

1 (10:45 a.m. - 12:15 p.m.)

2

3 PANEL IV - DO JUDGES HAVE A MEANINGFUL ROLE IN LEGAL  
4 EDUCATION?

5

6 Since judges often see some lawyers'  
7 abuse of precedent and statutory law,  
8 gross inability to write, and blatant  
9 incivility, should judges insist more  
10 forcefully on legal competence, ethical  
11 behavior and civility from lawyers  
12 appearing in their courts? To the extent  
13 judges are reluctant to do so, what  
14 considerations inhibit them (for  
15 instance, concerns about reappointment,  
16 limited time to intervene, or belief that  
17 intervention would be inappropriate)?  
18 Realistically can judges do more, and  
19 should they do more, to ensure the  
20 effective education of lawyers?

14

15 MODERATOR: HONORABLE GERALD BRUCE LEE  
16 Judge, U.S. District Court for the  
17 Eastern District  
18 Alexandria, Virginia

19

20 PANELISTS: Honorable Cynthia D. Kinser  
21 Hugh M. Fain, III, Esquire  
22 Monica Taylor Monday, Esquire  
23 Honorable Michael F. Urbanski

24

\* \* \* \* \*

25

26

1                   MR. REVELEY: All right. Everyone, it  
2 is time to come back. While we come to our  
3 final panel, another star-studded group, and  
4 this one is going to be talking about the  
5 role of the courts in the lifelong learning  
6 of lawyers, a subject pregnant with promise.

7                   Judge Lee, it is yours, we are yours.

8                   JUDGE LEE: Good morning, everyone.

9  
10                   (Good morning)

11  
12                   JUDGE LEE: I have been asked to  
13 suggest that if you have comments during our  
14 panel, please stand, identify yourself, and  
15 speak up because we have a court reporter  
16 present. Whenever you are in a room like  
17 this, with this many lawyers.

18                   JUDGE URBANSKI: There's no podium.

19                   JUDGE LEE: No. But, they can stand up  
20 and speak loudly so we can hear. The court  
21 reporter is all the way over here, so she  
22 needs to be able to hear you.

23                   JUDGE URBANSKI: But you're used to the  
24 podium.

25                   JUDGE LEE: I'm used to the podium and  
26

1 so are you, Mike.

2 JUDGE URBANSKI: Not so much.

3 JUDGE LEE: What I was going to say to  
4 the lawyers, is I know when you have this  
5 many in a courtroom with a judge, and you are  
6 facing the judge, what you always hope is you  
7 will hear what I'm about to say, which is  
8 that your motions are granted.

9 The question is: Do judges have a role  
10 in legal education, and what is the role of  
11 the judge in legal education?

12 You know, the work that we do we call  
13 practice for a reason. And I suspect that if  
14 you are in Judge Crigler's courtroom, and he  
15 says objection sustained, that is a form of  
16 teaching evidence. And if you are in my  
17 courtroom and I grant summary judgment,  
18 that's where we learn, isn't it,  
19 Lee Livingston? That's one way we learn.

20 But, I think judges have a special  
21 responsibility, in addition to the work we do  
22 in the courtroom, outside the courtroom in  
23 programs like this, and in programs with US  
24 law schools. And you see many deans here who  
25 draw upon our judiciary to teach in our law

26

1 schools, evidence and trial practice, and a  
2 number of other subjects.

3 We are grateful today to have the  
4 opportunity to have a panel composed of  
5 judges and lawyers who have an idea about  
6 whether or not judges have a role in legal  
7 education. To my right we have Chief Justice  
8 Cynthia Kinser, Chief Justice of the  
9 Supreme Court of Virginia. And to her right  
10 is Hugh Fain, who is president of the  
11 Virginia Bar Association. And to his right  
12 Monica Monday, who is a partner at Gentry  
13 Rakes in Roanoke. And at the end, our  
14 colleague, and my colleague, Judge Mike  
15 Urbanski. Our reporter is the Chief Judge of  
16 the Virginia Court of Appeals, Judge Walter  
17 Felton.

18 Let's start out with Chief Justice  
19 Kinser. Do judges have a role in legal  
20 education, and what is that role.

21 CHIEF JUSTICE KINSER: Thank you.

22 To answer the overriding question  
23 whether judges have a role in legal  
24 education, the answer is absolutely yes. I  
25 think what we need to address is how we do  
26

1           that as judges, because I think in some ways  
2           many aspects of that starts with us. We set  
3           the bar, we set the standard.

4                     And I think we can demand that of the  
5           lawyers who come in front of us, by ourselves  
6           being prepared, by ourselves acting  
7           professional, by ourselves being punctual and  
8           on time. And I think in the course of  
9           dealing with issues, whether it's motions,  
10          summary judgment, trials, that in the  
11          interaction that you have with attorneys,  
12          when you yourselves are prepared, that you  
13          can teach them.

14                    But, the more specific subject that  
15          Judge Lee asked me to address was the role of  
16          the Supreme Court in setting the ethical  
17          standards that lawyers must abide by when  
18          they are practicing law in the Commonwealth.  
19          And those standards are set by the Court.  
20          And it reflects the minimum that lawyers must  
21          abide by in order to keep their license.

22                    I think it's the Court's responsibility  
23          to continue to review those standards as the  
24          practice of law changes, because technology  
25          changes on a daily basis. And so, the Court  
26

1 has a responsibility, I believe, to  
2 constantly monitor those standards to make  
3 sure that they are keeping pace with the  
4 realities of the practice of law. Because it  
5 is our responsibility to protect the public,  
6 that's why they are there as sort of the  
7 minimum, but I believe that judges have a  
8 responsibility to impress upon lawyers that  
9 the practice of law in terms of keeping your  
10 license should be more than just abiding by  
11 those minimum standards. When they take the  
12 oath to be sworn in, part of that oath says  
13 that they will courteously and professionally  
14 demean themselves in the practice of law.  
15 That was added, I don't know, five or six  
16 years ago, I think at the request of the  
17 Virginia Bar Association. And that's what  
18 the oath now includes. And, I think we have  
19 a responsibility as judges to remind them of  
20 that in the practice of law, that they must  
21 conduct themselves courteously and  
22 professionally.

23 Part of the standards -- and this is  
24 something that I hope we will have some  
25 interaction on today. Part of the  
26

1 requirements that the Court has to consider  
2 is what are the requirements when lawyers ask  
3 to practice law, be licensed in Virginia  
4 through reciprocity? They haven't taken the  
5 Virginia Bar Exam, and they are asking to be  
6 licensed to practice in Virginia. What  
7 requirements should those be?

8           There's been some debate about that.  
9 They are currently under review by the Court.  
10 So, I hope that there will be some feedback  
11 about that. I mean, should they be required  
12 to take the professionalism course that all  
13 first-year students have to take sometime  
14 during their first year as an attorney that's  
15 admitted to practice here after they have  
16 practiced somewhere else for a number of  
17 years?

18           Or, should there be any other than that  
19 they have practiced five years and been  
20 licensed, so should that be sufficient?

21           So, I think the Court has a continuing  
22 responsibility in these minimal standards  
23 that everybody has to abide by in order to  
24 keep their license.

25           I think, also, the judges'  
26

1 responsibilities to continuing the education  
2 of lawyers comes in breaking down the  
3 barrier. Being a judge is very isolating.  
4 Being an appellate judge is even more  
5 isolating. And I think lawyers are sometimes  
6 hesitant to ask judges for their feedback.  
7 So, we have to break that barrier. We have  
8 to let them know that we are willing to talk  
9 to them, we have to let them know that we are  
10 willing to participate in CLE programs, and  
11 be open to that. And be able to, in these  
12 kinds of settings, whether they are formal or  
13 informal, to give feedback to attorneys, not  
14 case specific, but just in general about  
15 writing, oral communications, and the  
16 importance of being prepared.

17 I often tell lawyers that you don't  
18 have to be the most eloquent speaker, but you  
19 have got to be prepared. And that overcomes  
20 so very, very much. So, I think we need to  
21 convey that as judges, and we can in how we  
22 deal with attorneys that come in front of us,  
23 by asking them to -- engaging them in  
24 conversations about their motions, about a  
25 case, about a particular statute. That's a



1 teaching moment, even though in the context  
2 of a specific case.

3 But, more importantly, and I go back to  
4 this, is I think that in all of this, that  
5 judges really have a responsibility for being  
6 the example. And if we set the right example  
7 as judges, I think it goes a long way. You  
8 know, we often hear comments as parents that  
9 our children learn not by what we say, but by  
10 what we do. I think that's true of judges  
11 and the Bar as well.

12 JUDGE LEE: Hugh, what do you have to  
13 say about the role of judges.

14 MR. FAIN: Thank you, Judge Lee.

15 Hello, everybody. When Bill Rakes  
16 called and asked me to be on a panel that was  
17 going to discuss the topic of whether judges  
18 have a role in continuing the education of  
19 lawyers, I frankly thought it was a trick  
20 question.

21 And, of course, we all know that judges  
22 do have a role in the continuing education of  
23 lawyers. And for me personally, I thought it  
24 was a trick question because I have practiced  
25 in Richmond for almost 30 years, and the  
26

1 Bench and Bar relationship there, as it is  
2 in, I'm sure, most every jurisdiction  
3 throughout the commonwealth, is just so  
4 robust. And I'm going to talk a little bit  
5 about that. The Richmond Bar has no monopoly  
6 on Bench/Bar relationships and how judges go  
7 about educating our practitioners there.

8 But, I am going to talk, I want to  
9 review some of those with you, some of the  
10 ideas we have there. But, for a practitioner  
11 in Richmond, to me, that's just like falling  
12 off a log, asking the question are judges  
13 participating in the continuing education of  
14 lawyers. They certainly are and do in a very  
15 robust way.

