

# DOCKET CALL NEWSLETTER

Vol. 16, No. 6 • Winter 2000 • Editor: Michelle M. Jones

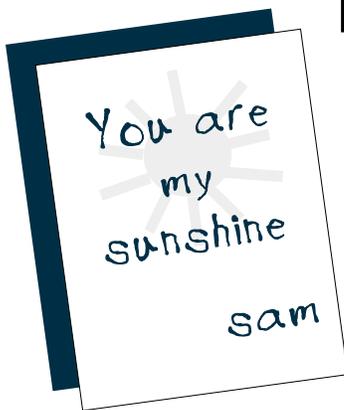
Young  
Lawyers  
Conference



Virginia State Bar

## Little More Than a Phone Call

by Catherine Steffen



In late September, the eastern seaboard braced for the potential widespread loss of life and property damage as a wall of water known as Hurricane Floyd approached the coast. Many believed the hurricane would disrupt the lives of

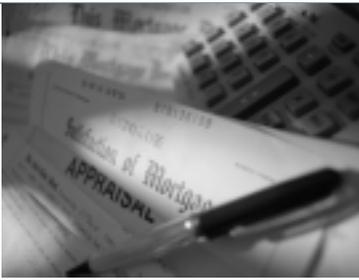
many in Virginia, but no one could have predicted the devastating floods that would accompany the hurricane. The Virginia State Bar and The Virginia Bar Association asked its members to volunteer for the Emergency Legal Services team in response to Hurricane Floyd. Hundreds of lawyers throughout the Commonwealth quickly responded to the needs of their communities. This is the story of one such lawyer that described his participation in this relief effort as "little more than a phone call." Although I agreed to tell his story anonymously, you will see that "Jake" did much more than place a phone call.

Late on a Thursday afternoon, Jake was rushing from court to the volunteer training program for the Emergency Legal Services Response. He had a briefcase full of work, but realized the importance of serving not only his clients, but serving the community as well. The training session was only a couple of hours long and described several opportunities for Jake's participation in the program. He quickly realized the importance of his participation in this program as many people had been devastated by Hurricane Floyd and the floods that were gripping the Commonwealth. He volunteered to be placed on a list to receive phone calls from disaster vic-

tims who had concerns about consumer law, insurance, housing or property damage.

The next day, Jake received a couple of phone calls, but was unable to assist the disaster victims due to conflicts the victims had with his firm. But later that day, Jake was able to assist a disaster victim named Emma. Emma was a resident of the city of Franklin. Her house had literally been washed away by the floods that ravaged the area. As a single mother of three children, Emma had limited resources to deal with such a devastating event. She was living in temporary housing provided by a charitable organization, while trying to reassure her children, especially little Sam, that he wouldn't be washed away with the water that seemed to rise every hour. Remarkably, Emma had purchased homeowner's insurance that included coverage for floods, but all of her insurance documents were washed away, along with priceless family heirlooms and all of their personal belongings. Emma was obviously shaken by the experience and needed someone to contact her insurance carrier and work out the details so that she and her family might attempt to rebuild their lives. Jake carefully took down all the information that Emma was able to provide and attempted to locate her insurance company and resolve the matter as quickly as he could.

Jake made a couple of phone calls and finally tracked down an insurance agent who could deal with Emma's claim. There were only minor issues that needed to be negotiated and the insurance company was relatively



# New Lawyers Admitted in Fall A&O Ceremony

by Jon Allen

The Supreme Court of Virginia and the Virginia State Bar opened the doors to an especially large class of newly licensed attorneys during this fall's Admission and Orientation Ceremony. More than 850 attorneys were admitted to the bar at the ceremony, according to Frank Lynch, chairman of the Admissions and Orientation Ceremony Committee of the Young Lawyers Conference.

Speakers at the event included Virginia State Bar President-elect Joseph A. Condo and Young Lawyers Conference President J. Tracy Walker, IV. Lynch noted that two speakers addressed new projects sponsored through the Young Lawyers Conference — Kellye C. Clarke described the Peer Mediation Program and Marie T. Diveley spoke about the Domestic Violence Safety Project.

The ceremony allowed newly-licensed attorneys to appear before the Supreme Court of Virginia to be admitted to practice in Virginia state courts. Before and after the ceremony, registration booths were available so that newly licensed lawyers could easily sign up for volunteer and pro bono opportunities, bar associations and other professional organizations. According to Lynch, many at the event also took advantage of the opportunity to gain admission to federal court by registering with the Court of Appeals for the Fourth Circuit.

The ceremony took place on Monday, November 1 at the Marriott in downtown Richmond.

## Affiliate Outreach Program

by Toni E. Gilbert

The Young Lawyers Division of the American Bar Association will hold its Affiliate Outreach Program May 11-13, 2000, in Washington, DC. The three-day program brings together young lawyers from across the country. The program provides ideas, as well as guidance and training, for community service projects to be sponsored by local ABA young lawyer affiliates. In addition, there will be instruction on such things as counseling and fundraising.

The bulk of the day on Friday, May 12 will consist of a seminar on domestic violence. That evening there will be a reception for all attendees at the Supreme Court of the United States. In addition, there will be other seminars and events, as well as time to enjoy the sights of our nation's capitol. For a complete listing of events, or to obtain more information on the Affiliate Outreach Program, please contact O'Kelly McWilliams at (202) 220-1299.

