Tell Us Your Favorite Law Story

Every lawyer has a story set aside for gatherings of friends or relatives. It's a special tale about a legal battle won, or lost. Or about an amusing encounter with a judge. Or a story with a surprising twist. Maybe it's a story that will bring a knowing smile, or shake of the head, from a colleague.

Pick your best Law Story, your incredible adventure, your unusual courtroom or even boardroom escapade, and send it to us. Keep them short — about 400 words or less — and send them in.

E-mail your stories to us at hickey@vsb.org.

And the Trap Door Opened
by Edward J. Kiley

It was the Spring of 1975. I had been a lawyer for a bit over a year, working for a Washington firm that specialized in regulatory law, principally transportation and energy. I had started at the firm as a law clerk in 1972 and would remain there until the end of 2008. That means that it was a great place to practice, or I was just lazy.

The case in question was my first US Court of Appeals assignment. The issue was both obscure and esoteric. One of the firm’s clients had received an injunction sought by the now defunct Civil Aeronautics Board. The client had used its local attorney at the district court level, but was both obscure and esoteric. One of the firm’s clients had received an injunction sought by the now defunct Interstate Commerce Commission on the basis that the company was operating as a surface freight forwarder without proper registration. The client maintained that it was an air freight forwarder subject to the (also now defunct) Civil Aeronautics Board. The client had used its local attorney at the district court level, but came to us for the appeal. My mentoring partner assigned the matter to me, thinking that I was brilliant or that this case was a loser. I of course thought the former; it turned out to be the latter.

I did the briefs, receiving approving nods and comments from my mentor, and travelled to New York (Second Circuit) for the argument. The panel consisted of Chief Judge Henry Friendly, retired Supreme Court Justice Tom Clark and a senior district court judge whose name I’ve forgotten. At the time my dad was editor in chief of the New York Law Journal, and I of course invited him to witness his number-two son’s prowess.

My case was the second on the calendar that day. I should have been warned by the first case. Counsel for the appellant had reserved three minutes for rebuttal, and when the red light went on Chief Judge Friendly warned him to stop. Counsel responded that he had only a few more points to make. As near as I can remember Judge Friendly replied that if he didn’t stop that minute a trap door would open under him and his appeal. He sat down.

My turn. I made my argument, reserving no time for rebuttal. There were no questions from the panel, and in my neophyte stupidity, I thought “This is great; I must have really wowed them!” Counsel for the government rose and approached the podium. Before he got there Chief Judge Friendly advised, “Counsel, there is no need for you to argue; the judgment of the District Court is affirmed.” The trap door had opened. In shock I packed my briefcase and turned to leave. My dad was sitting in the back row. As I approached, shakily, he put his arm around my shoulder and said, “I thought that you made some good points; let’s have lunch.” I don’t recall where we went or what I ordered, but I do remember that I had a double Jack Daniels on the rocks.

Since then I have argued some sixty court of appeals cases and won more than I lost, but that case will stay with me always. Good news: After nearly forty years, I still represent that client.

A Busy Man
by John Carter Morgan Jr.

Terry was sort of a legend in Fauquier County. He was homeless, a vagrant, wandering the streets and roads of the country town of Marshall, always looking for a place to lay his head during those warm days of the summer of 1990. A rather young and uneducated man, he had no shoes, and his torn shirt was hardly acceptable attire in a courtroom. I was a brand new lawyer, court appointed to represent Terry on a charge of trespassing. Judge Foley had been on the bench for four years, and was my favorite judge, the real reason I decided to practice law in Warrenton.

In his characteristic country drawl, Judge Foley said from the bench five feet above the courtroom, “Terry! What are you doing back here on this same charge? Can’t you stay out of trouble? This is the fifth time this year that you’ve been here on this same charge.” (It was my first time representing Terry and I didn’t know this.) “Terry! I have half a mind to throw you in jail. Do you want me to put in jail?”

Terry stood up straight at attention, his arms extended down, and in a loud voice, he said, “No saah!” Terry stretched out that second word, and bellowed it louder than the first.

Judge Foley cracked a smile. Then he almost laughed. A couple of people in the crowded courtroom chuckled. Then the judge said, “Terry! You can’t be sleeping in people’s sheds. People you don’t know. You have to stay off other people’s property. Maybe I should put you in jail. Do you think jail would teach you not to trespass?”
Terry jerked straight up again and practically yelled, “No saaaaah!”

With that, Judge Foley started to laugh, and out of embarrassment he leaned over to his right as if to pick something up off the floor. He just didn’t want everyone in the courtroom to see he was laughing.

Then, he composed himself somewhat quickly, looked down at Terry, and said, “Terry! Tell me why I shouldn’t put you in jail today.”