16 But, I think the challenge that we need  
17 to talk about, and we have talked about it in  
18 other contexts here over the last day and a  
19 half, are how we deliver that continuing  
20 education. That is offered by the judiciary  
21 constantly to more rural areas or to populous  
22 areas where folks just don't decide they want  
23 to be a member of the Bar Association, they  
24 don't want to participate.

25 So, the offerings are there, as I think  
26

1 I'm going to review here in a moment, but I  
2 guess one of the challenges is how do we get  
3 the word out, how do we recruit lawyers to  
4 participate in Bar Association activities and  
5 CLE activities, and really take advantage of  
6 the offerings?

7 You know, in Richmond, we are very  
8 fortunate, as I say, to have a judiciary that  
9 never refuses us. I mean, just at every  
10 level, the federal judiciary, the appellate  
11 judiciary, the Circuit Court, J&DR Courts,  
12 General District Court, when we ask, they say  
13 yes. They come to our Richmond Bar  
14 Association CLEs routinely. And, of course,  
15 that's what fills the seats. That's what the  
16 lawyers want to hear, they want to hear from  
17 the judges. We want to know how to do it  
18 right. We want to know what the best  
19 practices are in your courts. We want to  
20 know the things we are not doing right.

21 So, when you all agree to come to a  
22 CLE, guess what, we show up. And you do, at  
23 every level, as I say.

24 Some other things that happen in  
25 Richmond, that I'm sure happen in other  
26

1 jurisdictions, but some things we do that are  
2 successful, we have a very, very well  
3 attended Bench/Bar conference annually in  
4 October. It's a full day set aside for Bench  
5 and Bar to come together with good CLEs.  
6 Again, the judges are all there in force, and  
7 that's why we are there, we want to learn  
8 from them. We have a luncheon, more CLE in  
9 the afternoon. Sometimes we finish off with  
10 refreshments in the evening. So, we do that  
11 in October every year.

12 Throughout the year our association has  
13 monthly lunches, and the judges attend. And  
14 we ask them to attend. In fact, we ask the  
15 judges, and I think David Harless might have  
16 instituted this in his year as president, we  
17 ask the judge at every level to host a table.  
18 So, we have J&DR, General District Court,  
19 Circuit Court, Federal Bench tables, where  
20 the judges on a rotating basis are asked to  
21 come and host a table. And of course those  
22 tables are full, everybody is clambering to  
23 sit with them.

24 So, these are opportunities for the  
25 Bench to interact with the Bar, and they do.

1 We asked them questions, how is it going in  
2 your court? Just by being together, we get  
3 educated. And we do that every month in the  
4 Richmond area.

5 We have a December holiday party and a  
6 spring social party where the Bench and Bar  
7 come together, and it's another opportunity  
8 for Bench and Bar to interact and talk about,  
9 you know, latest practices and so forth. All  
10 of those venues are not really for best  
11 practices, but we are together and meeting  
12 and talking, and that's what is important.

13 One thing the Richmond Bar does that I  
14 think is a great idea, and maybe by show of  
15 hands we can see if other jurisdictions do  
16 it, but we have a committee called the  
17 administration of justice committee. The job  
18 of this committee is to meet annually with  
19 the chief judges of each of the courts in our  
20 jurisdiction, federal and all of the state  
21 court levels, to interview the chief judge  
22 about what has happened in the past year,  
23 what is going on in your court, what do you  
24 see is the best practices, what do you see as  
25 the problems, what are some things that the

1 Bar needs to know about that we need to work  
2 on and improve. That report is compiled,  
3 gets delivered in our newsletter, and then it  
4 gets put online, and you can go to it at  
5 RBA.org/judgefeedback.com or .org if you want  
6 to look at it. It's an annual opportunity  
7 for the Bench to speak out and let the Bar  
8 know what it is that they ought to be doing  
9 better and what they are doing well.

10 Our judges, another thing that at least  
11 in the Richmond area that has worked well to  
12 educate our lawyers on procedure, in the  
13 state court system, Henrico County, Richmond,  
14 and Chesterfield County Circuit Judges came  
15 together a number of years ago, I would say  
16 15 or more years ago, and prepared something  
17 called the suggested practices and procedures  
18 for the circuit courts in those jurisdiction.

19 Because, as we all know, the Rules of  
20 the Supreme Court obviously set out the  
21 required Rules of Discovery and  
22 motions practice, but every court has got  
23 their local best practices and procedures.  
24 And the circuit courts in those jurisdictions  
25 have published a how to guideline for the

1 lawyers; look, if you are in this  
2 jurisdiction, here is how our docket calls  
3 work and here are suggested practices for  
4 discovery.

5 Now, some of that has been mooted by  
6 the Uniform Pretrial Procedure Rule that we  
7 have in the Code now, or in the Rules now.  
8 But, nonetheless, it was an effort by the  
9 circuit judges to educate the lawyers in our  
10 jurisdiction on the best practices in their  
11 court.

12 Statewide, the Virginia CLE puts on a  
13 wonderful program that I have the pleasure of  
14 participating in. Best practices in circuit  
15 court. Do you take that, Tom, statewide? Do  
16 you do that in every jurisdiction?

17 PARTICIPANT COMMENT: Yeah. The major  
18 metropolitan areas.

19 MR. FAIN: So, the Bench and the Bar  
20 come together and have CLEs annually on the  
21 best practices in Circuit Court so that we  
22 can convey to the Bar what the judges are  
23 thinking about and what it is that they ought  
24 to be doing or not doing in their court.

25 Of course, the VBA, we are privileged  
26

1 and honored to have a member of the judiciary  
2 sitting on our board of governors, and we  
3 have a judicial section at the VBA, and more  
4 opportunities for the Bench and Bar to come  
5 together.

6 So, again, I kind of viewed it as a  
7 trick question, Judge Lee, when we were asked  
8 about whether judges educate the Bar. Of  
9 course they do. There is the challenge, of  
10 course, of getting the word out, as I say, to  
11 folks that just, for some reason, maybe they  
12 are shy. I was interested in the comment  
13 earlier by someone about -- Judge, I think  
14 you made a comment, that some young folks  
15 today are so shy that they just don't talk.  
16 They e-mail, they text. And so, I can see  
17 how some of these young people might come  
18 into the practice of law and withdraw into  
19 their shell and not come to the Bar  
20 luncheons, not come to the Bench/Bar  
21 conferences, not come to the CLEs, and just  
22 do something online where they don't have to  
23 interact, except for those four hours where  
24 they have to interact. So, that's a  
25 challenge of course.

26



1           I think, also, in forums likes this one  
2           or other opportunities, it is not a one-way  
3           street, the Bar needs to speak out to the  
4           Bench about what we need to be educated on.  
5           And if I could, Justice Lee, I'm going to use  
6           this opportunity to mention an area of law  
7           that I think we ought to just think about a  
8           little bit, and use it as an example of how  
9           the Bar needs some education at the moment, I  
10          think, on the dreaded ESI, electronically  
11          stored information and e-discovery. This is  
12          a rapidly evolving area of the law. As we  
13          all know, the Federal Court has rules in  
14          place now that we are aware of. But, in my  
15          experience, and other lawyers I talk with,  
16          the application of those rules in state  
17          court, the practices of circuit judges vary  
18          widely from the extreme, I will call it the  
19          logical extreme, because it is logical to  
20          assume that there are not megabytes, there  
21          are not gigabytes, there are terabytes of  
22          data involved in most any, civil litigation  
23          matter anyway, that are housed in e-mails,  
24          text messages, web mail, shared servers. If  
25          any company that you are representing has  
26

1 more than 15 employees, the amount of e-mail  
2 and messaging and data that's out there on  
3 just a routine commercial matter is immense.

4 And the logical extreme of this issue  
5 is that you have to collect every bit and  
6 byte of that data and review it for  
7 potentially relevant information. And, at  
8 the other end of the scale, not all courts  
9 are seeing it that way, and you really have  
10 to be reasonable about what sort of data you  
11 have to collect and review in order to match  
12 it with an ad damnum case and so on and so  
13 forth.

14 So, I offer that as an example of ways  
15 where the Bar needs to speak up to the Bench  
16 and say, hey, we really need some guidance  
17 here, because it's costing our clients a lot  
18 of money to try to deal with these issues.

19 So, after I lob that out there, I will  
20 stop by just saying that I think that for  
21 most of us that are active practitioners, we  
22 get wonderful, vibrant education from the  
23 judiciary daily and weekly and monthly. But,  
24 the challenge is to bring those in the fold  
25 that aren't taking advantage of it.

1                   JUDGE LEE: Monica Monday is a civil  
2 litigator and has some ideas about whether  
3 judges have a role in controlling the  
4 litigation and the kinds of things that we  
5 will see from time to time, certain  
6 statements in briefs, attacks on counsel.

7                   Does the judge have a role to educate  
8 those lawyers, Monica?

9                   MS. MONDAY: Yes. But, part of that  
10 role may involved the Court as the  
11 disciplinarian or, as Judge Urbanski was  
12 quoted in an article saying, as a  
13 kindergarten monitor. This is an area where  
14 there is an increasing lack of civility and  
15 professionalism seen in not just the  
16 appearances in court with lawyers speaking to  
17 each other, but also in the briefs that are  
18 filed both at the trial and at the appellate  
19 level. And they are personal attacks, as  
20 Judge Lee has said, personal attacks upon  
21 counsel, charges of deceit or unprofessional  
22 or unethical behavior, where there is no  
23 accompanying sanctions motion. Inflammatory  
24 language used both in oral and written  
25 presentations.  
26

1                   This is a difficult area for the Court  
2                   because there's no clear breach of ethics,  
3                   but rather you are involved in this more  
4                   mirky area of whether there's really a  
5                   transgression with regards to professionalism  
6                   and civility.

7                   There was an article, which I've got  
8                   here, there was an article that two of my  
9                   partners wrote a few years ago that appeared  
10                  in the Virginia Lawyer. It's called, "Have  
11                  You Made a Last Ditch, Desperate and  
12                  Disingenuous Attempt to Subvert the Legal  
13                  Process Today?" And the article bemoans the  
14                  increasing use of this type of language,  
15                  principally in our written filings with the  
16                  Court.

