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Virginia Pomeroy: A Public Defender's Story

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INTRODUCTION: THE IMPORTANCE OF INDIVIDUAL STORIES

I believe everyone has a story, a path they took to get to where they are. Among the most interesting paths are the ones taken in opposition to the status quo. In the context of women lawyers these were the paths taken by nearly every woman lawyer before 1970.¹ I took a History of Women Lawyers class expecting to learn about the “firsts.” What I did not expect to learn was that the stories of the “firsts” are not the only stories that should be learned. Women in the law profession are traveling down paths more worn but there are still obstacles. The stories continue. Many biographies focus on the superlatives, the best, the first, the fastest.² As a consequence the biographies available are often the ones of atypical lives, which leaves so many stories are left untold.³ Carol Sanger, in critiquing women lawyer biographies, states that “readers of women’s biographies want less royalty and romance ...[w]e desire instead the company of a woman who has accomplished something and the record of how she did it.”⁴

Individual stories should not be overlooked. Examined in their particular context, individual stories tell us something about the world we live in and add to historical scholarship.⁵ A social history prospective examines the everyday life of an individual in the broader social

¹ See Audrey Wolfson Latourette, *Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives*, 39 VAL. U.L. REV. 859, 882 (2005) (“The numbers of women attorneys for the forty year period from 1930 until 1970 remained small, comprising at best one to three percent of the profession for most of that duration.”).

² See Carol Sanger, *Review Essay: Curriculum Vitae (Feminae): Biography and Early American Women Lawyers*, 46 STAN. L. REV. 1245, 1252 (1994) (noting that many biographers seek validation by assuring readers the worthiness of the biography by highlighting the subject’s accomplishments measured by superlatives – “best, first, most”).

³ Sanger, *supra* note 2, at 1255.

⁴ Sanger, *supra* note 2, at 1257.

⁵ See William E. Forbath et. al., *Introduction: Legal Histories from Below*, 1985 WIS. L. REV. 759 (1985) (arguing that historical understanding of the law should include individual lived experiences, and that true understanding of the law comes from many voices).

context and challenges the dominant narrative.⁶ Examining the everyday creates a more full and nuanced picture of reality and contributes to history.⁷ Law itself is particularly insightful to history, and the way in which individuals' lives and law intersect is important to understanding the law fully.⁸ Furthermore, individual stories can serve as a vehicle for dismantling stereotypes and unfair generalizations.⁹ In this way examining the life of an individual and telling her story will contribute to the history of women lawyers.

My goal in this paper is to tell the story of Virginia Pomeroy. In doing so I would like to add to the discourse of women lawyers, specifically women public defenders.¹⁰ Interestingly, the first advocate for a public defender was a woman.¹¹ I would like to add to this history of women public defenders by illuminating the life of Virginia Pomeroy. Virginia Pomeroy was a public defender in Wisconsin from roughly 1981-2004. She was not really a "first" but a remarkable woman nonetheless. Her story certainly adds to the discourse of women in the profession, specifically public defense. Public defenders are unique in their profession and, accordingly,

⁶ See Kenneth Walter Mack, *A Social History of Everyday Practice: Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925-1960*, 87 CORNELL L. REV. 1405, 1410 (2002) (examining the life of Sadie T.M. Alexander using a social history approach stating "many legal historians have begun calling for, and practicing, legal history "from below," arguing that social history (often encompassed in the voices of outsiders in the law) performs a critical function by complicating and informing the dominant narratives of legal history. These social historians of American law argue that analysis of the everyday experiences of outsiders – workers, women, ethnic and racial minorities – critically contribute to a full and nuanced picture of the history of American law and sociolegal change").

⁷ *Id.*

⁸ See Austin Arat & Thomas R. Kearns, *LAW IN EVERYDAY LIFE* 1-9 (1993) (explaining everyday life should be the center for sociolegal analysis).

⁹ See Honorable Deanell Reece Tacha, *Leo C. Goodwin Symposium: Tilting the Scales: The Changing Roles of Women in the Law and Legal Practice: Women and the Law: Challenging What is Natural and Proper*, 31 NOVA L. REV. 259, 276-277 (2007) ("We should learn from the feminist tradition of connecting to each other through our real-life stories, without adopting one story as representative of us all. This is, after all, how our laws have come to disavow many stereotypes and generalizations – through individual stories (i.e. cases) that challenge our views of what is natural and universal.").

¹⁰ Sanger, *supra* note 2, at 1254. (stating a biographers job is to "understand a life and then convey that understanding to the reader" and that "gender will always, in some way, be central to an understanding of a woman's life").

¹¹ See Barbara Allen Babcock, *Inventing the Public Defender*, 43 AM. CRIM. L. REV. 1267 (2006).

motivations for this profession are often misunderstood.¹² Some see public defense as undesired and as a result they view public defenders as incompetent attorneys unable to secure other employment.¹³ Some observe the high number of plea deals and see public defenders as “double agents” coercing clients to plead guilty.¹⁴ But peel back the layers behind a public defender and one will see that public defense is one of the most rewarding and essential jobs in the criminal justice system and that public defenders do not have improper motives.¹⁵ Virginia’s life shows this, she is a real life example of why public defenders do what they do and what that means.