### DOCKET CALL

*A quarterly publication of the  
Young Lawyers Conference  
of the Virginia State Bar.*

#### EDITOR

**Michelle M. Jones**

#### EDITORIAL BOARD

**Jonathan E. Allen, Bonnie Ashley, Suzanne Fay  
Garwood, Jeffrey H. Geiger, Toni E. Gilbert, Kathleen  
Keener Elsner, Julie D. McClellan, John M. Poma,  
Emily Sisler, Catherine A. Steffen**

#### BOARD LIAISON

**Eric R. Thiessen**

#### PRODUCTION & DESIGN

**Cheryl L. Pavkov**

Docket Call welcomes contributions from members  
of the YLC.

#### SEND SUBMISSIONS TO:

**Publications Dept.  
Virginia State Bar  
707 E. Main St., Suite 1500  
Richmond, VA 23219-2800**

by J. Tracy Walker, IV



### THINK BEACH!

As the early dark of winter nights and the drudgery of sleet and snow begin to take their toll, it's time to think beach — the Virginia State Bar Annual Meeting at Virginia Beach.

The Virginia State Bar's Annual Meeting will be held at Virginia Beach on June 14-18, 2000 at the Cavalier Hotel and surrounding venues. The Annual Meeting is a fun-filled family event and a great occasion for young lawyers to participate in Bar activities, catch up with old friends, and get to know new friends from across the Commonwealth.

The Annual Meeting has much to offer, whether you are looking for a chance to relax on the beach, enjoy some friendly competition, catch up on your CLE requirements, or meet and greet at any number of social activities.

The Annual Meeting is jam-packed with activity. Nearly all the substantive Bar sections host CLEs (where attendees feel equally at home in casual beach attire or business suits), and there are a variety of luncheons and receptions throughout the meeting, including the President's reception on the lawn of the Old Cavalier on Thursday evening, and the crowded, but always exciting, reception and raffle on Saturday at the Cavalier Beach Club. Friday evening brings the annual banquet, followed by the Young Lawyers Conference dance "under the stars," hosted once again by Bart Chucker.

As always, the Young Lawyers Conference will have a significant presence at the

Annual Meeting. On Friday, June 16, the Conference will host a reception at the Cavalier Beach Club, followed by its annual business meeting and luncheon, where we will recognize the contributions of our many volunteers during the year, present the R. Edwin Burnette, Jr. Young Lawyer of the Year Award, and receive the report of the Nominating Committee for new members of the Board of Governors.

The Young Lawyers Conference, through the assistance of a large group of volunteers led by Rich Garriott, will host two popular athletic events, the Run in the Sun, a 5K event on the boardwalk, and a beach volleyball tournament on Saturday morning in front of the Cavalier. Finally, the Conference will host a CLE on Friday afternoon.

The Annual Meeting Committee, chaired by Jacqueline Crook and Dan Gray, is putting together an outstanding program on practical negotiation skills that can be used in all aspects of your practice.

I strongly encourage each of you to attend the Annual Meeting. It is an outstanding way to enjoy a short vacation from your practice while getting to know Bar leaders, judges, and other lawyers and their families in casual, fun-filled surroundings. So, as winter comes to a close, be on the lookout for the Annual Meeting mailer from the State Bar and mark your calendar for June 14-18.

*" . . . an outstanding way to enjoy a short vacation from your practice while getting to know Bar leaders, judges, and other lawyers and their families . . . "*

# November No Bills Night a Success

*by Suzanne Garwood*

**K**nowing that many Virginia residents are without the resources necessary to consult attorneys to determine if their rights have been violated, the YLC has a long history of sponsoring successful "No Bills Nights" across the state. Traditionally held twice per year -- once in the fall and once in the spring -- No Bills Night gives Virginia attorneys an opportunity to volunteer a few hours to assist residents of their communities in identifying legal problems.

While the volunteer attorneys cannot provide individuals with legal advice, they are able to give guidance and, in most cases, direct people to agencies or other organizations that are in a position to provide relief. Such was the case with the Fall No Bills Night in Richmond. Five attorneys from the law firms of Spotts, Smith, Fain & Buis, P.C., Williams, Mullen, Clark & Dobbins, P.C., and Hunton & Williams fielded continuous phone calls from 5:00 to 6:30 PM on the night of November 8. These attorneys referred callers to nearly thirty local agencies, including the

Virginia Department of Taxation and the Virginia Department of Medical Assistance, in an effort to assist area residents in finding solutions to their legal problems. The enormous success of Richmond's No Bills Night was due, in no small part, to the publicity supplied by Channel 12. Not only did Channel 12 help advertise the event, it served as the host for the five Richmond-area attorneys. In fact, the television station went so far as to forward a message from one caller that simply could not get through to an attorney during the allotted time frame.

Richmond's success was equal to the success achieved by the Northern Virginia area Fall No Bills Night. Twelve attorneys, including representatives from the law firm of Miles & Stockbridge, P.C. in Tysons Corner, fielded between 120 and 130 phone calls from area residents. Even though the Northern Virginia event was scheduled to end after two hours, the attorneys welcomed calls for an additional half-hour. Richmond and Northern

Virginia fall No Bills Nights are just two examples of the programs that YLC attorneys have undertaken in an effort to utilize their skills and education in a manner that benefits the public good. These two successful Fall No Bills Night will pave the way for similar successful programs to be held this spring. While the residents of the Richmond and Northern Virginia areas can expect to participate in another successful round of No Bills Night, many other regions including Abingdon, Charlottesville, Danville and Tidewater will be holding their annual No Bills Night, as well. Due to the smaller size of these regions, representatives have decided to hold only a Spring No Bills Night.

