

Introduction to Virginia Beach Courts CLE

VIRGINIA BEACH BAR ASSOCIATION
YOUNG LAWYER'S COMMITTEE
DECEMBER 13, 2018
2:00 P.M. TO 4:00 P.M.

2:00 – 2:15 Introduction (10 minutes)

Jonathan L. Stone, Virginia Beach Bar Association President
Laura McQuesten, Young Lawyers Committee Chair

2:10 – 2:35 Circuit Court (25 minutes)

Clerk of Court – Tina E. Sinnen
Judge William R. O'Brien
Staff Attorney – Amy H. Jones
Q&A

2:35 – 3:00 Juvenile & Domestic Relations District Court (25 minutes)

Acting Clerk of Court – Peggy Davy
Judge Kevin M. Duffan

3:00 – 3:10 Virginia Beach Sheriff's Office (10 minutes)

Captain Alvie Culandring

3:10 – 3:20 Break (10 minutes)

3:20 – 3:45 General District Court (25 minutes)

Clerk of Court – David M. O'Dell
Chief Judge Daniel R. Lahne
Q&A

3:50 – 4:00 Wahab Law Library (10 minutes)

Library Program Specialist - Laurie Pitz

Virginia Beach Courts

The most up-to-date information concerning court schedules; hours of operation; court dockets; local rules, practices and procedures; forms; filing instructions; and contact information is found on the City of Virginia Beach's website on the Virginia Beach Courts page. It is also a good idea to check the website for Virginia's Judicial System (i.e., state court), which contains information about Virginia's court system as well as links to individual pages for each of the Virginia Beach Courts. Links to specific information are noted below.

- **Virginia's Judicial System Website Homepage**

For helpful information, including links to individual court homepages, visit <http://www.courts.state.va.us/>.

- **Virginia Beach Courts (City of Virginia Beach Website) Homepage**

For essential information pertaining to the local juvenile and domestic relations, general district, and circuit courts, visit <https://www.vbgov.com/government/departments/courts/Pages/default.aspx>.

- **Inclement Weather Information**

Procedures and contacts for Virginia Beach courts during inclement weather are found at <https://www.vbgov.com/government/departments/courts/Pages/general-information.aspx>.

- **Juvenile and Domestic Relations District Court**

- The Virginia Beach Juvenile and Domestic Relations District Court's page on the City's website is found at <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/default.aspx>.
- For general information about juvenile and domestic relations district courts, visit <http://www.courts.state.va.us/courts/jdr/home.html>.
- The Virginia Beach Juvenile and Domestic Relations District Court homepage on the state court website is found at http://www.courts.state.va.us/courts/jdr/virginia_beach/home.html.
- Information about court policies and procedures is found at <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/policies-and-procedures.aspx>
- For the docket schedule, visit <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/calendar-hours-closings.aspx>

- For the schedule of court closings, visit <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/calendar-hours-closings.aspx>
- For the court's daily docket, visit <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/daily-docket.aspx>
- For information about court proceedings, visit <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/court-proceedings.aspx>
- For information about filing in JDR court, visit <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/filing-information.aspx> (in general) and <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/filing-motions.aspx> (motions).
- For links to court forms, visit <https://www.vbgov.com/government/departments/courts/juvenile-domestic-relations-court/Pages/forms.aspx>

- **General District Court**

- The Virginia Beach General District Court's page on the City's website is found at <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/default.aspx>.
- For information about Virginia's general district courts, visit <http://www.courts.state.va.us/courts/gd/home.html>.
- The Virginia Beach General District Court page on the state court website is found at http://www.courts.state.va.us/courts/gd/virginia_beach/home.html.
- For tracking cases filed in the Virginia Beach General District Court, visit <https://eapps.courts.state.va.us/gdcourts/captchaVerification.do?landing=landing>.
- For contact information, visit <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/default.aspx>
- For information about hours of operation, forms, continuances, and pre-paying fines, visit <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/faqs.aspx>

- For information about appealing a case to circuit court, visit <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/appeals-to-circuit-court.aspx>.
- Information for public defenders is found at <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/public-defender.aspx>.
- Information about traffic court is found at <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/traffic-court.aspx>.
- For information about the civil division of the General District Court, visit <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/civil-division.aspx>
- For information about the criminal division of the General District Court, visit <https://www.vbgov.com/government/departments/courts/general-district-court/Pages/criminal-court.aspx>

- **Circuit Court**

- For information specific to the Virginia Beach Circuit Court on the City's website, visit <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/default.aspx>
- For information about circuit courts in Virginia, visit <http://www.courts.state.va.us/courts/circuit/home.html>.
- The Virginia Beach Circuit Court page on the state court website is found at http://www.courts.state.va.us/courts/circuit/virginia_beach/home.html.
- For tracking cases filed in the Virginia Beach Circuit Court, access the Virginia Beach Circuit Court through <http://ewsocis1.courts.state.va.us/CJISWeb/circuit.jsp>.
- For the court docket, visit <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/default.aspx>
- For the court holiday schedule, visit <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/default.aspx>

- For information pertaining to audio and visual technology in the courtrooms, visit <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/default.aspx>
- For links to court forms, visit <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/court-forms.aspx>
- For information concerning local procedures and practice, visit <https://www.vbgov.com/government/departments/courts/circuit-court-judges/Pages/procedures-for-civil-actions,name-changes,-annulment,-divorce-and-Criminal-Cases.aspx>
- For remote access to circuit court documents online, visit the OCRA (Officer of the Court Remote Access) login page at <https://cisweb.courts.state.va.us/Ocra/login/522878/a.html>

- **Circuit Court Clerk's Office**

For information about the Circuit Court Clerk's Office, including information concerning schedule of filing fees, hours of operation, marriage, probate, and real estate records, visit <https://www.vbgov.com/government/departments/courts/circuit-court-clerks-office/Pages/default.aspx>

WAHAB PUBLIC LAW LIBRARY

Wahab Public Law Library
Judicial Center
2425 Nimmo Parkway, Bldg. 10B
Virginia Beach, VA 23456
(757) 385-4419
eosborne@vbgov.com

Information for Newly Admitted Attorneys

The mission of the Wahab Public Law Library (WPLL) is to ensure free access to current legal and law-related information for legal research and the practice of law. WPLL employs highly-trained professional staff who provide training, education, and quality customer service to the general public, government employees, the judiciary, and members of the legal profession. WPLL supports the needs of Virginia Beach attorneys with an extensive Virginia Continuing Legal Education collection; rapid-response in-person, telephone, and e-mail legal reference services; and a professional setting within which to meet clients and colleagues.