VIRGINIA POMEROY: EARLY LIFE

Virginia was born January 2, 1953 in Redwood City, California.¹⁶ Her family was a typical middle class family; their neighborhood consisted of teachers, lawyers, policemen and other similarly situated families.¹⁷ From the start Virginia was a born leader, she organized the neighborhood children in plays and skits.¹⁸ She was a middle child between two older sisters and one younger sister.¹⁹ Patricia was the oldest, Nancy was older by seven years and Virginia’s younger sister, Victoria, followed her by only three years.²⁰

¹² Paul B. Wice, PUBLIC DEFENDERS AND THE AMERICAN JUSTICE SYSTEM x (2005) (noting that the general public holds public defenders in low esteem, in addition the public is “skeptical about the value of something received for free” and question how “viable an adversary can exist when both defense and prosecutors receive their salaries from the exact same source”).

¹³ Michael Scott Weiss, PUBLIC DEFENDERS: PRAGMATIC AND POLITICAL MOTIVATIONS TO REPRESENT THE INDIGENT 1 (2005). (“Stereotypical notions of young, inexperienced and poorly educated recent law school graduates, exploitative con artists in cahoots with the prosecution, and ineffectual incompetents have reinforced the view that public defenders are low-grade practitioners who do what they do because they are unable or unwilling to find more palatable legal opportunities.”).

¹⁴ *Id.*

¹⁵ Weiss, *supra* note 13, at 11. (“Of all the court participants, defense attorneys are clearly the most essential to the adversarial model.”).

¹⁶ Telephone interview with Nancy Bucher, sister of Virginia (March 19, 2011). On file with author.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Virginia's dad, Wes Pomeroy, was a former Marine and also had a law degree – obtained by attending night school while working – but never practiced law.²¹ His work certainly involved the law as it revolved around law enforcement.²² He was a sheriff, police officer, head of security at the University of Minnesota and even worked for the United States Attorney General Ramsey Clark.²³ Perhaps his most notable job was the head of security for Woodstock, which 16-year-old Virginia was allowed to attend.²⁴ She even appeared in the documentary about Woodstock, her long blonde hair singling her out on horseback.²⁵ An original Woodstock poster would be one of her first 60s collectible items and her love for 60s memorabilia followed her the rest of her life.²⁶

While Virginia's early childhood was in California, it was her dad's work that caused them to move to Virginia when he accepted the job for the United States Attorney General Ramsey Clark.²⁷ Although Virginia stayed in California for a period to finish out her school year she eventually moved to Northern Virginia with her family and attended Falls Church High school.²⁸ While in high school Virginia was a cheerleader for a short time, but most of her extra curricular activities involved politics, specifically, the anti-war movement.²⁹ This was a foreshadow of her later career, public defenders are often anti-establishment and seek to challenge conventions.³⁰ It was Virginia who organized a vigil at her high school after the Kent State shootings.³¹ Her parents were very supportive of her, and would even write her and her

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Telephone interview with Victoria Pomeroy, sister of Virginia (April 2, 2011). On file with author.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* Weiss, *supra* note 13, at 145.

³¹ *Id.*

sister, Victoria, notes excusing them from class in order for them to attend protests.³² It was at one of these protests that Virginia had her first experience with the law when she was arrested.³³ Her dad practiced as a lawyer for the first and last time when he defended her and got the charges dismissed after the officer could not remember her specific arrest.³⁴

In high school Virginia was very popular.³⁵ She was very accepting of all types of people and her friendships included people of all races and religions at a time when not everyone was so accepting.³⁶ In this way Virginia was like her dad. Wes Pomeroy was a member of the NAACP, a friend of the Quakers and Jewish organizations.³⁷ He won awards from such organizations as a result of his acceptance of others.³⁸ This had a huge impact on Virginia and often they would talk politics together for hours.³⁹ Virginia's dad had much influence on Virginia's career path and they were quite close.⁴⁰

Virginia's mom was a stay at home mom.⁴¹ This might have also influenced Virginia's decision to go to law school. Cynthia Fuchs Epstein notes that some women chose to attend law school as a result of "negative role models" from their mothers – persons "whom one does *not* wish to be like."⁴² She explains that many women in the 1970s "felt their mothers' lives had been frustrating and unfulfilling, and their talents had been subordinated to their roles as wives

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Bucher, *supra* note 16.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See Cynthia Fuchs Epstein, WOMEN IN LAW 26-27 (1993). (Epstein conducted a study about women who went to law school in the 1970s, states "it seemed clear from the interviews that the changing mood of the times had affected the fathers, and the lawyers among them had encouraged daughters to follow their footsteps. Those interviewed included daughters of prominent civil rights attorneys who were practicing in the public interest sector...").

