

Rule of Law Not Linked to Diversity

When I enrolled at New England Law in 1973, the student government attempted to require all students to become members of the student chapter of PIRG (Public Interest Research Group)—or, at least, pay its dues. As an aerospace engineer of seventeen years, I didn't know anything about PIRG. I asked if the organization took sides on controversial issues. The answer was yes. The students rejected the proposal.

It's that simple. Clearly, diversity is a controversial issue. The mandatory Virginia State Bar has no business promoting any side of an issue not directly related to its primary mission—certainly not one as controversial as diversity, even if some view diversity as remotely related to improving the profession and the availability of legal services.

I support the Virginia State Bar and its stated purposes, but I oppose this initiative!

Hooray for the well-stated views of Joseph W. Stuart and David E. Wilson in the December 2008 *Virginia Lawyer*. They and many others reject VSB President Manuel A. Capsalis's view that "We cannot deny that the preservation of the Rule of Law is inextricably linked to diversity." It isn't, and shouldn't be.

Peter K. McCrary
Manassas

Focus on Individuals, Not Groups

I have followed the diversity debate in *Virginia Lawyer* with great interest. No matter what side of this issue one stands on—and on this issue no one is completely neutral—the immediacy and potential consequences are riveting. The recent U.S. Senate appointments highlight a danger inherent in pursuing an active diversity initiative within the bar.

Many impassioned arguments were made to fill President Barak Obama's vacated Illinois Senate seat with another African American. And now it seems that battle lines are being drawn along increasingly explicit racial lines around Roland W. Burris's appointment.

Attacking or defending a senate seat as "racial property" is an extraordinarily dangerous way to think or act.

In the same vein, Hillary Rodham Clinton's former Senate seat in New York went to another woman, Joseph R. Biden Jr.'s seat in Delaware went to another elderly white male, and a deal was made to fill Republican Sen. Judd A. Gregg's New Hampshire seat with another Republican, if he had taken the position of U.S. secretary of commerce.

These are, of course, political appointments made for purely political, nonlegal reasons. The diversity debate is inherently political and must necessarily remain so. Perhaps this is why Virginia State Bar President Manuel A. Capsalis rightly declined to define diversity and wisely acknowledged that its outlines and priorities must change over time—as all things political do. But injecting such explicitly political choices and actions into our organization should give us grave pause.

As President Capsalis alluded, we cannot simply ignore the issue and pretend it doesn't exist. To turn a blind eye is to risk the kind of prejudice we all wish to stamp out. Nor can we allow this issue to control and pre-decide our actions through preferences. This would be to engage in the very discrimination we all wish to stamp out.

Most insidiously, however, the Diversity Task Force would unnecessarily focus our attention along generic group lines (racial, gender, religious, ethnic—fill in the blank) in the same way that the Senate appointments have. Determining that we must have a prescribed number of counselors from fill-in-the-blank group would be as dangerous over the long term as thinking of legislative seats as the property of fill-in-the-blank group.

Individual lawyers necessarily retain the right to voluntarily associate along group lines as they see fit. But by focusing the Virginia State Bar's attention on such generic groups, we retrace the lines of distinction that will always thread their way through any population. This explicit attention reinforces entrenched divisions. The lines of separation and

potential fracture become harder to overcome.

Although it sounds like an impossible dilemma—being mindful of differences without focusing undue attention on them—in practice we do it all the time. For example, we listen to a traffic report on the radio, not ignoring the information, while focusing active attention on driving. The additional information usually is helpful, if it isn't too expensive to acquire. And actions may indeed be necessary. Thus, we should complete the diversity study to see what our bar actually is. But we should not allow our focus—our mission statement—to be changed or distracted.

So often the law is far better written in the negative than the positive, by setting out what we shall not do rather than what we must do. And so much in the law is best done in a limited and restrained fashion, doing only what is necessary. With these tenets as guide, our organization should not undertake to advance diversity, however we may define it. Instead, the VSB should swat unlawful discrimination, wherever we may find it.

When you really come down to it, discrimination—perhaps all injustice—is terribly personal, committed by one person against another, one tragic act at a time. When we refuse to defend or attack discrimination along generic group lines, we break the power of those old distinctions that might have been dictating our actions and thoughts, perhaps unconsciously. Isn't that the right path to progress here?

Shouldn't the law view and treat us as individuals, and not as representatives of some group? Our organization must remain vigilant to root out what we know to be wrong—unlawful discrimination—and do it through the established remedy of individual suits for and against individual parties. To do more or less sets us on a dangerous path. We set the correct example when we place our attention on individuals, not group identities.

Robert L. Lamborn
Redding, California

Disband Diversity Task Force

I write to express my gratitude to Fairfax lawyer Joseph W. Stuart for his letter to the editor published in the February 2009 issue of *Virginia Lawyer*. I join him in urging Virginia State Bar President Manual A. Capsalis to disband the Diversity Task Force. If Mr. Capsalis insists on continuing the pursuit of this “improper initiative,” I will join Mr. Stuart in strongly urging the Supreme Court of Virginia to put a stop to this effort.

In what seemed a show of arrogance in his October 2008 column, Mr. Capsalis wrote “[t]o those who preach the counsel of patience, respectfully, I decline your advice. I have no desire to stand by passively, and hope that history will surround us.” Wow! Then in his December 2008 President’s Message, “[d]iversity of ideas is itself inherently limited by the lack of diversity in those who are meaningfully able to put forth those ideas.” Double wow! Shame on me, but at the time, Mr. Capsalis’s statements were enough to cause this white guy to push away from the keyboard.

One challenge I recognized when I was initially moved to express my opinion was deciding where to start. Mr. Stuart noted the same problem when he wrote, “[i]t’s hard to know where to begin in addressing the fundamental flaws with Mr. Capsalis’s manifesto.” The undaunted Mr. Stuart poured significant thought and energy into a two-plus page, clearly crafted letter. He does an outstanding job of organizing the issues and expressing an opinion that I suspect many other lawyers in the commonwealth share on the matter of the direction and existence of our bar’s Diversity Task Force.

For me it is heartbreaking to read the following sentence that our president wrote in October: “We cannot deny that the preservation of the Rule of Law is inextricably linked to diversity, without which justice is an incomplete principle and, tragically, a hollow promise to many who live among us.” That statement disparages thousands of Virginia lawyers, past and present, who have poured so much of themselves into the

unending quest of justice for all. Virginia lawyers have a strong history that continues today of engaging in the most worthy and noble efforts in pursuit of justice. Those efforts are taking place each working day in countless cases and disputes, typically in unreported and unnoticed cases, at every level in our judicial system and in every corner of this commonwealth.

While Mr. Stuart noted that Mr. Capsalis evades defining “diversity,” he and fellow Fairfax lawyer and letter writer David E. Wilson, both correctly note that Mr. Capsalis’s diversity is nothing more than a racial head count or a preferential treatment of persons based upon race, sex, or national origin. Mr. Capsalis believes that justice has been an incomplete principle and a hollow promise in this commonwealth because the count of blacks, Asians, women, and other minorities on the bench or in the bar has not been “reflective of the demographics of society.” Given what I’ve seen over the years of the hearts of many Virginia lawyers, I am left feeling extremely sad that such is the view of our elected leader.

This thinking is upsetting to me as a lawyer in private practice (who used to do criminal defense work), and I suspect it is upsetting to many judges in our state who take their seats on the bench each day with a commitment in their hearts and minds to do their very best to judge the facts and the parties without regard to the parties’ or their lawyers’ skin color, gender, or other irrelevant factors. I will add that this is from a lawyer who, early in my career in the late 1980s, requested a jury trial for a black defendant because I believed the judge (who is now deceased) tended to impose harsher sentences on black defendants. Though I was struggling with what I felt was a bias in a judge, I declined to adopt the belief that the answer was to request (or even have the option to request) that a black judge hear the case. Fixing the system so that the odds are improved that the races, sexes, or national origins of the judge, the litigants, and counsel will match up is not the answer today. That approach will leave all of us on a

never-ending, increasingly divisive, and miserable course, which, unfortunately, is where it seems the Diversity Task Force is dead set on heading.

The answer, for the purposes of the Virginia State Bar, is for the bar to pour its efforts and energy in assisting the General Assembly in the judicial selection process. We should do all we can to aid the General Assembly in identifying and appointing judges who will be as unbiased as humanly possible in the administration of justice. We also should assist in removing those who prove unable or unwilling to so function.

As to the bar’s role in improving its non-judge members, many—I would hope all—of us acknowledge that minorities (perhaps not so much women any more) are underrepresented in our profession in Virginia. This is a challenge that came to my attention when I started law school at the University of Richmond in 1985. At the time University of Richmond had a dean, Thomas A. Edmonds, who was as committed as anyone to bringing minorities into the profession. There was no misunderstanding how Tom felt about the stain of racism in our country.

However, from my observations, efforts to increase minority enrollment were stymied by the stiff competition among law schools for qualified minority applicants. The effort to build up minorities in our ranks needs to start in high school or earlier. That, of course, is an order that might be translated into the daunting task of fixing our public schools—especially those serving largely minority communities. While that task is beyond the bar’s focus, I would think that the leaders of the many fine law schools in Virginia might have some insight into a few (legal) things that our bar could do to attract applications to Virginia law schools from academically strong students of varied backgrounds and races.

Our Virginia State Bar (and our Supreme Court) should stick to supporting and promoting racially neutral efforts to improve the administration of justice and the practice of law. It seems clear to me that if our bar pursued only

efforts that are framed around the behavior that we are supposedly seeking — making choices and dispensing justice in a manner that is blind to the factors that we reject as irrelevant — then our state will be far more likely to attract lawyers of all sorts of backgrounds and races who will become integral participants in a legal system where the judges, the lawyers, and the litigants are judged by their demeanor, civility, integrity, intellect, work ethic, behavior, and other actions, and not by their race, gender, or national origin. Unfortunately, Mr. Capsalis has unequivocally informed us that he has not the patience for any approach other than appointment of judges and bar leaders based upon their skin color, sex, and national origin.

I urge all Virginia lawyers, if you have not done so, to go to the bar's website and read Mr. Stuart's letter. (http://www.vsb.org/docs/valawyer magazine/v10209_letters.pdf) And I urge my colleagues to oppose the use of our bar dues for the Diversity Task Force, the actions of which Mr. Stuart correctly observes puts the bar on a collision course with Article I, Section 11 of the Constitution of Virginia. As we find our voices, we will have the added bonus of showing that U.S. Attorney General Eric H. Holder Jr. was wrong — at least about Virginia lawyers. We are not cowards when it comes to discussing race. We are bold leaders.

John L. Lumpkins Jr.
Goochland

The Meaning of "Demean"

I have just finished reading the February 2009 issue of *Virginia Lawyer*, which includes an article by Travis J. Graham and James J. O'Keeffe IV. (http://www.vsb.org/docs/valawyer magazine/v10209_legal-process.pdf) They quote the preamble of Virginia's Principles of Professionalism as stating "all Virginia lawyers pledge to demean themselves professionally and courteously."

Since I do not like to demean myself or anyone else, I checked the definition in my American Heritage Dictionary of

the English Language where it states: "demean, transitive verb. 1. To debase in dignity or stature. 2. To humble (oneself). See Synonyms at degrade. [DE-(pejorative) + MEAN (base).]"

Did the authors leave the word "not" out before the infinitive "to demean"? If not, does "demean" have another archaic meaning not in my abridged dictionary? If so, does the preamble need to be modernized to replace "demean" with another word like behave," "comport," or "conduct"?

Joseph Scafetta Jr.
Falls Church

Editor's note: One meaning of "demean" is a synonym for "behave." One can demean oneself well or poorly (think "judicial demeanor"). A second definition is a synonym of "debase." Both are acceptable, depending on the context. The American Heritage Dictionary of the English Language, 3rd ed., traces the word from Middle English demainen, "to govern," from old French demener, to "conduct."

Did You Say Maid Service?

Your February 2009 article on diversity in *Virginia Lawyer* was informative and enjoyable. However, I was very surprised at your choice of words under the sub-head "Don't Whine."

You stated that Betty Thompson had been unable to afford to pay for a "maid service." I looked up "maid" in several places and the definitions all refer to a specific gender: a female. It is a shortened version of "maiden" or "maid-servant." The Merriam-Webster online dictionary defined "maidservant" as "a woman or girl employed to do domestic work."

I assume that Ms. Thompson was referring to a "cleaning" service and that she would have been happy to employ a cleaning person or service, regardless of gender. However, by using such a gender-specific term you are perpetuating a stereotype of women that is at odds with the whole message of your article.

As a female who worked for five years as a criminal defense attorney

before taking a year off to go sailing, I am not one who is easily offended. However, your use of the word "maid" was offensive on more than one level.

First, "maid" implies that only a woman could or would do this job. Because there is a perception by some that cleaning for someone else is a menial job, using the word "maid" in this context implies that men are "above" this type of employment. Second, by calling a cleaning service a "maid" service, you implied that cleaning is women's work.

It is especially ironic that you would use this word in an article about diversity and women in particular! It is not clear to me whether the choice of words was yours or Ms. Thompson's, but regardless, I believe the use of "cleaning person/service" would have been much more appropriate.

Sheryl K. "Sherry" Netherland
Richmond

Writer's Note: Ms. Netherland caught me. My experience is that so-called "maid" services employ both men and women. But the dictionary rules, and I should have used "cleaning" service as a gender-neutral term, as Virginia Lawyer's editorial style requires. It was my word, not Ms. Thompson's. — Dawn Chase

Hill-Tucker Admissions Explained

We read with intrigue the letters section in the February 2009 *Virginia Lawyer*. One letter in particular struck us, titled "'Diversity' Ends in Racial Headcount." While most of the letter is about the Virginia State Bar's Diversity Initiative, it mentions the Oliver Hill/Samuel Tucker Prelaw Institute sponsored by the Millennium Diversity Initiative and the VSB Young Lawyers Conference.

In his mention of the institute, writer David E. Wilson challenges the legal validity of such a program, and questions whether it is available as "a legal pipeline open to young people of all races."

As the codirectors of the program for the past two years, we were compelled to submit a response to Mr. Wilson's

rhetorical question. In describing the goal and mission of the institute, we state on the YLC website: “The Institute targets a diverse group of students. We seek to attract minority high school students who would not normally have access to or positive interactions with members of the Virginia State Bar.” (<http://www.ohli.org>) In our online application there is no mention of race or ethnicity.

All applications are reviewed on their merits and students are admitted as space is available. In 2008, we admitted twenty-three students to the Oliver Hill/Samuel Tucker Prelaw Institute. Twenty-one students were able to attend the program. One was Russian and another was Hispanic.

We have partnered with area school districts to notify them of the availability of applications, and the districts then disseminate that information to the high schools. There is no mention that the program is limited to minority students, as all students are welcome to apply. In fact, our response to inquiries related to whether a non-minority student can apply is: “While the program is targeted towards minority students, we welcome and encourage all students who are interested in attending the program to apply.”

We do not request information on a student’s racial or ethnic background on the application, and we make no assumptions regarding such during the review of applications received. All fully completed applications are reviewed for acceptance into the program, as space permits.

While we have come a long way in terms of diversity, we have a long road ahead of us. It is unfortunate that a program that was designed for students who may not otherwise have access to members of the bar could be challenged on the basis of a false assumption.

Yvette A. Ayala
Rasheeda N. Matthews
Richmond

Diversity in the Legal Profession Benefits Us All

The February 2009 edition of *Virginia Lawyer* published letters joining the current debate over the merits of Virginia State Bar President Manuel A. Capsalis’s initiative to promote diversity. We should acknowledge and welcome the debate but not the tonality of personal attack directed at Mr. Capsalis, whose motives to better our profession are unassailable.

Opponents of his initiative attempt to define “diversity” as establishing quotas for the unqualified, which is not what promoting diversity is all about. By defining diversity in this manner, they attempt to win the debate in painting the diversity initiative as nothing more than an effort to victimize and take from the qualified and give to the unqualified. This is a tried-and-true but unwelcome tactic sometimes evident in litigation — namely, to refashion the arguments of opponents into something they are not, in order to then defeat a worthy effort now recast as an affront to the sensibilities of the audience to which the communication is directed.

Promoting diversity in the law is not about securing some narrow niche of privilege for a particular group, but is rather an effort to end a pattern where such diversity is suppressed, whether intentionally or merely by replication of past custom. Diversity is about encouraging tolerance, respect, and inclusiveness of persons in the law who have been otherwise discouraged from full participation because of their race, gender, ethnic origin, or social background. Virginia has come a long way in encouraging diversity, but not far enough.

One example to which we can point with pride is that diversity came to the Supreme Court of Virginia not because of quotas but because of the breakdown of barriers that previously prevented the best candidates from reaching the Court if they happened to have been other than white men. It would be hard to argue that the current Court’s two African Americans and two women are other than jurists of the highest qualifications. Thus, promoting diversity is in

essence about encouraging the most qualified to enter the law — no matter what their background — and not allowing the impression that the profession is unwelcoming of a particular group.

Diversity enriches the bar. It does not detract from the profession. The debate should be framed in terms that state a truism: promoting diversity benefits the profession by increasing the talent pool from which lawyers, judges, and others engaged in the legal system are drawn.

David Bernhard
Falls Church

In Defense of Hope

In a letter in the February 2009 edition of *Virginia Lawyer*, an argument was made that because diversity had been left undefined, it could not and should not be pursued; the argument then sustains itself by defining diversity in a manner most supportive of the letter’s position that diversity is discrimination. We define diversity differently. Diversity is opportunity, and it paves the way for hope.

True diversity does not tolerate unlawful discrimination or the failure to provide equal protection in any form. It is never a place where “whites” are not welcomed or are told they need not apply.

Diversity measures quality by merit — not by the accident of birth, upbringing, or cultural heritage. It recoils with disapproval from decisions driven by race or ethnicity alone. It strikes down laws that favor one group over another based solely on the physical characteristics of the favored group.

It is not a quota, racial or otherwise. Diversity is tolerance. It is an unquestioning acceptance of the proposition that merit can be achieved regardless of background and no one should be limited in their opportunities to serve the bar by anything other than their abilities and availability. Successes and personal accomplishments in any field of endeavor are inextricably bound to relationships. Wherever our life begins, we all navigate through life marked and

affected by our relationships. Most of us get to where we are going because of the relationships we build along the way. A diversity task force seeks to make those relationships available to anyone who wants to work hard enough to sustain those relationships.

Fewer than fifty years ago, we forbade certain relationships from ever forming. In *Loving v. Commonwealth*, 206 Va. 924, 147 S.E. 78 (1966) the Supreme Court of Virginia affirmed a felony conviction of persons who violated the commonwealth's ban on interracial marriages.

That ban had been upheld years earlier in *Naim v. Naim*, 197 Va. 80, 87 S.E.2d 749, remanded 350 U.S. 891, 100 L.Ed. 784, 76 S.Ct. 151, *aff'd*. 197 Va. 734, 90 S.E. 2d 849, app. disp. 350 U.S. 985, 100 L. Ed. 852, 76 S. Ct. 472 (1955). In *Naim*, we concluded that laws prohibiting miscegenetic marriages were constitutional, to "preserve the racial integrity of its citizens," to prevent "the corruption of blood," "a mongrel breed of citizens," and "the obliteration of racial pride". 197 Va. at 90; 87 S.E.2d at 756.

The U.S. Supreme Court reversed *Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967). Citing two prior decisions the Court repeated the principles that "distinctions between citizens solely because of their ancestry" were "odious to a free people whose institutions are founded upon doctrines of equality," *Hirabayshi v. United States*, 320 U.S. 81, 100 (1943) and *Korematsu v. United States*, 323 U.S. 214, 216 (1944). (There is an irony to this citation, which is not a part of this note).

The cases cited above are now considered historical and are consigned to the back shelves of the nation's law libraries. Virginia's judiciary today is composed of men and women whose beliefs, judicial temperament, and awareness reflect a community from all corners of this commonwealth, from Fairfax County to Wise County to Poquoson. Our judiciary is as close a model of tolerance as we have seen—not because of the color or gender of the bench alone, but because of the strength of their character. Meanwhile,

diversity within the bar itself continues to grow at an astounding pace, but it is still in a state of growth. As we seek to better serve justice, we seek to improve all aspects of our profession, including the growth of diversity. The creation of a diversity task force is intended to foster such improvements.

It is not surprising to hear that this effort is coming from the Virginia State Bar. The governing body of the VSB in many respects is formed and rests upon a model of diversity. The bar council purposefully draws its members from each of Virginia's thirty-one judicial circuits, and nine additional members are appointed by the Supreme Court from the active members of the bar at large. Any judicial circuit that has more than five hundred active members is entitled to one additional council member for each additional five hundred members. Consequently, although the most densely occupied circuits may have more representatives as a group on the council, the entire governing body comes from all across the commonwealth, and the diversity of their ranks is enhanced by the at-large seat appointments.

A diversity task force and a diversity conference are thus a natural outgrowth of the core values of a bar leadership which, over the years, has undertaken efforts to increase diversity in the profession.

We believe that instead of "racial balancing," the Diversity Task Force's mission is one of promoting sober reflection on whether the divisiveness of the past—the vestiges of the 1970s—is truly vanquished from our society. The question remains whether we can honestly say that within Virginia's legal profession there is tolerance and opportunity for all its members worthy of an institution entrusted with ensuring equal justice under the law.

This concept of equal justice does not demand symmetry; it simply requires that all should have equal opportunities. When we foster equal opportunities we encourage people from all walks of life to come into our profession because the doors were opened for anyone with the merit and courage to

walk through. Diversity opens the door. It does not usher in the unwilling or unqualified, but it does and should welcome the application of a poor white student from Appalachia to join the Oliver Hill/Samuel Tucker Prelaw Institute.

Diversity allows for hope.

History has shown us that real progress and change cannot occur without hope and that hope comes from the leaders of our community when they challenge complacencies. These leaders are unafraid to examine their prejudices because they believe that when they face those prejudices, they better themselves and foster justice for all.

Democracies exist when opportunities and hope abound. Lawyers, whether from Pakistan or the United States, are the natural guardians of democracy. The Rule of Law understands that freedom can be sustained only when we promote the hope that a few find inconvenient.

Regardless of the inconvenience, it is inescapable that diversity is America. Nowhere else in the world can there be found the variety of lives that exist from the winters of Alaska to the summers of Hawaii; from the West Coast to the corn fields of Iowa to the East Coast; from the Florida Keys to the Southern Gulf to the Great Lakes. The diversity initiative seeks to build on the recognition that the strength of this nation comes from all corners of the country and the talents of its citizens.

These are more than just words, more than sophistry. These are the voices of America. And in keeping with those voices, we applaud the current VSB president and his courageous colleagues of the Virginia State Bar who are willing to raise those voices and challenge us to do the same.

Asian Pacific American Bar Association
of Virginia
Hispanic Bar Association of Virginia
Northern Virginia Black Attorneys
Association
Virginia Trial Lawyers Association

Editor's Note: More letters are posted at VSB.org

CLE Calendar

The **Virginia Trial Lawyers Association** will sponsor the following:

Lien Resolution — Getting ready for the new Medicare set-aside regulations (Mandatory Insurer Reporting) by July 1 — May 8 in **Richmond**, May 21 in **Fairfax**, and June 25 in **Roanoke**

Virginia College of Trial Advocacy — May 29–30 in **Williamsburg**

July Family Law Seminar — July 11 in **Williamsburg**, July 16 in **Roanoke**, and July 30 in **Fairfax**

For details visit <http://www.vtla.com> or call (804) 343-1143.

The **Virginia Criminal Sentencing Commission** will sponsor the following:

Introduction to Sentencing Guidelines, designed for attorneys and criminal justice professionals who are new to Virginia's sentencing guidelines. April 28 in **Richmond**, May 7 in **Portsmouth**, May 15 in **Fairfax**, May 21 in **Abingdon**, and July 14 in **Richmond**.

Advanced Sentencing Guidelines Topics and Ethical Hypotheticals, for experienced users of the guidelines. May 13 in **Danville**, May 22 in **Abingdon**, June 23 in **Charlottesville**, and June 24 in **Winchester**.

For program locations and other details, go to <http://www.vcsc.virginia.gov> or call (804) 225-4398.

Nonprofit bar associations and state agencies can submit their continuing legal education programs for publication in *Virginia Lawyer* at no charge. The next issue will cover July 22–October 16, 2009. Send information by June 1 to chase@vsb.org

For other CLE opportunities, see Current Virginia Approved Courses at <http://www.vsb.org/site/members/mcle-courses> or the websites of commercial providers.



