Docket Call Newsletter

Young Lawyers Conference

Virginia State Bar

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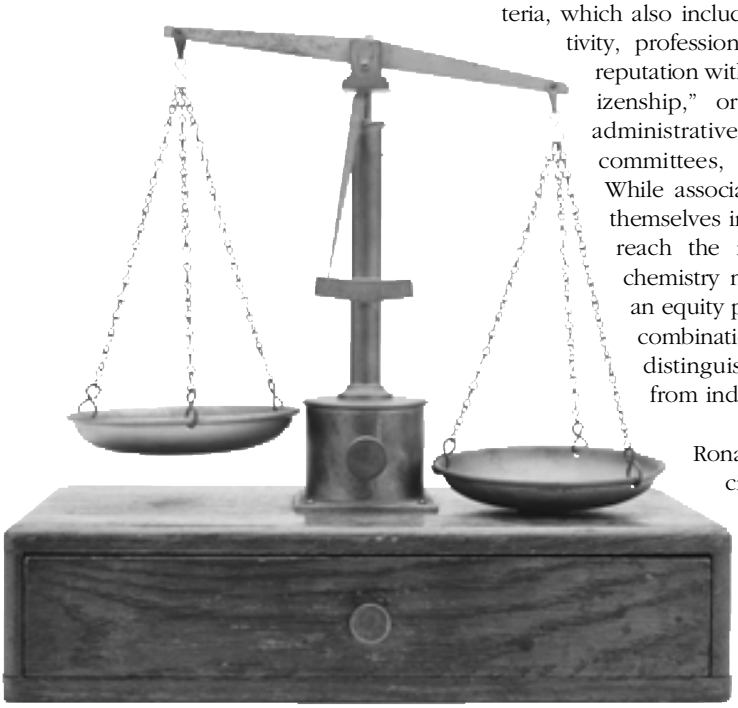
Beyond Billables:
Tipping the Balance in Your Favor at Partnership Time

Meghan M. Cloud

It's the equivalent of a jury to a trial lawyer—the black box from which some associates emerge with an ownership interest and others do not. Besides giving up the proverbial pound of flesh, what exactly does an associate have to do to become a partner in a law firm these days?

Of course, there are as many answers as there are law firms, and the uncertainty is compounded by the fact that at each firm the decision is an individualized one. Still, Docket Call's conversations with equity partners at three law firms in Virginia who were willing to talk about the process reveal some guiding principles.



According to Gregory J. Haley at Gentry Locke Rakes & Moore in Roanoke, a forty-one lawyer firm with a two-tier track, the decision is never just about numbers; it has an "intangible and subjective" element to it. Good lawyering tops the list of written criteria, which also includes financial productivity, professional involvement and reputation within the bar. "Firm citizenship," or involvement with administrative and managerial committees, is also important. While associates who distinguish themselves in only one area may reach the non-equity tier, the chemistry necessary to become an equity partner comes from a combination of qualities that distinguishes good lawyers from indispensable ones.

Ronald R. Tweel, a principal at the fifteen-lawyer firm of Michie, Hamlett, Lowry, Rasmussen & Tweel in Charlottesville, where partners traditionally bill more hours than associates, describes the process there as "not novel, but probably more informal" than at larger firms. Integrity, decorum, and furtherance of the firm's reputation is important, as is being a "stand-alone lawyer"—someone who can handle his or her practice area from A to Z. While Michie, Hamlett does not have a rigid billable-hours requirement for its associates, being financially profitable and a hard worker certainly matter. Compatibility with a limited number of co-workers is particularly important in a small office, where both partnership and initial hiring decisions involve a personality component. As is true at Gentry Locke, community service and involvement is fundamental.