⁴¹ *Id.*

⁴² *Id.* at 31.

and mothers.”⁴³ Virginia’s own personal notes describe “[a] primary message I took away from growing up (interaction between mom and dad) is to be financially independent; to not have to rely on anyone else financially – primary reason for law school.”⁴⁴ And later when talking about her mother, “how sad to live your life in fear like that.”⁴⁵ But both parents certainly encouraged Virginia to attend college.⁴⁶

EDUCATION

After graduating from Falls Church High School, Virginia ventured west to attend University of Colorado at Boulder.⁴⁷ She would only stay there a year before transferring to the University of Minnesota.⁴⁸ Virginia’s dad had accepted a job at the University of Minnesota as the head of security.⁴⁹ Virginia’s move allowed her to be closer to family in Minnesota. Virginia’s sister also speculates that the rural setting in Colorado was not a good fit for Virginia and that Minneapolis, which was more progressive was a place where Virginia’s political beliefs could be voiced and where she could thrive.⁵⁰ Virginia was very social in college and organized women study groups.⁵¹ She also was very active in co-ops.⁵² She majored in English and then went straight to law school.⁵³

⁴³ *Id.*

⁴⁴ Virginia Pomeroy’s notebook. Date unknown, sometime between 2003 – 2004.

⁴⁵ *Id.*

⁴⁶ Victoria Pomeroy, *supra* note 24.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Bucher, *supra* note 16.

⁵⁰ Victoria Pomeroy, *supra* note 24.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

Virginia wanted to be a lawyer from an early age.⁵⁴ She watched a lot of Perry Mason episodes growing up and loved detective stories.⁵⁵ Virginia's parents were able to help pay for college but Virginia paid for her law school.⁵⁶ She was a parking garage attendant, which was a great job for her because it allowed her to study at the same time.⁵⁷ When Virginia attended law school women made up about one third of her class.⁵⁸ Virginia's time at law school as a woman was most likely not as particularly difficult as it was for women before her. She attended during the late 70s, which was on the cusp of the third-wave of feminism.⁵⁹ Third-wave feminists are described as the beneficiaries of the progress and inroads created by earlier women that came before them.⁶⁰

CAREER AND PERSONAL LIFE

Virginia's goal, right from the start, was to help people. She was the student-director with the Legal Assistance to Minnesota Prisoners Project during law school.⁶¹ Soon after graduating Virginia made her move to Wisconsin where she would stay nearly her entire career. Virginia joined the small public defender's office in Eau Claire, Wisconsin in 1981.⁶² This was actually quite characteristic of the 1980s because during this time women were over-represented

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Victoria Pomeroy, *supra* note 24.

⁵⁷ *Id.*

⁵⁸ *See* Epstein, *supra* note 40, at 58.

⁵⁹ Felice Batlan et al. *Not Our Mother's Law School?: A Third-Wave Feminist Study of Women's Experiences in Law School*, 39 U. BAL. L. F. 124, 126 (2009) (describing the third wave of feminism as referring to the feminists too late to participate in the women's liberation movement of the 1960s and 1970s).

⁶⁰ *Id.*

⁶¹ Jane Pribek, "Former deputy Wisc. State Public Defender dies" WISCONSIN LAW JOURNAL (Milwaukee, WI), Mar 31, 2004.

⁶² Telephone interview with Mike Tobin, friend and colleague of Virginia (March 31, 2011). On file with author.

in government work.⁶³ When Virginia started working the office only had three other attorneys.⁶⁴ Virginia tackled her job with energy and enthusiasm.⁶⁵ Her passion showed early on when she went through bail statutes in elaborate detail to argue on behalf of her clients.⁶⁶ She was frustrated with an older judge who would simply accept whatever bail the district attorney proposed.⁶⁷ The judge would not focus on the written elements.⁶⁸ In this way it seemed as if her interests in changing the law set the stage for her later appellate work. Even though she was interested in the broader context of shaping the law, her relationship with her clients was also very important.⁶⁹ She got along with clients and was always accepting of everyone.⁷⁰

One client in particular, it is safe to say, was her favorite. Jason Pries met Virginia shortly after she started working at the public defender's office in Eau Claire after a little run-in with the law.⁷¹ Sleeping behind the wheel after drinking during a hunting trip he was arrested.⁷² When Virginia met him she was wearing a zigzag patterned dress, that for a slightly hung-over Jason, was a little mind numbing.⁷³ Nonetheless, after Virginia successfully resolved the charges, Jason got the courage to ask her to get a drink with him.⁷⁴ They got a drink together and after that they were virtually never apart.⁷⁵ Jason was a carpenter from Germantown, Milwaukee.⁷⁶ The pair dated for three years and got married in 1983.⁷⁷ Virginia was 30, Jason

⁶³ See Epstein, *supra* note 40, at 112.

⁶⁴ Tobin, *supra* note 61.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Interview with Marla Stephens, friend and colleague of Virginia, in Milwaukee, Wis. (March 3, 2011). On file with author.

