

# Bar Programs Help Attorneys Avoid Disciplinary System

by Phillip V. Anderson, 2005–2006 VSB President



When I was twenty-five years old and childless, I had all the answers about how other people should discipline their kids. Many years and three teenage sons later, with the gray hair to show for it, I have far fewer answers but one tried and true observation: Discipline comes in many forms and seldom is a one-size-fits-all proposition.

For sixty-seven years, the Virginia State Bar has been about the regulation of Virginia's lawyers. With the help of 135 lawyers and 55 lay volunteers, the VSB works diligently to enforce the Rules of Professional Conduct and ensure that the public is protected from unscrupulous and incompetent lawyers in the commonwealth. Each year, those 190 volunteers will hear cases on 17 District Committees or the Disciplinary Board. In addition, the bar staff will process 3,100 complaints and field another 1,650 inquiries.<sup>1</sup>

Regulation and discipline, however, are about more than simply responding to inquiries and complaints and enforcing the rules against the violators. Equally important in this mission of protecting the public and regulating the profession is providing Virginia's lawyers with the necessary tools and education that will hopefully keep them from becoming statistics in the VSB's regulatory system.

As part of that effort, the VSB will, within the next several months, provide an online legal research tool, which will be available to all Virginia lawyers at no additional charge. The basic research package will ensure that all lawyers in the commonwealth have the tools necessary to represent their clients well. This asset should be of particular benefit to solo practitioners and lawyers in smaller firms who, due to either lack of resources or the size of a case, have not been able to justify the extra cost of legal research on certain cases. Lawyers engaged in pro bono efforts or representation of indigents in criminal cases will no longer have to personally underwrite the cost of legal research in order to adequately represent their clients. Those among us who are willing to give of their time to represent Virginia's less fortunate should not have to choose between self-funding legal research or doing without. The online legal research tool should elevate the

quality of legal services provided not only to the less fortunate citizens of the commonwealth, but to all clients.

Another significant step in providing lawyers assistance in avoiding the VSB's disciplinary system is the Solo and Small-Firm Forum. This program will be offered for the third time on January 27, 2006, at the College of William & Mary. First offered in March 2005 in Abingdon and followed last fall in Harrisonburg, the central theme of the daylong Solo & Small-Firm Forum is avoidance of disciplinary claims and tips on law office management. The free program is followed with a "town hall" style meeting where attendees can address questions and concerns with Supreme Court Justices and VSB officials.

Most lawyers do not set out to engage in misconduct. Sure, there are those who cleverly and intentionally set out to craft ways to steal from their clients and breach the sacred trust invested in them. Thankfully, they are the exception rather than the rule. Most lawyers simply arrive in the disciplinary system by virtue of making poor choices, sometimes driven by competitive pressures, by personal problems that are neglected, by failure to implement sound office management procedures, or by simply not recognizing the inevitable and properly planning for winding down their law practices. The program provides lawyers with information and education tailored to help them make good choices and avoid the situations that lead to disciplinary complaints.

The VSB offers other programs designed to assist lawyers in avoiding disciplinary problems. Using the Ethics Hotline, Virginia lawyers can seek free, confidential ethics advice by calling the bar office. Lawyers can request formal Legal Ethics Opinions from the Standing Committee on Legal Ethics. Free advice on legal malpractice avoidance, claims repair, and professional liability insurance issues are offered to all Virginia lawyers. A confidential analysis of law office management issues is offered at reduced

**Disciplinary System** *continued on page 13*

## Clients' Protection Fund Board Petitions Paid

On September 9, 2005, the Clients' Protection Fund Board approved payments to twenty clients. The matters involved ten attorneys.

Attorney/Location	Amount Paid	Type of Case
Steven Edgar Bennett, Williamsburg	\$820.00	Unearned retainer/Tax matter
Steven Edgar Bennett, Williamsburg	\$750.00	Unearned retainer/Child support
Margaret L. McLeod Cain, Charlottesville	\$1,000.00	Unearned retainer/Tax matter/Will preparation
Margaret L. McLeod Cain, Charlottesville	\$3,000.00	Unearned retainer/Unspecified representation
Margaret L. McLeod Cain, Charlottesville	\$580.00	Unearned retainer/Criminal representation
O. Stuart Chalifoux, Richmond	\$2,000.00	Unearned retainer/Divorce/Unemployment matter
Charles D. Chambliss, Richmond	\$1,000.00	Unearned retainer/Traffic violation
John M. DiJoseph, Arlington	\$1,800.00	Unearned retainer/Representation civil matter
Arthur C. Ermlich, Deceased	\$953.84	Embezzlement/Personal injury settlement
Sam Garrison, Roanoke	\$1,500.00	Unearned retainer/Divorce
Steven Y. Lee, Fairfax	\$7,804.23	Unearned retainer/Immigration matter
Steven Y. Lee, Fairfax	\$6,647.86	Unearned retainer/Immigration matter
Steven Y. Lee, Fairfax	\$2,309.00	Unearned retainer/Immigration matter
Steven Y. Lee, Fairfax	\$13,566.12	Unearned retainer/Immigration matter
Steven Y. Lee, Fairfax	\$4,000.00	Unearned retainer/Immigration matter
John H. Partridge, Herndon	\$700.00	Unearned retainer/EEOC case
John H. Partridge, Herndon	\$6,000.00	Unearned retainer/EEOC case
John H. Partridge, Herndon	\$5,000.00	Unearned retainer/EEOC case
John H. Partridge, Herndon	\$1,500.00	Unearned retainer/Personal injury case
Gary B. Vanover, Clintwood	\$2,400.00	Unearned retainer/Property easement matter
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Total	\$63,331.05	

# Highlights of Virginia State Bar Council Meeting

October 21, 2005

At its regular meeting on October 21, 2005, in Charlottesville, the Virginia State Bar Council heard the following significant reports and took the following actions:

## **Malpractice Insurance Options Studied**

At the request of the Supreme Court of Virginia, a subcommittee of the Special Committee on Lawyer Malpractice Insurance is exploring options for providing better protection to the public when malpractice is committed by lawyers in private practice. Options include the possibility of requiring lawyers in private practice to have malpractice insurance. About 90 percent of the commonwealth's lawyers in private practice report that they have malpractice insurance.

## **More Support of Criminal Defense Endorsed**

VSB President Phillip V. Anderson has written to Governor Mark R. Warner to ask that more money be allocated toward court-appointed counsel fees and salaries and resources for state public defenders. The VSB Council in October 2004 adopted VSB Indigent Defense Task Force recommendations that included more financial support of indigent criminal defense in Virginia, which ranks last in the United States in fees paid to court-appointed counsel.

## **Disaster Pleas Drew Big Response**

More than four hundred Virginia lawyers, responding to a letter from Chief Justice Leroy R. Hassell Sr. and VSB President Phillip V. Anderson, volunteered to provide pro bono legal advice to Gulf Coast hurricane evacuees who relocated to Virginia. The young lawyers groups of the VSB and The Virginia Bar Association trained the volunteers, and the Virginia Lawyer Referral Service is fielding requests for help.

Meanwhile, Virginia lawyers contributed seventy-two thousands dollars toward

restoration of the justice system in the affected areas, in response to a letter from Anderson and VBA President James V. Meath. Half of the money was sent to state bar-sponsored projects in Louisiana, and half to Mississippi.

## **Budget**

The VSB ended fiscal 2004–2005 with revenues of \$9.8 million and expenses of \$9.7 million. The reserve as of June 30, 2005, stood at \$3.78 million. VSB President-elect Karen A. Gould reported that efforts are under way to increase the Clients' Protection fund, which currently contains about \$3.3 million. An actuarial study last winter recommended that the fund be increased to meet projected obligations in the coming years.

## **Legal Advertising Opinion —Best Lawyers**

The Supreme Court approved a compromise version of Legal Advertising Opinion 114, which addresses how a listing in the book *Best Lawyers in America* can be used in lawyer advertising. The approved opinion states that truthful information about a listing in a credible directory can be included in an ad, but unfair or misleading characterizations drawn from the information are not permitted. For example, a firm might advertise that some members are listed in the book, but may not further claim to be the best law firm in a practice area or geographical region.

## **Online Legal Research**

VSB Executive Director Thomas A. Edmonds reported that the VSB hopes to have a contract in place by the end of 2005 to provide online legal research capability to all Virginia lawyers as a member benefit. The provider is FASTCASE Inc., the only vendor to submit a proposal in response to the bar's second request through the state procurement process. FASTCASE provides a similar service in Florida, Louisiana and Iowa.

## **Limit Considered for Online CLE**

The Mandatory Continuing Legal Education (MCLE) Board is exploring the possibility of a cap on the number of credit hours that lawyers may obtain through distance learning, based on the theory that live seminars with more interaction offer better training. The board is divided about the matter, as is the bar's membership.

## **Disciplinary Matters— Procedural Defaults**

Of the instances of procedural default reported to the VSB by Virginia's appellate courts, 160 have become disciplinary cases, VSB Counsel Barbara A. Williams reported.

## **Law Practice Receiverships**

Receiverships continue to present an element of unpredictability in the disciplinary budget, as more lawyers become disabled, die, abandon their practices or commit serious disciplinary infractions. Currently, twenty-four receiverships are pending. Ten involve attorneys who are deceased or disabled. As of August 31, the program was well under budget for costs and fees. The VSB has budgeted two hundred thousand dollars for receiverships in fiscal 2005–2006.

## **Justice Lacy Appointed as Liaison to the VSB Disciplinary System**

The Supreme Court has appointed Justice Elizabeth B. Lacy to serve as the Court's first-ever liaison to the VSB Standing Committee on Lawyer Discipline, which reviews disciplinary cases for conformity to policy and develops disciplinary rules for review by the council and Court.

## **VSB Computer Project**

Dana D. McDaniel, a volunteer lawyer who has overseen the VSB's years-long effort to rewrite and integrate its computer software system, reported that the bar's technical staff and consultants are now working on the MCLE and professional regulation modules. MCLE is scheduled to

be implemented in January 2006, and professional regulation in September 2006. The modules for managing accounting, membership and Consumer Real Estate Settlement Protection Act requirements are completed.

Virginia.gov has been hired to develop password-protected Web access so that Virginia lawyers can conduct legal research and do business online with the VSB. The log-on security component is scheduled to be completed by the end of December.

### **Online Lawyer Look-up**

The Publications and Public Information Committee, represented by Chair William R. Allcott Jr., proposed that Virginia lawyers' addresses and phone numbers of record be made available on the VSB Web site. After concerns were expressed over junk mail and security of lawyers who work in law enforcement and intelligence, the council indicated in a straw vote that it would prefer an opt-in process, in which information would be provided online only if lawyers affirmatively choose to be on the list. The committee was asked to bring to the March 2006 council meeting a proposal that would specify what information would be provided and how a lawyer would choose to be listed.

### ***Pro Hac Vice***

The council approved by a vote of 51 to 11 a new rule that, if it is accepted by the Supreme Court, will govern appearances in Virginia courts by lawyers licensed in the U.S. outside of Virginia. The rule, proposed by the Multijurisdictional Practice Task Force, would require those lawyers to:

- Associate local counsel, who must sign all pleadings.
- File with the Virginia tribunal an application, a certificate of good standing from each jurisdiction where the lawyer is admitted and a fee of \$250. The fee will be waived for pro bono representations of indigent clients.
- Consent to the jurisdiction of Virginia courts and agencies and the Virginia State Bar.

- Be limited to seven appearances in a twelve-month period.

### **Succession Planning**

On the recommendation of the Receivership Task Force, the council approved by a vote of 46 to 11 an addition to the comment section of Rule 1.3 of the Rules of Professional Conduct. New Comment [4], which is advisory only, states: "A lawyer should plan for client protection in the event of the lawyer's death, impairment, incapacity or disappearance. The plan should be in writing and should designate a responsible attorney capable of making, and who has agreed to make, arrangements for the protection of client interests in the event of the lawyer's death, impairment, incapacity or disappearance." The addition will be sent to the Supreme Court for its consideration.

### **Changes to Corporate Counsel Rule**

The VSB Council voted 58 to 4 to allow and encourage pro bono work by attorneys with Part I corporate counsel certificates. The work must be through a Virginia-licensed legal aid society. The council also approved increasing the corporate counsel registration fee from \$50 to \$150. The changes are subject to approval by the Supreme Court.

### **Representation Before the Virginia Gas and Oil Board**

The council approved and sent to the Supreme Court for its consideration Unauthorized Practice of Law Opinion 209, which states that only a licensed Virginia lawyer can represent a client before the Virginia Gas and Oil Board, which the UPL Committee concluded was a tribunal. The vote was 35 to 3 in favor of the proposed opinion.

### **ABA's Grey Commended**

The council recognized Robert J. Grey Jr. of Richmond for his service as the 2004–2005 president of the American Bar Association.

## Disciplinary System

*continued from page 5*

rates. These are just a few of the services that help Virginia lawyers avoid the disciplinary system.

Providing information and resources that help lawyers avoid disciplinary problems and provide better legal services to their clients is an integral part of the VSB's mission to regulate the legal profession and improve the quality of legal services available to the public. Every time we help a lawyer avoid a bar complaint by providing information and research tools, we save bar dues that would otherwise be spent investigating and perhaps prosecuting the lawyer, we protect the public, and we hopefully preserve a career.

The regulation of Virginia's thirty-nine thousand lawyers is, at times, a daunting task. Certainly, the prompt and thorough investigation and prosecution of disciplinary complaints, when warranted, is the centerpiece of that mission; however, just as our profession has grown and become multifaceted over the last sixty-seven years, so must our approach to regulation and discipline. We must be bold enough to be creative and flexible enough to realize that discipline can be preventive as well as reactive. ⚖️

Endnote:

1 Based on 2005 data.

**Paulo E. Franco Jr. joins  
the VSB as assistant  
bar counsel**



Paulo E. Franco Jr. has joined the Virginia State Bar as assistant bar counsel in the bar's Richmond office.

Franco, who grew up in Northern Virginia, most recently had a solo practice in Richmond that focused on construction and commercial litigation, insurance defense and creditor's rights.

Previously, he practiced with Wright, Robinson, Osthimer & Tatum in Richmond; Robins, Kaplan, Miller & Ciresi LLP in Washington, D.C.; and Rust, Rust & Silver PC in Fairfax. In 1989, he served as clerk to the chief staff attorney for the Supreme Court of Virginia, and before that was a law clerk to a congressional committee.

Franco received a bachelor's degree from Kenyon College in 1986 and a law degree in 1989 from the University of Richmond, where he was associate editor of the *Law Review*.

Franco is the first Virginia bar counsel to speak fluent Spanish.

In his job with the VSB, he will represent the bar in lawyer disciplinary matters.

**IN MEMORIAM**

**A. Lewis Allen**  
Hampton  
October 1935–November 2005

**The Honorable Robert P. Beaver**  
Mechanicsville  
May 1932–September 2005

**Herman O. Bly**  
Fort Myers, Florida  
July 1913–April 2005

**Lucie Carolyn Clarke**  
Charlottesville  
May 1930–April 2005

**Harry Edward Cohn**  
Virginia Beach  
March 1959–October 2005

**Richard C. Erickson**  
Staunton  
July 1946–August 2005

**Roger Douglas Groot**  
Buena Vista  
July 1942–November 2005

**Frank David Harris**  
South Hill  
July 1924–October 2005

**Ellsworth Martin Jennison Sr.**  
Arlington  
October 1920–October 2005

**Joseph William Kaestner**  
Richmond  
March 1947–November 2005

**Robert Helmuth Kluge III**  
McLean  
February 1969–August 2005

**Jeffrey D. Krause**  
Clifton  
June 1944–October 2005

**Woodrow P. Lipscomb**  
Boydton  
March 1916–August 2005

**Graham Gilmore Ludwig Jr.**  
Richmond  
November 1948–August 2005

**Bernard G. Makowka**  
Fairfax  
August 1944–March 2005

**The Honorable James Harry  
Michael Jr.**  
Charlottesville  
October 1918–August 2005

**John Robert Morgan**  
Tunkhannock, Pennsylvania  
November 1927–March 2005

**Robert M. Musselman**  
Charlottesville  
June 1914–November 2004

**Martha Zilmer Neely**  
Fairfax Station  
March 1940–July 2005

**Nanette Helen Pointon**  
Richmond  
August 1957–October 2005

**John D.K. Smoot Jr.**  
Alexandria  
January 1918–July 2005

**Harry Lee Thomas**  
Arlington  
March 1930–September 2005

**Earl Montgomery Tucker**  
Glen Allen  
March 1939–October 2005

**Theophlise Lee Twitty**  
Portsmouth  
October 1951–November 2005

**Gary David Weinfeld**  
Miami, Florida  
June 1962–September 2004

**Andra Jade Zavoy**  
Richmond  
October 1971–September 2005

Thompson's Photography



Oliver W. Hill (seated) poses with scholarship recipients who were recognized during the fifth annual Oliver W. Hill-Samuel W. Tucker Scholarship Dinner on November 3, 2005, in Richmond. The scholarships, which benefit law students at Virginia schools and Howard University, are sponsored by the Richmond Chapter of the Old Dominion Bar Association and the Greater Richmond Bar Foundation. Scholarship recipients include (l-r) Ebony Johnson, Tracey Evans, Emily Bishop, Alex Monroe, Demar Alley, Bobbi Brown, Brian Wesley and Lavonda Rowe. Hill and Tucker, who died in 1990, were principal attorneys for the *Brown v. Board of Education* cases when the U.S. Supreme Court struck the doctrine of separate but equal education.

**VIRGINIA LAW FOUNDATION FELLOWS OFFER SERVICES AS MENTORS**

The fellows of the Virginia Law Foundation, a group of experienced Virginia attorneys recognized for their integrity, character and leadership within the profession and the community, have created a mentor program. Guidance will be provided to new lawyers in matters of professionalism, local customs, practices and procedures, and general legal issues. The program is designed to supplement similar programs that may be in place in law firms or in local bar associations.

Any active Virginia State Bar member who has been in practice for less than three years may request participation in, and help from, the Fellows Mentor Program. A mentor will be assigned to the new lawyer from his or her geographical area for one year. If you are interested in being assigned a Fellows mentor or would like further information, please call the Virginia Law Foundation in Richmond at (804) 648-0112.

.....*What's New!*.....

**Servient Opens Richmond Office**

*Servient offers Discovery Solution for all types of projects*

November 2005: Servient announced the opening of an East Coast headquarters, located in Richmond, Virginia. Jim Renehan, former CEO of DiscSense—the provider of DiscLaw a popular primary law product in the 1990s—will head the East Coast office.

