

# Together at the Table: Why Diversity Is Important

*Editor's Note: This article is second in a series about diversity in the Virginia bar.*

by Dawn Chase

DAVID P. BAUGH AND GERALD T. ZERKIN have known each other for maybe thirty years. The best they can remember, they met when both served on an American Civil Liberties Union advisory board in the late 1970s.

As criminal defense lawyers, they have worked together representing codefendants, or as co-counsel. They find that their different styles—Zerkin, 59, meticulously prepared, and Baugh, 61, flashy and spontaneous—go well together, and the clients benefit. Now, as they pursue public defender jobs—Zerkin in the federal system, and Baugh handling Virginia death penalty cases—they touch base frequently. “If I can’t find a library ... I will call him anytime,” Baugh said.

Their professional respect for each other grew into friendship. Baugh was best man at Zerkin’s wedding and is a doting “uncle” to Zerkin’s young daughter. When Baugh received the Virginia State Bar’s Lewis F. Powell Jr. Pro Bono Award in 2006, Zerkin drove from Alexandria, where he was defending terrorist Zacarias Moussaoui, to attend the Charlottesville ceremony. “David is as passionate about the Constitution as anyone I know, and that’s always inspirational,” Zerkin said.

The fact that one man is black and the other is white seems hardly worth mentioning. They never discuss race, except as it affects a client. No diversity program brought the two together. Their relationship germinated in the diverse milieu of civil

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rights and civil liberties law and grew because of their shared passion for the rule of law.

The fruits include a rich legacy of cases and clients who prevailed against tough odds.



Zerkin (left) and Baugh

The Baugh-Zerkin relationship hits at the heart of what proponents of diversity in the legal profession want to see happen: Bring skilled people with different viewpoints into a room, give them a shared assignment, and watch the world become enriched.

## **Why Does It Matter?**

Why should the Virginia State Bar be concerned with encouraging minorities and women to practice law, and to assume leadership roles in the profession? Many attorneys interviewed for this story answered with a pragmatic reason: the marketplace.

The 1998 Virginia State of the Judiciary Report projected that nearly one-third of Virginia’s population growth between 1995 and 2025 will come from immigration. Other sources report that one-third of people who live in Northern Virginia—the commonwealth’s most populous and diverse region—describe themselves as

African American, Hispanic, Asian, or of mixed race.

Many multinational corporations have offices here. Many companies bid for contracts with governments and other businesses that place premiums on minority hiring.

George Peter Braxton, director of recruiting and diversity at Richmond-based LeClairRyan, said firms feel pressure from corporate clients to provide a legal team that includes women, people of color, and multilingual lawyers. "Clients marketing to people in general want lawyers to have better understanding of their base," he said.

The increasingly diverse community makes up today's juries. And all these citizens buy homes, get divorces, plan estates, defend against traffic tickets, draw up contracts, incorporate businesses, and litigate.

"The legal profession has been slow, but we have finally figured out that if we want to compete, we have to have all hands on deck," said U.S. DISTRICT JUDGE GERALD BRUCE LEE of Alexandria, who has worked throughout his legal career to invite minority youth and women into the profession.

"Virginia firms are competing for and securing national companies' business in a way that demonstrates we have a commitment to excellence and diversity," Lee said. The firms market their international offices and their minority and multilingual lawyers, and they project the message "we can win, because we can draw upon these assets."

Solo and small-firm lawyers in Northern Virginia have become skilled at finding clients by advertising to niche markets.

"Latinos and Asians have auto accidents, and they need access to the courts. Somebody's going to present their case," Lee said. "Maybe you want to miss out on the multimillion-dollar wrongful death case because you won't represent the trash worker who speaks Spanish. If that's where you are, great." But "somebody down the street" is poised to take that case.

"What you need to decide is, do you want to compete in the full marketplace?"