⁷⁰ *Id.*

⁷¹ Interview with Jason Pries, husband of Virginia, in Germantown, Wis. (April 8, 2011). On file with author.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

was 26.⁷⁸ It was a small wedding with a local judge who was a friend and a small number of other friends.⁷⁹ The reception was held on the judge's newly built deck.⁸⁰ Virginia and Jason's marriage was strong and they always tackled life's problems together.⁸¹ They were avid art collectors, loved to ski and bike, and enjoyed playing board games together.⁸² Soon after getting married the pair decided to move back to the Milwaukee area where Jason was from.⁸³ This led Virginia to the appellate office of the state public defender in 1984.⁸⁴

Virginia was always passionate about changing policy so the transition to the appellate office was a better fit for those goals.⁸⁵ It was not common for a public defender trial attorney to transfer to the appellate division but Virginia made the transition easily.⁸⁶ Her background in trial work helped, Virginia had a better sense of what was really going on off the record and behind the scenes when reading the transcripts from cases.⁸⁷ One aspect of her work that was always important to Virginia was to meet the clients before starting any work on the case, not something every attorney would do.⁸⁸ She wanted to see her clients fact-to-face and connect with them first before even reading any part of their file.⁸⁹ Appellate work can be difficult, even when there was an error in the case courts are generally unlikely to give any relief.⁹⁰ Therefore, Virginia did not want to have to tell her client bad news at their first meeting.⁹¹ Appellate work

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Stephens, *supra* note 68.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

provided Virginia the opportunity to really use her intellect, in addition she really enjoyed writing.⁹²

After 10 years Virginia advanced as the Director of the Appellate Division.⁹³ Virginia is credited with being a key influence in proposing and then implementing strategic plans that proved very successful for the office, ultimately winning Wisconsin Forward Awards in 2000 - 2003.⁹⁴ This was a major accomplishment for the office and involved a comprehensive application. The Wisconsin Forward Awards were business awards regarding management that included private sector businesses.⁹⁵ Never had the Wisconsin Public Defender Office even applied for such awards. The awards are based on Baldrige criteria, which include seven categories (leadership, strategic planning, customer focus, measurement, analysis, knowledge management, workforce focus, process management, and results).⁹⁶ The process required the office submit an extensive application, nearly 50 pages in length.⁹⁷ In addition, the application included site visits by board examiners.⁹⁸

Virginia had a larger plan for the awards; she was seeking to gain credibility for the public defender office.⁹⁹ Generally the public does not look at the public defender's office with favor.¹⁰⁰ Many people question government funding for essentially protecting criminals.¹⁰¹ The Legislature, who designates the funding for the public defender and also creates the statutes that

⁹² *Id.*

⁹³ Pribek, *supra* note 60.

⁹⁴ Stephens, *supra* note 68.

⁹⁵ See *Wisconsin Forward Award Process*, <http://www.forwardaward.org/process.html> (last visited April 12, 2011).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Stephens, *supra* note 68.

¹⁰⁰ Thomas F. Geraghty, *The Care and Feeding of Defender Organizations*, 82 N.W. U.L. REV. 1255, 1256 (1988). (reviewing LISA J. MCINTYRE, *A REVIEW OF THE PUBLIC DEFENDER: THE PRACTICE OF LAW IN THE SHADOWS OF DISREPUTE* (1987)). (“[P]ublic defenders do not enjoy the appreciation of the public.”).

¹⁰¹ Joint Committee On Continuing Legal Education of the American Law Institute and the American Bar Association, *THE PROBLEM OF ASSISTANCE TO THE INDIGENT ACCUSED* 75 (1961) (containing article: Dimock, *The Public Defender: A Step Towards a Police State?* 42 A.B.A.J. 219 (1956)).

public defenders must abide by, also views the public defender with a skeptic eye.¹⁰² Virginia's strategic planning help gain respect for the public defender office.¹⁰³ In addition, Virginia implemented educational forums throughout the state in order to inform the public as to what the public defender actually does.¹⁰⁴ It was important to her for everyday people to understand and grasp what the public defender was all about.¹⁰⁵

In 1996 Virginia decided to switch gears and try private practice. A friend from law school, Jeff Ojile, contacted Virginia about joining him in Minnesota.¹⁰⁶ Virginia decided that she was ready for a new challenge and agreed.¹⁰⁷ Virginia moved there on a trial basis.¹⁰⁸ On weekends she would return to Milwaukee, or Jason would visit her in Minnesota.¹⁰⁹ The new venture did not prove to be as financially successful as Ojile thought it would be.¹¹⁰ In addition, although Jason was very supportive of anything Virginia did, Virginia found it to be very difficult to be far away from him.¹¹¹

According to one friend, Virginia decided to stop in, spur of the moment, at the State Public Defender Office in Madison on her way home to Milwaukee.¹¹² She asked if the office had any openings.¹¹³ They did, and about one year after she had left Virginia moved back and returned to administration within the state public defender's office.¹¹⁴ This time she joined as

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Interview with Hannah Dugan, friend of Virginia, in Milwaukee Wis. (March 31, 2011). Memorandum of interview on file with author.

¹⁰⁵ *Id.*

¹⁰⁶ Pries, *supra* note 70.

¹⁰⁷ Stephens, *supra* note 68.

¹⁰⁸ Pries, *supra* note 70.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Dugan, *supra* note 103.