Chase



Floyd



Dunn



Brown



Burtch



Ledbetter



Zwirner



Spahn



Spicknall

Dawn Chase, assistant editor of *Virginia Lawyer*, researches, writes, and edits stories for Virginia State Bar President Manuel A. Capsalis's diversity initiative. She has been a professional journalist for more than thirty years.

Ideas for future stories or comments on diversity coverage should be directed to her at (804) 775-0586 or chase@vsb.org.

M. Christina Floyd practices with Vandeventer Black in Norfolk, and focuses on business transactions and commercial, employment—including discrimination issues—and automotive law. A former general counsel, she is chair of the Virginia State Bar Corporate Counsel Section and a director of the Virginia Women Attorneys Association, and she has served in leadership roles with the Virginia Commission on Women and Minorities in the Legal System. She received bachelor's and master's degrees in psychology from Virginia Commonwealth University and a law degree from the University of Richmond.

Broderick Coleman Dunn is an associate in the Richmond law firm of Hirschler Fleischer PC, where he works in the litigation section on a range of civil and commercial disputes. He is a member of the Employment Law Practice Group. He received a bachelor's degree from Williams College and a law degree from Washington and Lee University.

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. *Photo by Olan Mills*

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, where he teaches negotiations, interviewing, and counseling.

William H. Ledbetter Jr. is a retired judge of Virginia's Fifteenth Judicial Circuit, a mediator with the McCammon Group, and a member of the board of governors of the Senior Lawyers Conference of the Virginia State Bar.

Gail Zwirner is the head of Access Services at the University of Richmond Law School Library, where she also teaches legal research in the first-year law skills program. Prior to her appointment at UR, she was senior reference librarian at Hunton & Williams LLP in Richmond. She has worked at law firms in Washington, D.C., and Philadelphia. Zwirner served as the president of the Virginia Association of Law Libraries 1999–2000.

Thomas E. Spahn, a commercial litigation partner at McGuire Woods LLP, has devoted much of his legal career to helping lawyers and law firms practice ethically. He was a key member of the committee that developed the Virginia Rules of Professional Conduct. He summarized all 1,500 Virginia legal ethics opinions and posted them in a searchable database on his law firm's website, at <http://www.mcguirewoods.com/services/leo/>. He was chair of the Virginia Bar Association committee that created the Virginia Principles of Professionalism. He is a magna

cum laude graduate of Yale University and received his juris doctor degree from Yale Law School.

Robert H. Spicknall is president of the bar's endorsed broker/administrator for insurance programs—the Virginia State Bar Members' Insurance Center, an affiliate of Dominion Benefits. He is a certified employee benefit specialist, and he has assisted Virginia lawyers and law firms with health, life, and disability insurance for more than fifteen years. More information: (877) 214-5239 or www.vsbmic.com.

President's Message

by Manuel A. Capsalis



The Clubhouse Turn

THIS IS MY LAST PRESIDENT'S COLUMN. For whatever reason, it has proven the hardest to write. Perhaps it is because there is so much I could write about. Being president of the bar is a whirlwind tour. It offers a wonderfully unique opportunity to be a witness to nearly every facet of our profession. It presents the challenge of leading the twenty-eight thousand active members of the bar, as well as thousands more associate, retired, and judicial members, and dealing with a seemingly limitless number of issues, large and small. It is exhausting and exhilarating. It is demanding, and immensely rewarding. It is the ultimate privilege, and I still cannot believe my good fortune in being given the opportunity.

I have traveled the commonwealth, meeting and working with fellow attorneys and the bench from Alexandria to Abingdon, from Millwood to Norfolk. The caliber of practitioners and judges I have met across the state is undeniably impressive. They are proud stewards of the Rule of Law, defenders of justice, and strong leaders in their communities. I know of no other profession as committed to public service, or any which accomplish so much for the collective good.

Perhaps the most educational experience for me has been the opportunity to speak at various law schools, colleges, and high schools throughout the state. The students give me great faith that this next generation of leaders will do us proud. They are smart, and despite the problems the world currently presents, they are positive and full of hope. I always thought it was, at best a cliché to talk about how it is harder growing up now. I was

wrong. It is true. Life really was much simpler being a kid way back when. I look back now at the world when I was growing up, and I compare it to what our kids are facing, and it is a wonder how they will cope. After speaking at so many schools this year, and meeting so many students of every imaginable background, I have come to believe that they will do just fine.

It is particularly fascinating to witness how this younger generation accepts life on different terms. Generations before them, including mine, often saw people through the prism of race, or color, or heritage. I certainly experienced this growing up in North Carolina and Virginia, and if truth be told, it affected me on some level. But where older generations reacted to one's color or race, so many of these kids just see people. They have enormous potential, and if we are willing, perhaps we can learn something from them.

I have witnessed firsthand the excellence of bar staff. They are committed, efficient, and the unknown catalysts of our profession. Despite the economic hardship the bar has faced as a government agency, today it is run more efficiently and productively. We now have a balanced budget, with no diminution in services. Just as she proved as president of the bar two years ago, Karen A. Gould is an impressive and innovative executive director. She is a rock of stability, and the bar will thrive under her continued leadership.

Working together with staff are the many volunteer attorneys in bar service who selflessly give of their time for the greater good of our profession. We currently have forty-seven confer-

ences, sections, and committees at the state bar, not to mention task forces, working groups and subcommittees, all of which comprise these dedicated practitioners. They are truly inspiring in their commitment.

It is important to recognize the job of the office of bar counsel. Public protection is the core mission of the bar. We are the only self-regulated profession in Virginia. As the regulatory agency of the Supreme Court of Virginia, the bar is tasked with the obligation of protecting the public. Through hard work and innovation, bar counsel is handling more cases than ever before, with greater efficiency and with a consistent and desirable quality of service. At the beginning of my term, I challenged the bar to fully review our public protection efforts, and to determine how and where we could do a better job. The results of bar counsel's answer to this challenge are resoundingly clear. Ned Davis and his staff are getting the job done, and they are doing it quite well. Our core mission is being fulfilled.

I am proud of our renewed commitment to diversity, and I hope we will move forward with the simple goal of promoting the opportunity of inclusion and in seeking to make our profession and the judiciary more reflective of the demographics of our ever-changing society. This is a cause worthy of the effort, and I firmly believe we have it in our ability to make a difference and in turn, to best serve Virginia.

This year we enhanced our focus and efforts in providing accessible pro

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Executive Director's Message

by Karen A. Gould



It's Budget Time!

THE PROPOSED BUDGET for the Virginia State Bar (VSB) for the fiscal year 2009-10 is ready for your review and comment. The budget has been approved by the Standing Committee on Budget and Finance. It now will be scrutinized by your representatives on the Executive Committee and our supervising authority, the Supreme Court of Virginia. Finally, the budget will be presented to the VSB Council at its June meeting.

I am providing these details as part of an ongoing effort to keep the VSB's 43,239 members informed about how your bar is using your dues dollars to regulate and support the profession and to protect and serve the public.

The series began in the June/July 2008 edition of *Virginia Lawyer*, when I described bar programs and asked you for feedback on which you believe should be given priority. (http://www.vsb.org/docs/valawyer magazine/vl0708_exec-dir.pdf) In February 2009, I outlined some of the areas in which the VSB has contained expenses, to make your money go further while continuing to carry out the bar's mission. (http://www.vsb.org/docs/valawyer magazine/vl0209_ed.pdf)

I am pleased to report that the bar's cost-cutting efforts are having a positive impact. The 2009-10 budget projects a reduction of \$289,000 in expenses, compared to the current operating budget that ends on June 30, 2009. The bar will meet its budget without a dues increase. The VSB is accomplishing its mission without putting additional financial stress on Virginia lawyers during this difficult time.

As Chart A shows, the cost of operating the bar during the fiscal year ending (FYE) 2010 is estimated at

\$12,244,000. Approximately 60 percent pays for salaries, wages, and benefits — a typical ratio for a service agency. There are 90.8 budgeted positions in next year's budget, which is three fewer than this year. Employees will not receive a salary increase this year or next year, in accordance with decisions by the Governor and Chief Justice in light of the economic downturn.

The bar is reducing its office space. In September, the lease in Alexandria will not be renewed. Employees there will work from their homes. The budget item of \$447,600 for rent will cover the Richmond office and the months remaining in Alexandria.

Communication of the bar's work and information essential to ethical practice is an important part of professional regulation. The budget includes \$218,800 for publication of the *Virginia Lawyer* and *Virginia Lawyer Register*, which costs about \$157,000 annually to print five issues of each. This has been reduced by \$96,000 since 2008, due to cost-saving measures instituted in the publications department. The VSB is publishing more information than ever, but we are using the Internet, which is faster and less expensive than print. Digital documents also give each bar member the option to create a printed document.

The publications savings reflect a \$35,000 reduction in the printing of the *Professional Guidelines*. All volunteers and any member who requests one will receive a printed copy, but the book will not be sent to all members. Instead, the *Professional Guidelines* will be posted at VSB.org, where it will be updated on an ongoing basis so members always have immediate access to the current rules.

Despite reductions in printing, significant postage costs are unavoidable. Postage is projected to be \$225,725 in FYE 2010. This pays for mailing the *Virginia Lawyer* and *Virginia Lawyer Register*, at \$85,000 annually. Another \$63,000 will pay for mailing bar membership cards and notices of annual dues, delinquencies and suspensions, and mandatory continuing legal education. Mailings related to bar discipline are projected to cost \$37,000.

The budget for FY 2009-10 includes \$154,700 for the bar's computer operations. This supports the bar's software, hardware, telecommunications, and networking information technology needs. This enables us to bring you the up-to-date, quickly accessible information you have become accustomed to. IT also helps us manage our complex regulatory caseload.

An allocation of \$105,000 is budgeted for new technology projects in the coming year. This amount is contingent on review and recommendation by the Information Technology Committee. The amount includes \$75,000 for document management — an ongoing project for the bar. Web-based applications for bar members and the public are a priority, and \$30,000 is budgeted to cover potential new applications.

Travel costs for the many volunteers who serve on committees, conference boards, and the bar's governing body are a major expense and essential to a self-regulated profession in a geographically far-flung state. The budget for mileage reimbursement, meals, and hotel expenses for our volunteers is \$289,000.

The bar contributes \$100,000 annually to the Lawyers Helping

Chart A

**VIRGINIA STATE BAR PROJECTED EXPENDITURES
FISCAL YEAR 2010 BUDGET**

	FY 2010 PROPOSED BUDGET
Salaries	\$5,647,500
Benefits	2,182,635
Wages & Professional Services	122,220
Receiverships	300,000
Dues & Subscriptions	42,835
Rent: Office Space	447,575
Rent: Office Equipment	25,620
Office Supplies	39,500
Stationery & Forms	30,150
Office Furniture & Equipment	20,000
Staff Travel	116,725
Office Insurance	10,550
Repairs & Maintenance	8,250
Printing & Copying	218,800
Postage	225,725
Telephone	107,370
Advertising	57,700
Other Contractual Services	118,400
Computer	154,700
Other Technology Projects	105,000
Professionalism Course:	
Travel	171,750
Miscellaneous	14,550
Council, Comm., Boards:	
Travel	288,650
Miscellaneous	75,430
Lawyers Helping Lawyers	100,000
Attorney General Costs	100,000
A & F Transfers	125,000
Clients' Protection Fund Transfer	718,125
Online Legal Research	100,000
Special Programs and Operating Contingency	102,500
Sections	357,172
Senior Lawyers Conference	25,000
Young Lawyers Conference	76,850
Fee Disputes	8,000
TOTAL	\$12,244,282

Lawyers program, because LHL helps lawyers avoid disciplinary problems, and it works with the bar disciplinary system to rehabilitate lawyers who have run afoul of the ethics rules due to substance abuse and mental health problems.

Supporting members with training and research tools is a priority of the bar. The Supreme Court requires the VSB to provide an online legal research program to its members. (Rules of the Supreme Court of Virginia, Organization and Operation of the Virginia State Bar, Part Six, §IV, ¶ 21) The bar contracts with Fastcase through a competitive process to provide this service at a cost of \$100,000. At the direction of the Supreme Court, the bar also hosts the Indigent Criminal Defense Training Initiative (\$80,000) and the Solo and Small-Firm Practitioner Forum (\$15,000).

Investing in practice development and service interests of VSB members also is a focus of the bar. The specialty sections that help practitioners hone their skills in criminal law, family law, litigation, and seventeen other areas costs \$357,000, which is supported by elective dues paid in addition to the mandatory bar dues. From its mandatory dues, the bar funds conferences of Senior Lawyers, with a budget of \$25,000, and Young Lawyers, for \$96,350. These conferences provide many substantive programs and projects that are helpful to lawyers and citizens in the commonwealth and that engender goodwill toward the legal profession, and they are part of volunteer leadership development. The budget for FY 2009-10 does not contain a line item for the proposed Diversity Conference that has not yet been approved by the council and the Supreme Court of Virginia.

Perhaps the biggest unknown in the VSB budget is the cost of receiverships ordered by courts due to the death, disability, disappearance, suspension, or disbarment of an attorney. (*Code of Virginia* §§54.1-3900.01 and 54.1-3936) The proposed receivership budget for next fiscal year is \$300,000. While the

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VSB Seeks Comment on Diversity Recommendations

Editor's Note: This article was published previously in the March edition of the Virginia Lawyer Register.

THE VIRGINIA STATE BAR is seeking public comment on proposals that would broaden the agency's responsibilities to include promotion of diversity in the legal profession. The VSB Council will consider the proposals at its meeting on June 18, 2009, in Virginia Beach.

Comments should be submitted in writing to Karen A. Gould, Executive Director, Virginia State Bar, 707 East Main

Street, Suite 1500, Richmond, VA 23219, no later than end of business on May 26, 2009.

The recommendations were developed by the Diversity Task Force appointed by VSB President Manuel A. Capsalis. Chaired by former president Joseph A. Condo, the task force convened for the first time on July 28, 2008.

Proposed Amendments to Virginia State Bar Mission Statement;

Rules of Court, Part 6, § IV, ¶ 9;

Rules of Court, Part 6, § IV, ¶ 5;

Bylaws of Council, Part II, Article VI, § 1;

Proposed Bylaws for Diversity Conference

The proposals, recommended by the Diversity Task Force, would amend the bar's mission statement, establish a Diversity Conference, and designate a new seat on the VSB Council and Executive Committee for the conference's chair.

The council will consider the proposals at its meeting on June 18, 2009, in Virginia Beach.

The proposals are:

- To amend the VSB Mission Statement to add a diversity component. The revised statement would be:

The mission of the Virginia State Bar, as an administrative agency of the Supreme Court of Virginia, is (1) to regulate the legal profession of Virginia; (2) to advance the availability and quality of legal services provided to the people of Virginia; and (3) to assist in improving the legal profession and the judicial system; and (4) to promote diversity in the administration of justice and the practice of law.

- To amend the powers of the Virginia State Bar Council to include a power to "encourage and promote diversity in the profession and the judiciary." See Proposed Addition to Paragraph 9, Organization and Government of the VSB, at <http://www.vsb.org/site/news/item/diversity/#par9>.
- To establish a Diversity Conference with a mission to "(1) foster and encourage diversity in the admission to the bar and advancement in the legal profession and the judiciary;

(2) serve as a catalyst for creating leadership and bar service opportunities in the legal profession in Virginia; and (3) work to ensure that the legal system is responsive to the legal needs of the people of Virginia." The conference's members would include local or specialty bar associations, law schools, and individual lawyers. The conference would be governed by a board, with a budget approved annually by the VSB Budget and Finance Committee. The board would comprise twelve governors elected by the conference members, three — including at least one layperson — appointed by the VSB president, and up to three elected as nonvoting honorary members. See Proposed Bylaws, VSB Diversity Conference, at <http://www.vsb.org/site/news/item/diversity/#bylaws>.

- To add an ex officio seat designated for the chair of the Diversity Conference on the VSB Council and its executive committee. The council at present consists of eighty members, including three officers, and the executive committee has twelve members. See Proposed Amendment to Paragraph 5, Organization and Government of the VSB, at <http://www.vsb.org/site/news/item/diversity/#P5>. Also, Proposed Amendment to Article VI, VSB Council Bylaws, at <http://www.vsb.org/site/news/item/diversity/#VI>.

Planning for the Unexpected: Bar Gains Insight from Attorney with Disability

by Dawn Chase

“DIVERSITY” IS NOT LIMITED to categories such as race, ethnicity, gender, and sexual preference.

Diversity also includes persons with physical or mental conditions that can limit the ability to sustain day-to-day activities. It includes people with family situations that interfere with work schedules and workplace settings. Disability is a category that cuts through all others.



Richardson

So says attorney John Y. Richardson of Norfolk, who hopes that more people whose lives are complicated by disabilities can take their place alongside other lawyers in the Virginia State Bar. If the bar welcomes the perspectives of the widest swath of Virginians, people with disabilities should be among them, he says.

The voices of attorneys with disabilities are essential to planning for the population of aging lawyers, younger lawyers who manage care of elderly parents, and the many people who, because of technological advances, can participate in the workplace as they never could before.

Richardson, fifty-six, is well-known to the Virginia State Bar. He is a deputy city attorney for Norfolk. He is a member of the bar’s governing council and its Professionalism Committee, and he is on the faculty of the Harry L. Carrico Professionalism Course.

Last year, he was chair of the Conference of Local Bar Associations. In March, he organized a Diversity in the Professions program at Norview High School in Norfolk. (Story on page 28.) He also is a past president of the Norfolk & Portsmouth Bar Association.

And, along with a life committed to paid and volunteer work, good friends, and an insatiable interest in many subjects, Richardson wrestles daily with disability on two fronts.

When he was thirty and engaged in high-stakes litigation — an admiralty case representing suppliers of coal that had the propensity to spontaneously combust — his infant daughter, Marie, was diagnosed with a birth defect and seizure disorder that left her nonverbal, blind, unable to walk or feed herself, and totally dependent on others for care.

For Richardson, health insurance took on heightened importance. Much of his volunteer time became dedicated to the local community services board that provides assistance to

VSB Provides Resources, Makes Decisions Affecting People with Disabilities

The Virginia State Bar is well aware that lawyers, like everyone else, are stricken with unexpected events that can disrupt their careers.

The Virginia Board of Bar Examiners long has accommodated the needs of persons with visual impairments, learning disabilities, and other challenges when they take the bar exam.

That’s why the agency has a Personal Insurance for Members Committee to ensure that lawyers in firms of every size have access to medical, disability, and life insurance. It’s why the VSB Council endorses a broker — the Virginia State Bar Members’ Insurance Center — that makes available affordable products to provide coverage throughout our far-flung state. (www.vsbmic.com)

That’s why the VSB helps support Lawyers Helping Lawyers, which conducts confidential assessments and helps lawyers with addictions and depression get services and support that they need. (<http://www.valhl.org/>)

To prepare lawyers for the unexpected, volunteer Frank O. Brown Jr., who makes his career in estate planning, travels across Virginia to urge lawyers to plan for the unexpected demise of their practices and put in place safeguards to protect their clients and families. (<http://www.vsb.org/site/publications/planning-ahead>)

Through its regulatory function, the VSB occasionally has to put a disabled lawyer under an impairment suspension, when there’s a potential for client harm.

And it sometimes has to intervene when a practice has been abandoned through death or disability — a problem that likely will increase as the population ages, said Assistant Ethics Counsel Leslie A.T. Haley.

In the best circumstance, a lawyer will have made his or her own provisions, the practice will settle efficiently, and clients will be taken care of.

In a good situation, the VSB can find other lawyers who will step in voluntarily to make sure pending matters are handled on time, to distribute monies held in trust, and to return or dispose of client files appropriately.

In a worst case, the bar has to pay a receiver to close out a practice. Receiverships are a huge and unpredictable expense for the bar. (See Executive Director’s column, page 16)

Even though it’s not required under the Rules of Professional Conduct, the VSB would like to see every lawyer have a practice settlement plan in place, and an attorney “buddy” designated to administer it, Haley said.

VSB leaders make many decisions to assist attorneys with practice planning, and to protect the public in the aftermath of illness and death. They need in their midst lawyers who have insights into how those decisions can be most effectively applied and implemented fairly. Those lawyers might themselves have a disability, or they might have experience assisting others with disabilities.

That is why John Richardson (see story this page) wants disability to be a category in the quest for diversity in the bar.

— Dawn Chase

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Richardson continued from page 19

his daughter. His flexibility for long hours and job travel was greatly reduced—he had to stay close to home to help his wife, Karen, parent a child with never-ending medical, school, child care, and transportation issues—as well as the two healthy sons who followed.

When he was in his early forties, the other shock hit: Richardson was diagnosed with young-onset Parkinson’s disease, a progressive, degenerative neurological illness.

Richardson knew he had decisions to make, but the emotional reaction to the diagnosis carried a power to freeze him in place. “It made it easier to stay where you were,” he said. He likened the choices before him to the *Let’s Make a Deal* game show: trading “what’s in your hand” for “what’s behind the door. . . . The dangers are unknown.”

But Richardson, a graduate of Virginia Military Institute, stoically embarked on career and estate planning.

He took stock: His medium-sized law firm had good benefits, but, as a member of the firm’s management team, Richardson knew the cost of those benefits would rise for the entire firm as a result of his diagnosis. He knew that, to cover the increasing costs of premiums and medicines he would require, he would have to shift more and more of his paycheck into health costs.

His litigation practice involved intense deadlines, long hours, and high stress. His partners depended on his productivity and management skills. They didn’t have the resources to cover for him. They were game, however. The firm went out of the way to accommodate his restrictions and his needs.

“But, as anyone with a degenerative condition knows, the more you accommodate, the more reliant you are on the system that supports you,” Richardson said.

In consultation with his doctor, he took a courageous look at the possible trajectory of his illness and listed new priorities:

- He needed stimulating work that would continue to support his family, allow him to use his skills and keep him involved with people.
- He needed affordable health insurance that would cover his medications.
- He needed to get vested in a disability plan.
- He needed less stress, fewer clients, and regular hours.
- He needed other attorneys and support staff to back him up on days when his energy or mental acuity was low.
- He needed a work location close to home.

Full disclosure was his policy from the time he got his diagnosis. “I made it known to my firm,” he said. The firm offered him alternatives in compensation, work, and time requirements in order to permit him to stay, but “I chose not to

Richardson continued on page 24

Adapting to Disability: Advice for Lawyers

Barbara Ann Williams is a former VSB bar counsel, a member of the board of Lawyers Helping Lawyers, and deputy counsel and ethics counsel for McGuireWoods LLP. She is very familiar with delicate situations in which a lawyer’s decision to soldier on through illness worries colleagues, who fear that clients might be at risk.

In some cases, colleagues may misunderstand the illness or the lawyer’s control over the situation. In other cases, the lawyer might be incapable of assessing his or her own degree of impairment.

Williams recommended that a lawyer who has a chronic illness that might affect performance in his or her practice should have three things in place:

- She should be particularly careful about the area of practice she chooses. High-stress practices with many deadlines, such as litigation, are not well suited to certain illnesses.
- She should have a support network that includes trusted medical advisors, people in the workplace, and “family members who can help bridge the periods when they might be out of work” due to the illness.
- She should be honest with clients about her disease and how she manages it, and she should be honest with herself about her capabilities.

James E. Leffler, executive director of Lawyers Helping Lawyers, added that lawyers as a profession are particularly prone to denial when they are faced with a diagnosis of a debilitating illness, “because lawyers in general have been so successful and high-functioning for such a long period of time. It’s such a blow to their ego. It’s completely contradictory, and they hate that.”

For lawyers who anticipate they will face a time when they should not be practicing, Leffler offered this advice: Make a pact with others whom you trust, and agree that you will listen to them when they say it’s past time for you to be practicing.

“The earlier you can do that, the better,” Leffler said. “Denial is like a slippery slope. You don’t recognize you’re in denial when you’re in denial.”

Haley said that if attorneys or judges suspect a lawyer is impaired, they can approach it first by going to the lawyer himself, his law firm, or his family. Their goal, she said, should be to help the lawyer.

However, if a lawyer has evidence that significant public harm is possible or money is being mishandled, the professional rules require that the matter be reported.

Lawyers sometimes can satisfy the rules by enlisting Lawyers Helping Lawyers, which can help an impaired lawyer recognize the issues without the involvement of bar disciplinary authorities, Haley said.

But in some cases, a report to bar discipline is in order. The VSB tries to resolve many inquiries informally before it files disciplinary charges, but in extreme cases it can push for an impairment suspension of a law license, as a public protection measure.