Terry snapped straight up again like a soldier to a general, and shouted, “Thaangs to-doooo!!!”

Starting with Judge Foley and then me, the whole courtroom burst into roaring laughter at the hilarity of the scene before them.

**A Certain Odor**

*by James Wesley Moyers*

I had just received notification that I’d passed the July 1989 Virginia bar exam and was beginning a very unofficial part-time job with a Fairfax County immigration lawyer. Let’s call him Adam. After a few weeks, things just didn’t smell right with the chap so I terminated the relationship.

I already had a Plan B, namely being a sole practitioner in northern Virginia. I had retired early from the federal government so finances, important to be sure, weren’t positively critical. At that time it seemed that there were more attorneys in northern Virginia than there were cockroaches. That essentially convinced me to take court appointments, mainly from criminal defendants who claimed to be unable to afford counsel.

A few years passed. I was doing fairly well with my one-person law firm in Falls Church, dealing mostly in Arlington and Falls Church courts with occasional trips to Fairfax and Manassas. My appointed clients were generally what you could expect — some fairly decent folks who had gone wrong and some who were, let’s face it, jerks. Only in rare cases would I have real difficulty representing some of the jerks. In those cases the judges invariably agreed with me and I was released.

One of the jerks I had as a client was arrested for distribution of cocaine, a serious offense that called for hard prison time. Mr. Jerk did not want to have a court-appointed attorney so, with his parent’s financial assistance, he wanted attorney “Bill” to represent him. The assistant commonwealth’s attorney, outside of court, said that Bill could not represent Jerk because Bill was already representing Jerk’s co-defendant. Jerk was going ballistic and could not or would not listen when I told him his choice of counsel did not require the prosecutor’s approval; it was between Jerk, Jerk’s co-defendant, and Bill — with the judge’s approval.

No matter what I tried to tell Mr. Jerk, he naturally knew better than I. He lined up another attorney, let’s call him Clyde. Clyde, it turned out, was a quasi-associate in the newly constituted law firm headed up by immigration attorney Adam, my first unofficial colleague as a fledgling lawyer. Clyde was not a member of the Virginia Bar so I would have had to be the credentials member of the team that was representing Mr. Jerk. That didn’t give me too much pause; I could have been hasty in my earlier opinion of Adam or he might have shed the “odor” I thought I had detected earlier. So I called Clyde. Alas, I detected another odor. I found Clyde to be very strange and told Mr. Jerk that I would not work with Clyde under any circumstances. Mr. Jerk then engaged “Mr. Nice” to represent him. He ultimately did a straight up plea. I heard no word of his actual sentence.

A few years went by and two events transpired in northern Virginia legal circles. I do not recall which came first, but they were certainly connected. Clyde was convicted for unauthorized practice of law. He had no bar membership anywhere and had never graduated from law school. (It’s not clear to me that he had ever attended any law school.) Adam was convicted in the federal court in Alexandria on multiple counts of immigration fraud. As a footnote, I also discovered from Mr. Nice that the check he received from Mr. Jerk’s parents bounced. In mid-2001 we relocated to Florida where I retired the second time. One evening while channel surfing with my TV remote, I recognized an Arlington policeman (on a CNN’s Bill Kurtis program, I think). I stopped surfing to watch the program and only saw the tail end of the strange tale of Clyde, the ersatz attorney.

I am not boasting here. My “nose” is not at all perfect and I don’t have a stellar record with my hunches. I still give thanks to the Lord, however, for steering me correctly on those two occasions — serving ties with Adam and foregoing the experience of working with Clyde.

**Gunk**

*by Denman A. Rucker*

Many years ago, I was appointed by the court in Arlington County to represent a defendant charged with burglary, grand larceny, and destruction of property. The defendant was arrested at home about thirty days after the burglary. On my first meeting with the defendant, he stated “they got nothing on me.” At first glance he appeared to be correct. There were no eye witnesses and no incriminating statements from my client.

The perpetrator had forced a door open to gain entry to the building and located a safe in the office. He moved the safe around and finally gained access using a crow bar. In order to destroy any fingerprints, the perpetrator sprayed the point of entry and safe with gunk (a substance used to remove grease, etc. from the automotive engines). The gunk did its job. No fingerprints were lifted from the point of entry or the safe. However, the perpetrator left the gunk on top of the safe with his fingerprints all over it. Faced with this evidence, he eventually pled guilty.

**Law Stories**

John Morgan has been practicing law in the Town of Warrenton, in Fauquier County, for twenty-five years. He now focuses primarily on bankruptcy cases all across the commonwealth, and is the author of the newly published book, “The Truth About Bankruptcy In Virginia.”

Denman A. Rucker has been in private practice since 1974. He is primarily involved in litigation with an emphasis on criminal defense, domestic relations, and personal injury.