¹¹³ *Id.*

¹¹⁴ Amy Rabideau Silvers, *Pomeroy Fought for Those Without Voice*, MILWAUKEE JOURNAL SENTINEL. Milwaukee, Wis. Apr 5, 2004.

legal counsel for the office itself.¹¹⁵ In this capacity Virginia represented the agency itself in employment matters.¹¹⁶ Jason remembers the relocation differently; it was near this time that Virginia learned she had breast cancer.¹¹⁷ With no insurance at the private practice, the state's benefits package was attractive. Friendships at the office and previous work history made it possible for Virginia to come back to the office, partly in order to receive health insurance during her battle with breast cancer.¹¹⁸ This is a fitting example of the great work environment that public defender offices have.¹¹⁹ Many public defenders choose or decide to remain as public defenders because of the great atmosphere and teamwork.¹²⁰

March 1997, on Good Friday, was when Virginia received her breast cancer diagnosis.¹²¹ But, like everything else in her life, Virginia was ready to fight.¹²² It was a battle that would endure, off and on, for 7 years.¹²³ Virginia tackled breast cancer with vigor. In addition, as it was often so typical of Virginia, she focused her fight on others by encouraging other women to get mammograms.¹²⁴ She also underwent experimental treatment that she hoped would help others someday, even if it would not save herself.¹²⁵ Friends stated that she really would not talk about her disease unless asked, but this was typical of a conversation with Virginia as she rarely

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Pries, *supra* note 70.

¹¹⁸ *Id.*

¹¹⁹ Abbe Smith *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender*, 37 U.S. DAVIS L. REV. 1203, 1245 (2004) (noting the unique camaraderie in public defender offices, "The culture of public defender offices is one of mutual support, collegiality, and generosity...If time allowed, defenders would do anything for their colleagues").

¹²⁰ Weiss, *supra* note 13, at 52, 79. (noting that public defenders have a common experience and that public defenders enjoy strong professional relationships with their likeminded colleagues. In addition, public defenders provide each other with mutual support). *See also* Wice *supra* note 12 at 145. (stating there was a sharp contrast between the atmosphere at a public defender's office and the formal competitiveness typical at private law firms).

¹²¹ AWL newsletter October 1998 and Virginia Pomeroy's personal notes.

¹²² Pries, *supra* note 70.

¹²³ AWL newsletter May 2004.

¹²⁴ AWL newsletter October 1998

¹²⁵ Bucher, *supra* note 16.

talked about herself.¹²⁶ One friend noted that she did not even realize Virginia had a husband until years after knowing her because Virginia's conversations were always about others or her work.¹²⁷ Her disease was no different, as she continued to put others before it.

During her on-again, off-again struggle with breast cancer Virginia stayed at the state public defender's office.¹²⁸ After a mastectomy she was cancer free for about four years.¹²⁹ It was during this time that she was eventually appointed to the number two position in the office – the Deputy Public Defender, in 2000.¹³⁰ Virginia was essentially the second in command for the largest law firm in the state. The office had a total of about 550 staff members, including lawyers.¹³¹ Eventually Virginia resigned as deputy in 2002.¹³² Always willing to work, she returned to the appellate office in Milwaukee and also continued to work on revisions to the juvenile handbook.¹³³

Virginia's individual casework is obscure, trial court decisions are not published and only some appellate decisions are published. According to my research I found nineteen decisions in which Virginia worked as counsel.¹³⁴ Virginia "won" only a handful. The reality is that public

¹²⁶ Stephens, *supra* note 68. Dugan, *supra* note 103.

¹²⁷ Dugan, *supra* note 103.

¹²⁸ Silvers, *supra* note 113.

¹²⁹ Pries, *supra* note 70.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See *Fawcett v. Bablitch*, 962 F.2d 617 (7th Cir. 1992), *Pharr v. Gudmanson*, 951 F.2d 117 (7th Cir. 1991). See *In re Sheldon G v. Circuit Court for Walworth County*, 237 Wis. 2d 696 (Wis. Ct. App. 2000), *State v. Bridges*, 195 Wis. 2d 254 (Wis. Ct. App. 1995), *State v. Corrigan*, 1995 Wisc. App. LEXIS 1642, *State v. Bramlet*, 182 Wis. 3d 514 (Wis. Ct. App. 1994), *In re Anthony K v. Anthony Y*, 186 Wis. 2d 577 (Wis. Ct. App. 1994), *State v. Benson*, 184 Wis. 2d 406 (Wis. Ct. App. 1994), *State v. Zimmerman*, 187 Wis. 2d 293 (Wis. Ct. App. 1994), *In re Antonio M.C. v. State*, 182 Wis. 2d 301 (Wis. Ct. App. 1994), *State v. Buchanan*, 178 Wis. 2d 441 (Wis. Ct. App. 1993), *In re Jason B. v. State*, 176 Wis. 2d 400 (Wis. Ct. App. 1993), *In re B., L., T. and K: State v. Rose*, 171 Wis. 2d 617 (Wis. Ct. App. 1992), *In re R.W.S v. State*, 162 Wis. 2d 862 (1991), *State v. Hanson*, 163 Wis. 2d 420 (Wis. Ct. App. 1991), *In re R.W.S v. State*, 156 Wis. 2d 526 (Wis. Ct. App. 1990), *In re D.F. and D.H. v. Juneau County, Department of Social Services*, 147 Wis. 2d 486 (Wis. Ct. App. 1988), *State v. Fawcett*, 145 Wis. 2d 244 (Wis. Ct. App. 1988), *In re J.S. & M.S. v. Racine County*, 137 Wis. 2d 217 (Wis. Ct. App. 1986).