WPLL is solely funded by a \$4 civil case filing fee from the Circuit and General District Courts and donations.

Services and Resources

- Comprehensive primary and secondary law print collection
- Extensive Virginia CLE handbook and seminar collection, on standing order
- Print and electronic access to Virginia Lawyers Weekly and other legal periodicals and journals
- Access to Lexis Advance and Westlaw Next
- Computer lab with printing & copying at 20 cents per page
- Fax service and Wireless printing

Attorney Lending Privileges

The collection is primarily reference and does not circulate. However, attorneys in good standing may request to borrow certain materials at a negotiated due date. Please speak with a staff member for more information about our lending policy.

Legal Reference Services for Attorneys

WPLL provides legal reference services to attorneys.

In the library,

- We can help you find the legal resources you need, quickly.
- We are experienced in using legal resources with which you may not be familiar and can make suggestions to improve your research.
- We have a deep understanding of Lexis Advance and Westlaw Next, and can help you perform efficient, thorough searches.

From your office,

- We can fulfill research requests when you cannot come to the law library. You may call or e-mail us with research inquiries, and we will respond in a timely manner. We currently provide this service free of charge.

Attorney Billing Accounts

WPLL offers attorneys in good standing the convenient option of opening an account for quarterly billing of copies and printing with a small service charge. Please speak with a staff member for more information about Attorney Billing Accounts.

Location, Hours, and Contact Information

Location: Wahab Public Law Library is located at the Virginia Beach Judicial Center, Building 10B, on the ground floor.

Hours: Monday – Friday, 8:30 am – 4:30 pm

Address: 2425 Nimmo Parkway, Bldg. 10B, Virginia Beach, VA 23456-9062

Phone: (757) 385-4419

E-mail: llstaff@vbgov.com

Website: www.vbgov.com/law-library

Branch Manager: Jean Tancredi (jtancred@vbgov.com)

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Young Trial Lawyers

Career lessons learned.

What I wish I'd known when I was a young lawyer

by L. Steven Emmert

We've all heard that law school doesn't teach you how to be a lawyer; it just teaches you how to think like a lawyer. Most of us have recognized the wisdom in this observation. Experienced attorneys will tell you that it takes perhaps five years in practice before you can comfortably manage your profession. The best lawyers don't stop learning there; they continue to work on improving themselves for decades.

In an effort to smooth the career path for young trial lawyers, here are some musings on what I've learned over the past 30 years.

Be proactive about your career

You'll meet many attorneys who feel that they have very little control over their careers. They've made a few basic decisions in the beginning, but far too often there's only one decision – to accept the only job offer and then do whatever the new boss assigns. The caseload, and career path, of such an attorney will thus be controlled by an outside factor: whatever walks in the door.

Years later those attorneys often wind up feeling trapped in unrewarding careers, about which they feel no passion. Ten to 15 years into their careers, they're handling a certain kind of work for one primary reason – because that's what they've always done.

This is the passive approach to shaping your career. It might lead to career satisfaction and personal happiness, but if it does so, it'll be by accident. If you want a truly rewarding professional life, you need to be proactive about creating it. No one's going to do it for you. There's a good reason why Stephen Covey chose "Be Proactive" as the very first in his list of *The Seven Habits of Highly Effective People*.

In crafting your future career, I suggest that you follow the advice of a wise Virginian, Napoleon Hill, who recommends that you decide what you "really love to do, and then find a way to make a good living doing it." That advice may eventually lead you to focus on a particular narrow field of the law. If you already know what that field is, spend some time right now figuring out how to shape a practice like that, and then get started in that direction. Five years from now, your only regret will be that you didn't start sooner.

Don't be afraid to take calculated risks

When it comes to their careers, lawyers are notoriously risk-averse. One explanation for this may

be that we're trained never to take risks that might imperil our client's case. Trust lawyers recommend conservative investments, so they can't be sued for squandering the trust assets on investment vehicles that might provide a higher return for the beneficiaries. Trial lawyers are advised never to ask a witness a question if the lawyer doesn't already know the answer.

In some instances and with some clients, this hyper-cautious approach makes sense. But when you allow this kind of thinking to govern your career decisions, you're succumbing to timidity and clipping your own wings. Frank Sanitate has wisely observed that risk is "the price you pay for growth." Meir Statman defines it only slightly differently: "Risk is payment for a chance to reach our aspirations." Lawyers are not exempted from this rule.

What level of risk is right for you? If you look in a mirror, you'll find the only person who can answer that. For some of you, it may be a decision to jettison the warm security blanket of the billable hour, where the client bears all of the risk and the lawyer is guaranteed to get paid. For others, it may be a decision to take on a controversial case for unpopular clients; John Adams did that when he agreed to represent British soldiers in the wake of the Boston Massacre.

It's perfectly appropriate to take few risks with your clients' interests, but this is your career; this is your life. When confronted with J. Alfred Prufrock's question, the answer is yes – you should indeed "dare to eat a peach." Doing so may well be the difference between your making a good living and making a memorable life.

Organization matters – a lot

When you're planning your trial presentation, do you prepare a checklist for the matters you want to prove, the witnesses you want to call, and the exhibits you want to admit? If so, good for you. Lists are great tools for ensuring that you get everything into the record that you want to establish. That will help to ensure that, for example, you haven't waived anything for purposes of appeal.

But if that's the only kind of planning you do, you're shortchanging your client and setting yourself up to lose at trial. In order to make your presentation as effective as possible, you have to tell a story, and that takes preparation on a different level. Ideally, you should be in a position to present a case in a logical, orderly fashion, one that's easy for your audience to understand. Merely introducing all of the factual components of your case without organizing the story properly is like handing your judge or jury a jigsaw puzzle and saying, "Here are all the pieces to my case; now *you* put them together."