17                  And I'm going to read just a little bit  
18                  of some of the information. Basically they  
19                  went and gathered some of this data and then  
20                  also spoke to some judges, including  
21                  Judge Urbanski, Justice Lemons,  
22                  Justice Koontz, and one of our local trial  
23                  judges, Judge Weckstein. But, here is just a  
24                  sampling of what they included. They said,  
25                  "Somehow we are not just wrong anymore, we  
26

1 are absurd, ridiculous, disingenuous, myopic  
2 in our view of the world, and prone to wild  
3 exaggeration. Now, instead of being  
4 incorrect, we are hopeless, we engage in  
5 subterfuge, we obfuscate the facts, we muddy  
6 the water, we employ a selective memory, and  
7 conveniently forget facts in the record, and  
8 generally spend all day trying to pull the  
9 wool over the Court's eyes. Our pleadings  
10 smack of desperation and serve as gross  
11 admissions of failure."

12 This is some of the language that is  
13 now being seen in briefs filed in all the  
14 courts in Virginia. A couple years ago I  
15 created my own list of words that I had seen  
16 appear in briefs and filings, and it included  
17 language such as that the person was  
18 misleading the Court, had played fast and  
19 loose with the facts or the law, had accused  
20 the opponent of presenting arguments that  
21 were frivolous, spurious, absurd, specious,  
22 sophomoric, disingenuous, and blunderbuss.  
23 How about that opposing counsel has engaged  
24 in sophistry.

25 In one appellate brief that I was  
26

1 involved in, the opposing counsel said that  
2 my argument could only have been advanced by  
3 someone who had never tried a case before. I  
4 had, and I won that case. But, besides the  
5 point, lawyers don't like this. Nobody wants  
6 to be on the receiving end of it.

7 And, more to the point, what the  
8 article talked about was that the judges  
9 don't want to see it categorically.

10 The other conclusion that the article  
11 reached was that it doesn't work. And the  
12 judges uniformly said it doesn't work.  
13 Judge Urbanski was quoted as saying it is  
14 distracting to what we are trying to do.  
15 Justice Lemons said it doesn't help your  
16 case.

17 So, having said all of that, where does  
18 that leave the judge? Is the judge going to  
19 become the disciplinarian in the court, the  
20 traffic cop, or the kindergarten monitor?

21 We know that the judge's role is to  
22 call balls and strikes with regard to the  
23 law. But, is the Court going to call balls  
24 and strikes when it comes to this kind of  
25 behavior, whether it occurs in court or on  
26

1 the briefs?

2 There are natural impediments, of  
3 course, to the Court engaging or taking on  
4 this greater role. One is time. There are  
5 heavy dockets, there are other things that  
6 the Court is supposed to be doing. Further,  
7 it may at least create the appearance that  
8 the judge has abandoned his or her role as  
9 the impartial and unbiased decision-maker.  
10 If you are going to call somebody out in  
11 court, how is that going to look? Is it  
12 going to make it look like you have abandoned  
13 that impartial role?

14 On the state level, is there a fear of  
15 retribution when it comes time for  
16 reappointment? Is the lawyer in the  
17 courtroom who is creating part of these  
18 problems, is that lawyer a legislature? Now,  
19 the federal judges don't have these problems,  
20 they have lifetime appointment. But, it is  
21 an issue, perhaps, for the state judges.

22 And, finally, one of the impediments  
23 may be that judges don't see that as their  
24 role. That it is simply not their role to  
25 police what happens in the courtroom and in

26

1 the briefs.

2 But, if we flip the coin for a minute,  
3 what does the Bar think? I can only present  
4 my personal views here, and hopefully we can  
5 open this up for some discussion. But, I'm  
6 left asking the question of, if the judges  
7 don't do it, who will?

8 And I don't know that there really is  
9 anyone else who can do it. I will talk a  
10 little bit about what the VBA has done, of  
11 course you have articles like this, but who  
12 is going to do it? And I honestly think that  
13 the Bar yearns to have judges step in and  
14 intervene in these kinds of circumstances. I  
15 think they yearn for it. And this is not to  
16 kind of minimize it, but in some respects  
17 when you are learning about becoming a  
18 parent, they always tell you the kids want  
19 rules. Kids yearn for structure and rules.  
20 I think we all do. And I think that lawyers  
21 hate this kind of practice, it increases the  
22 stress and anxiety of practice. Back in the  
23 days of faxes, I had an awful case, the other  
24 lawyer was in North Carolina, and every fax I  
25 got was like a bomb landing in my in box. It

26



1 was laden with ethical attacks, and just I  
2 didn't want to look at them. It increases  
3 the anxiety for the lawyer. And again, it  
4 distracts the Court from its job, which is to  
5 be the decision-maker.

6 But, if left unchecked, I think this  
7 behavior will only continue. And we run the  
8 risk that it will become the norm in what we  
9 see in court.

10 So, what can judges do? Shameless  
11 pitch for the VBA, the VBA did advance the  
12 Principles of Professionalism, and they were  
13 approved by the Supreme Court of Virginia and  
14 by every statewide Bar organization. And  
15 those rules call out this type of behavior  
16 and say it is inappropriate, and specifically  
17 states that lawyers must avoid ad hominem  
18 attacks and must treat their counsel with  
19 respect and courtesy. But, who enforces  
20 these rules if not the Court?

21 The other possibility that judges can  
22 do is something that has already been talked  
23 about, which is the judge as the educator.  
24 Justice Lemons referenced the time that  
25 judges spend speaking at CLEs, and Hugh  
26

1           talked about it as well. As an appellate  
2           practitioner, I have been part of the  
3           Virginia State Bar litigation section, which  
4           hosts free appellate CLEs across the state.  
5           And happy to report, Justice Kinser, even in  
6           Grundy several years ago under the leadership  
7           of Steve Emmert.

8           But, these are designed to have judges  
9           and practitioners come together and talk  
10          about at least trying to elevate the level of  
11          appellate practice. And the judges are so  
12          generous with their time in doing this. But,  
13          one of the things they always talk about is  
14          guarding your reputation, about appropriate  
15          dress, about appropriate decorum, about  
16          appropriate behavior and what to include and  
17          not include in your briefs.

18          So, that's an appropriate role,  
19          clearly, and one that the judges in Virginia  
20          have already taken up.

21          What about the judge as a gentle  
22          teacher in the courtroom? If something  
23          happens in the courtroom, is it appropriate  
24          to take the lawyer behind the closed door and  
25          say I didn't really like that or that doesn't

1 work? We have a local judge who does that.  
2 Has been doing it for years. And we can all  
3 debate whether -- you know who it is. We can  
4 all debate, does the Bar like that? At least  
5 you know where you stand with that judge.

6 Does the judge call -- if it's a young  
7 lawyer from a law firm, does the judge call  
8 the senior counsel in the firm, call the  
9 senior partner in the firm, and talk to the  
10 senior partner on a very informal basis about  
11 something that happened in court?

12 Or, maybe something as simple as,  
13 perhaps picking up on something  
14 Justice Kinser said, which is maybe an  
15 announcement at the beginning of court that  
16 the Court expects appropriate, courteous,  
17 professional demeanor by the lawyers in the  
18 courtroom.

19 But, then we get into the issue of  
20 maybe the judge as the referee. Can the  
21 judge say, Mr. So-and-So, that is not  
22 acceptable. Or attorney X, would you please  
23 restrict your comments to the facts and the  
24 law. Or, attorneys, I'm not going to accept  
25 this type of behavior and language in the  
26

1 court.

2 With regard to decorum and practice  
3 issues, I've seen some instances, at least at  
4 the appellate level, where the Court educates  
5 the lawyers every day. Just a while ago, a  
6 few writ sessions ago, there was a lawyer who  
7 delivered an entire writ argument leaning on  
8 the podium like this (indicating). And one  
9 of the justices said at the end, you know,  
10 please in the future do not lean on that  
11 podium.

12 The way that the lawyers address the  
13 justices is often inappropriate, you guys, or  
14 other inappropriate ways, and the court will  
15 say, Counsel, that's not an appropriate way  
16 to address the Court. I mean, it is done  
17 right on the spot and it's done in a very  
18 professional, appropriate way, but that's  
19 with regard -- those are easier, a little  
20 bit, with decorum and practice issues.

21 The Court of Appeals, I've seen the  
22 judges on the Court of Appeals tell a lawyer  
23 at oral argument that they have not stated  
24 the facts in light of the appropriate  
25 standard of review, and that they need to do

26

1           that in the future.

2                       What do you do about the language in  
3           the briefs? And I think that's a very tough  
4           issue. In the appellate court when a brief  
5           is not properly filed, often times the Court  
6           will send a 10-day letter that says you have  
7           got 10 days to fix this, the way it's bound,  
8           or something is wrong with it, you have got  
9           10 days to fix it. Can the Court send a  
10          letter to counsel saying you need to refile  
11          this brief deleting this inflammatory  
12          language? Does the court send counsel a  
13          letter saying attached are the VBA Rules of  
14          Professionalism, which the Supreme Court of  
15          Virginia has adopted, we hope that you comply  
16          with these in the future? Does the court  
17          strike the language from the pleading or the  
18          brief?

19                      These are really difficult issues, it  
20          is a mirky area, but hopefully during the  
21          course of this discussion and in the future,  
22          those issues can be explored.

23                      JUDGE LEE: Judge Urbanski.

24                      JUDGE URBANSKI: Thank you, Judge Lee.

25                      First let me say it's a real privilege  
26

1 to be here. I look around this room, Holy  
2 cow, what a group of leading lawyers and  
3 legal educators. It's a real privilege for  
4 me to be here.