Lee described a young lawyer in Fairfax whose advertisements in a Spanish newspaper draw a steady stream of business. He handles three or four uncontested divorces a day at \$500 each. "That's his business model. Maybe he's not Hunton & Williams, but he's doing fine."

With this widening spectrum of languages and cultures in our society comes new challenges for the courts and the VSB regulatory process. As policies and practices are developed to accommodate the changes, all voices need to be heard so the rules adequately protect the public and treat practitioners fairly.

"We need lawyers of diverse backgrounds to participate in the Virginia State Bar," said VSB Executive Director Karen A. Gould. "Without this diversity, the bar is myopic. It will be unable to grasp the panoply of issues that face lawyers who come from diverse backgrounds."

VSB Counsel Edward L. Davis, who heads the professional regulation department, said, "Diversity among our district committees is essential to give the disciplinary system viability and credibility."

### The Future of Justice

More abstract than marketplace issues, but equally important in the minds of many lawyers, is the future of the justice system if all citizens are not brought into the fold, taught the value of the rule of law, treated with respect and fairness in the legal arena, and given access to careers as lawyers, law professors, lawyer-legislators, and judges.

How will the justice system fare if it is widely perceived as a bunker to protect one segment of society?

"Everyone recognizes the perception," said Cleo E. Powell, who last month was installed as the first woman African American judge on the Virginia Court of Appeals and before that presided in Chesterfield Circuit Court. In many jurisdictions, when a minority defendant enters the



Braxton



Lee



Powell

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courtroom, "the judge is not a minority, and the prosecutor is not a minority, and the defense counsel is not a minority.

“What’s going on in the mind of a criminal defendant who wonders whether they are going to get a fair shake in this criminal courtroom?”

Statistics indicate that the criminal justice system is disproportionately harsh on African Americans. For example, a survey based on 2006 data provided by the Virginia Department of

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Corrections reported that “African American youth constituted fewer than half of all youth arrested in Virginia, but represented 73 percent of youth entering the adult correctional system.” (“The Consequences Aren’t Minor,” Campaign for Youth Justice, 2006.) A criminal conviction can throw up barriers, even for a juvenile, that will forever thwart an individual’s exercise of full citizenship rights and responsibilities. (See “Marked for Life: Long-Term Effects of Juvenile Adjudications,” page 30.)

“If a black person walks into a courtroom and there are no African Americans involved in the judicial administration process, given our history they may very well doubt that the rule of law will protect their rights,” Gould said.

So the challenge to the bar is this: Bring a diverse spectrum of citizen-lawyers to the table to write good law, apply it skillfully, and exercise it fairly. And teach the Constitution to everyone.

### **Paths to the Law**

In a series of interviews, Virginia lawyers described their ideas for, experiences with, and concerns about achieving diversity. They described personal styles they believe got them through doors, individual projects that helped others, bigger projects, and ideas for what more can be done.

### **The Optimists**

Gobind S. Sethe wears a turban, but if that concerns anyone, he doesn’t let it bother him. “I’ve always thought of myself as an American,” he said. His philosophy: “Just be who you are, and try not to make an issue of it.”

After a 3½-year stint defending city employees in the Bronx, he moved from New York to Fairfax County, where he was raised, and joined the Reston firm Hall, Sickels, Frei &

Mims PC, where he practices plaintiffs personal injury law.

The hire came when he called senior partner Robert T. Hall, and the two had a long conversation. “Bob loves talking to people from different backgrounds and different cultures,” Sethe said. In Sethe, Hall found lots of interesting details—his Sikh religion; his family roots in India; his proficiency in Spanish; the fellowship in Bangor, Maine, when he provided legal assistance to migrant workers; his world travel experiences; and his interest and education in international relations.

“One of the drawbacks of the legal environment is you don’t have to be too worldly to be a lawyer,” Sethe said. He thinks Hall was attracted by his “macro viewpoint of the world. It doesn’t really affect us day to day.”

Even in a post-9/11 world, his turban has never presented an obstacle. A much bigger challenge is being a plaintiff’s lawyer in Virginia. “It’s like being a defense lawyer in New York,” Sethe said cheerfully.