Anyone who is interested in participating in the Spring No Bills Night should contact Statewide Coordinator Jason Moyers at (540) 983-9338. Moyers will be able to provide volunteers with the name of the appropriate Regional Chair and help YLC attorneys learn more about No Bills Night.

# Looking Back, Looking Forward: The Changing Face of the Practice of Law

by Emily L. Sisler

A new millenium, what will it bring? If you take a moment to think back to what life might have been like in the early 1900s, the possibilities seem endless. As we began life at the turn of the century, telephones and automobiles were new concepts. Radios and newspapers were the primary sources of information communication until the picture tube came along several decades later. Airplanes and automobiles were just beginning to emerge as modes of transit.

Today we see multiple phone lines in family homes and businesses used for communication of voices and data within and outside of the country, often in mere seconds. Televisions and computers with phenomenal speed may be used for viewing the ever changing superhighway of information available on the internet. We can now fly to Europe in several hours on the Concord and be directed to our destinations via satellite in our private automobiles.

The practice of law has seen changes in these last 100 years that are no less dramatic. While it would not be possible to survey all of these developments, or even the astounding developments that have taken place in the last two decades, there are areas of marked transformation which must be mentioned. Among them, greater participation of women and minorities in the law practice; an increased mobility of members of the profession into businesses, accounting firms, and among local rival law firms; technological advances which affect our daily practice; an increased focus on competition and maintaining profits; and the advent of Alternative Dispute Resolution and mediation as means of conflict resolution.<sup>1</sup>

Topping the list of significant changes in the practice of law is greater participation by women and minorities in the legal profession. Somewhat surprisingly, increased numbers of minorities and women is a relatively recent development.<sup>2</sup> According to one author,

The profession in general and large firms in particular [have] undergone radical change with regard to the inclusion of women. Women had been an insignificant proportion of lawyers in the profession until the late 1960s (when they were about 3%) and constituted only a handful in the large firms.

(citation omitted). In the mid-1970s they started entering law schools in significant numbers and moving into all sectors of the law.<sup>3</sup>

\*\*\*

By 1992 women made up 26.2% (up from 20.9% in 1989) of all the lawyers at the top 250 law firms in the country and 11.2% of their partners (up from 9.2% in 1989 and 3.5% in 1981). They were 37% of all associates

(up from 33% in 1989 and 20% in 1981). They were 40% to 50% of the firms' new recruits in 1992. In 1992, all large firms had at least



one woman partner, only six had only one, and a number had twenty or more. However, minorities were only a tiny percentage of the pool of recruits and of partners.<sup>4</sup>

According to the National Association for Law Placement, the rate of women partners in the nation's largest firms jumped to 12.9% in 1994 . . . . Minority partners accounted for just 2.68% of partners in all firms. Two in five associates (38.99%) were women and one in twelve (8.36%) were minorities.<sup>5</sup>

The greatest period of growth for women and minorities in law firms occurred in the mid and late 1980s when firms were enormously successful and thus expanding beyond anyone's imagination.<sup>6</sup> Following the greater number of women entering firms during this period of prosperity, firms began considering more "family friendly" policies such

See 'Looking Back' on Page 6

## Looking Back —

Continued from Page 5

as maternity leave programs and provisions for part-time and flexible-time schedules and also began instituting formal mentoring and sensitivity training programs.<sup>7</sup>

Enthusiasm for these kinds of improvements dwindled, however, in the early 1990s when legal business declined markedly. Associates and even some partners were asked to leave their firms and hiring and promotion "slowed dramatically."<sup>8</sup>

Since then, minorities and women are increasing their presence in the legal profession.<sup>9</sup> Women and minorities are securing jobs in firms large and small, within state and federal governments, within the judiciary, in businesses, in law schools and institutions of higher learning and in politics. Some of the perceived obstacles to advancement that remain<sup>10</sup> are concerns about time spent from work to raise or care for a family,<sup>11</sup> decreased access to the traditional arenas of marketing and networking,<sup>12</sup> "selective use of women on certain cases," thus decreasing women's participation in some sophisticated legal work,<sup>13</sup> and "differentiating women as 'outsiders' and regarding them as less committed to the firm and less able to answer its needs for client satisfaction and development."<sup>14</sup>

As the professionals making up the legal profession become more diverse, we can expect that the way in which firms and individuals approach marketing and client development will change. We can anticipate that these new faces in the profession will bring with them new ideas and methods of handling and resolving legal matters. Given the number of much younger, successful business persons and companies emerging in the market today, all lawyers will need to consider how their individual participation will serve the demands currently in vogue. The outcome of increased opportunities to diversify the legal profession may be as yet uncertain, but as one Virginia lawyer stated, "Whenever you break down barriers and get rid of exclusivity, a more civilized entity emerges."<sup>15</sup>