At Hunton & Williams, whose ranks include more than eight hundred lawyers in seventeen offices, partnership decisions are guided first by the firm's four core values: quality, integrity, hard work, and service. A fifth consideration, according to Harry M. "Pete" Johnson III, is strategic fit, or "economic need," which takes into account not only an aspiring partner's potential to expand the firm's client base but also the vibrancy of the relevant practice group. Serious candidates for equity partnerships at Hunton & Williams, which has a one-tier track, are not expected to have substantial books of business, but they are required to be "actively involved in maintaining and expanding their practice area," a criterion that includes engagement with and contribution to strate-

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Legal Ethics Corner

Jeffrey Hamilton Geiger

As he tripped over a stack of Docket Call Newsletters while searching for a client's file, Reiss Ikle declared, "Starting this year, I am going to get organized!" With visions of a paperless office dancing in his head, Ikle boldly proclaimed his new office procedures: (1) scan each paper document into an electronic format; (2) transmit the document to the client by e-mail; and (3) destroy/recycle the paper document to prevent disclosure of confidential information. Yet, the fear of having made an improvident New Year's resolution gnawed at Ikle even as he tried to imagine what his desk looked under the stacks of papers. "Do I have to still keep a paper file?" "Even if the client consents, can I destroy paper documents?" "Can I require that a client agree to my paperless requirements?"

Time to break out the shredder! The Standing Committee on Legal Ethics addressed the propriety of maintaining an electronic file in Legal Ethics Opinion 1818. As the Committee noted, "[i]n determining whether an attorney is meeting his ethical responsibilities for a particular client, it matters not generally what form the documents in the file take, but instead whether all documents necessary for the representation are present in the file." Of course, certain paper documents must be maintained, as with, for example, testamentary documents. But there is no requirement contained in the Rules of Professional Conduct dictating file maintenance procedures, what must be kept in the client's file or in what form.

Similarly, a lawyer is generally permitted to destroy paper documents after they have been converted to an electronic format provided the client consents. Notwithstanding such consent, the lawyer is often in the best position to know whether the paper documents may be of a benefit to the client now or at a future time.

Finally, a lawyer may condition representation on the client's agreement to an "electronic-only" file, provided that the client's interests are not prejudiced.

With all of that said, whether made up of "0s and 1s," stone tablets or paper, the "perfect" file is one in which an attorney unfamiliar with the matter could take it over without needing to do anything but review the file. It should be up to date and discretely organized, with sections or folders for correspondence, notes, client information, billing, engagement agreement, research, client documents, etc. The subject of attorney-client communications becomes ever so critical upon initiation of disciplinary proceedings or malpractice litigation. Who said what and when did they say it? In real estate it is all about location. In legal malpractice cases, it is all about documentation. Write (or type) it all down.

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Docket Call

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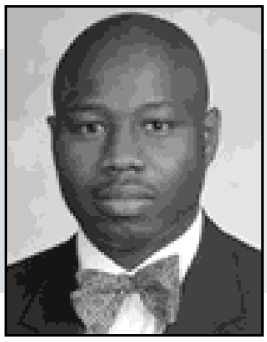
Message from the President

Jimmy F. Robinson, Jr.



How Dignified Defiance Can Change A Nation: A Tribute to Rosa Parks, An American Icon

Each person must live their life as a model for others. —Rosa Parks

In my mission to strengthen our community and better our profession, I often find inspiration in the history books. Join me in revisiting a story that taught a nation that human dignity is a right, regardless of one's station in life; and that right must be acknowledged and respected.

The death of Rosa Parks at age 92 reminded me that dignified defiance has the power to change laws, lives and nations. Fifty years ago, this American icon referred to by many as the "Mother of the American Civil Rights Movement," led the challenge to the South's Jim Crow laws and Montgomery Alabama's segregated bus seating policy. Mrs. Parks began a movement that would bring international attention to the unjust practices of the segregated South. By refusing to relinquish her seat to a white passenger, this ordinary citizen, armed with human dignity and moral fortitude, changed the destiny of millions. I include myself in that number. All across this country, civic and community centers, schools and even highways are named in her honor.

