter member of the University of Richmond Estate Planning Advisory Council, and cofounder of the University of Richmond Estate Planning Seminar. He authored the *Virginia Probate Handbook* and holds bachelor's, master's, and juris doctor degrees from the University of Richmond.



Meeting the Midcareer Challenge Head-On

by Jack W. Burtch Jr.

If we have learned anything from the newer generations of lawyers joining our profession, it is that the question “What do I want to be when I grow up?” can be answered more than once in our adult lives. A partnership offer can be the catalyst for examining what we really want.

There are no lack of challenges in law practice. Lawyers, adept at addressing their clients' problems, often seem adrift when confronting their own. One of the biggest issues facing seasoned lawyers at midcareer is their own futures. What follows are ways to think about lawyers' midcareer challenges and strategies to make the best of them.

Midcareer has no precise boundaries. It can be that time when a private law firm considers a lawyer for partnership, or when an organization moves a lawyer into a supervisory position. It may be that time when a solo practitioner finally feels secure and competent. Although these events are indicators of success, midcareer can be one of the most difficult and stressful times in law practice. The general malaise of midcareer lawyers has become a popular topic in legal journals.

Our profession has become more competitive. Law schools continue to produce lawyers, perhaps faster than the economy can absorb them. Some young people, undecided about what to do after college, choose to go to law school without really

understanding what law practice entails. While many of these lawyers will have left the practice by the time their peers hit midcareer, those who remain will face an endurance test. Many lawyers are paying off school debt, buying homes, and raising their families at the same time they are working to establish their reputations and hone their expertise.

Decide about Partnership

Becoming a partner is a decision, not a reward. You—the potential partner—are the one who should make that decision. Becoming a partner in a law firm is like winning a pie-eating contest where the prize is more pie. There are constant pressures of billable hours and productivity.

For many lawyers, becoming a partner is not necessarily a desirable goal. The question for the lawyer considering the partnership offer is not “Is this what I want for the rest of my career?,” but rather “Is this what I want for now?” Career decisions can always be changed at any point in life. If partnership in a particular firm means we are bound to one organization for the rest of our careers and the essen-

tial decisions about our working lives are made by others, partnership might be something to avoid.

Law firms make partners when they have to. It's a business decision, not a reward for faithful service. You are offered a partnership when you have clients or legal abilities a firm doesn't want to lose. The firm's decision to make you a partner means the firm believes it will lose significant value if you leave. The offer of partnership is a recognition of your present value and a wager on your future.

The decision to stay or leave a law practice is significant at many different levels. Deciding to accept a partnership role involves weighing alternatives. Do I want to be identified with this firm, with these people? Is this a place where my practice will flourish? Or is there a better opportunity that's a better fit for me?

One of the characteristics of the law as a profession is its effect on our identities. When we went to law school, we learned to think like lawyers. One of the costs of success in this process is identifying ourselves too closely with what we do.

In considering a partnership offer, most lawyers will confront a deeper question, "Do I want to continue practicing law?" If we have learned anything from the newer generations of lawyers joining our profession, it is that the question "What do I want to be when I grow up?" can be answered more than once in our adult lives. A partnership offer can be the catalyst for examining what we really want.

Get Real

Partnership is essentially employment-at-will. This should come as no surprise. Articles on law firm downsizing and "partner de-equitization" are common topics in legal journals. Our profession seems to be following the trail blazed by accounting firms in that we are increasingly characterized by fewer large firms and more small

firms. The midsize firm is under extreme pressure to maintain profitability and retain talent. Whatever your firm size, the old expectation that every good lawyer will eventually become a partner is now a faint memory.

Partners won't remain partners unless they keep pace with their firms' expectations. At one time, partners were rarely forced out. Now, asking a partner to leave is a normal occurrence. It may happen when the firm changes its business model. It may occur when the profitability of the partner or the firm falls short of expectations. Or it can happen when the firm perceives that it has a better opportunity. The "insurance principle" that a firm will carry lawyers through its lean years—as the lawyers carried the firm through its profitable years—has largely evaporated.

Partnership or shareholder status is not tenure. What you may have thought of as *your* firm is really only your *employer*, and only for today. Your security is assured when you add value to the whole. When that perception ends, so does your job. Valuing lawyers is notoriously difficult. It is the subject of many books and has been the downfall of innumerable law firm retreats. Some firms measure lawyers' value solely in terms of dollars generated. Others add caseload, clients, community service, or general reputation. Since there is no perfect formula or standard, only the firm's perception of the lawyer's added value determines whether the lawyer stays or leaves.

For all these reasons, it should be obvious that the lawyer's interests and the firm's interests are different. Successfully addressing the midcareer challenge requires facing these realities and determining how they can work for your benefit.

Live Like the Self-Employed

We may be happy in our jobs, or we may be miserable. We have probably been both at different times. But the most effective

way to preserve our options and maintain our job satisfaction is to avoid the classic traps lawyers encounter at midcareer.

The chief trap is financial. We tend to live at the level of the salaries we are making now, fully expecting to make more next year when we get the raise and bonus we deserve. Self-employed lawyers have a different perspective. They are grateful for what they had last year, but have no expectation next year will be better. Decreasing crime and increasing marital harmony could threaten the incomes of many solo practitioners who specialize in these areas. Yet, unlike their colleagues employed by large law firms, most of them understand the ebb and flow of business. They succeed by living below their means. Having a financial buffer for lean times provides security and freedom of choice when assessing your career direction.

Many lawyers get caught in the security trap. If a partnership is, in fact, more like employment-at-will than tenure, then it is just another job. Some employers are more flexible than others. You may already belong to the perfect firm or organization. Yet most lawyers would like to see some changes in their work situations. Not making a change for fear of losing security is deceptive thinking. There is no security in law practice today. Stated more positively, you are your own security. If that is true, or even just partly true, then your real risk lies in doing nothing.

Another trap some lawyers face at midcareer is not having their own clients. Lawyers who work in large organizations and some smaller ones may find that more-senior lawyers want to restrict client contact in order to "own" business relationships. So even by midcareer, it's not unusual that some lawyers have no clients they can call their own. Self-employed lawyers know they need clients to survive. Even the lawyer who hasn't risen high enough on the ladder to control business has a whole network of friends and con-

tacts. Savvy lawyers keep in touch with friends at the bar who have observed their work over the years. Tending a network of relationships is long-term client development. It may not bring in business tomorrow, but it is the foundation of an active law practice. Living as if you were self-employed means always developing and expanding the group of people who think of you as their lawyer.

Becoming a partner is a decision, not a reward. You—the potential partner—are the one who should make that decision. Becoming a partner in a law firm is like winning a pie-eating contest where the prize is more pie.

A strong financial base and a developing list of clients ensure choices for the mid-career lawyer. Whether the decision is to stay where you are, to head out to a new firm, or to start one of your own, you can act in confidence that your fundamental career choices can be made *by* you—not *for* you.

