Howard W. Martin
President
Virginia State Bar

Dear Mr. Martin:

The October issue of *Virginia Lawyer* is a terrific tribute to Oliver W. Hill. As you know, I had the pleasure of working for Mr. Hill at Hill, Tucker & Marsh when some twenty-two years ago Mr. Hill hired me to become the newest associate of the firm. I also counted him as a friend and a mentor. You and Rodney Coggin are to be commended for highlighting his contributions to the bar in this issue.

I was particularly struck by your tribute to him. While it is important for attorneys to celebrate his civil rights accomplishments, we risk in doing so relegating him to a very narrow perch. Your article praised him for his courage and tenaciousness during the era of massive resistance, but your article also did so much more. You reminded members of our bar that "Oliver White Hill epitomized the best of Virginia lawyers." Period.

Thus, his practice at the bar remains not only a testament to exceptional civil rights work, but prevails as a shining example to all lawyers of what a Virginia lawyer should strive to be: dignified, of high character, and of exceptional legal attainment.

Richard D. Taylor Jr.
Judge
Circuit Court of the City of Richmond

Letters

Send your letter to the editor* to:
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Thank You, Tom

by Howard W. Martin Jr., 2007–08 VSB President

Men make history, and not the other way around. In periods where there is no leadership, society stands still. Progress occurs when courageous, skillful leaders seize the opportunity to change things for the better.

—Harry S. Truman (1884–1972)

It is a fact that Harry Truman never knew Tom Edmonds. But Truman's words above accurately and completely foreshadow the value of Tom Edmonds's tenure at the helm of the Virginia State Bar. For more than eighteen years, Tom has defined the word "leadership," and not for a moment under his guidance has our legal "society" in Virginia stood still. With courage, skill, integrity, vision, and professionalism, Tom has indeed seized opportunities to lead the bar toward change for the better. I am one among many who consider it a privilege to have served with him. His retirement on December 31 this year will mark a significant milestone in the life of the bar, which, coincidentally, was created the year that Tom was born.

If I tried to tell you everything that Tom has accomplished as Executive Director of the bar, I could fill many pages of this magazine. But I must mention several hallmarks of his career as an agent of change. These signature items were accomplished under Tom's guidance, through the efforts of the volunteer bar leaders and the bar staff:

- Collaborative work with the Supreme Court of Virginia to implement educational programs for solo and small-firm practitioners as well as lawyers who represent indigent defendants in criminal cases
- Implementation of an online legal research tool for use by all members of the bar
- Growth of the professional regulatory staff to respond to increased disciplinary workloads
- Reorganization of the disciplinary system to open hearings to the public and to include lay members on all hearing panels
- Quadrupling of the dollars in the Clients' Protection Fund and increasing the individual award maximum that can be paid by the fund
- Progressive moves to improve efficiency and productivity in carrying out the work of the bar, including relocation and expansion of the bar's Richmond offices and installation of a modern and improved computer system that has led to better use of technology
- Accomplishing a beneficial change of the bar's endorsement to a new professional liability insurance carrier

While serving the three primary missions of the VSB (professional regulation, public access to legal services, and improving the legal and the judicial systems), Tom has made the Virginia State Bar a model across the nation. Just a few weeks ago at a Southern Conference of Bar Presidents meeting, two other state directors told me that if they had an idea for their own bars, they always checked to see what Virginia was doing on the issue before moving ahead. Virginia has benefited from Tom's calm, thoughtful, prompt, and intelligent assessment of the issues that needed attention. Tom will leave the Virginia State Bar in far better shape than when he arrived here in 1989.

As many of you know, Tom's career successes have not been confined to his native Mississippi nor his adopted state of Virginia. From his Marine Corps days to school at Mississippi College and then Duke Law School, into the rarified world of academia as professor, administrator, and dean, he has excelled and performed so well that institutions and positions have sought him out. He has really never applied for a job! His command of all things bar-related propelled him to the top of the National Association of Bar Executives, which he led with distinction as president in 2005–06. In recognition of his national and state leadership, Tom was awarded NABE's prestigious Bolton Award at the annual meeting of the American Bar Association in San Francisco earlier this year.

As much as we will miss Tom, I must not allow this opportunity to pass with-

President's Message *continued on page 10*

continued from page 9

out mentioning perhaps the most attractive of Tom's attributes, one whom we will sorely miss: his wonderful, engaging, articulate, and lovely wife, Martha. The two of them have been such a positive influence on the VSB and its stature, in Virginia and across the nation. They leave our bar well-positioned for the future, and well thought of.

Tom's shoes clearly will be difficult to fill. However, I am delighted to report that at the VSB Council meeting on October 19, 2007, the Executive Director Search Committee, ably led by past president Phil Anderson, recommended selection of Karen A. Gould of Richmond as the next Executive Director. The council enthusiastically and unanimously approved Karen, the Supreme Court of Virginia approved the selection, and Karen started work on December 1. We are excited to have Karen aboard.

On the evening of October 18, the bar council hosted a dinner in honor of Tom. There were a number of moving tributes, including one by Justice Donald W. Lemons of the Supreme Court of Virginia. Justice Lemons very graciously in addressing Tom said, "You were always accessible; you were always responsive; you were always competent; you were always professional." These are wonderful characteristics to which all of us, as lawyers, should aspire.

Tom, you have devoted the best part of your career to your work for and with the Virginia State Bar. You have been an inspirational leader and a great mentor to the bar-officer volunteers who, selected anew each year, arrive on your doorstep every June. I personally want to express my sincere appreciation for the contributions you have made to the Virginia State Bar, to me, and, over these past eighteen years, to those who preceded me. Thank you. We wish you "fair winds and following seas" as you enter the next phase of your very remarkable life. ⚖

photo by Trevor A. Wrayton

At Thomas A. Edmonds's retirement party, Justice Donald W. Lemons conveyed the Supreme Court of Virginia's appreciation for the almost nineteen years Edmonds served as executive director of the Virginia State Bar.

"You were always accessible; you were always responsive; you were always competent; you were always professional," Lemons said. "For your service to the commonwealth, . . . the citizens of Virginia and, more particularly, the bench and bar owe you a debt of gratitude."

Bar Council Honors Outgoing VSB Executive Director

Thomas A. Edmonds, the Virginia State Bar's executive director for more than eighteen years, was celebrated for his service by the Virginia State Bar Council on October 18 during its meeting at the Norfolk Marriott Waterside.

Edmonds will retire on December 31, 2007.

The party was attended by justices and judges from the Supreme Court of Virginia and Court of Appeals, Congressman Robert C. "Bobby" Scott and Delegate Jennifer L. McClellan, many past VSB presidents Edmonds has worked with over the years, family and friends of Edmonds, and members of the VSB executive staff.

McClellan (photo 1), president-elect of the VSB Young Lawyers Conference, presented Edmonds with a resolution from the General Assembly. The resolution stated that Edmonds has served the bar "with great vision and purpose and has unequivocally strengthened its mission to regulate the legal profession of Virginia, advanced the availability and quality of legal services provided to the people of Virginia, and assisted in improving the legal profession and the justice system."

John A.C. Keith of Fairfax (photo 2) and Joseph A. Condo of Vienna (photo 3) were among the past presidents who attended.

Edmonds's friends and family members (photo 4) included (from left) his wife, Martha Edmonds; his former pastor, the Reverend Joseph S. Harvard, and his wife, Carlisle Harvard, now of Durham, North Carolina; and Edmonds's son-in-law, Scott Thompson, and daughter, Amy Thompson.

Edmonds's reflections on his years with the Virginia State Bar are on page 8.


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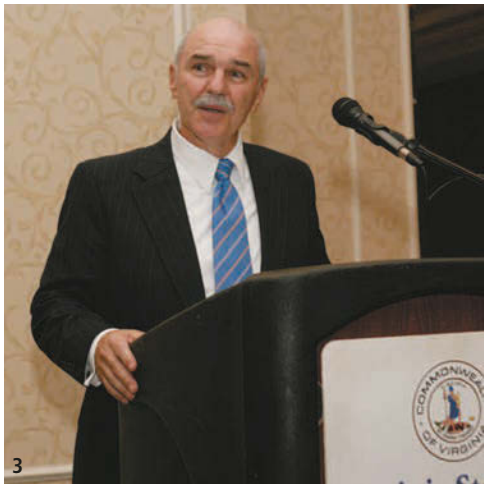
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photos by Trevor A. Wrayton

Highlights of the Virginia State Bar Council Meeting

October 19, 2007

At its regular meeting on October 19, 2007, in Norfolk, the Virginia State Bar Council heard the following significant reports and took the following actions:

Delinquency Collections Almost Doubled

The number of attorneys who miss membership obligation deadlines has remained constant, even though the Supreme Court of Virginia doubled late and reinstatement fees effective this year. Delinquent attorneys will pay a projected $230,000, VSB Executive Director Thomas A. Edmonds reported. More than 1,481 active, associate, and corporate counsel members were sent notices that threatened administrative suspensions if they did not comply by October 10, 2007.

Studies of Council Size and Disaster Legal Relief Are Underway

VSB President Howard W. Martin Jr. has appointed task forces that will:

- consider whether the size and composition of the VSB Council should be changed. The council currently comprises seventy-eight representatives.

- study a proposed model rule that would allow lawyer volunteers to provide pro bono legal services in another state in which a disaster has occurred.

Rules Change Proposals Approved

The council approved amendments to Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. The changes address provision of available dates for disciplinary hearings; a clarification that Disciplinary Board sanctions imposed pursuant to an agreed disposition cannot be appealed; and notification of clients when an attorney has been suspended. The proposals will be submitted to the Court for its consideration. The proposed changes can be viewed by going to the VSB home page at **www.vsb.org** and clicking Proposed Rule Changes in the Resources box.

Increase in CRESPA Bond Proposed

The council approved a proposed amendment to the Consumer Real Estate Settlement Protection Act that would increase from $100,000 to $200,000 the surety bond that lay and attorney settlement agents must carry. The VSB's Public Protection Task Force recommended the change because real estate prices have increased since the CRESPA statute went into effect twelve years ago. In some cases of attorney defalcation, losses have exceeded the amount of the bond. With the Court's approval, the proposal will be submitted to the General Assembly. The task force estimates the cost to attorneys would no more than double the current cost of $375 to $500 annually.

Notification Proposal Rejected

The council by a vote of 7–54 rejected a proposal by the Public Protection Task Force that insurance companies be required by statute to notify third-party claimants or judgment creditors when they issue settlement checks to attorneys for the claimants. The task force recommended the proposal as a way to prevent lawyers from forging client endorsements and stealing funds. The measure was opposed by council guest Charles J. Zauzig III, president of the Virginia Trial Lawyers Association, and other trial lawyers on the council. They contended that notification would interfere with the attorney-client relationship, represent an inappropriate attempt to regulate the insurance industry, and open clients to ex parte manipulation by the companies responsible for paying the claims.

Mandatory Malpractice Insurance Proposals to Be Developed

The council by a vote of 38–21 directed the VSB Special Committee on Lawyer Malpractice Insurance to develop one or more proposals "for mandatory malpractice insurance for Virginia attorneys engaged in private practice drawing clients from the general public." The recommended proposal(s) will be considered at a subsequent council meeting. Debate ranged from proponents who contend the burden on attorneys of requiring insurance is outweighed by the public protection needs of their clients to opponents who say that, with about 90 percent of Virginia lawyers reporting that they are insured, the bar doesn't have a problem. Questions to be resolved by the insurance committee include what will be done with lawyers who are unable to obtain or afford insurance because of past claims or their areas and types of practice.

New Executive Director

Karen A. Gould was unanimously approved as the VSB's next executive director effective December 1, 2007, subject to approval by the Supreme Court of Virginia. Gould, a Richmond attorney, was president of the bar in 2006–07, and has served as chair of its Disciplinary Board, Mandatory Continuing Legal Education Board, and Budget and Finance Committee. She was recommended unanimously by a fourteen-member search committee chaired by past president Phillip V. Anderson.

Outgoing Director Honored

Thomas A. Edmonds, executive director and chief operating officer of the bar for almost nineteen years, was honored by the council. Edmonds will retire effective December 31, 2007. The council recognized Edmonds for many achievements, including implementing the Fastcase legal research system as a VSB membership benefit; modernizing the agency's computer system; increasing the professional regulation staff to address increased disciplinary caseloads; opening disciplinary

Council Highlights *continued on page 19*

Goodwyn Is New Virginia Justice

S. Bernard Goodwyn of Chesapeake (left) took the oath as a Virginia justice on October 18, 2007, while his mother, Dolly M. Goodwyn, held the family Bible. The investiture ceremony took place at the Supreme Court of Virginia.

Goodwyn had been sworn in by Chief Justice Leroy R. Hassell Sr. on October 10, after Governor Timothy M. Kaine appointed Goodwyn to the seat vacated by Elizabeth B. Lacy. Lacy took senior status effective August 31.

Goodwyn's appointment must be confirmed by the General Assembly.

Goodwyn has been a judge in Chesapeake Circuit Court since 1997, and he was a Chesapeake general district judge for two years before that. He was a litigation attorney from 1986 to 1988 at McGuireWoods LLP, and from 1988 through 1995 at Willcox & Savage PC, where he became a partner in 1992.

A native of Southampton County, he received an undergraduate degree in economics from Harvard University in 1983 and a law degree from the University of Virginia in 1986.

He is married to Sharon Smith Goodwyn, an attorney with Hunton & Williams in Norfolk. They have two children.