In addition to the changing face of the legal profession is the changing place of the legal profession. There was a time when lawyers had general law practices either on their own or within small local firms serving neighboring communities. Today, some firms amass hundreds of lawyers capable of serving clients throughout the United States and abroad. In the wake of an explosion in the number of reported cases, many law practices, large and small, unable to stay abreast of multiple areas of law have necessarily

specialized their practices.<sup>16</sup> Moreover, lawyers are seeking work within the federal government in agencies from the Department of Justice to the Farm Credit Bureau; in businesses as advisors and corporate counsel; in advertising and public relations firms; as consultants and counsel in accounting firms now providing a vast array of legal and financial services to clients; as managers and executive administrators in law firms; as publishers; as mediators; and as consultants on every topic from environmental issues to diversity to bioethics. These lawyers now work full time, part time, on a contract basis, in an office, from home, as partners (equity or non equity), as associates, and as of counsel members. In today's legal market, approximately 30% of new lawyers leave their firms within two years and approximately 45% leave their firms within three years to pursue different positions.<sup>17</sup>

With the wide range of opportunities available to junior and senior lawyers and the current demand for legal talent, it has become more and more difficult for firms to retain their member lawyers -- both at the associate and partner levels. "Institutional loyalty appears to be in decline. Partners in law firms have become increasingly 'mobile', feeling much freer than they formerly did and having much greater opportunity than they formerly did, to shift from one firm to another and take revenue-producing clients with them."<sup>18</sup>

Whether this increased movement of lawyers between and among legal and accounting firms, businesses and government positions will continue remains to be seen. Law firms are working to address the many issues surrounding attorney retention in an effort to reduce the lateral losses they face every year. While the extensive scholarship written on these issues provides some insights into what solutions firms may adopt, only time will tell whether the place of the legal profession in the 21st century will undergo the kind of change it has experienced in the last several decades.

As lawyers are on the move, so too is technology. Technological advances have substantially impacted the way in which law is practiced. As recently as the 1970 and 1980s, much legal work was produced using typewriters and carbon paper. Sending and receiving correspondence via mail enabled attorneys to complete projects and to take on others while awaiting responses from clients or opposing counsel. Computers today are not only faster and capable of producing superior quality printed text and graphics

See 'Looking Back' on Page 10

# *Committee on Women and Minorities in the Legal Profession to Sponsor Annual Board Match Program*

by Julie M. Cillo

On March 2, 2000 at 5 p.m., the Young Lawyers Conference Committee on Women and Minorities in the Legal Profession will hold its annual Board Match Program at the Hunton & Williams office in Richmond. This program provides young lawyers from around the Richmond metropolitan area with the opportunity to learn more about serving as board members of non-profit organizations. The Committee is pleased that this year the Pro Bono Committee of the Richmond Bar will also be participating in this event.

The program will include brief presentations from members of the legal community who will share their own personal experiences serving on non-

profit boards and the satisfaction that such service can bring.

In addition, the Committee has invited representatives from a variety of non-profit organizations to attend the program. Following the panel presentations, the event will conclude with a reception that allows participants to speak with the representatives on a one-on-one basis.

During the 1999 Board Match Program, the committee was pleased to have representatives from the United Way, the Virginia Science Museum, the Boys and Girls Club of Metro Richmond, Big Brothers/Big Sisters, OAR of Richmond, Inc., Memorial Child Guidance Clinic,

Association for Retarded Citizens, Richmond Aftercare, Inc., United Negro College Fund, Adult Care Services and the Legal Information Network for Cancer. The distinguished panel at last year's Board Match Program provided an overview of the non profit organization under Section 501(c)(3); the ethical considerations that attorneys serving on boards of non-profit organizations face; and some practical considerations for choosing the right non-profit organization with which to become involved as a board member.

If you are interested in attending this program, please contact Julie Cillo, Esquire, at (804) 897-1515 or Ashley Rowe, Esquire, at (804) 788-7311.

## **Little More —**

Continued from Page 1

cooperative in its administration of Emma's claim and payment of the insurance policy proceeds. After a couple of days, Jake had assembled a packet for final settlement with the insurance company and forwarded the documents to Emma for her signature. He called to confirm that she had received the documents and to inquire whether she had any further questions or needed any further assistance. In a soft and stuttering voice, Emma expressed her gratitude and told Jake that his assistance was more than she could have ever had hoped for in the wake of this disaster. Jake was appreciative of Emma's kind words and told her he was glad he had an opportunity to participate on the Emergency Legal Services Team and assist members of his community like Emma.

Several months later, Jake was working on numerous projects before the Christmas holiday, when he noticed something unusual in his mail. It was a small, handmade card with a bright yellow Crayola sun on the front. Inside the card, it simply read, "You are my sunshine, Sam." Before that moment, Jake had considered his participation in the

disaster relief for Hurricane Floyd as little more than a phone call. The innocence of a child, who seemed to have lost everything but his two sisters and mother, made Jake realize how important it is to participate in pro bono activities such as the disaster relief team.