— Dawn Chase

Corporate Diversity Programs: Fostering Inclusion in the Selection of Legal Counsel

by M. Christina Floyd

THE QUESTION IS OFTEN POSED: “Why should companies have diversity programs?” For many, the answer is simple: our population—including the American work force—is changing. Demographers routinely report that the work force includes growing numbers of women, racial and ethnic minorities, aging workers, persons with disabilities, and persons with alternative lifestyles. Companies and law firms that do not recognize these changing demographics will be left behind in the race for attracting and retaining the best and the brightest talent, as well as the opportunity to compete in the global market. This globalization of many companies has forced the issue of diversity to become a top priority. Many corporations find that they need a multicultural perspective in order to compete abroad. Through acquisitions, mergers, and relocation overseas, the issue of diversity in American corporations has become critical to success.

Statistics that measure women and minorities in law firms are discouraging. Although women make up almost half of law school graduating classes, studies show that they represent a disproportionately low number of equity partners. We also know from *Visible Invisibility: Women of Color in Law Firms* (American Bar Association Commission on Women in the Profession, 2006) that law firms are riddled with impediments to the advancement of minority women. While many law firms profess dedication to diversity, the fact remains that they are not improving their diversity.

Diversity can be whatever the organization defines it to be. Some companies and law firms have focused diversity efforts mainly on increasing the racial composition of their staffs and service providers. Others have considered diversity initiatives to include a mixture of people of different races, ages, and genders.

A majority of companies engaged in diversity initiatives report that the primary reasons for managing diversity are to improve employee productivity, to gain or retain competitive business advantage, and to improve working relationships among employees and service providers. This remains consistent in programs that also target the provision and receipt of legal services, through in-house legal departments or outside providers. Many diversity initiatives result from concern about adhering to the law. For some companies, the mere expectation of avoiding fines or Equal Employment Opportunity Commission lawsuits is enough to justify the expense of diversity programs. Finally, some businesses pursue diversity because they consider it to be socially responsible.

Articles published from the late 1980s through the present reveal a few clear trends in diversity initiatives among major corporations. Programs in the early 1990s seemed to focus almost exclusively on the intangible “feel good” benefits of diversity initiatives. Much was written about why diversity is socially responsible; however, little was written about benefits a business may reap from diversity initiatives. That changed in the late 1990s, and literature today often focuses on diversity’s return on investment (ROI) to the organization. The analysis of ROI, however, is often seen more in the context of isolated portions of a diversity program, rather than the whole program. For example, equal employment opportunity and affirmative action usually are components of a diversity program and are keys to identifying the ROI. Isolating specific events translates the intangible “people” effect of diversity programs into business dollars.

In 1999, chief legal officers of almost five hundred major corporations signed a document, “Diversity in the Workplace – A Statement of Principle.” This statement asserted the companies’ commitment to diversity in the legal profession and inspired more than 250 companies to commit to working with law firms that had a proven record of promoting diversity. In 2004, Roderick A. Palmore—then executive vice president and general counsel of Sara Lee Corporation—wrote a letter titled “A Call to Action – Diversity in the Legal Profession,” in which he concluded that “all objective assessments show that the collective efforts and gains of law firms in diversity have reached a disappointing plateau.”¹ Palmore’s letter asked the general counsel of Fortune 500 companies to take a stand for diversity by signing a pledge. The pledge stated:

As Chief Legal Officers, we hereby reaffirm our commitment to diversity in the legal profession. Our action is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers and the communities where we do business. In furtherance of this renewed commitment, this is intended to be a Call to Action for the profession generally and in particular for our law departments and for the law firms with which our companies do business.

In an effort to realize a truly diverse profession and to promote diversity in law firms, we commit to taking action

consistent with the referenced Statement. To that end, in addition to our abiding commitment to diversity in our own departments, we pledge that we will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.²

This initiative prompted responses from 110 general counsel from nationally known companies who pledged their commitment to diversity in their law departments and in use of outside legal resources. As a result, a number of diversity programs were developed and implemented by corporate law departments.³ The following are statements from several prime examples of companies with such programs:

Exxon Mobil Corp.: “By supporting [minority organizations] we not only work to improve the legal profession overall but most importantly, we broaden the available talent pool for ExxonMobil. Our participation enables us to meet and network with highly skilled minority attorneys from around the country. Sometimes that leads us to new employees; other times it leads us to minority-owned outside counsel that can represent ExxonMobil. Through our involvement, we gain access to talent that we might not otherwise find. Wherever we are involved, we strive to provide resources, support, networking and mentoring to minorities in the legal profession. . . . And by being visible in these organizations, we are ‘walking the talk’ by proving that ExxonMobil is committed to diversity.”⁴

General Electric Co.: “As a global Company with operations in more than 100 countries, diversity isn’t merely a noble idea – it’s the reflection of our business. Every day, GE works to ensure that all employees, no matter where they work today or where they come from, have an opportunity to contribute and succeed. Encompassed in that goal are traditional ideas of diversity, including ethnicity, race and gender, and exploring more contemporary concepts like inclusiveness.”⁵

HSBC Bank USA N.A.: “We know that employing and managing diverse people gives us a more rounded and balanced organization and makes us more adaptable to new situations. This is not simply about gender, ethnicity, disability or age: it is about open mindedness, embracing non-conformity and creating balanced teams. Respect for individuals of all types will inspire loyalty in both employees and customers, which will have a direct line of sight to the achievement of business goals.”⁶

Goodyear Tire & Rubber Co.: “Diversity makes good business sense for a global company such as Goodyear that is committed to continued growth and maintaining its position as the world’s tire industry leader. Goodyear has embraced diversity throughout the organization — from its world headquarters in Akron, Ohio, to all its facilities and markets around the globe. As the workplace and technology bring associates together in pursuit of common objectives, personal bonds are created beyond whatever racial, ethnic or cultural differences exist in society. A diverse and inclusive workforce provides the strategic advantage to successfully conduct business in multi-cultural marketplaces globally, and Goodyear’s diverse mindset has enabled it to respond to change much quicker than its competitors.”⁷

The commitments by these companies acknowledging the importance of diversity in the workplace are not novel premises. In *Land of Plenty: Diversity As America’s Competitive Edge in Science, Engineering and Technology*⁸, published by the Congressional Commission on the Advancement of Women and Minorities in Science, Engineering and Technology Development, the reporter emphasized the importance of a diverse workforce if America wants to sustain its preeminence in the global economy. The report stated:

Beyond the demographic reality that skilled workers must be drawn from an increasingly diverse domestic population, there are other compelling reasons why a workforce that includes more women, underrepresented minorities, and persons with disabilities helps to strengthen business, academe, and government.⁹

A recent survey of Fortune 100 human resource executives found that increasing diversity is desirable for the following five reasons: better utilization of talent; increased marketplace understanding; enhanced breadth of understanding in leadership positions; enhanced creativity; and increased quality of team problem solving. Another recent survey conducted by the American Management Association of more than one thousand of its members found that heterogeneity — a mixture of genders, ethnic backgrounds, and ages in senior management teams — consistently correlated with superior corporate performance in such areas as annual sales, growth revenues, market share, shareholder value, net operating profit, worker productivity, and total assets.¹⁰

In some instances, companies demand that their outside legal service providers meet diversity requirements. For example, in 2005 Walmart threatened to end or limit relationships with law firms that fail to demonstrate a meaningful interest in diversity. In July 2008, Microsoft Corp. offered cash bonuses to outside counsel who increased the number of women and minorities in their firm by 0.5 percent or those who work on

Microsoft matters specifically by 2 percent. Mandates such as these led to questions about legality, and whether firms that take affirmative action to meet their corporate clients' diversity demands risk violating federal law prohibiting discrimination.¹¹ Case precedent suggests that courts are likely to view a company's diversity recruitment efforts as a legitimate exercise of business judgment. For example, in *Grutter v. Bollinger*, the U.S. Supreme Court stated that "[m]ajor American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints." 539 U.S. 306, 330 (2003). Similarly, in *Duffy v. Wolle*, the Eighth Circuit U.S. Court of Appeals stated:

An employer's affirmative efforts to recruit minority and female applicants does not constitute discrimination. An inclusive recruitment effort enables employers to generate the largest pool of qualified applicants and helps to ensure that minorities and women are not discriminatorily excluded from employment. This not only allows employers to obtain the best possible employees, but it, "is an excellent way to avoid lawsuits." 123 F.3d. 1026, 1038-39 (1997)

In September 2007, the Minority Corporate Counsel Association published a report addressing the issue of legality of diversity programs under Title VII, which concluded:

A commitment to diversity does not equal discrimination. On the contrary, it generally entails taking steps to ensure that minorities, women and others are given opportunity for access to positions that historically have been denied to them or in which they currently are underrepresented. Race and gender are simply elements of diversity. They represent an aspect of the search for talented people who may succeed in employment, but might otherwise be overlooked.

From a business perspective, diversity is about the bottom line, which means hiring individuals who bring competitive advantage to the enterprise. As law firms diversify and seek new talent from traditional and non-traditional venues, and incorporate different but still legitimate criteria, the "qualified" pool expands and changes. In fact, what corporate America is saying to law firms is to try new approaches in hiring because the "old approaches" are not working.¹²

Broadening the scope of recruitment resources used ensures that all segments of the potential candidate pool, including minorities, are informed about job openings. In support of this approach, many corporations with diversity programs contact minority organizations, groups or bar associations when openings become available, which sends a message to applicants that the employment of minorities is important to the company.¹³

Corporate diversity programs also often include the use of assigned mentors. Since employees tend to gravitate towards co-workers or managers who are like themselves, informal mentor relationships may develop between similar individuals. Such informal relationships risk excluding minorities if the management ranks of a company do not include a significant number of minorities. Use of assigned mentors from ensures that all employees have the opportunity to develop relationships with individuals in higher-level positions. Pairing new talent with such relationship partners can be an especially effective way to assist in retention.¹⁴

Not only do the companies benefit from the mentoring relationships, but on those occasions when the participating corporate counsel move into private practice their experience with such relationships in a corporate environment enhances their ability to work with and relate to a wide range of colleagues and clients. Thus, corporate diversity programs contribute to the development of diversity oriented attorneys in the general practice of law.

Corporate diversity programs also often include the use of assigned mentors. Since employees tend to gravitate towards coworkers or managers who are like themselves, informal mentor relationships may develop between similar individuals. Such informal relationships risk excluding minorities if the management ranks of a company do not include a significant number of minorities. Use of assigned mentors from ensures that all employees have the opportunity to develop relationships with individuals in higher-level positions. Pairing new talent with such relationship partners can be an especially effective way to assist in retention.

Another avenue corporate law departments and firms use to increase minority representation is to begin recruitment efforts before a prospective employee applies to enter the workforce.¹⁵ This usually occurs through the use of internships and clerkships coordinated with law school career services departments and minority student organizations. Such opportunities for both the company or firm and law student to "test drive" a potential employment situation provide invaluable insight as to whether the position sought would be a good fit for the individual. These temporary assignments can also help the intern or clerk later advance in the organization if employment is offered, since they essentially have an advantage over new hires that were not provided with the opportunity to learn the company or firm culture prior to employment.

The legal profession should not depend on in-house counsel to be the primary agent to achieve diversity in the legal profession. But we cannot ignore the significant power that corporate legal departments have to effect such change. Corporate legal departments have been a stalwart voice not only for what makes good business, but also for what is right. Consequently, the time may be ripe for corporate counsel to address attrition and the slow advancement of women and

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Richardson continued from page 20

take it.” He left the firm and explored other options, working for a while at the U.S. Department of Defense.

The timing was fortuitous, Richardson said. Bernard Pishko, whom he had worked with in private practice, had just been appointed Norfolk city attorney and was assembling an experienced legal team. He approached Richardson, who accepted quickly.

Pishko, said he was delighted to get Richardson on board. “It was a real bargain for a city attorney to have such an accomplished lawyer,” he said. When Pishko thought about the long term, he decided the complications that might arise are no different from any employee’s. Health issues, pregnancies, and changes in career goals affect many workers’ performance and tenure.

With the city job, Richardson was able to check off all the priorities on his list. He assists Pishko with a variety of tasks essential to Norfolk. A civil engineer before he became a lawyer, Richardson draws on that and his litigation experience to help downtown development projects — including light rail — from preliminary design and property acquisition through construction and operation. He advises civil facilities and the departments of finance, public works, and development.

From his desk job in City Hall, Richardson is one of the rarely seen hands who guide Norfolk in its growth and service to its citizens.

Today, Parkinson’s is taking a toll. Richardson’s motor skills are declining. Speech is difficult sometimes. After a night of disrupted sleep — a common problem with the disease — he is fatigued in mind and body. He has reluctantly given up some outside activities, such as working at a soup kitchen, which he did weekly for about ten years. He also gave up coaching soccer — his passion for more than a decade.

Though Richardson is more unsteady in body, in Pishko’s view Richardson is still the man he hired. “His contributions are invaluable,” he said. “He’s talented. He is an especially wise person with incredible character, and an incredible lawyer. The Parkinson’s hasn’t taken anything away. It has not robbed him of his talents and wisdom.”

Just as with most employees, “There are some days when it’s harder for him to work — it’s slower for him. ... But the vast majority of the time, he’s firing on all cylinders.”

“A lot of people would say I’ve done as well as you can do,” Richardson said. “A person I know who was diagnosed the same time I was died two years later.”

He continues to contribute to the profession as a devoted volunteer. He makes friends wherever he goes. “I can get comfortable with most people,” he said.

And Richardson keeps dreaming. Case in point: his March 19, 2009, Diversity in the Professions program, which brought Virginia Chief Justice Leroy R. Hassell Sr. home to his alma mater and gave two hundred students a chance to see that

there’s a path into the law and other professions from Norview High School.

After the program, Richardson celebrated its success at a local restaurant with “J.C.” — Rear Adm. Julius S. Caesar, a former neighbor and one of the program’s speakers — and Derek Mungo, a co-worker in the city attorney’s office, and a Norview alumnus who helped Richardson with the event.

All agreed the Chief Justice seemed to have been touched by the experience, and all marveled at the dedication of the school principal and the promise of the students.

Talk turned to stories — memories of Richardson’s experiences coaching the neighborhood kids. Caesar’s description of a tour in Afghanistan. Mungo’s accounts of mission work in Chicago and, now, a Norfolk housing project.

It was a sweet time — a pause for camaraderie before Caesar hit the road for Washington, D.C., and Mungo and Richardson returned to the office.

There are a lot of uplifting times around Richardson, who savors people. His humor is penetrating, based on careful observation, but always gentle. There’s a centering effect being around him.

His older son just graduated from college (VMI, like his Dad). His younger son is working and attending a local college. Marie lives in a group home now, with mother Karen, who is a nurse, watching over her care.

Recently, people have expressed concern as they see more external signs of his illness. “People will tell you that I ignore realities.” On the other hand, his doctor has told him “I may be the best judge of what I can do.”

He knows his friends’ concern is well-intentioned, but he gets irritated at it — particularly when he feels people are making judgments about what he is capable of doing.

Since his diagnosis, he has pushed through every day, finding his own reality in the face of the stereotyping and doubts of others. He hopes he and others with that experience can bring to the table ideas for how the bar can support lawyers with disabilities, and how it can compassionately address problems that arise.

Richardson occasionally runs into one of his former adversaries or now-retired judges he once practiced before. “They always ask me, every time I see them, ‘Are you still working?’”

“I don’t think there’s any question I can do what I’m doing,” he said. “You stop working, you stop living.” ■

Lilly Ledbetter Act Extends Time for Filing Fair Pay Claims

by Broderick Coleman Dunn

ONE OF PRESIDENT BARACK OBAMA'S FIRST EXECUTIVE ACTS was to sign the Lilly Ledbetter Fair Pay Act of 2009 into law on January 29, 2009. The act directly overturns the U.S. Supreme Court's holding in *Ledbetter v. Goodyear Tire & Rubber Co.*¹ which held that the statute of limitations for filing an equal-pay lawsuit before the Equal Employment Opportunity Commission (EEOC) begins to run at the date the pay was agreed upon rather than the date of the most recent paycheck. President Obama signed the act as its namesake, Lilly Ledbetter, and several female senators looked on.

Background

Ledbetter worked for Goodyear Tire and Rubber Company at its Gadsden, Alabama, plant from 1979 until 1998.² When Ledbetter first started working at Goodyear, the managers were all paid at the same rate.³ With such transparency, Ledbetter knew that she was making the same amount of money as her male counterparts. At some point during Ledbetter's tenure, however, Goodyear switched to a performance-based compensation system.

The new pay system imposed by Goodyear was anything but transparent. Managers such as Ledbetter, were forbidden to discuss how much they were being paid. Accordingly, Ledbetter was shocked to learn that despite years of positive reviews, she was earning between 15 percent and 40 percent less than her male counterparts.⁴ Specifically, by the end of her tenure at Goodyear, Ledbetter was making \$3,727 per month. The lowest-paid male area manager received \$4,286 per month and the highest-paid male received \$5,236.⁵

Ledbetter v. Goodyear Tire & Rubber Co.

Title VII of the Civil Rights Act of 1964 makes it an "unlawful employment practice" to discriminate "against any individual with respect to his compensation ... because of such individual's race, color, religion, sex or national origin."⁶ Ledbetter filed a formal EEOC charge against Goodyear in July of 1998.⁷ She did this prior to filing suit because an individual wishing to bring a Title VII lawsuit must first file an EEOC charge within 180 days "after the alleged unlawful employment practice occurred."⁸ After taking an early retirement from Goodyear and filing an EEOC charge, Ledbetter asserted a Title VII claim, among other charges, instituting *Ledbetter v. Goodyear*.

At trial, Ledbetter introduced evidence that during the course of her employment, several supervisors had given her poor evaluations because of her gender.⁹ Moreover, Ledbetter

alleged that as a result of these evaluations, her pay was not increased as much as it would have been if she had been evaluated fairly.¹⁰ She argued that the aggregate effect of these discriminatory pay decisions left her with a lower salary and lower pension. The jury agreed and awarded her back pay as well as more than three million dollars in compensatory and punitive damages.¹¹

On appeal, Goodyear argued to the U.S. Court of Appeals for the Eleventh Circuit that Ledbetter's pay discrimination claim was time barred with respect to all pay decisions made prior to 180 days before the filing of her EEOC questionnaire. The court of appeals reversed the trial court's decision, holding that a Title VII pay discrimination claim cannot be based on any pay decision that occurred prior to the last pay decision that affected the employee's pay during the EEOC charging period.¹² The court of appeals concluded by finding that there was insufficient evidence to prove that Goodyear acted with discriminatory intent in making the only two pay decisions that occurred within the 180-day time span between Ledbetter's last two pay checks before she filed her EEOC questionnaire.¹³

By petition for writ of certiorari, Ledbetter asked the Supreme Court to consider the following issue:

Whether and under what circumstances a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964 alleging illegal pay discrimination when the disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside the limitations period.¹⁴

By a 5-4 majority, the Supreme Court held that because the later effects of past discrimination do not restart the clock for filing an EEOC charge, Ledbetter's claim was untimely.¹⁵

The majority didn't find compelling Ledbetter's argument that discriminatory acts which occurred prior to the charging period had continuing effects during that pay period. Specifically, the majority noted that the short EEOC filing deadline reflected Congress's strong preference for the prompt resolution of employment discrimination allegations through voluntary conciliation and cooperation.¹⁶ Moreover, the majority noted that the EEOC filing deadline protected employers from the burden of defending claims arising from employment decisions that occurred long before discrimination charges.¹⁷

Conversely, the minority was persuaded by Ledbetter's arguments that the nature of pay discrimination trumped pro-

cedural limitations. In a dissenting opinion authored by the Court's only female justice, Ruth Bader Ginsburg, the minority noted that the majority's insistence on immediate contest overlooks the common characteristics of pay discrimination. Namely, pay disparities often occur, as they did in Ledbetter's case, in small increments, whereby cause to suspect that discrimination is at work develops only over time.¹⁸

Comparative pay information often is hidden from the employee's view. Ledbetter learned that she was being paid less than her male counterparts only when someone placed an anonymous note in her mailbox at work.¹⁹ Justice Ginsburg further noted that because of such a lack of transparency in pay decisions, it is easy for employers to keep the pay differentials maintained among supervisors under wraps. Thus, small initial discrepancies may not be seen as meet for a federal case — particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves.²⁰

Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. No. 111-2)²¹

Debate over the Supreme Court's 5-4 decision in *Ledbetter v. Goodyear* began almost overnight. Congress in 2007 attempted to pass an earlier version of what would become the Lilly Ledbetter Fair Pay Act but the measure failed to pass the Senate by a vote of 56-42, four votes short of a filibuster-proof majority.²² Proponents and opponents of the measure attempted to politicize the vote on the measure, with one side declaring a defeat for all women and the other side labeling it "gotcha politics."

Proponents of the bill echoed Justice Ginsburg's dissent noting the difference in the common characteristics of pay discrimination. Proponents also expressed support for upholding the initial district court jury verdict in Ledbetter's favor. Opponents, however, noted that the 180-day rule was necessary to prevent frivolous lawsuits. As one senator put it, "The only ones who will see an increase in pay are some of the trial lawyers who bring the cases."²³

As soon as the 2008 Congress convened, the Ledbetter Act was reintroduced. This time, the act passed the Senate by a vote of 61-36, with every Democratic senator²⁴ and all four female Republican senators voting in its favor. When he signed the act into law, President Obama said, "There are no second-class citizens in our workplaces, and it's not just unfair and illegal, but bad for business, to pay someone less because of their gender, age, race, ethnicity, religion, or disability."²⁵

The Ledbetter Act essentially applies a paycheck accrual rule like the one Ledbetter argued in favor of in her lawsuit. A paycheck accrual rule holds that each paycheck triggers a new EEOC charging period during which the complainant may properly challenge any prior discriminatory conduct that impacted that paycheck's amount, no matter how long ago the discrimination occurred.²⁶ Specifically, the act amends section 706(e) of the Civil Rights Act of 1964 by adding the following:

For the purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.²⁷

Accordingly, a plaintiff similarly situated to Ledbetter now has 180 days from his or her last paycheck, during which time she can bring a complaint to the EEOC that evidences discriminatory conduct outside of that 180-day period.

While the act is named for Ledbetter and the struggles of women in the workplace have been highlighted in passing the act, women are not the only beneficiaries. Besides amending Title VII of the 1964 Civil Rights Act, the act also amends the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA). Thus, the Ledbetter Act grants equal pay rights to all federally protected classes, including race, age, and disability.

Pandora's Box?

It is too soon to know whether the Lilly Ledbetter Fair Pay Act of 2009 represents vindication for dreams deferred or whether Congress has opened a Pandora's box. Supporters laud the act's potential to level the employment playing field. The American Bar Association praised the "bipartisan cooperation" that went into passing the act and the act's renewed "federal commitment to a fundamental principle that all employees should be protected from pay discrimination based on gender, race, color, religion, national origin, age, or disability."²⁸ The Service Employees International Union said the act "strengthens the rights of women and all workers to pursue justice for wage discrimination on the basis of sex, race, color, religion, nation origin, age, or disability."²⁹

While supporters extol the act's breadth, detractors — including many in the business community — claim that the act radically amends all major federal civil rights laws, effectively granting Equal Pay Act rights to every federally protected class of individuals. Michael Eastman, executive director of labor policy for the U.S. Chamber of Commerce lamented that, "the real effect of this [law] is the volume of frivolous complaints."³⁰ The EEOC receives more than five thousand wage bias charges each year under Title VII, the Equal Pay Act, the ADEA, and the ADA.³¹ This number is almost sure to go up under the Lilly Ledbetter Fair Pay Act.

The footnote to this story is that Ledbetter will not be among the beneficiaries of the act. While the act, and the amendments made by the act, takes effect as if enacted on May

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minorities, and to use their economic power to increase diversification of legal services providers and identify new mechanisms to provide meaningful pathways for all members of the legal community to succeed. We encourage corporate counsel to keep the voice of inclusion strong and their diversity efforts moving forward. ■

Author's Note: M. Christina Floyd recognizes and appreciates the assistance and contributions of VSB Corporate Counsel Section Board of Governor's member Gunes F. Hopson, assistant general counsel at Capital One, in the preparation of this article.

