

Professor James Joseph Duane
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TEACHING EXPERIENCE AND HONORS

REGENT UNIVERSITY SCHOOL OF LAW. Virginia Beach, Virginia, 1991 - present.
Awarded Regent University *Faculty Excellence Award for Teaching* (spring 2012).
Awarded Regent University *Faculty Excellence Award for Scholarship* (fall 2010).
Voted *Teacher of the Year* by graduating classes of 1994, 1997, 1998, 1999, 2000, 2003, 2007, 2008, and 2009, and by the first year students in the class of 2012.
Awarded *Distinguished Faculty Achievement Award* by the Virginia State Council of Higher Education, 2002.
Professor of Law, 2000 – Present
Associate Professor of Law, 1996 - 2000.
Assistant Professor of Law, 1991 - 1996.
Courses taught: Trial Practice, Appellate Procedure, Evidence, Advanced Evidence, Civil Procedure, Criminal Procedure, Professional Responsibility, Remedies.

WILLIAM AND MARY LAW SCHOOL. Williamsburg, Virginia.
Distinguished Visiting Professor, Fall 2009 and Fall 2011.

THE UNIVERSITY OF VIRGINIA SCHOOL OF LAW. Charlottesville, Virginia
Faculty Member, National Trial Advocacy College, 1995 - present.

HARVARD COLLEGE. Cambridge, Massachusetts.
Graduate Teaching Fellow, "Law and Social Order." Spring 1984.

EDUCATION

HARVARD LAW SCHOOL. Cambridge, Massachusetts.
J.D. *cum laude*, 1984
Honors & Activities: Harvard University Graduate Teaching Fellowship; Editorial Assistant to S. Verba and G. Orren, *EQUALITY IN AMERICA: THE VIEW FROM THE TOP* (Cambridge: Harvard Univ. Press, 1985).

HARVARD COLLEGE. Cambridge, Massachusetts.
A.B. *magna cum laude*, Philosophy, 1981
Honors & Activities: Phi Beta Kappa; Harvard-Radcliffe Scholar; National Merit Scholar; Awarded grant from Harvard Office of the Arts for study of Music Theory; Varsity Debate; Research Assistant for the Harvard Institute of Politics and the Harvard University Center for International Affairs.

PRACTICE EXPERIENCE

CONNORS & VILARDO. Attorneys at Law, Buffalo, New York.

Associate, August 1987 - August 1991.

Briefed and argued five appeals in the United States Court of Appeals for the Second Circuit, and four appeals in the New York State Appellate Division; briefed and argued dispositive motions in more than a dozen cases, both civil and criminal, in the United States District Court; was lead counsel in the representation of civil litigants and criminal defendants in approximately twenty cases in the United States District Courts; tried civil and criminal cases in New York state court.

Master, James Kent American Inns of Court, Norfolk Virginia. 1997 - present.

Admitted to practice:

United States Supreme Court.

United States Courts of Appeals for the Second and Fourth Circuits.

United States District Courts for the Western District of New York, the Eastern District of Virginia, and the Western District of Virginia.

Admitted to practice in New York (since 1985) and Virginia (since 2009).

JUDICIAL CLERKSHIPS

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Honorable Ellsworth A. Van Graafeiland, Circuit Judge

Law Clerk, August 1986 - August 1987

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK.

The Honorable Michael A. Telesca, Chief Judge

Law Clerk, August 1984 - August 1986

SCHOLARLY PUBLICATIONS: BOOKS AND CHAPTERS OF BOOKS

Weissenberger's Federal Evidence, with Dean Glen Weissenberger (7th ed. 2011).

Procedures for Taking and Presenting Evidence, Vol. 4 of *The New Wigmore* (in progress; Aspen Publishing).

Black's Law Dictionary (panel of academic contributors; 8th ed. 2004).

Local Rules in Ambush, in AMERICAN BAR ASSOCIATION, SECTION OF LITIGATION, THE LITIGATION MANUAL (3rd ed. 1999).

SCHOLARLY PUBLICATIONS: ARTICLES

Heading in the Right Direction, 15 GREEN BAG 2d 235 (Spring 2012).