The Bar's response to Hurricane Floyd helped hundreds of hurricane and flood victims throughout the Commonwealth. Providing assistance to victims of natural disasters is not an easy task. People need not only food, shelter and clothing, but the means to put their lives back together. Many times this requires the assistance of counsel. Like Emma, devastation in such a situation is felt on a very personal level and can be paralyzing even if one has prepared by purchasing insurance or providing for other contingencies in the event of such a disaster. Sometimes offering to make a phone call can be the lifeline that many victims need. If you would like to participate in the Emergency Legal Services Program, you should contact either your local Virginia State Bar Young Lawyers Conference Circuit Representative; Shawn Copeland, Chairman of the Virginia State Bar Young Lawyers Conference Emergency Legal Services Committee; or Steve Otero, Chairman of The Virginia Bar Association Young Lawyers Division Disaster Relief Assistance Committee.

# First Day in Practice Seminar Plays to a Sold-Out Crowd

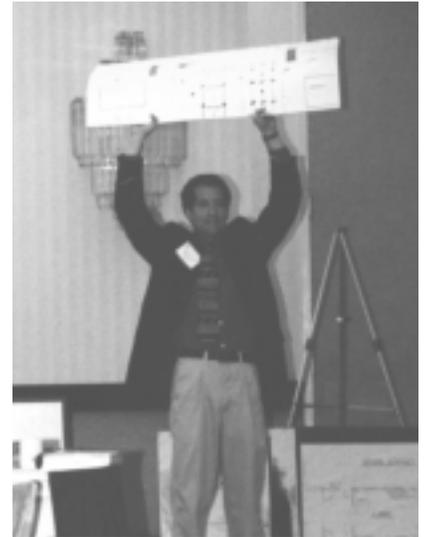
by Kathleen Keener Elsner

Fourteen years ago the Young Lawyers Conference put on the initial First Day in Practice Seminar — a one day presentation designed to inform new lawyers of what they can expect and what is expected of them in the practice of law. On November 2, 1999 this annual presentation was held in Richmond, Virginia. Described as "entertaining" and "excellent overall," this year's First Day in Practice Seminar was an unquestionable success. Over 200 young lawyers assembled to hear discussion on topics ranging from personal injury law to ethics.

After introductions by Jeffrey L. Galston and J. Tracy Walker, IV, the new attorneys heard lectures on District Court, Circuit Court and Juvenile Court practice from judges currently sitting on those benches including the Honorable William L. Wimbish, the Honorable Randall G. Johnson and the Honorable Jerry Hendrick. Other topics such as criminal law, small business law and property law were covered by seasoned attorneys from across Virginia who practice in those areas. The impressive panel included Douglas K.W. Landau, Joseph W. Richmond, Jr., Johnson Kanady, III, Malissa L. Giles, David R. Rosenfeld, Laura O. Pomeroy, Jr., Judy L. August, Craig S. Cooley. Jeffrey L. Galston and Christopher R. Graham served as program moderators.

With this year's program completed, the organizers are looking for ways to improve the presentation for next year. Organizer Christopher Graham hopes to include sections on how young attorneys can develop business and how to interact with veteran attorneys and partners in order to help further your career. Some attendees also suggested adding cutting edge topics such as computer law or e-commerce law to the line up of traditional law topics.

Although it is uncertain just how the organizers will tweak the program for next year, it is clear that the tradition of helping young lawyers start their practice off on the right foot will continue.



Speaking to the audience about the field of personal injury law, Douglas K.W. Landau, of Allred, Bacon, Halfhill, Landau & Young P.C. in Fairfax, shows an exhibit used in a traffic case.

## N O M I N A T I O N S W A N T E D

The Virginia State Bar Young Lawyers Conference is seeking nominations for the 1999-00 **R. EDWIN BURNETTE, JR., YOUNG LAWYER OF THE YEAR AWARD**, which honors an outstanding young Virginia lawyer who has demonstrated dedicated service to the conference, the legal profession and the community. This award, established by the YLC in 1994, is named after R. Edwin Burnette, Jr., a Lynchburg attorney, who exemplifies the qualities and attributes the YLC encourages. Among Burnette's achievements are his service as YLC president from 1985-86 and as president of the VSB from 1993-94. He served as president of the Lynchburg Bar Association from 1991-92 and became the first recipient of the Association's and Virginia Legal Aid Society's Pro Bono Award in 1992. He has chaired and been a member of numerous committees in service to the bar, the legal profession and the public.

The nominee should meet the following criteria:

- (1) promotes, upholds and elevates the standards of honor, integrity and competence in the legal profession;
- (2) initiates and participates in activities and programs to improve the legal system and the responsiveness of the profession to members of the public for whose benefit the profession exists; and
- (3) serves the legal profession and the public through pro bono and leadership activities.

+ + + + +

Nominations, along with a written summary of the nominee's qualifications for the award, should be sent to: Julie D. McClellan, P.O. Box 35243, Richmond, VA 23235, email: [jmcclellan@landam.com](mailto:jmcclellan@landam.com) The deadline for receipt of nominations is April 1, 2000.



**Y O U  
M A K E  
T H E  
C A L L**

**Q** Lawyer Greene Horne represents Lucy Lipps in a civil action against Dudley D. Wright, the owner of an equestrian park, arising out of injuries Lipps and her horse sustained when they were hit by a train. Lipps testified in her deposition that she slowly approached the tracks, looked both ways, and gingerly trotted across the railway. The day before trial, P. Vera Kate, Lipps' friend and only eye-witness, informs you that Lipps in fact jumped over the blinking railway crossing barrier and attempted to race the train before being bucked by her horse. When asked about this obvious "omission," Lipps shouts that "you can't handle the truth," before admitting that she lied. Just when Horne thinks he is in a real bind, Wright's attorney sends him a settlement offer.