Distinguish Yourself

Lawyers are not fungible billing units. They are individuals with their own talents and peculiarities. A good friend of mine used to say, “To make a difference in this world, you have to be different. And to be different, you have to be yourself.” One of the glories of law practice is the vast range of abilities that contribute to your being an effective lawyer. One individual doesn’t have to master the whole range. We only have to excel in a few.

A lawyer will not reach maximum potential trying to be like everyone else. Having learned the fundamentals of law practice, midcareer lawyers can then practice in a way that highlights their personal talents. These talents are what will move them up in their own firms and make them attractive to other firms and new clients.

Lawyers are known as problem-solvers. If you are known for solving a particular kind of problem, you will have your own portable legal career. Your career is you.

Reinvent Yourself

Recently, a partner in a large law firm told me that one of the firm’s greatest challenges in keeping good lawyers motivated was to find ways they could recharge their

careers. Firms invest significant resources in teaching new lawyers how to practice law and develop their practice niches. Just at the point when these lawyers, now at midcareer, are becoming more profitable, the firm becomes more reluctant to let them try anything different. Ironically, this may be the same point at which lawyers, having worked for years to establish competence and financial security, are starting to feel burned out. Their need to get out of a rut suddenly runs up against the firm’s need to keep them in it.

I don’t think there are many firms out there with a Department of Lawyer Reinvention, but it might not be a bad idea. It would enable firms to keep the income from the investment they made in lawyers’ careers for a longer period of time. Today, many firms address this problem by adapting their lawyers’ skills to changing client needs. Their approach, however, is entirely reactive. It responds to external pressure: the market defines the service to be delivered. But from the individual’s perspective, the problem looks different. A lawyer on the verge of exhaustion is more interested in relieving personal pressure than in serving market needs.

It may be time for midcareer lawyers to rethink the fundamentals. Why did you become a lawyer in the first place? What made law seem like the right path for you? What was the passion that kept you going through the most mind-numbing hours of law school? Fortunate lawyers may realize they are doing exactly what they want; they may just want to do it differently or do a little less of it. Unfortunate lawyers may find their practices are far removed from their legal passions. Some midcareer lawyers find these fundamental questions lead to the discovery that they are not happy being lawyers after all.

Don’t ignore the questions. Discovering your core values, asking what you want to achieve during your working life, and remembering why you became a lawyer in the first place may give you the energy to reshape your career. Counselors or legal career coaches can certainly help. But the first step is admitting that something is amiss and your career is not what you want it to be. If you want to continue practicing law, then you owe it to yourself to be the lawyer you always wanted to be, or at least the lawyer you want to be now.

First, be sure your support systems are in place. Let family and friends participate in the conversation about your career. They may see unexpected strengths. Talk with trusted colleagues. Read the lawyer blogs. Scan professional journals or the Web to find out how other lawyers are making changes and restarting their careers. Help other lawyers who may be confused about their choice of career, because those conversations will help clarify your own goals. There are plenty of people who have opinions on your career, but you are the one who will have to live in it. Ten or twenty years from now, you don’t want to say to yourself, “If I’d only made a change then, I wouldn’t be stuck now.” Treat yourself like a client. What’s the best advice you can give yourself today?

Revisit Your Defeats

Midcareer lawyers have practiced law long enough to have had some defeats. When I was a younger lawyer, my son asked me how many cases I'd lost. "None," I told him. "I made the most of every case; the results were what they were." I lied. I have been defeated; I have lost cases. What I have learned at this stage of my career is that my defeats provided me with my greatest opportunities to grow and improve as a lawyer. Sometimes they highlighted ways I needed to prepare better. Sometimes they forced me to look at things I did not want to see. It's embarrassing to expose personal flaws, but it's even more embarrassing to know they are there and not do anything about them. Don't be afraid to take a hard look at your defeats. They may hold the secret to future success.



Jack W. Burtch Jr. was admitted to the Virginia State Bar in 1973. He received his undergraduate degree in 1969 from Wesleyan University in Middletown, Connecticut, and his law degree in 1972 from Vanderbilt University, where he served as an editor of the *Vanderbilt Journal of Transnational Law*. After serving as an associate in the labor law section of Hunton & Williams from 1973 to 1980, Burtch became a principal of the firm that became McSweeney, Burtch & Crump. In January 2001, he joined the firm that became Macaulay & Burtch PC, where he represents businesses, executives, and professionals in employment law and labor relations. Burtch is an adjunct professor of law at the University of Richmond School of Law, where he teaches negotiations, interviewing, and counseling.

Relax

Sometimes we take ourselves too seriously. Many of the lawyers who came before us found personal fulfillment, financial security, and civic usefulness in the practice of law. We can too, if we understand that even our best decisions will be imperfect. But deciding to take

control of our own careers and becoming the lawyers we wanted to be in the first place is the best way I know to address the pressures and challenges every lawyer encounters in midcareer. ☺

It is in this retrospect that we remember Eleanor Roosevelt, who used her conscience, tenacity, and influence to encourage her husband to cause the machinery of government bureaucracy to examine the plight of the *Quanza* refugees and to save them from being returned to Europe and a possible grim fate. The Williams family, Jacob L. Morewitz, Eleanor Roosevelt, and many others in this story certainly loved their neighbors.

It is a life-altering experience to have saved the life of one person; how much more rewarding an experience it is to have given the chance of new lives to more than eighty people. ♪

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Thanks

The author thanks the following persons who were of help to him in his research: Dr. Stephen J. Morewitz; Dean Kristine M. Henderson, Gail Zwirner, and Carl Hamm of the University of Richmond Law School; John M. McClure of the Virginia Historical Society; and Tim Hensley of the Virginia Holocaust Museum.

Visit the Senior Lawyers Conference website at
<http://www.vsb.org/slc>

UR's National Center for Family Law Brings Focus for Lawyers, Judges, Scholars, and Clients

by Rob Walker

The University of Richmond School of Law encourages pro bono service by all members of the law school community.

The National Center for Family Law at the University of Richmond School of Law was established in 2007. The center provides academic and service programs to enhance the quality of the American legal system in matters relating to families and children.

American society has a profound interest in fostering legal and public-policy study of family law issues and in training law students, lawyers, and judges in family law matters in collaboration with many different academic disciplines.

The center is national and international in its breadth of interest. It has an especially strong relationship with public and private organizations in Virginia.

The University of Richmond School of Law encourages pro bono service by all members of the law school community. Members of the Senior Lawyers Conference of the Virginia State Bar, with their large reservoir of experience, wisdom, and talent, can support this pro bono activity. The creation of programs with other bar groups and public agencies to promote pro bono services in the field of family law is an important mission of the center.

Through the center, the interests of families and children will be served by research, discussion, and debate on reforms and improvements in the nation's family law policies and processes. Family law issues in modern society are increasingly complex. The center will bring

together experts from different academic disciplines to address the issues.

The center also benefits law students who plan to pursue a family law practice.

The center plans to sponsor conferences that focus on legal or policy issues germane to family law. It might promote research and scholarship through research papers and presentations. It will provide continuing legal education.