defense is a losing game.¹³⁵ Public defenders define their own success.¹³⁶ This can include the ability to negotiate a favorable plea bargain, the ability to out-wit the prosecution in pre-trial motions, make the prosecution look foolish in court, or lengthy jury debates which for some indicate an “almost-win.”¹³⁷ A notable case for Virginia was one that she argued before the 7th Circuit Court of Appeals.¹³⁸ Interestingly, Jason remembers that she had a feeling that she was going to lose, but it did not stop her from fighting and arguing the case to the fullest.¹³⁹ She was nervous, but always was a little nervous when arguing before anyone and would practice in front of a mirror.¹⁴⁰

None of Virginia’s colleagues, friends or family with whom I talked to could remember a specific case that Virginia won. But this is not surprising. In addition to defining their own success apart from wins, public defenders rarely take credit for their courtroom victories.¹⁴¹ This is for a number of reasons, one being the belief that because cases are most likely randomly assigned no single attorney should take credit for the “luck of the draw.”¹⁴² Also, by not taking the credit for losses, many public defenders decline to take credit for their wins.¹⁴³ In addition, many view the simple win/loss labeling overly simplistic.¹⁴⁴ Numerous public defenders do not look at individual cases as a gauge for success but rather view their casework collectively

¹³⁵ Weiss, *supra* note 13, at 29. (“[C]onstant and inevitable losses are the most observable result of defender actives.”).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Pries, *supra* note 70. Based on limited facts I was unable to identify the exact case Pries mentioned.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Wice, *supra* note 12, at 154.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

because they know they are working not only for individual clients' justice but also working to protect the criminal justice system itself.¹⁴⁵

Win or lose Virginia did sometimes grapple with defending the guilty, but believed in due process and the social value of her work.¹⁴⁶ This is a common motivator for many public defenders.¹⁴⁷ A lot of public defenders do what they do not because they agree with the actions of their clients, but because they believe in upholding Constitutional rights guaranteed to everyone, which in turn “keeps the system honest.”¹⁴⁸ Virginia believed in due process strongly and also believed in the importance of not judging others. This is evident in some of her personal notes. She writes “[W]e need not worry about continually judging, deciding who to forgive & not forgive (“being principled”)... [I]t’s not my job to not forgive...I don’t need to fix blame ... I can decide not to relate to certain people but need not judge them.”¹⁴⁹

WORK OUTSIDE OF WORK

Virginia was very active outside of work as well. It was not very common for attorneys from government agencies to be involved with bar organizations or even outside professional groups.¹⁵⁰ Virginia changed that by being active in both the bar and other outside organizations. Two of her passions, women in the law and juveniles, were apparent. Virginia served on the State Bar Children & the Law Section of the Bar, the Indigent Defense Committee and the Special Committee on the Participation of Women in the Bar.¹⁵¹ She also co-wrote the

¹⁴⁵ Babcock, *supra* note 11 at 1277. (“In short, the progressive defender was more efficient, precisely because he was less concerned with achieving the best possible result for each accused than with making the system generally fair and impartial.”).

¹⁴⁶ Pries, *supra* note 70.

¹⁴⁷ Weiss, *supra* note 13, at 95.

¹⁴⁸ *Id.*

¹⁴⁹ Virginia’s personal notes.

¹⁵⁰ Dugan, *supra* note 103.

¹⁵¹ AWL newsletter October 1997.

Wisconsin Juvenile Law Update. Virginia was always dedicated to women's issues and she served President of the Association of Women Lawyers (AWL), as well as on the AWL Board from 1992-1996 as secretary, treasurer, Director of Programs and President-Elect.¹⁵² Virginia was instrumental to the growth of AWL, she implemented strategic planning for the association.¹⁵³ She also instituted the first AWL scholarships to be awarded to law students from the University of Wisconsin Law School and Marquette University Law School. In addition, Virginia made it possible for women law students to join the organization at a reduced student rate.¹⁵⁴

Virginia was recognized for her work, she received an honorable mention for the Virginia Hart Special Recognition Award for Unsung Heroes in State Service in 2002. That same year, she was chosen as one of Wisconsin Law Journal's "Women in the Law."¹⁵⁵ But awards were not important to her, it was everyday people that she cared about. This is evident from a "to do" list tucked away in one of her notebooks. Of the eight things she had jotted down – four at the top of the list consisted of pro bono work and volunteering, all made during her battle with cancer.¹⁵⁶ A battle she would ultimately lose on March 21, 2004 at her home surrounded by loved ones.¹⁵⁷ Virginia was only 51 years old. Virginia's dedication to help others seemed never ending and is still inspiring years later.