Endnotes:

- 1 Roderick Palmore, "Call to Action," reprinted in *New England In-House*, at www.newenglandinhouse.com/200410issue/call.htm.
- 2 *Id.*
- 3 A number of companies operating in Virginia have implemented diversity programs that include legal services, including Capital One: programs for supplier diversity program and minority/women business enterprise development; Dominion Power: partnerships with minority organizations, supplier diversity team; Norfolk Southern Corp: diversity council; Exxon Mobil Corp: global training and development programs; Genworth Financial Inc.: internal network groups; Nationwide Mutual Insurance Co.: chief diversity officer leads corporate diversity efforts, supplier diversity; and Verizon: supplier diversity program.
- 4 Joseph Yao, "Texas State Bar Honors ExxonMobil: Company named 2008 Champion of Diversity winner for its support of minority attorneys, law firms," <http://www.exxonmobil.com/news/>.
- 5 <http://www.ge.com/en/citizenship/employees/diversity.htm>
- 6 www.hsbc.com/hsbc/careers/diversity
- 7 http://www.goodyear.com/corporate/about/about_diversity.html
- 8 Congressional Commission on the Advancement of Women and Minorities in Science, Engineering and Technology Development, *Land of Plenty: Diversity As America's Competitive Edge in Science, Engineering and Technology* (September 2000).
- 9 *Id.*
- 10 *Id.*
- 11 See Curt A. Levey, *The Legal Implications of Complying with Race and Gender-Based Client Preferences* at 2 (March 12, 2007).
- 12 Minority Corporate Council Association, *Why Corporate Initiatives to Promote Inclusion through Selection of Outside Counsel Can Co-Exist with Title VII: Another Look at Corporate Counsel Requests for Law Firm Diversity*, at 9, 12, 15, September 2007.
- 13 *Id.* at 17-18.
- 14 *Id.* at 18
- 15 *Id.*

Hill-Tucker Dinner to Raise Money for Law Student Scholarships

Journalist Juan Williams will be the featured speaker at the Ninth Annual Oliver W. Hill and Samuel W. Tucker Scholarship Dinner on April 30, 2009, at the Virginia Holocaust Museum in Richmond.

The dinner raises funds for scholarships presented to first-year law students at Virginia law schools and Howard University. Recipients are chosen based on academic excellence and a desire to follow the examples of civil rights attorneys Hill and Tucker. Three scholarship winners will be recognized at the dinner.

Williams is a news analyst on National Public Radio and author of a biography of Thurgood Marshall and *Eyes on the Prize: America's Civil Rights Years, 1954-1965*. Daphne Maxwell Reid, an actress and owner of New Millennium Studios in Petersburg, will serve as master of ceremonies.

Delegate Jennifer L. McClellan and Richmond Mayor Dwight C. Jones also will be on the program.

The event is sponsored by the Greater Richmond Bar Foundation, the scholarship committee, and the Holocaust Museum. Individual tickets are \$55 in advance and \$65 at the door. Dress is business attire. For information, contact Crystal Y. Twitty at (804) 786-9583 or ctwitty@oag.state.va.us.

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Norfolk Program Brings Chief Justice Home

WHEN JOHN Y. RICHARDSON WAS CHAIR of the Virginia State Bar Conference of Local Bar Associations last year, he started organizing a special homecoming celebration — an opportunity for Virginia’s Chief Justice to return to his Norfolk high school and talk to today’s students.

On March 19, 2009, Chief Justice Leroy R. Hassell Sr. and two guests went to Norview High School for a program on Diversity in the Professions. Norfolk City Manager Regina V.K. Williams and Rear Admiral Julius S. Caesar of the Navy Installations Command joined Hassell in answering students’ questions.

The students (Photo 1) asked how the speakers overcame challenges in their lives, and about allegations of sexual improprieties and crimes against women in the Navy. (For a Norfolk Public Schools news clip about the event, see http://ww2.nps.k12.va.us/education/components/scrapbook/default.php?sectiondetailid=107394&×tamp=1237905046×tamp=1237905046&&cms_mode=view.)

After the presentation, students lined up for the speakers’ autographs (Photo 2, with Hassell on right), and Norview Principal Marjorie Stealey gave the Chief Justice a tour of the school’s Hall of Fame, where portraits are displayed of today’s high-achieving students, the Norfolk Seventeen (the first black students to integrate previously all-white schools, in 1958), and Hassell himself (class of 1973).

VSB President Manuel A. Capsalis wrote describing the event: “Because of [Richardson’s] efforts, ... students at Norview High School were supremely inspired. ... And given that this public high school requires every senior to apply to college — yes, everyone — I am firmly confident that we met many leaders of tomorrow. When you listen to how well the students spoke during the interviews, you get a small sampling of what we experienced, and a sense of what is possible.”

Photo 3 shows (left-right) Capsalis, Caesar, Richardson, Stealey, Norfolk Assistant City Attorney Derek A. Mungo, Hassell, and Williams. Mungo represents the school system, and he helped organize the program. He also is a Norview alum — class of ’76 — and works with a program that encourages black male students to achieve honors status.



Highlights of the Virginia State Bar Council Meeting

February 28, 2009

At its regular meeting on February 28, 2009, the Virginia State Bar Council heard the following significant reports and took the following actions:

ALPS

Robert W. Minto Jr., president and chief executive officer of ALPS—the VSB’s endorsed legal malpractice insurance carrier—reported that the company is in good financial condition and profitable. Since 2006, Virginia claims have increased in frequency and severity, primarily in the areas of real estate and plaintiff personal injury. In 2008, Virginia’s loss ratio was 77.26 percent and the claims frequency was 4.32 percent. Both are higher than ALPS’s overall book of business. The trend may result in higher premiums for lawyers in higher-risk practices.

Professional Guidelines

The VSB is reformatting the online version of the *Professional Guidelines* to html, so the rules can be searched more easily and updated on an ongoing basis. With those improvements at VSB.org, the print version will not be mailed to all members, but will be distributed to volunteers and anyone who requests a copy, for a savings of \$38,000 annually.

Web Postings of Disciplinary Cases

The Supreme Court has authorized the VSB to resume posting public discipli-

nary information on the bar’s website following a probable cause determination. The information must include the status of the proceeding and whether an appeal has been filed.

CPF Notices to Be Sent by Regular Mail

The council dropped a requirement that Clients’ Protection Fund petition notices be sent to the lawyer by certified mail with a return receipt request, at a cost of \$4.90 per item currently and \$5 per item beginning in May. Under the new procedure, the petition will be sent by regular mail to the lawyer’s address of record and to any additional address known to the bar.

Proposed Amendment Concerning Communication of Specialty Certification

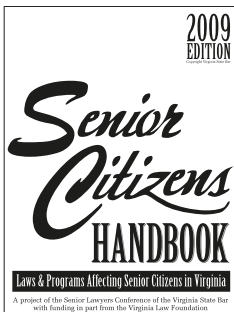
The council approved a proposed amendment to Rule 7.4(d) that would allow a lawyer to advertise a specialty certification without a disclaimer if the certification is granted by an American Bar Association-accredited organization. The current rule permits a lawyer to advertise a specialty certification only if the advertisement contains a disclaimer indicating that there is no Virginia procedure for approving certifying organizations. The motion to approve the amendment and recommend it to the Supreme Court passed by a vote of 30–25.

Proposed Amendments to Paragraph 13

Council voted unanimously to approve and recommend to the Supreme Court the following changes to Paragraph 13: (1) that the definition of “terms” contained in Paragraph 13(A) be amended to allow imposition of terms for certain suspensions; (2) that the definition of “costs” contained in Paragraph 13(A) be amended to include electronic and telephonic conferencing costs; and (3) that Paragraph 13(I)(8)(b) be amended to increase the reinstatement bond from \$3,500 to \$5,000.

Proposed Amendments to Paragraph 19

Council voted to approve and recommend to the Supreme Court the following changes to Paragraph 19: (1) that an additional \$100 delinquency fee be imposed for failure to comply with Mandatory Continuing Legal Education certification by February 1; and (2) that the certified mail requirement for initial notice of noncompliance with membership obligations be deleted.



The Senior Citizens Handbook: a resource for seniors, their families, and their caregivers. 2009 edition now available.

We’re as busy as ever at age fifty-five and over, and we face new challenges and opportunities, with little time to search them all out. How can anyone find out about them all and, with such an array of choices, how does anyone begin to make a selection?

The Senior Citizens Handbook. Available online at <http://www.vsb.org/docs/conferences/senior-lawyers/SCHandbook09.pdf>.

Criminal Law Seminar

U.S. Rep. Robert C. “Bobby” Scott (Photo 1) of Virginia’s third congressional district was the featured speaker at the Virginia State Bar’s Thirty-Ninth Annual Criminal Law Seminar in Williamsburg on February 6, 2009.

At the seminar’s Charlottesville gathering on February 13, Marvin Lamont Anderson (Photo 2) told of his experiences as the first person to be exonerated in Virginia after post-conviction DNA testing under Virginia Code §19.2-327. Anderson was convicted of rape and other felonies and spent nineteen years in prison before petitioning, with the help of the Innocence Project, for retesting of forensic evidence in his case. The test exonerated him.

The VSB Criminal Law Section sponsors the annual seminar to keep its members up to date on legal developments.

This year, in Charlottesville, the section honored the memory of Professor Robert E. Shepherd Jr., a guiding force in the section for thirty years and the winner of its Harry L. Carrico Professionalism Award in 2003.

Section member Reno S. Harp presented a resolution to Shepherd’s daughter Susan (center), and wife Nancy. (Photo 3)



Photo credit: Andrew Shurtleff, *The Daily Progress*



Thank You

The family of Robert N. Pollard III wishes to thank readers of *Virginia Lawyer* who so kindly responded to our appeal letter in the February issue. Unfortunately, on March 4 we learned of a decline in Bobby’s medical condition. This has resulted in postponement of the stem cell transplant and suspension of the fundraising campaign. However, we want those who donated to know that their gifts will be applied to Bobby’s care and treatment for non-Hodgkin’s lymphoma.

For more information, please contact Marty Pollard Easton at measton105@yahoo.com

UR Law Professor Peter N. Swisher Recognized for Achievement in Family Law

Peter N. Swisher, a professor of law at the University of Richmond and a contributor to the development of family law in Virginia, has been named the 2009 recipient of the Lifetime Achievement Award 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 award will be presented during the section's annual Family Law Seminar on April 24, 2009, in Richmond.

In nominating Swisher, Fairfax attorney Aaron J. Christoff cited his extensive writing, which includes co-authorship of *Virginia Family Law: Theory, Practice, and Forms*; *Understanding Family Law*; and *Family Law: Cases, Materials, and Problems*. Christoff also emphasized Swisher's service to the VSB Family Law Section.

"Aside from the obvious — teaching family law to students at the University ... (inspiring many soon-to-be lawyers to take on the challenges of practicing family law) and authoring the books that so many family law practitioners keep close — Professor Swisher has propelled and contributed to the evolution of family law in Virginia for nearly three decades. ...

"Very simply, Professor Swisher has been a driving force changing family law in Virginia. ... More importantly, he's a key reason the future of family law holds so much promise for Virginia practitioners and law students."

Among his many contributions, Swisher chaired the curriculum committee that recommended a certificate program in family law now available to UR students. As the section's law school liaison, he helped establish a family law award in all Virginia law schools. He is a past chair of the Association of



American Law Schools Family and Juvenile Law Section. He has helped develop legislation through the Virginia Bar Association's Domestic Relations Council.

Swisher earned a bachelor's degree from Amherst College in 1966, a master's from Stanford University in 1967, and a law degree from the University of California Hastings College of the Law in 1973.

Local Bar Elections

Chesapeake Bar Association

Brian Kenneth Miller, President
Lori Beth Klinghoffer Galbraith,
Vice President

David Jason Whitted, Secretary
Kimberly Hughes Phillips, Treasurer
Corrynn Jessica Peters, Executive Officer

Danville Bar Association

Wells Huntington Byrnes Sr., President
Michael James Newman, Vice President
Miss Stacy Danielle Allocca, Secretary
Claudette Suzanne Robertson, Treasurer

Fauquier County Bar Association

Miss Hanna Lee Ethel Rodriguez,
President
Nono Musolino Fisher, President-elect
Charles Patrick Tench, Secretary
Vaughan Ruig Myers, Treasurer

Hampton Bar Association, Inc.

Patrick B. McDermott, President
Terry Noland Grinnalds, President-elect
Cristina Marie Kowalczyk O'Brien,
Secretary
Romeo Garcia Lumaban Jr., Treasurer

The Prince William County Bar Association, Inc.

Barry Alan Zweig, President
Amy Marion Ashworth, President-elect
Laurie Jeanne Sholtis, Secretary
Jonathan Stuart Rochkind, Treasurer
Richard Hamilton Boatwright, Director
Mark Thomas Crossland, Director
Miss Megan Eileen Kelly, Director
Petula Cherise Alston Metzler, Director

The Virginia Bar Association

John Daniel Epps, President
Stephen Donegan Busch, President-elect

Virginia Beach Bar Association

Timothy Sean Brunick, President
William Carl Bischoff, President-elect
Timothy John Quick, Secretary
Glenn Randall Croshaw, Treasurer
Robert Franklin Hagans Jr., Director
Sandra Lynn Sampson, Director

Washington County Bar Association

George Allen Whitley, President
Byrum Lynn Geisler, Vice President

In Memoriam

Charles William Beddow
Chesterfield
February 1934–December 2008

John Baker Boatwright III
Richmond
July 1954–February 2009

Dorothy B. Boucher
Abingdon
March 1924–January 2009

James Nicholas Brennan IV
Charlotte, North Carolina
October 1956–October 2008

William F. Evenson
Richmond
December 1936–September 2008

Leslie A. Grandis
Richmond
March 1944–March 2009

T. Keister Greer
Rocky Mount
September 1921–May 2008

Charles Wesley Gunn Jr.
Richmond
July 1922–January 2009

Leigh B. Hanes Jr.
Roanoke
April 1918–August 2008

Julian F. Hoffar III
McLean
May 1947–October 2008

Eino Emil Jenstrom
Alexandria
May 1921–September 2008

Max Cleveland Kennedy
Charlottesville
August 1929–January 2009

William C. King Jr.
Roanoke
December 1923–December 2008

Konstantine Andrew Konopisos
Sugar Land, Texas
April 1919–March 2008

Conrad Charles Lewane
Richmond
August 1937–January 2009

C. Berkley Lilly
Beckley, West Virginia
January 1923–January 2009

Michael Anton Lubin
Leesburg
May 1949–October 2008

Horace D. McCowan Jr.
Richmond
May 1920–December 2008

H. Merrill Pasco
Richmond
October 1915–November 2008

Ralph Lucian Payne
Alexandria
January 1916–September 2008

Hon. Edward L. Ryan Jr.
Norfolk
November 1913–September 2008

Keith Thomas Sefton
Washington, D.C.
November 1946–November 2008

Ronald Lee Shrecengost
Newport News
March 1945–January 2009

Hon. Norvell Prentis Smiley Jr.
Yorktown
June 1938–December 2008

E.L. Stephenson
Newport News
June 1927–January 2009

Hon. Lloyd C. Sullenberger
Orange
May 1940–February 2009

Dyer Justice Taylor
Weems
September 1922–November 2008

Garland Parnell Thompson
Annandale
September 1921–October 2007

Ethan Allen Turshen
Arlington
March 1934–February 2009

Thalia V. Warnement
Washington, D.C.
August 1967–January 2009

Charles H. Whitebread II
Los Angeles, California
April 1943–September 2008

CALL FOR NOMINATIONS

Award of Merit Competition

Sponsored by the VSB Conference of Local Bar Associations.

Nomination deadline:
May 1, 2009

Local Bar Leader of the Year

Sponsored by the VSB Conference of Local Bar Associations.

Nomination deadline:
May 1, 2009

For more information, see <http://www.vsb.org/site/conferences/clba/view/awards/>.

Executive Director's Message

continued from page 17

attorney's nontrust assets can be assessed to reimburse the bar, those assets usually are insufficient. In FY 2007-08, the bar expended in excess of \$500,000 for receivers, against a budget of \$200,000. This year, the VSB had exhausted its \$300,000 receivership budget by mid-March.

Chart B describes the VSB's revenue sources, projected to total \$12,208,500 in FY 2009-10. These include:

- Bar dues charged to all active, corporate counsel, and associate lawyers licensed in Virginia. The projection for bar dues for FY 2009-10 is \$8,683,500. This anticipates a 2 percent increase over the FY 2008-09 revenue, which is consistent with our experience in past years. The dues come from approximately 28,200 active and corporate counsel members, 11,500 associate members and 400 corporate counsel registrants who are on the bar's membership rolls. Mandatory dues are the VSB's largest source of revenue.
- Mandatory Continuing Legal Education fees, projected at \$780,000 in FY 2009-10. MCLE sponsors pay \$280,000 of this amount. The remainder is from fees generated by late filing, noncompliance, and reinstatement charges to attorneys who do not fulfill their MCLE obligation in a timely manner. This is the second-largest source of VSB revenue.
- Unpaid past dues and penalties, projected at about \$480,000. This includes late fees paid by active members who do not pay the annual dues or Clients' Protection Fund assessment on time or do not complete the professional responsibility questionnaire by the deadline.
- The Harry L. Carrico Professionalism Course fee charged to all newly licensed lawyers in Virginia, who are required to take the course within one year of being admitted to the bar. Approximately 1,450 new lawyers

attend annually. The registration fee is \$150 per attorney and the course generates \$218,500 annually. Pursuant to the rules of the Virginia Supreme Court, this fee covers the cost of administering the course.

- The Clients' Protection Fund (CPF) assessment, \$25 per active attorney in addition to the annual dues. This generates just over \$700,000 in revenue for the fund, which makes monetary awards to persons who have suffered financial losses because of dishonest conduct by Virginia lawyers. The CPF assessment was established by the General Assembly in 2007 to increase the fund to levels recommended in an actuarial study. These receipts are transferred to an account maintained and invested specifically for client distributions. The VSB pays the expenses of the CPF board and support staff

from the operating fund. The fund balance currently is approximately \$4.7 million.

- Other sources outlined in Chart B, totaling \$1,203,500.

As always, please do not hesitate to let me know your thoughts, concerns, and questions about the bar's operations. The bar staff is dedicated to fulfilling the VSB's mission of protecting the public, regulating the profession, improving the quality of legal services, and providing access to justice for all Virginians, regardless of their ability to pay. ■

Chart B	
VIRGINIA STATE BAR PROJECTED REVENUE FISCAL YEAR 2010 BUDGET	
	FY 2010 PROJECTED REVENUE
Professional Corporations	\$100,900
Virginia Lawyer/Register	40,000
Sections	373,485
Current Dues	8,683,500
Pamphlet Sales	2,000
Past & Penalty Dues	480,000
Seminar & Miscellaneous	325,050
Lawyer Referral	223,750
Mandatory Continuing Legal Education Fees	780,000
Professionalism Course Fees	218,500
Cost Assessments	90,000
Certificates of Good Standing	23,500
CRESPA Registration	24,675
Administration and Finance Account Receipts	125,000
Clients' Protection Fund Receipts	718,125
TOTAL PROJECTED REVENUE FY 2010	\$12,208,485

Building Bridges and Planting Apple Trees

by Frank O. Brown Jr.

Many years ago, the late E. Griffith Dodson Jr. introduced me to a favorite poem, “The Bridge Builder” by Will Allen Dromgoole¹. It conceptualizes one of the essential roles of senior lawyers in the legal profession and of citizens in our country.

The Bridge Builder

An old man, going a lone highway,
Came, at the evening, cold and gray,
To a chasm, vast, and deep, and wide,
Through which was flowing a sullen tide.

The old man crossed in the twilight dim;
The sullen stream had no fear for him;
But he turned, when safe on the other side,
And built a bridge to span the tide.

“Old man,” said a fellow pilgrim, near,
“You are wasting strength with building here;
Your journey will end with the ending day;
You never again will pass this way;
You’ve crossed the chasm, deep and wide —
Why build you this bridge at the
evening tide?”

The builder lifted his old gray head:
“Good friend, in the path I have come,” he said,
“There followeth after me today,
A youth, whose feet must pass this way.

This chasm, that has been naught to me,
To that fair-haired youth may a pitfall be.
He, too, must cross in the twilight dim;
Good friend, I am building this bridge for him.”

“Grif” Dodson knew whereof he spoke. By the time of his death at age 87, he had lived a long and productive life. He served his country in the U.S. Navy during World War II as a gunnery officer, executive officer, and commanding officer of a submarine chaser in the Pacific. He was a founder and the first president of the Roanoke Jaycees; represented Roanoke in the Virginia House of Delegates; led the Virginia State Bar as its president in 1961–62; and served as a member of the vestry and as senior warden of his church under three rectors. With Molly, his wife of sixty years, he raised his loving family of three children (who had blessed them with seven grandchildren). He was chosen as Roanoke Father of the Year in religious activities. He served on the board of governors of the then Senior Lawyers Section of the VSB and as its chair in 1996–97, and he mentored many young lawyers (including a judge or two). He had a successful career as a practicing lawyer. He sailed many a river and planted many a garden (even giving each of his young children their own plots in the garden, so that they could learn and enjoy gardening and the optimism that comes with it). And helped build many bridges that those of us in practice today cross on a regular basis. He was a true citizen lawyer.

In an editorial in the May 19, 2001, *Roanoke Times*, Judge Jack B. Coulter wrote, “Another Giant of the law and a citizen extraordinaire has passed on the torch for those of us who remain behind. By word and deed, by creed and act, E. Griffith Dodson Jr. set examples of meaningful leadership, dedication to aggressive service and unbounded faith that ultimate good would prevail, that had no equal. His life was truly one of principle and integrity to the sacrifice of all else.”

Grif Dodson died on May 8, 2001. He would have been pleased that the Senior Lawyers Conference of the Virginia State Bar was established on June 14, 2001, through the diligent efforts of Overton P. Pollard, William B. Smith, myself, and others, with the support and encour-

agement of then VSB President Michael A. Glasser — a true friend of seniors. The conference comprises all members of the VSB who are fifty-five years of age or older and who are in good standing; membership is automatic, and there are no additional dues. There are more than 13,500 members in the conference. Among its purposes are “to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, and to encourage cordial discourse and interaction among the members of the Virginia State Bar (VSB).”

The conference has a twenty-four member board of governors from judicial circuits throughout the commonwealth. Since its inception in 2001, the conference has nearly doubled in size, making it the largest volunteer component of the VSB. This means that many lawyers for whom bridges were being built are now bridge builders.

The *Senior Citizens Handbook* is the most popular publication of the VSB. Topics include Social Security, Supplemental Security Income, pensions, veterans’ benefits, Railroad Retirement Act benefits, food stamps, federal tax relief, real estate tax reductions for the elderly, Medicaid, Medicare, medigap, long-term care insurance, nursing homes, and assisted living facilities, among many other subjects. The book also contains agency contact information. The handbook is distributed at public information gatherings and can be placed by local bar associations or lawyers in libraries, churches, assisted living facilities, or other appropriate locations. A newly revised edition of this publication is available through the VSB publications office at (804) 775-0548, and it is published online at [VSB.org](http://www.vsb.org).

Senior Law Day Programs are based on a format developed by past conference chair William T. “Bill” Wilson, who presented the first program with the Alleghany-Bath-Highland Bar Association in Covington. Since then, the programs have been presented across the state. As Wilson said, “In my judgment, the programs are ‘win-win-win.’ The senior citizens win because they are receiving information about legal issues affecting their lives. ... If you have been present or have participated in one of these programs, you know how attentively and appreciatively the senior citizens receive the program and how interested they are in the subject matter. The program is also a win for the lawyers and their bar associations, because it is impossible to be a part of one of these programs and not see the enormous good that is being accomplished. To be able to give information to

senior citizens and know that they are receiving information vital to their well-being is a rewarding and professionally satisfying thing to do. The program is also a win because it raises the image of the lawyers, the legal profession, and the bar associations in the eyes of the public.” A blueprint for this program can be obtained by calling Patricia A. Sliger, VSB liaison to the Senior Lawyers Conference, at (804) 775-0576.

“Protecting Your and Your Clients’ Interests in the Event of Your Disability, Death, or Other Disaster” is a conference program to educate and to encourage all lawyers in Virginia to plan. It can be presented as a mandatory continuing legal education pre-approved program with full ethics credit. It is presented at no charge to the Virginia State Bar or to local or specialty bar associations.

The program has been presented at least once in Abingdon, Alexandria, Arlington, Boydton, Covington, Charlottesville, Danville, Fairfax, Fredericksburg, Gloucester, Harrisonburg, Henrico, Irvington, Keysville, Leesburg, Lynchburg, Mclean, Richmond, Roanoke, Salem, Virginia Beach, Williamsburg, Winchester, and more than once at some locations. To schedule this program for your local or specialty bar association, call Ms. Sliger.