On Thursday, December 1, 1955, Mrs. Parks, a forty-two-year-old seamstress for the Fair Department Store boarded the Cleveland Avenue bus in Montgomery. For African-Americans, who made up two-thirds of the bus riders, riding the bus in 1955 segregated Montgomery was no easy task. To ride, they had to step onto the bus, pay the driver, exit the bus and walk to the back door to reboard. If they were fortunate, they would find an empty seat in the "colored section" and would complete their ride. However, pursuant to Alabama law, when asked, African-Americans were required to give up their seats to white patrons, and had to move to the back of the bus. They were not allowed to sit across the aisle from whites.

On that famous Thursday, Mrs. Parks took her seat in the "colored section." As the bus made its stops, it became crowded. Mrs. Parks was ordered to give up her seat to a white passenger. She refused. Some historians have written that her feet ached and she was tired. Others have written that her act was planned by the NAACP. However, by her own testimony, Mrs. Parks stated that she was "no more tired than usual" and that she did not plan her arrest. "I did not get on the bus to get arrested. I got on the bus to go home."

Mrs. Parks stated that she was tired of segregation, Jim Crow laws and the racist treatment she and other African-Americans received every day of their lives. In her book, *Quiet Strength*, Mrs. Parks wrote, "Our mistreatment was just not right, and I was tired of it. I kept thinking about my mother and my grandparents, and how strong they were. I knew there was a possibility of being mistreated, but an opportunity was being given to me to do what I had asked of others."

Clifford Durr, a white attorney whose wife had hired Mrs. Parks as a seamstress, posted bail for her release after her arrest. The NAACP had searched long and hard for an ideal plaintiff for a case to challenge the constitutionality of Montgomery's segregation laws and expose the injustice of segregated public transportation. That evening, they lobbied Mrs. Parks, and she agreed to be the face for the NAACP's case.

The rest of the story is American history: her trial, a 381-day Montgomery bus boycott, the establishment of the Montgomery Improvement Association with Reverend Martin Luther King Jr. as its president, and the Supreme Court's ruling in November 1956, finding that segregation on public transportation was unconstitutional.

Today we can all learn from the example of Rosa Parks. She was tired of being humiliated; tired of having to adapt to unjust rules codified into unjust laws. By sitting, Rosa Parks stood up for African-Americans and challenged all laws that treated them as something less than human beings. In her simple act of dignified defiance, Rosa Parks taught us: each of us has the power within us to change our communities, our families, and maybe even our nation through simple acts of dignified defiance. Do your part in 2006 to pass on this legacy.

See You in Court
News and Practice Tips for Virginia Litigators

Be Careful Not to Become a Test Case Under the New Rules of Court

Michael R. Spitzer II

The General Assembly last year approved the merger of law and equity in Virginia. The Virginia Supreme Court's new rules went into effect on January 1. The Old Rules of the Supreme Court of Virginia were divided into Part 2 (Equity) and Part 3 (Law). The New Rules now abolish Part 2 and have a unified Part 3 for both law and equity.

Most of the changes to the Rules are for nomenclature purposes only and do not affect anything substantive. There are a few substantive changes in the Rules. For example, Rule 3:8 replaces old 3:5 relating to the filing of defensive pleas and motions as well as grounds of defense (now referred to as "answers" in all cases). There is a new statement which did not appear in the old rule as follows: "A demurrer, plea, motion to dismiss, and motion for bill of particulars shall each be deemed a pleading in response for the count or counts addressed therein." This is significant in two respects. By listing particular defensive pleas as being "deemed a pleading in response," it is unclear whether other motions, such as motions craving oyer, motion to quash, motion to stay, or motion to transfer are deemed responsive pleadings. Caselaw will certainly iron out these questions in the months to come, but if such motions are not deemed responsive, a party may face a motion for default judgment for not filing a responsive pleading within 21 days of service of the Complaint. To be cautious, it is probably wise to file an Answer along with another motion to prevent your client from being in default.