The center will publish of a scholarly journal, newsletters, Internet resources, and other materials; convene task forces to study specific family law issues; and undertake interdisciplinary studies funded by grants.

The center debuted in September 2007 with a symposium cosponsored by Virginia CLE to discuss the law, research, and social policies that affect families and children. Virginia's first lady, Anne B. Holton, who has spent her legal career advocating for children, applauded the center for bringing together "some of the best minds in the nation in fields related to family law." Holton, a former juvenile and domestic relations court judge in Richmond, joined about 150 lawyers, judges, law school deans and professors, mental health professionals, social services workers, and others from as far away as California for the three-day symposium, titled "State of the Family 2007."

Edward D. Barnes of Chesterfield, chair of the center's board and a thirty-six-year

veteran of family law practice, said response to the symposium demonstrates how far this field of law has progressed in recent years. “It is getting a lot more attention in the courts and legislatures,” he said. Issues such as elder law, child placement and custody, and welfare have moved forward on the public agenda.

Holton described family law as an increasingly complex subspecialty within the law that often demands attention from someone “who does this close to full time. You’ve really got to know this stuff.” Holton said that Virginia usually does well by its young people, but it is not doing well enough for older children. Many of those between ages twelve and eighteen are placed and left in the care of social services agencies — particularly in group homes and residential facilities that cost fifty thousand dollars or more a year per child.

“We are overusing congregate care,” she said. Having government agencies replace a parent “is never going to be the best way to care for children who in many cases have been through the equivalent of what soldiers see in war.” At eighteen, they will “age out” of care without family contact. They may be incapable of caring for themselves and at high risk of winding up homeless, incarcerated, on welfare, or in mental institutions, Holton said. “It’s shocking.”

Speakers also discussed the roles of culture and religion on families, and they spoke of transformations that have taken place in the American family throughout history.

The symposium was approved for continuing legal education credits.

Adrienne E. Volenik, a UR law professor and the center’s acting director, hopes it will become more than a center for professional training. “We want it to be more of a mix of academicians and practitioners

because that’s where the creative ideas come from,” she said. “There were cases in this year’s symposium where academics presented ideas that practitioners were skeptical of. That led to considerable discussion that was helpful to us all. It’s a wonderful way to test ideas outside the academic realm.

“This is a field that requires multidisciplinary knowledge,” said Barnes. “There’s so much more to it than the law. And it has such an impact on us as a society and as human beings.”

“We expect the center to become a leading resource, a clearinghouse for information and experts, for legislators, academicians, and practitioners who are looking for solutions to challenges facing children and families,” Volenik said. “This will be a place where people can turn for models of excellence, best practices, and for support in facing these complex, important issues.”

A grant from the Lipman Foundation will help the center reach into the Richmond community to work with low-income families who need legal assistance. The \$651,000 grant will help fund an interdisciplinary clinic that will provide direct legal services, access to psychological care, counseling, and social services for low-income children and their families.

Plans call for the clinic to be located in urban Richmond, where it will partner with the Richmond Families Initiative, a joint venture of the University of Richmond School of Law and the university’s Center for Civic Engagement. It will use the services of the Department of Psychology and School of Social Work at Virginia Commonwealth University.

Pro bono services will be provided through the Richmond Families Initiative, and the law school’s Harry Carrico Pro Bono Center might join it downtown. The combined resources of these entities “enable us to extend our outreach into the community in this complex area of great need,” Volenik said. The center also will

draw expertise from its board, which includes lawyers, judges, scholars, and teachers.

“This is a field that requires multidisciplinary knowledge,” said Barnes. “There’s so much more to it than the law. And it has such an impact on us as a society and as human beings.”

Plans call for the University of Richmond School of Law to develop a curriculum that will enable law students to pursue a concentration in family law through the center. That program should be in place by the end of this academic year. The law school also hopes to use the center to establish stronger bonds with undergraduate faculty and students, Volenik said. It will involve faculty whose research is related to the wide range of work the center is undertaking.

“There are wonderful people on the undergraduate faculty who are working on issues related to the family in education, psychology, and anthropology,” and other fields, Volenik said. “We’d like to be able to promote their work and to support their efforts as well.”

Senior Lawyers Conference

The center also might help develop a course on the role of family in society that could be offered to undergraduates, Volenik said. The University of Richmond School of Law's Juvenile Law and Policy Clinic, which focuses on legislative issues, will be enlisted "to take what we learn and apply it to the legislative arena," Volenik said. ♪

Note: This article was adapted from an article by Rob Walker that appeared in the Winter 2008 issue of Richmond Law magazine, a publication of the University of Richmond School of Law.



Rob Walker is the editor of *Richmond Law* magazine, a publication of the University of Richmond School of Law. A Richmond-based journalist and editor, he worked for more than fifteen years with daily newspapers, including the *Richmond Times-Dispatch* where he covered legal issues and higher education. Walker has bachelor's and master's degrees in English from Washington and Lee University and the University of South Carolina, respectively.

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These minimum coverage standards mirror the basic policy currently offered by the two insurance companies that insure the majority of solo and small-firm practitioners in Virginia. The committee opted not to impose any maximum deductible limit. Under an open market model, insurers would continue to determine appropriate deductibles on an individual case basis and in accordance with their own underwriting standards and the insured's preferences.

While higher levels of per claim coverage would be desirable in most instances, as would an aggregate limit reflecting some multiplier of the per claim limit, the committee's focus was on making the transition from uninsured to insured as economical as possible. The present proposal, while minimal, arguably would afford an alleged victim of legal malpractice a greater opportunity to be compensated than the victim would obtain without the insurance. The proposal also would afford the member the benefit of experienced claims handling and defense.

What insurance information would the member be required to report to the VSB?

Each active member subject to the mandatory malpractice insurance provision would be required to certify to the bar on or before July 31 of each year that he or she is covered by a professional liability insurance policy that meets the specified minimum standards. The member would be required to provide the name of the insurance company—not the agent—and the policy number.

By signing the required certification, a member would authorize the Virginia State Bar, at its discretion, to verify with the named insurer the existence of the disclosed policy. Each active member would submit the required certification upon admission to the bar, as well as with each application for renewal thereof. If a member becomes engaged in the private practice of law offering legal services to clients drawn from the general public, that member would have thirty days in which to

notify the bar and obtain insurance. Additionally a member who intends to continue representing clients drawn from the public would be required to notify the bar and obtain new insurance within thirty days if the member's coverage lapses, is no longer in effect, or terminates for any reason—unless the policy is replaced with another policy and no lapse in coverage occurs.

To be fully in compliance with the proposed rule when it goes into effect, members who already certify that they have insurance coverage need only provide the name of the carrier and the policy number. Large firms that currently “batch” the required annual renewal paperwork can simply have the firm administrator supply the name of the insurance carrier and policy number prior to the member's certification. New admittees who are not yet employed or have not yet established a practice would indicate that they are not currently engaged in practice and would be instructed to notify the bar and obtain insurance within thirty days of any change that brings them under the rule. Other members who in a given bar year previously certified they were not subject to the rule would also have an affirmative obligation to report within thirty days a change in status that brings them under the rule.