Bridging the gap between young lawyers and senior lawyers is an effort led by past SLC chair Jack W. “JB” Burtch Jr., a recognized authority on mentoring, whose passion is intergenerational communication. JB has researched and written articles to benefit attorneys in *Virginia Lawyer* and in *Senior Lawyer News (SLN)*, the Senior Lawyers Conference newsletter. These articles are valuable references and are downloadable at <http://www.vsb.org/slc>.

Promoting and maintaining civility and professionalism are other conference goals. Many senior lawyers are faculty of the VSB’s Harry L. Carrico Professionalism Course and have written on professionalism and civility in the practice of law in bar publications. On a daily basis, we look to all lawyers, and especially senior lawyers, to set an example for the profession in matters of civility and professionalism.

Remembrances of deceased, distinguished senior lawyers are published periodically in the *Virginia Lawyer* and the *Senior Lawyer News*. They remind us of the qualities and conduct of these women and men who were inspirational leaders and bridge builders. We have remembered and learned from the lives of, among others, Sloan Kuykendall, Armistead L. Boothe, Charles L. Kaufman, Alan J. Hofheimer, William

Rosenberger Jr., Francis V. Lowden Jr., Fielding L. Williams Sr., William F. Parkerson Jr., William S. Moffett Jr., James E. “Jimmy” Edmunds, Douglas W. Conner, C. Hardaway Marks, James Clopton Knibb, A. Christian Compton, Frank W. Rogers Jr., Roby Greene Janney, Walter T. McCarthy, Oliver W. Hill Sr., Carolyn O’Neal Marsh, Jacob L. Morewitz, Ken McFarlane Smith, and Robert R. Mehrige Jr. As you reflect on these and other exemplary members of the profession, please share with other members of the profession your insights about them and the lessons learned from them, and, above all, please demonstrate by your own example. If you wish to write a remembrance to be shared with the bar, please e-mail me, at lawinorder@aol.com.

Pro bono activities are conducted by senior and other lawyers in different ways. Some provide pro bono services to clients as part of their everyday law practices, without any reporting of those services and without any legal aid organization being involved. Other lawyers, such as John M. Oakey Jr., provide their pro bono services under the auspices of a legal aid organization; John Oakey also accepts court-appointed cases. He received the Virginia State Bar 2007 Lewis F. Powell Jr. Pro Bono Award in recognition of his longstanding service in providing pro bono legal representation. He is a shining example of a senior lawyer’s pro bono spirit. George H. Hettrick of Hunton & Williams is responsible for his firm’s pro bono programs in Richmond, Charlottesville, and thirteen other locations in the U.S.; Hunton & Williams has increased its pro bono services by 40 percent since April 1, 2008.

As you reflect on these and other exemplary members of the profession, please share with other members of the profession your insights about them ...

The SLC encourages senior lawyers’ work in providing pro bono services. Renae Reed Patrick and Maureen K. Petrini wrote “Emerging Service Opportunities for Seasoned Lawyers,” (SLN, Spring 2008), the full text of which may be found at http://www.vsb.org/site/pro_bono/slc-news-sp08. The article identifies many ways to volunteer pro bono services.

I mentioned above that Grif Dodson loved gardening and instilled the optimism of that in his children. He may not have actually planted an apple tree in his garden (preferring instead tomatoes and jonquils), but he had the spirit of an apple-tree planter, as exemplified in William Cullen Bryant’s poem, “The Planting of the Apple-Tree,” which was written by Bryant when he was aged 55.

Bryant read the law and was admitted to practice in 1816. In this poem, Bryant wrote about the hopeful, prospective, and optimistic act of planting an apple tree, the tangible fruits of which the planter may or may not personally enjoy. But the planter will enjoy the intangible fruits of providing for the future.

After writing of the abundant life of the apple tree and the benefits it will provide, he concludes with a description of the decline of the apple tree in its old age and of young people of that distant time asking, “Who planted this old apple tree?”

Let us hope that we will be able to answer that question, and that we will have planted apple trees ourselves, over the years.

Bridges and apple trees provide unique benefits of different durations — the latter needing to be replaced more often than the former, but both requiring constant attention.

So it is with all of us — the senior lawyers, the young lawyers, and those in between — as with the bridge builder and the apple tree planter. The view must be toward the future, with the hopeful expectation that those who cross the bridge and those who enjoy the fruits of the apple tree will build new bridges and plant new apple trees for the benefit of the profession and the public. ■

Endnotes:

- 1 Will Allen Droomgoole is often erroneously referred to as “he” or “Mr. Droomgoole.” She was born in Tennessee in 1860 and read law with her father who was a practicing lawyer in that state. Because of the Tennessee laws then in effect, as a woman she was not allowed to practice law. She was, however, elected clerk of the Tennessee State Senate when she was twenty-five years of age. When the U.S. entered World War I, she volunteered, at age fifty-seven, for active duty in the Navy, and served as a warrant officer, stationed in Norfolk, from 1917 to 1918. She spent most of her professional career as a writer and editor for the *Nashville Banner*. She died in 1934.

Richmond Civil Rights Lawyer Will Receive Award for Pro Bono Work

Clarence M. Dunnville Jr., a Richmond attorney whose civil rights work led him from protest demonstrations in the 1950s, to preserving the legacies of the movements' leaders and continuing courtroom battles on behalf of disenfranchised people in the twenty-first century, will be given the 2009 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.

Dunnville, 75, most recently has been involved as a court-appointed advocate in cases that support a constitutional right to counsel in civil cases.

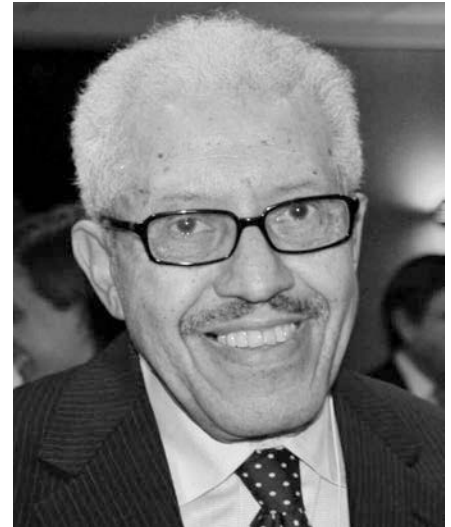
He has committed substantial time in recent years to preserving the legacy of civil rights attorney Oliver W. Hill and his colleagues in the legal battles of the 1950s and '60s. As a founding member of the Oliver White Hill Foundation, Dunnville led a project to purchase and restore Hill's boyhood home in Roanoke. He then formed a coalition to use the home to provide legal services to the poor, as part of a practicum by third-year students at the Washington and Lee University School of Law.

In a nomination letter, Mary Z. Natkin, the W&L assistant dean and professor who oversees the clinic, credited Dunnville's persistence for the development of the clinical program. "We committed to the idea, in large part because of Clarence's vision and dedication, and began designing a program to augment pro bono representation in Roanoke.

"He has been back to the city or on the phone too many times to count to appear before City Council in support of the program, to speak to the Roanoke Bar Association in support of the program, to check on the law fellow residing in the house or the law students working on matters, or for any matter that needs attention.

"It has been particularly inspiring to work with him on this project while he managed his own caseload in Richmond, mentored law students, and cared for his wife." Norine Dunnville, his wife of forty-two years, died in January.

In 2007, Dunnville was awarded the Segal-Tweed Founders Award by the Lawyers' Committee for Civil Rights Under Law, for displaying outstanding leadership and service in the cause of equal justice under law. Milestones in his life include participating in sit-ins and picketing to protest racial segregation; hearing Thurgood Marshall and Spottswood W. Robinson III argue *Brown v. Board of Education* before the U.S. Supreme Court; serving as a volun-



teer civil rights attorney in Jackson, Mississippi; and co-founding organizations to promote persons of color to management positions and on boards of directors.

"Mr. Dunnville has been a tireless advocate for our liberties throughout his long and storied career," Natkin wrote.

In February, VSB President Manuel A. Capsalis presented Dunnville with a special VSB President's Award in recognition of his many contributions to the legal landscape in Virginia.

Dunnville has a bachelor's degree from Morgan State University and a law degree from St. John's University.

The Powell Award will be presented during the VSB's Pro Bono and Access to Justice Conference on April 20, 2009, in Richmond.

University of Richmond Law Student Wins Virginia State Bar Pro Bono Award

Miriam Sincell, a student at the University of Richmond School of Law, has been selected to receive the Virginia State Bar's 2009 Oliver White Hill Law Student Pro Bono Award.

The award, named for a late Virginia civil rights litigator, recognizes a law student's commitment to uncom-

pensated or minimally compensated pro bono work and other public service. It is bestowed by the VSB Committee on Access to Legal Services.

Sincell's uncompensated pro bono hours while a law student have exceeded the award's one hundred-hour minimum, Professor Margaret Ivey Bacigal

wrote in a nomination letter. Sincell plans to pursue a career in public interest law after she graduates.



Law Student Award continued on page 49

Retire or Refresh: One Lawyer's Perspective

by Jack W. Burtch Jr.

I learned an important lesson years ago about career planning unexpectedly — at our neighborhood Christmas party. My across-the-street neighbor John Roberts, age 80, had just sold his business, though he kept a small piece to develop on his own. As we stood at the buffet table, I asked him if he had set goals for this new business. “Oh,” he said, “I think I’ll just give it twenty years and see what happens.” John just turned 90; both he and his now ten-year-old business are doing fine. For John, retirement has meant focusing on the part of his business that intrigued him most.

Being a senior lawyer presents us with a dilemma. On one hand, we may be asking ourselves whether it’s time to think about retirement. On the other, we may have finally achieved that elusive state of knowing exactly what we’re doing. Some lawyers have the retirement issue settled for them, at least temporarily. A recent study found that about half of all American law firms have a mandatory retirement policy. Even firms without these policies may “de-equitize” partners or offer departure incentives to achieve the same goal. Ironically, this forced retirement comes at a time in our history when a declining birthrate means we may soon see a shortage of good lawyers. A few good law firms, however, have recognized this demographic trend and decided to abandon forced retirement rather than embrace it.

Approaching Traditional Retirement Age

Whether we are being forced out of a firm or not, the senior lawyer period of our career presents opportunities and choices. The key to navigating the terrain successfully is to understand that the

choice is ours. No one can chain us to our desk or kick us out of law practice if we do not concur. Of course, the current economic crisis presents yet another challenge. Uncertainty about our financial security makes the decision to keep working a safe bet.

Senior lawyers have to make their own individual decisions. For me, the loaded question is: “When are you thinking about retiring?” When I first entered my sixties, I began to examine the concept of retirement in personal terms for the first time. There wasn’t much about it that appealed to me. Few people in my grandparents’ generation lived long enough to retire. Many in my parents’ generation cut themselves off in their prime. They rewarded years of hard work by going to Florida, where they played golf until boredom set in. For my generation, a longer, healthier life expectancy challenges the long-held concept of retirement. We may want a rest, but not one lasting thirty years.

There is no lack of retirement advice. Financial consultants say they can help us finance our dreams. Professional journals detail how to wind up a law practice. But many of us are not ready to think about this just yet. If we are senior lawyers looking forward to continuing our law practice, we have our own personal reasons for doing so. Assuming financial pressure is not our

The key to navigating the terrain successfully is to understand that the choice is ours.

primary motivation, we continue practicing either because we want to, or because we are too apathetic to do anything else. Identifying and embracing our own internal motivation could be the starting point for the rest of our legal career.

Capitalizing on Experience

In talking with other senior lawyers, I sometimes hear them ask, “Why would I stop practicing law when I’m just now figuring out how to do it

right?" If we find meaningful work, there's no reason to give it up. We don't use the term "law practice" for nothing. Generally, it takes us at least five years to learn what we are doing. It took me longer than that to figure out what clients want and what it is possible to achieve, even under optimal circumstances.

When I handled my first defense of an employment discrimination lawsuit, I was fully prepared in all the legal standards and shifting burdens of proof. I was ready to enter the labyrinth of proof leading to a favorable outcome. But today I have the additional benefit of a reservoir of past experiences, both good and bad. This familiarity with law practice helps me better understand the opportunities and challenges at each decision point, as well as the likelihood of a case breaking in one direction or the other. There are times when a younger lawyer overvalues the need to take action, whereas an experienced lawyer can appreciate the wisdom of doing nothing.

As senior lawyers, we have learned from our experiences, both in the courtroom and out of it. We are no longer who we were on our first day of practice. We have succeeded or failed at marriage and relationships, raised and educated children, suffered illness, family deaths, and achieved many lifelong goals. We have also fallen flat on our faces. The lawyers we are reflect the people we have become.

Discerning My Direction

Several years ago, I took six months off, in order to step away from law practice and spend some time pursuing interests I had long neglected. While this was a transforming experience in many ways, it also brought me up short. I had always thought I was not as identified with my job as I had perceived others to be. I was wrong. Somehow, my personal identity and my being a lawyer had become intertwined. This was partly the result of our somewhat unnatural process of legal education. My professors sought to make students think like lawyers, and this thought pattern was then reinforced by years of practice. So the process of legal analysis I was taught became transformed into an intuitive mode of thinking. I shouldn't have been surprised when the lawyer and the person finally achieved a level of integration.

Today, I have a much better sense of who I am as a lawyer. At some point in our careers, we senior lawyers either embrace our calling as lawyers or else we just continue to trudge along. In a profession characterized by pressure and competition, we have to find our own "sweet

spot." This is the place where who we are and what we do intersects with our natural talents and abilities. Not long ago, I was sitting across the table from a distinguished lawyer from Alexandria who told me he had no intention of retiring, because he was finally getting the cases he wanted. He had found his sweet spot.

Then there is the other viewpoint, summed up by the conversation I had with a lawyer at a party some time ago. "Just have to grind it out for four more years, and then I can quit," he sighed. My heart sank. If I felt like that about practicing law, it wouldn't take me four years to quit. Moral: if law practice makes you miserable, find something else to do. If you want to keep practicing, enjoy the chance to concentrate on the legal matters in which you shine — matters that provide you with energy and personal fulfillment.

Embracing My Choice

So, being a senior lawyer means I have had to be honest with myself about why I show up at the office every morning. Is it just because I have a lot of work to do and failing to do it will be humiliating? Or do I show up because there are important things I can do well and clients for whom my advice will make a difference?

One of the reasons I wanted to be a lawyer is that I wanted to give good advice. I enjoy helping others get what they need. Continuing in this profession allows me to do something that makes me happy. I also want to show up because I get to work with younger men and women who are just beginning their legal careers. My own formation as a lawyer came from the patient mentoring of partners in the law firm that first hired me. They allowed no compromise of professional, technical, or ethical standards.

I have tried not to lose sight of those ideals. I can't go back and adequately thank those who helped me. Passing on what they gave me, the best I can, is just the right thing to do. For a number of years, I have had the opportunity to teach two classes at the University of Richmond School of Law. I believe law students can benefit from exposure to practicing lawyers, just as they do from their daily encounters with professional academic lawyers. My law practice continues to give me professional credibility with my students, while they continue to provide me with inspiration and energy.

Making a New Choice

There can be compelling reasons for a senior member of the bar to stay engaged in law prac-

tice. But staying engaged in law practice does not mean we have to continue doing what we have always done. We can think of this stage of our lives as an opportunity to do what many others are doing at this time of life: embarking upon a second career. Our new career can be the law practice we always wanted to have. At last, we can allow ourselves the luxury of taking on cases that interest us, and eliminating cases that don't.

Just playing with this idea of choice allows us to think about issues we haven't considered for a long time. For example, examine those elements of law practice you handle really well and thoroughly enjoy, that also help other people and satisfy your economic needs. Most lawyers are naturally restless. Law practice takes us from one client to another, from one problem to another. Sometimes we change firms. Sometimes we change specialties. Every now and then, we need to change our attitudes.

At this time in our lives, we need to ask ourselves what is really important to us right now and what do we want to achieve in our remaining working years. Combining the answers to these questions with our particular skills as lawyers is a road map to our new second career. Probably the only thing holding us back is the fear we will fail. Well, we haven't failed so far, so there is no reason to think we will.

Contributing Experience

Senior lawyers who began their practice more than thirty years ago have lived through several revolutions. We saw the introduction of the billable hour and the beginning of its demise. We were trained by a mentor system that is no longer economically feasible. Doing our work once required offices, secretaries, and libraries full of books. Now we can — and do — work anywhere with a laptop computer and a cell phone.

The digital revolution is not limited to condensing the amount of space required to practice law. It goes much deeper than that. The new generations coming into law practice think differently than we did. They are comfortable in non-hierarchical relationships. The technological advancements of the past twenty years have endowed the new digital generation with certain innate capabilities that are foreign and exotic to senior lawyers. This digital revolution has poised an entire generation of young lawyers at the crest of a wave that will inevitably change the practice of law as we know it today.

Yet we, as senior lawyers, still have valuable skills to contribute to the digital revolution. No

matter how easily new lawyers can manipulate Lexis and Westlaw, if they omit book research, they may miss the key precedent. There is no technological solution to helping clients get to the heart of a problem or helping them tell their story. This is a truism young lawyers can learn by watching senior lawyers.

Remembering Values

To embark on our new second career, we may first have to look backward and consider why we

Probably the only thing holding us back is the fear we will fail. Well, we haven't failed so far, so there is no reason to think we will.

became lawyers. Some lawyers were attracted to a legal career during college or even later. I knew I wanted to be a lawyer by the time I was aged ten, though I can't really say how. The lawyers in my home town seemed to be the people who did the most interesting things in the community. They served on the city council, ran the school board, and were active in their churches. They mediated the disputes in our small community. I had no idea what they did at the office. I imagined they were all like Perry Mason, but I had never been inside a courtroom, so I didn't know for sure. What I did know was that they were doing important work, and I wanted to be a part of that dynamic.

Some of my childhood impressions have proven correct. Despite our current public relations challenges, most lawyers still offer themselves as private public servants. We serve, sometimes as volunteers, to advance the public good. We serve on boards, councils, and committees for all types of charitable and religious organizations. We provide advice and counsel where it is needed, whether or not we receive a fee. Any lawyer active in the community provides valuable free service without ever thinking of it as pro bono work. Lawyering is a service profession. Our cultural role as lawyers — as "private public servants" — is as essential today as it was in my childhood.

Rejoicing in the Freedom to Choose

For the last twenty years, legal publications have been filled with articles decrying the transforma-

tion of the legal profession into the law business. While today's economic pressures affect every one of us, I continue to believe that law is a noble profession. The ideals of justice, honesty, civility,

We are living at a very wonderful time in history, a time when each generation in law practice has something valuable to give to the other.

order and freedom have been upheld by men and women devoted to this profession. This is a tradition all of us need to embrace and pass on, whether we decide to retire or refresh.

We are living at a very wonderful time in history, a time when each generation in law practice has something valuable to give to the other. If senior lawyers check out prematurely, our profession will be diminished. Giving ourselves permission to set out on new, second careers can add

motivation and focus to our work. We can practice law the way we enjoy it most, without sacrificing our values. Senior lawyers thinking of law practice as a new career can enjoy the ability to commit to the long-term view.

I, personally, have decided to "give it twenty years or so and see what happens." So feel free to check back with me in 2029. ■

Keepers of the Flame: The Duty of Judges to Promote and Preserve Civility and Professionalism

by William H. Ledbetter Jr.

Among many ancient cultures, especially those with no written language, a small and elite group was dedicated to preserving the laws and customs of the people. Sometimes called Keepers of the Flame, these tribal officials were highly esteemed because their work enabled the best traits of that culture to continue from one generation to the next. Some might say that is the essence of civil progress.

There are several areas in the practice of law where appropriate professional conduct is under particular strain.

In our legal culture, without the loin-cloths and magical herbs, judges are Keepers of the Flame. Although today our laws are written, the bedrock of our legal culture — time-tested courtesies, civilities, manners, and professional mores — are not. As leaders of the communities they serve, judges have a duty to promote and preserve these things.

What Do Judges Do to Fulfill These Duties?

Judges participate in the functions of their local bar associations. Further, they should serve on committees and boards of statewide bar organizations. This includes acting as panelists, speakers, moderators, and in other capacities, especially on topics related to professional ethics and civility. Judges demonstrate a commitment to promote and preserve the traditions of our legal culture.

Since 1987, all lawyers in Virginia must complete a mandatory course on professionalism within twelve months of becoming an active member of the bar. The course is taught by prominent lawyers and judges who are appointed by the Supreme Court of Virginia for three-year terms. As an adjunct of that course, mini-courses on professionalism are now offered in all law schools in the commonwealth, taught by some of the same faculty. Judges participate in these programs, evincing a commitment to the preserva-

tion of civility and professionalism among members of the bar.

Foremost, of course, judges must promote civility and professionalism in their official capacity as jurists.

The Litigation Section of the Virginia State Bar has adopted principles of professional courtesy that state: “Civility and manners are the mark of an enlightened and effective system of justice. Courtesy, then, emanating from all quarters, extending in all directions, becomes an indispensable ingredient in the orderly administration of the courts.” As noted in an article by G. Marshall Mundy and Vicki L. Wiese in the December 2003 *Virginia Lawyer*, “The importance of the judiciary in the foregoing is apparent, and greater involvement of the judiciary will be to everyone’s benefit.”

There are several areas in the practice of law where appropriate professional conduct is under particular strain. In all of them, judges have a responsibility to deal with corrosive behavior. Four areas deserve our attention.

The Courtroom. The judges from central casting on *Boston Legal* and *Law and Order* do not preside in real courtrooms. Virginia lawyers do not practice before trial judges who sit in near-nap repose while allowing the attorneys to insult one another and the court, engage in circus-like antics, and argue social theory rather than facts to the jury. That’s television, and the real world, thankfully, is not the same.

Nevertheless, there are occasional breakdowns in courtroom decorum that should be addressed firmly and immediately. (It is human nature to want to be liked. Thus, how does a judge caution, admonish, or even scold, an attorney without affecting the outcome of the matter before the court, without unduly embarrassing the offender, and without appearing, well, unlikable? Each judge must come to grips with a particular methodology, based on that judge’s background and personality.)

When an attorney consistently arrives late to court, or fails to stand when addressing the court, or turns to the adversary to argue an objection rather than directly addressing the court, or charges toward an adverse witness without asking permission to do so, or displays a document to the jury without having moved it into evidence, or floods the court with last-second motions expecting to argue them on the day of trial, these missteps must be corrected by the judge.

Communications. Notwithstanding strides made in the field of communications, why do judges hear so many complaints about attorneys failing to return telephone calls or not responding to e-mails? No lawyer is so busy that he or she cannot respond to a letter, phone call, or e-mail from a colleague about a pending matter before a court or to entreaties from a client, whether the case involves a high-dollar claim for a well-heeled client or a court-appointed defendant in a local jail. (It is amazing how many bar complaints originate with this sort of discourteous neglect.)

Scheduling and Notices. Why do attorneys schedule proceedings before the court without giving adequate notice to opposing counsel? Contacting the other attorney usually triggers a response so that the matter is scheduled at a mutually convenient time. A phone call or e-mail requesting available dates for a pretrial motion often leads to a resolution without the need for a court appearance. Only if opposing counsel does not respond should an attorney file notice unilaterally, appointing a date available to the noticing attorney. In cases in which the other attorney fails to cooperate, the noticing attorney should keep notes so that a skeptical judge can be persuaded

(but rapidly expanding) breed of trial lawyers concluded that the trial should not be the focus of the litigation process; instead, discovery became the fulcrum around which all else revolved. This development has moved litigation from the public arena to the private conference rooms of law firms, thereby shielding it from oversight. Without supervision or public scrutiny, some attorneys are discourteous and unprofessional. When such matters reach the attention of a judge, obviously they are more difficult to deal with than inappropriate conduct in the courtroom. Nonetheless, it is incumbent upon the judge to correct the problem or at least minimize recurrence.

This is not to say that judges are *the* Keepers of the Flame. They are complemented by senior practitioners, law schools, and continuing legal education program designers, among others. Judges must continue to promote, preserve and pass on the laudable traditions of professionalism in our Virginia legal culture. ■

Notwithstanding strides made in the field of communications, why do judges hear so many complaints about attorneys failing to return telephone calls or not responding to e-mails?

to grant a hearing notwithstanding the lack of concurrence of opposing counsel. Judges must decide such disputes to ensure that the uncooperative attorney does not profit from such conduct.

Discovery. Some time during the last couple of decades of the twentieth century, a relatively small

CLBA Programs Touch Students As Well As Bar Leaders



SINCE MY LAST REPORT TO YOU in the February 2009 *Virginia Lawyer*, the Conference of Local Bar Associations (CLBA) has been active and pressing forward with its programs.