For about the same cost as making copies, Servient enables a legal team to search, review, organize and manage all documents (paper or electronic) involved in the discovery process.

There is no software to purchase, and Servient is set up to allow law firms to pass through the cost of the service. Servient is a Web-based system that can be accessed via a secure Internet site and is scaleable to handle millions of pages or a couple of boxes of documents.

Servient offers all the services needed for a discovery project, whether paper or electronic. The Discovery Compass allows the legal team to review, redact, create privilege logs, create witness file folders and much more, all for the price of making a couple of copies.

Servient focuses on providing solutions for all types of discovery (paper and electronic) for firms of all sizes, but has substantial expertise in the emerging area of electronic discovery.

Servient offers free demonstrations and will show how the system works with your data. For more information, contact Jim Renehan, [jim@servient.com](mailto:jim@servient.com) or (804) 364-6588.

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*“What’s New!” is a column of information about new products and services available to lawyers. In addition to press releases, we can include photographs and logos. For lawyers, it’s a good way to keep up with the latest developments. For advertisers, it’s a great way to get the word out on new products and services. “What’s New!” listings are published for a fee of \$100. Contact Rod Coggin at (804) 775-0585 or [coggin@vsb.org](mailto:coggin@vsb.org) for more information.*

## Harrisonburg-Rockingham Bar Association Presents Pro Bono Awards



Dana J. Cornett (right), president of the Harrisonburg-Rockingham Bar Association, presented Pro Bono Awards to (l-r) Roger A. Ritchie Sr., Dawn Wine Ruple and R. Darren Bostic.

Two attorneys and a law firm from Harrisonburg have been honored for their commitment to pro bono publico service.

Attorneys R. Darren Bostic and Dawn Wine Ruple and the Ritchie Law Firm PLC were recognized by the Harrisonburg-Rockingham Bar Association and Blue Ridge Legal Services during the association's professionalism seminar on October 12, 2005.

All were honored for significant hours of work they put into individual pro bono cases. Bostic and Ruple took on complex domestic relations matters, and the Ritchie Law Firm—made up of Roger A. Ritchie Sr. and his sons, Roger Jr. and Michael L. Ritchie—has accepted many pro bono cases over the years, including complex Supplemental Security Income litigation that is ongoing.

Bostic practices with his wife, Mary Beth M. Bostic, in the firm Bostic & Bostic PC.

Ruple is a solo practitioner who has handled many pro bono matters since she came to Harrisonburg in the late 1980s.

The awards were presented by Dana J. Cornett, president of the bar association. The Pro Bono Awards recognize lawyers in private practice who take referrals of pro bono cases from Blue Ridge Legal Services, a legal aid society that serves low-income residents of the Shenandoah and Roanoke valleys. Blue Ridge has offices in Winchester, Harrisonburg, Lexington and Roanoke.

The referral program has been recognized nationally for its success in drawing volunteers who donate thousands of dollars worth of legal services in critical cases.

More information on the Pro Bono Referral Program can be obtained by calling Janet R. Ikenberry, referral coordinator, at (540) 433-1830.

## Legal Aid Honors Pro Bono Attorneys

More than one hundred attorneys, judges and law office staff gathered in Blacksburg on November 15 to honor the pro bono contributions of Southwest Virginia attorneys. Hosted by Southwest Virginia Legal Aid Society (SVLAS), the gathering celebrated the partnership of legal aid and the private bar in providing essential legal services to low-income Virginians.

SVLAS Executive Director Larry T. Harley said, "In two of the last three fiscal years our legal aid has closed the greatest number of cases of any legal aid in Virginia. You, the pro bono attorneys working with us, have handled 20 percent of our cases that have resulted in court orders."

The Honorable Ray W. Grubbs of the Twenty-seventh Judicial Circuit, was the event's keynote speaker.

SVLAS provides free legal services to low-income Virginians in seventeen counties and four cities in southwestern Virginia west of Roanoke. "This is a huge geographic region—an area the size of New Jersey that we are currently serving with only eleven legal aid staff attorneys," Harley said. Pro bono attorneys in the SVLAS region have served more than five hundred clients in the past two years. Most of the cases have involved divorce, custody or bankruptcy.

Sharon Sowers, the SVLAS community resources coordinator, makes referrals of cases to pro bono attorneys in the New River Valley. SVLAS provides services to low-income residents over a variety of civil legal issues, but refers to pro bono attorneys only those types of cases that each has agreed to accept.

Harley serves as the secretary of The Virginia Bar Association's Community Service Council and has helped legal aid coordinate pro bono work with the private bar for over twenty years. "I don't think the private bar appreciates the power for change it has in its possession. If just half of Virginia's attorneys would handle just one prescreened pro bono court case each year it would double the number of low-income Virginians receiving extended services through our legal aid programs," he said.

### Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB Web site for free and low-cost pro bono trainings and volunteer opportunities: [www.vsb.org/probono/](http://www.vsb.org/probono/).



## Emeritus Members Can Contribute Pro Bono

An emeritus membership status with the Virginia State Bar is now available for lawyers who are retiring from active practice, but who want to be able to contribute through pro bono work.

Under the program—described in Paragraph 3, Section IV of the Rules of Court—lawyers can take emeritus status and continue to provide legal services under supervision of an approved legal services program. To be an emeritus lawyer, you must meet the following criteria:

- You must be an active member of the Virginia State Bar at the time of the application for emeritus status.
- You must have been in active practice for ten of the fifteen years preceding application. Active practice includes working as in-house counsel, a public lawyer or full-time teacher at an American Bar Association-accredited law school, as well as private practice.
- You must have been in good standing, with no discipline for professional misconduct by the VSB or the courts, for fifteen years.
- You must continue to submit to the disciplinary jurisdiction of the Virginia State Bar and Supreme Court of Virginia.
- You must satisfy the mandatory continuing legal education requirements for active members; however, you need not pay annual bar dues.

- You and the legal aid society you will work with must sign affidavits agreeing to the supervisory relationship.
- You must agree to receive no compensation except for reimbursement of expenses for the legal work.

Emeritus lawyers can appear in Virginia courts, prepare and sign court filings and give legal advice. Clients must agree in writing to the arrangement. Judges have discretion to determine the extent of an emeritus attorney's participation in a case.

Some legal aid societies have begun formal programs for recruiting emeritus lawyers. Lawyers with no formal program in their jurisdictions can approach their local legal aid societies individually to arrange emeritus supervision.

The program went into effect on September 1, 2004. So far, one lawyer has emeritus status.

To begin the application status, a lawyer must send a letter of intent to Membership Department, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond 23219. For questions, call (804) 775-0535.

The rule can be downloaded at [www.courts.state.va.us/scv/amendments/080204\\_para\\_3\\_sec\\_4\\_part\\_6\\_effective\\_090104.pdf](http://www.courts.state.va.us/scv/amendments/080204_para_3_sec_4_part_6_effective_090104.pdf).

## Western District of Virginia Names First Public Defender

Larry W. Shelton of Norfolk will serve as the Western District of Virginia's first public defender, starting early next year.



Shelton has supervised Norfolk's federal public defender's office since it opened in 2001.

He will relocate to Roanoke, where the Western District's central office will be located. He will supervise two assistant public defenders in each of the district's offices in Roanoke, Charlottesville and Abingdon.

He was selected by the Fourth U.S. Circuit Court of Appeals from about fifty candidates.

Shelton is a former president of the Norfolk and Portsmouth Bar Association, a former member of the Boyd-Graves Conference and a fellow of the Virginia Law Foundation. He has volunteered in the Virginia State Bar disciplinary system and served on the VSB's Special Committee on Judicial Nominations.

He received his undergraduate and law degrees from Duke University. He came to Norfolk in 1978 as an assistant U.S. attorney, and had a private practice in civil litigation for fourteen years.



## LSNV Celebrates Twenty-fifth Anniversary

At Legal Services of Northern Virginia's Twenty-fifth Anniversary Reception and fundraiser on November 9 were (l-r) J. Bennett Downey, managing attorney of LSNV's Loudoun office; Virginia State Bar Immediate Past President David P. Bobzien; Debra Berke; Fairfax Circuit Judge Stanley P. Klein; and Mark H. Bodner, president of the LSNV Board of Directors. To support LSNV, please contact Andrea L. Bridgeman at (703) 903-2796 or [andrea\\_bridgeman@freddiemac.com](mailto:andrea_bridgeman@freddiemac.com). Photo by Russ Hatchl.

# Fairfax Public Law Library: Legal Information for the Public

by Bobbie J. Denny

The mission of the Fairfax Public Law Library (FPLL) is to promote justice by providing all citizens with access to legal information. The number of individuals representing themselves in court and in noncourt legal matters without assistance of counsel is increasing. The law library, which is located in the Fairfax County Judicial Center, serves thirty-five thousand nonattorney customers each year. Many of these individuals need legal information because they are unable to afford legal representation and do not qualify for free legal services. The FPLL staff provides a portal for individuals proceeding *pro se* to access forms and procedures—both within and beyond the walls of the law library. Other organizations who assist individuals who represent themselves include Legal Services of Northern Virginia (LSNV), the Office of the Clerk of the Circuit Court of Fairfax County, the commonwealth attorney's office and the Fairfax Bar Association (FBA). The law library links patrons to those resources and other print and online legal materials. The library staff frequently refers customers to LSNV, mediation services and the lawyer referral services of the Virginia State Bar and the FBA.

The strongest demand from citizens proceeding *pro se* is for fill-in-the-blank legal forms and pleadings. (See "LSNV Develops Public Forms Web Site," this issue.) In the past, library patrons could only copy sample legal forms and pleadings and then use them as models to draft their own documents at home. The major improvement in the law library's services is the ability to provide customers with direct access to legal forms that can be completed at five public computer workstations, printed and filed with the court. Legal forms are general and may not be suitable for an individual's particular needs. Because personnel do not give advice on which forms to select, the burden is on customers to choose or revise

forms appropriate under their own circumstances. When a customer cannot locate a suitable form to complete, other resources are available, including sample legal forms in both print and online databases. Although the law library does not offer word processing to customers, LSNV has added a blank page on its Web site where library users may draft short legal documents while they are in the law library.

The library staff closely monitors forms and instructions available to the public on the following Web sites: [www.lsnv.org](http://www.lsnv.org) (Forms Master Larry Fann, LSNV staff attorney), [www.fairfaxcounty.gov/courts/circuit](http://www.fairfaxcounty.gov/courts/circuit) (the Honorable John T. Frey, clerk of the Fairfax County Circuit Court), and [www.courts.state.va.us](http://www.courts.state.va.us) (home page for the Virginia Judicial System). The LSNV Web site offers legal information and public forms; the index alone is twenty-five pages. The library staff keeps LSNV informed of forms needed by the public and makes suggestions for improvements based on customer feedback when the forms are accessed. The Fairfax County Circuit Court Web site offers subject-specific procedural information and Supreme Court-approved PDF forms for public use. The circuit court and the law library also assure that law library staff knows what is available on the circuit court Web site and how to direct library patrons to print the documents in a format acceptable to the court. The Web site for the Supreme Court of Virginia includes downloadable PDF forms used by the circuit courts, the general district courts and the juvenile and domestic relations district courts in Virginia.

Frequently requested forms are in the areas of divorce, name change and expungement. For divorce matters, the Fairfax County Circuit Court provides a *pro se* divorce brochure at <http://www.co.fairfax.va.us/courts/circuit/pdf/CCR-H-53.pdf>. LSNV pro-

vides additional information related to divorces and public forms for bills of complaint and final decrees for less complicated uncontested divorces. The library also instructs customers how to access forms (divorce and many others) using the *Fairfax County Circuit Court Manual* (print version and/or disc, which works in conjunction with the Virginia Casefinder CD-ROM database). The Model Domestic Relations Court Orders (*pendente lite*, spousal, final decree, name change, income deduction) for the Fairfax County Circuit Court are available online in the law library. The model orders were produced by the FBA Family Law Section (Chair Richard J. Byrd). For name changes, the Fairfax County Circuit Court Web site includes a brochure with a number of name change petitions and orders in PDF format; customers frequently complete a petition and order for a name change at a computer workstation while they are in the law library. The circuit court also provides an expungement brochure describing procedures applicable to the process. Those seeking expungements are often directed to the law library for expungement forms. These forms are available on the Public Forms section of the LSNV Web site. The library also has expungement forms for use in Fairfax County drafted by Assistant Commonwealth's Attorney John J. Murray. The advantage to *pro se* individuals who choose to complete forms while in the law library is that they have immediate access to explanatory legal information contained in both print and online resources.

The Fairfax Public Law Library includes publications acquired specifically for *pro se* individuals such as the Nolo Press legal self-help books, West's Nutshell Series, and legal materials written for nonattorneys. For the past several years, the Fairfax Public Law Library Committee has

Public Library *continued on page 31*

# LSNV Develops Public Forms Web Site

by Laurence E. Fann

How can a legal aid organization effectively use new technology, such as the Internet and e-mail, to enhance the delivery of legal resources by staff and assist pro bono attorneys, law librarians, personnel in other social service agencies and nonlawyers alike? Starting four years ago, Legal Services of Northern Virginia (LSNV)<sup>1</sup> developed a Web site we call Public Forms<sup>2</sup>. The site provides legal information and procedures as a public service. From the beginning, we decided that we didn't want the traditional "bulletin board" for our site—we wanted to provide ample useful and practical resources that would permit the users to address specific legal issues or procedures.

Our first efforts were directed at developing more than two hundred supplemental forms designed to harmonize with Virginia state forms posted on the Virginia Judicial System Web site. We developed these supplemental forms for many of the more common legal procedures, such as adding a third party to a lawsuit or filing a motion to request a bill of particulars. We also developed specialized forms specific to areas of the law where we practice, such as consumer or family law.

Most of the feedback and guidance in this effort was the result of our collaboration with personnel in the Fairfax County Law Library. Time and again they tell us the most common topics and questions that they are addressing, and we use this information to develop new forms and procedures. We endeavor to add unique and useful information to these forms such as instructions for their use, direct electronic links to the *Code of Virginia*, and rules cited in the form. We make some of them bilingual. The law library has completely integrated Public Forms in their resources to assist the public with information on legal matters. For instance, the library has five computers

devoted to legal information on the Internet, including Public Forms.

Sometimes a useful form is also the simplest. For example, the library does not permit the public to use Microsoft Word or WordPerfect on its computers because of possible computer viruses. At the request of library personnel, LSNV built a blank page in Adobe Acrobat PDF format so that the public could take notes or attach additional information to forms they need to file.

As we went forward, we encountered concerns, especially from nonlawyers, that demanded solutions if our Web site was to be successful. For example, when nonlawyers are late to court they generally have no idea what course of action is available to them. Using the Google search engine, we developed distinctive search features that take common concepts and link them to appropriate legal procedures. For example, if you enter the search terms "late to court," you are taken to information about a rehearing, an appeal, or both<sup>3</sup>.

Public Forms is changing the way we use the very important services of pro bono attorneys and paralegals. Previously we requested the pro bono attorney or paralegal meet in person with up to three clients at one of our offices. Too often, at least one of the clients failed to show up, thereby wasting the time of the attorney or paralegal. In addition, we failed to adequately prepare the attorney or paralegal with enough information for them to be able to spot issues and remedy problems. Recently we began to address these two concerns. We now make appointments for the attorney or paralegal to meet with the client at one of our offices, at their own office or to conduct the initial interview by telephone—saving time and the frustration caused by traffic.

Our staff now spends more time and effort gathering facts and identifying legal issues, and then suggesting solutions. We prepare written material that is directly linked to various sections of our Web site where the attorney or paralegal can find information on a particular subject. This information is e-mailed to the attorney or paralegal before the interview.

We also pay more attention to the needs of the other social service agencies. As part of our site on health care, we have information, including forms, regarding financial aid policies and procedures for hospital bills in Northern Virginia. We have an entire section on the Virginia Health Records Privacy Act with forms, charts and instructions.

Public Forms also offers its volunteer advocates unique vignettes, or samples that steer them through typical cases. The vignettes cover general procedures and emerging areas of law. The vignettes—usually four to six pages—present material in a balanced and impartial manner. They address:

- A discrete issue.
- References to the Code of Virginia, rules and case law.
- The best practices.
- The burden of the parties.
- Recommended information to include in pleadings and
- Questions that may be asked at trial by counsel for plaintiff and defendant.

Our staff and pro bono attorneys prepare these vignettes for law firms who want to

**Public Forms** *continued on page 31*

# Bridging the Information Gap: Librarians Offer Sources To Satisfy Topical Needs

by Gail F. Zwirner

Librarians frequently hear suggestions from patrons about gaps in legal literature. We've tackled many researchers' needs and requests. Not long ago, only a couple of decades of Virginia's court decisions were available online. Researchers now take database content for granted. Virginia's librarians strongly encouraged LexisNexis and Westlaw to add comprehensive case law coverage for the commonwealth and led both vendors to expand coverage nationwide. Attorneys practicing in regulatory areas worked without a code until 1995. Librarians spearheaded that project, too. This issue of *Virginia Lawyer*, which features articles written by law librarians, responds to some of those researchers' requests for topical information.

As more practitioners become comfortable with Internet searching, a frequently asked question at the reference desk is "Where can I find such-and-such title on the Web?" Online and Internet sources are no longer new to legal researchers, but the expectations for accessibility and delivery are expanding. Publishers responded by offering access to many research tools in multiple formats, but as the Internet has become the standard for delivery, the days of totally free access to Web sites are over. These articles suggest options for access. Lyn Warmath's survey of Virginia legal research sources responds to a question frequently asked by many library patrons: "Isn't everything free on the Web?"

Hazel L. Johnson returns to *Virginia Lawyer* with an article entitled "Locating and Identifying Expert Witnesses."

Rodney A. Smolla, dean of the University of Richmond Law School, suggested that many attorneys have a "science knowledge gap" when faced with complex litigation, and he provides guidance in this research area.

Paul Barron from the University of Mary Washington reviews online science sources and suggests ways to refine Internet "surfing" skills.

Kent C. Olson outlines employment law sources. This is an area of law where Virginia practitioners contribute significantly to the literature through the Virginia Law Foundation's continuing legal education series.

Virginia environmental law research is covered by Jennifer Sekula. She shows how to combine print and Internet research for the most effective approach in this specialty practice area.