5 I want to follow up on a few things  
6 that have been said already, sitting here at  
7 the end. First, I think courts in particular  
8 have a limited role. We have a role. But,  
9 we have a limited role in legal education.  
10 And that's because if you are trying the  
11 case, you up there thinking why is that  
12 lawyer asking that question, or why is that  
13 lawyer not asking that question? Or where is  
14 the statute of limitations defense, why isn't  
15 that raised?

16 And we really can't get involved in  
17 that. You know, the fray between the battle  
18 in the courtroom, there are things that we  
19 need to stay away from because it's not our  
20 job. It's not our job to try the case. It's  
21 not our job to -- you know, in Federal Court  
22 if there's a jurisdictional issue, I'm always  
23 going to raise it. But, if it's an  
24 affirmative defense and somebody just hasn't  
25 pled it, well, that's their job, even though  
26

1 I'm sitting up there thinking about why they  
2 haven't raise it. Not my job, okay.

3 And so, the limited role of judges is  
4 something that makes this issue a little  
5 difficult, because there are things we are  
6 not supposed to do.

7 The thing that Justice Kinser said, I  
8 think is right on the money, and I was  
9 thinking about it over this weekend as I read  
10 the materials which are, I think, really  
11 outstanding. I think we can best lead by  
12 example. And there's a number of examples I  
13 think that come to mind when I think about  
14 that. I mean, how many times have we all  
15 been in court when the first thing you walk  
16 in for this hearing that you have written  
17 briefs on, and you have prepared for the  
18 argument, and the judge says tell me what  
19 this case is about, okay. How many times?  
20 Lots, okay.

21 I have been in court trying a case  
22 where the judge -- a bench trial where the  
23 judge has fallen asleep, okay. It may  
24 reflect on my advocacy, all right. I argued  
25 to the Supreme Court one time where one of

26

1 the justices turned his chair around. Again,  
2 it may reflect on my advocacy.

3 So, you know, the issue -- I think that  
4 sends the wrong message to the Bar when the  
5 judge doesn't know what the case is, when the  
6 judge hasn't read the briefs, when the judge  
7 hasn't looked at the legal issues, what does  
8 that say to the lawyers?

9 It says to the lawyers, well, gosh, I  
10 don't really have to spend that much time  
11 because somebody is just going to come in and  
12 make some stuff up on the fly and the judge  
13 is going to buy it, because the judge hasn't  
14 done his or her homework.

15 So, leading by example goes straight  
16 into the area of competence, core competence  
17 and preparing, because the judge needs to be  
18 there first, and the judge needs to set that  
19 example. And what it means is, on these  
20 immense salaries that we make, it means we  
21 have got to burn the midnight oil just like  
22 the trial lawyers do, because we have got to  
23 be prepared. And we need to be -- I like to  
24 be -- I like to be better prepared than the  
25 lawyers. It really makes me happy, you know.

26



1           When the lawyers are -- it doesn't make me  
2           happy for them, it makes me happy for me that  
3           I'm doing my job, that I am prepared.

4           So, I think lawyers can learn by  
5           example in terms of competence and  
6           preparation, by being competent ourselves, by  
7           being prepared, by being civil, by not being  
8           rude, by letting the lawyers do their jobs,  
9           by listening to them, letting them make their  
10          arguments, by being patient. I think that's  
11          something that is very important for,  
12          particularly a trial court to do, is to be  
13          patient and to let folks listen.

14          So, I think we can lead by example. I  
15          think the Chief Justice is right on the  
16          money. I think leading by example is very  
17          important.

18          Let's talk for a minute about civility  
19          and professionalism. And there are really  
20          two worlds here. There is the world of  
21          visible civility and professionalism that as  
22          judges you rarely see. There's, you know,  
23          somebody does something in the courtroom,  
24          well, that doesn't happen really all that  
25          often. Or somebody writes something in a  
26

1           brief, that happens more and more frequently,  
2           but it still -- it is still not the real  
3           problem with civility and professionalism,  
4           and that's what the Court doesn't see.  
5           That's the lawyer who doesn't return phone  
6           calls, that's the lawyer who won't give you a  
7           deposition dates because he just doesn't want  
8           to. It's the lawyer who is just hard to deal  
9           with on a daily basis. And we all know who  
10          those lawyers tend to be. You know, when you  
11          are in a particular community for a long  
12          time, you kind of know who they are.

13                 And so, how do judges deal with that  
14          particular issue? I know what I do when I  
15          see something in a brief that's particularly  
16          troubling, I know exactly what I do. I  
17          circle it and I take a break from whatever  
18          I'm doing and I go to my law clerk and I say  
19          can you believe this person actually said  
20          this? I mean, my God, what are they  
21          thinking? You know, am I sleeping? I mean,  
22          this is ridiculous. This is completely  
23          absurd. Don't ever do that. Okay. So, I  
24          try to talk to my law clerk, don't be the  
25          kind of lawyer who does this. So, there's my  
26

1 little next generation education.

2 So, is Justice Lemons right on the  
3 money when he says it doesn't work, it's not  
4 helpful? Absolutely. It's distracting, it's  
5 annoying, but I don't think that's the real  
6 problem with civility. The real problem with  
7 civility is the e-mails that you get. You  
8 know, I remember years ago really before  
9 e-mail was so prevalent, I was dealing -- I  
10 had a case in the Southern District of  
11 New York and I was dealing with a law firm in  
12 New York City. And they loved to send me  
13 faxes on Sunday night, okay. That's just the  
14 way they did business. They sent me faxes,  
15 the most hostile, nasty faxes I would get  
16 would be Sunday night. I would come into the  
17 office and start my week off just great.

18 And so, that's what we don't see as  
19 judges. We don't see that unseen incivility.  
20 And I think something -- I read in the  
21 materials, and the article written by Justice  
22 Lemons, is really right on the money. And I  
23 think what judges can do, what trial judges  
24 can do to deal with the unseen incivility,  
25 the invisible incivility is to be open and

26

1 accessible. When there's really a problem,  
2 that somebody can approach the Court and say,  
3 look I'm really having a problem, I've got to  
4 deal with this.

5 An example I had recently -- a couple  
6 things about that. An example I had recently  
7 was two lawyers couldn't agree as to where to  
8 take the deposition, whether it was the  
9 plaintiff's lawyer's office or the  
10 defendant's lawyer's office. And it was the  
11 plaintiff being deposed. But, the defense  
12 lawyer was concerned if I take the deposition  
13 at the plaintiff's lawyer's office and I need  
14 to make a copy, this lawyer won't let me use  
15 the copy machine. I mean, for goodness  
16 sakes, they had a hearing with me in Federal  
17 Court on the issue of where to take the  
18 deposition. I was glad they did, okay. I  
19 was glad they did, because I can say right  
20 there jeez Louise, I mean, are you all  
21 kidding me? You really want to do this? You  
22 want to -- so, hopefully I sent a message to  
23 the lawyer that was disinclined to allow  
24 someone to use their copy machine, that  
25 that's not appropriate practice.

1           I think by trial judges being open and  
2           accessible -- and I do all of my own  
3           discovery myself, simply for a number of  
4           reasons, but because, A, it's fun, and, B, I  
5           like to get in on the cases a little sooner.  
6           But, by being open and accessible, I think it  
7           sends a message that folks who are out there  
8           engaging in this kind of stuff ought not and  
9           cannot get away with it. Not because someone  
10          is going to call the judge, but because the  
11          threat is there, okay. If someone just says,  
12          well, let's just call the judge, okay. Let's  
13          just call the judge. And if it's a judge --  
14          and I've heard a state judge, and I know  
15          there's federal judges that feel the same  
16          way, who say, listen, if you have got a  
17          discovery dispute, don't call me. I don't  
18          want to be bothered with it. I'm too busy  
19          dealing with other things, okay. Sure, we  
20          are all busy, we have got lots of stuff to  
21          do. But, I think if the lawyers know that  
22          you have got a case with a judge who doesn't  
23          want to be bothered with discovery disputes,  
24          that is going to encourage the lawyers to get  
25          away with murder. They are never going to

1 agree to deadlines, they are never -- they  
2 are going to file the most absurd objections  
3 to interrogatories, you know, I don't know  
4 what truck means. You know. And they are  
5 just going to get away with murder.

6 So, if the lawyers know that, yes, the  
7 judge will take a phone call, the judge will  
8 deal with that issue, it doesn't mean that  
9 you call the judge all the time, but it means  
10 that -- I think that provides some check on  
11 incivility.

12 The hidden, the unseen incivility. You  
13 know what it's -- I mean, when you are  
14 practicing law, the hardest thing to do is  
15 schedule stuff. Getting the discovery done,  
16 getting scheduling, dealing with lawyers who  
17 are just completely -- they are pains, okay.

18 Some of those things are written in  
19 briefs, I was wondering did I write that  
20 brief? But, I hope not. Some of those I  
21 probably did.

22 So, I think Justice Lemons is right on  
23 the money, being open and accessible as a  
24 trial judge, it sends the message that you  
25 know, sure, do I want to hear all of this  
26

1           stuff all the time? No. But, should I be  
2           there to deal with it? Yes, in certain  
3           cases. Does that mean that every lawyer  
4           should with every motion file a motion for  
5           sanctions right along with it? I mean,  
6           sanctions motions make me crazy, because  
7           sometimes they are warranted, but come on,  
8           they shouldn't accompany every motion.

9                     And I think in this day and age, in  
10           some respects there are folks who want to  
11           play the gotcha game in litigation, and that  
12           is, oh, well, I got him on something, so I'm  
13           going file this motion for sanctions, and I'm  
14           going to get it. So, the pendulum can move  
15           too far in that direction as well.

16                    So, first point, we lead by example.  
17           Second point on civility, I think our role at  
18           the trial level is to be available to deal  
19           with incivility.