If you want to be maximally effective, you need to recognize that putting the pieces of the puzzle together is *your* job. From their experience watching fictional trials in movies and television shows,

jurors have been conditioned to expect concise, logical, and even entertaining trial presentations; they don't come into the courtroom expecting to have to put a jigsaw puzzle together. In bench trials, judges may well have the ability to put the pieces together, but they usually don't have the time.

Regardless of your audience, your trial presentation will be vastly more effective if you do more than just get all the evidence in. Present your case in a consumer-friendly manner, one that's easy for the judge and jury to understand, and your trial results will improve.

Nastygrams are almost always counterproductive

No matter how recently you received that big certificate from the Board of Bar Examiners, you've probably received at least one intemperate, or abusive, or sanction-threatening letter from another member of our profession. How you choose to respond to those is a matter of personal style. But your career will be a better one if you resolve now never to send one of your own.

The usual reason why lawyers send out nastygrams is that they learned from early-career mentors to do so. Those mentors, unfortunately, are passing along the disease of career myopia. It may be that they never learned how to craft an effective letter that's moderate or even understated in tone, one that treats the addressee as a fellow professional. These lawyers illustrate the observation, "When the only tool you own is a hammer, eventually all of your problems start to look like nails."

From a practical and short-term standpoint, the primary drawback of angry, threatening letters is that they all too often wind up in the hands of judges who are in the process of ruling on motions. Because judges see incivility so often, they resent it when they see it. When the court recognizes that there's incivility on one side of the equation only, close-call discretionary rulings often start going in one direction – against the abusive lawyer.

Over the long term, refusing to engage in this particular form of incivility can have benefits for your career, as you develop solid personal relationships with lawyers across the aisle. When you look over at your adversary, keep in mind that you're likely to be practicing law in the same town for the next 30 to 40 years. The time *will* come when you'll need a favor from her, or when she needs to refer a client to an attorney she trusts. You should never burn a bridge if you can avoid it.

"All other things being equal"

This one comes courtesy of Justice Don Lemons of the Supreme Court of Virginia, who recounts this story from his early years in practice. An older lawyer in his firm asked him cryptically, "So, have you figured it out yet?" The conversation played out over several minutes as the young future jurist tried

to figure out what “it” was, and the mentor offered playful but unavailing hints. Finally, the older lawyer spelled it out:

“In close evidentiary or procedural rulings in trial courts, where all other things are equal, the older lawyer wins.”

Did it rankle you to read that diagnosis? Well, it rankled then-Attorney Lemons, who mused that he was destined to lose a disproportionate share of rulings until his temples grayed. But his mentor was quick to clarify this principle:

“I said, ‘All other things being *equal*.’ Your job is to make sure that when you go up against a more senior lawyer, all other things *aren’t* equal.”

If this sounds unfair to you, that’s because it *is* unfair. But it also reflects reality, and you can’t simply ignore it. Trial judges are required to make judgments more or less instantaneously; they don’t have the leisure of mulling over the merits of an evidentiary objection for weeks before making a ruling, so when it’s a tough choice, many jurists will understandably conclude that the more-seasoned lawyer is somewhat more likely to have the right side of the argument.

Until *your* temples start to gray, you need to be sure that all other things aren’t equal. You’ll need to out-prepare your opponent, to be ready for any potential wrinkle that might arise. Of course, the byproduct of this approach is that you’ll start to develop a reputation as a very well-prepared advocate, and that can’t hurt your career.

There is a right way to stand up to judges

Early in my legal career, I attended a motion hearing with my first boss and career mentor, Marc Jacobson. He argued in favor of his client in a hotly disputed legal issue, and on a couple of occasions, the judge (who had a well-deserved reputation for being irritable and short-tempered) responded to some of my mentor’s contentions with patent judicial anger.

Despite this anger from a thoroughly dangerous source, my mentor never backed down. He continued to insist, in a respectful but firm tone, that the learned jurist’s views on a couple of issues were wrong. To my surprise, when the hearing ended we were allowed to leave through the same door by which we had entered; I fully expected a short but unpleasant stay in lockup, at least for him and maybe for me, too.

As we walked down the hallway of the courthouse, I remarked to my mentor that I was surprised that he had continued to argue even as the judge became obviously angry. His response has stuck with me, verbatim, for more than half my life: “You can’t let these judges just walk over you.”

As foreign as that sounded to me, he was right. The General Assembly does not hand out robes only to people with calm, gentle demeanors, and if you’re a trial lawyer, you’re certain to encounter

irritable and even angry trial judges. When that happens, remember two things:

1. There is a way to make your point, to explain your objection, to proffer excluded evidence, in a professionally acceptable manner. You must do it respectfully, of course; always resist the temptation to fire off an acrid comment in response to a clearly erroneous ruling. Like the boundary between confidence and arrogance, you should never cross the line between respectful disagreement and scorn for the court.

2. As part of your duties to your client, you are required to make professional, respectful objections, arguments, and proffers even when the judge’s temper threatens to blow. If you allow yourself to become intimidated into silence, you will likely waive appellate review of the argument that you didn’t have the courage to make. As Justice Lemons has urged, “If you’re afraid of trial judges, perhaps you should consider a career as a transactional lawyer.”

Always bring a proposed order to a hearing

Even seasoned lawyers sometimes forget this one. When you attend a hearing, you should always bring with you a draft order that carries out the ruling that you want the judge to make. This advice applies whether you’re the movant or the respondent; you want something that you can hand up to the judge for entry immediately.

There are two reasons for this. First, since courts of record speak only through their orders, it gives immediate effect to the ruling that you desired. For example, if the order overrules a demurrer and gives the defendant 21 days to answer the complaint, immediate entry of your order starts the clock ticking immediately.

Second, when you undertake to prepare and circulate an order after the hearing, your opponent will know that she can, in effect, get a free crack at asking the judge to revisit the ruling. How does she do that, especially considering the provision in Rule 4:15(b) that prohibits reconsideration hearings unless the court directs one? It’s easy; she uses the simple expedient of not agreeing to endorse your draft order, perhaps by a pretext of disagreeing with your wording. Once she gets her foot in the courtroom door, who knows what might happen? If you bring an order to the original hearing, and it gets entered that day, you will avoid this danger.