Our feature article is an interview by Gail Warren, Supreme Court of Virginia law librarian, with Chief Justice Leroy R. Hassell Sr. He shares his thoughts on the court's responsibilities to disseminate legal information. Warren has worked on other information accessibility issues, including the court's development of its Web site at <http://www.courts.state.va.us/scv/home.html> and, more recently, the Virginia State Bar's project to provide online legal research access to Virginia practitioners.

We hope you benefit from our contributions. If you have suggestions for future articles, please send them to me at [gzwirner@richmond.edu](mailto:gzwirner@richmond.edu).



**Gail Zwirner** is head of access services at the University of Richmond Law School Library, where she also teaches legal research. Prior to her appointment at UR, she was senior reference librarian at Hunton & Williams LLP in Richmond. She has worked at law firms in Washington, D.C., and Philadelphia. Zwirner is chair of the publications committee of the Virginia Association of Law Libraries and served as its president from 1999–2000. Gail thanks all the contributors and, in particular, Lyn Warmath, who helped with content ideas and contributed an article.

# "It's Not Rocket Science": Making Sense of Scientific Evidence

by Paul Barron

*The Internet has quite simply become one of the primary tools in a research strategy that aims to pull data from all relevant sources. The Internet simply can't be ignored.*

Carole A. Levitt & Mark E. Rosch

*The Lawyer's Guide to Fact Finding on the Internet*

American Bar Association

In a 2001 *Duke Law Journal* article, Carl F. Cranor wrote, "[L]ittle is known about the universe of approximately 100,000 chemical substances or their derivatives registered for commerce. Surprisingly, for seventy-five percent of the 3,000 top-volume chemicals in commerce, the most basic toxicity results cannot be found in the public record."<sup>1</sup> This might dissuade researchers from searching the Web for information on the reliability of scientific evidence about toxic substances.

Legal professionals have integrated the Web into their research, but they also know that the number of Web documents makes it more difficult to find relevant information. Sources cited by the Congressional Research Service estimate the "Surface Web"—that portion of the Web reached by search engines—contains more than thirteen billion documents. Each day seven million documents are added on the more than nine million Web sites. The "Deep Web"—that portion of the Web reachable only by querying a free database such as PubMed from the National Library of Medicine or fee-based services such as LexisNexis or Westlaw—is much larger. Estimates of its size vary from 150 to 500 times larger than the Surface Web.<sup>2</sup>

If a law library housed the number of print resources equivalent to the number of resources of the Surface Web, researchers would use more than key words to locate

information. By using the advanced search features of Web search tools, relevant material can be found quickly. For instance, to locate the Cranor piece, a Google site-limited title search returns one result—the link to the full text article. This article will review a search process using advanced search query features in Google, (see figure 1) Yahoo and other search tools to find publicly accessible

Scirus science-specific search engine, OAIster academically oriented digital resources and MEDLINE.<sup>4</sup> The information gleaned from the two Web sections will supplement more in-depth research conducted in print resources and proprietary databases such as LexisNexis.

The search query syntax is standardized: Search terms of two or more words are

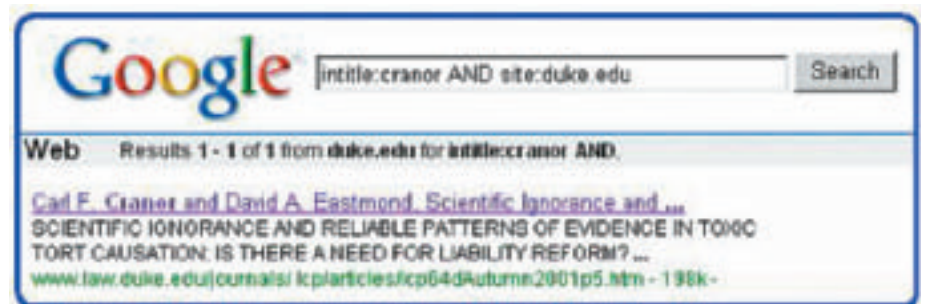


Figure 1

Web-based information on toxic substances and the law and the reliability of scientific evidence about toxic substances. Search tools that perform better with specific topics are searched using queries related to "sick building syndrome." Although Google and Yahoo are used in Surface Web searches, no search engine indexes more than 20 percent of the Web. Additional search engines may be used to search thoroughly the Surface Web's content.<sup>3</sup> The Deep Web is searched using the

enclosed in quotes so the search engines search for phrases, not individual words; Boolean operators (OR, AND and NOT) are upper case text; and, multiple Boolean expressions are nested in parentheses to keep like concepts or synonyms together. This method works in the Surface and the Deep Web search tools discussed in this article. Using this standard, the mixed syntax search query format is:

**"toxic substances" AND "scientific evidence" AND (reliability OR verification).**

Although Google's and Yahoo's advanced search query features are used, queries are run in the basic search templates to avoid the confusion of where to place search query segments in the advanced search template.

For broad topic research we begin with the Scirus science-only search engine recommended by Levitt and Rosch: The search tool locates scientific, scholarly, technical and medical data. Unlike the general search engines, Scirus's advanced search option allows the researcher to find search terms in the article title and to limit the results by content area, date, information type and subject. (see figures 2 and 3)

The date-limited search (2000–2006) Scirus search: **"toxic substances" AND "scientific evidence" AND (reliability OR verification)**

returned relevant resources such as the current edition of the Federal Justice Center's *Reference Manual on Scientific Evidence*, including the full text of the *Reference Guide on Toxicology* coauthored by Mary Sue Henfin, J.D., M.P.H., a partner in a New Jersey law firm and an adjunct professor of public health law at the University of Medicine and Dentistry of New Jersey–Robert Wood Johnson Medical School. The "guide focuses on scientific issues that arise most frequently in toxic tort cases . . . and provides an overview of the basic principles and methodologies of toxicology and offers a scientific context for proffered expert opinion based on toxicological data."

Locating recent research is accomplished by the OAIster Deep Web search tool, a project of the University of Michigan

Digital Library Production Service. OAIster's mission is to provide links to free difficult-to-access, academically-oriented digital resources. A search for **"toxic substances" AND law** returns eleven results. One article, titled "Regulating Toxic Substances Through a Glass Darkly: Using Science Without Distorting the Law," is by Cranor and concludes, "Legal regulation of toxic substances by the tort (or personal injury) or regulatory law can be addressed by sensitively designing scientific and legal burdens of proof for the legal and public health problem in question." (see figure 4)

Another specialized database is the National Library of Medicine's PubMed that contains over fifteen million citations from MEDLINE and other life science journals. New material is added Tuesdays and Saturdays. The database's content is indexed using the controlled vocabulary Medical Subject Headings (MeSH). Since the MeSH terms are precise, the controlled vocabulary should be reviewed prior to searching the database. For example, the MeSH for "toxic substances" is "hazardous substances" and the descriptor for the toxic "black mold" *Stachybotrys atra* is satratoxin H, described as "a toxic metabolite of *Stachybotrys atra*." Using the controlled vocabulary in the search: **"satratoxin H" AND buildings** returns six results from journals and articles studying the adverse health effects to occupants after exposure to satratoxin H in water-damaged buildings. The first result links out to a full text copy of the article. (see figure 5)

Researchers can also search for non-MeSH terms in PubMed; a title search for **"sick building syndrome"** returned 173 results from journals such as the *Archives of Environmental Health* ("Studies on the Role of Fungi in Sick Building Syndrome")

TOXNET is a useful National Library of Medicine database. It is a cluster of databases on toxicology, hazardous chemicals, environmental health and toxic releases.<sup>5</sup> Running the "sick building syndrome" search returned 500 results from U.S., Belgian, British, Dutch, German and Scandinavian journals.

The screenshot shows the Scirus search engine interface. At the top, it says "SCIRUS for scientific information only". Below that are navigation links: "About Us", "Newsroom", "Advisory Board", "Submit Web Site", "Search Tips", and "Contact Us". The main search area has two tabs: "Advanced Search" (selected) and "Basic Search Search Preferences". Under "Advanced Search", there are two search boxes. The first box contains "Exact phrase" and "toxic substances" in "The complete document". The second box contains "AND" and "All of the words" and "scientific evidence" AND (reliability OR verification) in "The complete document". A "Search" button is at the bottom right.

Figure 2: Scirus Science-specific Search Engine Advanced Search Template

The screenshot shows search results from Scirus. The first result is "Reference Manual on Scientific Evidence 402 IV, Specific Causal... Human Body Alter the Toxic Effects of the Compound... quantities, can be toxic. Second, each chemical... Risk Assessment, in Toxic Substances and Human Risk: Principles... Reference Manual on Scientific Evidence 402 clinical case...". The second result is "Reference Manual on Scientific Evidence 402 IV, Specific Causal... Human Body Alter the Toxic Effects of the Compound... quantities, can be toxic. Second, each chemical... Risk Assessment, in Toxic Substances and Human Risk: Principles... Reference Manual on Scientific Evidence 402 clinical case...". The third result is "Supreme Court establishes standards for scientific evidence (liability for... admissibility of scientific evidence: However, such... of purportedly scientific evidence by assigning to... fail at hand. The reliability standard is established...". On the right side, there is a sidebar with "Define your search using these keywords found in the results:" and a list of keywords: "toxicology", "admissibility", "scientific evidence", "liability", "causation", "risk of injury", "toxic substances", "expert evidence", "expert testimony", "toxicology", "liability", "causation", "risk of injury", "toxic substances", "expert evidence", "expert testimony", "toxicology", "liability", "causation", "risk of injury", "toxic substances". At the bottom of the sidebar, there is a "Refine" button.

Figure 3: Scirus Results

After exhausting specialized search tools, the next step is to search the Surface Web. An initial Google search for **“scientific evidence” AND “toxic substances”** returns more than 340,000 results from .com, .org, and .gov sites and sites from Canada and the Cocos Islands. While the number of results may reflect the popularity of an issue, no one can wade through 340,000 hits.

However, the thirteenth result is surprisingly relevant; the Web site belongs to a board-certified civil trial lawyer with a bachelor’s degree in chemical engineering. The site’s subject categories include Research Sites for Chemical and Toxic Properties, Scientific Evidence Resources for *Daubert/Frye* Issues, Resources for Specified or Classes of Toxins, and

Litigation Support Resources.<sup>6</sup> A rule of thumb: When the results are high, review the first fifteen hits.

One useful technique to refine a search returning too many results is to find only Web pages with a specific title since a Web page entitled “Scientific Evidence” probably focuses on that subject. The title search syntax in Google is: **intitle:** and the revised query is:

**intitle:“scientific evidence” AND (reliability OR verification) AND “toxic substances”**. (see figure 6)

All forty-seven of the results have the phrase “scientific evidence” in the title. The second result, an online version of the peer-reviewed *American Journal of Public Health*, has an abstract of the full text article, “The Weight of Scientific Evidence in Policy and Law,” which can be purchased for ten dollars. The fifth result from Defending Science.org provides a full text copy of the same article for free.<sup>7</sup>

Another effective search technique to reduce the number of results is to limit the results to sites with specific top-level domains such as an .edu, .gov, or .org. Educational sites may provide articles by faculty. Federal and state government sites provide full text of laws, and organizational sites express viewpoints about an issue or law. In the .edu domain-limited search **“scientific evidence” AND “toxic substances” AND (reliability OR verification) AND site: edu** the second result is the 2001 *Duke Law Journal* article by Cranor. The fourth result in the .edu-limited search connects to the Harvard University site Sound Science in the Courtroom. The home page mentions the Atlantic Legal Foundation mission to “ensure that whenever science is used in a courtroom that it shall be sound science.” (see figure 7)

Another search option limits the results to a specific site by running a site-limited search. To search only the Atlantic Legal Foundation site for information about toxic substances and scientific evidence, the search query is: **“toxic substances” AND “scientific evidence” AND site:atlanticlegal.org**.

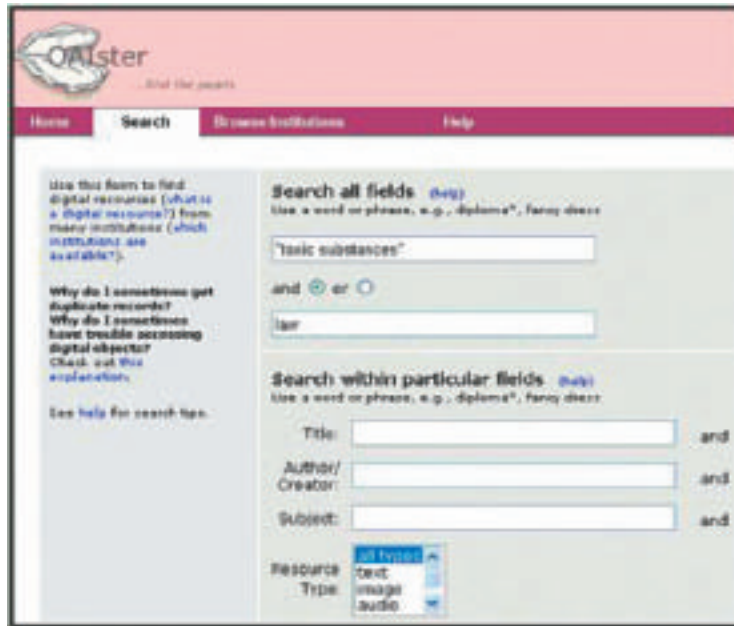


Figure 4: OAIster Digital Library

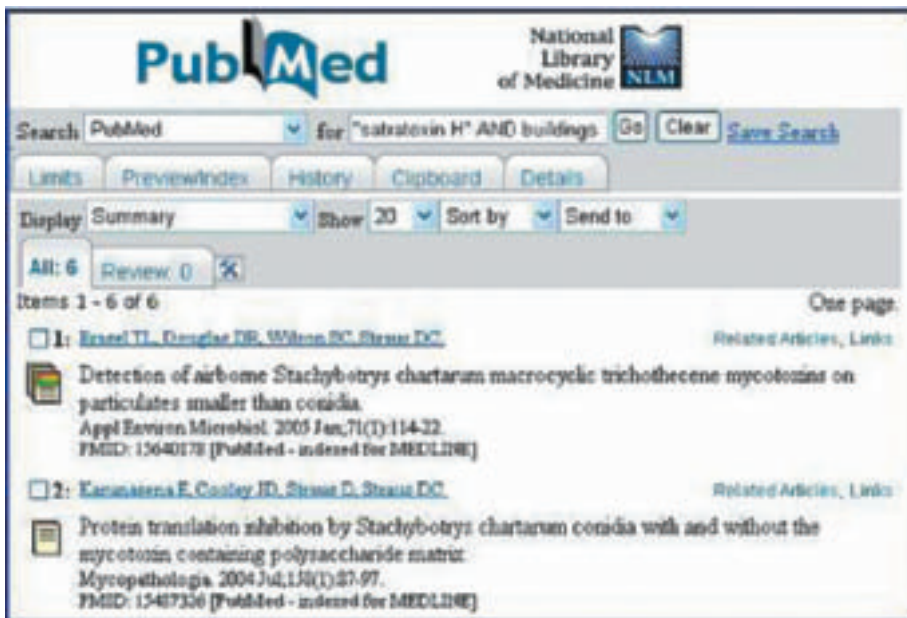


Figure 5: PubMed Results Display

The second result is a 5,300-word article by a lawyer explaining the *Daubert* standard for the admissibility of scientific testimony. The *Daubert* standard only applies in federal courts; some states rely on the earlier *Frye* standard that established a threshold rule for assessing whether scientific testimony had sufficient foundation to be considered by a jury.<sup>8</sup> (see figure 8)

One of the sites linked to by the Florida attorney specializing in toxic tort is the Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency of the U.S. Department of Health and Human Services.<sup>9</sup> A review of the site indicated that ATSDR's mission is to serve "the public by using the best science ... to prevent harmful exposures and diseases related to toxic substances." A site-limited search with the query "toxic substances" AND "scientific evidence" AND site:atsdr.cdc.gov returned eighty five results from only the ATSDR site. Along with case studies one of the results is an extensive study about the social and psychological effects of exposure to toxic substances.

Armed with a useful Web site, a researcher can use a "link check" application similar to a *Shepard's* process. Quality Web sites link to other quality Web sites and may expand the content of the "linked to" site. Yahoo is recommended for link checks because the search engine will run complex Boolean and top-level domain-limited searches. Note: "http://" must be included in the link check search query in Yahoo or the search will fail. To find sites that mention scientific evidence and toxic substances that are linked to the Atlantic Foundation Web site the query is: link:http://www.atlanticlegal.org AND "scientific evidence" AND "toxic substances". (see figure 9)

Three results are returned for the search; the first is the site of the board-certified civil trial lawyer located in the first search in Google.

The results from these searches of the Surface and Deep Webs remind us that the Web is a vast and ever-changing information source. By using advanced search features in specialized search tools and



Figure 6: Google Title Search Results



Figure 7: .edu Top Level Domain-Limited Search Results



Figure 8: Site-limited Search Results





Figure 9: Yahoo Link Check Results

general search engines, we can locate relevant information to supplement print and proprietary databases.

**Summary of Web Search Strategies**

- Determine appropriate search engines to recover information in both the Surface and Deep Web.
- Structure the search query with punctuation and groups for the maximum effect.
- Use date restrictions to narrow the results.
- Consider narrowing searches by using in-title, domain or specific site searches.
- Use link check to “Shepardize” the results. ☞

Endnotes:

- 1 [www.law.duke.edu/journals/lcp/articles/lcp64dAutumn2001p5.htm](http://www.law.duke.edu/journals/lcp/articles/lcp64dAutumn2001p5.htm)
- 2 Congressional Research Service. (2003). *Internet Statistics: Explanation and Sources* (Order Code RL31270). Rita Tehan: Author.
- 3 Lawrence, S. & Giles, C. L. (08 July 1999). Accessibility of Information on the Web. *Nature* 400, 107. To verify the limited overlap in search engine results, run a search query in Thumbshots: ([ranking.thumbshots.com](http://ranking.thumbshots.com)). Other recommended search engines are: Ask Jeeves ([www.ask.com](http://www.ask.com)), MSN ([www.search.msn.com](http://www.search.msn.com)), and Yahoo ([www.search.yahoo.com](http://www.search.yahoo.com)).
- 4 OAIster ([oaister.umdl.umich.edu/oaister](http://oaister.umdl.umich.edu/oaister)), Scirus ([www.scirus.com](http://www.scirus.com)), and PubMed ([www.ncbi.nlm.nih.gov/entrez/query.fcgi](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi))
- 5 <http://toxnet.nlm.nih.gov>
- 6 [www.heindllaw.com/Toxic\\_Tort\\_Chemical\\_Florida\\_Lawyer.htm](http://www.heindllaw.com/Toxic_Tort_Chemical_Florida_Lawyer.htm)
- 7 [www.defendingscience.org](http://www.defendingscience.org)
- 8 See the National District Attorneys Association site for a list of states and whether they follow *Daubert* or *Frye* ([www.ndaa-apri.org/pdf/hgn\\_state\\_chart\\_summary\\_2005.pdf](http://www.ndaa-apri.org/pdf/hgn_state_chart_summary_2005.pdf))
- 9 [www.atsdr.cdc.gov](http://www.atsdr.cdc.gov)


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 about the  
 Virginia  
 Association of  
 Law Libraries  
 see  
<http://law.richmond.edu/vall>**

**Yes, Virginia**  
*continued from page 34*

manuals, citators, digests, encyclopedia, statutes, ordinances, opinions, regulations, legislative materials and *selected* periodicals. Excluded from the survey are law reviews because subject coverage expands beyond topics specific to Virginia. Excluded too are CLE seminar outlines and a few titles available from Virginia CLE that are not Virginia-specific.