20                    The issues of core competence, of  
21           preparation, I think we can deal with by  
22           example by being prepared ourselves. The  
23           issue of trial competence, you know, trial  
24           advocacy skills, in an era where nothing is  
25           getting tried, both criminally and civilly,

1 is a real problem, okay. It's a real  
2 problem. Law schools are trying to address  
3 it, and I compliment them. You know, there's  
4 this whole philosophical discussion that I'm  
5 not capable of thinking about, but I think  
6 there's some practical aspects of education  
7 here that need to be addressed by law  
8 schools. Maybe it can go too far, maybe not,  
9 I don't know.

10 There are some really great programs  
11 like the trial advocacy program that,  
12 Judge Lee, I know that you and I, and lots of  
13 other folks, participate in in  
14 Charlottesville that's really good. One of  
15 the problems with that is it's a great  
16 problem, but -- and I know they give  
17 scholarship, but it's a pretty expensive  
18 program, it takes a whole week to do, lots of  
19 folks can't do that.

20 What's the lawyer's job -- I mean  
21 what's the judge's job when it comes to  
22 competence? I know in the criminal arena,  
23 since we are constantly dealing with  
24 ineffective assistance of counsel claims,  
25 both in state habeas and federal habeas, we  
26



1 can write opinions that say this is really  
2 bad, you know, this is ineffective assistance  
3 of counsel to do this or do that. But, that  
4 only gets -- that's only as effective as  
5 those opinions are read.

6 One thing to help deal with the issue  
7 of core competence, I know when I see  
8 somebody who has done a good job, or when I  
9 see someone who has done a particularly good  
10 job on the brief, when I come down off the  
11 bench and shake their hands after the  
12 hearing, I always tell them that, okay. If  
13 they did a really bad job, I generally don't  
14 say, you know, that was pathetic, okay.

15 I know I was arguing before the Fourth  
16 Circuit once and Judge Motts came down and  
17 shook my hand and said you must be a really  
18 good trial lawyer. Which made me think I  
19 must be a really bad appellate lawyer. So --  
20 and then I lost, so, hey, I guess that's  
21 right.

22 One thing we did in Roanoke a few years  
23 ago is we did -- and I give Tom Miller and  
24 folks at the Roanoke Bar Association a lot of  
25 credit, is we did our own little baby trial  
26

1           advocacy program.  And one of the things was  
2           it was sort of modeled loosely after Steve  
3           Strassburg's program in Charlottesville, but  
4           it was inexpensive, it was done by the local  
5           Bar, and this is what we did.  We spent a  
6           Friday, and we started -- and I went and  
7           personally asked folks would you talk about  
8           voir dire, would you talk about opening  
9           statements, would you talk about direct and  
10          cross, would you talk about expert witnesses.  
11          We had a full-day seminar with the leaders in  
12          our area talking about those issues.  Sort of  
13          like just a lecture question and answer,  
14          really well attended.

15                 And then -- and that was open to  
16          everybody.  And then for the younger lawyers,  
17          less than five years in practice, we had --  
18          and I presided, and we, the Bar Association  
19          paid for temps to come in and serve as  
20          jurors, we used the Federal Court, and I  
21          spent two days, and we tried a case.  We had  
22          to spend a little money, we bought the facts  
23          from NITA, they sold us the fact pattern, the  
24          Bar spent a little money on the jurors, and  
25          then with -- but, the lawyers weren't alone.

1 They were in terms and they had mentors, some  
2 of the same folks giving the lectures, and  
3 others sitting by their side and saying this  
4 works, this doesn't work, what do you think?  
5 The mentors were available all weekend to  
6 work with these folks to do that. And we did  
7 that for two days. I tried those cases. And  
8 the jurors were on closed-circuit TV, okay.  
9 Well, my mentor Bill Propp said, if that  
10 doesn't lead to more settlements, nothing  
11 would, because we got to hear what the jurors  
12 had to say about insurance, pretty much, the  
13 whole time.

14 But, it was, I think, a good program  
15 that can be used. It was inexpensive, the  
16 young lawyers liked it. Sure, it took a  
17 couple of days, three days of my life to  
18 participate in this thing, but I think that's  
19 something a judge could do to help young  
20 lawyers. Do that kind of thing through the  
21 Bar Association.

22 One other thing I want to say, and then  
23 I will stop, is I think another area for  
24 getting, for building competence among the  
25 lawyers, and in my wheelhouse it's in the  
26

1 courtroom, is encouraging folks to -- and  
2 both Bars, the statewide, both statewide bars  
3 and the other bars, the VADA and the others,  
4 encourage folks to get involved in pro bono  
5 work. Because, you know, when you read these  
6 materials and you think about all of the  
7 comments in there about -- there are -- you  
8 know, the top lawyers from the top law  
9 schools are going to the top law firms  
10 serving corporations, and there's a lot of  
11 individuals who are underserved. And we all  
12 see that. We all see that. There's a lot of  
13 folks who are underserved, folks with low and  
14 middle income.

15 And to encourage, I think lawyers can  
16 get trial skills by doing pro bono work. I  
17 have -- when I was a magistrate judge, the  
18 magistrate judge in the Western District is  
19 in charge of all pro se cases, and we have  
20 hundreds and hundreds and hundreds of them.  
21 And I put a little feeler out on the website  
22 about eight years ago saying if you really  
23 want to try cases and you want to learn, we  
24 will appoint you. And if you win, you get  
25 your attorney's fees under 1983, but we can't  
26

1 pay you like under the CJA Act. And I put  
2 that out there, we need lawyers. And we were  
3 only going to appoint them in cases that were  
4 actually going to trial. They weren't going  
5 to go through all of the chaff that we see,  
6 it was just for the cases that had an issue  
7 that was going to go to trial, because there  
8 are so many of them.

9 And I got no response, zero, no  
10 response, none whatsoever to that request.  
11 And so, the judges continued to try a lot of  
12 these cases with a pro se plaintiff. You  
13 know, I don't know about -- there's nothing  
14 worse than when you are a judge and you have  
15 got a pro se plaintiff, you know. And it's  
16 not particularly good for the defendant  
17 either, because you have to sort of -- the  
18 Fourth Circuit says we must grant them all  
19 kinds of courtesies.

20 So, one thing we are doing now, the  
21 Roanoke Bar, one thing it's doing now is it  
22 has picked up the mantra and in order to  
23 encourage folks to get into the courtroom,  
24 try these cases, they are doing a CLE on 1983  
25 cases. And it's being led off by the guy,  
26

1 Gerald, who does -- the law professor from  
2 Illinois, who does all of the FJC, the  
3 Federal Judicial Center programs on 1983  
4 cases. He is coming in by video into the  
5 Roanoke courthouse, federal courthouse, he is  
6 going to talk, and then we have got local  
7 lawyers to talk about plaintiffs and defense  
8 side on 1983 cases. And, therefore, to give  
9 the members of the Bar who hadn't had any  
10 experience in those cases, the core  
11 competence to come in and say, look, I will  
12 take one of those cases. I will try one  
13 those cases. It helps the Court, it helps  
14 the parties, and hopefully helps those young  
15 lawyers get some experience in the courtroom.

16 So, that's what I have to say, Gerald.

17 JUDGE LEE: Thank you, Mike. Thank  
18 you.

19 Well, part of this conference is to  
20 address the role of the law schools in the  
21 legal education and the role of the judge in  
22 legal education. It seems to me that there's  
23 a triangle here. As Justice Kinser  
24 mentioned, the first way that we can help  
25 lawyers, and young ones in particular, is to  
26

1 be prepared, to set a good example, to make  
2 proper rulings on their motions, and to  
3 conduct a trial with civility. Those are  
4 very important roles.

5 I think many of the judges in this room  
6 also participate on a regular basis in  
7 continuing legal education. And we also  
8 participate in activities with our law  
9 schools, and with the law schools either as  
10 teachers, serving on the Board of Visitors,  
11 serving on the Dean's Advisory Council, and  
12 other ways.

13 There's actually a triangle here. That  
14 triangle is the intersection between judges  
15 and the law schools, and leadership role as  
16 an advisor to the law schools, and also  
17 teaching at the law schools.

18 But, there's another part I want to  
19 bring up. We talked about a little bit now  
20 the issue of mentorship and internships of  
21 law students beyond law clerks, and that is  
22 internship programs. It's kind of like being  
23 an apprentice, when you intern in my  
24 chambers, we put you through boot camp. I  
25 have a training program for interns on how to  
26

1 write, how to do research, and we give them  
2 projects, and they produce memos and orders  
3 and they help with our work, but they are  
4 being trained. Kind of like an intern in a  
5 medical center working with real patients and  
6 working with real cases, that's a very  
7 important role.

8 I just want to mention in that respect  
9 that there are a number of programs that many  
10 of us in this room participate in. The  
11 American Bar Association has a program called  
12 the Judicial Internship Opportunity Program,  
13 which is a summer program, where students  
14 work in state and federal judges' chambers.  
15 I run a program along with the Just the  
16 Beginning Foundation, where this summer we  
17 have placed 65 students in federal judges'  
18 chambers, and we have done training for them  
19 in advance on writing and research before  
20 they start working with their judges, so they  
21 will be able to go in chambers with some idea  
22 of how things go.

23 I think there's another role that  
24 judges have, and that is in terms of civic  
25 and public education, where we can also use  
26



1 law students. I'm not sure about you, but  
2 this is a season for summer camps. I do five  
3 different summer camps. How many? Five.  
4 Why? Because I think it's important for kids  
5 to have a chance to come to court and nothing  
6 bad happens. Nothing bad happens. They come  
7 into court, they see a judge, they see  
8 lawyers, and they see this array of diverse  
9 backgrounds. And what they find out is when  
10 you take the robe off, that many of them have  
11 had the same experiences as you, in terms of  
12 being first in your family to go to college,  
13 to have to take student loans out to pay for  
14 your legal education, to have to work your  
15 way through college, to have to overcome some  
16 obstacles. These things, I think, empower  
17 young people to come into the profession.