WOMEN IN PUBLIC DEFENSE: A HISTORY

¹⁵² *Id.*

¹⁵³ AWL Newsletter Feb 1999.

¹⁵⁴ AWL Newsletter May 2004.

¹⁵⁵ Pribek, *supra* note 60.

¹⁵⁶ Virginia's personal notes.

¹⁵⁷ Pries, *supra* note 70.

Virginia's role in Wisconsin's Public Defender office and her interest in women's issues is intriguing in light of the fact that the public defender system has a unique history grounded in some of the first women lawyers. Most credit the start of public defender systems to the landmark case *Gideon v. Wainwright*.¹⁵⁸ This case established that the assistance of counsel is a fundamental right protected by the Fourteenth Amendment's due process clause, therefore requiring all criminal courts to provide free counsel for indigent defendants.¹⁵⁹ Consequently, formal government funded public defender offices were not mandated until the *Gideon* case.

But despite the *Gideon* case's decision coming down in 1963, many states had already had public defender systems in place.¹⁶⁰ While not mandated by the Constitution, states provided indigent clients with defense in a variety of ways, either through informal appointment from the private bar or legal aid societies.¹⁶¹ Clara Foltz was one such attorney that had instituted a defender office for indigent clients.¹⁶² A trailblazing lawyer just by virtue of being a woman, she is also credited with being the first advocate for government funded public defenders, something that would not be instituted until nearly seventy years later.¹⁶³ Foltz's first recorded proposal for a public defender was at the Chicago's World Fair in 1893, given in a speech at the Congress of Jurisprudence and Law Reform.¹⁶⁴ She stated that "For every public prosecutor there should be a public defender chosen in the same way and paid out of the same fund."¹⁶⁵ By 1913 Foltz had established the first public defender office in Los Angeles.¹⁶⁶

¹⁵⁸ 372 U.S. 335 (1963) See Wice, *supra* note 12, at 2 and at 12.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 6.

¹⁶¹ *Id.*

¹⁶² Barbara Allen Babcock, *Symposium: Women Defenders in the West*, 1 NEV. L.J. 1, 18 (2001).

¹⁶³ *Id.*

¹⁶⁴ Babcock, *supra* note 11, at 1270.

¹⁶⁵ *Id.* at 1271.

¹⁶⁶ *Id.* at 1274.

Many of the reasons why women advocated for a government funded public defender system arose because of women's unique circumstances. Women first became public defenders out of necessity.¹⁶⁷ It wasn't easy for women to get work and indigent was some of the only work available to women.¹⁶⁸ After law school many early women lawyers ended up helping with their husbands' practice or became legal secretaries.¹⁶⁹ Indigent defense appointment was sometimes the only work women could secure.¹⁷⁰ Women were hired as defense counsel by poor clients because these clients so desperate they would hire a woman.¹⁷¹ In addition to logistical reasons why women defended the indigent, women were in a unique position that they, themselves, could identify with their clients because they too were oppressed,¹⁷² at that time women were not allowed to vote and could not serve on juries.¹⁷³ Some point to women's maternal characteristics as one reason why women were especially prone to help poor clients.¹⁷⁴ Women tapped into maternal feelings desiring to protect those who could not protect themselves.¹⁷⁵ For all these reasons women had a unique role in the development of the public defender system.

Despite their presence within the underpinnings of public defense, women faced obstacles in criminal defense unlike other areas of law. Women had to overcome the perception that women should not be involved with the "nastiness" of criminal law.¹⁷⁶ Increased hostility to

¹⁶⁷ Babcock, *supra* note 159, at 11.

¹⁶⁸ *Id.*

¹⁶⁹ Virginia G. Drachman, *Women Lawyers and the Quest for Professional Identity in Late Nineteenth-Century America*, 88 MICH. L. REV. 2414, 2434 (1990). *See also* Babcock *supra* note 11, at 1.

¹⁷⁰ Bucher *supra* note 11, at 13.

¹⁷¹ *Id.*

¹⁷² *Id.* at 13.

¹⁷³ Joanna L. Grossman, *Women's Jury Service: Right of Citizenship or Privilege of Difference?*, 46 STAN. L. REV. 1115, 1129 (1994) ("Only in 1975 did the Court finally rule that the exclusion of women from juries raised a constitutional issue.").

¹⁷⁴ Babcock, *supra* note 11, at 17-18.

¹⁷⁵ *Id.* at 16.

¹⁷⁶ *Id.* at 4.

women defenders was possibly a result of men's fear of being humiliated and beaten in courtroom in front of the public.¹⁷⁷ Some of these perceptions still linger today, Virginia herself noted that “[c]riminal defense attorneys are kind of ‘cowboy’ attorneys as more women become good criminal defense attorneys the whole image changes.”¹⁷⁸ A successful attorney herself and co-chair of the Participation of Women in the Bar Committee, Virginia worked to change these perceptions of women defense attorneys.