While we’re on the subject of hearings . . .

Always bring your own court reporter

In the absence of a clear record of the proceedings, whatever the trial judge does is probably insulated from meaningful appellate review. While it’s possible that you could fashion a sufficient written statement of the proceedings under Rule 5:11(e) or 5A:8(c), such a statement is usually a poor substitute for a transcript.

In effect, the reporter is the in-court embodi-

ment of the Court of Appeals or the Supreme Court, peering over the trial judge's shoulder to ensure that no funny business goes on. The best way to ensure that your opponent isn't the beneficiary of a little creative justice is to make the proceedings transparent. That's what the reporter is for, even if you never order a transcript.

Don't be afraid to ask

Even the best lawyers don't know everything (though they do know where to find everything). You may feel pressure in your law firm to be self-sufficient as quickly as possible, particularly when it comes to technical proficiency or the law in your area of practice. Resist the desire to go it alone in pursuit of an image as a low-maintenance associate. The client's interests are too important for your ego to get in the way; when you have a question, ask a senior lawyer. The firm will prefer that you get that kind of guidance, and so will your malpractice insurer.

In case you're concerned about being seen as a pest, relax. We were young lawyers once, too, and each of us owes a tremendous debt to our own mentor, one that in most cases cannot be repaid to the original "creditor." Let us repay it to you. In a few years, you'll be able to transfer the debt to another generation of attorneys. That oft-repeated transition is part of what makes this such a noble profession.



L. Steven Emmert is a partner at Sykes, Bourdon, Ahern & Levy in Virginia Beach. His practice focuses exclusively on appellate advocacy in the state and federal courts. He is a member of the VTLA Board of Governors and a member of Virginia's Appellate Rules Advisory Committee. Mr. Emmert received the Virginia Beach Bar Association's Joseph L. Lyle, Jr. Award for Professionalism and has been named a Leader in the Law by Virginia Lawyers Weekly. He is a graduate of Richmond College and The University of Virginia School of Law.

Ethics & Professionalism

Pro bono publico is Latin for fulfillment

by John C. Lowe

“Pro bono.” “Pro bono publico” to be complete. For the public good. For some, the words create a warm feeling of goodness and caring. For others, they are an annoying requirement thrust upon them by the Bar or because their large law firm wants to climb higher in the AmLaw 500 rankings. In truth, pro bono means fulfillment.

In the process of requiring lawyers to perform a certain level of pro bono activity each year, the real opportunities pro bono work creates frequently get lost in the shuffling of papers, griping, groaning, and institutional compliance. There are three potential and frequent benefits from pro bono work that are rarely emphasized: recognition by the profession at the highest levels for young lawyers, leadership in the Bar by example for more senior lawyers, and an incredible feeling of fulfillment from performing good deeds for others and achieving the highest ideals of our profession for all lawyers handling pro bono representation.

Yes, since I am writing this article, it is appropriate that I prove all of that here and now. Easy job, say I. Read on and you will see why I am so confident in that conclusion. I will start with what appears to be a mathematical formula.

$$XX + XY = UVA$$

This formula produces an example of a young lawyer achieving community recognition through a pro bono case that jumps out to be recognized. Back in 1969, I had just hung out a solo practice shingle in Charlottesville and a young woman who was graduating from Albemarle High School outside of Charlottesville volunteered to work for me as a secretary for next to nothing because of all the pro bono work I was doing – mainly in civil rights cases of one stripe or another. She was graduating from high school with straight A’s and I said, “Well, I guess you’ll be going to the University of Virginia in the fall.”

She said, “No.”

I asked, “Why not?”

She said, “Because women aren’t permitted to attend as undergraduates except in the Nursing School.” I was dumbfounded. This was 1969 – not 1919.

So, I took her case to federal court pro bono with a friend, Alexandria attorney Phil Hirschkop, as co-counsel and help from another Alexandria attorney, Bernie Cohen. As is so often true with pro bono cases dealing with important issues, there were moments of wonderful humor in our hearing for a temporary restraining order to admit our primary plaintiff, Virginia Ann Scott, for the September class at the University. Judge Robert Merhige was sitting and Kate Millett, one of the ardent women’s rights advocates of the day, was our expert witness on the witness stand.

Counsel for the University had harped in various papers about the expense of converting to coeducation. He fixed her with a hard glare and asked, “Isn’t there a significant expense in converting men’s bathrooms into women’s bathrooms?”

Ms. Millett smiled back at him and said, “No, you just plant geraniums in the urinals and you have a women’s bathroom.”

Judge Merhige laughed openly. At the end of that hearing, he granted the TRO requiring that Ginger Scott be admitted to the University of Virginia College of Arts and Sciences pending the outcome of the litigation. And all pro bono.

There came a point in the later pretrial proceedings where the federal judges on the three judge court (we were challenging the constitutionality of a state regulation) suggested to the University’s counsel that the University reconsider its position of opposition to immediate coeducation. The University rose to the occasion and reconsidered the benefits of coeducation, we settled the case, and with that year’s class Virginia Ann Scott was formally admitted. In the next year 40 percent of the entering class were women. Three years later, by agreement, coeducation was in full tilt, without quotas. And all that with a pro bono case from start to finish. And so it came to be that $XX + XY = UVA$.

Everyone in town knew who I was after that case, though some thought the case was a travesty and others thought it was a blessing. But it was pro bono all the way. I felt terrific about the doors we had opened, and my practice grew. Truth be known – and I suspect that the opponents would admit this today if they were honest about it – the University would never have achieved the level of greatness it now enjoys without coeducation in 1969.

And in a footnote that pleased me the most, while so frequently someone who breaks a barrier later drops out or fizzles away, Ginger Scott went on to graduate with honors four years later in Religious Studies, one of the toughest curricula at the University at that time.

But the most convincing pro bono experience was yet to come.