Excluded from the survey's statistics are sites offering opinions from the federal courts sitting in Virginia, although their URLs and dates of coverage are included for researchers' convenience.

- 2 Gary Wilbert, phone interview by author, 17 October 2005.
- 3 Lawrence Lessig, "Let A Thousand Googles Bloom," *Los Angeles Times*, 12 January 2005, p. 11.
- 4 Kevin J. Delaney and Jeffrey A. Trachtenberg, "Publishers Challenge Google's Book-Scanning Plans," *Wall Street Journal*, 20 October 2005, p. A1.
- 5 Thomas Mann, *The Oxford Guide to Library Research*, 2d. (New York: Oxford University Press: 1998), 139.
- 6 Mann, *Oxford Guide*, 134.
- 7 Catherine Sanders Reach, David Whelan and Molly Flood, "Feasibility and Viability of the Digital Library in a Private Law Firm," *Law Library Journal* 95 (2003): 381.
- 8 Mann, *Oxford Guide*, 256.



**Paul Barron** manages the Stafford Library at the University of Mary Washington's College of Graduate and Professional Studies. After retiring from the U.S. Marine Corps, he earned a library degree from the University of Texas at Austin in 1997. He served in public and special libraries and as the Technology Director for Rockbridge County Schools in Lexington, Virginia. He is a National Teacher Training Institute Master Teacher, a former adjunct faculty member at Virginia Military Institute and Dabney Lancaster Community College and a past president of the Shenandoah Valley Technology Consortium. He has provided over one hundred workshops and presentations on Web searching at regional and national conferences in Virginia, California, Maryland, Texas and Washington, D.C.

**For more information  
 about the  
 Virginia  
 Association of  
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**Yes, Virginia**  
*continued from page 34*

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- 5 Thomas Mann, *The Oxford Guide to Library Research*, 2d. (New York: Oxford University Press: 1998), 139.
- 6 Mann, *Oxford Guide*, 134.
- 7 Catherine Sanders Reach, David Whelan and Molly Flood, "Feasibility and Viability of the Digital Library in a Private Law Firm," *Law Library Journal* 95 (2003): 381.
- 8 Mann, *Oxford Guide*, 256.

# Identifying and Evaluating Expert Witnesses

by Hazel L. Johnson



The growth in the number and complexity of lawsuits that rely on technical data, coupled with mandated standards on the use of scientific evidence espoused in the U.S. Supreme Court's *Daubert*<sup>1</sup> and *Kumho Tire*<sup>2</sup> decisions, makes it essential that lawyers use every resource to identify appropriate experts and to assess those of the opposing party. This article will review sources that can assist an attorney who is trying to find or evaluate an expert.

## Literature Searches

By consulting library catalogs and indexes of scientific journal literature, a lawyer can gain insight into the subject and begin a preliminary list of potential experts. Most university and many public library catalogs are available through the library's Web site. Virginia library catalogs with links can be found at the Virtual Library of Virginia (VIVA) Web site.<sup>3</sup> The Library of Virginia maintains a page of links to public libraries in the state.<sup>4</sup>

Searching an index of literature relevant to the subject matter (scientific, economic, medical, etc.) can also provide guidance on cutting-edge issues and potential experts. Most indexes to scholarly literature are not available without paying a subscription fee. However, academic and public libraries frequently make that type of index available to individuals who hold

library cards, are alumni of the institution or are members of "friends of the library" groups. The best strategy for finding relevant materials is to identify an institution that has a strong academic program in the desired subject area (e.g., Virginia Tech or Virginia Commonwealth University for engineering materials, the University of Virginia or Medical College of Virginia for medical materials), and check that library's Web site for available indexes and requirements for gaining access to them.

One major exception to the "it's not free on the Internet" scenario is PubMed,<sup>5</sup> the National Library of Medicine's index of medical literature. Another is FindArticles,<sup>6</sup> which provides references to thousands of articles. Searching these sites, as well as access to the full text of some of the articles, is free, and links and subscription instructions are provided for materials that require payment. With the exception of some of the articles included in FindArticles, most of the references will be citations only, but the original publications are often available at a local library. By using the search function to identify articles of interest, you may then check with a library for copies. Literature searches are also valuable once an expert has been identified, as an expert may have publications that are not reflected on his or her curriculum vitae (CV). Consulting an index can help identify both potential experts and any materials that the expert may not be disclosing on a CV.

Consider using other types of literature for identifying and validating an expert witness. Litigation reports that are produced by publishers like Andrews, Mealey's and Harris Martin<sup>7</sup> focus on pending litigation. They include copies of complaints and other pleadings, reports on expert witness testimony and news about the subject. Topics include insurance, specific toxic torts, drugs and medical devices, employment and securities.

## Directories

There are a number of reliable directories listing individuals who actively offer their services as experts. General directories provide information on a wide variety of specialties. Among the more prominent general directories are Jurispro,<sup>8</sup> Experts.com,<sup>9</sup> American Lawyer Media's database of experts<sup>10</sup> and The TASA Group.<sup>11</sup> The expert must pay to be listed in each of these titles. These directories are Internet based and are free to search. ALM's directory also includes a print component that is distributed with its legal newspapers—*National Law Journal*, *Texas Lawyer*, etc. Each site categorizes the services the expert provides and offers the ability to search by specialty and location. Jurispro and ALM often include links to an expert's CV or Web site, articles by the expert and photographs. TASA requires the attorney to contact the company and describe the expertise needed. Then TASA will make referrals from a group of independent experts who are

included in their registry. Searching the TASA Web site provides only the number of experts they have listed and their geographic location.

Specialty directories, including trade association membership directories, offer focused lists of experts. Individuals in these directories might not be interested in testifying as an expert. The most comprehensive list of associations is the *Encyclopedia of Associations*, available at most large public and university libraries and as a database on Lexis and Westlaw.<sup>12</sup> It includes listings for over twenty thousand nonprofit associations. Other possible resources for trade associations are on the Web site of the American Society of Association Executives.<sup>13</sup> This site offers a searchable directory of associations and allows searching by word within the association name.

**Membership Organizations**

Plaintiff and defense organizations usually maintain repositories of materials on experts. The materials frequently include copies of the expert’s CV, deposition testimony and transcripts. On the national level, DRI<sup>14</sup> and Idex<sup>15</sup> provide materials for the defense bar and the Association of Trial Lawyers of America<sup>16</sup> and TrialSmith<sup>17</sup> focus on the plaintiff bar. Membership in the organizations is required for access. Typically, searching is free, but there are fees for obtaining copies of documents from the repository. These services allow the attorney to speak with other attorneys about their experiences with the expert. The Virginia Trial Lawyers Association offers its members access to a database of depositions as well as the ability to search e-mail archives for discussions about the expert.<sup>18</sup>

**Case Law, Dockets, Verdicts and Settlements**

An important factor in identifying and evaluating an expert is the extent to which the individual has testified previously. If an expert’s CV is unavailable, or if you do not have access to membership organizations, there are other research options available. A search of case law often provides references to an expert’s testimony. This may be of interest if the expert’s testimony or credentials have been challenged. Using one of the commercial legal databases<sup>19</sup> is the best way to approach this type of research. Another approach is

to use the subscription service Courtlink<sup>20</sup> to search the content of docket sheets for suits filed in the federal courts—a way to locate instances in which the testimony of an expert has been challenged.

Reports of jury verdicts and settlements can also provide insight into the subject matter testimony of an expert as well as the frequency of testimony. Unfortunately, there is no comprehensive database of verdicts and settlements, since publishers rely on self-reporting by the lawyers involved in a lawsuit. Both Lexis and Westlaw include several verdict/settlement databases that provide coverage for various parts of the country. If the expert testifies nationally, a comprehensive search is necessary. Virginia verdicts and settlements are covered by *Virginia Lawyers Weekly*.<sup>21</sup> The publication offers the ability to search the paper’s archives to 1993, and a subscription to *VZW* is needed to use this service.

**Other Resources**

Consider checking general news sources<sup>22</sup> for news reports on an expert’s testimony. In a high-profile case, the local paper may offer analysis of the expert’s work. An expert may have presented testimony before Congress. This may be covered in general news, but a search of the *Congressional Record* at Thomas (the Library of Congress’s database of congressional material)<sup>23</sup> is a better option. Is the expert involved in research that might produce a patentable device? If so, search the patent databases at the United States Patent and Trademark Office.<sup>24</sup> Does the expert possess a professional license that is relevant to the testimony? The Council on Licensure, Enforcement and Regulation Web site<sup>25</sup> links to international licensing boards. Some will provide a name-searchable database of individual license holders. These searches can be limited by geography. More global searching is available by using the public

records databases on Lexis or Westlaw or a service like Accurint.<sup>26</sup>

Would it be useful to investigate the personal background of the expert? If so, search for lawsuits filed against the expert personally,<sup>27</sup> outstanding liens,<sup>28</sup> criminal records,<sup>29</sup> property ownership,<sup>30</sup> political affiliation,<sup>31</sup> bankruptcy filings,<sup>32</sup> or corporate affiliations.<sup>33</sup> ⚡

Endnotes:

- 1 *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993)
- 2 *Kumbo Tire Co. v. Carmichael*, 526 U.S. 137 (1999)
- 3 [www.vivalib.org/cfapps/lib1.cfm](http://www.vivalib.org/cfapps/lib1.cfm)
- 4 [www.lva.lib.va.us/whoware/directories/valib/libweb.asp](http://www.lva.lib.va.us/whoware/directories/valib/libweb.asp)
- 5 [www.ncib.nlm.nih.gov/entrez/query.fcgi](http://www.ncib.nlm.nih.gov/entrez/query.fcgi)
- 6 [www.findarticles.com](http://www.findarticles.com)
- 7 Andrews Publishers is now a subsidiary of Thomson West. Information about their products can be found at: [west.thomson.com/store/product.asp?product%5Fid=Andrews+Reporters](http://west.thomson.com/store/product.asp?product%5Fid=Andrews+Reporters). They are also available through Westlaw. Mealey’s is a subsidiary of LexisNexis. Information on their products can be found at: [www.mealeys.com/index.html](http://www.mealeys.com/index.html). These materials are available through Lexis. Information on HarrisMartin products can be found at [www.harrismartin.com](http://www.harrismartin.com).
- 8 [jurispro.com](http://jurispro.com)
- 9 [www.experts.com](http://www.experts.com)
- 10 [www.almexperts.com](http://www.almexperts.com)
- 11 [www.tasanet.com](http://www.tasanet.com)
- 12 *Encyclopedia of Associations* is included in the “Legal Reference Materials” database listing on LEXIS. Its database identifier on Westlaw is EOA. Before using, you should determine whether they are included in your firm’s contract with the services.
- 13 [www.asaenet.org](http://www.asaenet.org)
- 14 [www.dri.org](http://www.dri.org)
- 15 [www.idex.com](http://www.idex.com)
- 16 [www.atla.org](http://www.atla.org)
- 17 [www.trialsmith.com](http://www.trialsmith.com)
- 18 “VTLA Beats VSB to Punch in Providing Online Research”, *Virginia Lawyers Weekly*, Sept. 26, 2005, at 1.
- 19 Fastcase, Lexis, LOISLAW, Westlaw offer this capability



**Hazel L. Johnson** has more than twenty years of experience as a law librarian and currently holds the position of library supervisor at McGuireWoods LLP in Richmond. She is a member of the American Association of Law Libraries, the Southeastern Chapter of AALL and the Virginia Association of Law Libraries.

- 20 [www.courtlink.com](http://www.courtlink.com)
- 21 [www.virginialaw.com](http://www.virginialaw.com)
- 22 Lexis and Westlaw include large databases of newspapers. Many newspapers are making their content available on the Internet, sometimes with extensive archives and for free. Good sources that identify papers with an Internet component are the US Newspaper List ([www.usnpl.com](http://www.usnpl.com)) and [Onlinenewspapers.com](http://Onlinenewspapers.com). ([www.onlinenewspapers.com](http://www.onlinenewspapers.com)). Searching Google News ([www.google.com/news](http://www.google.com/news)) is another option.
- 23 [thomas.loc.gov](http://thomas.loc.gov)
- 24 [www.uspto.gov/patft/index.html](http://www.uspto.gov/patft/index.html)
- 25 [www.clearhq.org](http://www.clearhq.org)
- 26 The availability of information on professional licenses is a function of state law. Lexis includes professional license information from twenty-seven states, Westlaw from all states and Accurint ([www.accurint.com](http://www.accurint.com)) from forty-nine states.
- 27 Resources include the case law databases (see *supra* note 19) as well as docket sheet databases such as Courtlink (see *supra* note 20).
- 28 Lien information is available through the public records databases on Westlaw, Lexis or Accurint.
- 29 A nationwide database of criminal records is not available; however Westlaw, Lexis and Accurint have a good collection of data. Additionally, some states, counties or municipalities may make criminal data available on their Web site.
- 30 See *supra* note 28
- 31 Lexis and Westlaw offer databases of voter registration information. Both are found in the "Public Records" database listing. Voter registration records for twenty-seven states are currently included. Voter registration information for twenty-one states is available through Accurint.
- 32 PACER ([pacer.psc.uscourts.gov](http://pacer.psc.uscourts.gov)), the federal court's system for docketing provides excellent access to bankruptcy records. An account is required, but the system is "pay per view." A nationwide debtor search can be performed in the National Party/Case Index ([pacer.uspci.uscourts.gov](http://pacer.uspci.uscourts.gov))
- 33 The Securities and Exchange Commission's Web site ([www.sec.gov](http://www.sec.gov)) and its Electronic Data Gathering Analysis and Retrieval (EDGAR) system data provide access to information on corporate filings, including the names of boards of directors. There are a number of inexpensive commercial services that provide access to EDGAR data and offer more sophisticated search capabilities than the SEC site. The public records databases on Westlaw and Lexis also offer access to comprehensive corporate information on the state level or most states provide minimal search capabilities for their corporate data.
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**Public Library** *continued from page 18*

made the law library more user-friendly to *pro se* individuals. The Fairfax Bar Association manages the law library through an agreement entered into by Fairfax County, the Clerk of the Circuit

Court of Fairfax County and the FBA. The Fairfax Public Law Library functions as an essential component of the county's efforts to provide the public with meaningful access to justice. ☞



**Bobbie J. Denny** is a law librarian at the Fairfax Public Law Library, which provides citizens with access to more than thirty-five thousand books and legal periodicals as well as Internet access to legal resources. She is a member of the Virginia State Bar, the Virginia Association of Law Libraries, and the Board of Directors of the Fairfax County Public Library Foundation.

**Public Forms** *continued from page 19*

contribute their time and expertise to help our clients. ☞

Endnotes:

1 LSNV is a nonprofit public interest law firm that provides free civil legal assistance to low-income residents in Northern Virginia.

2 <http://www.lsnv.org/publicforms.htm>

3 Public Forms can be also be accessed by going to the LSNV main page at [www.lsnv.org](http://www.lsnv.org) or by going to a search engine such as Google.com, entering a search term (e.g., garnishment or Public Forms), space and lsnv.



**Laurence E. Fann** is a part time consumer attorney with Legal Services of Northern Virginia (LSNV), a non-profit public interest law firm that provides free legal assistance to low-income residents of Northern Virginia. He has been with LSNV for ten years, with four of those ten years working on Public Forms. Prior to joining LSNV, Fann worked for twenty-five years as an FBI Agent and three years as an attorney with the U.S. Department of Justice.

**For confidential  
toll-free consultation**

available to all Virginia attorneys on questions related to legal malpractice avoidance, claims repair, professional liability insurance issues and law office management, call the VSB's risk manager, McLean lawyer John J. Brandt, at

**1-800-215-7854.**

**Virginia State Bar  
Publications**

The Virginia State Bar publishes pamphlets and handbooks on law-related issues for Virginia's lawyers and Virginia's citizens. Please note that some are available in bulk quantities, and others only in single copies. All publications can be found on the VSB Web site at <http://www.vsb.org/publications>.

# Yes, Virginia, Everything is Available on the Web for Free

by Lyn Warmath

How often have we heard researchers assert, “Everything is available for free on the Web”? How many times have we heard well-meaning attorneys or administrators say, “Let’s get rid of the books. Who needs books, expensive floor space for libraries or even librarians for that matter? It’s all on the Web, isn’t it?” Well, . . . not yet anyway.

Although researchers can find immeasurable numbers of free resources on the Web, free Internet-based resources will not replace the need for libraries anytime soon. Two classes of important resources for attorneys are not and never will be accessible on the Web for free. First, there are copyrighted materials whose copyright holders and publishers are trying to earn a living. Second, older materials are unattractive candidates for any enterprise to post on the Web for free, notwithstanding a Google Print project that aims to allow Internet searches of millions of books. Without a cultural shift from copyright law and researchers’ preferences for paper, truly free Internet-based research will never come to pass.

This article surveys the free availability on the Web of authoritative and trusted sources of Virginia-specific law on which Virginia’s attorneys have come to rely.<sup>1</sup> The article links to survey results ([www.vsb.org/publications/vlawyer/dec05](http://www.vsb.org/publications/vlawyer/dec05)) confirming that a remarkable percentage of Virginia-specific law sources are not published for free on the Web. The article examines which titles are not currently available on the Web at any cost, and reveals mistaken assumptions about the Web.