In welcoming Goodwyn to the bench, the Chief Justice quoted Chesapeake Chief Circuit Judge V. Thomas Forehand Jr.'s description of the newest justice as "a scholar, a down-to-earth good guy with a big heart of gold."

photos by: Steve Helber, Associated Press

Virginia State Bar President Howard W. Martin Jr. (left) welcomed Goodwyn on behalf of all of Virginia's statewide bars. Behind him were (first row, left side), Senior Justice Harry L. Carrico; Carrico's wife, Lynn Brackenridge; Senior Justice Charles S. Russell; Senior Justice Lacy; and (second row) representatives of the Virginia Court of Appeals: retired judge James W. Benton Jr., Judge William G. Petty, Judge Larry G. Elder and Judge Randolph A. Beales. On Martin's left, first row, are Delegates Lionell Spruill Sr. of Chesapeake (left) and A. Donald McEachin of Richmond.

Council Highlights *continued from page 18*

hearings to the public and including lay members on all hearing panels; quadrupling the Clients' Protection Fund and increasing the claim amount paid by the fund; and collaborating with the Supreme Court of Virginia to offer educational programs for lawyers who represent indigent defendants and for solo and small-firm practitioners.

Hill, Gardner Memorials

The council approved memorial resolutions that recognize the achievements of Oliver W. Hill, a leading Virginia civil rights lawyer, and Benjamin R. Gardner, a council member and general practitioner in Martinsville.

YLC Leaders Gear Up for 2007–08 Bar Year

The leaders of the Virginia State Bar's Young Lawyers Conference gathered on Saturday, October 6, at the Virginia State Capitol to learn about tips for successful projects and recruiting and motivating volunteers.

The half-day 2007–08 Leadership Conference, portions of which were held in the House Chamber, featured remarks from VSB President Howard W. Martin Jr., President-elect Manuel A. Capsalis, and Executive Director Thomas A. Edmonds, and included informational breakout sessions for circuit representatives and committee chairs.

One of the day's highlights was a keynote address by Richmond Juvenile and Domestic Relations Judge Ashley K. Tunner. Tunner spoke about her journey from public defender to the bench and stressed the importance of courtesy, communication, and collegiality not only among attorneys but also between the bar and the bench.

Clockwise from top left: Virginia State Bar President-elect Manuel A. Capsalis; Washington, D.C., attorney Carson H. Sullivan and Virginia Beach attorney Hugo R. Valverde; Ashley K. Tunner, Richmond juvenile and domestic relations judge; VSB President Howard W. Martin Jr. (standing) distributes bookmarks detailing the Rule of Law to the young lawyers at the YLC Leadership Conference; Young Lawyers Conference President Daniel L. Gray and Portsmouth attorney Davina A. De Braux

Dinner Celebrates Women and Minorities on Bench

Each year, the Virginia State Bar's Young Lawyers Conference hosts the Women and Minorities in the Legal Profession Bench-Bar Dinner to recognize the newly appointed and elevated female and minority members of the judiciary. The reception and dinner were held on Tuesday, October 16, at The Bull and Bear club in Richmond.

The 2007 honorees and guests at the dinner were (from left-right) Judge Cheryl V. Higgins of Albemarle Circuit Court; Judge Sarah L. Deneke of Stafford County General District Court; Judge Florence A. Powell of Washington County Juvenile and Domestic Relations Court; VSB President Howard W. Martin Jr.; Senior Justice Elizabeth B. Lacy of the Supreme Court of Virginia; Judge Lisa A. Mayne of Fairfax County General District Court; Judge Roxie O. Holder of Portsmouth General District Court; YLC President Daniel L. Gray; Judge Lauri D. Hogge of Norfolk Juvenile and Domestic Relations Court; and Judge Janine M. Saxe of Fairfax County Juvenile and Domestic Relations Court.

Senior Justice Elizabeth B. Lacy of the Supreme Court of Virginia (right) presents a token on behalf of the VSB and YLC to Judge Sarah L. Deneke of Stafford County General District Court.

Kiely Receives Sandra Day O'Connor Award

Christy E. Kiely, a Virginia State Bar Young Lawyers Conference volunteer and winner of its R. Edwin Burnette Jr. Young Lawyer of the Year Award in 2006, has received the 2007 Sandra Day O'Connor Award for Professional Service from the American Inns of Court.

Kiely, an associate with law firm Hunton & Williams in Richmond, was presented with the award during the American Inns of Court's Celebration of Excellence on October 20. U.S. Justice Samuel A. Alito Jr. hosted the event at the United States Supreme Court.

The award recognizes contributions to pro bono or public interest law by an American Inn member who has practiced ten or fewer years. Kiely is a member of the John Marshall Inn of Court in Richmond.

Kiely has led and volunteered with many projects sponsored by the young lawyers of the Virginia State Bar and The Virginia Bar Association. Hunton & Williams has recognized her with its E. Randolph Williams Award each year she has been in practice for contributing more than one hundred hours of pro bono service.

Keily holds a bachelor's degree from the College of William and Mary and a law degree from Duke University. She practices labor and employment law.

Karen A. Gould Is New Executive Director of VSB

Karen A. Gould, a Richmond attorney, has been named the new executive director and chief operating officer of the Virginia State Bar, the agency of the Supreme Court of Virginia that regulates more than forty thousand lawyers. She began December 1, 2007.

Gould was selected by a VSB committee after a nationwide search. The appointment was approved by the Virginia State Bar Council—the bar's governing body—and the Supreme Court.

She will succeed Thomas A. Edmonds, who is retiring after almost nineteen years in the position.

Gould served as president of the Virginia State Bar for fiscal 2007. An active volunteer at the bar beginning in the 1990s, she was chair of the agency's Disciplinary Board, Continuing Legal Education Board, and Budget and Finance Committee, and she served on the district disciplinary committee that hears lawyer misconduct cases in Richmond.

She received a bachelor's degree from the University of Virginia in 1976 and a law degree from the University of South Carolina in 1979. She clerked for U.S. District Judge Glen Williams of Abingdon, then was a litigator for the Virginia Attorney General's Office for four years.

She entered private practice in 1984 at the former firm Crews & Hancock in Richmond, where she practiced for twenty years. Most recently, she practiced with McSweeney, Crump, Childress & Gould PC. Her practice focused on defense of

professional liability of health-care providers, workers' compensation, employers in employment matters, and other litigation, as well as representation of health-care providers before regulatory boards.

U.Va.'s Professor Bonnie Wins Jefferson Award for Work in Mental Health Law

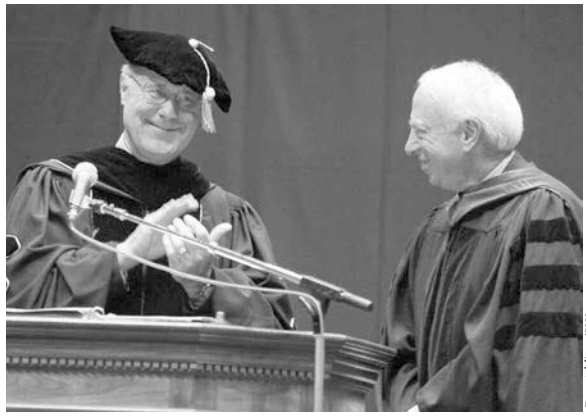
Richard J. Bonnie, director and co-founder of the Institute of Law, Psychiatry and Public Policy at the University of Virginia, has received the university's highest accolade, the Thomas Jefferson Award.

The award was presented during a convocation ceremony on October 26.

Bonnie, the Harrison Foundation professor of medicine and law and the Hunton & Williams research professor at U.Va., has a long history of public service on mental-health issues in Virginia, nationally, and worldwide.

Currently, he is chair of the Chief Justice's Commission on Mental Health Law Reform.

In presenting the award, U.Va. President John T. Casteen III (left) said: "The world's foremost legal expert in the field of mental-health law, Mr. Bonnie has fundamentally shaped the way in which doctors, lawyers, and citizens approach their relationship with some of the most vulnerable members of our society.



Dan Addison/U.Va.

"Since 1979 . . . , Mr. Bonnie has expanded the field of law by helping legislators, lawyers, judges, advocates, and citizens thoughtfully grapple with the challenges of mental illness and insanity. At the same time, he has enriched the field of medicine by working with doctors to help them understand the precarious legal rights and strictures affecting patients."

The Jefferson award has been presented since 1955 to a member of the U.Va. community who exemplifies in character, work, and influence the principles and ideals of Jefferson, and thus advances the objectives for which he founded the university.

In Memoriam

Franklin P. Backus
Alexandria
December 1913–October 2007

Walter L. Devany III
Philadelphia, Pa.
March 1921–May 2007

Robert A. Dublin
Annandale
May 1943–October 2007

Joseph Simpson Farland
Winchester
August 1914–January 2007

Kathy Rae Frahm
Richmond
May 1967–September 2007

Benjamin R. Gardner
Martinsville
October 1941–September 2007

Jane Siobhan Glenn
Roanoke
December 1956–November 2007

H. James Hansen
Alexandria
February 1942-July 2007

Lucius H. Harvin III
Henderson, N.C.
October 1938–May 2007

Harry J. Hicks
Virginia Beach
August 1924–July 2006

Verne L. Hosta
Middleburg
March 1948–June 2007

Charles R. Jones Jr.
Arlington
May 1929–July 2007

William Mills Krieger
Poquoson
September 1942–October 2007

Gene Malde Munson
Arlington
May 1940–December 2006

John J. O'Keefe Jr.
Herndon
October 1946–August 2007

Charles Evans Pope
Fort Belvoir
June 1928–July 2007

Thomas David Rosen
Chevy Chase, Md.
May 1955–October 2006

John Kent Shumate Jr.
Midlothian
February 1971–August 2007

Richard Allen Steinberg
Washington, D.C.
May 1946–September 2007

Bruce Elliott Welch
Roanoke
December 1944–September 2007

Charles C. Wentworth II
Newport News
December 1931–August 2007

Virginia Law Foundation Names 2008 Fellows

The following attorneys will be inducted as fellows of the Virginia Law Foundation in January:

Irving M. Blank of ParisBlank LLP in Richmond; **Frank Overton Brown Jr.** of Frank O. Brown Jr. PC in Richmond; **Beverly J.A. Burton**, senior assistant city attorney in Richmond; **Manuel A. Capsalis** of Capsalis Bruce & Reaser PLC in Arlington and president-elect of the Virginia State Bar; Senior U.S. District Judge **Robert G. Doumar** of Norfolk; **Patricia K. Epps** and **T. Justin Moore III**, both of Hunton & Williams in Richmond; **Paul E. Fletcher III**, publisher and editor of *Virginia Lawyers Weekly* in Richmond; **Howard E. Gordon** of Williams Mullen in Norfolk; **Karen Ann Gould**, executive director of the Virginia State Bar in Richmond; **Steven L. Higgs**, a solo practitioner in Roanoke; **Ray W. King** of LeClairRyan PC in Norfolk; Senior Virginia Justice **Elizabeth D. Lacy** of Richmond; **Mark D. Loftis** of Woods Rogers PC in Roanoke; **Christopher M. Malone** of Thompson McMullan PC in Richmond; **Martha White Medley** of Daniel Medley & Kirby PC in Danville and Martinsville; **E. Carter Nettles Jr.**, commissioner of accounts for Sussex County Circuit Court in Wakefield; **Linda F. Rigsby** of Williams Mullen in Richmond; **Rhysa Griffith South**, an assistant county attorney in Henrico County; **Ronald R. Tweel** of Michie Hamlett Lowry Rasmussen & Tweel PLLC in Charlottesville; and **Andrew William Wood** of Wood & Wood PC in Richmond.

Local and Specialty Bar Association Elections

Fairfax Bar Association
Daniel Howard Ruttenberg, President
Julie Harry Heiden, President-elect
Corinne Neren Lockett, Vice President
Brett Armen Kassabian, Secretary
David John Gogal, Treasurer

Virginia Association of Commonwealth's Attorneys
Harvey Lee Bryant III, President
Joel Robert Branscom, President-elect
Stephen Randolph Sengel, Vice President
John Raymond Doyle III, Secretary-Treasurer

Attorneys Honored with Circuit Awards

Four Virginia attorneys have been recognized with Circuit Awards for extraordinary contributions to the justice system through pro bono or minimally compensated court-appointed cases.

The awards are bestowed by the Virginia State Bar's Special Committee on Access to Legal Services through a pilot project that began in 2005. Selected judicial circuits were invited by the bar to nominate attorneys who meet the criteria for the award, and the access committee chose the honorees.

Awards presentations will be arranged for the honored attorneys in their respective circuits. They will receive a certificate signed by Virginia Chief Justice Leroy R. Hassell Sr. and Virginia State Bar President Howard W. Martin Jr.

The 2007 winners are:

Twentieth Judicial Circuit

(Fauquier, Loudoun, and Rappahannock counties)

Bernadette Rush O'Reilly, a family law practitioner with Campbell Miller Zimmerman PC in Leesburg.

Since 2005, O'Reilly has provided pro bono representation in complicated family law cases referred to her by Legal Services of Northern Virginia.

She has devoted many hours of pro bono time assisting clients through the Loudoun Abused Women's Shelter. She helps them obtain protective orders and sometimes continues to represent them in custody and divorce matters.

O'Reilly said that, based on her experience, "generally, the victims of domestic violence are without the funds to hire attorneys, . . . and the abusers are able to hire firms, as they are in charge of the marital funds."

She also has shared her pro bono experience with other lawyers. "In spite of her busy schedule, she has been a willing mentor for pro bono attorneys assisting LSNV clients," according to a nomination letter from Q. Russell Hatchl, the LSNV pro bono coordinator.

O'Reilly has an undergraduate degree in finance from the University of Virginia and a law degree from George Mason University.

Twenty-First Judicial Circuit

(Martinsville and Patrick and Henry counties)

Michael W. Cannaday, a general practice attorney in Collinsville.