The Strange Glitch in the Rhode Island Rules of Evidence, 14 GREEN BAG 2d 143 (Winter 2011).

The Federal Rule of Civil Procedure that Was Changed by Accident: A Lesson in the Perils of Stylistic Revision, 62 SOUTH CAROLINA LAW REVIEW 41 (2010).

The Right to Remain Silent: A New Answer to an Old Question, 25 CRIMINAL JUSTICE 57 (Summer 2010).

What Every Virginia Criminal Defense Lawyer Needs to Know About Model Jury Instruction 2.600, THE CHAMPION 4 (June 2009).

"She Told Me She Was Scared of Him": The Admissibility of Hearsay Evidence that a Murder Victim Feared the Accused, THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 14 (Spring 2009).

Virginia's Unconstitutional Inference of Larceny from the Unexplained Possession of Stolen Property: The Dissenting Opinion in Patrick v. Commonwealth, THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 10 (June/July 2008).

The Admissibility of Memories and Beliefs: The Hearsay Exception that Even the Best Judges Frequently Misunderstand, 22 CRIMINAL JUSTICE 16 (Summer 2007).

Federal Rule of Evidence 408(a)(2): The Only Federal Rule that is Nothing But a Trap for the Unwary, EVIDENCE SECTION NEWS 3 (Spring/Summer 2007) (newsletter of the evidence section of the AALS).

The Constitutionality of Irrebuttable Presumptions, 19 REGENT UNIVERSITY LAW REVIEW 141 (2006).

The Cryptographic Coroner's Report on Ohio v. Roberts, 21 CRIMINAL JUSTICE 37 (Fall 2006).

Arresting Officers and Treating Physicians: When May a Witness Testify to What Others Told Him for the Purpose of Explaining his Conduct?, 18 REGENT UNIVERSITY LAW REVIEW 229 (2006).

A Summary of the Recent Changes to the Virginia Privilege for Marital Communications, THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 14 (December 2005/January 2006).

The Latest Amendments to the Federal Rules of Evidence: A Summary and a Few Comments, EVIDENCE SECTION NEWS 2 (Fall/Winter 2005-06) (newsletter of the evidence section of the AALS).

The Virginia Presumption of Fraudulent Intent in Bad Check Cases: The Statute That Dare Not Speak Its Name, THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 10 (June/July 2005).

Who Holds the Doctor-Patient Privilege in Virginia?: The Astounding Answer to an Unlikely Enigma, LITIGATION NEWS, Vol. 12, page 1 (Fall 2004) (newsletter of the Litigation Section of the Virginia State Bar).

The Applicability of the Attorney-Client Privilege and the Work Product Doctrine to Investigators and Experts: The Horrendous State of the Law in Virginia, THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 9 (August 2004).

The Virginia Supreme Court Takes a Big Bite Out of the Privilege for Marital Communications, 29 THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 8 (March 2003).

The Proposed Amendments to Federal Rules of Evidence 608(b) and 804(b)(3): Two Great Ideas That Don't Go Far Enough, 209 FEDERAL RULES DECISIONS 235 (Oct. 2002).

Recent Changes in the Federal Rules of Evidence, 27 THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 12 (March 2001).

The Fourth Circuit Lays a Real Trap for the Unwary: Preserving Claims of Privilege with Respect to 'Alleged' Conversations, 27 THE VIRGINIA BAR ASSOCIATION NEWS JOURNAL 16 (March 2001); reprinted from the Newsletter of the Evidence Section of the American Association of Law Schools (May 2000).

Pretrial Motions and Preservation of Error: Recent Developments in State and Federal Law and their Tactical Implications, 63 TEXAS BAR JOURNAL NO. 7, 616 (July 2000).

Prior Convictions and Tuna Fish, 7 SCRIBES JOURNAL OF LEGAL WRITING 160 (2000).

The Bizarre Drafting Errors in the Virginia Statute on Privileged Marital Communications, 12 REGENT UNIVERSITY LAW REVIEW 91 (1999).