### Where Did the “Free” Myth Come From?

Researchers often confuse Web access with “free” Web access. Because a source or document is posted on a Web site does not mean it is or will ever be accessible for free. The publisher of *Virginia Lawyers Weekly* maintains a Web site, but the publisher charges for its Virginia circuit court opinions and for access to its articles. Commercial publishers expect to be paid for their copyrighted works—just as attorneys expect to be paid for their work products. Expecting copyright holders and commercial publishers to post their works

for free is analogous to expecting attorneys to post their work products on the Web for free.

Nonprofits rely on sales to survive. Virginia Continuing Legal Education “relies entirely on income from registration fees and publications and will never be able to offer its hugely popular CLE books and seminar materials on the Web for free,” according to Gary Wilbert, executive director of Virginia CLE. “Virginia CLE serves the entire bar, presenting seminars and publishing books that are not always profitable. Commercial enterprises would not undertake some of the projects that we do. Like other businesses, Virginia CLE has staff to pay, a building to house them, utilities and equipment expenses.”<sup>2</sup> Businesses cannot expect publishers to post their intellectual property on the Web for free and remain in business.

It is easy to see how researchers may become confused about “free” Web sources. The opening line on the opening page of one major “free” legal site reads: “Enhanced! Find Cases for FREE.” Savvy researchers find that this “free” site

offers a meager five years' opinions—hardly a starting point for serious, comprehensive research.

Librarians inadvertently have promoted the myth of free access. Two recent seminars on effective Web searching skills presented by librarians for continuing education organizations were both titled or subtitled, "Find it Fast, Find it Free."

Moreover, researchers should not be misled by flat-rate contracts (sometimes known as fixed-fee contracts) offered by Westlaw and LexisNexis, for example. How many times have we heard researchers suggest that their institutions' flat-rate contracts mean the resources are free? Not one of them is free. Subscribers pay monthly fees for flat-rate contracts. Flat-rate does not mean free. All subscribers pay for access to these two services, and some institutions pay dearly for flat-rate contracts.

LexisNexis and Westlaw charge for access to primary materials (e.g., statutes, regulations and courts' opinions) that researchers might find on free sites. The operative word is "might," because "Wexis" offers researchers better access (not to mention annotations and headnotes), as well as depth of coverage, than alternative free sources whose years of coverage and jurisdictional coverage pale in comparison to the magnitude of "Wexis's" coverage.

### So, Which Sources Really Are Free?

#### Primary Sources: Those Government Sources Funded by Your Tax Dollars

The Web abounds in free primary sources. Researchers will find codes, regulations and opinions everywhere. Virginia's state government, for example, is an authoritative source of primary materials. But the years of coverage vary from one free site to the next. The Supreme Court of Virginia's free Web site publishes its opinions and those of the Virginia Court of Appeals from mid-1995. (Other free sites offer partial coverage of opinions, too: Findlaw from 1995, LexisOne since 2000 and *Virginia Lawyer's Weekly* from 1998 and 1997, respectively.) These are great sites for staying abreast of newly issued opinions, but not so useful for comprehensive coverage and research.

Many attorneys rave about sources freely

available on the Web, but those free sites often come with significant trade-offs:

- Many lack the capability to search multiple jurisdictions simultaneously.
- Many lack search engines.
- Many lack annotations and headnotes.
- Many offer limited or no search help or tech support.
- Some may have undergone little or no editorial review, fact-checking or quality control.
- Organization, if any, may be difficult to discern.

#### It Pays to Pick and Choose

Knowing when not to use the Web has become an attorney's most critical Internet research skill. Before relying on information from any online source, researchers should assess a site's credibility, authority, reliability, currency and accuracy. Free sites posted by government entities and educational institutions are reliable, but careful researchers verify the sources and currency of government and education sites.

## *Knowing when not to use the Web has become an attorney's most critical Internet research skill.*

Failing to confirm a site's currency can be disastrous. For example, local ordinances of a city in Virginia that appear on a free Web site were last updated in 1997. The print edition of that city's code of ordinances is more up-to-date than its Web site.

#### Time to Throw Away the Books?

The Google Print project, announced in December 2004, has served to reinforce the notion that everything that is not already on the Web soon will be. Google and several of the world's top libraries have joined to put fifteen million books online. Lawrence Lessig, professor of law at Stanford University and founder of the school's Center for Internet and Society, has reservations about the Google Print project. "It is not at all clear that Google

and these libraries have the legal right to do what is proposed. For work in the public domain, the right is clear enough. But for work not in the public domain, Google's right to scan—to copy—whole texts to index is uncertain at best—even if it ultimately makes only snippets available. When permission has been given by the copyright holder, again there's no problem. But when permission has not been secured, the law is essentially uncertain,"<sup>3</sup> he says.

The Authors Guild, a society of eight thousand published authors, as well as several individual authors, filed a class-suit for massive copyright infringement against Google in September 2005. In October, the Association of American publishers filed a complaint seeking an injunction to prevent Google from scanning copyrighted materials without permission. "The legal battle could help define how copyright law will affect the Internet and the business models of publishers, news organizations and other content owners."<sup>4</sup>

According to Thomas Mann, a reference librarian at the Library of Congress, obstacles remain—among them that "Most people simply do not like having to do sustained reading of book-length texts on electronic screen displays.

"People who claim that all books will be available online—usually implying thereby that real libraries will become unnecessary—seem seldom to have actually read any book-length works themselves in the electronic format they would so readily impose on other people,"<sup>5</sup> Mann says.

#### Virginia's Survey Statistics Speak Volumes

The mission of the Google Print project and the reality of publishers' practices with Virginia-specific law titles are clearly at odds. A cursory look at the numbers of titles of Virginia-specific law treatises, practice books, CLE books, form books and research manuals available online for free may startle some. None of the sec-



ondary sources surveyed in the linked study is available on the Web for free. Researchers have access to the following Virginia-specific favorites, but not for free:

- *Bryson on Virginia Civil Procedure.*
- *Friend's Virginia Pleading and Practice.*
- *Virginia Civil Procedure.*
- *Virginia Remedies.*
- *Virginia Forms.*
- *Virginia Model Jury Instructions.*

Many treatises and practice books are not available online: fifty-four of 122, or 44 percent, of treatises and other secondary sources surveyed are available only in print. Treatises include some of Virginia's best known, frequently requested and cited titles such as *Goolshy on Virginia Corporations* and *Virginia Title Examiner's Manual*. In another class are the hybrid formats of Virginia CLE materials. Although the nonprofit institution does not enjoy the resources of the big commercial publishers to mount sophisticated online databases, Virginia CLE makes every effort to serve the bar efficiently. Its recent online publishing campaign offers for sale electronic PDF and CD-ROM versions of most of its books and seminar materials. Both are searchable through Adobe Acrobat's Find feature.

Web searchers fare better when they search for primary materials. Of the 155 total sources surveyed, including primary and secondary sources, ninety-nine entries or 63 percent are available on the Web in varying formats, but only 14 percent of those are free. Coverage is spotty, and researchers are warned to proceed with caution.

**Reality Check**

Librarians and attorneys cannot toss the books and rely on free or fee-based online sources. Some authorities suggest that day may never come. Mann says:

The bottom line is that copyright restrictions will never disappear from the Information Superhighway. Neither U.S. nor international law is simply going to change and allow free access to "everything." Some vir-

tual library enthusiasts regard copyright protection as a problem that will eventually be "solved." This is nonsense. Copyright is not the problem. Piracy is the problem. Copyright is the solution. That fundamental relationship will not go away.<sup>6</sup>

The American Bar Association's Catherine Sanders Reach, associate director of the Legal Technology Resource Center, and her coauthors are more optimistic about a virtual library while validating the Virginia survey's results. "It certainly appears that federal case law, statutes, and regulations in a law firm collection can be entirely digital, but practice-specific resources, state resources, and treatises still need refinement in the digital world to be viable. The digital library remains more a vision than a reality."<sup>7</sup>

While publishers may refine their collections of treatises and state-specific resources, researchers cannot expect publishers to provide their work products for free. Mann says:

The Internet will never include everything in real libraries until such time as human nature itself changes, in the direction of selfless benevolence, and all writers, artists, and creators forgo the advantages of intellectual property to voluntarily contribute their work products to the good of the socialist whole. History has not been kind to systems based on the assumption that most human beings will act in this manner. Within the world of learning, however, history has also witnessed the creation of a marvelous mechanism for protecting the rights of authors while also making the universe of knowledge freely available to anyone who will travel to certain locations," and that mechanism is real libraries.<sup>8</sup>

In the meantime, while tensions heat up among commercial interests, copyright holders and advocates of free access, many public libraries are filling a breach.

**Good News for Researchers**

Local public library systems in many cities and counties in Virginia now offer desktop access to scores of pricey, commercial, nonlegal publications purchased by taxpayers. Researchers who own a public library card can visit their local public libraries to register for desktop access to titles such as the *Richmond Times-Dispatch*, *Washington Post*, *New York Times* and *Encyclopedia of Associations* as well as company and industry information. Researchers can "read all about it" through a Web site called Find It Virginia (<http://www.finditva.com>).

Remember, however, that selected databases may have the trade-offs mentioned in this article (lack of legal publications, date coverage restrictions, search engine quirks, unfamiliar and awkward navigation systems).

**What Lies Ahead?**

Many of us are amazed by the wealth of documents freely accessible on the Web. Scores of sites posted by government and educational institutions are impressive (see Paul Barron's article in this issue) and the sites offer researchers conveniences unknown before the Internet. For the foreseeable future, however, careful research will require reliance on fee-based resources and the judicious use of free online sources, as well as those in print. ♫

Endnotes:

1 The linked survey covers Virginia-specific law treatises, practice books, CLE books, form books,

*Yes, Virginia continued on page 28*



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# Law Libraries in the Digital Age—

## *An Interview with Virginia's Chief Justice*

by Gail Warren

A casual visitor to a law library at a university, a law firm or a public facility may notice few differences from ten to fifteen years ago. But changes in legal publishing have affected the resources used by law libraries. Library patrons' expectations direct the design and content of library services. As technology offers greater access to a variety of information, the law library has changed. Law librarians recognize the importance of their roles as information provider, educator, collaborator and navigator of all information electronic. Law librarians move forward by investing in the mission of their parent organization and by encouraging an ongoing dialog with those who rely upon their services.

The Virginia State Law Library is a division of the Supreme Court of Virginia. Since 1902, the library has served the research needs of Virginia's appellate courts, members of the bar and others in the legal community. Although in recent years the number of people physically visiting the law library has declined, the small staff is busier than ever answering the telephone, conducting research and responding to e-mail reference questions from court staff

and the general public. The staff undertakes new projects such as converting briefs and appendices to digital format, monitoring the legal links appearing on the Virginia Judiciary Web site and expanding resources via access to e-books and other electronic resources. This work takes time, but adds value to the library's profile. The library also is responsible for creating an archive to preserve and disseminate the court's rich judicial heritage, and it recently helped evaluate proposals for an online legal research service that will be provided to all members of the Virginia State Bar. All of this work positions the library squarely in the management team of the Court.

The law librarian meets on a regular basis with the Chief Justice to discuss the library's services, the challenges wrought by technology and the delicate balance of print and electronic resources necessary to meet the needs of the Supreme Court and Court of Appeals. Rather than limiting the conversation to highlights of current library activities, these meetings offer an opportunity to envision the future and discuss the broader role of the law library as it relates to the Court's mission. On

October 12, 2005, I spoke with Chief Justice Leroy R. Hassell Sr. to hear his perspective on law library services for the bench and bar, and his thoughts about the future of law libraries in the digital age.

*Chief Justice Hassell, during your tenure as an attorney at McGuire Woods and then as a justice of the Supreme Court of Virginia, you've always been an ardent supporter of the law library. To what do you attribute this interest in law libraries?*

**CJH:** I have always had a strong passion for reading. I like to read. My parents were educators. My dad was a high school teacher and, later, an assistant principal at several high schools in Virginia Beach. My mother was an elementary school teacher and, later, a school administrator in Norfolk. They instilled within me, at a very early age, a passion for reading. And, even as a young child in Norfolk, I had a library card for the Norfolk Public Library.

*So, it has really been a lifelong love of libraries and law libraries. Several years ago, I served on the American Association of Law Libraries's Special Committee on the Future of Law Libraries in the Digital Age.*

*One of the primary objectives of this committee was to examine the issues and outline "different scenarios to describe the law library of the future." From your experience as a consumer of law library services, what are the services you would expect from law libraries of the future? How would this law library best meet your legal and nonlegal research needs?*

**CJH:** I hope that libraries will always retain hard copies of sources of information. I do not believe, as we become more reliant upon information technology systems, that we should de-emphasize the importance and value of hard copies of books. Books, for the most part, are easier to read than spending many hours trying to read and decipher information that is contained on a computer screen. That process, I have found, is not very eye-friendly or, at times, user-friendly.

Secondly, from time to time, there are significant distinctions, or differences, between information contained on a written document and information retrieved online. For example, the color of ink may be different or signatures may differ, and these factors may be significant; such factors may have legal consequences and ramifications. I would hope that law libraries will always remain repositories of data in the form of books, journals, and other publications in printed form, and these documents should be available to the bench and bar. Additionally, many lawyers and judges prefer to perform research in a library.

*I'd like to follow up on your comment about libraries retaining these sources of information permanently and, hopefully, housing print collections. As local, state and federal government entities, particularly the federal government, publish their "official" primary legal materials on the World Wide Web, often in lieu of a printed publication, we need to remember the segment of our citizenry that does not have ready access to the Internet. "In many communities across the United States, public libraries, including law libraries open to the public, remain the single location where citizens are able to access the Internet without payment of fees, pre-registration or institutional membership."<sup>1</sup> How do we ensure this group of citizens is not disconnected?*

**CJH:** I hope that we will never reach a point in our society when we fail to make access to information available to poor citizens and to citizens who live in rural areas or remote areas. We must always provide citizens meaningful access to information. I think that if we publish certain information online, and when I say "we" I refer to governmental entities, it is incumbent upon those governmental entities to make that information available in libraries so that the public will have access to the information. Libraries should be accessible to all Virginians. We must remember that government exists to protect our citizens and to serve our citizens, and we cannot limit our services to those who are blessed with the financial ability to afford Internet access. We must not forget that many citizens cannot afford access to the Internet.

*Turning again to law libraries generally—some commentators have predicted the demise of law libraries because "everything is on the Internet" and anybody can use Google to obtain the legal information they need. Do you envision a future where everything is available on the Internet? And, if so, will access to commercial online research services and the free information on the Internet be sufficient to meet the legal research requirements of the bench and bar?*

**CJH:** I think that the use of information technology to enhance the accessibility of information to the public is wonderful in many, many respects. However, I think there will always, and there should always, be a special place in our hearts and in our budgets for libraries. Law libraries are places where people can escape the pressures of the day and immerse themselves, uninterrupted, in research. Furthermore, law libraries contain certain information such as treatises

that are no longer published and are not available in an electronic format.

I also note that a judge or a lawyer cannot examine original documents online. However, there is no substitute for the ability to carefully scrutinize and examine original documents. We have many historical documents in Virginia. I think it is important that the bench and bar have the ability to examine original documents as opposed to a facsimile or a replica that may exist online.

*My last question: For law libraries to remain a vibrant partner in the legal information community, their value must be visible and measurable. How might law librarians better promote their specialized organizational and research skills to attorneys, judges, deans, faculty, law students and the public they serve?*

**CJH:** I think that law librarians have to remind users, users being judges, lawyers, law students, and the public, of the unique resources that libraries possess—and many of those resources are not available online. And I return to the example of ancient treatises and authentic documents. From time to time I have researched old publications and treatises to learn about the history of certain legal concepts. This material was available either at the Supreme Court of Virginia's law library or at the Library of Virginia. This material was not available in an electronic format. I think there will always be a unique role for law libraries and I think it is incumbent upon law librarians to educate the public about their unique missions and their unique roles. ☺

Endnotes:

- 1 *Beyond the Boundaries: Report of the Special Committee on the Future of Law Libraries in the Digital Age*, at 81 (Chicago, IL: American Association of Law Libraries, 2002)



**Gail Warren** has served since 1982 as state law librarian of the Virginia State Law Library, a division of the Supreme Court of Virginia. She holds a bachelor's degree from James Madison University, a law degree from the University of Richmond and a master's degree in library science from The Catholic University of America. Warren is a member of the Virginia State Bar Education of Lawyers Section, and she has taught on the adjunct law school faculty at UR. She has held many leadership positions with the American Association of Law Libraries. She currently is a member of the VSB's Online Legal Research Services Evaluation Panel.

# A Piece of Work: Employment Law Research in Virginia

by Kent C. Olson

The term “employment law” includes issues from the beginning of the employment process (recruiting practices, immigration issues) through the day-to-day business (wages and hours, employee policies and occupational safety) to the end of employment (wrongful dismissal and discrimination), and beyond (unemployment compensation, the Consolidated Omnibus Budget Reconciliation Act and reference inquiries). The field is governed by federal and state authorities, including labor relations laws, civil rights statutes, common-law contract and tort doctrines, and fair labor standard regulations. Virginia is more than an employment-at-will state.

This article surveys the major published texts, free Web sites with which employment lawyers should be familiar, and other sources. It is based in part on suggestions from several leading Virginia employment law practitioners.<sup>1</sup>

## Books

Thomson West publishes an extensive roster of a dozen titles in its *Virginia Practice* series, but none of these focus on employment law. The major player in this area is Virginia CLE, [www.vacle.org](http://www.vacle.org). The acknowledged bible in the field is Virginia CLE’s two-volume loose-leaf *Employment Law in Virginia*, edited by R. Mark Dare, Bayard E. Harris, and William V. Hoyle Jr., with contributions from more than thirty Virginia lawyers. Now in its second edition

(2002, with a 2005 supplement), this set costs \$165 and, like other Virginia CLE titles, can be purchased in print, on CD-ROM or by download from the Virginia CLE Web site. Topics covered include employment discrimination under federal and state law, the at-will doctrine, employment agreements, wage and hour law, and a range of other issues, such as privacy and testing, occupational safety and health, the Employment Retirement Income Security Act and unemployment compensation. *Employment Law in Virginia* may be the best source on Virginia employment law. It was written by leading employment lawyers in the state.