After his admission to the bar in 1973, he returned to his native community of Martinsville and Henry County and immediately signed up for the court-appointed list.

"He has distinguished himself from other bar members as being one of the few who have continuously been on the court-appointed list," said James R. McGarry in a nomination letter. When the Public Defender's Office experienced a backlog, "Michael Cannaday volunteered to represent court-appointed clients on one day of each week in the Henry County General District Court."

Cannaday continues that arrangement. "If it were not for his service, the court would have had to scale back on its criminal case docket," McGarry wrote.

Cannaday has an undergraduate degree from the University of Virginia and a law degree from the College of William and Mary.

The late **Benjamin R. Gardner**, a general practitioner who devoted substantial time during his thirty-five years of practice to

Bernadette Rush O'Reilly

Michael W. Cannaday

Benjamin R. Gardner

Ross C. Hart

represent indigent and low-income residents of Martinsville and Henry County.

Gardner accepted many court-appointed cases, some of them difficult and high-profile. As often as not, he submitted no voucher for payment, according to his partner and brother, Philip G. Gardner, and the nomination letter by James R. McGarry. Ben Gardner also was a substitute judge of the local juvenile and domestic relations court and general district court. A member of the Martinsville-Henry County Bar Association, Gardner could "always be counted on to step up and fill a need," McGarry wrote.

Gardner was active in community affairs throughout his career. Notwithstanding struggles with cancer, he chaired the coalition that established the Martinsville-Henry County Economic Development Corporation to produce jobs as factories in the area were closing. He received numerous awards honoring him for community service.

He and his brother formed the Martinsville firm that is now Gardner, Gardner, Barrow and Sharpe PC.

Gardner died of cancer on September 9, late in the Circuit Awards nominations process.

Twenty-Third Judicial Circuit

(Roanoke County and the cities of Roanoke and Salem)

Ross C. Hart of Salem, a third-generation member of Hart & Hart Attorneys Ltd., a family law firm founded in 1894.

In the past eight years, Hart accepted twenty-two pro bono referrals from Blue Ridge Legal Services Inc., according to the nomination letter from BRLS executive director John E. Whitfield.

Some of the cases were complex and time-consuming. Hart handled estate matters, and he helped clients obtain guardianship in cases involving mental retardation, brain injury, and Alzheimer's disease.

He also conducted an Incapacity Planning Seminar at an assisted living facility in Roanoke, and has executed wills, powers of attorney, and advance medical directives for elderly residents at a retirement community.

Hart has a bachelor's degree in business administration from Monmouth College in Illinois and a law degree from the University of Virginia. His practice focuses on elder law, wills and estates, real estate, and landlord-tenant matters.

Pro Bono Program Celebrates Quarter Century of Success

The Harrisonburg-Rockingham Bar Association (HRBA) and Blue Ridge Legal Services (BRLS) celebrated the twenty-fifth anniversary of their jointly sponsored Pro Bono Referral Program at the bar's annual Professionalism Seminar on October 10.

Since its inception in 1982, HRBA's Pro Bono Referral Program has helped thousands of low-income clients with civil legal problems receive free legal assistance and garnered national recognition as one of the most successful, longest-running pro bono programs in the nation. From 1986–2006, HRBA's membership closed 2,093 pro bono cases, representing approximately $2.4 million in donated legal services.

October's Professionalism Seminar included a two-hour continuing legal education ethics course with presentations by U.S. Magistrate Judge B. Waugh Crigler, tax attorney Jeffrey G. Lenhart, and John E. Whitfield, BRLS executive director. Judge Crigler presented awards to bar members M. Steven Weaver and Glenn M. Hodge for their twenty-five years of service as team leaders for the Pro Bono Referral Program. The bar also presented Whitfield with an award for his years of service to the community with BRLS.

Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB Web site fo free and low-cost pro bono trainings and volunteer opportunities: **www.vsb.org/site/pro_bono/resources-for-attorneys/**.

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 **www.vsb.org/site/publications**.

The following judicial changes were reported to the Supreme Court of Virginia's human resources office in the Office of the Executive Secretary from August 1 through November 1, 2007:

Appointments:

Supreme Court

S. Bernard Goodwyn of Chesapeake was appointed pro tem to succeed **Elizabeth B. Lacy,** who took senior status effective September 1, 2007. His appointment was effective October 9, 2007.

Retirements:

Circuit Courts

1st Circuit: Frederick H. Creekmore Sr. of Chesapeake, effective January 31, 2008.

4th Circuit: Jerome James of Norfolk, effective January 31, 2008

18th Circuit: John E. Kloch of Alexandria, effective December 31, 2007

19th Circuit: Kathleen H. MacKay of Fairfax, effective December 31, 2007 . . . **Arthur B. Vieregg** of Fairfax, effective December 31, 2007

24th Circuit: J. Samuel Johnston Jr. of Rustburg, effective May 31, 2008

25th Circuit: Thomas H. Wood of Staunton, effective December 31, 2007

26th Circuit: John J. McGrath Jr. of Harrisonburg, effective February 29, 2008

General District Courts

8th District: C. Edward Knight III of Hampton, effective April 30, 2008

Global Trade Law

Global trade has grown immensely since the end of the Second World War. Globalization accelerated exponentially after the fall of the Berlin Wall and after the dissolution of the Soviet Union.

The World Trade Organization was founded in the midst of these momentous changes. Its principal objective was to develop a rules-based international system of trade. Shortly after the formation of the WTO, new and powerful players emerged in the global trading system, which gave rise to economic and political anxiety within the United States and worldwide. After 9/11 this anxiety was heightened when countries such as Russia, China, India, Brazil, and the United Arab Emirates exploded onto the global stage with their great economic booms, supercharged with trade surpluses, petrodollars, and surging commodity prices. Managing this new order has become a central problem of global politics.

The International Practice Section presents feature articles in this issue of *Virginia Lawyer* to explore legal dimensions of this new global landscape.

Two articles examine the World Trade Organization by assessing U.S. trade litigation against China and reflecting upon the current stalemate of WTO trade negotiations. Other articles appraise the trade policies of Virginia and Gov. Timothy M. Kaine's vision of "embracing globalization." Another article assesses the challenge that bilateral agreements pose to the multilateral system. Finally, two shorter pieces provide research assistance to professionals examining international trade law and undertakings by major universities aimed at commercializing research and promoting technology transfer to the private sector.

Global trade cuts across sectors and disciplines. Contributors are from George Mason University's schools of public policy and information technology, the Virginia Association of Law Libraries, the Department of Trade and Economic Development in the Office of the Virginia Governor, and the U.S. International Trade Commission in Washington, D.C.

Stuart S. Malawer is distinguished professor of law and international trade at George Mason University. He is also a visiting professor at St. Peter's College, Oxford University. A former chair of the International Practice Section of the Virginia State Bar, Malawer is special editor of the articles sponsored by the International Practice Section featured in this issue of *Virginia Lawyer*. He is the author of *WTO Law, Litigation & Policy* (2007), published by William S. Hein & Co. He was a member of former Gov. Mark R. Warner's trade mission to China. His Web site is www.InternationalTradeRelations.com. His e-mail is StuartMalawer@msn.com.

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United States-China Trade Litigation in the WTO

by Stuart S. Malawer

The Permanent Mission of the People's Republic of China to the World Trade Organization

中华人民共和国常驻世界贸易组织代表团

The two most intriguing aspects of today's global trading system are the convergence of the role of the World Trade Organization (WTO) litigation and United States-China bilateral trade relations.[1] The U.S. has made WTO litigation a major component of its trade policy of "active engagement" to meet the new challenges of East Asia.[2] A response to the historic change of control within the Congress at the 2006 mid-term elections, the policy has become a central aspect of U.S.-China trade policy.

The U.S. government has initiated a trade offensive against China in the WTO, mainly in response to the shift of congressional control from the Republican Party to the Democratic Party. This offensive has serious implications beyond the bilateral trade issues concerning the U.S. and China. It foreshadows the governance of global trade moving from negotiations toward more litigation.

This change and its effects raise two broader questions. First, what are the implications of this U.S. trade offensive against China for global trade relations? Second, is resorting to WTO litigation a default position because of the failure of international negotiations?

My approach is to focus primarily on recent WTO litigation involving the U.S. and China while noting recent international negotiations and pending Congressional legislation.

Since the midterm elections, the United States has launched an assault on China using WTO litigation.

WTO Litigation

Since the midterm elections, the United States has launched an assault on China using WTO litigation. In 2007, the United States filed three cases in the WTO against China.

The first case, filed on February 2, 2007, targeted a range of export subsidies. (*Exemption from Taxes as to Domestically Produced Goods*)[3] The U.S. contends that China is violating the Subsidies Agreement and National Treatment Principle. Specifically, the U.S. argues that China provides various tax rebates to a range of Chinese firms amounting to export subsidies.[4] Mexico filed a similar case and a panel was established in September 2007.[5] The U.S. case was suspended in November after the parties reached a settlement.

On April 10, 2007, the United States filed twin cases.[6] The first of these cases involved an alleged failure to enforce intellectual property rights. (*Protection & Enforcement of Intellectual Property Rights*)[7] The U.S. alleges that China is violating the Intellectual Property Agreement (Trade-Related Aspects of Intellectual Property Rights, or TRIPS) by not enforcing its intellectual property obligations. For example, the U.S. argued that the threshold to establish trademark counterfeiting and copyright piracy under China's criminal procedures is too high. Moreover, the U.S. argues there is a lack of procedures and penalties. A panel to determine

this matter was established in September 2007.

The second of these cases targeted market access and distribution restrictions on films and audiovisual products. (*Trading Rights and Distribution Services for Certain Publications* and *Audiovisual Entertainment Products*)[8] The U.S. argues that China maintains restrictions on the import of films and restricts foreign companies from distributing films and DVDs. The U.S. contends these restrictions violate market access obligations under the 1994 General Agreement on Tariffs and Trade (GATT) as to imports, as well as the Services Agreement concerning domestic distribution. A panel was requested in October 2007.

Neither of these cases had third parties joining the U.S. Apparently, no foreign governments wanted to be associated with either the merits of the cases or their timing, given their foreign policy or other global trade considerations.

Prior to the 2007 WTO litigation, the U.S. filed two WTO cases against China. The earlier filings indicate that the U.S. began choosing WTO litigation against China as an important trade tool several years prior to its most recent actions.

The first case, filed on March 18, 2004, (*VAT & Integrated Circuits*),[9] was settled in the consultation stage by a "mutually agreed-upon solution" prior to full litigation.[10] The U.S. contended that China was violating the National Treatment Principle of the GATT, and argued that the refund of the value added tax to Chinese manufacturers (or when Chinese designed chips were imported) violated the GATT. The second case, filed on March 30, 2006, (*Imports of Auto Parts*)[11] had the U.S. and the European Union arguing that the import of auto parts are subject to tariffs equal to those on completed cars.[12] They argued that they should be charged the lower rate for parts, rather than the higher rate, for completed automobiles and that failure to classify the parts properly violates the GATT and the Trade-Related Investment Measures Agreement. A panel has been requested.[13]

While not currently involving WTO litigation, a U.S. Court of International Trade decision of 2007 (*High-Gloss Paper/NewPage Corporation*) further complicates the trade disputes between China and the United States. China has recently threatened to bring full litigation against the U.S. in the WTO concerning subsidies levied pursuant to this case.[14] This case marks the first by China as a sole complainant.[15] Consultations were requested in September.[16] On March 29, 2007, the U.S. Court of International Trade in New York upheld the George W. Bush administration's (Department of Commerce) change of trade policy, bringing subsidy actions against Chinese imports.[17] The administration decided as a matter of policy to allow subsidy actions concerning goods from non-market economies. This ruling reversed the 1980's *Georgetown Steel* and U.S. trade policy of the last twenty years, both of which did not allow bringing subsidy cases involving nonmarket economies, principally China.

China has consistently argued that the cases filed by the U.S. on these issues were unjustified. "U.S. filing complaints in the WTO over alleged commercial piracy in China will badly damage cooperation."[18] In the U.S. Court of International Trade case, China has taken an even stronger position. "The Chinese government expresses strong dissatisfaction about the U.S. decision to impose penalty tariffs against the imports of Chinese coated free sheet paper."[19]

Ambassador Susan C. Schwab, the U.S. trade representative, says bringing trade actions should not be viewed as a failure in trade relations. "We have brought four formal WTO cases in the past fourteen months and we are determined to press our cases vigorously in the months ahead. This should not be regarded as a failure in our trade relationship with China. Quite the contrary. Resorting to dispute settlement is itself a form of engagement. It is evidence of two countries working to resolve disputes about obligations through neutral, legal mechanisms. WTO dispute settlement is designed to prevent trade wars rather than fuel them."[20]

International Negotiations

The reliance of the U.S. on WTO litigation points to faulty international negotiations.[21] In May 2007, the Second China Strategic Dialogue in Washington, D.C., the more recent negotiations in Beijing and the Group of Seven (G-7) meeting (even though it stepped up pressure on China in currency valuation) failed to produce any significant results.[22] Neither has the older U.S.-China Joint Commission on

China Litigation in the WTO (2003–07)

Complainant	Party	Status	Number	Agreement
U.S. Steel Safeguards	T.P. Complainant	AB Report 2003	DS 252	Safeguards
U.S. A/D & CVD	Complainant	Request Consultation 2007	DS 368	Dumping & Subsidies
Respondent				
China's VAT on Integrated Circuits	Respondent	Mutually Agreed Solution 2005	DS 309	GATT 1994
China Auto Parts	Respondent	Request Consultation 2006	DS 340	GATT 1994, Subsidies
China's Subsidies & Refunds	Respondent	Request Consultation 2007	DS 358	Subsidies
China's Intellectual Property Rights	Respondent	Request Consultation 2007	DS 362	Intellectual Property
China's Distribution System	Respondent	Request Consultation 2007	DS 363	Services

Commerce and Trade produced any important outcomes.[23] This failure of negotiations is occurring while China remains the target of the largest number of antidumping actions brought by countries worldwide (thirty-six during July to December 2006).[24] The EU is considering filing newer cases and adopting a more aggressive approach.[25] European steel makers recently asked the European Commission to impose antidumping duties on steel, and this appears to be an opening shot in a looming trade war with China.