There is no change proposed to the existing requirement that members notify the bar in writing within thirty days if their malpractice insurance policy is no longer in effect. Under the proposal, however, members would be required to provide the name of the carrier and policy number of any replacement policy. Members who make lateral transitions during the course of a year would have an obligation to confirm and report their coverage under the new firm's policy. An extended reporting endorsement would not satisfy this requirement. The committee considers the benefits of this rule to outweigh any minimal burden it imposes on the approximately 90 percent of affected bar members who currently report having malpractice insurance coverage.

The committee opted to forego requiring any documentation in the form of a certificate of coverage or copy of a declaration page because of its trust that Virginia lawyers are truthful. The committee considered it appropriate to specify that, if a question arises as to the accuracy of a member's certification of insurance, the certification would be deemed authorization for the bar to verify the policy's existence and for the insurer to provide the information. It is not anticipated that this authority would be invoked frequently.

Would any current requirements be eliminated?

If a mandatory malpractice insurance rule were adopted, the need for the current attorney record search option related to disclosure of lack of malpractice insurance would be obviated. The committee's proposal also eliminates the current provisions in Paragraph 18 related to the disclosure of “the date, amount, and court where rendered, of any unsatisfied final judgment(s) against such member, or any firm or professional corporation in which he or she has practiced, for acts, errors or omissions (including, but not limited to, acts of dishonesty, fraud, or intentional wrongdoing) arising out of the performance of legal services by such member.” The current requirement has not yielded particularly useful information and has contributed to the underestimation of situations in which a member of the public has suffered an uncompensated loss as a result of an attorney's professional actions.

What are the consequences for failure to comply with the proposed rule?

Under this proposal, the consequences for failure to comply with a requirement for mandatory malpractice coverage would be the same as the consequences for failure to comply with the requirement for mandatory continuing legal education. The lawyer would be subject to the penalties set forth in Paragraph 19 Provision for the Administrative Suspension of a Member. It is recommended that the delin-

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quency fee for a member who does not timely comply with the requirements of amended Paragraph 18 be \$100, and the reinstatement fee be \$250. An untruthful certification or unjustified failure to notify the bar of a lapse or termination of coverage would subject the member to appropriate disciplinary action.

How soon would such a rule be implemented?

The committee anticipates that the effective date of any rule change would coincide with the commencement of the bar's fiscal year. (While the rule would be effective July 1, the certification itself would not be due until July 31.) The committee believes that at least six months would be necessary to promote member education and to allow sufficient time for previously uninsured lawyers to apply for insurance, satisfy underwriting requirements, and obtain an insurance policy that meets the prescribed standards.



Darrel Tillar Mason has a solo practice in Richmond that focuses on representing children in special education law. She is chair of the Virginia State Bar's Lawyer Malpractice Insurance Committee, and she previously served on the VSB Council, the Legal Ethics Committee, and other bar committees. She holds a bachelor's degree in English and a master's in education from Virginia Tech and a law degree from the University of Virginia.

What are the next steps?

In the next few months, information about this important issue will be widely disseminated and feedback will be solicited from all members of the VSB. The bar council will further debate the pros and cons at its June meeting, with no vote possible before October 2008. Whether a mandatory malpractice insurance rule should be adopted in Virginia and, if so, whether an open market model is the appropriate approach are questions that should be given thoughtful consideration. ♪

Endnotes:

- 1 The full report is available on the VSB website at <http://www.vsb.org/site/news/item/committee-reports-on-malpractice-insurance/>.
- 2 Those models are:
 - a. create an Uninsured Lawyer Malpractice Claims Fund (similar to the Clients' Protection Fund);
 - b. require all lawyers in private practice who represent clients drawn from the public to obtain malpractice insurance mandatory coverage through a bar-controlled fund, or "captive," similar to the current program in Oregon;
 - c. require all lawyers in private practice who represent clients drawn from the public to obtain malpractice insurance either through the open (commercial) market or through an assigned risk group policy to be developed by the VSB; and
 - d. require all lawyers in private practice who represent clients drawn from the public to obtain malpractice insurance through the existing open (commercial) market.

Lawyer Malpractice Insurance Debate

continued from page 10

Endnotes:

- 1 In the June 2007 meeting of the VSB Council, I warned the body that if we failed to address this issue adequately, it would be only a matter of time before the legislature would make the decision for us. Adopting a policy of our own making would be far more palatable than one imposed upon us.
- 2 Curiously, lawyers engaged in residential closings are currently required to have a minimum of \$250,000 in malpractice coverage *and* a CRESA bond of \$100,000—to be increased to \$200,000 on July 1, 2008. Likewise, lawyers who provide services under the Virginia Lawyer Referral Service are required to have coverage comparable to that suggested under the current proposal before the VSB Council.
- 3 A question recently arose as to how this proposal might impact attorneys not regularly engaged in private practice who perform pro bono services. The committee assures the bar that such an issue will be addressed in the process so as not to negatively impact the good work of providers of those services.



Bruce M. Marshall is a director at DuretteBradshaw PLC in Richmond with a practice that focuses on commercial litigation and business and construction law. He holds a bachelor's degree in government from the University of Virginia and a law degree from the University of Richmond. In addition to serving on the VSB's Special Committee on Lawyer Malpractice Insurance, he is vice chair of the bar's Special Committee on Publications and Public Information and a member of the Construction Law Section.

- 4 The reasons why that 10 percent is uninsured have not been the subject of any in-depth study. The committee has been told anecdotally that malpractice insurance was unaffordable, unavailable, or not something that a "good lawyer" needs.
- 5 \$100,000 per claim with expense allowance of at least \$50,000 outside the policy limits or \$200,000 per claim with claims expenses within the policy limits.
- 6 The most common argument being made against the proposal is, "Why fix a system that does not seem to be broken?" My response is, "Why wait until it is broken and then implement the change while apologizing for allowing the system to break?"

Maestro

by John Y. Richardson Jr., 2007–08 Conference of Local Bar Associations Chair



*No; the two kinds of people on earth
I mean
Are the people who lift, and the people
who lean.*

— “Which Are You?”
Ella Wheeler Wilcox

Several years ago, I wrote a president’s column in my local bar newsletter about what epitaphs tell about a person.

We cannot predict what we will be remembered for when we are gone. In many cases, it’s what the epitaph does not say that is most telling. One of my favorites was that of a Virginia lawyer who was described as “an avid golfer.”

A few weeks after my column ran, I was stopped by a lawyer I knew only slightly. He said he was moved by my column and, although the birth of his first child was imminent, he was eager to lend his hand to a worthwhile bar event. In the months that followed, he took a major role in a unique fundraiser for a local charity and the local bar association. This gentleman should lose no sleep over his legacy.

I was thinking of that episode recently when I was moved by the work of Fairfax attorney Edward L. Weiner, a member of the Conference of Local Bar Associations.