Rule 3:8 contains a significant change in procedure for demurrers. The rule states directly that if you are demurring or challenging in some other defensive filing less than all counts of the Complaint, you must file an Answer at to all other counts not addressed in your demurrer, plea or motion. Previously, it was fairly common to see a party demur to a subset of the counts in the Motion for Judgment or Bill of Complaint, and, only when the demurrer was ruled upon, to file a responsive pleading. Under the new rules, if a party demurs to fewer than all counts of the Complaint, an Answer must also be filed to the counts not demurred to within 21 days of service of the Complaint.

The other significant rule change is Rule 3:21 which deals with jury trials by right. There was not a comparable provision under the old rules. Under the new rule, you must file and serve a demand for a jury within 10 days of service of the "last pleading directed to the issue" or the constitutional right to a jury trial is waived as per the Federal Rules of Civil Procedure. Pursuant to the Federal Rules, the last pleading directed to the issue has been held to be the Answer. To preserve your right to a jury trial, I suggest that a demand for a jury trial be contained in the Complaint.

Hopefully, these tips on the new rules will prevent your clients from being the test cases under the new rules!

Mike Spitzer is a litigation associate at Hirschler Fleischer, P.C. in Richmond. He can be reached at mspitzer@hf-law.com.

Virginia State Bar Professionalism Course

Upcoming course dates:

March 2, 2006—Charlottesville
May 4, 2006—Chesapeake
July 27, 2006—McLean
August 24, 2006—Roanoke

for additional dates and a registration form:
www.vsb.org/membership/professionalism.pdf

The Special Committee on Access to Legal Services of the Virginia State Bar and the Miller Center of Public Affairs at the University of Virginia invite you to mark your calendar for the

Annual VSB Pro Bono & Access to Justice Conference

Wednesday, April 26, 2006
Miller Center of Public Affairs - Charlottesville, VA
look for updates online at **www.vsb.org/probono**

Immigrant Outreach Committee Seeks to Educate Attorneys

Sarah Louppe Petcher

The Immigrant Outreach Committee is a relatively new committee of the Young Lawyer's Conference. This year the committee will focus its efforts on providing education to the legal community in order to improve the quality of representation available to immigrants. The committee will be holding the first annual Model Hearing Program in March, in partnership with the Executive Office of Immigration Review (EOIR).

The Model Hearing Program was developed by the Pro Bono Program of the EOIR to improve advocacy before the immigration courts and to train lawyers who wish to provide pro bono representation. The program is also designed to provide basic immigration law to practitioners so that they can more fully understand the consequences of their actions on their clients' immigration status.

The Model Hearing Program consists of two parts. The first half of the program is a two-hour CLE covering the basics of immigration law and providing "hands-on" immigration court training. The CLE will emphasize practice, procedure and advocacy skills. The second half of the program is a model hearing which consists of a small-scale "mock" immigration trial, presented by a volunteer immigration judge.

The CLE will be held at the George Mason University School of Law Campus in Arlington, and the mock trial will be held at the Immigration Court in Arlington. It is free of charge, and participants will receive training materials and CLE credit, so long as they commit to take one pro case in the following twelve months.

The Immigration Outreach Committee believes this is an excellent opportunity for attorneys to improve their knowledge of immigration matters. This program has already been held with great success in cities such as San Diego, Dallas, New York, Cleveland, Newark and Seattle. We anticipate similar success here in Virginia.

The program will take place in March 2006. If you are interested in participating or assisting with the program, please contact committee chair Sarah Louppe Petcher at sarahlouppe@yahoo.com.

Sarah Louppe Petcher is an associate at Colten, Cummins, Watson & Vincent P.C. in Fairfax.