Congressional Legislation

While the Bush administration is moving forward with its trade litigation, there are various bills in Congress proposing a host of stronger actions against China. Each could have potentially serious consequences for trade with China. Describing them is like photographing the sand on a beach during a windstorm.[26] However, what is particularly unique is that congressional legislation for the first time would include WTO litigation as a sanction.

The Senate Finance Committee bill (sponsored by Max S. Baucus, Charles E. "Chuck" Grassley, Charles E. Schumer and Lindsey O. Graham) defines dumping by considering undervaluation of foreign currency.[27] This approach is tamer than earlier bills. However, this bill would require the United States Trade Representative (USTR) to file a WTO action within a year of the Department of the Treasury determining that a nation's currency is "misaligned." Leading Democratic presidential contenders (Hillary Clinton and Barack Obama) have signed on to this approach.[28] The Bush administration opposes this strategy.[29] "Public opinion polls show rising discontent with globalization among Republicans and Democrats alike."[30]

Given the time it will take for enactment of the legislation, required Treasury Department action, the USTR request to the WTO, and the WTO's process of panels and appeals, late 2010 is the earliest any WTO action could occur. This lengthy timeline for possible action under this bill indicates that passing legislation is not necessarily the most efficient or effective way to address these trade issues. Reinvigorated negotiations become more attractive, with a promise of a quicker resolution.

The earlier Senate bill (sponsored by Schumer and Graham) would authorize 27.5 percent duties on all imports to counter the undervaluation of the yuan. This bill also presents a novel possibility—action in the WTO. The bill declares that as a general principle the undervaluation of currencies amount to an export subsidy.

The Senate Banking Committee bill (sponsored by Christopher J. Dodd and Richard C. Shelby) requests the Treasury Department to take actions over global currency imbalances and currency manipulation. This measure is clearly aimed at China.

A bill in the House of Representatives (sponsored by Arthur G. Davis and Philip English) would allow subsidy actions as to nonmarket economies. It would codify both the Bush administration's policy and the decision of the U.S. Court of International Trade in the *High-Gloss Paper* authorizing subsidy actions against imports coming from nonmarket economies.

The Bush administration has warned against all of the above legislation.[31] It emphasizes China as a source of affordable consumer products and a marketplace for American exports. In particular, the administration has supported negotiations with litigation as a central component of its trade policy. Recently, the Bush administration denied a Section 301 petition seeking to launch a WTO case against China concerning the valuation of the yuan.[32]

Assessment

In summary, the U.S. filed two cases against China in the WTO soon after China's accession in 2001. Since the midterm elections in 2006, the Bush administration has launched a more aggressive trade policy against China in the WTO, filing an additional three cases. Panels have been established and decisions are expected by late 2008.

The Bush administration's newer trade policy is in response to the swing in power in the Congress.[33] The Democrat-controlled Congress has become more resistant to President Bush's trade policies, which have involved opposition to fast-track extension and the approval of various bilateral trade agreements (with South Korea, Panama, Peru, and Colombia). The Bush administration's approach is an obvious response to the Democratic Party's focus on a "new populism," emphasizing "trade and jobs."[34] This shift joins a growing popular resistance to globalization and trade, growing concern over product and food safety, and increasing Republican Party resistance, as well. Congressional backlash is in large part based on continuous failure by the Treasury Department to determine that China has manipulated the yuan and declare such manipulation to be a prohibited trade restriction.

The Treasury Department failed to take this action again in its semi-annual report to Congress on foreign exchange, issued in June 2007. However, the Treasury Department's cautionary position is understandable. The provisions of the WTO agreements do not consider currency valuation in the context of a trade restriction, let alone declare them as inconsistent with the WTO.[35]

The Bush administration's policy also is a reaction to international diplomacy failures. Bilateral negotiations with China and the Doha trade negotiations have been disappointments. Successful bilateral trade talks hold the promise of resolving difficult disputes. Success in multilateral negotiations offers the possibility of adoption of newer rules for the general trading system. Developing and clarifying rules through multilateral negotiation is the optimal solution. U.S. trade efforts should be focused on this approach.

Of course, this newer U.S. trade policy is in the context of myriad international economic and political factors. China's eco-

China Investment Data

Foreign Direct Investment

Outflow — 2006	$11.3 billion
Outflow — 1996	$2.1 billion

Direct Investment Positions

Inward — 2005	$610.2 billion
Outward — 2005	$64.5 billion

International Direct Investment Database, Organisation for Economic Co-operation and Development, Paris, 2006

nomic development and growth is huge. China's gross domestic product in the first quarter was a twelve-year high at 11.9 percent. China could well grow this year at the fastest rate since 1993 and bring it closer to overtaking Germany as the world's third-largest economy.[36] China has an overvalued currency, and global economic balances persist. The U.S. economy is slowing. China's demand for imports is fueling a global economic expansion. China is on course to lead the world in initial public offerings.[37] The initial public offering of the Industrial and Commercial Bank of China in July 2007 made ICBC the world's largest bank by capitalization. Two months later, this IPO was surpassed by that of China Construction Bank Corp. China's stock market has reached an all-time high (six thousand in October 2007). In November, after its public offering, PetroChina became the world's first $1,000bn company. A day later, the public offering of Alibaba.com made it the world's second largest Internet company. China now leads the world in publicly traded companies with more than $200 billion in market capitalization.[38] China's sovereign wealth fund, the China Investment Corporation, is preparing to invest globally.[39]

Within a geopolitical context, China is becoming of great importance and concern to the United States. For example, there has been increased cooperation between Russia and China in Central Asia within the new Shanghai Cooperation Organization. China has been a key participant in the nuclear negotiations with North Korea. "[C]hinese nationalism backed by economic strength—poses obvious foreign policy dilemmas for the west."[40] The ideological battles over which model is best for economic development will continue. "Authoritarian nationalism" is challenging the Western political model that embraces liberal democracy.[41] "State capitalism" seems more appropriate for defining the market in China.[42]

The new U.S. trade actions against China in the WTO could easily spill into a larger trade war.[43] Initially, it could lead to new Chinese restrictions on U.S. multinationals investing in China and China's investment in the U.S.[44] The U.S. multinationals doing business in China and U.S. exporters to China would pay the price for U.S. import restrictions.[45] This possibility is particularly worrisome since China is generating significant earnings in a generally slowing U.S. economy. The U.S. economy is "decoupling" from the global economy as the economic locomotive of global growth. "[T]he global economy is moving into a newer era in which growth in developing parts of the world becomes the key component of economic expansion."[46]

Ultimately, the trade conflict could affect the U.S. political and national security relations with China. Changing some specific practices of China or tweaking U.S. trade law are not going to change the fact that China is a rapidly developing, emerging-market powerhouse. China is poised to become the largest trading nation in the world. There is a need to develop other remedies for the U.S.-China trade conflict. Developing less unilateral and confrontational actions on both sides is preferable.

The bigger issue still warrants discussion. Has WTO litigation become the weapon of choice for the United States because there has been a failure of diplomacy within the WTO system?[47] The answer is yes. The possible implications of this reality are huge. Litigated decisions are applicable only to the individual parties to a case. While litigation does hold the promise of coaxing states back to the negotiating table litigation simply does not hold the answer for developing general rules addressing ever more complex issues of trade relations—rules that are applicable to all WTO members. Is it better for global trade relations to be centered on the WTO Dispute Settlement Understanding system than on the seemingly never-ending Doha negotiations or bilateral negotiations over trade disputes? Here, the answer is no. Trade disputes are better settled within the dispute resolution system. While individual or a range of trade disputes may be settled by bilateral negotiations, it is crucial for trade relations to be grounded in multilateral negotiations through which policy choices are made by the parties for the benefit of themselves and the global trading system. Professor Robert Z. Lawrence of Harvard University states, "The shift from bilateral to multilateral enforcement helps secure the legitimacy of the trading system and reduces the political costs associated with bilateral dispute settlement."[48] He concludes, "There are other reasons to be wary of an aggressive move toward tougher enforcement . . . [The] dispute settlement system reflects a subtle amalgam of the legal and diplomatic approaches . . ."[49]

This grounding means reinvigorating the current round of WTO negotiations to develop newer rules for both broader and more technical trade issues. As trade relations continue to evolve, these issues will undoubtedly encompass a greater range of economic relations than does the

Trade Litigation *continued on page 56*

Official China Web Sites For Foreign Affairs & Foreign Commerce

Chinese Mission to the World Trade Organization	http://wto2.mofcom.gov.cn/aboutus/aboutus.html
China Ministry of Foreign Commerce (MOFCOM)	http://english.mofcom.gov.cn/
China's Foreign Market Access Report (MOFCOM)	http://gpj.mofcom.gov.cn/table/2005en.pdf
China Ministry of Foreign Affairs	http://www.fmprc.gov.cn/eng/
China Embassy to the U.S. (Economic & Commercial)	http://us2.mofcom.gov.cn/index.shtml

Virginia Embracing Globalization

by Patrick O. Gottschalk

From left to right: Brent D. Sheffler of the Virginia Economic Development Partnership, Virginia Secretary of Commerce and Trade Patrick O. Gottschalk, Gov. Timothy M. Kaine, and Virginia Deputy Secretary of Commerce and Trade Rick Siger on a 2006 trade mission to Canada.

Increased international trade by U.S. companies has helped maintain the strength of the U.S. economy.

In his Economic Development Strategic Plan, Gov. Timothy M. Kaine set forth nine broad goals that focus on strengthening and maintaining Virginia's award-winning business climate, while expanding opportunities for all of Virginia's regions and citizens. In keeping with Virginia's history of international commerce, the Governor's Economic Development Strategic Plan contains a goal directly related to international business. This goal is to "develop a coordinated international marketing strategy for Virginia including both foreign direct investment and export/import features."

The position of Governor Kaine's administration regarding globalization is clear—Virginia is better positioned than many other states to be a winner in a global economy. Targeted international investments, increased exports, dependable transportation, and strong governmental leadership have all contributed to placing Virginia in a position to prosper from globalization.

There are many questions regarding both the short- and long-term implications of globalization, but there is no question that globalization is upon us. The world's economy continues to expand. In a recent study, the International Monetary Fund projected that the global economy will grow by 4.8 percent in 2008, while the U.S. economy will grow by only 1.9 percent.

Increased international trade by U.S. companies has helped maintain the strength of the U.S. economy. The growth of the world's economy, combined with advances in technology and transportation, has produced a global business climate that was unimaginable fifty years ago. Over the past several decades, Virginia, like the United States as a whole, has benefited from the increase in global trade. Since 1950, the volume of world trade has increased twenty-fold from $320 billion to $6.8 trillion.

Virginia is already a winner in globalization. There are more than seven hundred

foreign-affiliated firms located in Virginia. Virginia's total exports of goods and services are estimated to be $21 billion worldwide. The Port of Virginia is the third largest on the East Coast, and earlier this year Governor Kaine launched the Virginia International Trade Alliance, a public-private partnership aimed at leading Virginia's international business strategy.

There are challenges that come with the benefits of globalization. Virginia has lost jobs in certain manufacturing industries. While the loss of any job in Virginia is a concern, the reality is that the net impact of trade on the number of manufacturing jobs in the United States is positive. All fifty states, including Virginia, have realized a net gain in jobs directly attributable to trade.

Virginia Attracts International Investment

One benefit of globalization is the foreign dollars it brings to the commonwealth through investment. Foreign investment has long been a priority for Virginia. In 1968, Virginia became one of the first states to set up an overseas investment presence in Europe when it opened an office in Brussels, Belgium. Successful foreign companies in Virginia not only reinvest in their operations here, but also become examples to other companies in their home countries and in their industries. Their success makes it easier to attract similar companies to Virginia.

Foreign investment in Virginia totals $19.6 billion—just 1.6 percent of all foreign investment in the U.S. Leading countries for Virginia foreign investment are Germany, Japan, the United Kingdom, Denmark, and Canada. Industry sectors in Virginia with high levels of foreign direct investment are information technology, transportation equipment, electronics, plastics, rubber, and machinery manufacturing. Not all foreign direct investment is for big projects. The average size project based on jobs created is seventy-one jobs, and based on capital investment is just more than $10 million.

According to the U.S. Bureau of Economic Analysis, Virginia accounts for 2.5 percent of foreign employment in the U.S., or approximately 144,800 jobs. The top countries for foreign employment are Germany, the United Kingdom, Japan, Canada, and Sweden. The average compensation per employee was nearly $60,000 for U.S. subsidiaries of foreign companies, higher than the national average annual pay as calculated by the U.S. Bureau of Labor Statistics.

Foreign Companies in Virginia

Some of the successes of foreign businesses in Virginia speak volumes to the importance of foreign investment to the commonwealth.

***Maersk*—** In September 2007, the Danish shipping line Maersk and its sister company APM Terminals opened a $450 million new container terminal in Portsmouth that will employ 210 people. This facility is the first privately developed container terminal in the U.S. Maersk's current facility is adjacent to the Port of Virginia. The proximity provides the state an opportunity to improve capacity at its port operations.