Motions in limine and Preservation of Error: Recent Developments in the Law and their Implications for Trial Attorneys, 14 LOUISIANA ADVOCATES, No. 2, 13 (Feb. 1999).

Appellate Review of In Limine Rulings, 182 FEDERAL RULES DECISIONS 666 (Jan. 1999).

"Screw Your Courage to the Sticking-Place": The Roles of Evidence, Stipulations, and Jury Instructions in Criminal Verdicts, 49 HASTINGS LAW JOURNAL 463 (January 1998).

Avoiding the Curse of "Whetherornot," 6 SCRIBES J. OF LEGAL WRITING 41 (1996-1997).

Litigating Felon-with-a-Firearm Cases After Old Chief: Trial Strategies for Lawyers and Judges, 12 CRIMINAL JUSTICE 18 (Fall 1997).

The Trouble with United States v. Tellier: The Dangers of Hunting for Bootstrappers and Other Mythical Monsters, 24 AMERICAN JOURNAL OF CRIM. LAW 215 (Spring 1997) (lead article).

Media Coverage and Public Opinion of the O.J. Simpson Trial: Implications for the Criminal Justice System, 2 COMMUNICATION LAW AND POLICY 261 (Spring 1997) (with Dr. William J. Brown and Dr. Benson Fraser).

Stipulations, Judicial Notice, and a Prosecutor's Supposed "Right" to Prove Undisputed Facts: Oral Argument from an Amicus Curiae in Old Chief v. United States, 168 FEDERAL RULES DECISIONS 405 (Nov. 1996).

Jury Nullification: The Top Secret Constitutional Right, 22 LITIGATION No. 4, 6 (Summer 1996) (lead article).

Some Thoughts on How the Hearsay Exception for Statements by Conspirators Should -- And Should Not -- Be Amended, 165 FEDERAL RULES DECISIONS 299 (June 1996).

The Four Greatest Myths About Summary Judgment, 52 WASHINGTON & LEE LAW REVIEW 1523 (Spring 1996) (lead article).

What Message are we Sending to Criminal Jurors When we Ask Them to 'Send a Message' with their Verdict?, 22 AMERICAN JOURNAL OF CRIMINAL LAW 565 (Spring 1995) (lead article).

The New Federal Rules of Evidence on Prior Acts of Accused Sex Offenders: A Poorly Drafted Version of a Very Bad Idea, 157 FEDERAL RULES DECISIONS 95 (Nov. 1994).

SCHOLARLY PRESENTATIONS

What Every American Needs to Understand About the Fifth Amendment. Washington & Lee School of Law. Lexington, Virginia. October 26, 2012.

An Overview of the New Virginia Rules of Evidence. Presentation for the Norfolk-Portsmouth Bar Association. Norfolk, Virginia. October 22, 2012.

Religious Speech in the Public Square – When is it Permissible? Yale Law School. New Haven, Connecticut. October 18, 2012.

What Every American Needs to Understand About the Fifth Amendment. Northeastern Law School. Boston, Massachusetts. September 14, 2012.

What We Can Learn About the Psychology of Modern Jurors From Their Post-Verdict Questions and Complaints. Virginia Indigent Defense Commission's Annual Public Defender Conference. Virginia Beach, Virginia. September 12, 2012.

Say What, Say Where: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 12, 2012.

When May Jurors Impeach Their Verdict?: The Problem with Federal Rule of Evidence 606(b). Continuing legal education seminar for members of the Virginia bar. Norfolk, Virginia. May 30, 2012.

The Federal Rule of Civil Procedure that Cannot Mean What It Says. Continuing legal education seminar for members of the Virginia bar. Virginia Beach, Virginia. September 23, 2011.

Advanced Aspects of Cross-Examination. Presentation at the annual Public Defender Training Conference sponsored by the Virginia Indigent Defense Commission. Richmond, Virginia. June 29, 2011.

Say What, Say Where: Contours of the Public Forum Doctrine. National Litigation Academy. Laguna Niguel, California. July 11-16, 2011.