Fairfax has a lot to offer. Finding one’s niche is not always easy. Ed Weiner does not do things in the customary manner—he creates niches. A few years ago he was attending a recital at the George Mason University Department of Music. He was impressed by the music, but distressed by the small audience. As a member of

the Fairfax Bar Foundation board, he saw that the two organizations might complement each other.

From Ed’s ability to look at the flower and avoid the thorns blossomed a new venture: Jazz 4 Justice. Due largely to Ed and his wife Maura’s efforts, the event has grown from a standing-room-only crowd in a small theater to the elegant George Mason University Center for the Arts. The event consistently earns a substantial sum of money for the foundation, which contributes a portion to the music program. Musical instruments have been bought and donated. The corpus that funds the bar foundation’s charitable gifts has grown to benefit many programs in need.

Each year, Ed oversees all the critical factors: the arrangements, the musical guests, the time and day of the week. He is a tireless promoter. Those of us who serve with Ed on the Conference of Local Bar Associations board have been given more than one Jazz 4 Justice baseball hats.

The fifth annual concert was held in November 2007 at the GMU Center on a Friday night. I was there with some other CLBA members. Also attending were state and local bar presidents, judges, legislators, and prominent members of the community.

The concert was fabulous. The George Mason’s Jazz Ensemble was incredible by itself. Members of the music faculty and a six-year-old trumpet prodigy guest added to the unique character of the event. In the foyer following the concert, there was a jam session by members of the ensemble and other

musicians who had just walked in. Many in the crowd stayed to enjoy the after-concert music and conversation.

The small CLBA contingent attended the concert to see Ed, whom we affectionately call “Maestro,” conduct one of the concert numbers. He lived up to all our expectations and then some. Coming onto the stage in his showman manner, he spoke briefly and quietly to the musicians. Once he started, the stage was his. He put on a show. It was an evening none of us will soon forget.

Footnote: On Saturday evening, February 2, 2008, at the Verizon Center in Washington, D.C., after the conclusion of the Washington Capitals hockey game, Ed put on another uniform.

His daughter Maurissa is in remission from recurrent respiratory papillomatosis, a condition that causes rapidly growing tumors on vocal cords, larynx, and lungs and sometimes requires numerous surgeries. Maura, Ed’s wife, is on the board of directors of the RRP Foundation, and Ed is national fundraising chairman.

February 2 was the Sixth Annual RRP Hockey Night, and major contributors to the foundation were recognized. Concluding the event was a hockey game in which Ed, who plays in two hockey leagues, challenged the limits of his physical ability to benefit the foundation.

Ed Weiner will not have to worry about finding text for describing his life. Ed is a person who lifts. He lifts us all.

Minority Membership and the YLC

by Daniel L. Gray, 2007–08 Young Lawyers Conference President



Before her formal appointment as executive director of the Virginia State Bar, I met with Karen A. Gould in Richmond. I was readying my agenda for the upcoming year and talked with Karen and Virginia State Bar President Howard W. Martin Jr. about the bar's priorities. During that meeting, Karen asked the Young Lawyers Conference to look at minority retention in the bar. While the YLC has very active involvement by minorities and women, this does not translate, apparently, into ongoing bar service once YLC members age out of the conference.

The YLC has commissions that examine legal issues and make recommendations. The Pro Bono Commission examined pro bono work last year, and reported its findings in *Virginia Lawyer*. The YLC also has the Women and Minorities in the Profession Commission, so I called upon Mollie C. Barton of Richmond to reconstitute the commission, study the issue, and report back to the YLC with its findings and recommendations on minority retention in the bar. We will be sharing those findings in an upcoming article.

My initial response to Karen's request was to reiterate the energetic work the YLC does to recruit minority lawyers. For example, its Minority Pre-Law Conference invites undergraduate students from all Virginia colleges to participate in a weekend seminar designed to expose students to law school and legal life.

The Pre-Law Conference

- conducts panel discussions on traditional and untraditional careers in the law;

- presents mock law school classes;
- invites law schools to its law school fair;
- presents seminars on financial aid, the character-and-fitness requirement for bar admission, the law school admissions process, and the Law School Admission Test.

This may be the only program that helps students decide whether to pursue a legal career. Through these seminars and in social events during the conference, students talk with members of the legal elite who are generous with their time and money. The YLC recently expanded the pre-law conference, which took place in February 2008 at the George Mason University School of Law and was guided by Samantha Ahuja, and at the Washington and Lee School of Law on April 4 and was guided by chair Brooke C. Rosen.

The YLC also hosts a bench-bar celebration dinner that honors recent women and minority appointees to the Virginia bench. Honorees in Richmond this year were Judges Sarah J. Denke, Lauri L. Hogge, Karen V. Burrell, Roxie D. Holder, Janine M. Saxe, Lisa A. Mayne, and Cheryl O. Higgins. Senior Justice Elizabeth B. Lacy presided, assisted by chairs Alana N. Malick and Mollie Barton.

We reach younger students with the annual Oliver Hill/Samuel Tucker Pre-Law Institute, a week-long summer law camp aimed at minority high school students. It generally takes place at the University of Richmond, recently under the guidance of committee chairs Yvette A. Ayala and Rasheeda N. Creighton. The students have a law

school experience that culminates in a mock trial.

The YLC has been in the vanguard in recent years by actively pulling minority lawyers into our ranks. While the drop-off in retention likely is due to a number of factors (we'll wait to see what our commission reports), as a young lawyer about to age out of the YLC, I can certainly say that efforts to retain lawyers of my generation aren't what they could be.

In the winter 2008 *Docket Call*, our YLC newsletter, I gave our members ideas about how to become involved in the bar. Most of those ideas came from former VSB executive director Thomas A. Edmonds, who talked about continued involvement at our leadership conference in Richmond in September. I ended that article by taking our YLC members to task for any tendency to expect the bar to reach out and grab us. Instead, I exhorted them to make themselves known to their VSB Council representatives.

Young lawyers need to be better at "breaking in" to the bar after the YLC. That is not to say that the bar can't do more to retain former YLC members. Having sat in with the Virginia State Bar Council and Executive Committee, I can attest to their demanding work. Part of the council's job, though, ought to be making sure it can replenish its ranks with new talent and new voices. If the council is concerned about retaining minority members, it should make minority membership a priority. It has a group of lawyers ready and waiting to be retained.

The ABCs of SEO (Search Engine Optimization)

by Sharon D. Nelson



Once your law firm has invested in a website, how do you draw traffic to it? How do you position it so it appears high in a search engine's list?

You do it with search engine optimization. The following are questions frequently asked about SEO.

Which search engine should we optimize for?

Google. Compete.com reports that in November 2007 Google commanded 68.9 percent of the market share, and received almost four times the number of queries as the runner-up, Yahoo.

Do we lose anything by optimizing specifically for Google and not other engines?

Doubtful. Google-optimized sites seem to show up just fine in other search engines.

How does Google rank websites?