"This facility will create opportunities in global commerce for our customers while maintaining the highest standards in safety and security. Our vision is to create a port that will act as a catalyst for international business in the local and regional economies by creating a new, broader long term platform for business growth," said Thomas Thune Andersen, president and chief executive officer of Maersk Inc.

***IKEA*—** In October 2006, Swedwood North America, a furniture manufacturer and subsidiary of IKEA, announced that it would build its North American manufacturing operation in an industrial park jointly developed by Pittsylvania County and the City of Danville. With a projected completion date on the first of three phases slated for the end of 2007, the Swedwood facility will employ up to 740 people.

"Swedwood's new facility represents the second largest investment ever in Southside Virginia," said Governor Kaine in making the announcement. "The available, trained workforce pushed Virginia ahead."

***Volkswagen of America Inc.*—** In September 2007, Virginia welcomed Volkswagen of America Inc. as it relocated its U.S. corporate headquarters to Fairfax County. Volkswagen will invest more than $100 million in a 185,000-square-foot facility to serve as the headquarters for both Volkswagen and Audi. This project will create four hundred new jobs paying an average wage in excess of $120,000.

"Virginia's work force and business culture are in line with our strategy of connecting even more closely with our customers, and its location is convenient to vitally important markets for all of our brands. We are excited to become part of the Virginia community," Stefan Jacoby, CEO of Volkswagen of America, said in the September announcement.

Virginia's foreign company activity has been on an upward trend since 1994, and I am confident this trend will continue. Based on the Virginia Economic Development Partnership's (VEDP) current pipeline of projects, foreign investment should continue to play an important role in Virginia's economic growth. The VEDP is currently pursuing projects with major multinational companies in the medical equipment, energy, metal building materials, food products, and automotive industries.

Virginia's Products and Services Are World-Class

Virginia products and services are found around the world, and the demand for Virginia products and services continues to grow. The commonwealth has incredible assets that support Virginia companies as they expand their international business. The twenty-fourth largest exporting state in the U.S., Virginia has seen exports steadily rise over the years. In fact, Virginia saw a more than 15 percent growth in exported goods from 2005 to 2006, an increase for the fourth consecutive year. From 2002 to 2006, the export of Virginia goods rose an astounding 31 percent.

Thanks in part to our strategic location and infrastructure, globalization via export trade thrives in Virginia. Virginia industries have proven flexible, open to meet the

changing needs of a global economy and recognizing the need to diversify their customer base via export trade. Although traditionally dominated by coal and tobacco exports, Virginia's strengths have shifted to the manufactured goods sector, and more recently toward technology and services. Top exports in recent years include industrial and electrical machinery, vehicles, plastics, and paper products.

Tobacco and, more recently, coal have dominated Virginia exports since the state's founding in 1607. Virginia has diversified to make up for market shifts pertaining to declining coal and tobacco sales, although these products remain in demand worldwide. Coal and tobacco remain in the top five exported Virginia goods. As Virginia develops its strengths in technology, services, and manufacturing, the rate of growth for other commodities, along with changing demand, will likely decrease the dominance of tobacco and coal exports. Virginia exported 54 percent less tobacco in 2005 than in 2001, and although coal exports increased by nearly one-third in the same period, other commodities play stronger roles in Virginia's economy each year.

One clear example of Virginia's shift away from coal and tobacco and toward technology is the recent rise of digital integrated circuit exports. Otherwise known as microchips, integrated circuit exports rose to the top of Virginia's export list in 2006 with more than $1.5 billion in international sales, overtaking both coal and tobacco products. Export volume of microchips in 2006 nearly tripled that of 2004. This represents growth at an astounding pace.

Another sign of globalization is found in Virginia's increased export of services. For the past decade, service exports have been slowly growing to dominate Virginia's gross domestic product (GDP) and employment. Service exports contribute heavily to Virginia's technological innovation and growth in skilled jobs, although the subject does not typically draw much attention.

Map courtesy of Theodora Maps, www.theodora.com/maps; 2006 data from World Trade Atlas, www.worldtradestatistics.com

The service sector is large and lucrative. According to the United States Coalition of Service Industries, more than 80 percent of Virginia's GDP is generated by the service sector, and employs more than 80 percent of Virginians. In 2005, Virginia exported close to $12 billion in services.

Encompassing travel, financial, legal, security, and many other industries, the service economy in Virginia has a huge impact on the local economy. In fact, the price and quality of services influence other parts of the economy, including our competitiveness in the manufacturing arena, according to the Coalition of Service Industries. The coalition also estimates that the U.S. only exports about 5 percent of its services. Compared with 20 percent of American-made goods that are exported, it is evident that there is ample room to grow service exports.

Whether the export is a service or a tangible good, Virginia businesses export to every geographic region in the world. Top trading partners include Canada, European Union countries, China, and Japan.

Virginia sold more than $2 billion in goods to Canada last year, marking the tenth year in a row that Canada has been Virginia's number one export destination. Western Europe ranked as Virginia's top export region for the ninth consecutive year. Virginia export volumes soared to China as well; they rose more than 30 percent last year, making China Virginia's third-highest export destination at more than $900 million.

Emerging markets such as China and India have become key trading partners for Virginia. Emerging markets also present interesting opportunities for growth in Virginia's future exports. These markets and others—such as Brazil and Russia—are currently industrializing. They have a growing middle class and governments instituting reforms that will likely lead to increased trade and investment.

Connecting Virginia to the World

Virginia's advantages for international trade are its location and transportation system. These valuable resources offer companies engaged in international business opportunities to get people and products to or from anywhere in the world. With its East Coast location, Virginia is a gateway to the U.S. for international business by virtue of the Port of Virginia and Washington Dulles International Airport, as well as the six major interstate highways and eleven railroads that crisscross the commonwealth. These world-class facilities enable products and people to enter the U.S. market and access international markets with ease and efficiency.

The Port of Virginia comprises three marine terminals operated by the Virginia Port Authority. The Port of Virginia is the seventh-largest container port in the U.S. and the third-largest on the East Coast. Over 55 percent of the cargo that is transported via the Port of Virginia originates or is destined for locations outside of Virginia.

Virginia's air transportation system also contributes to its strength as an internationally competitive state. Dulles Airport continues to see remarkable growth and expansion. International passenger traffic increased by 13.2 percent in 2006 and 2007. In 2007, 145 new weekly flights to

eight new international destinations were added, and flights to six new countries—China, Ireland, Kuwait, Panama, Qatar, and Spain—were added. In fact, I had the pleasure of being on the first flight from Dulles to Beijing, China, in March 2007.

While Virginia is proactively building upon its rail and port infrastructure, the commonwealth must continue to address issues related to congestion on its interstate highways to ensure that the flow of goods is uninterrupted. To address this issue, Governor Kaine has made transportation investments a key priority for his administration.

Virginia Supports International Business

In addition to the Kaine administration's dedication to improving infrastructure, the commonwealth also has a wide variety of state resources devoted to promoting international trade in general. The Virginia Economic Development Partnership focuses on two aspects of international business—investment promotion and export trade promotion.

VEDP maintains investment offices in Brussels, Belgium, Tokyo, Japan, Seoul, South Korea, and Hong Kong. The agency's trade offices in Mexico City, Mexico, and São Paulo, Brazil, also offer investment assistance. VEDP maintains an aggressive marketing program to attract foreign companies to Virginia, as staff in Virginia and the overseas offices make direct calls on foreign-owned companies.

VDEP's services geared toward export trade promotion include not only in-country market research and export programs such as Virginia Leaders in Export Trade and Accessing International Markets, but also business matchmaking visits to other countries as part of VDEP's regular cadre of trade missions. As Virginia's secretary of commerce and trade, I've been honored to participate in three trade missions with Governor Kaine, other members of his cabinet, and Virginia business leaders. It is a tremendous opportunity to personally emphasize to our world partners the importance the commonwealth places on our standing in the global marketplace.

One foreign trade mission, in May 2006, took us to Canada, Virginia's top trading partner. There, we visited Toronto and Montreal to strengthen our economic ties and promote Virginia's four hundredth anniversary at Jamestown. In November 2006, we traveled to Denmark, Sweden, the United Kingdom, and Germany to focus on trade development and business recruitment. While in London, Governor Kaine also kicked off the Jamestown four hundredth anniversary celebration at Tower Bridge.

More recently, I had the opportunity to lead with my colleague Aneesh P. Chopra, the Virginia secretary of technology, what is believed to be the largest and most strategically significant state delegation to India. At more than one hundred strong, we traveled to New Delhi, Chennai, and Mumbai in April 2007 to cultivate Virginia's relationship with India and open more doors to increased mutual trade and investment, particularly in the areas of global logistics, agriculture, infrastructure, technology, and research and development.

Poised for the Future of Globalization

Thanks in part to Virginia's strategic location, transportation system, and businesses dedicated to trade and investment, Virginia has responded well to the demands of a global economy. We are, however, far from finished in our efforts to adapt to globalization.

There inevitably will be challenges related to globalization that Virginia businesses and state organizations must face. Business leaders, our government, and other stakeholders continue to be aggressive and deliberate regarding Virginia's role in the global economy. Issues surrounding the advantages and disadvantages of globalization will continue to challenge us.

Founded as a trading company four hundred years ago, Virginia has exceeded every expectation as a global player. I am confident that Virginians will continue to embrace globalization, ensuring success and profitability in the commonwealth for years to come. ⚖

Patrick O. Gottschalk was appointed Virginia secretary of commerce and trade by Gov. Timothy M. Kaine on January 15, 2006. A graduate of the U.S. Naval Academy and University of Virginia Law School, Secretary Gottschalk practiced corporate law for twenty-two years prior to joining the Kaine administration.

The author thanks Alleyn Harned, assistant secretary of commerce and trade, for his assistance on this article.

U.S. Trade Policy and Multilateralism—The Challenge of Bilateral Trade Agreements

by Kevin J. Fandl

The goal of the WTO has long been to seek elimination of all barriers to trade in each member country . . .

The present United States approach to global trade liberalization might be characterized as a haphazard scramble to piece together bilateral and regional agreements with any willing country. The George W. Bush administration has pushed hard for the conclusion of bilateral trade agreements with several developing countries by arguing that the agreements will open the door to expanded U.S. markets and will encourage stronger protection of U.S. investors in those markets. The recent conclusion of agreements in Latin America exemplifies this pattern. However, is this rushed approach to trade liberalization bringing benefits to the U.S. economy faster, or is it sacrificing true economic growth conducted on a more equitable multilateral basis that might provide for more sustainable long-term economic development?

The decision to push for bilateral agreements to the potential detriment of ongoing multilateral negotiations can have a significant impact on the U.S. business community.

In the short run, U.S. businesses stand to gain from bilateral trade agreements through easier access to new markets, potentially lower import costs for raw materials, and better protection of their investments in the countries privy to the agreement. Yet in the long run, the effects may not be as positive. First, as trade diversion expands, less-efficient producers will become production centers, stunting further development of already efficient producers in other countries and preventing U.S. businesses from reaping the rewards of low-cost imports. Second, if multilateral talks continue to starve from lack of attention, global liberalization would fail to materialize, again harming businesses. Third, U.S. businesses that have no incentive to conduct business with countries involved in bilateral agreements with the U.S. will gain little from the agreements and may suffer compared to U.S. counterparts that do conduct business with the countries in the agreement. Finally, bilateral agreements tend to create tension between the U.S. and developing countries as many developing world citizens perceive the agreements as unbalanced. Accordingly, the resulting backlash can cut off business opportunities for U.S. investors, as has happened in Venezuela and other parts of the developing world.

Since the inception of multilateral trade and the World Trade Organization's (WTO) most-favored-nation principle, economists, policymakers, and business professionals have concluded that the most efficient means for acquiring sustainable gains from world trade is through global trade liberalization. This means that all countries—developed and developing—that subscribe to the WTO would act concurrently to lower tariff and nontariff barriers to trade, offering equal protections to all other members of the organization. The goal of the WTO has long been to seek elimination of all barri-

ers to trade in each member country, leaving nothing but markets to determine the flow of goods and services across borders. The wisdom of this principle is supported by neoclassical economic theory, which forms the basis of many national economic policies as well as the WTO and thus attracts a large support base.

Bilateral and regional trade agreements are concluded between two or more countries outside the purview of the WTO. These agreements are most often, but not always, between a developing and a developed country. Because they are not regulated by the WTO, the parties are free to negotiate their own terms of trade and may include issues outside the basic exchange of goods and services. These additional issues can include security agreements, commitments to reduce corruption, investor protections, intellectual property rights, labor standards, environmental protections, international enforcement of judgments, and restraints on currency controls. The WTO does not generally negotiate such matters, as they are not considered direct components of trade.

Countries that engage in bilateral trade agreements generally argue that they are concluded in good faith with the intention of enhancing global trade. Developed countries that pursue such agreements contend that the agreements can lead to a more rapid liberalization process, thereby avoiding the long delays and barriers to concluding a full multilateral liberalization process, such as that sought by the WTO's current Doha Round of trade talks. They also argue that such agreements can work to improve geopolitical and political concerns, such as improving the judiciary, reducing corruption, and supporting economic development in the partner developing country.

Negotiation Imbalance

The WTO permits member states to enter into bilateral and regional trade agreements under certain conditions. These conditions specify that the agreement must not make any member state that is outside the agreement worse off than before the agreement; they must substantially eliminate all barriers to trade; and they must eliminate such barriers within a reasonable amount of time.[1] These agreements must be notified to the WTO in advance for review and subsequent approval. Of the more than two hundred such agreements in existence today, only one has been officially approved by the WTO.[2]

There are several concerns about countries entering bilateral rather than multilateral agreements to liberalize trade. On the economic front, the primary contention is that the long-standing WTO principle of most-favored-nation is compromised. This principle specifies that all member states of the WTO shall receive the same benefits as every other member—in other words, if one member state receives a benefit under the agreement, all member states must receive the same or an equivalent benefit. There can be, in effect, no favored nation. Bilateral and regional trade agreements do exactly the opposite—they provide special benefits to some member states that are not provided to other member states of the WTO. For example, if the U.S. offers Singapore duty-free entry of textiles under the U.S.-Singapore bilateral free trade agreement, yet it has negotiated a tariff of 5 percent for WTO member states under its WTO concessions, other WTO member states will suffer by having to pay more than Singapore for their textile exports to the U.S. A corollary of this concern is the likelihood of trade diversion.