The Federal Rule of Civil Procedure that Cannot Mean What It Says. Continuing legal education seminar for members of the Virginia bar. Norfolk, Virginia. June 29, 2011.

Say What, Say Where: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 14, 2011.

Courtroom Do's and Don'ts: Practical Tips for Success. Norfolk Portsmouth Bar Association 13th Annual Bench/Bar Conference. Norfolk, Virginia. April 6, 2011.

The American Jury and Nullification. Panel presentation to students at Harvard Law School. Cambridge, Massachusetts. March 28, 2011.

The Perils of Communicating with the Police. Presentation to the Annual Conference of the National Association of Criminal Defense Lawyers. Caesars Palace, Las Vegas, Nevada. October 14-16, 2010.

A Litigator's Guide to Courtroom Dos and Don'ts. Professional Development Conference for the Young Lawyers Conference of the Virginia State Bar. Richmond, Virginia. October 1, 2010.

Aspects of Evidence Law that Cause the Most Confusion for Lawyers and Judges. Keynote Speaker, Fall Conference of the Rhode Island Judiciary. Providence, Rhode Island. September 24, 2010.

Say What, Say Where: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 15, 2010.

The Law of Hearsay in Virginia: The Main Sources of Confusion for Judges and Lawyers. Presentation for the Annual Conference of the Virginia Public Defenders Association. Virginia Beach, Virginia. May 11, 2010.

Review of This Term's Major Supreme Court Decisions. Program for members of the federal judiciary sponsored by the Tidewater Chapter of the Federal Bar Association. Norfolk, Virginia. July 23, 2009.

False Confessions, Mistaken Eyewitnesses, and the Conviction of the Innocent. Two presentations to the annual meeting of the National Association of Appellate Court Attorneys. Annapolis, Maryland. July 17-18, 2009.

Say What, Say Where: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 17, 2009.

The Twenty Most Common Spelling Errors in America Today. Annual Meeting of the Virginia Court Reporters Association. Charlottesville, Virginia. March 14, 2009.

The Genius of the Fifth Amendment. Presentation to the Campbell Law School chapter of the Federalist Society. Buies Creek, North Carolina. March 12, 2009.

The Law of Marital Privilege in Virginia. Annual Winter Meeting of the Virginia Bar Association. Williamsburg, Virginia. January 24, 2009.

In Praise of the Fifth Amendment: Why No Criminal Suspect Should Ever Talk to the Police. Presentation at Yale University. New Haven, Connecticut. December 11, 2008.

Recent Developments in the Law of Evidence in Virginia. Presentation at the annual Judicial Hearing Officer Training Conference sponsored by the Supreme Court of Virginia. Richmond, Virginia. December 2, 2008.

In Praise of the Fifth Amendment: Why No Criminal Suspect Should Ever Talk to the Police. Presentation to the Washington & Lee Law School chapter of the Federalist Society. Lexington, Virginia. September 29, 2008.

Say What, Say Where: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 17, 2008.

Virginia Evidence Law: Keeping it Out, Getting it In. Seminar sponsored by Virginia CLE. Richmond, Virginia: May 21, 2008. Tysons Corner, Virginia: May 22, 2008.

The Constitutional Limits on Criminal Jury Instructions. Presentation to the Annual Conference of the Indigent Defense Commission of Virginia. Virginia Beach, Virginia. April 7, 2008.

In Praise of the Fifth Amendment: Why No Criminal Suspect Should Ever Talk to the Police. Presentation to the Regent University chapter of the Federalist Society. Virginia Beach, Virginia. March 14, 2008.

Presumptions and Inferences in Criminal Cases. Thirty-Eighth Annual Criminal Law Seminar sponsored by the Virginia State Bar. Charlottesville, Virginia: February 8, 2008. Williamsburg, Virginia: February 15, 2008.

Is There Ever an Ethical Duty to Make Futile Objections? Continuing legal education seminar for members of the Virginia bar. Norfolk, Virginia. August 15, 2007.

The Admissibility of Memories and Beliefs: The Hearsay Exception that Even the Best Judges Routinely Misunderstand. Continuing legal education seminar for members of the Virginia bar. Norfolk, Virginia. June 20, 2007.