18 I'm very intentional about doing this  
19 when I do these programs, because I bring  
20 little young lawyers in. So, for example, we  
21 have a program called The Colors of Justice  
22 Program, which is set up by the Virginia  
23 Women's Judges' Association initially. And  
24 we have the Fairfax Young Lawyers as well as  
25 the Virginia Black Attorneys' Association,  
26

1 the Hispanic Bar, and the Asian Bar. We put  
2 on a mock trial for these kids on a Saturday  
3 at the courthouse, and we divide them in  
4 groups, and they deliberate and reach a  
5 verdict. And they talk to the judge and  
6 lawyers in this program about their  
7 backgrounds in a way that will empower them.

8 These are things that we can do on an  
9 ongoing basis that will make a difference.

10 In addition to that, I think that we  
11 have an obligation to be involved in  
12 reflective work and the court to participate  
13 in programs that are put on by the American  
14 Bar, and the National Bar Association, and  
15 other National Bar Associations. Why?  
16 Because I think it makes a difference. And,  
17 also, there's some learning that takes place,  
18 that takes place with the judges and the  
19 lawyers and the law students.

20 I want to come back to what Michael  
21 just said in terms of the role of the judge  
22 in court and what Monica said about the role  
23 of the judge in court. And that is, I think  
24 that we can, by the way we conduct court,  
25 teach. You must stand in this court if you  
26

1 have an objection to make. That's a speaking  
2 objection, those are not allowed here. You  
3 want a continuance? You must not be from  
4 around here. Have you been in Federal Court  
5 before? You haven't been in Federal Court  
6 before, this is your first time, well,  
7 welcome. We don't grant continuances here.  
8 You ready?

9 I mean, there are ways that you teach  
10 that let them know how things are being done.  
11 That's very important. I think one of the  
12 greatest things the Virginia State Bar does  
13 in the Supreme Court Circuits is the  
14 professionalism course, because it gives  
15 young lawyers a chance to meet judges and  
16 practitioners, very selective practitioners.  
17 Not anyone can be a member of the faculty for  
18 the professionalism course. The court is  
19 very intentional about that. So that when  
20 they have their first introduction to the  
21 practice in Virginia, they get an idea of  
22 what it's like to be a Virginia lawyer, and  
23 that you are an officer of the Court. Yes,  
24 you are an advocate, but you are an officer  
25 of the Court. And there are distinctions in  
26

1           those roles.  So, there's an opportunity to  
2           talk about those things when there's nothing  
3           at stake.  It's very difficult to have a  
4           conversation with a lawyer when you have a  
5           case on the other side of the courtroom with  
6           them.  But, if are you sitting in a room in a  
7           discussion setting at the professionalism  
8           course, there's a way to form relationships.  
9           And all of these things, I think, are very  
10          intentional, and they matter, and they  
11          distinguish Virginia lawyers from other  
12          places.

13                        Going back to Justice Kinser's  
14           statement about the responsibility of the  
15           Supreme Court and out-of-state lawyers, let's  
16           start there.  I think that there is an  
17           obligation to ensure anyone that appears in  
18           our court, whether it's a pro hac vice motion  
19           or they are being admitted to the court,  
20           understands what it is like to be a Virginia  
21           lawyer.  And for now, it seems to me the  
22           professionalism course is at least one way of  
23           introducing them to our customs and our  
24           procedures and our rules in a way that's very  
25           meaningful.

1           So, let me stop there and just say that  
2 I think it's obvious that judges are involved  
3 in legal education. We have an obligation,  
4 and I think that most of the judges who are  
5 here and judges in most localities are very  
6 active with programs like Hugh mentions.

7           But, Hugh, what do you do if you are in  
8 court, I think Judge Urbanski touched on  
9 this, and the judge is sitting there, and  
10 they are looking at the pleadings, and it's  
11 obvious that the statute of limitations has  
12 run, but nobody said anything? Does the  
13 judge have an obligation to jump in at that  
14 point?

15           MR. FAIN: Depends on what side of the  
16 case I'm on.

17           And, you know, we all see different  
18 degrees of activism in that regard. We all  
19 know some judges who when the  
20 cross-examination ends, they will say is that  
21 all? And then they will pick up the  
22 examination. And if you are on the other  
23 side here, you are not too happy about that.

24           I don't know, Judge, I think that those  
25 of us that are responsible in the practice of  
26

1 law hope that the right thing happens in  
2 court and all of the proper things that ought  
3 to come out, do come out. And I think by and  
4 large the Bar is appreciative of judges who  
5 are active and don't let things go left  
6 unsaid. But, I haven't studied the judicial  
7 ethics of it. Judge Urbanski commented that  
8 it's not your job, it's actually not proper  
9 for someone. This is the jurisdictional --  
10 say you are trying a criminal case and they  
11 don't ask the question did the crime occur in  
12 the City of Richmond, and they haven't proved  
13 that element. Judge, are you allowed to tell  
14 the prosecutor to prove that element or not?

15 JUDGE LEE: Do you want them to do  
16 that, do you want the judge to jump in that  
17 way?

18 There's a very famous story from a  
19 Northern Virginia trial in Federal Court, and  
20 the examination had concluded, and the judge  
21 took over cross-examination, and it was  
22 blistering. And the lawyer for whom this  
23 cross-examination was being conducted, stood  
24 up and said, "Well, Judge, I don't mind you  
25 taking over my case, but I don't want you to

26

1           lose it for me."

2                     And there are judges who, if you are at  
3           trial, and your objection is sustained, and  
4           there was no objection by the other side, and  
5           you look around, and I've always thought that  
6           was inappropriate.

7                     What do you think Justice Kinser?

8                     CHIEF JUSTICE KINSER: I think it is  
9           inappropriate. I think there's a fine line  
10          between actually becoming an advocate instead  
11          of a judge. So, I don't think it's our  
12          responsibility to jump in and remind someone  
13          that the statute of limitations has passed  
14          and you haven't pled that as an affirmative  
15          defense, or whatever, or taking over the  
16          cross-examination.

17                    I think our role comes in talking about  
18          the quality of the representation, and  
19          jumping in, I think, it is perfectly  
20          appropriate for a judge to tell someone to  
21          refile a brief and to take out the  
22          inappropriate language. I know all of you  
23          are aware of a couple of instances when the  
24          Supreme Court has actually issued a show  
25          cause because of language in a brief. And I

26

1 can tell you that that occurred after much  
2 reflection by the Court, because we pondered  
3 whether we should be doing that and what  
4 message would play across the Commonwealth.  
5 And it would be interesting to know how it  
6 was received generally by lawyers out there  
7 that the Court had done that.

8 Another thing that the Supreme Court  
9 does is, you may or may not be aware of this,  
10 but we have what we call three strikes rule.  
11 When we see lawyers who repeatedly their  
12 appeals are dismissed because there were no  
13 assignments of error or the petition for  
14 appeal was filed late, so that just from the  
15 very beginning the appeal is dismissed on  
16 procedural grounds that prevent the Court  
17 from ever reaching the merits of the issues.  
18 And it's almost always in criminal cases and  
19 the lawyers were appointed. If there are  
20 three of those that occur, then we actually  
21 send a report to the Virginia State Bar  
22 telling them that this attorney on three  
23 occasions the appeal was dismissed because of  
24 just blatant procedural errors that prevented  
25 the Court from actually reaching the merits.



1 And, you know, when it happens again, when  
2 the lawyer -- when it happens three times,  
3 it's sent to the State Bar again.

4 And so, I think that's one way that we  
5 hope that we are educating the attorneys.  
6 Although, we continue to see the same  
7 attorneys on that list having the same  
8 problems with their appeals. So, I think  
9 that's a way of teaching and I think it's  
10 appropriate for a judge to step in and  
11 require a brief to be filed again and take  
12 out that inappropriate language or to stop an  
13 oral argument and remind the litigant that  
14 that particular conduct is not accepted in  
15 this courtroom.

16 I think trial judges, perhaps more than  
17 appellate judges, have that opportunity.  
18 Although, that opportunity, as Monica  
19 reflected, does come across sometimes in the  
20 appellate situation when the lawyer is doing  
21 something inappropriate, they are at the oral  
22 argument before the court. So, I think we  
23 play an important role in that.

24 But, we cannot try the case for the  
25 litigant. And one of the challenges we face

1 as appellate judges is when we see a brief, I  
2 would like to do what Waugh Crigler  
3 suggested, I would like to write across the  
4 top of it, "I cannot understand what you are  
5 trying to tell me. Do it again." It's  
6 amazing how many briefs we see like that.

7 But, as appellate judges, I think one  
8 of the problems that we encounter is when the  
9 brief is filed and there are issues that we  
10 see that are meritorious and they are not  
11 raised in some way in the assignment of error  
12 or they are not argued, and we discover these  
13 things when we are trying to write an  
14 opinion. How do we handle it? We can't jump  
15 in and make the appeal what it wasn't to  
16 begin with for the lawyer.

17 So, it is a fine line that we walk  
18 between trying the case, remaining impartial  
19 judges, and not becoming advocates for one  
20 side or the other.

21 JUDGE LEE: Let's hear from the  
22 audience. Do you have any questions or  
23 comments?

24 Justice Lemons.

25 JUSTICE LEMONS: Our brethren in the  
26

1 United Kingdom are astonished with the  
2 civility issues in this country. They, for  
3 the most part, are unfailingly polite to one  
4 another, and certainly to the tribunal in  
5 which they appear. And there's a reason for  
6 it. Recently in the Court of Appeals in  
7 England and Wales, there was a barrister who  
8 was being a bit more aggressive than most of  
9 them, attacking some of the prior opinions of  
10 the Court, and one of the judges said, "Are  
11 you attempting to show your disdain for this  
12 tribunal?" And his response was, "No, my  
13 Lord, I'm attempting to hide it."