In the example above, even if Singapore is not the most efficient producer of textiles, their exports to the U.S. will be favored by U.S. consumers because they will be sold roughly 5 percent less expensively on the U.S. market. If, in fact, India were the most efficient textile producer, Indian manufacturers would have to reduce their prices in order to remain competitive with Singapore, despite their quality and efficiency. The result is an imperfect market exchange, contrary to the free market aspirations espoused by the U.S.

On the noneconomic front, additional concerns about negotiating outside the multilateral context exist. Politically, there is a concern about the equitability of negotiations between developed and developing countries. Numerous trade experts have drawn attention to the power imbalance that exists between trade negotiators from a developed country and those from a developing country.[3] The U.S. has a specialized body that negotiates trade agreements on its behalf—the Office of the U.S. Trade Representative, which is home to a number of highly trained experts in all areas of trade deemed beneficial to U.S. industry. A developing country usually utilizes the services of its trade ministry or other body equivalent to the U.S. Department of Commerce to negotiate these agreements. Accordingly, it does not possess the cadre of experts that the U.S. enjoys, nor is it endowed with resources to dedicate to negotiating smaller agreements while also maintaining representation in WTO negotiations likely to be more friendly to developing countries.

Because these negotiations are not limited to trade issues alone, U.S. negotiators often push to receive noneconomic benefits. The two areas that have garnered the most attention in this area are labor and environmental protections. For example, the U.S. has made many of its agreements conditional upon developing countries adhering to strict labor practices and protections, such as paying reasonable wages to workers. Their primary concern here, altruistic as it may appear, is to protect U.S. industry that may wish to compete for market share in the developing country or to compete with lower developing-country export prices on the U.S. market. Lower wages, a common practice in many developing countries, allows those countries to remain competitive on global markets and to encourage the development of small businesses that could not afford to pay higher wages. Tougher laws mean less competitive edge against the incoming U.S. businesses and less competitive exports on world markets.

Environmental protections also greatly limit a developing country's economic prowess. In the early stages of industrialization, as is evident today in India and China and historically in the U.S. and

Western Europe, pollution is rampant. The infrastructure to limit this toxic proliferation is often not yet in place. Developing-country governments have neither the money nor expertise to invest in pollution reduction schemes. In many instances, their limited funds are devoted to debt repayment and poverty reduction programs. Yet developed countries—typically the largest global polluters—have used these provisions to further restrain developing country competitiveness by raising the cost of doing business through required environmental safeguards.

U.S. Trade Policy

The United States has used bilateral and regional trade agreements for a number of reasons, the least of which is economic gain. In fact, most of the recently ratified or negotiated trade agreements outside the multilateral context have generated only minor economic benefit for the U.S. For instance, the recent U.S.-Australia free-trade agreement has increased the trade surplus for the U.S. by 32 percent for a total of only $2 billion. The increase was only $4 billion for the agreements with Chile and Singapore. Even over the long term, economic gains have been small. The Congressional Budget Office reports that U.S. Gross Domestic Product increased only slightly because of the North American Free Trade Agreement (NAFTA), and not necessarily due to its direct effects.[4] In developing countries, the news is even less positive. Consider NAFTA, which, more than ten years after signing, is hotly debated by economists as to the benefits for the Mexican economy. Also consider the Free Trade Area of the Americas, which not only was unsuccessful as an agreement, but also may have increased regional backlash against the U.S.

U.S. trade policy is highly protective of its own innovative economy. Accordingly, the protection of intellectual property is a top priority for its trade negotiators. On any street corner in a developing country, vendors pawn off copies of the latest U.S. films and music, Rolex watches, Coach sunglasses, and almost anything that can be copied. The price for these items is rarely more than 20 percent of what someone would pay in a developed country, unless of course the buyer were a bad negotiator. The U.S. wants developing countries to implement more rigid laws to prohibit the manufacture and sale of these infringing goods, and stronger enforcement of such laws. Language requiring stronger laws and better implementation of such laws has become standard in trade agreements, despite the WTO's multilaterally negotiated intellectual property agreement.

I can speak firsthand of the effect of these clauses from my time living in Colombia during the negotiation of that country's trade agreement with the U.S. I witnessed one of their popular black markets, San Andrecitos, shutting down in anticipation of a raid by police—something much more frequent since the conclusion of the agreement.

These constraints on trade also can serve to weaken economic growth in developing countries. Much of the contraband sold in developing countries is copied because original research, development, and production are not yet feasible. Lack of investment in innovative technologies limits the growth of an innovative sector in most countries (with the obvious exceptions of China and India), leaving developing countries with the options of copying existing technology or reverting to primary commodities such as agriculture to sustain their incomes, which is becoming increasingly difficult.

So why does the U.S. insist on pursuing such agreements rather than remaining focused on the floundering Doha Development Agenda and other multilateral negotiations? The rationale is largely noneconomic. A recent Heritage Foundation report suggests that the primary basis for evaluating a free trade agreement includes the partner country's support of U.S. economic and foreign policy interests. As an example, the report discusses the U.S.-Bahrain agreement, which may be used as a stepping stone toward the conclusion of a Middle East Free Trade Area that would greatly promote the U.S. security goals in the region by expanding U.S. economic linkages there.[5]

The Bush administration has pursued a policy of trade negotiations with developing countries that uses the threat of removing existing trade preferences or aid if the country does not enter the agreement on U.S. terms—meaning that a developing country party to a negotiation has little negotiating room to debate the demands of the U.S. in exchange for small openings in the U.S. market. In the case of Colombia, the threat was the potential removal of the Andean Trade Preference Act (which has expired and was extended while Congress debates implementation of the FTA). Removal of these trade preferences, which gave Colombia duty-free access to much of the U.S. market, would be very detrimental to the Colombian economy. This coercive approach has caused many developing countries to balk at working on trade deals at all with the U.S. Consider Venezuela, for example, which has opted instead to negotiate with China and its regional partners, thereby diverting potentially beneficial U.S. market exchange. Singapore's own minister of foreign affairs, George Yeo, said that developing countries negotiate out of fear and insecurity, rather than economic considerations.[6]

Presidents William J. Clinton and George W. Bush have enjoyed Trade Promotion Authority (TPA), which allows them to negotiate a trade agreement and, once signed, present the agreement to Congress for an up or down vote. With TPA, Congress may not amend or modify anything in the agreement. This authority is a sharp sword for negotiations, as it provides confidence in the negotiating parties that the agreement will go forward without changes by the U.S. Congress. Without TPA, anything that the parties agree to is subject to modification before approval. However, President Bush lost this TPA in June 2007, taking away this powerful weapon and making the conclusion of trade agreements more challenging. Since the Republican Party lost control of the Congress, Democrats have asserted that they will not approve any pending agree-

ments without strong labor and environmental safeguards. Agreements with Peru, Colombia, and Panama hang in the balance as the administration tries to attract sufficient support to ratify these pending deals.[7]

One example of the controversy brewing in Congress today involves the pending U.S.-Colombia FTA, which, despite the support of Colombian President Alvaro Uribe and the Bush administration, is faltering under congressional pressure. Congress is pushing for more prosecution by the Colombian government of right-wing paramilitaries and better enforcement of the law against human-rights abusers. With a growing scandal of political ties to paramilitary groups in the Colombian Congress and the hesitation of the U.S. Congress to consider moving forward without certain assurances from Colombia, it seems less and less likely that the agreement will be approved before a change in U.S. administration. The situation is similar in Panama, where the leader of their Congress was accused, tried, and acquitted of killing an American soldier in 1992. Pedro Miguel Gonzalez is still wanted in the U.S. on these charges. With Gonzalez at the head of the Panamanian Congress, the U.S. Congress is unlikely to approve the FTA.[8]

Thus far, the U.S. has successfully concluded agreements with Israel, Canada, NAFTA, Jordan, Chile, Singapore, Australia, Morocco, El Salvador, Nicaragua, and Honduras. With the recent Costa Rican referendum, an agreement also will be concluded with the Central American region. Agreements with Bahrain, Guatemala, the Dominican Republic, and Costa Rica have been approved but not yet entered into force. Agreements with Oman, Peru, and Colombia are currently under Congressional review. Peru's agreement is likely to be approved later this year.

Public opinion in the U.S. lately has turned sour on trade agreements, attesting to a growing concern about the loss of U.S. jobs due to competitive foreign firms and outsourcing to lower-wage countries. Congress noticed this sentiment and, with the approaching election, again has made trade a central issue. Secretary of State Condoleezza Rice recently argued that the current sentiment both in the Congress and among the public at large could lead to protectionist tendencies, "and we know from any number of historical experiences that that impulse to protect always leads to bad outcomes."[9]

Yet the U.S. is not the only country pursuing bilateral and regional trade agreements with developing countries. The European Community has engaged in at least twenty-three bilateral trade agreements with countries such as Turkey, Egypt, Israel, Iceland, and Mexico, and has four regional agreements in place with South Africa, Chile, Mexico, and the European Free Trade Area. The European Union (EU) pursues a policy of using bilateral and regional agreements as stepping stones to larger, multilateral integration. Peter B. Mandelson, EU trade commissioner, argued last year that the EU does not pursue bilaterals as quick-fix solutions to trade problems, but rather as a testing ground for liberalization issues that the WTO has not yet successfully tackled, such as trade in services.[10] He argued that the EU is only interested in deep free-trade agreements that liberalize all trade.

Negative Consequences of Bilateral/Regional Trade Agreements

Liberal free traders—as described by the libertarian Cato Institute, for instance—suggest that all varieties of trade agreements are beneficial to global economic growth. They argue that individuals receive economic freedom when their governments lower barriers, so it makes no difference whether the other parties to the agreement reciprocate in order to see gains.[11] However, trade economists such as Jagdish N. Bhagwati and Arvind Panagariya at Columbia University argue the contrary. They say that agreements concluded outside the protections of the multilateral forum severely disadvantage developing countries by restricting their much-needed flexibility in adapting to the growing pains of development.

There is also concern about backlash from uneven trade liberalization. Inequality has been steadily growing throughout the developing world, and trade liberalization is considered by some as strengthening existing inequalities. It also is seen as a mechanism for exerting U.S. influence in the domestic political affairs of countries with which the U.S. has strategic interests. This is most evident in Latin America, where the Free Trade Area of the Americas—the keystone of the Bush administration's foreign policy in the region—met with significant resistance and eventually failed. Several countries in the region, including Venezuela, Brazil, Bolivia, and Ecuador, have recently elected left-leaning leaders that have chosen to slow the pace of liberalization and even in some cases to turn back previous liberalizations by nationalizing some industries. This backlash is not surprising given the failed U.S. economic interventions in the region over the past thirty years. However, the reversal of trade openness has been cause for concern because it is antithetical to the goals of the WTO, and makes multilateral liberalization goals harder to achieve.

The Bush administration and other proponents of unrestricted free trade are wise to seek reductions in trade barriers around the world and to pursue the goals of economic development; however, trade at all costs is not necessarily an intelligent approach to achieving this goal. Trade negotiations outside the multilateral context give rise to a significant number of concerns, as highlighted by this brief survey. While they bring the potential for economic growth and improved livelihoods for some, they also ignite concerns over inequities and imbalance in trade between developed and developing countries. The U.S. has long pushed for a reduction in barriers to trade, but by employing a haphazard bilateral and regional approach, they may be effectuating more negative consequences than positive.

Bilateral Trade Agreements
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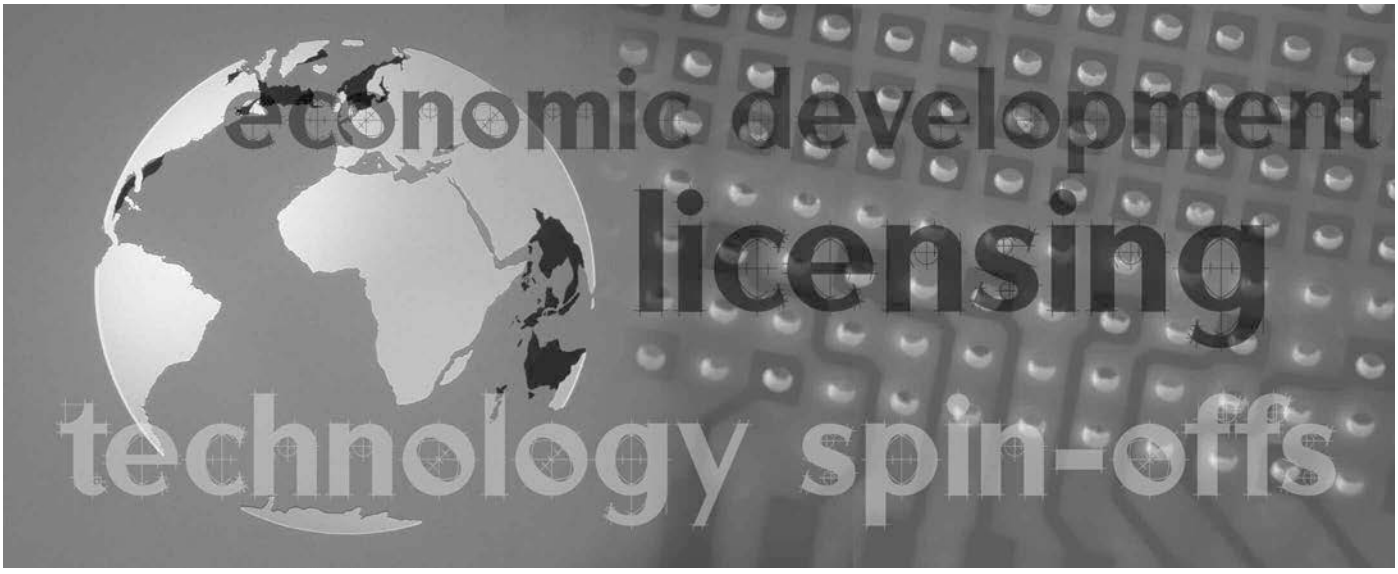
Technology Transfer by Universities in the U.S. and Abroad

by Arun K. Sood



Public and private universities are recognizing the importance of technology transfer mechanisms as a powerful catalyst for economic development.