A Legacy of Learning

Jacqueline McClenney

Have you ever wondered how you became interested in the practice of law? Maybe one of your parents was an attorney or maybe you attended a career fair in high school or college? The Oliver Hill/Samuel Tucker Pre-Law Institute ("Institute"), sponsored in part by the Millenium Diversity Initiative, is just one avenue that helps to expose minority high school students to the practice of law. One of the goals of the Institute is to provide an opportunity for students to learn about the varied areas of attorney expertise and practice.

Participants in the Institute spend a week on the campus of the University of Richmond. Their daily schedule is full of classes, seminars and practitioner panels. From Civil Procedure and Criminal Law to LSAT's and Financial Planning, students attend mock law school classes and learn exactly what it takes to move from high school to college and law school. One of the highlights of the week is a visit to the United States Court of Appeals for the Fourth Circuit. Annually, Judge Roger Gregory meets with students to share his personal story and provides practical applications of the law to every day life.

Not only do participants focus on academics – they also have a little fun. The Institute schedule is full of social activities designed to relieve the stress of the academic requirements of the week. Students spend time with each other and practicing attorneys in relaxed environments while bowling, attending a Richmond Braves baseball game and participating in a true test of an attorney's competitive nature – Laser Tag.

The week culminates in an exciting and challenging event, a trial complete with opening statements, direct examination, cross examination and closing arguments. As "attorneys," the students are charged with witness preparation and introduction of evidence. It is no small feat to see high school students accomplish what took many of us nine months to accomplish as first year law school students.

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Wills for Heroes: Successfully Serving Communities in 2005 and Looking Forward to 2006

Carson Sullivan

The Wills for Heroes program successfully served three separate communities across the Commonwealth in 2005. Thanks in large part to the tremendous efforts of local volunteers, the program served the Williamsburg community in May and June, Cumberland in August and September, and Danville in November.

The Virginia State Bar Young Lawyers Conference, in conjunction with the Virginia Bar Association Young Lawyers Division, sponsors the Wills for Heroes program. Created in the wake of the September 11, 2001 terrorist attacks, the program offers free wills, durable powers of attorney and advance medical directives to "First Responders" – firefighters, police, sheriff's deputies and other emergency personnel. As part of the program, volunteer attorneys attend a free CLE seminar to learn about the program and the computer software that generates the estate planning documents. Prior to receiving the documents, first responders attend a presentation to educate them about the benefits of estate planning and the documents the program offers them.

The program's Williamsburg organizers were VSB YLC 2005 9th Circuit Representative Laura Rugless of Heikes & Rugless, P.C. and trust and estate attorney Helena Mock of Jones, Blechman, Woltz & Kelly, P.C. The Danville effort was organized by VSB YLC 22nd Circuit Representative Trevor Moe, trust and estate attorney Harry Sakellaris, and Hunter Byrnes, all of Clement & Wheatley, P.C. Erin Whaley, of Troutman Sanders LLP, who is the program's new committee chair and VSB YLC 10th Circuit Representative, planned and led the successful effort in Cumberland, Virginia.

2006 also promises to be a successful and busy year for the Wills for Heroes program. After months of planning, the program is currently taking place in Norfolk. As one of the Commonwealth's larger cities, Norfolk is a substantial undertaking. Tricia Batson, local volunteer coordinator and immediate past chair of the Young Lawyers Section of the Norfolk Portsmouth Bar Association, reports that the volunteer response in Norfolk has been tremendous. On January 9, 2006, over 50 attorney volunteers attended the CLE, which was led by trust and estate attorneys Leigh Anne Bolling of Midgett & Preti PC and Amy Pesesky of Williams Mullen. Attorney volunteers have already signed up for sessions with Norfolk's first responders, which are scheduled to take place through March 2006.

The success of Wills for Heroes program relies on the efforts of the attorney volunteers, who have given up their weekends and evenings to provide this service to our local first responders. This is an ongoing program that will continue to call on the time and talents of members of the YLC. For more information and to get involved with the Wills for Heroes program in your area, contact Carson Sullivan at carsonsullivan@paulhastings.com or Erin Whaley at Erin.Whaley@troutmansanders.com.