Although Clara Foltz was credited as starting a public defender program, this is not to say that public defense was accepted. *Gideon v. Wainwright* did not get decided until 1963. Before this landmark case, public defense was criticized.¹⁷⁹ Opponents of public defenders pointed to the inconsistency of the government paying for both a suspect's prosecution and defense.¹⁸⁰ Others pointed out that even a defendant would not want a public defender because defendants would not trust one provided by the government.¹⁸¹ In addition public defenders would lack impartiality because they were in fact paid by the government.¹⁸² Public defense was even compared to communism.¹⁸³ These negative opinions concerning public defense still linger today, and public defense still remains controversial.¹⁸⁴ Despite this negative perception, Virginia chose to work as a public defender, this choice reveals a lot about her beliefs and her as a person.

¹⁷⁷ *Id.* at 9.

¹⁷⁸ Patricia McKeown, *Diversity in the Workplace: What Does it Mean for your Bottom Line?*, WISCONSIN LAWYER, April 1994. 67 APR Wis. Law. 10

¹⁷⁹ Dimock, *supra* note 99 at 75.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 72-73. (describing a public defender system, “[t]he Communists honestly believed in the doctrine that the highest welfare of the human race is to be attained only by complete subservience to an all-providing state... sadder still if the citizen in legal conflict with the state could get no counsel except as was vouchsafed him by the state. Of all the fields of private right, this field of legal representation is the last field where we ought to permit the Government to move an inch inside the gate”).

¹⁸⁴ *See* Babcock, *supra* note 159, at 1268.

It is clear that Virginia's motivations for becoming a public defender were grounded in the belief that everyone deserves due process and equal treatment, mirroring many women public defenders of the past, such as Clara Foltz. Barbara Babcock credits feminism as one of the major influences for Clara's formation of the public defender.¹⁸⁵ Like Clara, Virginia was very much a feminist.¹⁸⁶ Furthermore, Virginia's life is a real life example that public defenders are not simply helping the bad guys, they are protecting everyone's rights by fighting for those who cannot fight for themselves. Virginia's life shows that public defenders are not incompetent attorneys unable to secure other employment, but that they are truly talented and believe in the value and importance of their work.

CONCLUSION

Lawyers, or in my case, law students, like to look at life differently. We like to offer our legal arguments to make the systematic, logical argument. A, B, C therefore D. We like to write countless lengthy law review articles on the logical antics of judges who seemingly jump through hoops to get to an incoherent, yet fully reasoned conclusion. But you cannot "legalize" everything. The law can have formal arguments to get to the places we want to go and the conclusions we want, but in between that first premise and the conclusion is life.¹⁸⁷ And just because you are a lawyer you should not forget about that life. Don't get me wrong, it's important to be logical. It's important to look at the numbers sometimes too, as we can do with the history of women lawyers and see the underrepresentation and the inequality of women in the

¹⁸⁵ *Id.* at 1270.

¹⁸⁶ Stephens, *supra* note 68.

¹⁸⁷ Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1243 (1993) (Ogletree uses a narrative, personal approach in his law review article. He notes, "The formalized, doctrinal style of argument that characterizes much contemporary legal writing can too easily elude the realities of human experience.").

legal profession. It is good to have those facts and to understand the ramifications of a legal system in which women have been slow to enter and slow to be fully accepted. But just as important is the everyday life of those whose work and lives have individually influenced, and therefore changed, the legal community and the why and the how they did so.

“Without the everyday, law is a voice never heard, a memory never known. Without the everyday, law is a living impossibility. So we turn to the everyday to get a better fix on the ways of law, on what law is and what it can be.”¹⁸⁸

Virginia Pomeroy’s voice and story is one that should never be forgotten. Her story is one that shadows many common motivations for public defenders. For some, public defense is counterintuitive and the justifications for it are obscure. Even more obscure is why someone would want to do it. Public defenders are not always regarded highly, the bottom line is that they are helping the bad guys. Her story is one in which we can reflect on the history of public defense, which has its beginnings with a woman who had some of the very same motivations as Virginia. Her story gives context and legitimacy to public defenders everywhere and can help others to understand and respect the profession. In addition, learning about her story, as in every biography, we can learn something about ourselves. We can answer the very questions we ask. Why are we doing this? What do we hope to accomplish and how can we do it? Moreover, her story shows the remarkable dedication, fearlessness and success of a woman attorney. At a time when attorneys are sometimes thought of as greedy, lying, unhappy people,¹⁸⁹ Virginia’s story is a reminder that not all lawyers are “bad” and that lawyers *can* be happy. As she put it when describing her work:

¹⁸⁸ See Arat & Kearns, *supra* note 8, at 8.

¹⁸⁹ See Barbara Allen Babcock, *Book Review: Feminist Lawyers. Sisters in Law: Women Lawyers in Modern American History*, 50 STAN. L. REV. 1689, 1704 (1998) (noting “[b]ooks and articles, bar speeches and graduation valedictories abound on subjects of failing faith and lost lawyers. [T]he complaint is that a learned profession has become a bottom-line business”).

“I can’t believe it’s as simple as being able to do something because you want to, because it will make you happy. I’m lucky to be able to do this...”¹⁹⁰

If only we could all be so lucky.

¹⁹⁰ Virginia’s Personal Notes.