14 I tell you that story because even when  
15 they are bad, they are good. In our country,  
16 in our country, we do not discipline anybody,  
17 for the most part, for breaches of  
18 professionalism or civility. In their  
19 country, professionalism and civility is an  
20 ethical matter and they are subject to some  
21 kind of regulation or discipline by the  
22 profession at large. I'm not suggesting that  
23 we ought to take a professionalism credence  
24 and make them something that is a regulatory  
25 matter at the Bar. I'm not suggesting that.

1           But, I am suggesting that there's only  
2           one place now where this sort of thing can be  
3           dealt with, and that's on the Bench. Because  
4           the Bar is not going to do it, and I'm not  
5           suggesting that they ought to. But, for all  
6           of the judges in the Commonwealth, I do  
7           encourage them to be open and available and  
8           responsive to what are breaches of  
9           professionalism and civility, and perhaps not  
10          ethics. You get more of what you praise and  
11          you get less of what you disapprove of. And  
12          the judges need to disapprove of some of this  
13          conduct.

14                 JUDGE LEE: Other comments.

15                 Judge Padrick.

16                 JUDGE PADRICK: In my court, I try to  
17          keep it as civil as possible, because if it's  
18          not civil it totally poisons the atmosphere  
19          of what we are doing. And I'm of the school  
20          of thought that I will jump in immediately  
21          and say that's inappropriate, particularly in  
22          divorce cases. I don't know, maybe it's  
23          because they want their lawyers to be mean  
24          and nasty, and invariably they are sniping  
25          back and forth at each other. And if I see

26

1 any hint of that, I will say, "Counsel, don't  
2 talk to each other, talk to me."

3 Or, worst case scenario, behind the  
4 scenes bad behavior, when they write letters  
5 to each other, nasty letters, ugly, and they  
6 make the mistake of copying me. And I won't  
7 ignore it. I will immediately write a letter  
8 back and say it's inappropriate, you are not  
9 doing your job, you are not being civil,  
10 whatever.

11 So, I think it's the judge's role to  
12 immediately jump in, because otherwise it  
13 poisons the whole atmosphere if you don't,  
14 and it goes downhill after that.

15 And one other comment about behavior in  
16 court. My favorite thing that I like to say  
17 when they are acting a little bit  
18 inappropriately or asking for something  
19 inappropriate, I always say, "Do you think  
20 that would work in Federal Court in Norfolk?"  
21 And they immediately sit down.

22 JUDGE LEE: Well, the best advice I  
23 always heard is don't wrestle with a pig,  
24 because you get dirty and the pig loves it.

25 Other comments?

26

1           Let me say that I think it is very  
2           important for the law schools, particularly  
3           those trial advocacy professors and the  
4           clinical program professors, to occasionally  
5           suggest to students that they actually go  
6           visit court. One of the things I've done for  
7           many years, I've always invited law students  
8           to sit on my motions docket on Friday. And  
9           it's not uncommon for me to have at least  
10          four visitors every Friday who sit in from  
11          various law schools to just observe the  
12          docket. And then after that to discuss the  
13          docket, just discuss what they have seen. In  
14          addition, to have people come in and watch  
15          trials.

16                 I think the judge has a very important  
17          responsibility in conducting the trial to  
18          ensure civility. And you set the tone by the  
19          way you conduct yourself and by being  
20          decisive, stop the sniping between each  
21          other, address your comments to me, if you  
22          are going to object in this court, you have  
23          to stand and object, and make proper  
24          objections. You see these TV judges and  
25          there's some inappropriate comments along  
26

1 with the objection, and judge says, "I will  
2 allow it."

3 What kind of ruling is I will allow it?  
4 Is it sustained or overruled, Judge, that's  
5 what I want to know. Sustained or overruled,  
6 not I will allow. So, I think a judge has to  
7 be decisive as well.

8 And, Monica, to address your question,  
9 I think that judges ought to be accessible to  
10 hear concerns about assertive languages in  
11 briefs, inappropriate behavior in  
12 depositions. And imagine the judge is  
13 available by phone any time if there's an  
14 issue in a deposition, particularly with an  
15 inappropriate assertion of privilege or  
16 refusal to answer questions. That's intended  
17 to allow the parties to get to the root of  
18 the problem, to move forward with discovery,  
19 and proper rules, as we know, help them  
20 resolve cases.

21 MR. REVELEY: We have talked a lot  
22 about writing. Would it ever be appropriate  
23 for judges, pretty much as a standard  
24 operating procedure, quietly in chambers to  
25 say to lawyers you need to go get some formal  
26

1 instruction in how to write. You just don't  
2 know how to write.

3 JUDGE LEE: I think that -- let me  
4 answer that first question by saying as a  
5 state trial judge or circuit judge, I think I  
6 would be very reluctant to do that. Because  
7 that lawyer may well think that they write  
8 very well. And, it may give the other side  
9 the sense that because they write so well,  
10 they have an advantage in your courtroom.

11 There are lawyers who are well known to  
12 the Bench who are wonderful writers, and when  
13 you read their briefs, you are like, oh, this  
14 seems so right. But, then you have to step  
15 back, because you know it's just so well  
16 written, and you have to really look at the  
17 other side's case and look at the merits of  
18 it, look at the authorities, and then reach a  
19 decision.

20 But, there are those who have a  
21 reputation for writing so well. There's an  
22 Assistant United States Attorney in the  
23 Eastern District of Virginia, that whenever I  
24 see his briefs, I have to read it and I  
25 put it down and go away, and then come back

26



1 to it. And there's another lawyer in a very  
2 well-known law firm that is present in this  
3 courtroom, in this room today, that whenever  
4 I see their briefs, I know that I can count  
5 on what they say, they laid it out very  
6 persuasively, and then I have to make sure  
7 that that's actually the right rule.

8 And so, that really does make a  
9 difference, writing is very, very critical.  
10 But, I don't think that a judge, a state  
11 judge would do it. Judge Urbanski and I  
12 might be willing to do it, but I've deferred  
13 and not done it.

14 CHIEF JUSTICE KINSER: Can I comment on  
15 that?

16 JUDGE LEE: Please.

17 CHIEF JUSTICE KINSER: I tend to agree  
18 with Judge Lee, that I don't know if when I  
19 was a trial judge, as magistrate judge, that  
20 I would have taken a single lawyer aside to  
21 say, you know, your writing is lacking. But  
22 maybe a way that you can sometimes send that  
23 signal, perhaps, is when you have gotten that  
24 kind of brief, and during oral argument on  
25 it, you look at the lawyer and go, you know,  
26

1 I didn't quite understand what you were  
2 trying to tell me in the brief, can you  
3 articulate it now in oral argument. Maybe  
4 that's a subtle way of making that message  
5 come across.

6 And another thing I'd like to say to  
7 the deans in the audience, and I will  
8 shamelessly compliment the Appalachian School  
9 of Law, and I don't know if this is true of  
10 other law schools or not, but they require --  
11 the Appalachian School of Law requires that  
12 their first-year students, after their first  
13 year, spend I think it's approximately six  
14 weeks in a public office, such as a judge's  
15 office or a Commonwealth's Attorney's office.  
16 It's obviously a financial issue for the  
17 students because they aren't getting any pay  
18 for that and they are having to relocate and  
19 live somewhere. But, you know, I really  
20 enjoy having those interns and I -- they are  
21 writing when they come to an appellate judge,  
22 and they are doing research. And so, I  
23 really, I believe that when they leave,  
24 having spent that time in an appellate  
25 judge's chambers, as well as the trial  
26

1 judges, if they have required them to do some  
2 writing, that that will improve. Because I  
3 can tell you that I take them, and first they  
4 deal with my law clerks on the first level.  
5 The law clerk instructs them and edits their  
6 work, and then it comes to me. And when I  
7 send it back to them, there are things marked  
8 up over the entire thing. And I tell them  
9 that, and I do the same thing for my law  
10 clerks when they give me drafts of things.  
11 It isn't a criticism, but it is to help you  
12 learn and to see how you can make it better,  
13 and to not having your feelings hurt, that  
14 you don't know what you are doing, because it  
15 comes back marked up and nothing --  
16 everything is changed in what they have  
17 submitted to me.

18 So, I would encourage law schools to  
19 try to get more of their students to spend  
20 part of their summers in that environment,  
21 because I think there's a lot to be gained  
22 from it.

23 JUDGE LEE: Over the course of the  
24 years, I have probably had about 140 law  
25 student interns. And after we got to 60 who  
26

1           become state and federal judicial lawyers, I  
2           stopped counting.  And that's -- I'm not  
3           taking credit for their achievements, but I'm  
4           saying that the training they received -- and  
5           there are some judges who do not train their  
6           interns in terms of writing and don't give  
7           them substantive assignments.  That's a  
8           waste.  We can always use extra help, but you  
9           have to coach them and train them to do it.

10                   Michael.

11                   JUDGE URBANSKI:  There's an issue in  
12           terms of poor writing, and we have all seen  
13           that.  Sometimes we have written that.  But,  
14           then there's an issue that I think is more  
15           diabolical, and that is misleading writing.  
16           Writing that is deliberately misleading, that  
17           deliberately misquotes a case or states the  
18           facts the wrong way.  A way that is just --  
19           and sometimes, sometimes when I'm looking at  
20           briefs, and sometimes the opposing counsel  
21           doesn't quite get that the other side has  
22           just flat mischaracterized precedence.  So,  
23           what I -- while I haven't taken the step of  
24           saying, you know, you really need to work on  
25           your writing, what I often do when I see

26

1 something like that, what I always do on  
2 summary judgment argument or 12(b)(6)  
3 argument, is I will take them on in the  
4 argument and say, look, you characterized  
5 this case as this way. And, you know, that's  
6 not the way I read this case or something  
7 like that. That's not how I understand the  
8 facts to be. So that they get the notion of  
9 well, look, you can't pull that, you can't  
10 pull that stuff in here. And hopefully, over  
11 time, they will stop doing that.