*This article surveys the major published texts, free Web sites with which employment lawyers should be familiar, and other sources.*

*Employment Law in Virginia* is most accessible to those who refer to it regularly. It is organized by doctrinal area rather than stages of the employment relationship, so it helps to know specific issues. Relevant issues are covered in the chapters on antidiscrimination laws (in volume one) and privacy and testing (in volume two). An extensive index is included in each volume, but it can yield its references grudgingly. There are no index entries for “e-mail monitoring” or “overtime”; subheadings have broad entries such as “employee—communications, monitor-

ing” and “wage and hour law—overtime compensation.” Volume two includes a table of authorities that list statutes, cases and regulations. The table may provide more convenient access for those aware of at least one relevant source.<sup>2</sup>

Virginia CLE also publishes *Virginia Employment Practice and Forms* (2002 with 2005 supp., \$110), by Edward Lee Isler and Steven W. Ray. Although designed as a forms handbook, it is a useful text. The book discusses a more limited number of topics, with five chapters covering the hiring process, employment agreements, covenants not to compete,

personnel policies and termination. Because many topics are omitted or barely mentioned, this book is a source for guidance in specific areas rather than comprehensive coverage.

Virginia CLE is not the only publisher of Virginia employment law books. Other works are written for employers or human resources professionals rather than lawyers. The Virginia Chamber of Commerce, [www.vachamber.com](http://www.vachamber.com), publishes a *Virginia Legal Reference Series* of three paperback volumes: *Labor & Employment*

*Law in Virginia: A Business Guide for Employers*, by Thomas R. Bagby and Thomas M. Winn III (2004, \$127); *A Virginia Employer's Guide to Hiring, Firing, and Discipline*, by Troutman Sanders LLP (2004, \$99); and *Virginia Wage and Hour Handbook: A Practical Guide for Management*, by Ray & Isler PC (2005, \$78). These are current works by leading Virginia employment law attor-

neys and excellent examples of jargon-free client communication, with practical suggestions on topics such as drug testing and age discrimination. These texts are not blemished by footnotes or citations to statutes or cases. The books' value as research tools is minimal. Apparently, legal researchers' craving for citations is more than matched by nonlawyers' aversion to them.<sup>3</sup>

## *Just as Virginia CLE dominates Virginia-specific titles, the Bureau of National Affairs leads in more general employment law resources.*

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Just as Virginia CLE dominates Virginia-specific titles, the Bureau of National Affairs leads in more general employment law resources. BNA Books, [www.bnabooks.com](http://www.bnabooks.com), publishes dozens of texts on employment issues—from arbitration to whistle-blower protection. Many of these are produced in collaboration with the American Bar Association's Section of Labor and Employment Law. Attorneys frequently recommend *Covenants Not to Compete: A State-by-State Survey* (Brian M. Malsberger ed., 4th ed. 2004 with 2005 supp., 2 vols. \$595), and close runners-up include Barbara Lindemann and Paul Grossman, *Employment Discrimination Law* (3d ed. 1996 with 2002 supp., 2 vols. \$575) and *The Developing Labor Law* (Patrick Hardin ed., 4th ed. 2001 with 2004 supp., 2 vols. \$685). These are not inexpensive volumes, but those who use them on a daily basis say they are worth every penny.

BNA publishes the major loose-leaf service in employment and labor law, the *Labor*

with Disabilities Act. It combines the explanatory functions of a treatise with notice of new developments and the texts of federal and state statutes and cases. New cases appear first in the binders and then in six series of bound reporters, each with its own specialized digest system—an excellent way to find cases or to make sure that an online key word search hasn't missed anything. Volume 4A of the loose-leaf set (*State Laws*) includes summaries of Virginia labor relations, wage/hour and child labor laws; other Virginia material appears in volumes 8B (*Fair Employment Practices Manual*) and 9A (*Individual Employment Rights Manual*).<sup>4</sup>

### Free Web Sites

The Web sites that employment law practitioners most often mention as indispensable are those of two federal government agencies: the Department of Labor, [www.dol.gov](http://www.dol.gov), and the Equal Employment Opportunity Commission, [www.eeoc.gov](http://www.eeoc.gov). Both have extensive explanations of the laws they enforce, with links to statutes, regulations and other materials such as enforcement guidance, policy documents and fact sheets. Both are arranged by topic and are searchable. For lawyers working with organized labor issues, the National Labor Relations Board site, [www.nlrb.gov](http://www.nlrb.gov), is every bit as valuable.

The Web site for the Virginia Department of Labor and Industry, [www.dli.state.va.us](http://www.dli.state.va.us), is not as extensive as its federal counterpart,

but it does include information on topics such as labor law, child labor, garnishment and payment of wages, with links to the *Code of Virginia* sections. The Virginia Employment Commission's Virginia's Electronic Labor Market Access (VELMA) system, [velma.virtuallmi.com](http://velma.virtuallmi.com), provides extensive sets of statistical data and analyses on industries, occupations, wages and Virginia cities and counties.

Numerous nongovernmental employment law Web sites are available, although many have little more than links to the same lists of government sources. Perhaps the best-organized directory site is Cornell's Legal Information Institute, [www.law.cornell.edu/topics/employment.html](http://www.law.cornell.edu/topics/employment.html), which provides access to primary sources and major Web sites in several specific areas within employment law. The Virginia Bar Association's Labor Relations and Employment Law Section has a useful collection, [www.vba.org/section/labor/lablinks.htm](http://www.vba.org/section/labor/lablinks.htm), with more than one hundred links to relevant sites, including some two dozen specialized offices in the Department of Labor.

A few major Web sites are worth singling out. The Employment Law Information Network, [www.elinfont.com](http://www.elinfont.com), provides access to employment law articles from law firm sites, arranged topically and by jurisdiction. The site can be monitored through daily or weekly e-mail updates. For employer-side counsel, the Alexander Hamilton Institute's Employment Law Resource Center, [www.ahipubs.com](http://www.ahipubs.com), provides reports and quick answers on a wide variety of issues, as well as a free biweekly newsletter by e-mail. For employee advocates, the National Employment Lawyers Association's Workplace Fairness site, [www.workplacefairness.org](http://www.workplacefairness.org), provides practical information, news of court cases and legislative developments, and a "Today's Workplace" blog. The focus of Professor Ross Runkel's Employment Law Memo, [www.lawmemo.com](http://www.lawmemo.com), is a subscription-based e-mail newsletter issued three times each week (\$300 per year), but the site also provides some information for free, including a variety of articles and an employment law blog.<sup>5</sup>

### Other Current Awareness Sources

The most valuable way to learn about new developments, according to most lawyers, is not by reading or monitoring Web sites but by attending relevant conferences and seminars—in particular the Virginia CLE Annual Employment Law Update each May and The Virginia Bar Association's annual Labor Relations and Employment Law Conference each September. John M. Bredehoft of Venable LLP said, "New lawyers wanting to practice in this field should attend these conferences and introduce themselves to the speakers. The employment law bar is cordial—plaintiff and defendant—and we love to kibbitz about these issues! I really find that I learn as much—or more—from the connections I have made at CLE and bar meeting sessions than I do from the formal treatises."

Several attorneys singled out the VBA conference in particular as the key annual event for new lawyers. Elizabeth A. Lalik of Hunton & Williams LLP said, "It is an excellent way to hear some of the best labor/employment lawyers in this region talk about the hottest and most current issues in the field. Many of the sessions provide basic information about an array of employment law topics as well. The annual meeting also provides an opportunity to meet or to reconnect with employment lawyers from around Virginia, which is terrific for so many reasons." Thomas M. Winn III of Woods Rogers PLC echoes Lalik's sentiments. "The section puts on a first rate seminar each fall with a comprehensive agenda that is beneficial both for rookies and veterans. It is an excellent opportunity to meet labor/employment practitioners (both employer and employee-side) from across the state," Winn said.

The course materials for continuing legal education seminars are also useful surveys of recent developments. Virginia CLE employment law volumes (\$55–70) generally provide articles ranging from very specific topics to overviews of new court decisions. The Virginia CLE Web site, provides detailed information about the contents of recent collections of materials.<sup>6</sup>

Another comprehensive source for monitoring developments is the labor and employment law section of the "Annual Survey of Virginia Law" in the November issue of *University of Richmond Law Review* (\$20). The most recent contribution, covering developments in 2004–05, was written by W. David Paxton and Gregory R. Hunt, and appears at 40 U. Rich. L. Rev. 241 (2005).<sup>7</sup> *The Virginia Employment Law Letter* is a monthly update written by lawyers at LeClair Ryan and published by M. Lee Smith Publications, [www.hrhero.com/vaemp.shtml](http://www.hrhero.com/vaemp.shtml) (\$287 per year, available through Westlaw and Lexis).<sup>8</sup>

Two subscription-based resources available both online or in print are mentioned repeatedly as leading resources for current employment law awareness. The majority of attorneys surveyed at larger law firms report that they read the BNA's *Daily Labor Report*, [www.bna.com/products/labor/dlr.htm](http://www.bna.com/products/labor/dlr.htm) (\$9,264 per year, online version available to patrons in the University of Richmond and Washington & Lee University law libraries) and find it an ideal way to keep up on the latest developments. Like other BNA newsletters (such as the weekly *Employment Discrimination Report and Workplace Law Report*), the *DLR* provides summaries of new legislation, court decisions and agency actions. Its broad range and lack of Virginia focus, however, is noted by John Bredehoft: "While it is often amusing to find out what courts in Idaho or San Francisco think about employment law issues, it really does not help my practice on a day-to-day basis."

Most employment lawyers also read the *Virginia Lawyers Weekly* (VLW), [www.valawyersweekly.com](http://www.valawyersweekly.com) (\$289 per year) regularly to keep track of new developments. VLW subscribers can opt to receive e-mail notices of new decisions. Thomas Winn says, "An excellent way to stay on top of the latest developments is to sign up for VLW's Weekly Practice-Area Alert for Employment Law Cases. This is a VLW service that compiles the week's employment law cases, if any, and sends the summaries along to you by e-mail."

The Internet has not changed the way a lawyer becomes an expert in a field of law. The best path to knowledge and expertise is still to get involved, attend conferences, make connections, talk to other lawyers and gain experience. Steven D. Brown of Williams Mullen said, "Lawyers should resort to the lost art of talking with other lawyers about research issues. Many lawyers today are too consumed with searching for the answer on the computer and many of the answers come from experience." Word of mouth can still be the most effective source for new information. As Harris D. Butler III of Butler Williams & Skilling PC said, "Virginia has a fairly small and close-knit employment bar and news travels fast when a new opinion hits." ☪

#### Endnotes:

- 1 In addition to the people named in the article, A. Neal Barkus and Thomas P. Murphy of Hunton & Williams LLP; Agnis C. Chakravorty and Bayard E. Harris of Woods Rogers PLC; R. Mark Dare of Reed Smith LLP; Laura Effel and David E. Nagle

*continued on page 40*



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- of LeClair Ryan; Merrell Renaud of Squire, Sanders & Dempsey; and Dana L. Rust and Rodney A. Satterwhite of McGuire Woods provided helpful comments.
- 2 Virginia CLE also publishes an abridged paperback compiled by its staff and based on *Employment Law in Virginia*. Entitled *An Employment Law Guide: Employee Rights and Employer Responsibilities in Virginia* (3d ed. 2004, \$45), this streamlined version has a structure that may be more accessible to the nonspecialist. It is organized around the employment process rather than areas of law, beginning with issues in hiring and proceeding through employee conduct and rights to termination and post-termination considerations. Much of the text comes directly from the larger work, and it includes footnotes to statutes and cases. The material has also been reindexed in a simpler, more straightforward format. On the other hand, there is neither a table of authorities nor any cross-reference table indicating where one can find a fuller discussion in the larger work.
  - 3 Another volume, *Virginia Employer's Guide: A Handbook of Employment Laws and Regulations* (Michele A. Potts ed., updated annually, \$149.50) is available from Aspen Publishers, [www.aspenpub.com](http://www.aspenpub.com). It provides a straightforward overview of basic concerns such as hiring, termination, employment discrimination and hours and pay. The editor is also responsible for *Employer's Guides* for California, Illinois and Wisconsin, and the publisher produces similar guides for several other states—leaving one to wonder just how well the titles reflect the intricacies of state law. Supreme Court of Virginia decisions are discussed, but the text does not include case names. These and other references can be found only in “For Further Information” sections at the end of each chapter. Virginia cases are cited only to S.E.2d, not to the *Virginia Reports*.
  - 4 One might consider looking to Supreme Court of Virginia opinions to see what employment law treatises the justices have found valuable, but it appears that only one such work has ever been cited by the Court (and that in two cases): Henry H. Perritt, Jr., *Employee Dismissal Law and Practice* (Aspen, now in its 4th ed. 1998 with 2005 supp., 3 vols. \$350). Earlier editions of Perritt were cited in *Jordan v. Clay's Rest Home, Inc.*, 253 Va. 185, 194, 483 S.E.2d 203 (1997), and *Progress Printing Co. v. Nichols*, 244 Va. 337, 341, 421 S.E.2d 428 (1992).
  - 5 The Workplace Fairness and Employment Law Memo blogs are just two of a growing number of Web logs focusing on employment law. Others include The Employment Law Bulletin, [texasemploymentlaw.blogspot.com](http://texasemploymentlaw.blogspot.com) (which, despite its URL, is not limited to Texas law) and *Workplace Prof Blog*, [lawprofessors.typepad.com/laborprof\\_blog](http://lawprofessors.typepad.com/laborprof_blog) (covering developments in academe such as newly published scholarship). Jottings By An Employer's Lawyer, [employerslawyer.blogspot.com](http://employerslawyer.blogspot.com), is one of several blogs representing the management-side perspective and Drama, Conflict, Despair & Victory at Work, [employeeightsatty.blogspot.com](http://employeeightsatty.blogspot.com), focuses on employee rights litigation. If you locate one relevant blog, it will generally provide links to related blogs of interest.
  - 6 The National Business Institute, [www.nbi-sems.com](http://www.nbi-sems.com), also offers several CLE seminars each year on employment law issues and sells its course materials as well (generally \$99). Its Web site lists the authors for each course, but not the specific topics of their contributions.
  - 7 Another source for case summaries is “News from the Frontlines”: *Recent Developments in Virginia and Federal Employment Law*, by Harris D. Butler III, Lynn F. Jacob and Edward D. Isler. It is available for free download from the Virginia Bar Association Web site, [www.vba.org/section/labor.htm](http://www.vba.org/section/labor.htm), and covers cases decided in 2002 and early 2003.
  - 8 Other Virginia law firms provide analyses of recent employment law developments and guidance for clients through free mailed or electronic newsletters. Among these are the quarterly *Employment Law Outlook* from Willcox & Savage, [www.wilsav.com](http://www.wilsav.com) (click on “News, Events & Publications”) and the semiannual *Employment Law Update* from Hunton & Williams, [www.hunton.com](http://www.hunton.com) (click on “News and Events”). Firms with Web site updates also include McGuireWoods, [www.mcguirewoods.com](http://www.mcguirewoods.com) (“Press Room”) and WoodsRogers, [www.woodsrogers.com](http://www.woodsrogers.com) (“Articles and News”).

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# Nothing Dismal About It: Researching Environmental Law Without Getting Swamped

by Jennifer Sekula



A client of yours—a developer who owns several hundred acres of land abutting the Chesapeake Bay—calls you in a state of agitation. Her company has run into obstacles with its plans to build the region's first multimillion dollar superstore on the property. The land has changed since your client first bought it. What was once a fairly well-drained forest now contains standing pools of water replete with cattails and other marsh plants. Nesting waterfowl have been spotted. Your client suspects that the changes may have been caused by development over the last decade—development that altered the surrounding parcels' drainage patterns and affected the water table. She thinks, too, that Hurricane Isabel affected her property when it passed through in 2003, amplifying the damage allegedly caused by the neighboring developers.

Your client informs you that she's having problems getting permits from local authorities to begin construction. To make matters worse, a chapter of an environmental group is investigating whether to attempt to obtain an injunction to prevent her from developing the land.

You've represented your client in a number of matters, but none involved environ-

mental law beyond the scope of standard land use and zoning considerations. You have little experience with the topic. You know that environmental and land use issues can involve state, federal and local laws, so your research may lead you to all three levels of government. Visions of statutes, ordinances, impact statements, regulatory guidelines, surveyors' maps and soil sample reports dance before your eyes. Where on earth do you start?

## Start with Legal Analyses

A common mistake when approaching a new legal topic is to try to locate all of the statutes and cases immediately. Finding good commentary and analysis of the law will save time. Frequently consulted general environmental treatises are *Treatise on Environmental Law* by Frank P. Grad (Matthew Bender);, *Environmental Regulation of Land Use* by Linda A. Malone (Thomson West), and *Law of Environmental Protection* by Sheldon M. Novick, ed. (Thomson West). Grad's *Treatise* is the largest. It devotes entire volumes to topics such as air and water pollution, solid waste, land use and noise. Grad includes reprints of major environmental statutes and rules in a "Primary Materials" section.

Malone analyzes the confluence of environmental and land use regulation, with

chapters on air and water quality, wetlands, soil conservation and coastal management. Novick's three-volume book is more procedural and includes discussions of agencies' approaches to environmental decision-making, the use of permitting systems and standards, and state and federal interactions.

There are also a number of treatises on specific areas of environmental law. The attorney faced with a situation similar to the one described above might find William L. Want's *Law of Wetlands Regulation* (Thomson West) or *Wetlands Law and Policy: Understanding Section 404* by Kim Diana Connolly, Stephen M. Johnson, and Douglas R. Williams (American Bar Association Section of Environment, Energy and Resources) to be helpful.

Analyses of Virginia environmental law are less current than national treatments. For example, the *Virginia Environmental Law Handbook* (3rd ed., by Mays and Valentine LLP, published by Government Institutes) is an excellent practitioner's guide that describes how various state and federal laws operate, how to meet baseline standards and how to apply for permits—but the guide was last published in 1999. It remains useful, but be sure to check for changes in the underlying statutes and regulations. *Environmental Compliance*



(Business and Legal Reports Inc.) is more current and is a compliance manual for professionals. It offers less analysis of the law than the *Handbook*, but provides specific requirements. As an example, the “Effluent Limitations” section includes a table of industries and what types of discharges they must monitor.

Many Virginia CLE materials on environmental law are out of date; updating likely will be necessary. Occasionally, environmental matters are treated along with other related topics in Virginia CLE publications. The 2004 *Land Use Law in Virginia* (Virginia Law Foundation) contains a chapter entitled “Environmental Issues in Land Use Law.”

Practitioners should be aware of the Annual Survey of Virginia Law published in the *University of Richmond Law Review*. The survey includes a briefing on the changes to state and federal environmental statutes and regulations as well as discussions of recent cases and trends.