Carson Sullivan is an associate at Paul Hastings in Washington, D.C. in the firm's employment law section.

Williamsburg volunteers attended the Wills for Heroes CLE, led by Helena Mock. After attending the CLE, volunteer attorneys helped provide free wills and other estate planning documents to local First Responders.

The 2005 Wills for Heroes program in Williamsburg was organized by Laura Rugless of Heikes & Rugless, P.C. (left) and trust and estate attorney Helena Mock of Jones, Blechman, Woltz & Kelly, P.C. (right). Rugless was the 2005 YLC Circuit Representative for the 9th Circuit.

Beyond Billables, continued from page 1

gic planning. Considerations vary not only with the individual but also with the practice group; a team that is sustained by one or two large clients will obviously weigh factors differently from one with a more varied client base. Timing can also vary: although associates become eligible to join Hunton & Williams's equity ranks eight years out of law school, Johnson noted that there is no point at which the possibility of partnership has been foreclosed.

While the lack of precise, objective guidelines might be frustrating to those of us on this side of the fence, it may be worth keeping in mind that we are, after all, talking about partnerships. Existing partners might be forgiven for wanting to preserve a bit of flexibility when it comes to deciding whether or not to invite a particular associate into the ownership and shared control of a law firm. The issue, of course, is not just the associate's future, but also the firm's. According to Pete Johnson, the gravity of the situation is not lost on partners, whose decision-making process spans many months each year and includes its share of agonizing.

Feeling powerless? Don't. The best piece of advice for ambitious young lawyers may have come from Greg Haley, who notes that "associates who succeed think like owners"—by treating cases as their own, being ever-cognizant of the firm's reputation, and seeking out chances to create favorable exposure and maximize business opportunity. If your aspirations include making partner, think and act like an owner. It will increase your chances of becoming one.

Meghan M. Cloud is a litigation associate with McGuire Woods LLP in the firm's Charlottesville office.

Save the Date

VSB 68th Annual Meeting • June 15–18

Virginia Beach • The Cavalier Hotel and the Holiday Inn Sunspree

A Legacy of Learning, continued from page 5

So, maybe you do not recall how you first became interested in the practice of law. What you can now be certain of is how YOU can make a mark in the life of a young person—YOU can be a part of the legacy of learning. YOU, too, can honor the legacy and life-work of Oliver Hill and Samuel Tucker by volunteering with the Institute.

The 2006 Oliver Hill/Samuel Tucker Pre-Law Institute is tentatively scheduled for July 23-28, 2006 at the University of Richmond School of Law, pending receipt of funding. If you are interested in volunteering with the Institute, please contact Jacqueline McClenney at (804) 916-7135 or jacqueline.mcclenney@leclairryan.com

Jacqueline S. McClenney is is an associate with the Government Relations and Regulated Industries Group of LeClair Ryan.

YLC Board Elections

At its Annual Meeting on June 16, 2006, the Virginia State Bar Young Lawyers Conference will be electing members to the Board of Governors in the following districts:

2nd, 5th, 6th, 7th, 8th, 9th, 10th, and four at-large positions.

All nominations are due on May 1, 2006 and should be sent to:

Savalle C. Sims
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
202.857.6395 fax • sims.savalle@arentfox.com

Any active (in good standing) member of the VSB under the age of 36 or in their first three years of practice may serve on the YLC Board.

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Winter 2006, Contents

Address Change?

If you have moved or changed your address, please see the VSB Membership Department's page on the Web for an **address update form** at **www.vsb.org/membership/**.

Young Lawyers Conference
Virginia State Bar

R. Edwin Burnette Jr. Young Lawyer of the Year Award

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, 2006. Letters of nominations and any supporting materials should be sent to:

Savalle C. Sims, Arent Fox PLLC, 1050 Connecticut Avenue, N.W.
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(202) 857-6000; Fax: (202) 857-6395; simss@arentfox.com

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