The Virginia Weekly

In 1972, I was in a solo general practice in Charlottesville, still wondering how I could build an even more successful practice, when I was asked by a student to represent him pro bono on a civil rights case. He was the editor of an unofficial, independent student-run newspaper on the Grounds of the University, *The Virginia Weekly*. His newspaper had run an advertisement for the Women's Pavilion in New York City, a clinic that, among other things, performed abortions. Abortions were perfectly legal in New York at that time. He had been charged criminally with prompting or procuring an abortion under a statute in Virginia law, because the ad for the New York Clinic for activities to take place in New York, appeared in his Charlottesville student newspaper.

Jeff asked me to defend him, and I agreed. It was clear to me that this was a First Amendment issue and, in my opinion, a First Amendment violation.

In the General District Court, he was convicted despite my constitutional arguments. On appeal to the circuit court for a trial *de novo*, he was convicted again, with the same punishment, \$50 fine and 30 days in jail, all suspended. Our appeal to the Supreme Court or Virginia was futile and unsuccessful, so I petitioned for *certiorari* to the Supreme Court of the United States. All of this, mind you, was pro bono. Not only no fees, but I was eating all my expenses, too.

To everyone's surprise, the Supreme Court granted *certiorari*. On December 18, 1974, I argued *Bigelow v. Virginia*, 421 U.S. 809 (1975), before the nine justices – and yes – it was pro bono all the way. Another lawyer joined for the argument but it was my argument that led to the Court expanding the Commercial Speech Doctrine to say that commercial speech is entitled to First Amendment protection if it has political content. I had thought ahead to put in the trial record in the Circuit Court prior issues of the *Virginia Weekly* newspaper which editorialized for availability of abortions for women, which proved the political content of the advertisement.

How many lawyers would argue that all that pro bono time I spent was not worth a trip to argue and win a case in the Supreme Court of the United States? And to add free icing to this pro bono cake, a law professor at Northwestern University Law School established a web site, www.oyez.com for landmark cases of the Supreme Court. Each such case had the names and bios of the lawyers who argued the case, a group photo of the justices who heard the case, and a recording of the argument at the Court. Arguments in the Supreme Court are all recorded and available to the public. He decided that our case was a landmark case and included it on his web site. So if you go to http://www.oyez.org/cases/1970-1979/1974/1974_73_1309/ you can hear me arguing a case before the Supreme Court in 1974. How cool is that! All because I was willing to take a case pro bono – and one without a lot of expectation for such incredible proceedings.

Faith Mission Home

In 1986, a law school classmate, Beau Puryear of Madison, asked me to help him by taking over a case defending his client, the Faith Mission Home, a Beachy Amish Mennonite home for neurologically injured and severely retarded children and adults in the foothills of Albemarle County. The Home was fighting being shut down by the Virginia Department of Mental Health and Mental Retardation for allegedly violating state law by using physical punishment in the treatment of their children. It was clear from the outset that this would be a pro bono case. When Beau described the situation, I was immediately galvanized to take the case pro bono and spend a lot of time and effort on it.

The Faith Mission Home staff were all volunteers of the Beachy Amish Mennonite order, committed to love and help these badly disabled children and adults. One of the most troubling neurological disabilities was a condition that caused the child to have a proclivity to run. Anywhere. Just run away. They called these kids "runners." And these kids that suffered from that neurological disability were old enough and nimble enough to run and actually get away to who knows where. There were children with other profound mental, emotional, and neurological disabilities cared for at the Home and many of them were significant behavioral problems for their parents at home and for the staff at the Faith Mission Home. Parents brought their disabled children to the Home because there were no other facilities available in Virginia at any price that could care for their kids except a state facility in Lynchburg that cared for them by using four point restraints and heavy tranquilizers, such as prolixin and thorazine to neutralize the kids by turning them into practically zombies. To be fair to the state officials, they didn't have other options to care for such children and prevent them from harming themselves badly. They didn't like what they had to do but they felt they had no choice.

The parents, including a very high Virginia state government official, loved the Faith Mission Home, were dedicated to the staff and the work they did, and were terrified of any attempt to stop the work of the Home. These parents had searched all over the country for any kind of facility for their kids and could find none that worked at any price. Miraculously, Faith Mission Home only charged \$560 per month per child for everything – room, board, medical care, supervision, schooling, and loving care.

The techniques of the staff at the Home were based on showing the children such love and caring all day every day, that the children became compliant, and the staff were with the children all the time. But there were a few children who needed some additional one-time motivation and for those noncompliant children for whom nothing else worked, the staff would use a paddle to administer a spanking on the buttocks, followed by hugging and affirmations of love and injunctions to behave and follow instructions of the staff. Less than one-third of all the children – about 12 out of 41 if my memory serves me – were ever spanked even once. And no one had ever had to be spanked more than once. From every description of the spanking, I recall worse spankings from my loving father as I grew up and misbehaved occasionally.

State social workers heard that there were spankings and were horrified. Without really analyzing the beneficial results and the lack of any harm to the children, they had the Attorney General of Virginia file a lawsuit in Albemarle County Circuit Court to enjoin the Home from using spanking. Beau asked me to represent the Home along with him and I agreed. This was a watershed case for the staff because their use of spanking was based on Biblical injunction – the old “spare the rod and spoil the child” passage – which was a tenet of their religion. They said if they could not do that they would have to close the Home and move somewhere that allowed them to practice their religion. That absolutely panicked the parents of the children at the Home.

We obtained as our expert Dr. Michael Cataldo, the head of the Neuropsychology Unit at the world-famous Kennedy Institute, the psychiatric arm of the Johns Hopkins University Medical Center in Baltimore, where children with these same types of problems were treated. He visited the home, saw the Home’s techniques for bringing and keeping their children under control, saw the results, and proclaimed that what he had seen was remarkable and he was going to take it back to Johns Hopkins to investigate modeling programs for such children in their care. The Faith Mission Home only charged a parent \$560 per month for a child; Dr. Cataldo told us that the Kennedy Institute charged \$6,000 per month, and he proclaimed that they didn’t obtain as good results as the Home did with their protocol. He came from Baltimore to assist Faith

Mission Home at trial pro bono when he heard that we were representing the Home pro bono.