In 1980, the U.S. Congress passed the Bayh-Dole Act, formally referred to as Public Law 96-517. This legislation assigns the intellectual property rights derived from federal-government-funded research to a university. Most university research in the United States and abroad is directly or indirectly supported by governments. Thus, in the U.S., the Bayh-Dole Act has provided a strong incentive for the research-oriented universities to pursue technology licensing opportunities. Universities already participate in technology transfer—the students are the vehicle for this transfer, and the licensing opportunity provides an additional dimension for the technology transfer mission of the universities.

In this the Information Age, all governments see technology transfer as an important element of economic development and comparative trade advantage, and technology licensing and enterprise creation has implicitly become part of the mission of research universities all over the world. Technology licensing and related spin-off activities are handled at two U.S. universities and four foreign universities—each with research agendas and an organized effort to interact with industry.

Comparative Overview of Six Universities

Public and private universities are recognizing the importance of technology transfer mechanisms as a powerful catalyst for economic development. This is an international trend. Carnegie Mellon University in Pittsburgh, Pennsylvania; Feng Chia University in Taiwan; Indian Institute of Science in Bangalore; the Indian Institute of Technology in Delhi; Stanford University in Palo Alto, California; and the University of Oxford in England have made organized efforts at technology licensing. These organizations oversee and coordinate patent filings, patent, and "know-how" licensing, and they nurture university technology spin-offs. Additional

information about these institutions can be found at the Web addresses at right.

The universities structure the technology transfer organizations in different ways. Some of the institutions establish organizations independent of the university structure. For example, University of Oxford has set up a company—ISIS Innovations Ltd. Technology transfer operations at IIT Delhi are managed by an independent foundation. Oxford's ISIS has in turn formed Oxford University Consulting, which provides the expertise of Oxford faculty to solve specific problems. Oxford University Consulting has offices in Japan and the U.S. The ISIS Enterprise division offers support to the technology transfer offices at other institutions.

University Technology Transfer Organizations

University technology transfer operations benefit the community. Licensing arrangements provide financial returns for the university, inventors, and business owners. Revenue supports operational costs, including patent filings. Institutions report large variation in the annual income. The Stanford Office of Technology Licensing revenue was $50 million in 2004, $61 million in 2006, and $384 million in 2005. The order of magnitude increase in 2005 was related to the Stanford investment in Google. The Feng Chia University average annual technology licensing revenue is $4.5 million New Taiwan (NT)—about $150,000 U.S.—with a peak of $10 million NT in 2005. Feng Chia has found that technology transfer enhances the FCU image and is an effective faculty and student recruitment tool.

Spin-Offs Require Institutional Support

All the universities have active spin-off programs. The Stanford and Oxford efforts are more mature than those at other institutions. The Stanford Office of Technology Licensing has a staff of thirty and the Oxford ISIS a staff of forty. However, even the smaller units play a crucial role in encouraging entrepreneurship at the university. Establishing an administrative unit for patent filings and spin-off management leads to more enterprise creation. At Oxford, ISIS started spin-off creation activity in 1997. Pre-1998 there were ten spin-offs over the previous forty years; in 1998 there were four spin-offs; and subsequently an average of more than five spin-off companies have been created per year. At Carnegie Mellon, seven spin-off companies were created in 2005. The IIT Delhi Business Incubator was started in 2000. In the first five years, twelve spin-offs were sponsored and six companies left the incubator. In March 2005, six companies resided in the incubator; all of them had active faculty involvement.

The importance of organizational support for technology transfer is highlighted by the Bangalore India Institute of Science experience. IISc is a premier graduate and research institute in India started in 1909. Although the master's and doctoral research efforts at IISc are well-known, the enterprise creation efforts have not had organizational support. Typically, IISc has provided consulting services to industry. Discussions with faculty indicate that IISc has recognized the need, and is now establishing an organization to support technology transfer. The Society for Innovation and Development has been set up in collaboration with IISc.

Angel Networks for New Venture Support

Oxford has established the ISIS Angels Network. Angel groups are useful as a source of start-up funding, and also provide the researchers with key commercial contacts. The network increases community involvement in the university and provides a critical resource to the faculty entrepreneur. For example, early in the process of enterprise spin-off, the faculty entrepreneur negotiates a licensing agreement with the university. Since each new enterprise is different, each licensing arrangement is different. All these agreements involve different combinations of upfront payment, royalties, equity participation in the enterprise, and sub-licensing arrangements. The degree of exclusivity has an impact on these terms. Carnegie Mellon provides a template for a term sheet. The angel investor provides important input to the entrepreneur and ensures that the terms do not impede venture funding.

Conclusion

Organized technology transfer is taking on increasing importance in the context of increased international trade and the globalization of businesses. Legislation in the U.S. and foreign countries supports this undertaking. Traditional university research focus on scholarly work is now being influenced by the commercial pull. Since this research is often government funded, the Bayh-Dole Act has been instrumental in increasing the technology licensing focus at universities. Not all faculty members participate in the technology licensing efforts, but the presence of

Six Leading Global Universities & Technology Transfer

Institution	Unit	Web Address
Carnegie Mellon University	Center for Technology Transfer	www.carnegiemellonctt.com
Feng Chia University (FCU)	Office of Technology Licensing	www.ord.fcu.edu.tw/Organize/enOrganize_otl.html
Indian Institute of Science, Bangalore (IISc)	Centre for Scientific and Industrial Consulting	www.csic.iisc.ernet.in/index.htm
Indian Institute of Technology, Delhi (IITD)	Foundation for Innovation and Technology Transfer	www.fitt-iitd.org
Stanford University	Office of Technology Licensing	http://otl.stanford.edu
University of Oxford	ISIS Innovation Ltd	www.isis-innovation.com

organized technology licensing initiatives on the university campus is increasing faculty involvement. Universities are using incentives such as a share in the revenue derived from licensing fees to encourage faculty involvement. This article, by examining six universities in four countries, demonstrates that the trend for university technology licensing is widespread.

In conclusion:

- There is an increasing global awareness of the role universities play in economic development.
- One aspect of this critical role is the increasing importance of promoting technology transfer from universities to the private sector.
- This commercialization of university technology is crucial for developing and maintaining comparative trade advantage.
- Legislation is essential in promoting this process of commercial innovation.
- Barriers to technology transfer are often those internal to universities, but they can be alleviated by diligent management of faculty relations.

Arun K. Sood is professor of computer science at George Mason University. He received his undergraduate degree at the Indian Institute of Technology, Delhi, and his master's and doctorate at Carnegie Mellon University. Photo of Sood (left) with former Virginia governor Mark D. Warner in India.

The University of Virginia has a technology licensing program managed by the University of Virginia Patent Foundation (UVPF). The Technology Transfer Office at the College of William and Mary also works with UVPF. At Virginia Tech and George Mason University, technology licensing is managed by Virginia Tech Intellectual Properties Inc. and George Mason Intellectual Properties Inc. respectively.

The Commonwealth of Virginia recognizes the importance of commercializing university research in technology, as evidenced by the long-time establishment of the Center for Innovative Technology. The Virginia Economic Development Partnership and the executive branch's secretaries of commerce and trade and technology actively promote technology as a component of the new commonwealth's policy of embracing globalization.

Virginia universities play an important role in the economic development of the commonwealth and promote economic ties in this time of globalization. Transfer of technology is critical to this undertaking. Virginia universities are competing well with both national and international universities, but the challenge is to move forward and participate even more forcefully. ⚖

Trade Liberalization Despite Doha's Delay

by Robert A. Rogowsky

Despite bleak prospects, there is much to be optimistic about, unless you are a trade minister whose job success is tied to completing a round.

The Doha Round of multilateral trade negotiations appears to be, as some have labeled it, on life support. Desperate measures are taken weekly to sustain and possibly resuscitate it. While the round officially began November 2001, negotiations in services and agriculture, as dictated by the preceding Uruguay Round Agreement (URA), started in 2000 and have been grinding on for seven years. After more than half a decade, the talks have nearly collapsed. Despite bleak prospects, there is much to be optimistic about, unless you are a trade minister whose job success is tied to completing a round. Ultimately, the Doha Round is likely to succeed, but not for many years. In the meantime, significant trade liberalization will continue while the negotiators painstakingly labor toward more fundamental reforms on the agenda.

The Doha Round

First, the round will be lengthy. Each of the eight preceding rounds took longer than the one before. The Uruguay Round lasted eight years. If the length of the previous eight General Agreement on Trade and Tariffs negotiations is any measure, the Doha Round will last twelve years. By that calculation, we are only halfway through. Why does it take so long? The low-hanging fruit was picked decades ago. Negotiators are digging into highly sensitive areas that domestic political forces in every country are well-equipped to resist. Intensely sensitive agriculture negotiations have stymied progress of the round. Progress in both industrial tariffs in developing countries and services also has been slow. Negotiators for the former are still trying to settle on the "modalities" or method of the negotiation.

Second, the success of the Uruguay Round Agreement is a problem for the Doha Round. The URA is a broad-reaching agreement that brought under World Trade Organization discipline, indeed created the WTO, matters that for decades had been too politically sensitive to be included.

Early rounds focused on tariffs. The Tokyo Round (1973–79) opened discussions of a few non-tariff measures—like subsidies and antidumping. But the URA opened whole new areas for liberalization. Textiles and agriculture were brought under WTO discipline. The agreement restructured the dispute settlement rules, creating a more forceful adjudicative body. Services were introduced and concluded with the General Agreement on Services, including separate agreements on financial services and telecommunications. New agreements were reached on Trade Related Intellectual Property, Trade Related Investment Measures, Sanitary and Phyto-Sanitary Measures (to prevent them from being used as trade barriers), and Technical Barriers to Trade. The Trade Review Mechanism was created to audit members' progress on a regular basis. Bi-annual ministerial meetings were set up to ensure regular attention at the highest levels.

Third, the URA instituted the principle of "single undertaking" wherein every member agrees to every element of the agree-

ment. A member cannot pick and chose, but must accept the whole agreement and all its parts. Once considered among the most valuable accomplishments of the URA, it now appears to be its Achilles heel.

Single undertaking becomes a problem in part because of the success of the WTO in attracting members. The Kennedy Round (1962–67) involved forty-eight parties and covered $40 billion in trade. The URA involved 120 members and $3.7 trillion in trade. The WTO currently has 151 members, and the current negotiations touch on more than $5 trillion in trade. Fewer than three dozen members are considered developed nations. The developing and less developed countries range from China, India, and Brazil to Indonesia, Paraguay, and Burkina Faso. Common ground is scarce.[1]

In the grim atmosphere of the Doha Round, much is encouraging. Trade negotiations are intensely political events. Powerful political forces are at work to prevent liberalization. If the necessary countervailing pro-trade forces are not active, that it is because the gains from freer trade are already occurring on their own.

National, Bilateral, and Regional Liberalization

Over the past decade, a substantial amount of liberalization occurred outside the multi-lateral negotiations, and this will continue. Bilateral and regional agreements, such as the North American Free Trade Agreement and Mercosur, have opened many markets. Nearly 400 regional agreements have been notified to the WTO. Some are modest initiatives, but many are robust free-trade arrangements. The United States alone has completed ten free-trade agreements covering fifteen countries and has many more in the pipeline, including a Framework for Transatlantic Economic Integration.

An even more powerful type of liberalization is unilateral reform. Many countries are already reducing tariffs well below their maximum level—the "bound" rate that the country negotiated in the URA.[2] For instance, Brazil's average most-favored-nation tariff bound under the URA exceeded 31 percent. But Brazil has lowered tariffs to a trade weighted average of 8.2 percent. India similarly has lowered its URA bound tariffs from nearly 50 to 14.6 percent, South Africa, from nearly 20 to 5.1 percent, and Turkey from nearly 30 to 4.8 percent. The World Bank's *Global Economic Prospects 2005* indicates that two-thirds of tariff cutting was the result of unilateral trade reform, 25 percent is from multilateral negotiations, and the rest is from preferential trade agreements.

Ironically, the greater the difference between the bound rates and the applied rates, the larger the cuts in bound rates that are required to affect actual rates, the ones that matter to exporters. The larger the cuts needed, the harder it is to negotiate, and yet the less valuable it is for exporters to expend scarce political capital lobbying for it (and against protection-oriented groups). Similarly, aggressive competition for foreign direct investment has pushed countries to offer protections and other enticements to encourage investment. This has substantially reduced the incentive for trade-oriented industry to expend political effort to get a more comprehensive Trade Related Investment Measures package.