On Thursday, March 19, 2009, a town hall meeting — Diversity in the Professions — was held at Norview High School in Norfolk. John Y. Richardson Jr. began developing the program when he was chair last year. The speakers included Virginia Chief Justice Leroy R. Hassell Sr. (who graduated from Norview in 1973), Norfolk City Manager Regina V. K. Williams, and Rear Admiral Julius S. Caesar of the U.S. Navy Reserve, commander of the Naval Installations Command. (See story on page 28.)

“The speakers were informative, candid, and moving,” Richardson said. “One didn’t have to look further to judge the effect on the students than simply watching the students standing in line to talk to the speakers after the formal program concluded.”

VSB President Manuel A. Capsalis moderated the event.

By the time you read this, the Bar Leaders Institute will have taken place at the Virginia Historical Society in Richmond. On the program was a three-hour workshop led by nonprofit management consultant Robert C. Harris, who gives advice on how to boost the efficiency and success of bar associations or civic groups. Terry L. Price of the Jepson School of Leadership Studies at the University of Richmond was slated to discuss his

new book, *Leadership Ethics: An Introduction*.

This year’s Solo & Small-Firm Practitioner Forums will take place Wednesday, May 20, 2009, at Shenandoah University in Winchester and Thursday, July 16, 2009, at the Southwest Virginia Higher Education Center in Abingdon. Topics will include financial and business dealings with clients; life balance issues for lawyers; appellate practice; and technology for the small firm. As always, the event will conclude with a town hall meeting led by Chief Justice Hassell. For registration information, visit <http://www.vsb.org/site/conferences/clba/view/solo-small-firm-practitioner-forum/>.

So You’re 18 booklets continue to be in high demand. If you are looking for a way to get into the schools to present this information to the students, we have a blueprint available for a panel discussion. Contact Paulette J. Davidson (804) 775-0521 or davidson@vsb.org for the blueprint and the *So You’re 18* booklets.

As you may know, VSB President Capsalis’s Diversity Task Force has proposed that a permanent diversity program be established as a conference of the Virginia State Bar. (See story on page 18.)

The Diversity Conference and another proposal that would amend the VSB Mission Statement to add a diversity component will be debated at the June 18, 2009, meeting of the VSB Council at Virginia Beach. The VSB is seeking public comment and the deadline for receiving those comments is May 26, 2009. A description of and links to the proposals can be viewed at <http://www.vsb.org/site/news/item/diversity/>.

Please remember that the CLBA is your organization and is designed to help you and your local bar association. We have many resources and suggestions that will help you with your programs. For assistance contact Ms. Davidson. In addition, if I can help, please contact me at (540) 962-4986 or wtw1130@aol.com.

Solo & Small-Firm Practitioner Forums

Wednesday, May 20, 2009

Shenandoah University in Winchester

Thursday, July 16, 2009

Southwest Virginia Higher Education Center in Abingdon

Topics will include financial and business dealings with clients; life balance issues for lawyers; appellate practice; technology for the small firm; and a town hall meeting led by Chief Justice Hassell. See <http://www.vsb.org/site/conferences/clba/>



Young Lawyers Are Committed to Pro Bono

PART OF THE VIRGINIA STATE BAR'S mission is to "advance the availability and quality of legal services provided to the people of Virginia." Comment 1 to Rule 6.1 of the Virginia Rules of Professional Conduct reminds us that "[e]very lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer."

In these troubling economic times, pro bono work has taken on even greater importance. With the rise in unemployment, foreclosures, and bankruptcies, the demand for pro bono services is increasing. At the same time, financial resources that support pro bono services are decreasing in many areas of Virginia.

The Young Lawyers Conference (YLC) helps provide high-quality pro bono legal services to the public. The following are some of our pro bono efforts.

Created in the wake of the September 11, 2001, terrorist attacks, the **Wills for Heroes** program provides free legal estate planning services to police, firefighters, and other first responders in Virginia. Cosponsored by the Virginia State Bar YLC and the Virginia Bar Association Young Lawyers Division (VBA YLD), the program works with local bar associations and young lawyers groups to implement the program in cities and counties across the state. Volunteer attorneys receive free continuing legal education (CLE) training in estate planning. The volunteers help first

responders understand the importance of estate planning, then meet with them one-on-one to draft a basic will, advanced medical directive, and power of attorney.

First implemented with Arlington firefighters, the program has now produced more than one thousand wills in Bristol, Charlottesville, Chesterfield, Danville, Norfolk, Roanoke, Williamsburg, and Albemarle, Cumberland, Henrico, and Hanover counties. For more information, or to volunteer, contact program chair Andrew G. Geyer at ageyer@hunton.com or (804) 787-8164, or board liaisons Christy E. Kiely at ckiele@hunton.com or (804) 788-8677 and Erin S. Whaley at erin.whaley@troutmansanders.com or (804) 697-1389.

Last year, the YLC inaugurated the **Mental Health Project**. On two occasions, young lawyer volunteers provided on-site legal counseling to persons with mental health disabilities at the Northern Virginia Mental Health Institute in Fairfax and the Blue Ridge Clubhouse of the Region Ten Community Services Board in Charlottesville. Topics covered include housing discrimination, family law, support, job discrimination, and civil commitment issues. For more information, contact program chair Nathan J.D. Veldhuis at Nathan.valdhuis@tremblaysmith.com or (434) 977-4455, or board liaison Daniel L. Gray.

The **Emergency Legal Services Program** is cosponsored with the VBA YLD. It provides pro bono assistance to Virginians affected by natural disasters or other mass emergencies. Modeled after the American Bar Association's

Disaster Legal Services Program, the program maintains a network of volunteers trained in disaster-related legal needs. When the governor declares a state of emergency, volunteers are mobilized in the affected locality to provide information about insurance issues, landlord-tenant problems, home repair contracts, home solicitation, lost legal documents, and other legal issues resulting from the disaster or emergency. Over the years our volunteers have responded to hurricanes, flooding, and tornadoes. For more information, contact program chair Glen H. Sturtevant Jr. at gsturtevant@hunton.com or (804) 788-8260, or board liaison J. Barrett Lucy at barret_lucy@gentrylocke.com or (540) 983-9300.

Since 1984, the YLC's **No Bills Night** has provided Virginians the opportunity to discuss legal issues for free with an attorney by telephone. To make this program available to as many communities as possible, the YLC has divided the state into twelve regions, each of which hosts its own No Bills Night. Although the volunteer attorneys cannot provide individuals with legal advice, they give guidance and, in most cases, direct people to agencies or other organizations that are in a position to provide relief. For more information about the program and each of its regions, contact statewide chair William W. Brock at wirt_brock@gentrylocke.com or (540) 983-9332, or board liaison Gerald E. Mabe III at gemabe@wytheco.org or (276) 223-4130.

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For several years, the YLC **Domestic Violence Safety Project** has worked to combat domestic violence in Virginia. Its projects have included the development, distribution, and translation into Spanish of more than two hundred thousand Domestic Violence Safety Brochures and Legal Pamphlets to victims of domestic violence statewide. Volunteers have also provided pro bono representation to domestic violence victims in protective order, child custody, and support cases. The program offers free training with CLE credit for attorney volunteers. For more information, contact committee chair Timothy M. Mayfield at tmayfield@nadamslaw.com or (540) 667-1330, or board liaison Kenneth L. Alger II at kenalger@shentel.net or (540) 459-6129.

Finally, the YLC's Pro Bono Commission serves as a think tank for the YLC on pro bono issues and periodically reviews the YLC's pro bono services to determine whether there are unmet needs to be addressed. The commission has also reported on the pro bono activities of Virginia law firms in the April 2007 edition of *Virginia Lawyer*. (http://www.vsb.org/docs/valawyer magazine/vl0407_access.pdf) For more information on the commission's activities, contact chair Samantha Ahuja at ahujas@gtlaw.com or (202) 530-8552, or board liaisons Christy Kiely and Ken Alger.

Virginia State Bar Harry L. Carrico Professionalism Course

See dates and registration information at <http://www.vsb.org>.

YLC Board Elections

At its Annual Meeting on June 19, 2009, the Virginia State Bar Young Lawyers Conference will be electing members to the Board of Governors. Three At-Large positions as well as seats in the following districts are up for election:

District	Circuits
2	2, 4
3	6, 11, 12, 13, 14
4	17, 18
5	19, 31
8	23, 25
9	10, 21, 22, 24
10	27, 28, 29, 30

All nomination are due on May 1, 2009 and any letter of interest or nomination should be sent to:

Daniel L. Gray
Immediate Past President
Cooper Ginsberg Gray PLLC
10201 Lee Highway, Suite 520
Fairfax, VA 22030
(703) 934-1480; Fax: 703-280-4370; dgray@cgglawyers.com

Learn more about the Young Lawyers Conference at
<http://www.vsb.org/site/conferences/ylc/>

Seeking Nominations

The Virginia State Bar Young Lawyers Conference is seeking nominations for the **R. Edwin Burnette Jr. Young Lawyer of the Year Award**.

This award honors an outstanding young Virginia lawyer who has demonstrated dedicated service to the YLC, the profession and the community.

The nomination deadline is May 1. Nominations should be sent to:

Daniel L. Gray
Immediate Past President
Cooper Ginsberg Gray PLLC
10201 Lee Highway, Suite 520
Fairfax, VA 22030
(703) 934-1480; Fax: 703-280-4370; dgray@cgglawyers.com

Senior Lawyers Conference

by Homer C. Eliades, Chair



A Lawyer Looks Back

I JUST TURNED EIGHTY LAST MONTH. This click of life's odometer has brought on quite a bit of reflection. Since fifty-three of those eighty years have been spent practicing law in a small town, many of these reflections have been about just that. Although some days have been more enjoyable than others, all my days as an attorney have been rewarding. Needless to say, I've seen quite a few changes — some of which I like and some of which I do not. But I remain very proud of my chosen profession.

As a young lawyer recently discharged from the Army, I thought I was ready to enter the legal arena. My first visit to the Hopewell General District Court was an eye-opener. The Hopewell District Court was located in a building that also housed the jail. It was not a very impressive courtroom. I was amazed when I saw the judge walk into the courtroom wearing no robe and smoking a cigarette. The lawyers were not wearing jackets or neckties — only slacks and short-sleeved shirts. It was a surprisingly casual atmosphere.

The circuit court was located in another building, and the amenities were somewhat better. Term days were important in my early days of practicing law, because it was then that cases were set for trial, and young lawyers were always hoping to be appointed to represent indigent criminal defendants. The magnanimous pay in those days was \$25 to represent a criminal defendant charged with a misdemeanor and \$100 for a defendant charged with a felony. In some instances, the grand jury would issue a true bill on term day in the morning, and the defendant would be tried later that same after-

noon. Justice came swiftly in most cases (although not always). The defense lawyer might talk to the arresting officer and to the commonwealth's attorney and then try the case that very same day. There were no Miranda rights issues to deal with in those days.

I remember being asked to represent a very difficult defendant who had already been through two other appointed attorneys. He had advised the court that he was unhappy with the prior representation that he had been given. I agreed to take this rape case, and I worked diligently in preparing his defense — meeting with my client, talking to witnesses, gathering experts, and negotiating with the commonwealth's attorney. The defendant was found not guilty. The judge awarded me \$50 for attorney's fees. I advised the court that if that was all that the court could pay, then the Commonwealth of Virginia could keep the money. Thus ended my court appointments.

In most localities, there was only one part-time commonwealth's attorney who prosecuted all of the cases. That person could be prosecuting in the morning in one jurisdiction and defending an individual in another jurisdiction that afternoon.

Interestingly, we had district judges who were also the juvenile judges. Would you believe that district court judges did not have to be attorneys fifty years ago? Yes. In the County of Sussex, we had a doctor who sat as a judge. And we had several judges who had never attended a four-year college or university.

Some judges had a unique way of dispensing justice. I represented a gentleman who held a supervisory posi-

tion at a local factory. He was stopped by a police officer who charged him with reckless driving (speeding ninety miles per hour in a fifty-five mph zone). The judge was inclined to give him jail time, but I had witnesses testify that my client was a wonderful person and that he had no prior record whatsoever. The judge ended up fining my client substantially. The judge suspended all jail time and forewent any suspension of driving privileges. However, he ordered my client to attend church twelve Sundays in a row. Can you see that happening today?

There was a juvenile judge who would mete out punishment with a whip — literally. He would allow the parent to take the child in a room and whip him. If the parent was reluctant, he would have a police officer carry out the whipping with the permission of the parent.

A certain circuit judge did not like to see lawyers come into his court with long hair. If they did, he would invite them to leave the courtroom. On one occasion, that judge stopped a case that I was trying with an older lawyer and told the lawyer to turn his chair so that he would be facing a wall with his back to the jury (this was in response to a less-than-professional snicker and mumble from the lawyer). One never knew what this judge would do or say in the courtroom. Life in his court was always interesting.

Let me conclude anecdotally with a situation that occurred when I was young and inexperienced. I was trying a civil automobile accident case in which opposing counsel and I had

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She was one of the first volunteers with the Richmond Child Health Advocacy Program, which addresses legal needs of low-income children who are patients at the Virginia Commonwealth University Medical Center.

She also has worked with the Richmond Housing Law Project, the law school's Street Law Program to educate high school students about their legal rights and responsibilities, the Christian Law Fellowship, and the community service committee of the Public Interest Law Association.

Tara Louise Casey, director of UR's Harry L. Carrico Center for Pro Bono Service, described Sincell as an ambassador of the legal profession and the law school to the Richmond community. Through the Street Law Project, for example, she recruited volunteer law students to teach disadvantaged youths about basic legal concepts and correct common misconceptions about the law.

Casey quoted Robert F. Kennedy's words, "The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away." Sincell is a student who finds ways to use the law to give back, she wrote.

Sincell grew up in Oakland, Maryland, and received her undergraduate degree from Bucknell University.

The Hill Award will be presented during the VSB's Pro Bono and Access to Justice Conference on April 20, 2009, in Richmond. ■

President's Message continued
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bono and otherwise affordable legal assistance to those who serve in our military and their families. I am very proud of our efforts in this regard, and it is clear that the results will be tangible and long-lasting. We also embarked on an amazing of efforts to provide assistance in the creation and development of the Afghan Bar Association. Upon the request of that bar, as well as our country's military legal team stationed in that war-torn country, our bar rose to the challenge, and there is now in place a team of more than fifty Virginia attorneys ready to offer legal advice and assistance when called upon. This is truly a wonderful opportunity that we embraced.

In the years to come, I look forward to the growth and vitality of the Virginia Law Foundation, the philanthropic arm of our profession. As a member of its board of directors, I see great promise for the future as it seeks out opportunities to enhance, through grant funding, access to justice, legal education, and the Rule of Law within our Commonwealth. It is a critically important component of our obligation as an honorable profession, and I believe it has the potential to substantially and positively affect many who are in need among us.

Much has been accomplished this year, of which I admittedly played a very minor role. Time and again our bar rose to the occasion. In a matter of a few weeks, I will hand the reins over to my friend, Jon D. Huddleston. I can tell you with confidence that he will do a great job, as will his successor, Irving M. Blank.

Until then, I thank you for the honor of serving. It has been a privilege. ■

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agreed to stipulate the amount of property damage to be approximately \$7,000. As I was about to rest the plaintiff's side, I felt a tug on my jacket. Defense counsel then reminded me that I had not put into evidence the fact that we had stipulated to the amount of property damage. I have never forgotten this kind and gracious act. This was the character of many of the lawyers during that time. They were gentlemen who were respected by the judiciary, the bar, and court personnel. This type of professionalism and civility seems to have waned somewhat over the years. My hope is that all attorneys would be on both the giving and receiving end of this type of professional courtesy.

I miss the interaction that lawyers and judges had years ago, and I would like to see that renewed. I learned so much as a young lawyer from experienced lawyers and judges who took the time to offer me very constructive criticism. The bench and bar can always benefit from shared advice and encouragement.

Here's to a few more years in a profession that has brought me many challenges but has given me such great satisfaction. ■

One Person's Junk, Another Person's Treasures: Dissolving a Small Law-Book Collection

by Gail F. Zwirner

DECISIONS TO ELIMINATE a book collection occur for various reasons, including retirement, downsizing a home library, or a sweet deal from an online vendor. Law librarians regularly receive inquiries about the purchase or donation of used law books. Many times these calls originate in a law school's development office after an attorney school seeks his or her law school's advice on eliminating a significant career investment. An attorney may turn to a law firm librarian for advice as well.

Collection development policies vary among law schools and law firms. Old editions of legal materials regularly line the shelves in law school libraries to capture the history of legal citation. Except for some Virginia primary sources and treatise materials, a law firm library patron is likely to see only the current edition of a particular title. Librarians regularly welcome donations. Gifts are a valuable source for out-of-print materials, extra copies of popular titles, and filling in worn or missing items in the collection. Librarians learn early in graduate library school courses that it was the sale of Thomas Jefferson's personal collection that helped recreate the Library of Congress after much of the original collection was destroyed in the War of 1812.

Some libraries celebrate the concept of book donations. A Make a Donation link at the Regent University Law Library's website, <http://www.regent.edu/acad/schlaw/library/barmembers/home.cfm>, leads to the following:

Countless legal researchers and scholars at Regent University have been blessed and enriched by the generous gifts of interested individuals through the years. If you would like to make a gift to the Law Library of either funds or materials, please contact [the associate director].

A phone call to other law school libraries will produce similar referrals to librarians designated to handle donations.

The following are some considerations when deciding to sell or donate a small law-book collection:

Selling

Sets of case reporters have limited appeal, according to a representative at Law Book Exchange Ltd. (LBE), a publisher of legal classics, appraiser, and dealer in used law books. Databases of primary authority, such as those available to Virginia State Bar members through Fastcase, have put case reporter resales in the "dinosaur" category. However, LBE says there is a market for some reporter sets, such as the *United States Patents Quarterly*, a set of *American Jurisprudence 2d*, or even *Michie's Jurisprudence* in good condition. Sets will also carry more value if they include the most recent replacement volumes and pocketparts. LBE is more interested in texts and treatises such as *Corbin* or *Areed*. The great news about treatise purchases of Virginia materials is that LBE is working on a reprint of the second edition of *Minor on Real Property*, a title often sought by our faculty and library patrons, and Virginia law librarians are always delighted to see it in a box of donated materials.

Law Book Exchange will accept e-mail requests for quotes on value. Appraisal fees depend on the size of a collection. A minimum fee is \$50. Send an e-mail to law@lawbookexchange.com with the title, edition reference, number of volumes, and when it was last updated, and LBE will respond with a fee quote.

Librarians also contribute general appraisal information. Librarian and author Ken Svengalis updates his "Appendix of Representative Used Law

Book Prices" in each annual edition of his book, *Legal Information Buyer's Guide & Reference Manual*. The current edition covers prices "as of April 15, 2008, which have appeared in recent years." For example, the price for a set of *Virginia Reports* (vols. 1-251) is \$1,695.

Donating

Two Internal Revenue Service publications (Nos. 526 and 1771) address charitable contributions and outline requirements for the donor and the recipient organization. For example, there are threshold guidelines for reporting requirements, appraisal requirements and sample donor letters. Even if the "final resting place" for donations is a recycling bin or landfill, librarians consider various options before making a non-green decision.

If incorporating the titles in the library's collection doesn't work, librarians use e-mail networks nationally through the American Association of Law Libraries and the association's Virginia chapter. It's not unusual to see regular postings such as:

- I am looking for a free set of outdated *Southern Reporters*;
- Free for postage — S.E.2d volumes 1-555; or
- We have the following law reviews/journals free to a good home or the price of postage
 - *Review of Litigation* — unbound — v.1,#1 through v.20,#2
 - *Virginia Law Review* — v. 46-91 (v. 46-79 are bound
 - *Washington and Lee Law Review* — v. 57-62 — not bound

Other creative solutions include donations to paralegal schools that need instructional tools, but not necessarily

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Virginia's New Principles of Professionalism

by Thomas E. Spahn

FOR THE FIRST TIME in Virginia's legal history, the Supreme Court of Virginia has endorsed aspirational statements of lawyer civility. All of us should use this historic event to redouble our commitment to treat each other and everyone with whom we deal the way we would like to be treated. This article describes the difference between ethics and professionalism, and the process that resulted in the Supreme Court's action.

The Difference Between Ethics and Professionalism

Lawyers have always struggled with the tension between our role as advocates for our clients and the golden-rule behavior that marks conduct in most professions.

For example, absent your client's consent, you generally cannot advise adversaries about some important argument they have overlooked or an appellate deadline they are about to miss. This is because our ethics rules require that we act as our clients' advocates. On one level, this might seem unfair and unprofessional. But our role as advocates makes us indispensable players in the most efficient and fair justice system ever devised. Unfortunately, many non-lawyers do not understand our role, which accounts for at least part of our profession's unpopularity. There really is nothing that lawyers can do to change our role in the adversarial system. To the extent that our ethics obligations fuel public criticism, we can only try to explain what we do and why everyone benefits when we do it well.

On the other hand, we have total control over another source of public condemnation: how we act toward those with whom we deal. This involves professionalism.

Thus, ethics and professionalism are entirely different concepts. Ethics guides our role as advocates and the substance of our daily decisions. Sometimes, ethics requires us to take actions that seem unprofessional and discourteous. It guides our interactions with others.

Professionalism cannot trump our duty of advocacy, but it can direct the way we undertake that duty. Professionalism focuses on civility and the golden rule.

Unfortunately, the news on the professionalism front is bad and getting worse. Our profession seems to attract driven people short on time and patience. Demographics and economics conspire against us. Lawyers who practice in small bars are restrained by the fear of social ostracism, or the certainty that karma eventually returns incivility exhibited toward another lawyer. But these deterrents disappear in large bars or among transitory lawyers. Traditionally, young lawyers relied upon mentors to guide their conduct. As law firms and bars have grown, these types of helpful relationships have largely disappeared or have been eroded by financial concerns.

Professionalism Efforts in Virginia

As in every other state, Virginia's ethics rules have never required lawyers to act with courtesy in their day-to-day dealings with others.

To be sure, Virginia Rule 3.4(j) contains the standard prohibition on lawyers taking any actions on behalf of their client "when the lawyer knows or when it is obvious that such action would serve *merely* to harass or maliciously injure another." (emphasis added). This obviously prohibits grossly discourteous behavior. In essence, the rule represents a minimum level of civility. Lawyers who fall below this minimum can face bar discipline. The American Bar Association Model Rules and every other state's rules contain the same provision.

However, the Virginia Rules of Professional Conduct also contain several unique provisions that do more than set a minimum standard. These provisions remind lawyers of the way we should act.

Virginia Rule 3.4 comment [7] explains that "[t]he duty of lawyers to represent a client with zeal does not militate against his concurrent obligation to

treat, with consideration, all persons involved in the legal process and to avoid the infliction of needless harm." Virginia Rule 3.4 cmt. [8] provides additional guidance to lawyers involved in "adversary proceedings." That comment advises litigators to act with courtesy and respect, but begins each statement with a "should" rather than a "must."

These provisions do not appear in the ABA Model Rules, and their inclusion in the Virginia Rules speaks volumes about Virginia's desire to encourage everyday courtesy, not just describe the type of extreme discourtesy that justifies discipline.

Given Virginia's heritage, it should come as no surprise that many lawyers have tried to encourage civility here. Over the years, Virginia voluntary bar groups have adopted their own civility creeds.

Virginia's New Principles of Professionalism

Starting in early 2007, Virginia Bar Association President William R. Van Buren III proposed establishing a statewide group that could finally articulate widely accepted standards of civility that our Supreme Court might officially acknowledge.

Working with VBA Executive Director Guy K. Tower, Van Buren selected judges, professors, and lawyers to serve on the Virginia Bar Association Commission on Professionalism. The panel reflects the full diversity of Virginia's legal profession and includes representatives of every statewide voluntary bar group.

Starting in June 2007, the commission met four times to discuss how best to encourage professionalism among Virginia's lawyers. The commission unanimously agreed on an approach to articulating and implementing standards of civility.