Judge Gerald Tremblay was a conservative Roman Catholic who was very upset at the state allegations that children were “beaten” at Faith Mission Home. However, he knew me well enough to withhold judgment and listen to what we had to tell him. He was also impressed that we were representing the Home pro bono and said as much. Pro bono status gives a lawyer considerable credibility because it removes the notion that a lawyer might represent a cause for the legal fees it would generate, regardless of the merits of the case. He set a trial and we brought our expert to testify. Judge Tremblay was particularly impressed by Dr. Cataldo, who was not only a superb, skilled, and knowledgeable psychologist, but also a wonderful human being. Finally, after a multi-day trial, with pro bono fire, brimstone, sturm und drang, Judge Tremblay ruled against the State, praised the Faith Mission Home program, and dismissed the case.

The group expression of relief from the assembled parents was unbelievable. The threat that they would lose the only place for their children to have a quality of life while dealing with their disabilities, without heavy tranquilizers and four point restraints, had been devastating to them. There were copious tears and sobbing expressions of relief. It was overwhelming and gratifying to see what good the litigation had produced. And all pro bono. I had kept track of my time for the case, probably just for curiosity since it was pro bono from the start. I donated more than \$50,000 of my time on that case, in return for which I experienced a multimillion dollar reward of good feelings and joy.

The Faith Mission Home decision was upheld on appeal by the Supreme Court of Virginia – also a result of pro bono representation. That was probably the most important case I have ever handled.

As it turned out, those were high profile cases. In fact, the cases that mean the most to me are cases where I represent individuals who are powerless and need a lawyer to vindicate their rights, protect them, or obtain public benefits to which they are entitled, but can’t afford to pay for a lawyer. Representing women in cases where women have been the subject of domestic violence make me feel particularly like what lawyers are supposed to be. And serving as a lawyer for children in custody cases as a guardian *ad litem* makes you realize that you are having an enormous impact on a child at a formative stage of her life.

The Finnegan Model

For four years, my old law firm in D.C., *Finnegan, Henderson, Farabow, Garrett & Dunner*, had me institute a vigorous civil pro bono program for the firm and enlist associates and partners in it as pro bono lawyers. I mentored them and served as co-counsel in cases primarily in the family law area in the Superior Court of D.C. These cases gave

inexperienced lawyers the opportunity to try cases under mentorship as a part of their evolution into trial lawyers.

I watched two young lawyers who had never been on their feet in a courtroom in their lives go up against a seasoned lawyer in a hotly contested adoption case with a judge who was probably the toughest on trial lawyers of any judge in the D.C. Superior Court. She was merciless in enforcing the rules of evidence and decorum, harsh in taking lawyers to task for missteps, and insistent on solid proof and persuasive argument. By the time they finished the multi-day pro bono trial, they had been through a bath of fire, they won the case, and they will never be intimidated by a judge in any court for the rest of their careers. If you ask them, they will tell you that it was the greatest learning experience they had yet had as lawyers and now feel they can work on any case in any court before any judge and hold their own – even when they are paid to do so! They would later go on to large corporate trials with the skills they acquired. And it was all pro bono learning.

Finnegan also had a pro bono criminal defense volunteer program I had helped to establish some years ago with an experienced criminal defense lawyer hired by the firm to run the program. Young lawyers who had never been in a courtroom were trying and winning criminal jury trials in the Superior Court of DC under this program – all pro bono.

Finnegan also initiated a comprehensive pro bono program for representing disabled American service members with medical disability problems, which enabled our lawyers to help repay wounded service members for their sacrifices to our country. These were administrative hearings in the first instance, but had the potential to lead to trials.

For inexperienced lawyers, handling pro bono cases going to trial is an excellent way to obtain trial experience. If such a lawyer wants mentoring, usually in the law firm or in the bar at large there are lawyers who will mentor and help.

One of the pro bono programs we tied in with at Finnegan was the Washington Legal Clinic for the Homeless in D.C. The Legal Clinic had volunteer law firms run free legal clinics at various homeless shelters around the city where homeless men and women could come for legal aid, assistance, and representation in court. We took on a monthly clinic. Some of the most interesting cases and nicest and deserving people I have ever known came to those clinics. It was an honor to help them. It certainly changed my concept of a homeless person, as many of the homeless had one or two college degrees, had worked very honorable and productive jobs before being laid off, and were trying their best to return to a productive life again.

Most homeless people were not homeless because of lack of motivation or effort. The vast majority of clients we saw wanted jobs and wanted

to succeed by working hard.

And – oh, yes – all those pro bono hours probably helped Finnegan's AmLaw 500 ratings.

Transactional work too

Pro bono work can take many forms. Trial work is what most people think of when they hear of someone doing pro bono work. But there is a lot of transactional work that needs pro bono lawyers, particularly today, with employment problems, housing foreclosure problems, housing refinancing problems, and many other non-litigation economy-related problems requiring help for people who really cannot afford lawyers.

In April of this year, my brother, retired U.S. Magistrate Judge David Lowe, called me from Richmond and asked if I could obtain some help for a man from his church – I'll call him Bob – who was having a terrible time obtaining response from the Social Security Administration on his disability claim. Bob, age 45, suffered a heart attack followed by a hemorrhagic stroke in December 2008. At the time he had been laid off from work. He was hospitalized at a local hospital's Intensive Care Unit from December 2008 until February 2009. He is unable to speak and is paralyzed on his right side. All his physicians agree impairments are severe and permanent. He was transferred to and remained at a rehabilitation hospital until April 2009. After showing little improvement, he was discharged and now attends on an "outpatient" basis. He has no other home, so he now lives with his mother, who is in her seventies. Bob and his mother have no assets or income. They cannot afford to pay for the medicines he has been prescribed nor can they afford additional medical expenses.

That wasn't bad enough, but then the red tape of the Social Security System bogged down the case for him to obtain disability benefits. He couldn't arrange a hearing or interview for months, yet he needed help right now.

My brother knows that I don't know anything about Social Security law but I used the Virginia Trial Lawyers Association listserv to find an experienced VTLA Social Security lawyer in Richmond who is now handling the case pro bono. Interestingly, but to me not surprisingly, I received about ten offers from other VTLA lawyers from all over Virginia willing to help this man pro bono, even though they knew he was in Richmond, as much as over a hundred miles away from them, when they saw his plight described on the listserv. It is a testament to the basic goodness and sacrifices of Virginia lawyers.