Where to Speak, What to Speak: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 12, 2007.

Preserving Claims of Error in an Uncertain Legal Climate. Annual training conference for Virginia Public Defenders, sponsored by the Virginia Indigent Defenders Commission. Portsmouth, Virginia. March 20, 2007.

Two Years Out from Crawford v. Washington: Where Does Sixth Amendment Confrontation Law Stand in Virginia and the Fourth Circuit? Advanced criminal law seminar hosted by the Virginia Trial Lawyers Association. Williamsburg, Virginia. November 11, 2006.

Federal Rule of Evidence 410: The Rule that “Cannot Mean What it Says.” Continuing legal education seminar for members of the Virginia bar. Norfolk, Virginia. August 30, 2006.

Protecting Free Speech: Defeating Censorship on Main Street. National Litigation Academy. Laguna Niguel, California. July 3-5, 2006.

Where to Speak, What to Speak: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 20, 2006.

The Imminent Changes in the Federal Rules of Evidence. Continuing legal education seminar conducted for members of the Virginia and North Carolina bar. Virginia Beach, Virginia. April 22, 2006.

Proposed Revision to the Virginia Privileges for Confidential Communications with Physicians, Pastors, and Counselors. Presentation before the annual meeting of the Boyd-Graves Conference on Virginia Evidence and Procedure. Roanoke, Virginia. October 22, 2005.

The New Court: Legal Trends and Litigation Strategies. National Litigation Academy. Naples, Florida. October 15, 2005.

The Law of Evidentiary Burdens and Presumptions. Virginia Judicial Conference for District Court Judges. Virginia Beach, Virginia. August 16, 2005.

Cross Examination and Witness Control. Virginia Public Defender Commission Trial Skills Bootcamp. Richmond, Virginia. July 12, 2005.

Evidence Law. Pre-Bench Statewide Orientation Program for New Virginia Trial Judges conducted by the Supreme Court of Virginia. Williamsburg, Virginia. June 28, 2005.

Where to Speak, What to Speak: Contours of the Public Forum Doctrine. Blackstone Legal Academy. Phoenix, Arizona. June 14, 2005.

Recent Changes and Other Surprises in the Rules for Impeaching Witnesses. Continuing legal education seminar conducted for members of the local bar. Norfolk, Virginia. January 26, 2005.

Surprises Lurking in the Law of Privilege. Continuing legal education seminar conducted for members of the local bar. Norfolk, Virginia. October 26, 2004.

Proposed Revision to the Virginia Privilege for Marital Communications. Testimony before the annual meeting of the Boyd-Graves Conference on Virginia Evidence and Procedure. Richmond, Virginia. October 23, 2004.

A Comparison of American and European Approaches to the Trial Process. National Litigation Academy. Laguna Niguel, California. October 20, 2004.

Recent Developments in the Law of Evidence. Continuing legal education seminar conducted for members of the local bar. Norfolk, Virginia. July 28, 2004.

Cross Examination and Impeachment. Virginia Public Defender Commission Trial Skills Bootcamp. Richmond, Virginia. July 14, 2004.

The Ten Federal Rules of Civil Procedure that Should Only Be Read With Adult Supervision. Blackstone Legal Academy. Phoenix, Arizona. June 15, 2004.

The Most Common Spelling Mistakes Made by Federal Judges. Legal writing seminar conducted for members of the local bar. Norfolk, Virginia. May 26, 2004.

Virginia Evidence: Getting It In, Keeping It Out. Seminar sponsored by Virginia Continuing Legal Education. Tysons Corner and Richmond, Virginia. May 12-14, 2004.

The Most Surprising Things You Thought You Knew About Federal Evidence Law. Continuing legal education seminar sponsored by the Norfolk and Portsmouth Bar Associations. Regent University, Virginia Beach, Virginia. April 1, 2004.

"I'm From the Government and I'm Here to Help": Is It Proper to Tell the Jury About the Differing Ethical Duties of Prosecutors and Defense Attorneys? Presentation to the annual training session of the Virginia Association of Public Defenders. Williamsburg, Virginia. March 23, 2004.