12 So, that's a -- I think that's a more  
13 dangerous practice. I mean, bad writing is  
14 bad writing, okay. And sometimes bad writing  
15 comes from not having enough time to just get  
16 it right. Slop something out, get it out  
17 because I've got 14 General District Court  
18 trials this week. You know, and that  
19 happens. Sometimes it's just a function of  
20 time.

21 But, what concerns me more is the folks  
22 who are trying to win, to win, to  
23 deliberately mischaracterize the facts of  
24 law. And in that they misunderstand the  
25 judge's role. And I didn't understand the  
26

1 judge's role until I became a judge. And the  
2 judge's role is to get it right. The judge's  
3 role is to get it right. And the lawyer's  
4 role isn't to win their case, but to help me  
5 get it right. I mean, if lawyers understand  
6 that it's their job to win their case by  
7 helping me get it right, I think that's  
8 different than just arguing every single  
9 point in their favor. If they understand  
10 what I'm trying to do, I think they can be  
11 more effective.

12 JUDGE LEE: Hugh, how can a judge be  
13 more effective?

14 MR. FAIN: I have a question for the  
15 trial judges.

16 JUDGE LEE: Please.

17 MR. FAIN: If you see a repeat offender  
18 in your court, whether it's a professionalism  
19 concern, or a writing concern, or some other  
20 just conduct that they need to learn how to  
21 do better, would you feel comfortable, after  
22 the case is concluded, calling a leader in  
23 that person's law firm, or if it's a solo  
24 practitioner, perhaps calling the president  
25 of the local Bar Association to say there's a  
26

1 lawyer in my court that needs some mentoring  
2 and needs some remedial training? Would that  
3 be an appropriate thing to do?

4 JUDGE CRIGLER: I've done it. I have  
5 done it. I had a young lawyer that  
6 misrepresented a lot of things in a brief,  
7 and I called the partner who was supervising  
8 the case, and I said I want you to go over  
9 this brief with a fine-tooth comb, because  
10 what is said in here is not true.

11 MR. FAIN: And for the solo  
12 practitioners, I posed the question during  
13 comments about how do we bring into the fold  
14 lawyers that are isolated and aren't taking  
15 advantage of the offerings of Bench/Bar  
16 conferences, CLEs?

17 I would suggest judges, trial judges  
18 call the local Bar Association president and  
19 say, you know, I've had a young lawyer in my  
20 courtroom that needs some mentoring.

21 JUDGE URBANSKI: You know, one other  
22 thought, and I've thought this for a while.  
23 We have had an Inn of Court in Roanoke, and I  
24 am involved, I have been involved in it, and  
25 sometimes the folks who are at the Inn of  
26

1 Court are the people who don't need to be at  
2 the Inn of Court, you know. Sometimes some  
3 of the folks who need to be at the Inn of  
4 Court are the folks who weren't invited to  
5 the Inn of Court.

6 So, what I might do in a case like  
7 that, if it's an area that has an Inn of  
8 Court, I might call the president of the Inn  
9 of Court and say, hey, why don't you invite  
10 this person next year. And it may be a  
11 person that may be a bit of a pariah in the  
12 Bar or something, that wouldn't get invited  
13 normally. But, maybe that person can really  
14 benefit from the collegiality and mentoring  
15 that goes on in that Inn of Court process,  
16 sort of on a QT basis.

17 JUDGE LEE: Let me make an observation.

18 JUDGE URBANSKI: It's a different  
19 thought.

20 JUDGE LEE: Let me make an observation  
21 about a judge observing a lawyer who is  
22 normally well prepared, who is for some  
23 reason missing appearances or not delivering  
24 the same quality of work. That's often an  
25 indicator of something going on; a divorce,  
26



1 depression, problem with a child, financial  
2 problems, substance abuse problems. And the  
3 Lawyers Helping Lawyers program has been  
4 very, very effective in dealing with issues  
5 of alcoholism, substance abuse, and now  
6 mental health issues.

7 As a judge, I have participated in  
8 intervention in a lawyer's case who we just  
9 observed was not appearing anymore, and used  
10 to make their appearances, was very well  
11 prepared, but now was not. And it turned out  
12 the issue was one of divorce and an alcohol  
13 problem. As a result of the intervention and  
14 treatment, that person is now practicing law  
15 and things are fine.

16 But, we could have just stepped back  
17 and not done anything, and that person  
18 perhaps would have been disbarred and perhaps  
19 caused harm to their clients. Some judges  
20 are willing to take those steps. It may not  
21 be very well known, but I think particularly  
22 amongst the judges who are present today, and  
23 many other who serve in our courts in the  
24 Commonwealth, we are willing to do things  
25 like that, because we think it's important.

1                   Comments.

2                   JUDGE CRIGLER: Butch Davies and I were  
3 victims of a situation where the judges in  
4 their jurisdiction should have stepped in and  
5 recognized that things were wrong and taken  
6 corrective action, because we had a partner  
7 that stole money, that did things improperly,  
8 and he not only put his clients at risk, he  
9 put his entire law firm at risk. And I think  
10 that's what engendered in me the notion that  
11 if something is not quite right, I'm not  
12 going to be unwilling to say something.

13                   Now, whether it's appropriate or not,  
14 other people will have to judge that. But,  
15 there is a protection side of that, and the  
16 one thing that that situation taught me is  
17 that people, lawyers didn't report him when  
18 they should have, judges ignored it, and  
19 there were many people who were victims of  
20 it, including his own partners in the law  
21 firm.

22                   And so, it really did change my view  
23 about how people need to be addressed when  
24 things are going downhill.

25                   JUDGE URBANSKI: I would agree with my

26

1 colleague, both of my colleagues, that I do  
2 think judges have a role in not just deciding  
3 cases, but we have a role in protecting  
4 society and protecting the Bar from folks who  
5 are having difficulties. And it's a  
6 case-by-case basis. It's a difficult  
7 circumstance. But, I do believe that when a  
8 judge becomes -- gets information about a  
9 particular problem area, we have a role to  
10 play as public servants, because that's what  
11 we are.

12 JUDGE LEE: Monica, what can we do  
13 better?

14 MS. MONDAY: Well, if I could follow up  
15 for a minute on some of those comments,  
16 particularly in the smaller, more rural  
17 areas, I think that the trial judge sometimes  
18 is the only one who can step in and intervene  
19 in that kind of an area, and they are  
20 probably going to be the first person who  
21 sees it. And I can think of an instance in  
22 Southside where, you know, the judges did  
23 step in, and did it very effectively, and  
24 helped to save that lawyer, and potential  
25 problems for the client.

26

1           With regard to Taylor's question about  
2           the legal writing, I'm probably the only one  
3           up here who says that I think that the judge  
4           could in that instance maybe bring the lawyer  
5           into chambers and say, you know, I'm having  
6           difficulty with your writing, I think you  
7           could really benefit from some improvement in  
8           this area, I would be happy to try to get a  
9           senior lawyer in the Bar to help you, or  
10          there might be courses you could take. But,  
11          I guess I'm sort of left with the thought of,  
12          particularly with solo practitioners, if the  
13          judge doesn't say so, how is the lawyer going  
14          to know?

15                 Because if the lawyer is filing  
16                 regularly shoddy work, incomprehensible work,  
17                 they are not going to stop until somebody  
18                 tells them that there's a problem. So, I  
19                 think in terms of what the judges can do, I  
20                 guess I tend to be on the side where I think  
21                 that the judge may have to, because there may  
22                 not be anyone else who would do it. And I  
23                 think it can be done in a way that shows that  
24                 the judge has the lawyer's interest at heart,  
25                 and wants that lawyer to progress and improve

26

1 in those particular areas.

2 JUDGE LEE: Let me say this -- I'm  
3 sorry, go ahead.

4 CHIEF JUSTICE KINSER: I have a  
5 comment. I wholeheartedly agree that judges  
6 have a responsibility to step in if there's  
7 an ethical violation. As hard as it is, we  
8 have to report it to the State Bar. If it's  
9 a problem with alcoholism or depression,  
10 whatever, I think we have a responsibility,  
11 too, to do an intervention and try to get  
12 them help with Lawyers Helping Lawyers.

13 On a more general level, you know, I  
14 think in the rural areas especially, where I  
15 find it's difficult to get those people to  
16 come to see CLEs, and they tend to do it more  
17 online because of the travel issues. As a  
18 local judge, I think it's so important for  
19 you to have Bench/Bar conferences. We have  
20 never had one in the Lee, Scott, Wise area.  
21 And after I became a Justice of the  
22 Supreme Court, I attended one with a much  
23 larger Bar, and I thought we can do that on a  
24 smaller scale. We won't go to a fancy hotel  
25 and it won't be an overnight thing. And, you

26

1 know, I said I want to do this. And, let's  
2 face it, they weren't going to tell me no.  
3 And I knew that, and I took advantage of it,  
4 I admit it. But, it got it started.

5 And so, I think local judges, you know,  
6 if there's just sort of this general  
7 competence level that you would like to  
8 address and make lawyers aware of it, if you  
9 cancel court and you say we are going to have  
10 a Bench/Bar conference, and there's going to  
11 hopefully be some CLE, and you are there, and  
12 you let the lawyers know you expect to see  
13 them, I think it goes a long way. They don't  
14 want to be on the bad side of the judge and  
15 not show up for that conference. I think  
16 that can be so helpful.

17 MR. REVELEY: Well, yet another  
18 wonderful panel. You all, in the vernacular,  
19 have done good. And that, actually, for me,  
20 in particular, has been a very helpful  
21 conversation.

22 All right. It's time to feed at 12:30.  
23 And we will have after dinner -- I mean after  
24 lunch remarks, that I'm sure will be  
25 rivetting, and then we will come back for a  
26

1           concluding session at which our reporters  
2           will capture the very essence of what we have  
3           been talking about.  Then we will all steal  
4           away.

5                        So, let's show up for lunch at 12:30.

6  
7                        (Applause)

8  
9                        (Panel IV concluded at 12:15 p.m.)

10

11

\* \* \* \* \*