Only Google knows. The algorithm it uses is protected as fiercely as the formula for Coke. Nonetheless, those who study rankings have a reasonably good idea of what works and what does not. Here are the elements we at Sensei think are most important, pretty much in order of priority:

- **Page title**—Include your name and keywords that potential clients will use when searching for you.
- **Site content**—The deeper and broader, the better. Keywords count, but never “stuff” them. Use as many as permissible within the bounds of graceful writing and delivery of useful information.
- **Content on the home page**—This is the most important factor to Google. Some theorize that hyperlinked content and page subtitles are given additional weight.

• **Inbound links**—How many high-quality sites link to you? How do they link? By firm name only? By keyword text? This is also one of the hardest things to achieve, especially for solo practitioners and small firms, whose sites are mainly promotional. Their inbound links are paid links from directories, which count, but are given far less weight. For quality links, you have to have content that gives someone a reason to link to you.

• **Domain name**—If someone is searching for baby gifts and you are babygifts.com, you have a definite edge, but it is only one factor, and certainly not the major one.

• **Currency**—Sites that are not updated vanish quickly from the top rankings. Herein lies the problem for most law firms, which let sites wither untended, except for minor alterations.

• **Age**—This factor was probably introduced by Google as a way of letting new sites “stew” for a bit to sift out scammers who fold their tents and disappear when the law comes after them.

Can companies really get you quickly to the top of the search results, as they promise in their ads?

Search engine optimization is a long, hard process. It takes time to cultivate a site that will get to the top of the rankings. Some folks who promise the moon try to cheat the system. For example, they may have the site listed at phony sites that exist as a bank of links to boost the apparent popularity of a website. Or they use white-on-white text on the home page to list keywords over and over, invisible to the human eye but picked up by

the spider robots that crawl websites for the search engines. Google and the other engines penalize or ban sites that use these devices. The seamy side of the SEO industry constantly tries new gambits. They succeed only briefly before they are sniffed out and penalized.

Does competition hurt the chances for a high ranking?

Absolutely. If you practice, say, aviation law in Fairfax, you may vault to the top quickly. But a small divorce law firm in Fairfax is unlikely to have a site that is both broad and deep. Most users will use geography and area of law to search (e.g., “divorce lawyer” and “Fairfax Virginia”), and there are many divorce lawyers in Fairfax. The competition for ranking in this case is severe.

This is precisely where SEO can help. But it would be a mistake to expect overnight success. This is definitely a case where “slow and steady wins the race.”

How do I go about SEO?

First determine who your prospective clients might be. What age? What gender? What income level? What are their “pain points” that you can touch? Are you in search of clients from the public or referrals from colleagues? Once you have a profile in mind, you can work on figuring out graphics that will hook site visitors and text that will keep their attention and convert them to clients or to lawyers who want to refer clients. Creativity is key. Don't use stock graphics—no courthouses, gavels, or law books. Nothing that smacks of being a cookie-cutter site. If you practice criminal defense, you might want to show a good photo of someone being arrested or handcuffed. That's a photo that your potential clients can identify with.

Which keywords are most valuable?

There is an excellent tool to help you figure this out. It is called Wordtracker and is available at <http://www.wordtracker.com>. It is subscription-based: one year costs \$329, one month \$59, and one week \$30. You may be just fine with using it for a week if you are diligent in devising keywords, studying the results, and perhaps revising the keywords to see what that does to the Wordtracker results. Look at your competitors' sites for ideas for keywords, which usually are phrases, not single words.

How do you broaden and deepen your site for better SEO?

This takes time and dogged work. Decide what content will appeal to site visitors. They will appreciate information on your area of law—articles and news blurbs are great. They will like case digests. Frequently asked questions are always popular. Never underestimate the power of blogs, though you should make sure you can muster the time to provide regular and quality content for a blog. Choose carefully, picking material that has the most allure for site visitors and that you know you can maintain.



Sharon D. Nelson is president of Sensei Enterprises Inc., a Fairfax-based computer forensics and legal technology firm. Nelson received a law degree from Georgetown University in 1978. Her practice focuses on electronic discovery law. She serves on the Virginia State Bar Mandatory Continuing Legal Education Board and Special Committee on Law and Technology. She publishes a Web log, Ride the Lightning. <http://ridethelightning.senseient.com/>

How do law firms stay on top of SEO?

If you're big enough to have in-house marketing and website design/SEO, you are blessed. Some smaller firms have marketing committees that track SEO on a regular basis. But you might want to outsource this function. Because the Google algorithm changes so much, it is probably a good idea to have your site reviewed for optimization at least annually. Once it's been done right to begin with, the updates should be considerably more modest in cost.

Are you an alcoholic?

An alcoholic is always searching, usually daily, on keywords to check his site's Google ranking. Resist the temptation. If you check it no more than

quarterly, you won't need a twelve-step program for your addiction.

You might be able to do SEO yourself. We at Sensei learned it ourselves, became proficient at it, and now receive about 20 percent of our business from the website. But if you don't have the time (and how many busy lawyers do?) get a professional to assist. Lawyers ask constantly what single investment they can make to help grow their practice and our answer is always the same: Invest in a first-class creative website and pay attention to the ABCs of SEO.

Your Second Season of Service Is Just Beginning

by Donna Bausch

We all look forward to a productive retirement, but the prospect can be daunting. Seeing retirement as a journey rather than a destination can help you identify developmental steps on a path toward the most rewarding stage of your life.

Getting Started

The American Bar Association has a Commission on the Second Season of Service. Its website aptly states: "With the upcoming transition of the 'Boomer' generation, possibly the single largest transformation of a workforce in modern times, the ABA is well positioned to help those of its members who wish to continue practicing law, either as a continuing form of income but with a new career pathway, as a form of public service or pro bono publico work, or in some combination of the two."

This rich site, <http://www.abanet.org/secondseason/>, links to topics such as malpractice "tail" coverage, dealing with the death of a small-firm practitioner, news, a discussion list, and frequently asked questions. The volunteer opportunity search engine permits searches by location and type of project.

Next Steps

If you're at least fifty-five, the best way to continue planning is to join the Virginia State Bar Senior Lawyers Conference. This conference is one of the most active and honored in the VSB, and its website provides hundreds of links to relevant and timely resources, as well as opportunities to serve your profession and the public. <http://www.vsb.org/slc/attorney/index.html>

Perhaps you have a law practice for which you need to plan a future, too. *The Lawyer's Guide to Buying, Selling, Closing, and Merging a Law Practice* is a valuable ABA resource offering practical advice and tips on the advantages of buying and selling a law practice; ethical aspects of acquiring a law practice; valuation of a law firm; tax consequences of retiring a partner's interest in a law firm taxed as a partnership; merging law firms; selling a niche practice; business responsibilities in closing a law practice; ethical aspects of winding down a law practice; file preservation; and ending client and employee relationships. The guide includes handy checklists, forms, sample agreements, and sample letters as well as material from the ABA's Model Rules of Professional Conduct. <http://www.abanet.org/srlawyers/publications/lawyersguide.html>

More to consider

You're a lawyer, so you know all about the need to have a current will, power of attorney, and advance directives. So often, those of us who know better neglect these basic tasks, which should be priorities. Past VSB Senior Lawyers Conference Chair Frank O. Brown Jr. provided specific advice in "Basic Estate Planning for (Senior) Lawyers" in the December 2000 issue of *Virginia Lawyer*. <http://www.vsb.org/publications/valawyer/dec00/brown.pdf>

While updating your estate plan, give some thought to your legacy. If you wish to continue support for law-related causes, consider a planned charitable gift to the American Bar Endowment, the Virginia Law Foundation, or your local voluntary bar

foundation. Keep in mind the important work done in your locality by your community foundation, as well. For tips, see <http://www.abendowment.org/>, <http://www.virginialawfoundation.org/support.htm>, and <http://www.norfolkfoundation.org/>.