Kyle Leftwich Banning, from Marks & Harrison took the case, pro bono. In about four days she had obtained full SSDI benefits for the man – a not-so-small miracle. I don't know Kyle other than her reputation as one of the best and her being on the VTLA Board. But I would bet the farm and give you three to one odds that if asked she would extol

the virtues and wonderful feelings from taking such a case for a helpless man – pro bono.

The magic incantation

So, suppose I have motivated you to take on a pro bono case or two, even if you never have taken one before or in spite of the fact that you already have taken one in the past. What do you do to get involved? There are many agencies, organizations, and groups who can direct you or place you right away with cases that need pro bono lawyers. Our Virginia State Bar has a Pro Bono Project that can place lawyers from anywhere in the state who desire to provide some pro bono work. Local courts usually have a crying need for pro bono lawyers to take cases that do not qualify for court-appointed lawyers, particularly in family law cases. There are Legal Aid offices, Public Defender offices, prosecutors' offices, churches, and a variety of charitable organizations that can connect you or use you for pro bono work. Many judges need and seek pro bono lawyers for cases where they have no authority to appoint counsel for some needy person; clerks of court can connect you with such opportunities.

Get together a couple of lawyers from your firm and work out an arrangement with a local charity – such as a homeless shelter, a battered woman's shelter, or other free legal clinic – to hold classes, clinics, counseling, mediation, and other legal services on weekends or in evenings.

Many of the hours I spent on pro bono work in D.C. were spent in free legal clinics at a homeless shelter near our firm under the auspices of the Washington Legal Clinic for the Homeless. If the cases accepted require an appearance in a court, the lawyer has to work out with his firm to have that time available or has to arrange for another lawyer to associate with him and take the case for the court hearing.

In the family law arena there is a large need for family mediation and counseling and that work can be provided on weekends and evenings.

Check with Law Schools in the area. Many have student staffed clinics, legal assistance groups, appellate assistance groups, and other groups providing legal assistance to lawyers or organizations. A practicing lawyer may be needed in order for a law student to be able to submit a brief -- perhaps an amicus curiae brief. But a practicing lawyer will always be welcome for assistance.

Volunteer to provide research assistance to a judge in the local court where your law firm does not practice. For example, if your firm handles no family law cases, perhaps a judge on the local family law court could use some research assistance from a lawyer on a pro bono basis. Much or all of this assistance can be provided based on work performed in the evenings and weekends.

If you discover your firm is neutral or cool to pro bono work and won't support or give credit for pro bono work, that is one thing. But if the

problem is that your firm is hostile to pro bono work – doesn't want the firm name associated with pro bono work, doesn't want its lawyers working on pro bono projects – and won't permit its lawyers to engage in pro bono work, then the first step is to change firms or quit the firm and hang a shingle!

At some point every lawyer must take stock – take an accounting about what is important and how important it is for the lawyer to accomplish her goals. Once that is completed, then steps such as those referred to above, will fall into place.

If you are alert and ask questions with some sensitivity, you will find pro bono cases on your doorstep. You don't need an agency or organization in order to take on a pro bono case – you just need the willingness to help someone who needs a lawyer but can't afford one.

Then you need to learn the magic incantation! Are you ready? All right – repeat after me – “YES, I WILL REPRESENT YOU!”

One of the overlooked aspects of handling pro bono work is the collegiality among lawyers who handle pro bono cases. There is a real fraternal bond among the men and women representing people pro bono and it is a contagious collegiality that provides a wonderful ambiance to one's law practice. Some of my best professional friends are fellow pro bono lawyers. Doesn't matter if they handle one case each month or several each day. There is a camaraderie and recognition that we are not just colleagues but friends, teammates, kindred spirits.

So what does it mean to do a lot of pro bono work, particularly for a solo practitioner? Well, it means that the case will not generate the legal fees that would be earned were it not a pro bono case. But it means a sense of accomplishment and a feeling of having done a good deed for people who need help that cannot be felt in paying cases. I have won jury trials worth hundreds of millions of dollars each to my clients and have obtained murder acquittals for defendants who were not merely not guilty but truly innocent, but the feelings from pro bono cases are the best. And the truth is that most lawyers, particularly younger lawyers in solo practice or small law firms, have enough time available for a pro bono case or two from time to time.

Taking cases on a pro bono basis offers a world of wonderful opportunities for lawyers everywhere. True, not every pro bono case has a likelihood of getting to a high court, but who knows? Perhaps the Supreme Court is right around the corner procedurally for the next case you take pro bono.



John Lowe currently operates his own civil practice firm in Bethesda, Md. He was a trial lawyer in general practice in Charlottesville, before joining the intellectual property law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP in Washington, D.C., in 1992, where he was a partner specializing in patent, trademark, and copyright cases. He is a member of the Patent Bar of the United States Patent and Trademark Office. He retired early as a partner at Finnegan Henderson in 2003. He has served as lead counsel in more than 100 jury trials taken to verdict, has been lead appellate counsel in more than 20 appeals. He holds a B.S. in Research Chemistry from Lehigh University and a law degree from the University of Virginia School of Law.

Young Trial Lawyers

When you are no longer a young lawyer, you won't have to be told the following "rules"

by Barbara S. Williams

You never get a second chance to make a good first impression.
Trite, but true.

Every day young lawyers meet new people: clients, judges, jurors, co-workers, other lawyers. What these people perceive in the first few minutes of meeting you will stick with them. The old fashioned advice of looking people in the eye, paying attention or staying "in the present" (not thinking about what you are going to do next, at lunch, or later that day), and being appropriately dressed for the situation will combine to make a good first impression. These good first impressions last. Judges will remember you. Clients will listen to you. Jurors will pay attention. Co-workers will enjoy working with you.

A common mistake made in this day and age is to have your cell phone out and available during an initial client meeting, a firm staff meeting, or at a lunch meeting. When your cell phone is out and you are checking it for emails and text messages, it causes you to seem less than interested in the people around you. Please don't do that. There is a time and place for everything, and you can check your messages later.

If you try to make a good first impression, you will be served well. It all adds up to success, not to mention an easier life at work!