**A** Under the exceptions to the confidentiality rule, a lawyer is required to promptly reveal "information which clearly establishes that the client has, in the

course of the representation, perpetrated a fraud related to the subject matter of the representation upon a tribunal." Rule 1.6(c)(2), Virginia Rules of Professional Conduct. See also Rule 3.3(a).

In Legal Ethics Opinion 1451, the Virginia State Bar Standing Committee on Legal Ethics considered a situation in which the defendant lied in a deposition about matters deemed "irrelevant to the case's merits." Undertaking a step-by-step analysis, the Committee first opined that a knowingly false statement by a client constitutes a "fraud." Second, because the statement was made during the course of pre-trial discovery, the fraud is "related to the subject matter of the representation," regardless of whether the fraud impacts the merits of the case. Finally, the Committee concluded that depositions fall within the definition of a "tribunal." While the Committee based its opinion upon an interpretation of Disciplinary Rule 4-101(D)(2), the commentary accompanying Rule 1.6(c) states that the provisions of D.R. 4-101(D) were specifically added to Rule 1.6(c), in recognition of the fact that Virginia requires broader disclosure than that provided for under the A.B.A. Model Rules.

**Q** Yet, Horne wonders whether he can salvage his case by settling now, or, if Lipps has to testify at trial, letting her correct her deposition testimony at that time.

**A** Hold your horses, Horne. Simply stated, an attorney has a duty to disclose a client's fraud upon a tribunal, if the client refuses to do so. Thus, Horne must request that Lipps inform the court of her knowingly false statement, and if she is unwilling or fails to do so, must inform the court himself. While not specifically addressed in L.E.O. 1451, it would appear that to settle now without apprising opposing counsel of the false deposition testimony would be improper. As the Committee concluded, "it would be unjust to allow the false deposition testimony to stand, regardless of whether the case proceeds to trial." Indeed, under Rule 1.2(c), a lawyer shall not assist a client in conduct that the lawyer knows is fraudulent, and is required to avoid furthering the fraud.

## **YLC Seeking Board of Governors Nominations**

THE NOMINATIONS COMMITTEE of the Virginia State Bar Young Lawyers Conference is now accepting nominations for seats on the Board of Governors which are up for election at this summer's Annual Meeting. Elections will be held for positions representing the First (Newport News), Second (Norfolk), Third (Richmond), Fourth (Alexandria), Seventh (Leesburg), and Eighth (Roanoke) districts. There will also be three At-Large openings. Also being elected at the Annual Meeting is the YLC President-Elect.

Anyone interested in serving on the Board of Governors for the Young Lawyers Conference or in nominating a young lawyer to the Board of Governors should contact:

Julie D. McClellan  
P. O. Box 35243  
Richmond, VA 23235  
(804) 267-8271  
jmccllellan@landam.com

The deadline for nominations is April 1, 2000.

## Looking Back —

Continued from Page 5

which can be endlessly revised on the spot, but also are used as tools to send that same information across the country in a matter of minutes. This ability to share information so quickly via computers and fax machines significantly increases pressure on attorneys to receive material and then to formulate responses to it within in the same afternoon. Utilizing either the internet or a research service, legal research can now be up-to-the-minute. Thus, legal briefs and other documents must be scrutinized to ensure they reflect the latest developments in the law.

Given the improvements in cell phones and beepers and even wireless hand-held mini computers, individuals are now, theoretically, reachable immediately no matter how far they might travel from the office. The ability to be in touch via the phone or email may create a perceived need always to stay in touch with clients, secretaries and colleagues -- placing a heavy burden on lawyers' personal time.<sup>19</sup>

Notwithstanding the pressures these advancements may create, they also provide significant benefits to our practice. Hand-held dictating machines (some with digital recording allowing downloads to personal computers) and voice recognition software mean attorneys can produce more work in shorter periods of time, thus freeing time to take on other projects or to end the day sooner. Revising documents when changes arise and "cutting and pasting" from already-prepared documents may be accomplished with relative ease, increasing efficiency. Sophisticated software available to lawyers, staff and law firms means more complicated document and exhibit projects can be handled inside the law firm rather than through specialized companies.

Home computers, cell phones and beepers mean lawyers may complete work projects in the comfort of their homes or from remote and exotic destinations like golf courses and the beach. No longer must attorneys be in the office to handle research assignments or to prepare complex legal briefs, as the necessary tools for doing so may be found on a firm-provided lap top computer which may be taken anywhere and, if necessary, linked back to the office. One can only imagine what future developments are in store which will add to the ever changing way in which lawyers are able to complete their work -- more hours in the day tops the list of requests.

As mentioned, the beauty of the technological creations which ease our work day is the ability to produce more legal work in a given day. Having the ability to create more legal work can foster the need and desire to produce more legal work. As a result, the legal profession has experienced a sharp increase in competition to get and to keep clients, as firms must work to continue impressing and pleasing their existing clients. Clients are now in a position to demand that work be completed more quickly, for less money and in greater quantity. Attorneys lament that some clients are less loyal and stand ready to leave a firm should a lower priced, relatively comparable substitute emerge.<sup>20</sup> The days of submitting bills and having them routinely paid are gone.<sup>21</sup> Clients now can and do scrutinize bills more closely and announce guidelines refusing to pay for certain activities or capping the amount that may be charged. Some clients negotiate flat fees for handling litigation, thus imposing time and financial constraints on the attorneys handling those matters. Clients may demand that firms' technological resources stay up-to-the-day current, necessitating more capital expenditures than ever before.