In your spare time ...

Are you interested in continuing meaningful legal work after you've retired? There is a great need for pro bono services from active and retired lawyers. The best place to get started is on the VSB site, which provides links to myriad ideas and opportunities to give meaning to that second season of service. http://www.vsb.org/site/pro_bono/resources-for-attorneys/

The American Bar Association Center for Pro Bono Service provides a *National Pro Bono Opportunities Guide* that links to an inventory of pro bono projects. http://www.probono.net/aba_oppsguide/

The United Way can link your passions and skills to community needs. <http://volunteer.unitedway.org/index.cfm> They've even got an online quiz to help you. <http://volunteer.unitedway.org/quiz.cfm>

The Service Corps of Retired Executives (SCORE) needs your unique expertise, which they will help you share with entrepreneurs who need sage counsel. <http://www.score.org/volunteer.html>

Volunteer Hampton Roads offers an online Volunteer Connection listing

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opportunities with nonprofit organizations. <http://www.volunteerhr.org/>

You may be surprised to find that you'll come to love the law more than ever when you use your training and experience as a volunteer. May your retirement journey be filled with adventure and reward.



Donna Bausch has been the law librarian at the Norfolk Law Library since 1992 and executive director of the Norfolk & Portsmouth Bar Association since 2002. She received a law degree from George Washington University, a master's in library science from Catholic University, and a bachelor's degree from Muhlenberg College. She is a past president of the Virginia Association of Law Libraries and the Southeastern Chapter of the American Association of Law Libraries.



70th Annual Meeting

VIRGINIA BEACH, VIRGINIA

June 19 – 22, 2008

The following pages contain a preliminary schedule of events to be held during the Virginia State Bar 70th Annual Meeting in Virginia Beach.

Annual Meeting brochures will be mailed to all Virginia State Bar members in mid-April. Complete Annual Meeting information, including registration forms, also is available on the Virginia State Bar's website at <http://www.vsb.org>. If you do not receive a brochure and/or need more specific information, call the Virginia State Bar, Bar Services Department, at (804) 775-9400. All information on the following pages is tentative and subject to change. Please refer to the brochure and the website for updates. You will be able to submit registration forms online at <http://www.vsb.org>.

Schedule of Events

WEDNESDAY, JUNE 18

| | | |
|-----------|---|---------------------|
| Noon | Executive Committee Meeting | Cavalier Oceanfront |
| 6:30 p.m. | Council Reception & Dinner Sponsor: Cavalier Hotels | Cavalier Oceanfront |

THURSDAY, JUNE 19

| | | |
|-------------------------------|---|----------------------------|
| 8:30 a.m. | VSF Registration | Cavalier Oceanfront |
| 9:00 a.m. | Council Meeting | Holiday Inn |
| 9:00 a.m. to 5:00 p.m. | 34th Recent Developments Seminar (separate registration with Virginia CLE) | Cavalier Beach Club |
| 11:30 a.m. | Golf Outing | Signature at West Neck GC |
| 3:00 p.m. | VADA Executive Committee | Cavalier Oceanfront |
| 4:00 p.m. to 6:00 p.m. | Lawyers Expo Opening & Reception Sponsors: Pearl & Associates; Cavalier Hotels | Cavalier Beach Club |
| 5:30 p.m. | Bill W. Meeting | Original Cavalier |
| 6:30 p.m. | Reception on the Hill Sponsor: VSB Members' Insurance Center | Original Cavalier |

FRIDAY, JUNE 20

| | | |
|--------------------------------|---|----------------------------|
| 7:30 a.m. | Conference of Local Bar Associations Annual Meeting & Breakfast | Cavalier Oceanfront |
| 7:45 a.m. | Registration | Cavalier Oceanfront |
| 8:00 a.m. | "Run in the Sun" Sponsor: Virginia Lawyers Weekly | Boardwalk |
| 8:30 a.m. | VADA Board of Directors Meeting | Princess Anne |
| 8:30 a.m. to 10:30 a.m. | VSF Section CLE Workshops & Business Meetings Intellectual Property Section "Top Ten Recent Developments in Intellectual Property Law" | All Hotels |
| 8:45 a.m. to 10:45 a.m. | SHOWCASE CLE "Initiatives in Mental Health Reform in the Aftermath of the Virginia Tech Shootings: the Legal, Policy and Administrative Implications" Sponsor: Young Lawyers Conference | Cavalier Beach Club |

JUNE 19 – 22, 2008 • VIRGINIA BEACH, VIRGINIA

Schedule of Events

FRIDAY, JUNE 20

9:30 a.m. to 5:30 p.m.

10:00 a.m.

11:00 a.m.

Lawyers Expo

Virginia Legal Aid Project Directors

Lawyers Helping Lawyers
Board of Directors Meeting

Cavalier Beach Club

Cavalier Oceanfront

Original Cavalier

11:00 a.m. to 12:30 p.m.

VSF Section CLE Workshops & Business Meetings

Administrative/Antitrust/Corporate Counsel Sections

“How to Handle Issues Surrounding Multi-Jurisdictional Investigations”

Bankruptcy Law Section

“Loss of the American Dream—How Do I Save My Little (Sub-Prime) House on the Prairie?”

Construction/Local Government/Environmental Law

“The Trickle Up Effect — Efforts and Impacts of Local Governments on the Implementation of ‘Green’ Development and Construction”

Criminal Law Section

“The Do’s and Don’ts of Dealing with the Media in High Profile Cases”

Family Law Section/Virginia ADR Joint Committee

“Collaborative Law with a Capital ‘C’: Lawyers as Healers of Conflict”

Litigation Section/Bench-Bar Relations Committee

“The Bermuda Triangle of New Litigation Pitfalls: Sanctions, Waivers & Pleadings”

Real Property/Trusts & Estates Sections

“Death and Dirt: Real Estate and Trust Attorneys Look at the Same Issues”

11:00 a.m.

Virginia Law Foundation
Finance Committee

Holiday Inn Sunspree

Noon

Virginia Law Foundation
Board Meeting & Lunch

Holiday Inn Sunspree

12:30 p.m.