AMANDEEP S. SIDHU, a Washington, D.C., lawyer with roots in Virginia, is a bit more sensitive about reactions to his turban, but he’s equally confident about his abilities to open doors. He practices with McDermott Will & Emery LLP.

As a student at the University of Richmond, he was very involved in Sikh educational efforts nationally after September 11, 2001, when security increased and turbans became suspect.

Sidhu says he and his wife feel more comfortable living in Washington, where people are less likely to do a double take when they see his tall, imposing presence. He was a teenager living in Chester when he began wearing the turban as a symbol



Sethe



Sidhu



Marsh



Grey

that he had adopted the Sikh faith, and he knows how the unaccustomed react.

A Sikh American “may feel at a young age, ‘How could I possibly practice law wearing the turban?’” he said. But he learned to carry himself with “confidence and strength.” “There’s nothing that can stop me from doing what I want to do,” he said. “I’m able to feel comfortable in my skin.”

### Lawyers Helping Children

Judge Powell is one of many proponents of programs to bring children on field trips to the courthouse so that their first encounter with justice is not a fearful one. She answers questions such as “how does that radar gun work, and how do they know it’s my car and not somebody else’s?” She tells the visitors, “We’re interested in how well you do. The system is there for a reason, but it’s not targeting you because of what you are.”

The Just the Beginning Foundation, which Judge Lee is involved with, serves a similar function. (See photo, page 23.) So is the VSB Young Lawyers Conference’s Hill-Tucker Institute (*Virginia Lawyer*, October 2008, at 36), and the Virginia Bar Association middle school rule of law project, in which lawyers go into classrooms. (See story this issue, page 22.) Several local bar associations sponsor Barrister Book Buddies programs, in which lawyers listen to children read, and some donate computers and school supplies to classes and children who can’t afford them.

To Powell, such efforts are part educational and part relationship building. They convey the message, “There’s someone else out there who cares about me. ... Children thrive on love and attention and care and concern.”

She remembers the impact a lawyer’s visit had on her when she was growing up in rural Brunswick County. Powell was in eighth grade, and her teacher invited Samuel W. Tucker, a hero in her community for his work in civil rights law, to talk about black history.

“He just talked to us as if we were real people who had something to say and something to learn. He was larger than life,” she said. “He exuded confidence and wisdom, and all the things you’ve ever heard about Mr. Tucker.”

That visit was the beginning of her career path into law. “I suspect that Mr. Tucker probably died never knowing how many lives he touched,” she said.

### 21st Century Racism

Sen. Henry L. Marsh III of the Hill Tucker & Marsh — the Richmond law firm that led Virginia civil rights law and mentored many of today’s black judges — said he has seen a change in the nature of racism in his lifetime.

“I think there’s still limitation on opportunities, but it’s not nearly as great as when we were coming along,” he said. “It’s not as obvious.”

Marsh, like others, said he feels discrimination today is aimed not so much at middle-class minorities, but at an “underclass of persons” — poor people of all races.

“The whole immigration issue has created a sense of ‘we-they’ again,” said Robert J. Grey Jr., a Richmond lawyer and former president of the American Bar Association. “The problem is that we-they then transcends the issue of immigration and becomes part of we-they in our communities and we-they in jobs — we-they in everything. Because it’s an attitude. ... Politicians have used it as a way to create leverage and energize blocs of voters.

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“Unfortunately, lawyers are some of the ones that are perpetuating it, as well as politicians. But you just have to stand up against that.” Grey said lawyers should use their advocacy skills to “bring perspective” and to “lower the temperature of the discussion of immigration.

“I think lawyers are the standard bearers of equality and of challenging that kind of thinking.”

*More to come: The February 2009 edition of Virginia Lawyer will include articles on challenges faced by women attorneys and continue reports on the experiences and ideas of minority lawyers and judges.*