In this market, it can become more and more difficult for firms to operate as they are accustomed to doing and to remain profitable. As a result, firms must operate more like businesses with an eye constantly on the bottom line.

"Practitioners of law have long lamented that law is getting to be 'more and more like a business'; Louis D. Brandeis made that observation in 1905, and it has been made periodically since."<sup>22</sup> Lawyers are billing more hours -- in part, because of the volume of available legal work, the pressure to keep clients satisfied, and the need to compensate for negotiated fee arrangements and increasing salary requirements of staff and lawyers. With increased billing may come decreased interaction between lawyers in firms and lawyers within their communities. As firms hire business managers to monitor the numerous factors affecting competition and profits, Justice Brandeis' observation likely will continue to be relevant in the years to come.

The emergence of Alternative Dispute Resolution and mediation as methods of conflict resolution may change significantly the world of litigation as we know it. Kathleen Taylor Sooy,<sup>23</sup> a partner at McGuire, Woods, Battle & Boothe in Richmond says, "Businesses looking for faster and more efficient resolutions are turning to ADR to see whether it will meet these goals in their particular context." As a result, Ms. Sooy says, "There are not many big cases still churning through the traditional trial process." Given that ADR and mediation can offer parties an opportunity to resolve their disputes without the preparation, risk and

accompanying expense of traditional trials, each have become attractive alternatives for litigants in a wide array of cases from product liability to domestic relations to personal injury. Perhaps as stated by Judge Anderson,

We must understand that (Thomas) Jefferson, (James) Madison, (Dorthea Dix), (Abraham) Lincoln, and (Martin Luther) King would not have so affected our history if they had treated every debate as a contest to be won. Instead, they like scores of true heroes before and after them, understood that the views of others deserve respect and thoughtful consideration, and that good decisions and constructive progress take root not in winning and losing but in compromise, tolerance and cooperation.<sup>24</sup>

The practice of law has certainly undergone some substantial changes, impacting both the manner in which law is practiced and the faces of those signing up to join the group. Some speculate there has been an increase in disension within the legal profession due to financial constraints, competition for talent and for business, long hours and growing concerns about the public's perception of lawyers. "Covered extensively by the media, monitored closely by the public-at-large, and administered by men and women of differing philosophies, our system always has been and always will be a subject of debate, both within and without its ranks."<sup>25</sup>

Improvements to the way in which law is practiced are on the horizon. In an effort to balance the pressures of more lateral moves, more modes of communication through great strides in technology and more competition in the marketplace, firms must and will develop solutions benefiting their institutions and their collective members. What those solutions will be? Only time will tell.<sup>26</sup>

1869 and was led by Dean John Mercer Langston who had been denied admission to two law schools because of race. *Id.* at 1. Charlotte E. Ray was the first African-American woman to graduate from the Howard Law School. J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944*, at 18 (1993). Ms. Ray was the first woman to be licensed to practice law in the District of Columbia. Yewande D. Dada, "Carry Forth the Tradition," in *Howard University School of Law: One Hundred and Twenty-Five Years*, 38 *How. L.J.* at 5.

3 Cynthia Fuchs Epstein, *et al.*, *Report: Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession: A Report to the Committee on Women in the Profession*, *The Association of the Bar of the City of New York*, 64 *FORDHAM L. REV.* 291, 313-14 (1995). As the title indicates, this study was commissioned by the Association of the Bar of New York City. The study largely surveys only New York law firms, eight of which agreed to provide direct input (versus financial support) to the study.

4 Epstein *et al.*, 64 *FORDHAM L. REV.* at 314 (citation omitted). The first African-American member of the Virginia Bar was Wathal G. Wynn, around 1871. He was also the first Howard Law School graduate to be admitted to the bar in three jurisdictions including D.C. and Arkansas. Smith *et al.*, "Introduction," 38 *How. L.J.* at 2.

5 Epstein *et al.*, 64 *FORDHAM L. REV.* at 314.

6 As the Epstein group reported, "But the social structure of these firms began to change in the 1970s and 1980s, as they responded to the lavish business opportunities provided by the emerging and prospering fields of mergers and acquisitions, corporate restructuring, and other spheres. Law firms doubled, tripled, and quadrupled in size, as firms recruited large numbers of law school graduates, competing with each for talent. They searched for able people whose backgrounds were different from their members, were educated in schools and not regarded as elite, or were women and minorities." Epstein *et al.*, 64 *FORDHAM L. REV.* at 312.

7 *Id.* at 314.

8 *Id.* at 295. "Legal employers quickly lost interest in addressing the 'women's issues' that had been at the top of their human relations agendas only a year before." *Id.*

9 With regret, the Epstein study stated, "We had hoped to analyze the experiences of minority lawyers in the study of glass ceiling in large law firms. However, there were so few African-American, Latino or Asian-American senior associates and partners at these firms that no analysis could reasonably be executed." Epstein *et al.*, 64 *Fordham L. Rev.* at 324. The authors of the report revealed they decided to sample attorneys primarily at or above the fifth year level in a variety of specialties. *Id.* at 328.