Check [www.westlaw.com](http://www.westlaw.com) or [www.lexis.com](http://www.lexis.com) for articles from other sources. A search in *Westlaw.com*'s “Journals and Law Reviews” database (similar to *LexisNexis.com*'s “U.S. Law Reviews and Journals, Combined” database) turns up the environmental law article from the *University of Richmond Law Review*'s 2004 survey,<sup>1</sup> an analysis of the Virginia Nontidal Wetlands Resources Act,<sup>2</sup> and a recent American Law Institute-ABA Course of Study paper on state wetlands regulation, which includes a good summary of Virginia law.<sup>3</sup>

### Find Primary Sources Online

Once you have an orientation, it will be easier to track down the laws, cases, reports and other documents relevant to your client's situation. The following are online resources for acquiring different types of environmental materials.

*U.S. Environmental Protection Agency*

<http://www.epa.gov>

The U.S. Environmental Protection Agency's Web site is the source for the agency's reports, statistics and other docu-

ments. Statutes and docket details are also available, along with interactive maps, community information and an employee directory. Use this site after you have identified specific types of documents to retrieve. The site organization and search features are fairly reliable, and with a few clicks you can often determine the answer to the question “Do they have any reports on my topic?”

The front page of the Web site contains a navigation bar down the left of the page, a topical “Quick Finder” across the top and a search box just above the Finder. “Browse EPA topics” on the navigation bar allows the user to find the appropriate EPA division's home page based on a familiar interface (akin to *Yahoo.com* and Westlaw's directory format). “Laws, Regulations and Dockets” takes the user to a list of links to those resources, and “Where You Live” is the gateway to regional and community information, including enforcement and compliance histories, maps of pollution sources and the Toxic Release Inventory.

“Information Sources”—also on the left navigation bar—leads options including “Publications” and “Databases and Software” that access thousands of EPA documents, databases and compliance tools.

The EPA has the most extensive selection of environmental documents. But, other federal agencies are involved with environmental issues, and they make many of their reports, filings and other documents freely available. Check for relevant documents on the Web site of any other agency that might have jurisdiction or an interest in the subject.

*EnvironmentalLawNet.com*

<http://www.EnvironmentalLawNet.com> or

<http://lawvianet.com>

Environmental Law Net, managed by David S. Blackmar at New England law firm Murtha Cullina LLP, serves both the neophyte and the experienced environmental lawyer. This free Web site offers comprehensive points of access to several types of environmental legal materials. Links are organized into six groupings:

laws and regulations; court and agency decisions; agency documents and databases; compliance; enforcement litigation; and transactions. The first two of these link to federal and state statutes and cases, regulations, treaties and tribal laws. Federal and state environmental agency decisions are also available through the site. Under “Agency Documents” are links to federal, state and international reports and databases—arranged by jurisdiction and topic. The remaining three groupings access compliance manuals and forms, regulatory checklists and due diligence materials.

“Desk Reference” links to environmental organization home pages, business research tools, legal writing and research resources and directories.

The site offers browsing of reports and other documents by topic rather than by agency. This is useful when you don't know which agency's site might include a particular item.

*Virginia Department of Environmental Quality*

<http://www.deq.state.va.us> or

<http://www.deq.virginia.org>

This site contains Virginia statutes and regulations as well as reports and presentations the agency has created for the General Assembly. It includes enforcement manuals and orders, permit information and forms.

The real gems on this site are located using the list of topics accessed by clicking on the “Programs” link on the side navigation bar. Here, you can find reports, databases, guidance and forms from various DEQ offices and programs—such as Clean Air and Brownfields. At the time of the publication of this article, the Wetlands program was omitted inadvertently from the list. Find it at <http://www.deq.virginia.gov/wetlands>.

The DEQ maintains a list of other Virginia natural resources agencies and programs, which can be located by clicking on the “Links” heading on the main page sidebar.

*Local Laws*

<http://www.municode.com> (Municipal Code Corporation)

[http://www.spl.org/default.asp?pageID=collection\\_municodes](http://www.spl.org/default.asp?pageID=collection_municodes) (Seattle Public Library)

For environmental issues that involve local ordinances, consult city or county codes. These can be found online for free at either the Municipal Code Corporation's Web site or the Seattle Public Library's Municipal Codes collection. The MCC site contains available Virginia ordinances. Click "Online Library" near the upper left corner.

*CRS Reports for Congress*

<http://www.ncseonline.org/NLE/CRS>

The Congressional Research Service (CRS) reports and other studies prepared for Congress are lesser-known but incredibly useful resources. These papers assess current laws and scientific information and analyze potential consequences of proposed legislation. The reports were once confined to nearly mythological status due to their rarity in the public domain, but are now readily available. The National Council for Science and the Environment maintains a growing, searchable collection of free CRS reports on natural resources and the environment.

**Multi-purpose Reporters**

The resources that follow below are modernized versions of loose-leaf services. They collect laws, cases and agency materials—along with some news and commentary—and present them in one-stop packages. The unique features of each are highlighted.

*Environmental Law Reporter*

<http://www.elr.info> (subscription required)

The Environmental Law Institute's *Environmental Law Reporter* includes cases, statutes, treaties, executive and administrative materials, and commentary. It publishes in-depth discussions of specific environmental issues, featured in the "News and Analysis" section, and it provides access to litigation materials—summaries of briefs and other hard-to-find documents—the full text of which can then be ordered directly from the institute (or use your favorite search engine to track down any potentially free online ver-

sions). The Web site is arranged by jurisdiction and type of material, and includes the *ELR Update*, a newsletter issued thirty-six times a year, and the *ELR Daily Update*.

*Environment Reporter*

(Bureau of National Affairs)

[www.bna.com/products/ens/ercr.htm](http://www.bna.com/products/ens/ercr.htm)

(subscription required)

The BNA's *Environment Reporter* excels at gathering primary materials. It features state and federal statutes and cases that are available and administrative documents. The online *Environment and Safety Library* contains many of the same materials and is relatively easy to use. For firms that do not subscribe to the entire package, however, that simplicity is cluttered by the presence of active or grayed-out links to unavailable documents and libraries, which can fool the unwary user.

BNA provides an environmental news e-mail service for *Environment and Safety Library* subscribers.

**Conclusion**

Environmental legal research can be tricky. Complex interactions between federal, state and local laws—as well as the need to obtain and understand scientific data—complicate the most straightforward environmental or land use question. This article has introduced resources that will help you to navigate through the thickets. But remember, if you get mired in the swamp, call a librarian. ♪

## Endnotes:

- 1 Benjamin A. Thorpe, IV & William K. Taggart, *Environmental Law*, 39 U. Rich. L. Rev. 203 (2004).
- 2 Caleb A. Jaffe, *Tragedy of the Wetlands Commons: What the Virginia Nontidal Wetlands Resources Act Says about the Future of Environmental Regulation*, 20 Va. Envtl L. J. 329 (2001).
- 3 Jeanne M. Christie, *State Wetland Programs*, ALI-ABA Course of Study 329, 333-343 (June 9-10, 2005).



**Jennifer Sekula** is a senior reference librarian at the College of William & Mary Marshall-Wythe School of Law, where she teaches courses in introductory and advanced legal research. She received a bachelor's degree in biology and environmental science from William & Mary; a juris doctor and a master of studies degree in environmental law from Vermont Law School and a master of library science degree from The Catholic University of America. She would like to thank her research assistant, Michele Slachetka, for her help with this article.

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# The Power of One.

## M. Janet Palmer, 2005–2006 Conference of Local Bar Associations Chair



We are all familiar with the phrase “The power of one.” This cliché took on new significance for me as I reflected on the life of Rosa Parks. Mrs. Parks was one of the most influential persons in the twentieth century. With her passing, I am reminded of the power that one individual has to make a difference in the lives of others.

I had the honor of meeting and working with Mrs. Parks while completing an internship in the district office of U.S. Representative John Conyers of Michigan. It was one of the many jobs I took in law school to figure out what I wanted to do with my law degree. Mrs. Parks was an aide to Congressman Conyers at the time. From the first moment that I met her, I was struck by Mrs. Parks’s quiet and gentle demeanor. In fact, there was a small level of disbelief that this petite and unassuming woman ignited the most important movement for social change in our country since the abolition of slavery. But it did not take long for me to realize the Mrs. Parks’s strength was not in her size, but in her commitment to serving others. In one of the many tributes that have been printed in the past weeks, Mrs. Parks is quoted as saying, “I would like to be known as a person who is concerned about freedom and equality and justice and prosperity for all people.”

Do these words sound familiar to you? I would guess that words similar to these found their way onto the law school application for the vast majority of us. Many of us chose this profession because we wanted to make a difference. Many of us are making a difference. This has become evident to me through my involvement with the Conference of Local Bar Associations. I have met countless number of lawyers who are committed to serving and educating the public. Needless to say, however, as sincere as our earlier intentions were, the practice of law leaves most of us with little time or energy to serve others in a voluntary capacity.

But you can do something. One of the easiest ways to serve is to become an active member in your local or specialty bar. As we

approach the beginning of a new year, I challenge every lawyer to commit to one public service project in 2006. Join a committee that mentors school-age children. Make a presentation to senior citizens advising them of their legal rights and responsibilities. Maybe your bar can address the needs of one of the many Gulf Coast families who have relocated to Virginia. While the news about the devastating effects of Hurricanes Katrina and Rita is lessened, the need has not. Don’t limit participation in your programs to lawyers. Reach out to other professional and civic organizations. We need to let as many people as possible know about the good things lawyers do outside the practice of law.

The CLBA can help you. A CLBA representative is assigned to every local and specialty bar. Your bar can contact its representative to obtain information. The updated *So You’re 18* booklet is available for distribution. You can obtain copies from the bar. Then go to your local high school to explain what the law requires of our young people when they become adults. The CLBA is also supporting the Senior Lawyers Conference in its efforts to reach as many senior citizens as possible. The senior lawyers have compiled all the documents needed to conduct a Senior Citizens Law Day program. The CLBA encourages your bar to sponsor one.

If neither of these projects interests you, then get a copy of *Legally Informed*. This booklet, published by the CLBA, provides samples of projects and community services programs sponsored by local and specialty bars. There is no reason to reinvent the wheel, and remember: imitation is the greatest form of flattery.

Maybe our individual actions will not start a national movement. But you can make a difference in the life of a student, an underprivileged person or an aging citizen. After all, we’re not asking you to change the world, just a life. ♪

# The Supreme Court in Transition— The Legacy, The Vision

*It is the spirit and not the form of law that keeps justice alive.*  
—Chief Justice Earl Warren



**Jimmy F. Robinson Jr., 2005–2006 Young Lawyers Conference President**

In what direction will the U.S. Supreme Court travel under the leadership of Chief Justice John G. Roberts Jr.? How will his Court change our lives? Our country has enjoyed a rich legacy of chief justices. Now more than ever, the role of the chief justice and his Supreme Court will be critical to establishing the moral tone of America.

Supreme Court cases reach far beyond the concerns of individual litigants to influence all of us. Some cases are instantly recognizable: *Marbury v. Madison*, *Engel v. Vitale*, *Miranda v. Arizona*, *Brown v. Board of Education*, *Roe v. Wade*, *California v. Bakke* and *Bush v. Gore*. Whether the Court's decisions in these cases strengthened or weakened America's moral fabric continues to be argued.

The power and status of the Supreme Court were clearly established, confirmed, stretched and strengthened under the leadership of Chief Justices John C. Marshall, Earl Warren, Warren E. Burger and William H. Rehnquist. At the recent John Marshall 250th birthday gala in Richmond that celebrated the Virginia native's life, Justice Anthony M. Kennedy reminded all that Marshall—a federalist and arguably the Court's third chief justice<sup>1</sup>—believed in a strong central government. *Marbury v. Madison*, the opening case of constitutional law curricula across American law schools, established the principle of judicial review, allowing the Court to invalidate both federal and state laws when they conflict with its interpretation of the Constitution. *Marbury* established the Supreme Court's important role as the arbiter of the Constitution, and through that power, the agent to expand individual rights.

Ten chief justices and 116 years later, the Supreme Court was led by Earl Warren. During the late 1950s and 1960s, there were protestors for almost every cause, as Americans sought to define themselves and their nation. So, it was not surprising that, while earlier Courts stressed property rights, under Warren the Court's emphasis shifted to personal rights. Building on the power of judicial review, the Warren Court changed the nature of law enforcement, individual rights and civil rights through the landmark cases *Engel v. Vitale*, which outlawed mandatory school prayer; *Miranda v. Arizona*, which heightened the protections for

accused criminals; and *Brown v. Board of Education*, which declared that all citizens were to receive “equal protection under the law.” The Warren Court focused on First Amendment rights, affording protection to civil rights demonstrators and those who criticized public officials, and recognized new personal rights—like the right to privacy. The controversial cases of the Warren Court changed the nature of law enforcement, individual and civil rights. It has been said that Chief Justice Warren led his Court to “the most profound and pervasive revolution ever achieved by substantially peaceful means.”

The 1970s and 1980s saw a more conservative Court than the Warren Court, but it was just as active. Under the leadership of Chief Justice Burger, the Court profoundly influenced American jurisprudence. Its decisions included *Roe v. Wade* (abortion), *United States v. Nixon* (impeachment) and *University of California v. Bakke* (affirmative action). Burger was a strong advocate of the “strict construction” of the Constitution. It was not uncommon for Burger to vote to limit the decisions of the Warren period. Not one-dimensional, Burger also authored opinions upholding the right of trial judges to order busing as a remedy for school segregation, and he advocated for a unanimous Court upholding a subpoena for the Watergate tapes—leading to President Nixon's resignation. The Burger Court sought to enhance state powers under the Constitution.

The legacy of the Rehnquist Court is still being defined. Chief Justice Rehnquist was known as a strong promoter of federalism. His legacy includes the first modern limits on Congress's power under the Commerce Clause in *United States v. Lopez*. The Rehnquist Court was firm and visible—too visible for some. Rehnquist presided over the Clinton presidential impeachment trial and wrote a concurring opinion in *Bush v. Gore*. Notwithstanding the above, many would argue that the Rehnquist Court is best known for Associate Chief Justice Sandra Day O'Connor's swing opinions. O'Connor staked out the terrain, limited her opinions at times, and gave the Court the opportunity to rethink when it faced slightly different facts. History books are likely to reflect that Rehnquist led the Court in broadening state powers in the federal system.

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## Conference to Shine Light on Assisted Living Facilities

**William T. Wilson, 2005–2006 Senior Lawyers Conference Chair**



I am happy to report to you that the Senior Lawyers Conference's bar year is off to a good start. At our last meeting on September 22, 2005, we voted unanimously to urge every local bar association to conduct a Senior Citizens Law Day. This program, as I mentioned in previous columns, was a big success in Covington on May 24, 2005, when the Allegheny-Bath-Highland Bar Association initiated it. A panel of eight lawyers, including one judge, hosted about one hundred senior citizens, and we used the *Senior Citizens Handbook* as our teaching tool. Each of the attendees was given a copy of the book. Now, the senior lawyers have agreed to spread this program throughout the commonwealth. Packages outlining the Allegheny-Bath-Highland Bar's preparation for the seminar have been sent out to the presidents of each bar association and some of the specialty bar associations. Anyone interested in putting on such a program may contact Patricia Sliger at the Virginia State Bar at (804) 775-0576.

In addition to the Senior Citizens Law Day Program, the Senior Lawyers Conference is interested in doing things to improve nursing homes and assisted living facilities. At the next meeting of the SLC Board of Governors, we will hear from Virginia Senator Emmett W. Hanger Jr., chair of the Senate Rehabilitation and Social Services Committee. He will tell us what is going on at the General Assembly regarding these institutions and give us suggestions as to what we can do to help.

The SLC also plans to shine a spotlight on these institutions during a program at the Annual Meeting of the Virginia State Bar on June 15, 2006. We hope to include legislators and representatives from the Virginia Department of Health, which regulates nursing homes, and the Virginia Department of Social Services, which regulates assisted living facilities. We will also include on the panel attorneys who have been involved in elder law and in litigation involving these facilities. We hope all these efforts will improve the care given to our senior citizens.

I also want to applaud Robert J. Grey Jr., past president of the American Bar Association, for his efforts to protect and preserve the right to trial by jury. The figures I have seen indicate that jury trials are fast going the way of the dinosaur. I hope that is not true, but the signs are not good. I urge the Senior Lawyers Conference to take an active and vocal role in preserving that great institution. America's founding fathers thought that the right to trial by jury was a basic part of what our democracy is all about, and I agree. Unfortunately, with the increasing complexity and cost of litigation, jury trials are becoming less popular. This situation should be studied continuously so we can preserve and protect that right.

Two other programs of the Senior Lawyers Conference are worth mentioning: We will continue to produce, in cooperation with the Young Lawyers Conference, *the Senior Citizens Handbook*. This has become one of the most popular publications of the Virginia State Bar. I also want to brag about our own Frank Overton Brown Jr., former chair of the Senior Lawyers Conference, who continues to stump the state talking to lawyers about the need for planning for disability and death. Frank is moving lawyers in the right direction on this issue. Too few lawyers are planning for the possibility of death and disability as far as their law practices are concerned. Hopefully, through Frank's influence, more lawyers will plan better in that regard. ☞

## “An Ounce of Prevention...” Continued!

by Janean S. Johnston

We began our “Firm Fitness Check-up” series with my last column, which addressed docketing and calendaring procedures. For those who may have missed the June/July issue, I will review the process: The firm fitness review consists of examining several basic issues through the use of questions that are designed to be answered with a “yes” if you are practicing carefully. A “no” answer should encourage you to look at that area and determine what changes are necessary to turn the answer into an affirmative response. (Some questions will not apply, depending on your practice or size of firm.)

Please remember, the Virginia State Bar has provided some excellent resources to help you practice efficiently and ethically. Among them are the ethics hotline at (804) 775-0564 and the risk management hotline at (800) 215-7854. In addition, don't forget the low-cost (\$150 per attorney) opportunity to participate in a confidential half-day review of your office and its practice management procedures in order to lessen your exposure to malpractice claims and ethics complaints.

This month's column addresses the issue of conflicts of interest. While conflicts do not occur with great frequency in malpractice claims, when they do occur they generally add greatly to the severity of the claim. Therefore, it is important to have some kind of indexing system that includes a listing of current clients, former clients and any parties that could create conflict problems, such as individuals who came for consultations but did not retain your firm. (A computerized conflicts checking program is usually contained in your case management software package and is the easiest way to check for conflicts.)