Beach Break Reception
Sponsor: The McCammon Group

Cavalier Beach Club

12:30 p.m.

Young Lawyers Conference Reception & Meeting

Cavalier Beach Club

12:30 p.m.

Virginia Legal Aid Award Luncheon (*ticketed event*)
Sponsor: ALPS

Cavalier Oceanfront

12:30 p.m.

Bench-Bar Relations Committee

Holiday Inn Sunspree

12:45 p.m.

American Academy of Matrimonial Lawyers
Luncheon Meeting

Princess Anne

1:00 p.m.

Military Law Section Business Meeting

Holiday Inn

2:00 p.m. to 3:30 p.m.

VSF Section CLE Workshops & Business Meetings

All Hotels

Education Section/Virginia ADR Joint Committee

“Solutions for the Future — Interest Based Negotiation”

International Practice Section

“To and From Virginia — International Trade 2008”

SLC/General Practice Section/Virginia ADR Joint Committee

“When and How to Use Mediation in Cases Involving Elderly Clients: Nursing Home Issues, Estate Settlement and Trust Disputes, Power of Attorney, Conservatorship and Guardianship Matters and More”

Schedule of Events

| | | |
|-------------------------------|--|---------------------|
| 2:00 p.m. to 3:30 p.m. | VSB Section CLE Workshops & Business Meetings VSB Technology & Practice of Law Committee “Electronic Evidence: Report from the Battlefield” | All Hotels |
| | Lawyers Helping Lawyers “Mental Health and Substance Abuse Impairments: Impact on the Legal Community and a Way to Help” | |
| 2:30 p.m. | Virginia Women Attorneys Association <i>Annual Meeting & Program</i> | Cavalier Beach Club |
| 3:30 p.m. | Virginia ADR Joint Committee | Holiday Inn |
| 4:00 p.m. to 5:00 p.m. | Reception Sponsor: VWAA | Cavalier Beach Club |
| 5:30 p.m. | Bill W. Meeting | Original Cavalier |
| 6:00 p.m. | President’s Reception | Cavalier Beach Club |
| 6:00 p.m. | Childrens’ Dinner (<i>ticketed event</i>) | Cavalier Oceanfront |
| 7:00 p.m. | Banquet & Installation of President (<i>ticketed event</i>) Sponsor: Cavalier Hotels | Cavalier Beach Club |

SATURDAY, JUNE 21

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| 7:45 a.m. | Registration | Cavalier Oceanfront |
| 8:00 a.m. | Law School Alumni Breakfasts (<i>ticketed event</i>) | All Hotels |
| 8:30 a.m. | Lawyers Expo | Cavalier Beach Club |
| 9:00 a.m. | General Session & Awards Continental Breakfast Buffet | Cavalier Beach Club |
| 9:30 a.m. | Sand Castle Contest Sponsor: Minnesota Mutual Lawyers Insurance Company | Cavalier Beachfront |

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| 9:45 a.m. to 11:00 a.m. | Special Program: “Cleaning Up the Stress Mess” Sean Carter — Humorist at Law Sponsors: VLF; VSB LMI Committee | Cavalier Beach Club |
| 10:00 a.m. | 2008–2009 VWAA Board Meeting | Cavalier Beach Club |
| 12:15 p.m. | Expo Reception/Raffle Drawing Cash Bar Reception | Cavalier Beach Club |
| 12:45 p.m. | Senior Lawyers Conference Luncheon for 50-Year Award Recipients | Cavalier Oceanfront |
| 2:00 p.m. | Tennis Tournament Sponsor: Michie, Hamlett, Lowry, Rasmussen & Tweel | Original Cavalier |
| 2:00 p.m. | Volleyball Tournament Sponsor: Chicago Title Insurance Company | Cavalier Beachfront |

Maximum Available MCLE CREDIT 5.0 Hours
Maximum Available ETHICS CREDIT 3.0 Hours (*pending*)

According to their bylaws, sections are also required to conduct annual business meetings which will be scheduled either immediately preceding or following the corresponding section workshop. The annual business meetings are open to all members of the section.

21st Annual Lawyers Expo

A special highlight of this year's Annual Meeting will be the 21st Annual Lawyers Expo, sponsored by the State Bar's General Practice Section. The Expo will feature the latest in law office technology, legal publications and various related services. Located in Room C of the Cavalier Beach Club (adjacent to the Cavalier Oceanfront Hotel), the Expo will be open during the following hours:

- Thursday, June 19 4:00 p.m. – 6:00 p.m.
- Friday, June 20 9:30 a.m. – 5:30 p.m.
- Saturday, June 21 8:30 a.m. – 12:00 p.m.

An Opening Wine & Cheese Reception will be sponsored by **Pearl & Associates and the Cavalier Hotels** in the Expo Hall on Thursday afternoon, June 19. In addition, refreshments will be provided daily for all registrants.

Grand Prize Raffle

ONE PACKAGE TRIP*

VIRGINIA STATE BAR

35th Midyear Legal Seminar

RITZ CARLTON

SAN JUAN, PUERTO RICO

November 14–19, 2008

*(*Based on Double occupancy; does not include cost of spouse or guest)*

DRAWING:

**Saturday, June 21 • 12:30 p.m.
Cavalier Beach Club**

You must be present at the Raffle drawing to win the trip

Preregistered Exhibitors

- ALPS
- Aon Affinity Insurance – Aon Attorney Insurance Program
- Arbitration Associates, Inc.
- Caldwell Banker Seaside Realty
- FastCase, Inc.
- FREEDSTUDIO
- Great American Insurance Group – Lawyers Professional Group
- Lawyers Helping Lawyers
- Lawyer's Staffing, Inc.
- Minnesota Lawyers Mutual Insurance Company
- Pangean Systems, Inc.
- Pearl Insurance
- Regent University School of Law
- Robson Forensic, Inc.
- Sensei Enterprises, Inc.
- Thomson Tax & Accounting, Fast-TaxFPS
- TRT, Inc.
- Virginia Association of Criminal Defense Lawyers (VACDL)
- Virginia CLE
- Virginia Law Foundation
- Virginia Lawyers Weekly
- Virginia State Bar
- Virginia State Bar Members' Insurance Center
- virginia.gov

2008 Annual Meeting Sponsors

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| ALPS | Stewart Title Guaranty Company |
| David P. Bobzien | Tour Plan International, Inc. |
| Cavalier Hotels | Virginia CLE |
| Chicago Title Insurance Company | Virginia Law Foundation |
| Karen A. Gould | Virginia Lawyers Weekly |
| Great American Insurance Group | Virginia State Bar Members' Insurance Center |
| The McCammon Group | Virginia State Bar Lawyers Malpractice Insurance Committee |
| Michie, Hamlett, Lowry, Rasmussen & Tweel | Virginia Women Attorneys Association |
| Pearl Insurance | |
| Minnesota Lawyers Mutual Insurance Company | |

We gratefully acknowledge these sponsors of the 2008 Annual Meeting for their contributions in hosting a variety of activities and special events for our members and their guests.