The Federal Rules of Civil Procedure: The Ten Rules that Should Only Be Read With Adult Supervision. Regent University Christian Prelaw Conference. Virginia Beach, Virginia. February 21, 2004.

Jury Nullification. The Fifth Annual Conference of the Fully Informed Jury Association. Fort Lauderdale, Florida. November 7-9, 2003.

Where to Speak, What to Speak: Contours of the Public Forum Doctrine. National Litigation Academy. Laguna Niguel, California. July 1-12, 2003.

Blackstone Fellowship Training Academy. Blackstone Legal Academy. Phoenix, Arizona. June 17, 2003.

Where to Speak, What to Speak: Contours of the Public Forum Doctrine. National Litigation Academy. Chicago, Illinois. March 19-22, 2003.

The Law of Marital Privilege in Virginia. Presentation for the James Kent Chapter, American Inns of Court. Norfolk, Virginia. February 19, 2003.

Where to Speak, What to Speak: Contours of the Public Forum Doctrine. National Litigation Academy. Phoenix, Arizona. October 22-26, 2002.

Conflicting Ethical Duties of Civil & Criminal Trial Lawyers Under The New Virginia Model Rules. Presentation to the James Kent American Inn of Court. Norfolk, Virginia. October 16, 2002.

Advocacy Skills and First Amendment Litigation. National Litigation Academy. Cancun, Mexico. June 25 - July 6, 2002.

Contours of the Public Forum Doctrine and Equal Access. National Litigation Academy. Montreal, Canada. October 16-20, 2001.

A Federal Evidence Primer. Presentation to the annual meeting of the Virginia Association of Defense Attorneys. Norfolk, Virginia, October 6, 2001.

The Public Forum Doctrine. National Litigation Academy. Maui, Hawaii. July 3-7, 2001.

Recent Amendments to the Federal Rules of Evidence. Lead speaker at the annual District Training Conference of the United States Attorney's Office for the Eastern District of Virginia. Williamsburg, Virginia, September 26, 2000.

The Legal Limits on Closing Arguments: Recent Developments in the Fourth Circuit. Presentation to the United States Attorney's Office in-house training program. Norfolk, Virginia, April 28, 2000.

Religious Speech in the Public Square. National Litigation Academy. Atlanta, Georgia. February 16-20, 2000.

The Legal Limits on Closing Arguments: Recent Developments in the Fourth Circuit. Presentation to the James Kent American Inn of Court. Norfolk, January 19, 2000.

The Ten Commandments of Opening Statement. Presentation for local bar association members on “Trial Practice in the Modern Era.” Regent Law School. July 16, 1999.

Truth or Victory?: The Conflicting Ethical Duties of Civil and Criminal Trial Lawyers under the New Virginia Model Rules. CLE Presentation for local bar members at Regent Law School. June 24, 1999.

Motions in limine and Preservation of Error: Recent Developments in Federal Law and their Implications for Attorneys in the Fourth Circuit. Presentation for the James Kent Chapter, American Inns of Court. Norfolk, Virginia. March 16, 1999

Testimony before the United States Advisory Committee on the Federal Rules of Evidence on proposed rules amendments. Washington D.C. October 22, 1998.

All Things Considered. Live interview on National Public Radio about recent developments in privilege law. June 8, 1998. Recording available at:
<http://www.npr.org/programs/atc/archives/1998/980608.atc.html>

Motions in Limine and Preservation of Error: Recent Developments in the Law and their Implications for Trial Attorneys in the Fifth Circuit. Annual Convention of the Louisiana State Trial Lawyers Association. College of William & Mary, Williamsburg, Virginia. March 1998.

Truth and its Rivals: Evidence Reform and the Goals of Evidence Law. Hastings College of the Law. San Francisco, California. Commentator, September 1997.

Religious Values in Public Life. Panel Discussion with faculty members from Harvard Divinity School and Regent University. Cambridge, Massachusetts. January 22, 1997.