Treat everyone, both in the courtroom and in your office, with respect

Most of us readily treat other lawyers and judges with respect. But what about the court reporter, the judge's clerk, the bailiff? How do you treat those courtroom personnel? Are you dismissive, bossy or do you plain old ignore these other human beings that may be with you all day during a trial? If you do, the judge and the jury will notice. You don't want to be noticed for this type of behavior. You'll regret it when you need something from one of these important players in the courtroom (remember: the jury watches your every move. They have nothing else to do.).

In your office, the same rules apply. Do you treat the receptionist and the legal assistant with respect? Or do you think that because these staff people are not lawyers that they shouldn't be treated like you want to be treated? These are the members of your team that your clients and your potential clients will talk to, even before they get to talk with you. They are important members of your team because they do a lot of the work on a file. They help you stay organized, they help you prepare. Don't talk down to them, include them in your thinking and strategy if that will help them do their job, and treat them with kindness and respect.

Stay Organized

In general, lawyers are very organized people. However, I had to learn how to put systems in place in my office in order to get everything done that I had to get done. And since most of us are business people, too, we have to make sure the bills get paid, payroll is met, taxes are filed. To take care of all these multiple tasks, you have to find systems that work for you and stick to them. One of the simplest systems I learned from a former employer was to sort the mail every day and put all the bills in one place. Then when it is time to pay bills, they are all in one place. Seems simple, but I had to learn it from someone else! It just wasn't in my nature to put the bills in one place. I wanted to put client bills in

the client files, bills that had to be paid right away in another place, and monthly bills in yet another place. Sometimes we try to make life too complicated. The best systems are simple. And organized.

Be Prepared

I'm sure every lawyer reading this doesn't need to be told to be prepared. But just in case, let me say that I have heard many a judge though the years complain that lawyers that appear before them are not always prepared. Therefore, it is worth it to mention that to be prepared is very important when you appear in front of a judge, a mediator, a client, a prospective employer. I've even heard people say that women are better lawyers because they prepare more. I don't agree with that premise, as I think most of the lawyers that I know—men and women—that are motivated enough to join the VTILA and read articles like this are well prepared in their professional life. But just in case, I put it on the list to remind people.

Do what you say you are going to do.

This rule gets broken every day. Have you ever been to a meeting and someone volunteers to perform a task? And then doesn't do it? How about a lawyer on the other side of a case that says, "Your Honor, I will prepare an Order!" after a ruling and then the guy doesn't do it? Or a client that says they will pay an agreed upon fee, but then balks when she gets the bill? Be realistic. Don't volunteer to do anything unless you are willing to actually do it. On time. As promised.

You will find that you are in a minority if you follow this simple rule, and that others around you will take notice. I heard U.S. District Court Judge Gerald Lee tell a group of young students that if they wanted to succeed in the practice of law they should follow this rule. Look where it got him!

Clients, lawyers and judges have memories like elephants

If you think that you can act untrustworthy or pull the wool over someone's eyes on one occasion and go back to the same courtroom, opponent or client and your behavior will be forgotten, think again. A Virginia Supreme Court justice told us last year in a presentation that when he was a trial judge, he and his colleagues knew those lawyers which could be trusted to steer them right on the holding of a case and those that couldn't be trusted. The same holds true with other lawyers. Many times you will ask other members of the bar about someone you don't know, and you will immediately find out if that lawyer can be trusted. No one forgets, even if you want them to.

Get involved with bar associations to further your education and career

If you are reading this article, you are more than likely a VTILA member. Everything I've learned about being a good trial lawyer and an advocate

in the courtroom has been taught to me by other members of VTILA. When you get involved in a bar association, you can't go wrong. You meet other people, and many of them will have more experience than you. You develop relationships that make it easier to ask questions, get help, or learn from the experience of others. It was through bar associations that I met judges even before they became judges. It was through bar associations that I got to meet lawyers from all across the Commonwealth. You can be active in your local bar, in the state bar, in VTILA. Or all three! And of course there are national bars. Do what you can. There is a bar association for every type of practice or field. You won't regret getting involved. Being active within bar associations gets you out of the office and may give you a different perspective on the practice of law, as well.

Get involved in your community

The public has a dim view of lawyers and trial lawyers in particular. A few years ago we were rated below used car salesmen in trustworthiness. The public relations campaign aimed at reducing jury verdicts by the insurance industry has been, in my view, quite successful. Therefore, we all need to make sure that the people around us, the people of our own communities, know us. Many lawyers volunteer. We coach our kids in sports. We sit on boards of non-profits. We volunteer to feed the poor. When your neighbor and your community gets to know you through your work in the community, the public rating of lawyers will increase. Most people who regularly volunteer in their community say that they get back a whole lot more than they give.

Send a thank you note

It is old fashioned, but sending a hand written note can make a huge impression on someone, especially in this day and age of emails. I was taught that when you meet with a legislator and talk to him or her about a potential bill or something of interest to you and your practice, you should follow up with a hand written thank you note. If someone sends you something to help you with a case—and it is sent electronically—an email thank you is appropriate. It never hurts to say thank you. Time is a precious commodity and everyone appreciates it when you take the time out of your busy schedule to recognize another person's help.

When I left a firm and started my own firm about six years ago, I received dozens of notes wishing me luck and wishing me well. Some were letters, some were handwritten notes, some were in email form. I saved all of them. It meant a lot to me that all of these people would take time out of their day to congratulate me. I go back and look at those notes if I'm having a rough day. It helps.

I know I am preaching to the choir on many of the above "rules," but these are the basics that I return to over and over again when I think of what helped me the most over the last 25 years.



Barbara S. Williams operates her own firm in Leesburg and has been practicing personal injury law since 1988. Ms. Williams is the President-Elect of the Virginia Trial Lawyers Association and is a past president of the Virginia Women Attorneys Association. A member of the inaugural class of Virginia's Most Influential Women named by Virginia Lawyers Weekly, she also has served as a board member of Brain Injury Services and been an advocate for those with brain injuries. She received her bachelor of science degree from Virginia Polytechnic Institute & State University (VPI & SU) in 1979, and read the law from 1985-1988.