10 These obstacles detailed in the Epstein study are the result of the focus on law firms located in New York; their applicability to other geographical areas has not been researched.

11 *See* Epstein *et al.*, 64 *FORDHAM L. REV.* at 298-99. As noted by Judge Patricia Wald: "The biggest single complaint in the Glass Ceiling Commission's audit of White & Case, the first major law firm to undergo the process, was the pervasive perception among women that they couldn't have children and rise to partnership in the firm'." *Id.* at 298 (quoting Patricia M. Wald, "A Thousand Cuts: the Reality and Perception of Discrimination, Remarks at the Aspen Law & Bus. 3d Annual Institute: Woman Advocate 1995 (June 12, 1995).) "Ironically, in the sample of firms Dr. Epstein studied, the firms with what appeared to be a more 'family friendly' culture (more receptivity to family leave and part-time or flex-time work options) made the fewest women partners." *Id.* at 298 (citations omitted).

---

1 Certainly there is a wealth of information available on each of the important issues presented here, all of which could not be reviewed for this article. Due to space constraints, this article can only mention briefly these areas of development and achievement and directs the reader to independently research areas of specific interest.

2 Among many other achievements by women and minorities, it should be noted that the Washington College of Law was co-founded by two women in 1896. This law school later merged in 1949 with The American University. Gordon A. Christenson, *Looking Back "In Pursuit of the Art of Law,"* 45 *AM. U.L. REV.* 1015, 1016 (1996). Ms. Emma M. Gillette, one of the co-founders, was the first female leader of a law school and graduated from the Howard University School of Law around 1882. J. Clay Smith, Jr., *et al.*, "Introduction," in *Howard University School of Law: One Hundred and Twenty-Five Years*, 38 *How. L.J.* 1, 2 (1994). The Howard University School of Law opened its doors on January 6,

- 12 See Epstein et al., 64 FORDHAM L. REV. at 297.
- 13 Id. at 304.
- 14 Id. at 303-304.
- 15 Telephone interview with Alexander H. Slaughter (Dec. 21, 1999). Mr. Slaughter is a partner at McGuire, Woods, Battle & Boothe and began his career in the Richmond Office in 1964.
- 16 According to one lawyer, "The increasing complexity of the law necessitates specialization and larger numbers of lawyers to constitute a full-service firm and to address the litigiousness phenomenon." Anne M. Whittemore, Lawyers No Longer Can Accept Status Quo, RICHMOND TIMES-DISPATCH L1 (Nov. 14, 1999).
- 17 Stephen Gandel, Legally Binding: Firms Struggle to Keep Associates: Cash, Tickets, Casual Dress all Being Used, CRAIN'S NEW YORK BUSINESS 4 (Nov. 1, 1999).
- 18 William H. Rehnquist, The Legal Profession Today, 62 IND. L.J. 151, 152 (1987). Additionally, as the Epstein study reported, "Even older partners now find themselves facing work pressures they thought would diminish with seniority in the firm. Competition for business to support their large staffs and overhead, a client base that is no longer loyal, and technological innovations such as fax machines and cellular telephones that accelerate turn around responses, all undermine the possibility for a leisurely professional pace as partners advance in seniority." Epstein, et al., 64 FORDHAM L. REV. at 316.
- 19 A 1993 Case Western University School of Law study revealed that lawyer accessibility is the most important factor small business clients use to measure satisfaction with their legal counsel. Milton W. Zwicker, Targeting Small Businesses? Focus on Reputation and Accessibility, in 26 LAW PRACTICE MANAGEMENT (ABA) 49, 50 (Jan. - Feb. 2000).
- 20 To keep levels of client satisfaction high, "[f]irms had to compete for business in processes known as 'beauty contests' in which they made presentations to clients regarding their competence and the economies of their legal work." Epstein, et al., 64 FORDHAM L. REV. at 315.
- 21 "No longer can firms depend on client commitment; the days when firms could wait for business and bill fees that went unquestioned are gone." Epstein, et al., 64 FORDHAM L. REV. at 331.
- 22 Rehnquist, 62 IND. L.J. at 156.
- 23 Telephone interview with Kathleen T. Sooy (Dec. 6, 1999). Ms. Sooy is a partner at McGuire, Woods, Battle & Boothe, specializing in litigation management of national commercial and product liability litigation. She began her career in the Richmond office in 1984.
- 24 Joseph F. Anderson, Lawyers in the New Millennium: Reflections of a Journeyman Trial Judge, 49 S.C. L. REV. 951, 955 (1998) (citing Deaneell Reece Tacha, Renewing Our Civic Commitment: Lawyers and Judges as Painters of the "Big Picture", 41 U. KAN. L. REV. 41, 485-86 (1993)) (parentheses in original).
- 25 Id. at 952.
- 26 A special thank you to Kathleen T. Sooy, Alexander H. Slaughter and Anne M. Whittemore of the Richmond office of McGuire, Woods, Battle & Boothe and to Gregory S. Feder of the Washington, D.C. office of Arter & Hadden, LLP for their comments.

# DOCKET CALL

Virginia State Bar Young Lawyers Conference  
707 East Main Street, Suite 1500  
Richmond, VA 23219-2800