This index should be used to check for potential conflicts before a case is accepted and to continue to check for conflicts as new information is learned during the course of the representation. It is wise to check for possible conflicts when hiring new lawyers, paralegals and staff members. If you have partners or associates, please distribute a new case/new matter memo and ask for any information that could trigger a conflict. Regular office meetings can be the ideal setting to discuss new clients and whether there are any conflicts or issues that might affect the representation.

Now, on to the questions!

### Conflicts of Interest Procedures

- Does the firm have an alphabetical index of current and former clients?
- Is the list computerized?
- If indexed manually, is the index kept in a central location and easily expanded?
- Does the firm have a written policy that requires the conflict system to be checked before a case is accepted? (These procedures should be in writing for firms of two or more attorneys.)
- Does your system include the following: client names, opposing party, parties who were declined, name changes/maiden names, and a procedure to add new parties as representation proceeds?
- Is the conflicts system updated each time a new client or matter is accepted?
- Are the names of all entities in which attorneys have economic or fiduciary interests—including board positions—listed on the system?



- Does the firm prohibit its attorneys from entering into business deals with clients?
- Are potential conflicts checked before hiring new attorneys, law clerks or paralegals and before using the services of an independent contract attorney?
- Does the firm circulate a New Matter/New Case report at least weekly?
- Is a partner of the firm assigned to review all conflicts discovered by the search?
- Does the firm disclose to all potential clients in writing all actual conflicts of interest or conflicts you reasonably believe may exist, and the implications on their matter?
- After disclosure of actual or potential conflicts, do you or does your firm always obtain written consent to perform ongoing legal services, where appropriate?
- If representation is declined because of conflicts, does the firm always send a written declination/nonengagement letter?
- Do you continually examine your practice for potential positional conflicts?

If you have questions or concerns with handling your conflicts avoidance procedures, please contact me at (703) 567-0088.

Look for upcoming articles in the “Firm Fitness Check-Up” series. Stay tuned and stay healthy!

# Minimize Risk, Maximize Opportunity

by Christine M. Blackstun, ALPS Corporation, Marketing

Today is an exciting time in the legal profession—a time of rapid change. Law firms are under continual pressure to boost efficiencies, decrease costs and sustain effective lines of communication with their legal teams and clients. These pressures require law firms to develop new strategies that promise radical improvements in the way the firm functions.

ALPS, the endorsed malpractice insurance carrier for the Virginia State Bar, takes a deep interest and active involvement in the evolution of the practice and business of law. While many of you may know us for our stability and unmatched customer service to the legal profession through liability insurance, continuing legal education programs and strong commitment to state and local bar foundations—our resources don't stop there. Today, we continue our tradition of excellence by integrating our conventional services with new and innovative solutions that help clients build more productive and risk-free practice environments.

**ALPS Services and Solutions** include two areas of focus—Insurance Services and Professional Support Services. ALPS Insurance Services deliver stability, security, guidance, and protection to our clients. ALPS Professional Support Services give clients strategic direction, increased efficiency, and practical tools to create a more successful and profitable firm environment. To familiarize your firm with the comprehensive nature of ALPS services, below is an overview of our offerings.

## ALPS Insurance Services

**ALPS Professional Liability Insurance** for law firms and solo practitioners is available in 27 jurisdictions and endorsed by 11 states. The ALPS Risk Retention Group is owned and operated by attorneys, to serve attorneys. As your malpractice provider, ALPS offers stability, dependability, guidance and security when customers need it most.

**Big Sky Captive Management** is a resource for attorneys representing associations and high net worth institutions who are asked to provide their clients with advice on insur-

ance and risk issues. Big Sky offers alternative insurance strategies when traditional coverage is unavailable, inflexible, unstable or financially prohibitive. Big Sky combines its captive industry expertise with an experienced management staff to advise clients on high deductible plans, association insurance programs and captive insurance options.

## ALPS Professional Support Services

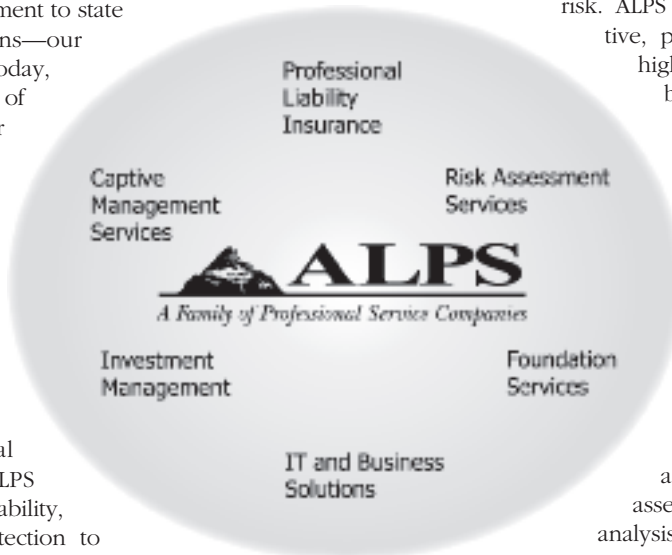
**ALPS Practice and Risk Assessment Services** combines years of malpractice claims knowledge with a practical understanding of how firms operate in order to recommend sensible, cost-effective solutions that reduce firm risk. ALPS Risk Managers provide objective, practical strategies that address high risk areas of your practice and business processes.

## ALPS Information Technology (IT) and Business Solutions

responds to the law firm need for more efficient business practices, thereby lessening exposure to liability incidents and claims before they occur. ALPS IT and Business Solutions provides tools such as strategic planning, technology assessments, process and workflow analysis, and records management creation—as well as the necessary training for successful implementation. Through a comprehensive evaluation process our experts help your firm develop a blueprint for a cost-effective business and technology future. ALPS IT and Business Solutions helps firms meet their client's changing expectations by ensuring the firm makes the right technology investments at the right time.

**ALPS Foundation Services** offers assistance with fundraising, capital campaign coordination, planned giving programs and grants management. It serves state and local Bar Foundations, private foundations and non-profit organizations in achieving their goals and growth potential. Foundation Services supports attorneys in their volunteer efforts as board members on non-profit organizations nationwide.

**Peak Investment Management** helps institutional and private clients reach their investment objectives through cus-



## THE ALPS CONNECTION

tomized portfolio management and a high level of client service. Clients turn to Peak to invest their corporate funds, foundation capital, trust and estate dollars, insurance reserves, and pension and profit sharing plans. Peak is adept at investing where complicated tax structures and investment regulations exist. Lawyers and law firms nationwide rely on Peak to help them meet their investment objectives.

From Professional Liability Insurance to Peak Investment Management, ALPS provides comprehensive services that minimize risk and maximize opportunity. It is ALPS's desire to establish long lasting, mutually beneficial partnerships with its clients.

### How Our Integrated Approach Serves You

Recently, a thirty-lawyer firm asked ALPS to perform a Practice and Risk Assessment. During the review, it became apparent that the firm's increased risk was directly attributable to its technology infrastructure and business practices. As a result, the law firm requested that ALPS perform an IT Assessment to develop a technology and practice blueprint to help the firm evolve toward a more risk-free environment. Today, the firm has a case management system and remote computing tools that allow lawyers and staff to easily access and share information anytime, anywhere. Impressed by ALPS customer service and expertise, the firm also selected ALPS as its insurance provider. The firm is now experiencing the benefits of ALPS Professional Support Services through improved efficiency and a clear sense of direction, while also receiving the security and stability that ALPS provides through Insurance Services.

Also, ALPS insures a law firm in the Midwest whose managing partner is the president of the state bar. The state bar was struggling to develop a capital campaign. Through his business relationship with ALPS, the state bar president learned ALPS Foundation Services had the expertise to develop and manage a large-scale capital campaign. Today, the campaign is in full swing and is well on its way to achieving its goal. As

a result of this relationship, the state bar is considering investing its Foundation funds through Peak Investment Management. Peak understands the role and responsibility of investing Foundation funds and has proven this through its returns to current Foundation clients.

### A Valuable Partner

ALPS is a full-service resource for our clients. With its in-depth understanding of the market, ALPS has established integrated services to meet the distinct needs of the legal profession. ALPS forms lasting partnerships with its clients, which allows us to identify and satisfy new or unmet needs. Through this exploration ALPS is helping shape the future of the legal profession by providing continuous value to our customers. With ALPS, your firm can be confident it has all the necessary tools to be productive and successful with the stability, protection and guidance that only ALPS offers.

### For further information

please call 1(800) 367-2577 or email the following contacts:

**ALPS Risk Retention Group, Insurance Services,**  
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**YLC** *continued from page 45*

America's politics have changed from the days of Marshall and Warren. The legislative and executive branches are more complex than in the days of Warren Burger. America was recognized by the Rehnquist Court as multilayered and diverse, requiring that a Supreme Court move in tandem with the needs of the American people. What role will the Roberts Court play in twenty-first century America? The answer depends on who will make up his Court and what role those justices will play in shaping it.

The Supreme Court helps set America's moral tone. The Court does not operate in a vacuum: the justices' upbringing, personal decisions, politics, morals and surroundings unavoidably influence their decisions. The Supreme Court is the final judge in all cases involving laws of Congress and the Constitution. The ultimate responsibility of the Roberts Court is to adhere to the words written above the main entrance of the Supreme Court building—to ensure that “Equal Justice Under the Law” is afforded to all. ♪

Endnote:

- 1 True historians will argue that John Marshall was the fourth Chief Justice. There is no question that John Jay served as the first chief justice from 1789–1795. Historians differ on whether to count John Rutledge, a recess appointment who served as chief justice from August to December 1795 but was later rejected by the Senate, and William Cushing, who may have been chief justice for three days, from February 3–5, 1796. (Historians disagree as to whether he resigned or declined the appointment.) If you count both John Rutledge and William Cushing both as the second chief justice, Oliver Ellsworth would be the third and John Marshall the fourth. If you do not count them, then Oliver Ellsworth enjoys the second slot and John Marshall the third.

# —VSB Attorney Profile—

## Anne P. Michie

*This is one in a series of Virginia Lawyer magazine profiles of state bar attorneys.*



Anne P. Michie joined the Virginia State Bar almost ten years ago. She is an assistant ethics counsel; her job includes offering advice to attorneys who call the Ethics Hotline, teaching continuing legal education courses, and serving as staff liaison to the VSB Standing Committee on Legal Ethics.

She began her childhood in the mountains of North Carolina and moved to Richmond at a young age. She attended the University of Virginia, from which she earned a bachelor's degree in philosophy in 1983 and a law degree in 1986.

Her legal experience includes working as a research attorney for the National Legal Research Group and practicing family and special education law with Wright & Associates in Richmond.

In 1989, she joined the Virginia Department of Education. Her work there included coordinating the special education administrative hearing system, leading a team that drafted state special education regulations, and serving on a multiagency task force that developed state day-care regulations.

As a volunteer, Michie has been board chair for Coordinators/2 Inc., an adoption agency, and president of an elementary school Parent Teacher Association. She currently teaches adult religious education classes at her church.

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**Your face is familiar to many Virginia lawyers because you do ethics training at continuing legal education courses throughout the Commonwealth. What kinds of questions are lawyers asking these days—what are the hot issues in ethics?**

Advancements in technology are provoking new questions for lawyers around the

state. On the ethics hotline, lawyers ask about powerful surveillance tools and software that reads keystrokes. Should attorneys, like private detectives, be able to do anything that is legal? Or should attorneys limit themselves in the use of invasive information-gathering techniques? Only professional consensus can draw the line. Pivotal issues such as this underscore the benefit and responsibility of self-government enjoyed by this profession.

**You served on the University of Virginia's Arbitration Board while you were an undergraduate there. Sounds like law has interested you from the beginning.**

My father, Joseph M. Parker Jr., is a lawyer. Dinner table discussions throughout my childhood presented lawyers as noble professionals in the Atticus Finch model. I always understood that my father practices law with integrity and that his respect for fellow attorneys is directly proportionate to that quality in them. It was inevitable, as I became a reader and lover of the power of language, that I would contemplate a career in the law. I set on that path in high school and never really considered anything else (once I had abandoned an early childhood dream of being the next Jacques Cousteau).

**What is the Arbitration Board, and what did you learn on it that foreshadowed your profession?**

The Arbitration Board is an arm of the Judiciary Committee, one of the three branches of student government at U.Va. Board members are all students. The board provides mediation and arbitration services to students in disputes with each other and with local businesses. During my period on the board, we primarily did mediation, often in the areas of landlord/tenant and tenant versus tenant conflicts. (Students in apartments do not

always get along!) The experience was a confidence builder: several of my first mediations involved graduate students fighting over rent and security deposits, and it was satisfying to have older students turn to me for advice and dispute resolution. That satisfaction emboldened me in my first job out of law school, for the National Legal Research Group, where I advised and wrote for more experienced attorneys around the country. I get that same sort of satisfaction with my present job, as I advise Virginia attorneys facing ethical dilemmas. Helping attorneys resolve these thorny situations is my favorite part of the job.

**How did serving as a judge on the university's Judiciary Committee prepare you for the complexities of real-life practice?**

The cases I heard presented a struggle between the rule of law and concern for the people involved. In many cases, students facing charges are also deserving of compassion. It was usually easy for the panel of judges to decide that an infraction had occurred as a factual matter, quite another to determine what sanction was appropriate. In many instances, despite a clear violation, we judges found it difficult to order severe sanctions in light of the young age of most of the students. I saw a lot of impulsive actions with long-term consequences. This dichotomy between the bright line of rules versus the equities of a person's individual situation is present throughout the law. The attorneys working in the Virginia State Bar disciplinary system are quite familiar with that delicate

balance. I have to resist telling attorneys seeking ethics help what they want to hear to feel better; instead, I must give them advice that is supported by the ethics rules. The callers need to trust that I maintain that objectivity in providing advice.

**As a research attorney and private practitioner, you dealt with family and special education law. What drew you to these areas?**

My mother, Louise Mitchell, was a teacher, now retired. Like my father, she presented her profession as a calling to service. I always enjoyed assisting her at school and hearing about her involvement with students and her development as first a teacher and then an administrator. As my legal career developed, I was able to tap into that influence by spending a number of years in the area of school law. Each of my parents rightfully saw in my work their influences on me.

**Tell us about your family.**

My husband John and I will celebrate our twentieth anniversary in a few months. We have the good fortune to have two great kids: Louisa, 11, and Jack, 8. My brother and his family are also here in Richmond. I also have siblings in New Jersey and North Carolina. My father and his wife are in North Carolina. My mother and stepfather are in sunny Florida. I also have in-laws from my husband's very large family. My kids are growing up with a big, warm family.

**Other than your parents, who has inspired you?**

I had a neighbor who balanced a career as a chemist with a passion for music and art; he played unusual instruments, wove on a loom and created sculptures. His life was full, with work, his art and his family. That fullness appealed to me as a child and I seek it in my own life now. An early mentor was my high school Latin teacher. She was passionate about her subject and her students—Latin was very popular at my school thanks to her efforts. As I develop as a lawyer, inspirational to me are public service attorneys such as Morris Dees,

who created the Southern Poverty Law Center and leads the fight against hate groups at some personal peril. I try to be mindful that it is an honor to be an attorney, despite the occasional glib media characterizations to the contrary.

**As you developed regulations for the Virginia Department of Education, where did you find your ethical challenges as an attorney?**

The biggest challenge in that sort of work was juggling the competing interests of various stakeholders. For example, in developing special education regulations, I heard from teachers, parents, principals, superintendents and lawyers, to name a few. It became clear that my loyalty had to be to the process rather than any particular issues. Precision and clarity of language was critical to reduce unnecessary disputes down the road. Through numerous team meetings and public hearings, I learned to listen to all, but to bring my own policy, legal and writing experience to pull those diverse views together for a valuable product—the regulations.

**When you look back at these projects, what do you feel was your major contribution?**

With the special education regulations, I especially enjoyed bringing order out of chaos. Literally thousands of letters of public comment were received in addition to the many speakers at public hearings a round the state. Categorizing that voluminous comment into a workable structure was challenging but rewarding. While working with the day-care regulations, I particularly remember the opportunity for diplomacy. I worked with representatives from other state agencies and enjoyed the combination of presenting my agency's perspective, learning from those of others, and working toward a common goal.

**How do your professional, family and community lives mesh?**

Of course, like everyone else, I would love to have the secret to perfect balance of work and family. It is always a juggling act. What makes it possible in my case is

the supportive work environment at the VSB. Among the staff attorneys, you'll find soccer coaches, choir members, blues band performers, athletes, scout leaders, PTA and local bar association officers, and volunteers for a variety of other organizations. The work ethic at the bar includes recognition of the benefits from life outside work. I like to think that my volunteer work enriches my professional work by expanding my leadership experience. The reverse is true as well: the image of the legal profession and the bar is enhanced by attorneys serving on the many civic boards and committees around the state. Attorneys play a vital role in the nonprofit community.

**What do you like about your job?**

I love this job. Working on the ethics staff provides a combination of three important items: service, variety and intellectual stimulation. Talking with so many lawyers a year, both on the Ethics Hotline and in person at CLE programs, is very satisfying. Attorneys often face perplexing, important dilemmas and seem to appreciate the opportunity for consultation. In addition to the ethics calls, I help the Standing Committee on Legal Ethics with research and draft writing to develop Legal Ethics Opinions. The committee volunteers bring intellectual rigor to the discussions—there is never a dull moment in those meetings! The VSB ethics unit is full of interruptions, and interruptions of those interruptions. The fast pace is energizing.

**What have you read recently that you'd recommend?**

Two very different books especially impressed me this year. One is a classic, one a new first novel. *Go Tell It on the Mountain* by James Baldwin is a seminal piece of literature from the civil rights era. I knew that, but did not realize how masterfully it was written. The inner thoughts of the characters are the primary content and are expressed with long, poetic, passionate phrases suggestive of evangelistic sermons. My favorite books are always those with masterful use of language, so I also recommend the recent *Everything Is Illuminated* by Jonathan Safran Foer. He

is very young, yet writes with poetic control, telling through numerous voices and documents his story of a young man searching for the person who saved his grandfather during the Holocaust. He uses the poor English of a translator in the story to reveal multiple meanings in any one phrase. These are authors who love working with language.

**What does your monthly dinner group do?**

A group of very busy acquaintances made a commitment to each other several years ago to take the time to develop real friendships. Ever since, we have met once a month for dinner—long dinners with hours of conversation. We make priority on

our calendars just like for business trips and our kids' orthodontist visits. Americans tend to feel almost guilty about making time for friendships rather than something more "productive." Nonetheless, those of us in this group stake out our evenings as high priority on our "to do" lists and do it unapologetically.

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