In adopting the Principles of Professionalism for Virginia Lawyers, the commission unanimously agreed to:

Virginia's New Principles of Professionalism

- Emphasize that we are not recommending mandatory rules — the violation of which could result in discipline. Instead, we are articulating aspirational statements of how Virginia lawyers should act.
 - Include this important distinction in our report to the Supreme Court rather than in the principles, so that the principles themselves emphasize the positive rather than the negative.
 - Avoid other states' inappropriate mixture of ethics and professionalism. The Virginia principles have no references to competence, ex parte communications, continuing legal education, excessive discovery, and other ethics issues that appear in many states' creeds.
 - Address only how lawyers should act, and not how we think judges should act.
 - Organize the civility standard in a common-sense way, starting with everyone with whom Virginia lawyers interact, then moving to our clients, courts, other institutions, and opposing counsel.
 - Take a modest approach. Ohio's creed has eighty-nine statements. The Virginia principles have only twenty-four statements, stated in fewer than five hundred words.
 - Keep our approach simple. Some states have elaborate combinations of canons, rules, and commentary. The principles have one list.
 - Avoid legalese. Not surprisingly, most states' creeds sound like they were written by lawyers — a cause of public ridicule over which we have some control, and which the principles try to avoid.
 - Emphasize lawyers' personal involvement in professionalism. Unlike many states' creeds, the principles use the first-person singular.
 - Add a few principles that we think other states have overlooked, such as a blanket antidiscrimination goal and a pledge to treat other lawyers' employees with respect.
- In discussing how best to implement the Virginia Principles of Professionalism, the commission unanimously determined to:
- Seek endorsement of the principles from every voluntary statewide bar group. We succeeded in this goal with the help of those groups' representatives serving on the commission.
 - Seek judicial acknowledgement of the principles from as many courts as possible, starting with the Supreme Court of Virginia.
 - Seek a big statewide publicity splash by selecting a rollout date with historic significance. We settled on April 13, 2009 — the 266th anniversary of Thomas Jefferson's birth.
 - Seek widespread publicity of our new principles.
 - Involve as many bar groups, law firms, law schools, and other institutions as possible in endorsing the principles and circulating them within their own communities.
 - Work with the Virginia State Bar's Harry L. Carrico Professionalism Course to incorporate the principles into that mandatory program, with the understanding that the principles represent statements of civility to which we should aspire, rather than standards of required conduct.
 - Prepare a CLE program that focuses on professionalism and entitles attendees to ethics MCLE credit.
- After meeting with commission representatives, Chief Justice Leroy R. Hassell Sr. sent a letter in June 2008 to VBA President B. Michael Pace Jr., expressing the Supreme Court's endorsement of the principles, and encouraging "the widest possible dissemination of these Principles."
- Virginia's federal courts have also welcomed the principles. The Western District commended the Principles of

Professionalism, and the Eastern District announced that it "fully supports" the aspirational principles. Chief Judge James R. Spencer stated that "the impact of the principles on the practice of law here in Virginia is potentially profound," and that he stands ready to assist "in publicizing these principles and encouraging the consideration of them by all Virginia lawyers."

Future Steps

The Supreme Court's endorsement of the Principles of Professionalism represents a historic event that should energize all of us.

As the principles' preamble boasts, Virginia has been blessed with lawyers who have played a pivotal role in American history — from Thomas Jefferson to Oliver W. Hill Sr. — who have played a pivotal role in American history. Virginia lawyers who served before us wrote the principles that define the United States, and then struggled to assure that the country live by those principles.

Our commission's goal has been deliberately far more modest. We hope to remind lawyers that acting as our clients' advocates does not require us to act discourteously. In our small way, we hope to make it more enjoyable to be a Virginia lawyer, and to revive the sort of respect in which our predecessors were held.

Of course, the principles signal only the start of everyone's efforts. We all should disseminate them as widely as possible, try to follow them in our own lives, and encourage others to follow them as well.

Editor's note: The Virginia Principles of Professionalism were published in the 2008-2009 Professionalism Guidelines, (http://www.vsb.org/docs/2008-09_principles.pdf) and are distributed in the materials for the Carrico Professionalism Course. The Virginia State Bar joined voluntary bar groups in endorsing the principles in 2008.

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June 2, 2008

G. Michael Pace, Jr., Esq.
President, Virginia Bar Association
Gentry, Locke, Rakes & Moore, LLP
10 Franklin Road, S.E.
P. O. Box 40013
Roanoke, VA 24022-0013

Dear Mr. Pace:

The Supreme Court of Virginia has endorsed the following Principles of Professionalism for Virginia Lawyers:

"The Supreme Court of Virginia endorses the attached Principles of Professionalism for Virginia Lawyers prepared by the Virginia Bar Association Commission on Professionalism. Having been unanimously endorsed by Virginia's statewide bar organizations, the Principles articulate standards of civility to which all Virginia lawyers should aspire. The Principles of Professionalism shall not serve as a basis for disciplinary action or for civil liability. We encourage the widest possible dissemination of these Principles."

I commend the Virginia Bar Association for its outstanding leadership.

Sincerely,

A handwritten signature in cursive script that reads "Leroy Rountree Hassell, Sr.".

Leroy Rountree Hassell, Sr.

Virginia's New Principles of Professionalism

PRINCIPLES OF PROFESSIONALISM FOR VIRGINIA LAWYERS

Preamble

Virginia can take special pride in the important role its lawyers have played in American history. From Thomas Jefferson to Oliver Hill, Virginia lawyers have epitomized our profession's highest ideals. Without losing sight of what lawyers do for their clients and for the public, lawyers should also focus on how they perform their duties. In their very first professional act, all Virginia lawyers pledge to demean themselves "professionally and courteously." Lawyers help their clients, the institutions with which they deal and themselves when they treat everyone with respect and courtesy. These Principles of Professionalism serve as a reminder of how Virginia lawyers have acted in the past and should act in the future.

Principles

In my conduct toward everyone with whom I deal, I should:

- Remember that I am part of a self-governing profession, and that my actions and demeanor reflect upon my profession.
- Act at all times with professional integrity, so that others will know that my word is my bond.
- Avoid all bigotry, discrimination, or prejudice.
- Treat everyone as I want to be treated — with respect and courtesy.
- Act as a mentor for less experienced lawyers and as a role model for future generations of lawyers.
- Contribute my skills, knowledge and influence in the service of my community.
- Encourage those I supervise to act with the same professionalism to which I aspire.

In my conduct toward my clients, I should:

- Act with diligence and dedication — tempered with, but never compromised by, my professional conduct toward others.
- Act with respect and courtesy.
- Explain to clients that my courteous conduct toward others does not reflect a lack of zeal in advancing their interests, but rather is more likely to successfully advance their interests.

In my conduct toward courts and other institutions with which I deal, I should:

- Treat all judges and court personnel with respect and courtesy.
- Be punctual in attending all court appearances and other scheduled events.
- Avoid any conduct that offends the dignity or decorum of any courts or other institutions, such as inappropriate displays of emotion or unbecoming language directed at the courts or any other participants.
- Explain to my clients that they should also act with respect and courtesy when dealing with courts and other institutions.

In my conduct toward opposing counsel, I should:

- Treat both opposing counsel and their staff with respect and courtesy.
- Avoid ad hominem attacks, recognizing that in nearly every situation opposing lawyers are simply serving their clients as I am trying to serve my clients.
- Avoid reciprocating any unprofessional conduct by opposing counsel, explaining to my clients that such behavior harms rather than advances the clients' interests.

Virginia's New Principles of Professionalism

- Cooperate as much as possible on procedural and logistical matters, so that the clients' and lawyers' efforts can be directed toward the substance of disputes or disagreements.
- Cooperate in scheduling any discovery, negotiations, meetings, closings, hearings or other litigation or transactional events, accommodating opposing counsel's schedules whenever possible.
- Agree whenever possible to opposing counsel's reasonable requests for extensions of time that are consistent with my primary duties to advance my clients' interests.
- Notify opposing counsel of any schedule changes as soon as possible.
- Return telephone calls, e-mails and other communications as promptly as I can, even if we disagree about the subject matter of the communication, resolving to disagree without being disagreeable.
- Be punctual in attending all scheduled events.
- Resist being affected by any ill feelings opposing clients may have toward each other, remembering that any conflict is between the clients and not between the lawyers.

Commission Members

Virginia Bar Association Commission on Professionalism members and the organizations they represented were:

Thomas E. Spahn, chair
Gov. Gerald L. Baliles
Reginald M. Barley (Old Dominion Bar Association)
Judge B. Waugh Crigler
Judge Joel C. Cunningham
Patricia K. Epps
Cheshire I'Anson Eveleigh
H. Duncan Garnett Jr. (Virginia Trial Lawyers Association)
Robert J. Grey Jr.
Michael N. Herring
Chandra D. Lantz (Virginia Women Attorneys Association)
Manuel E. Leiva Jr. (Hispanic Bar Association of Virginia)
Justice Donald W. Lemons
Heman A. Marshall III
Dana D. McDaniel (Virginia State Bar Professionalism Committee)
Howard C. McElroy
Martha W. Medley
Judge R. Terrence Ney
Judge Robert E. Payne
Anita O. Poston
Dean Rodney A. Smolla
Phillip C. Stone
Ashley L. Taylor Jr.
Frank A. Thomas III
Judge Winship C. Tower
John M. Tran (Asian Pacific American Bar Association of Virginia)
William R. Van Buren III (Virginia Bar Association)
Stanley P. Wellman (Virginia Association of Defense Attorneys)

Medicare Enrollment Process for Persons Approaching Age 65

by Robert H. Spicknall

FOR MANY YEARS, it has been my pleasure to assist law firms, lawyers, and their families as their health insurance agent.

Unquestionably, the most difficult age bracket to be in for health insurance is 60–64. Typically, those who have individual coverage or are part of a group with fewer than fifteen employees have health insurance premiums based on age. If you agree that health insurance is generally very expensive, then you'll find that health insurance premiums for those ages 60–64 to be outrageous.

As I assist many in the 60–64 age bracket, I invariably point to the light at the end of the tunnel: age 65, when people become eligible for Medicare. The reason one usually pays much less for health insurance at age 65 is because Medicare is heavily subsidized by the federal government.

Medicare Components

The Medicare program provides health care to more than forty-three million Americans. The federal agency that runs Medicare is the Centers for Medicare and Medicaid Services (CMS). CMS is part of the U.S. Department of Health and Human Services.

Medicare assists people age 65 or older, and persons younger than 65 who have disabilities such as permanent kidney failure. There are four components to the Medicare program:

Medicare Part A helps cover inpatient care in the hospital. Most people receive Medicare Part A without paying a premium. This is because they or a spouse paid Medicare withholding taxes while working.

Medicare Part B covers physician services and outpatient services. It is optional, yet is selected by most. The majority of the cost of Part B is borne by the federal government. Most individuals pay the standard Part B monthly premium

Premiums for Medicare Part B Coverage (2009)		
Medicare Part B	If Your Yearly Income Is	
Monthly Premium	Single	Married Couple
\$96.40	\$85,000 or less	\$170,000 or less
\$134.90	\$85,001–\$107,000	\$170,000–\$214,000
\$192.70	\$107,001–\$160,000	\$214,001–\$320,000
\$250.50	\$160,001–\$213,000	\$320,001–\$426,000
\$308.30	Above \$213,001	Above \$426,000

Source: <http://www.cms.hhs.gov/apps/media/press/factsheet.asp?Counter=3272>

(\$96.40 in 2009). However, wealthier seniors, or about 5 percent of Medicare enrollees, pay more. The chart above shows the Part B monthly premium amounts in 2009 based on income. These amounts change each year.

Medicare Supplement, or Medigap, Insurance is a private insurance policy designed to supplement Medicare Parts A and B. Insurance agents and insurance companies can only sell standardized Medicare Supplement policies, which are identified by letters (“Plan F” for example). These plans will have different required deductibles, copayments, and coinsurance. One should purchase a Medicare Supplement policy that coincides with the Part B effective date. When your Medicare Part B is activated, you have a six-month window in which to purchase a Medigap policy and be guaranteed that it will be issued. If you miss this window, you can apply later, but you may be declined or charged a higher premium due to health history.

Medicare Part D helps pay for prescription drugs. The program is administered by numerous insurance companies on the federal government’s behalf. The federal government has established guidelines for the types of drug plans and has set minimum standards of benefits.

However, not all Part D plans are the same. They vary by benefits, costs, and their lists of specific drugs covered (“formulary”). You likely will want to enroll in a Part D plan initially at your Medicare eligibility date. If you enroll beyond three months past your eligibility date, premiums will be higher, and you will be penalized the longer you wait unless you maintain comparable prescription drug coverage elsewhere. Delay can be costly: The penalty is 1 percent of average monthly premium for each month delayed, and the penalty continues through the remainder of one’s life. Many Part D insureds are unaware there is an open enrollment period November 15 through December 31 each year that allows enrollees to change Part D coverage to better suit their needs. If you already have Part D coverage and you switch plans during open enrollment, you will not incur the penalty.

When to Start the Medicare Enrollment Process

To prevent confusion and unnecessary expense in the future, pick one common effective date for all of your Medicare coverage.

You should begin the process three months before the month of your sixty-

Medicare continued on page 57

28, 2007, that date was after her case had already gone to the Supreme Court. ■

Endnotes:

- 1 *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 127 S.Ct (2007) (hereinafter *Ledbetter* 2007), at 2162.
- 2 Lilly Ledbetter, *Equal Pay for Equal Work: Hearing before the Senate Judiciary Committee 110th Congress*.
- 3 *Id.*
- 4 *Id.*
- 5 *Ledbetter* 2007, at 2162, 2171.
- 6 42 U.S.C. §2000e-2(a)(1).
- 7 *Ledbetter* 2007, at 2162, 2165.
- 8 42 U.S.C. §2000e-2(a)(1).
- 9 *Ledbetter* 2007, at 2162, 2165-2166.
- 10 *Id.* at 2166.
- 11 *Ledbetter*, *supra*. (The trial judge was forced to reduce the damages award because of Title VII's \$300,000 damages cap.)
- 12 *Ledbetter v. Goodyear Tire & Rubber Co.*, 421 F.3d (2005) (hereinafter *Ledbetter* 2005), at 1169, 1182-1183.
- 13 *Id.*, at 2162, 2166.
- 14 *Ledbetter* 2007, at 2162, 2166 . at 1186-1187 (quoting petitioner's Petition for Certiorari).
- 15 *Id.* at 2166-2178.
- 16 *Id.* at 2163.
- 17 *Id.* at 2170 (quoting *Delaware State College v. Ricks*, 449 U.S. 250, 256-257 (1980), which concerned a college librarian who alleged that he had been discharged because of his race).
- 18 *Id.* at 2178
- 19 *Ledbetter*, *supra*.
- 20 *Ledbetter* 2007, at 2162, 2179.
- 21 Carl Hulse, *Republican Senators Block Pay Discrimination Measure*, N.Y. TIMES, April 24, 2008, at A1.
- 22 *Id.* (quoting Orrin G. Hatch).
- 23 (Senator Edward M. Kennedy was not present to vote because of illness.)
- 24 *Supporters Cheer, Critics Brace for Litigation As Obama Signs Ledbetter Measure Into Law*, U.S.Law Week, February 3, 2009 (hereinafter USLW), at 2458.
- 25 *See e.g. Ledbetter* 2007 at 2162, 2164.
- 26 *See* 42 U.S.C. § 2000e-5.
- 27 USLW at 2459.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*

Law Libraries continued from page 50

the most current edition. Movie producers have inquired occasionally about collections for set backdrops. Advertisements for books appear occasionally in *Virginia Lawyers Weekly*.

Timing is crucial if you are considering downsizing a collection, since currency and condition are important in valuing used legal materials. So try to find a permanent home for your collection before moving them to a wet basement, hot attic, or off-site storage. Another institution will benefit from the donation of books in good and current condition, and your heirs will be free of a burden of disposing of those materials later. ■

Medicare continued from page 56

fifth birthday. First, contact your Social Security office to enroll in Medicare Part A. Also, it is typically wise to enroll in Part B at this time. Do not enroll in Part B unless you are planning to cancel your current coverage and purchase a Medicare Supplement (Medigap) policy with the same effective date. This is because when you enroll in Medicare Part B, you have a guaranteed right to buy a Medicare Supplement for six months. You cannot be declined for Medicare Supplement coverage if you sign up during this open enrollment period. However, if you apply for a Medicare Supplement beyond the six-month window, you may be charged a higher rate or declined coverage due to health history. Finally, Part D coverage, or prescriptions for seniors should have the same effective date as Part B and the Medicare Supplement.

Confusion often arises when people fail to pick a common effective date for:

- Medicare Part A
- Medicare Part B
- Medicare Supplement
- Medicare Part D
- Cancellation date of existing coverage

VIRGINIA STATE BAR 71st Annual Meeting



The following pages contain a preliminary schedule of events to be held during the Virginia State Bar 71st 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 17

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

THURSDAY, JUNE 18

- 8:30 a.m. VSB Registration
- 9:00 a.m. Council Meeting
- 9:00 a.m.–5:00 p.m. 35th Recent Developments Seminar (separate registration with Virginia CLE)
- 11:30 a.m. Golf Outing — Signature West Neck
- 3:00 p.m. VADA Executive Committee
- 4:00 p.m.–6:00 p.m. Lawyers Expo Opening & Reception
Sponsors: Pearl Insurance and Cavalier Hotels
- 5:30 p.m. Bill W. Meeting
- 6:30 p.m. Reception on the Hill
Sponsor: VSB Members' Insurance Center

FRIDAY, JUNE 19

- 7:30 a.m. Conference of Local Bar Associations Annual Meeting & Breakfast
- 7:45 a.m. Registration
- 8:00 a.m. "Run in the Sun" on the Boardwalk
Sponsor: Virginia Lawyers Weekly
- 8:30 a.m. VADA Board of Directors Meeting
- 8:30 a.m.–10:30 a.m. VSB Section CLE Workshop & Business Meeting *Intellectual Property Section*

FRIDAY, JUNE 19

- 9:30 a.m. to 5:00 p.m. Lawyers Expo
- 10:00 a.m. Virginia Legal Aid Project Directors
- 11:00 a.m. Lawyers Helping Lawyers Board Meeting
- 11:00 a.m.–12:30 p.m. VSB Section CLE Workshops & Meetings
 - *Administrative / Construction / Environmental / Local Gov't Law Sections*
 - *Antitrust / Corporate Counsel / International Practice Sections*
 - *Bankruptcy Law / Real Property Sections*
 - *Family Law Section / VSB Legal Ethics Committee*
 - *Litigation / Bench-Bar Relations Committee / Senior Lawyers Conference*
 - *Young Lawyers Conference / General Practice Section*
- 11:00 a.m. Virginia Law Foundation Finance Committee
- Noon Virginia Law Foundation Board Meeting and Lunch
- 12:30 p.m. Beach Break Reception
Sponsor: The McCammon Group
- 12:30 p.m. Young Lawyers Conference Reception and Meeting
- 12:30 p.m. Virginia Legal Aid Award Luncheon (ticketed event)
Sponsor: ALPS
- 12:45 p.m. American Academy of Matrimonial Lawyers Luncheon

- 8:45 a.m.–10:45 a.m. **Showcase CLE**
"From Guantanamo to Abu Ghraib—The Changing Landscape of Detention and Prosecution"
Sponsor: Criminal Law Section

Schedule of Events

FRIDAY, JUNE 19

- 1:00 p.m. Military Law Section Business Meeting and Luncheon
- 2:00 p.m.–3:30 p.m. VSB Section CLE Workshops & Meetings
- *Education Section / Virginia ADR Joint Committee*
 - *VSB Technology & Practice of Law Committee*
 - *Lawyers Helping Lawyers*
- 2:30 p.m. Virginia Women Attorneys Association Annual Meeting & Program
- 3:30 p.m. Virginia ADR Joint Committee
- 4:00 p.m.–5:00 p.m. Reception — Cavalier Beach Club
Sponsor: VWAA
- 5:30 p.m. Bill W. Meeting
- 6:00 p.m. President's Reception
- 6:00 p.m. Children's Dinner (ticketed event)
- 7:00 p.m. Banquet & Installation of President (ticketed event)
Sponsor: Cavalier Hotels

SATURDAY, JUNE 20

- 7:45 a.m. Registration Cavalier Oceanfront
- 8:00 a.m. Law School Alumni Breakfasts (ticketed event)
- 8:30 a.m. Lawyers Expo
- 9:00 a.m. General Session & Awards Continental Breakfast Buffet
- 9:30 a.m. Sand Castle
Sponsor: Minnesota Mutual Lawyers Insurance Company
- 9:45 a.m. Senior Lawyers Conference Continental Breakfast for 50-Year Award Recipients

SATURDAY, JUNE 20

- 10:00 a.m. 2009-2010 VWAA Board Meeting
- 12:15 p.m. Expo Reception/Raffle Drawing Cash Bar Reception
- 2:00 p.m. Tennis Tournament
Sponsor: Michie, Hamlett, Lowry, Rasmussen & Tweel
- 2:00 p.m. David T. Stitt Memorial Volleyball Tournament
Sponsor: Chicago Title Insurance Company

2009 Boardwalk Art Show & Festival

This year our meeting coincides with the 54th Annual Boardwalk Art Show! Nearly 400 artists and craftsmen will convene on the boardwalk from Thursday-Sunday. For more information contact the Contemporary Art Center of Virginia at <http://www.cacv.org/events/boardwalk.asp>

Athletic Events

Golf Outing — Thursday, June 18, The Signature at West Neck Golf Club — tee times begin at 11:30 a.m.

28th Annual Run in the Sun — Friday, June 19, 8:00 a.m. on the Virginia Beach Boardwalk — *Sponsors: Virginia Lawyers Weekly & Young Lawyers Conference*

7th Annual Tennis Tournament — Saturday, June 20, 2:00 p.m. at the Original Cavalier — *Sponsor: Michie, Hamlett, Lowry, Rasmussen & Tweel*

25th Annual David T. Stitt Memorial Volleyball Tournament — Saturday, June 20, 2:00 p.m. on the Beachfront, Cavalier Oceanfront Hotel — *Sponsors: Chicago Title Insurance Company & Young Lawyers Conference*

Visit the Virginia State Bar's website for more details and registration at <http://www.vsb.org>

- 9:45 a.m.–11:00 a.m. **Special Program**
"A Debate of Virginia's Candidates for Attorney General"
Sponsor: Young Lawyers Conference

Maximum Available MCLE CREDIT 5.0 Hours • Maximum Available ETHICS CREDIT 2.5 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.

JUNE 18–21, 2009 • VIRGINIA BEACH, VIRGINIA

22nd Annual Lawyers Expo

The General Practice Section will sponsor the 22nd Annual Lawyers Expo from Thursday–Saturday. The Expo will feature vendors offering the latest in law office technology as well as a variety of specialty exhibits. Daily refreshments will be provided for attendees, in addition to several sponsored events and raffles during the course of the meeting. The Expo will be open during the following hours:

- Thursday, June 18 4:00 p.m.–6:00 p.m.
- Friday, June 19 9:30 a.m.–5:30 p.m.
- Saturday, June 20 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 18.

Grand Prize Raffle

ONE PACKAGE TRIP*

VIRGINIA STATE BAR

**36th Midyear Legal Seminar
Marbella, Spain**

November 9–16, 2009

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

DRAWING:

**Saturday, June 20 • 12:30 p.m.
Cavalier Beach Club**

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

Preregistered Exhibitors

- ALPS
- Arbitration Associates, Inc.
- Broughton Associates
- Easy Soft Legal Software
- Lawyer's Staffing
- Lawyers Helping Lawyers
- NetSecurity Forensic Labs
- Pearl Insurance
- Sensei Enterprises, Inc.
- Sensei Enterprises, Inc.:VADER
- SoftPro
- TRT, Inc.
- Virginia CLE
- Virginia Lawyers Weekly
- Virginia State Bar
- Virginia State Bar Members' Insurance Center
- virginia.gov

Annual Meeting Sponsors

- ALPS
- Cavalier Hotels
- Chicago Title Insurance Company
- The McCammon Group
- Michie, Hamlett, Lowry, Rasmussen & Tweel
- Pearl Insurance
- Minnesota Lawyers Mutual Insurance Company
- Stewart Title Guaranty Company
- Tour Plan International, Inc.
- Virginia Lawyers Weekly
- Virginia State Bar Members' Insurance Center
- Virginia Women Attorneys Association

We gratefully acknowledge these sponsors of the 2009 Annual Meeting for their contributions in hosting a variety of activities and special events for our members and their guests.

Editor's note: We have received several letters since the April 2009 issue of Virginia Lawyer was printed. They are available below.

What's to fear ...?

The February 2009 *Virginia Lawyer* had two letters to the editor questioning the wisdom — even legality — of the bar's diversity program. One argued that diversity equals affirmative action and that constitutes reverse discrimination. The other claimed the bar should “stick to its knitting” and not press its ideology on its members.

Surprised by their tone, I returned to President Manuel A. Capsalis's proposals to see if I could detect what troubled them.

President Capsalis's proposal had three parts:

1. To add to the VSB Council's powers and purposes clause the following language: “To encourage and promote diversity in the profession and the judiciary”;
2. To create a Diversity Conference for:
 - (a) Encouraging aspiration to a legal career among diverse individuals;
 - (b) Enhancing access to a law-school education for diverse individuals and promoting their success;
 - (c) Promoting and maintaining the quality of legal services in Virginia;
 - (d) Promoting and assisting the advancement in the legal profession of diverse individuals;
 - (e) Fostering diversity at all levels of the judiciary;
 - (f) Enhancing participation by lawyers of diversity in the governance and activities of the

Virginia State Bar and other organized bar groups; and

- (g) Providing a forum to assist the legal profession and judiciary in understanding and addressing the legal needs of Virginia's diverse population.
3. To make the Chair of the Diversity Conference an ex officio member of the VSB Council and the Executive Committee.

What's to fear in these?

If past is prologue, diversity is a great benefit. Over my forty-three years of practice, our bench has morphed from an all-white, all-male bastion to one a good bit more diverse. There was a natural sequence. As the bar became more diverse, and as its newest members become more widely known, understood and appreciated, some ascended to the bench. It happened that way for African Americans and women at the bar.

Yes, there were some early tensions as each assumed powerful roles previously reserved to white males, but those times have passed. Women and African Americans occupy seats on our highest courts, and practice amongst us not just as tolerated colleagues but as respected and admired practitioners.

As a white, male lawyer who has lived through both experiences, trying cases in a white, male system and later one significantly more diverse, I pray that I be spared the former and allowed to enjoy the latter.

Homogeneity is a natural cousin of power, and under it some of my clients suffered the invisible consequences of biases and prejudices. “Sameness” wasn't so much admired, it was comfortable. In that environment there were no checks and balances. The system was “clubby,” and if you weren't a member of the club you were at a disadvantage. Interestingly, being white and male was no guarantee of membership. One also needed an attitude.

Diversity, with its variety of life experiences and cultural richness seemed to bring with it a template for a more compassionate system. Having to ride in the back of the bus or being denied access to resources because of one's gender couldn't help but shape one's perspective on fairness.

But diversity in the bench and bar isn't just about the individuals now allowed to percolate to the top. It also is about what their participation does to reshape attitudes and images. Litigants from all backgrounds feel more assured that they, too, are eligible for justice. The bench and bar seem proud of their diversity, not apprehensive. Inclusion breeds trust, confidence, camaraderie, and compassion — elements missing from the earlier paradigm.

I agree with President Capsalis. Much work needs to be done. In some respects women and African Americans are not yet full partners in this profession, and significant portions of our community — Hispanic, Asian, and others — are not fully accommodated in our professional home. I applaud President Capsalis's initiative, am optimistic about its adoption, harbor no fears about it and say to the one letter writer, diversity is not just the bar's knitting. It should be the bar's mission.

Robert T. Hall
Reston

Diversity Defined

In the February 2009 edition *Virginia Lawyer*, a Virginia State Bar member criticized VSB President Manuel A. Capsalis's initiative to promote diversity. One of his central arguments was that a major problem with President Capsalis's diversity effort was the president's failure to define the meaning of “diversity.” The author proceeded to equate diversity with affirmative action and suggested that President Capsalis's effort would unfairly penalize the majority of Virginia attorneys — white male attorneys. This is a familiar argument has been rebutted effectively time and time again in vari-

Elections

The 2009 General Assembly elected the following persons to judgeships:

SUPREME COURT OF VIRGINIA

Leroy F. Millette Jr., pro tem appointee, elected to succeed **G. Steven Agee**, who moved to the Fourth U.S. Circuit Court of Appeals.

VIRGINIA COURT OF APPEALS

Rossie D. Alston Jr. of Prince William County Circuit Court, elected to succeed **Jean H. Clements**, who retired.

Cleo E. Powell, pro tem appointee, elected to succeed **Leroy F. Millette Jr.**, who moved to the Supreme Court of Virginia.

CIRCUIT COURT

2nd Circuit: **Leslie L. Lilley**, former Virginia Beach city attorney, elected to succeed **Thomas S. Shadrack**, who retired; **Edward W. Hanson Jr.** of Virginia Beach reelected.

4th Circuit: **Louis A. Sherman**, pro tem appointee, elected to succeed **Alfred M. Tripp**, who retired; **Jerrauld C. Jones**, pro tem appointee, elected to succeed **Jerome James**, who retired; **John R. Doyle III**, pro tem appointee, elected to succeed **Charles D. Griffith**, who was not reelected by the 2008 assembly; **Mary Jane Hall** of Norfolk elected to succeed **John C. Morrison Jr.**, who retired.

5th Circuit: **Rodham T. Delk Jr.** of Suffolk reelected.

8th Circuit: **Bonnie L. Jones** of Hampton General District Court elected to succeed **William C. Andrews III**, who retired; **Louis R. Lerner** of Hampton reelected.

9th Circuit: **R. Bruce Long** of Hayes elected to succeed **William H. Shaw III**, who will retire in April 2009; **Samuel T. Powell III** of Williamsburg reelected.

11th Circuit: **Pamela S. Baskervill** of Petersburg reelected.

12th Circuit: **John V. Cogbill III** of Richmond elected to succeed **Cleo E. Powell** in Chesterfield, who moved to the Virginia Court of Appeals; **Timothy J. Hauler** of Chesterfield reelected.

13th Circuit: **Melvin R. Hughes Jr.** of Richmond reelected.

15th Circuit: **Charles S. Sharp**, pro tem appointee, elected to succeed the late **John W. Scott Jr.**; **Harry T. Taliaferro III** of Warsaw reelected.

17th Circuit: **Benjamin N.A. Kendrick** and **William T. Newman Jr.**, both of Arlington, reelected.

18th Circuit: **Donald M. Haddock** of Alexandria reelected.

19th Circuit: **Jan L. Brodie**, pro tem appointee, elected to succeed **Robert W. Wooldridge Jr.**, who retired; **David S. Schell**, pro tem appointee, elected to succeed the late **David T. Stitt**; **Jane M. Roush** of Fairfax reelected.

20th Circuit: **Jeffrey W. Parker** of Warrenton reelected.

22nd Circuit: **Joseph W. Milam Jr.** of Danville reelected.

23rd Circuit: **James R. Swanson** of Salem reelected.

24th Circuit: **J. Leyburn Mosby Jr.** of Lynchburg reelected.

26th Circuit: **James V. Lane** of Bridgewater reelected.

28th Circuit: **C. Randall Lowe** of Abingdon reelected.

31st Circuit: **Craig D. Johnston** of Prince William General District Court elected to succeed **Rossie D. Alston Jr.**, who moved to the Virginia Court of Appeals.

GENERAL DISTRICT

1st District: **Philip J. Infantino III** of Suffolk elected to succeed **Robert R. Carter**, who retired.

2nd District: **Steven C. Frucci** of Virginia Beach elected to succeed **W. Edward Hudgins**, who retired; **Pamela E. Hutchens** and **Robert L. Simpson Jr.**, both of Virginia Beach, reelected.

4th District: **Gwendolyn J. Jackson** and **Bruce A. Wilcox**, both of Norfolk, reelected.

7th District: **Alfred O. Masters Jr.** and **Gary A. Mills**, both of Newport News, reelected.

8th District: **M. Woodrow Griffin Jr.** of Hampton elected to succeed **C. Edward Knight III**, who retired; and **Tonya Henderson-Stith** of Hampton elected to succeed **Bonnie L. Jones**, who moved to circuit court.

12th District: **Pamela O'Berry Evans** of Richmond, a commissioner of the Alcohol Beverage Control Board, elected to succeed **Robert D. Laney**, who retired.

13th District: **Gregory L. Rupe** of Richmond reelected.

15th District: **Michael E. Levy**, pro tem appointee, elected to succeed **J. Overton Harris**, who retired.

17th District: **Dorothy H. Clarke** of Arlington reelected.

19th District: **William J. Minor Jr.** of Fairfax reelected.

23rd District: **John Christopher Clemens**, pro tem appointee, elected to succeed **Julian H. Raney Jr.**, who retired; **Jacqueline F. Ward Talevi** of Roanoke reelected.

26th District: **Richard A. Claybrook Jr.** of Harrisonburg elected to succeed **John A. Paul**, who retired; **Amy B. Tisinger**, Woodstock deputy commonwealth's

attorney, elected to succeed **Norman deV. Morrison**, who will retire in June 2009; **David S. Whitacre** of Winchester reelected.

27th District: **Gino W. Williams** of Floyd reelected.

29th District: **Richard C. Patterson** of Tazewell elected to succeed the late **Gregory S. Matney**.

30th District: **R. Larry Lewis** of Jonesville reelected.

JUVENILE & DOMESTIC RELATIONS

2nd District: **Deborah L. Rawls** of Virginia Beach reelected.

4th District: **Michelle J.L. Atkins** of Norfolk elected to succeed **Jerrauld C. Jones**, who moved to circuit court.

6th District: **Jacqueline R. Waymack** of Prince George reelected.

7th District: **Judith Anne Kline** of Newport News reelected.

8th District: **Deborah S. Roe** of Hampton elected to succeed **Nelson T. Durden**, who retired in 2006.

9th District: **Isabell Hall AtLee** of Yorktown reelected.

10th District: **S. Anderson Nelson** of Nelson reelected.

11th District: **James E. Hume** of Petersburg reelected.

12th District: **Harold W. Burgess Jr.** of Chesterfield reelected.

15th District: **R. Michael McKenney**, Northumberland County commonwealth's attorney, elected to succeed **J. Maston Davis**, who retired.

18th District: **Uley N. Damiani** of Alexandria, pro tem appointee, elected to succeed **Nolan B. Dawkins**, who moved to circuit court in 2008.

19th District: **Thomas P. Sotelo** of Fairfax, pro tem appointee, elected to succeed **David S. Schell**, who moved to circuit court.

22th District: **Stacey W. Moreau** of Chatham reelected.

23rd District: **Philip Trompeter** of Salem reelected.

24th District: **William R. Light** of Lynchburg reelected.

26th District: **H. David O'Donnell** of Harrisonburg elected to succeed **Marvin C. Hillsman Jr.**, who retired.

27th District: **Robert C. Viar Jr.** of Radford reelected.

29th District: **Michael J. Bush**, Russell County commonwealth's attorney, elected to succeed **John M. Farmer**, who was not reelected in 2008.

Unfilled Vacancies

The following judgeships have not been filled:

CIRCUIT COURT

3rd Circuit: **Mark S. Davis** of Portsmouth moved to a U.S. District Court judgeship in the Eastern District of Virginia in June 2008.

9th Circuit: **N. Prentis Smiley Jr.** of Yorktown died in December 2008.

10th Circuit: **William Wellons** retired in December 2008.

GENERAL DISTRICT COURT

3rd District: **S. Lee Morris** of Portsmouth retired in January 2009.

4th District: **Louis A. Sherman** of Norfolk moved to circuit court in October 2008.

9th District: **L. Bruce Long** of Hayes will move to circuit court in April 2009.

25th District: **A. Lee McGratty** of Staunton retired in December 2008.

31st District: **Craig D. Johnson** of Manassas moved to circuit court.

J&DR

24th District: **Philip A. Wallace** of Bedford will retire in June 2009.

27th District: **M. Keith Blankenship** of Wytheville resigned in December 2008.

31st District: **James Bailey Robeson** of Manassas will retire in June 2009.

SOURCE: HUMAN RESOURCES OFFICE OF THE OFFICE OF THE EXECUTIVE SECRETARY, SUPREME COURT OF VIRGINIA

Saving Money in a Recession

by John J. Brandt, Risk Manger

EVERYONE AGREES that we are in a deep recession that will not end in a day, a month or even a year. This economy is adversely affecting most Americans, including attorneys. The following pointers will help you practice our profession more economically, while still adhering to the principles of ethical lawyering:

Maintain current clients, particularly by returning telephone calls and emails.

Increase networking with other attorneys, and tell them that you will consider taking cases they do not want.

Move to more reasonably priced office space, including space shared with another attorney.

Consider reducing advance fees, but always obtain part of the fee in advance.¹

Write or e-mail your clients more frequently — and keep it short.

Bill monthly with a short letter that explains the progress of the client's case.

Reduce unnecessary expenses, including reference journals you do not really use.

Withdraw from non-paying cases, remembering your legal duties under your engagement letter and under the disciplinary rules of the Virginia State Bar (particularly Rule 1.16).

Become better organized by working from lists of daily assignments.

Economize and downsize office staff if possible.

Do your own legal research.

Help your office assistants by doing more word processing.

Consider lower-paying work, such as legal aid cases.

Be certain you are taking proper tax deductions for your business-related automobile insurance and mileage;

Review your office budget more frequently and reduce unnecessary spending.

Reduce the use of couriers and use the postal service instead.

Consolidate court matters as possible under the local rules and practices of the jurisdictions in which you practice.

Review your liability and malpractice insurance policies, and secure the most coverage for a reasonable fee.

Understand referral fees with other attorneys (Rule 1.5(e)).

Check with the courts for any checklists or forms that may economize your work.

Charge family members, other than your immediate family, for your legal work.

Use law libraries at courts and law schools, and consider eliminating costly legal services (remember, FastCase is free to Virginia State Bar members).

Scrutinize your costs to ensure that clients are charged for all of your work, including copying.

Finally, continue to work hard, do good work for your clients, and have faith that we will pull out of this recession just as we have in the past.

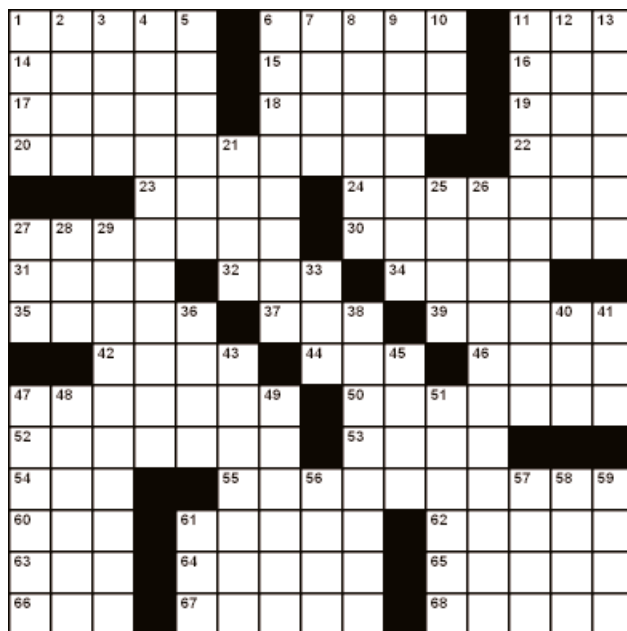
Endnote:

- ¹ “Abraham Lincoln is reputed to have said: ‘The lawyer should always get some of his fee in advance from the client. In this way, the client knows he has a lawyer and the lawyer knows he has a client.’” Jay G. Foonberg, *How to Start & Build a Law Practice* (4th Ed. 1999).

Virginia lawyers can reach John Brandt at (800) 215-2854 for a free consultation on any risk management issues.

Is There A Lawyer in the House?

by Brett A. Spain



Across

1. Claims
6. A doctor's eyes
11. Removed
14. Loaded
15. French impressionist
16. ____-de-France
17. Fragrant resin
18. Actress Jessica and family
19. Street name for the "love drug"
20. Time to heal a breach?
22. Expire
23. Editor's note
24. Blockages
27. Burns the midnight oil
30. ER specialties
31. Opera highlight
32. Precursors to CDs
34. Pound of poetry
35. Expanse
37. Down
39. Number of bits in a byte
42. Woe is me!
44. Game pieces
46. Big rig
47. Joe Torre, e.g.
50. Hopes to entrap
52. ____ in a new bottle
53. Singer Guthrie
54. Place to find attys.
55. Medical malpractice mantra?
60. Beak
61. Jack Black film, "Nacho ____"
62. Others in Madrid
63. Vane direction
64. Scoff (at)
65. 1998 De Niro film
66. Morse code element
67. Jane Fonda film, "____ of God"
68. Male honey bee

Down

1. Baldwin or Guinness
2. Coupon come on
3. German river
4. Prescription to block injunctive relief?
5. Actor Wesley
6. House actor
7. Colombian drug cartel
8. Open (a door)
9. Galena, e.g.
10. Possessive pronoun
11. Heal a breach?
12. Nissan model
13. Court intermission
21. Jewish month
25. Stare
26. Professional to hire for 20A, 55A, 4D, 11D, and 29D?
27. Hand or band
28. Cycle or dent lead-in
29. Be an accessory to Medicare fraud?
33. America's Uncle
36. European soccer star Gheorghe

38. Procrastinators
40. Managed care option
41. Container
43. Transmitting
45. First century fiddler
47. Complained in a way
48. Person with a melanin deficiency
49. Corned beef sandwich
51. Type of plea
56. Ash or maple
57. River in Tuscany
58. Precipitate
59. Serf
61. CFR update

Crossword answers on next page 6

This legal crossword was created by Brett A. Spain, a partner in the commercial litigation section of Wilcox & Savage PC in Norfolk. He can be reached at (757) 628-5500 or at bspain@wilsav.com.

Crossword answers.

A	V	E	R	S		O	C	U	L	I		F	A	R
L	A	D	E	N		M	A	N	E	T		I	L	E
E	L	E	M	I		A	L	B	A	S		X	T	C
C	U	R	E	P	E	R	I	O	D			D	I	E
			D	E	L	E		L	O	G	J	A	M	S
S	T	A	Y	S	U	P		T	R	A	U	M	A	S
A	R	I	A		L	P	S		E	Z	R	A		
W	I	D	T	H		S	A	D		E	I	G	H	T
		A	L	A	S		M	E	N		S	E	M	I
M	A	N	A	G	E	R		L	E	A	D	S	O	N
O	L	D	W	I	N	E		A	R	L	O			
A	B	A			D	U	T	Y	O	F	C	A	R	E
N	I	B		L	I	B	R	E		O	T	R	A	S
E	N	E		S	N	E	E	R		R	O	N	I	N
D	O	T		A	G	N	E	S		D	R	O	N	E

ous contexts, but it continues to be offered by some beneficiaries of the lack of diversity to justify maintaining the unequal status quo.

Professor Cedric Herring of the University of Illinois University of Illinois provided a useful definition of the term “diversity” in his August 2006 paper titled “Does Diversity Pay?: Racial Composition of Firms and the Business Case for Diversity.” Defining “diversity,” Professor Herring wrote:

For some people, the term *diversity* provokes intense emotional reactions because it brings to mind such politically charged ideas as affirmative action or quotas; yet, at its base the term merely refers to variety. Diversity is an all-inclusive term that extends beyond race and gender and incorporates people in many different classifications. It includes age, ... sexual preferences, ... and a myriad of other personal, demographic, and organizational characteristics. Generally speaking, the term *workforce diversity* refers to policies and practices that seek to include people within a workforce who are considered to be, in some way, different from those in the predominant group.

I believe that President Capsalis’s definition of diversity most probably would come close to Professor Herring’s. President Capsalis, of course, can speak for himself with regard to this subject and likely has done so already. The central point that the author who criticized him missed is that diversity includes white males. It is not an exclusionary term meant to prejudice anyone’s rights. Rather, it is an inclusionary term meant to expand participation to all competent individuals regardless of how one wishes to classify them.

Donald O. Johnson
Richmond

“Minority” Quotas?

I don’t know if you can stand one more letter about the diversity initiative in our bar, but I totally agree with Peter K. McCrary’s views as expressed in the April 2009 *Virginia Lawyer*.

It is either naïve or disingenuous to suggest, as do Yvette A. Ayala and Rasheeda N. Matthews, that a solicitation “to attract minority high school students who would not normally have access ...” would not be interpreted to intentionally exclude white males, regardless of the declared objective intentions.

Given Virginia State Bar President Manuel A. Capsalis’s apparent refusal to define exactly what is meant by “diversity,” most people infer that it means hard-line “minority” quotas. I grant that true diversity would provide many benefits to us all, but I am ever mindful that our rights belong only to individuals and not presumptuous groups. We white males don’t need special assistance as a group, but white male individuals are entitled to not be arbitrarily excluded as such. Willfully undefined buzzwords like “diversity” cause apprehension.

We lawyers and our bar need only to promote and stand firm for professional integrity, equal justice, and personal liberty.

H. Watkins Ellerson
Hadensville

Discrimination Led to the Law

I have fought against discrimination all of my life. For this reason I am against affirmative action and automatic use of diversity. People should be judged as individuals and not as a class when being admitted to the Virginia State Bar or holding an office in the bar. Favoring some people by way of affirmative action perpetuates discrimination against others who are not in the favored group or groups.

I am thoroughly familiar with discrimination and in fact am only a member of the bar because of discrimination

against Jews in the chemical field in 1940 when I graduated with honors from the Massachusetts Institute of Technology. My senior thesis involved the use of ribose, a rare sugar that was donated by Merck & Co. INC. When Merck came on campus to interview people for jobs, I was not included on the list. When I asked the head of the chemistry department why, he replied that Merck did not hire Jews. As a result of the discrimination against Jews in the chemical field, I entered the U.S. Patent Office and switched careers. I went to the T.C. Williams School of Law at night while I was a patent examiner, and I passed the Virginia Bar Examination when I was not quite two-thirds of the way through law school.

Also there is a question of what percentage of your ancestry determines your race. Thus President Barak Obama is called black although, like many of us, he is actually of mixed race, since his father was black and his mother was white. What is the race of my children? From me, they inherit German, French, Czech, and Jewish backgrounds. From my wife, Norma, they inherit English, Dutch, Scotch-Irish, and American Indian ancestors. Norma has enough Cherokee blood that she is entitled to live on a Cherokee reservation if she wants.

I repeat that is a mistake to arbitrarily decide that people should be chosen in order to provide diversity or for affirmative action. They should be chosen as individuals based on their own merits.

Alvin Guttg
Gaithersburg, Maryland

Diversity Enriches Legal Profession

I write to address the criticism you received from two members of the Virginia State Bar in letters published in the February 2009 *Virginia Lawyer*.

The letters of David E. Wilson and Joseph W. Stuart unequivocally demonstrate the need for the diversity initiative you have spearheaded. Mr. Wilson made

the statement that “diversity to me, is a nice way of saying whites need not apply.” Mr. Stuart’s assertion that you propose “that the bar and the courts specifically promote individuals and groups solely on the basis of race, color, sex or national origin, to the detriment or exclusion of others on the same basis” erroneously equates diversity with discrimination. The two letters reflect both a lack of knowledge on the subject and the same type of irrational fear-mongering that led to the discrimination against and subjugation of American citizens for decades.

The very fact that attitudes such as those noted above continue to exist shows the need for education about the importance of diversity and interactive experiences that can shatter preconceived notions and build positive personal and professional multicultural relationships. Far from promoting discrimination, diversity encourages inclusiveness and enriches the legal profession in numerous ways by bringing together people from different backgrounds and experience, different socioeconomic, educational, geographical, racial, religious, ethnic, cultural, and familial backgrounds, and different ages, genders, and sexual orientations, for example.

Minorities have historically been underrepresented in the legal profession generally, and it is particularly unsettling, in light of the burgeoning minority population in this country, that fewer minorities are enrolling in law schools. Moreover, according to a 2005 American Bar Association report on the progress of minorities in the legal profession, African Americans comprised 3.9 percent, Latinos 3.3 percent, and Asians 2.3 percent of 811,115 attorneys in this country. According to the last census, 35 percent of Americans are members of a racial or ethnic minority, and minorities in America are predicted to constitute the majority in America by the year 2042. These facts underscore the importance of the Virginia State Bar — and all other bars around the state as well, being proactive in anticipating, debating, and advocating for diversity in the bar.

The Old Dominion Bar Association congratulates you on your forward thinking and leadership in bringing these facts and corresponding issues to the attention of the Virginia State Bar membership and encouraging them to understand and support your diversity initiative. In my first remarks as president of the Old Dominion Bar Association, I reminded our membership that we could not afford to merely bask in the glow of our legacy as “Virginia’s Advocates for Equal Justice” and rest on our laurels, because the struggle continues.

The Old Dominion Bar Association is very appreciative of, strongly supports, and will continue to support the Virginia State Bar’s leadership on this issue in every way possible. We truly hope that your diversity initiative is a harbinger of things to come and will continue to evolve and progress with future changes in Virginia State Bar leadership.

The Virginia State Bar can count on the Old Dominion Bar Association’s continued support.

Beverly A. Burton
Richmond