Many countries are reducing the non-tariff barriers (NTBs) blocking trade. The World Bank reports that developing countries have substantially reduced core NTBs (including quantitative restrictions, price administration, and monopolistic trading channels). In 1989, more than 30 percent of tariff lines in East Asia and Pacific countries had core NTBs, but only 5.5 percent had them in 2004. South Asia fell from 57 to 13 percent, and the Middle East and North Africa from 44 to 8.5 percent. These trends are hard on those that we need support for negotiations, but ironically because progress is being made through other routes.

The pressure to liberalize also is muted when economies are growing rapidly. It has been calculated that the even the highest estimates of economic welfare gain from a successful Doha Round would be equivalent to eighty-two days of growth for Brazil at its average rate of growth from 2000–05.[3] For India, it is twenty-four days of growth, and for China only three days. It becomes clearer why trading partners are reluctant to concede sensitive trade protections when broader economic growth overshadows the potential gains. Happily, it also becomes increasingly clear to growth-oriented nations, as economic theory shows, that there is good reason to liberalize unilaterally.

Dispute Resolution and Liberalization

Finally, regardless of progress made in the Doha negotiations, a remarkable amount of liberalization continues through the dispute settlement mechanism. Since 1994, roughly 360 complaints have been filed. While only about 30 percent of the members of the WTO have been involved, and disproportionately, the United States and the European Union, important barriers to trade, are under growing attack from the juridical process the dispute settlement mechanism offers. Fewer than than a third of the complaints have required more than consultations to resolve. Of those that go to a dispute panel or through appellate body review, about 90 percent identify violations that must be corrected. Virtually without exception, members found in violation express intent to correct the problem, and in many cases have already done so. Retaliation, the remedy for non-compliance, has been requested in fewer than 20 percent of the adjudicated cases. Retaliation has been authorized in only eight cases and was not even used in some of them.[4]

Members have taken to dispute settlement highly sensitive matters that have plagued trade negotiations for decades, including Canadian softwood lumber stumpage fees, the U.S. foreign sales corporation tax, the European Union's hormone-treated beef ban, the European banana distribution restrictions, safeguards, and numerous complaints on anti-dumping and countervailing duty enforcement (including the practice of "zeroing"). In the past two years, seven cases aimed at intellectual property protection, including barriers to

entertainment products and refunds, reductions, and exemptions from taxes, have been filed against China. China has filed one against the U.S. Agricultural subsidies—slow in negotiation—are increasingly challenged in the dispute process. Brazil successfully challenged EU sugar subsidies and U.S. cotton subsidies. Canada has challenged U.S. corn subsidies. Brazil recently filed a broad-spectrum "request for consultation" (first step to a formal complaint) with the U.S., identifying violations for multiple agricultural support programs aimed at a long list of plant and animal products.[5]

The Doha negotiation may be in terminal decline. More likely, it is simply bed-ridden until after the U.S. and Indian elections. The negotiation is in this condition at least in part because of the solid institutional foundation left by the URA; the rapid globalization regardless of negotiations; the perception by export-oriented interests that they need to invest less heavily in trade at the expense of other areas of concern; and the growing realization by growth-oriented emerging markets that unilateral reform works. ⚖

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Endnotes:

1 Coalitions, however, are plentiful, including, but not limited to, the G-4, G-8, G-20, G-90, the Group-of-110, the Cairns group, the NAMA-11, the Africa/Caribbean/Pacific Group, the "Cotton 4," and the Like-Minded group, each with its own agenda.

2 Elborn-Woteck, et al.," Fiscal Implications of Multilateral Tariff Cuts," IMF Working Paper, September 2006.

3 Simon Evenett, "Doha's Near Death Experience at Potsdam: Why Is Reciprocal Tariff Cutting So Hard?", June, 2007, mimeo.

4 Bruce Wilson, "Compliance by WTO Members with Adverse WTO Dispute Settlement Rulings: The Record to Date," J. of *International Economic Law*, June 1, 2007.

5 United States—Domestic Support and Export Credit Guarantees for Agricultural Products, WT/DS365/1, 17 July 2007. Including production flexibility contract payments for each of wheat, corn, grain sorghum, barley oats, upland cotton and rice; non-insured crop disaster assistance payments; crop disaster payments, emergency feed and other feed program payments for each of beef, veal, dairy, hogs and pigs, sheep, and lamb; tree assistance programs for apples, apricots, peaches, pears, and all other trees, bushes, and vines; programs exempting farmers from fuel taxes or from taxes based on overall farm income; subsidies related to irrigations works.

Bilateral Trade Agreements

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To be successful in raising global living standards, eliminating tariff and nontariff barriers, and allowing markets to operate freely, the U.S. should be concentrating its vast resources on concluding the Doha Round of negotiations at the WTO. The successful conclusion of this trade and development agenda will do far more for economic growth than any number of smaller agreements, and will do so without the potential for severe backlash among developing countries that threatens to derail all efforts to conclude a multilateral agreement. A wise trade policy is an essential component of an effective foreign policy, and the two are largely interlinked. Pursuing U.S. economic power by coercing developing countries with little to offer the U.S. into trade agreements may weaken the U.S. position in global trade negotiations as well as on the foreign policy stage.

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Endnotes:

1 General Agreement on Tariffs and Trade, art. XXIV (1994).

2 Referring to the customs union between the Slovak and Czech Republics. *See* CONSULTATIVE BOARD, WORLD TRADE ORGANIZATION, THE FUTURE OF THE WTO: ADDRESSING INSTITUTIONAL CHALLENGES IN THE NEW MILLENNIUM *21-22* (2004), *available at* **http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf**.

3 *See, e.g.,* Kevin J. Fandl, Bilateral Agreements and Fair Trade Practices: A Policy Analysis of the Colombia-U.S. Free Trade Agreement (2006), 10 YALE HUMAN RTS. & DEV. L.J. 64 (2007).

4 Robert McMahon, *The Rise in Bilateral Free Trade Agreements*, Council on Foreign Relations (June 13, 2006).

5 Daniella Markheim, *America's Free Trade Agenda: The State of Bilateral and Multilateral Trade Negotiations*, Heritage Foundation Backgrounder (Nov. 2, 2005).

6 Guy de Jonquieres, "The Challenge for the Multilateral Trade System", Yale Global Online, Nov. 18, 2002.

7 Neil Irwin, "A Shift in Bush's Trade Politics," *Washington Post* (Oct. 10, 2007).

8 *Id.*

9 *Id.*

10 Peter Mandelson, "Bilateral Agreements in EU Trade Policy" (speech at London School of Economics, Oct. 9, 2006).

11 Edward L. Hudgins, "Regional and Multilateral Trade Agreements: Complementary Means to Open Markets," 15 *Cato Journal* No. 2-3 (Fall/Winter 1995/96).

Six Steps to a Smaller World: Finding International Law from Your Desktop

by Jennifer Sekula

Researching the law of another country is one of the most challenging, yet interesting, tasks an attorney can take on. Every country presents potential obstacles to the researcher, including unfamiliar legal systems and terminology, varying levels of access to laws and related materials, and possibly one or more different languages to contend with. Despite all the variables, the following steps can help you get started with your research into any country's laws.

Start at the beginning. Take a moment to acquaint yourself with the country's legal system so you can understand the relevance of the documents that you'll find later. Many research guides, in print or online, contain such introductions. Alternatively, try searching in Google or another Internet search engine using the name of the country and "legal system" or "research guide."

See if someone else has already blazed the trail. Imagine researching an issue within the U.S. law of sales without having ever heard of the Uniform Commercial Code. You would stumble across thousands of cases with no idea of what their significance is—or whether there's other law on point. To make sense of it all, you would look for a good secondary source that explains the law and leads you to the most relevant statutes and decisions. Foreign research is no different. Check treatises, academic and bar journal articles, and free Web sites for descriptions of and citations to the laws of the country in which you're interested. Try searches that combine the topic and the name of the country. If you need to know whether a divorce is valid under Ugandan law, for example, the search *Uganda /p divorce* in **LexisNexis.com** or Westlaw's journal database returns an article that cites and discusses six diverse laws that govern marriage and divorce in that country.

Look it up in Martindale-Hubbell. MH includes a helpful volume called the *International Law Digest* (also available on **LexisNexis.com**). The digest, written by local attorneys, provides a reasonably detailed, concise overview of a given nation's laws, with citations to relevant statutes or regulations. It covers eighty-one countries and the European Union, including most of the larger jurisdictions.

Seek out official Web sites of different countries about their laws. Stuart S. Malawer provides some links on his Web site at **www.InternationalTradeRelations.com**, under "Foreign Source Material."

Find a "Research Guide" on your country and/or topic. If none of the above suggestions help, you can set out on your own with the aid of a good, up-to-date guide to direct you to the resources where a country's laws can be found. One of the best free sites out there is GlobaLex from New York University (**www.nyulawglobal.org/globalex/**), which publishes guides by lawyers and librarians on countries from Afghanistan to Zimbabwe.

The most comprehensive foreign research guide of all is the *Foreign Law Guide*, a subscription-only online product (also published in print as *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*). The guide includes the names and citations to translations (if available) of more than 170 countries' codes, official journals, and other general legal sources. It also lists specific laws of each country by subject, with citations to translations if they exist.

Nail down the text of the law. Once you have your citation, the quickest way to locate the law is to search for it using an Internet search engine. If this doesn't work, try one of the Legal Information Institutes, which are Web sites that collect primary documents (collectively listed as "databases") and links to laws (collectively labeled "catalogs") from various countries. The biggest one is WorldLII (**www.worldlii.org**), where you can find links to regional LIIs at the bottom of the main page. LexisNexis.com and Westlaw are additional sources for laws, but only for a handful of foreign jurisdictions. Finally, if your law is reprinted in a book but you don't have access to it, see if you can obtain the book from a library.

Exercise caution when using translations of laws. Even "official" translations are not always as reliable as one might hope. Furthermore, many codes and cases have not been translated into

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English. You may wish to retain the services of a translation firm or local counsel to be certain that you are reading an accurate version of the law.

Treaties. If you discover that you actually need a treaty and not a foreign law, here are three sources to consult: Many multilateral treaties are administered by secretariats, which typically maintain Web sites that are great sources of a reliable version of the text. Enter the name of the treaty plus the word "secretariat" into an Internet search engine. Additionally, **LexisNexis.com** and Westlaw both include every treaty to which the U.S. is a party, starting with 1776 and 1778 respectively. Finally, the American Society of International Law (**www.asil.org**) offers a free, comprehensive research tool called EISIL (Electronic Information System for International Law; **www.eisil.org**), which can help you locate treaties by subject, among other useful features.

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Treatment Denied—What Can You Do?

by John Y. Richardson Jr., 2007–08 Conference of Local Bar Associations Chair

As someone who has been involved with my local bar for many years, I know finding intriguing and timely topics for local bar meetings can be challenging. As an organization intended to provide assistance, training, and resources to local and specialty bars, the Conference of Local Bar Associations offers resources that can be used for bar programs.

A topic your local bar might explore in the coming months is the options available to those who are denied medical coverage by an insurance company.

Consider the following predicament: Your spouse is diagnosed with cancer and undergoes concentrated treatments for several months. The treating oncologist does not recommend further treatment. The doctor believes continued treatment will not stop or slow progression of the cancer and will diminish the patient's quality of life during what he believes will four to eight months remaining. He says a program in a nearby city successfully treats patients with similar symptoms under a new protocol. He suggests getting clearance from your health-care provider, which you do. The new treatment requires hospitalization for three weeks, and a three-day follow-up assessment two weeks later. Halfway through the initial three-week program, you get a letter from your insurance company denying coverage for the treatment. What do you do?

A few years ago, there were few alternatives. Litigation was possible, but the applicable law made the insurance determination virtually unassailable.

Success was many times bittersweet; the likelihood of settlement increased if your client lost his or her battle with the disease. Little progress has been made in making the patient more likely to be covered. The consolidation of many hospitals under one operating entity and the reduction in the number of charitable hospitals makes it less likely that the patient will be covered.

During my occasional venture into this minefield, I did discover a new ally who proved invaluable—the patient advocate. In many cases, the position was filled by a volunteer or someone employed at a particular hospital or in a locality. In many cases, the advocate knew what outcomes were possible and how to succeed.

Since then, the need for the advocates has increased, and more sophisticated treatment protocols are available. Some organizations provide advocacy and other related services. One of these is the Legal Information Network for Cancer (LINC), which assists in insurance disputes, employment issues, child custody and care, estate planning, debtor-creditor matters, and federal and state benefits. LINC is nonprofit and depends on donations and volunteer attorneys. It provides speakers and continuing legal education presentations. Contact LINC by phone at (804) 644-5462 or by e-mail at **info@cancerline.org**, or visit its Web site at **www.cancerline.org**.

Another service, the Patient Advocate Foundation (PAF), helps solve insurance and health-care access problems. It maintains an advocate network. Contact the PAF by mail at 700 Thimble Shoals Boulevard, Suite 200, Newport News, VA 23606, or by phone at (800) 532-6274, or visit its Web site at **www.patientadvocate.org**.

I encourage bar leaders to contact these organizations for more information and consider inviting them to local bar meetings. For other programs that have been successful with local bars, please contact Paulette J. Davidson, the Virginia State Bar's liaison to the Conference of Local Bar Associations, at (804) 775-0521.

Edmonds Shares Lessons Learned in Years at the VSB

by Daniel L. Gray, 2007–08 Young Lawyers Conference President

We lawyers in our mid-thirties can't remember a time when Tom Edmonds wasn't at the helm of the Virginia State Bar. During my time in the Young Lawyers Conference, Tom has been a steadying hand, navigating the conference by gentle, sometimes forceful, prodding and suggestion. I always thought it to his great credit that he recognized the energy and optimism of the conference and let its members do good work without undue interference. We knew he was watching over us from his perch at Eighth and Main, but it was comforting rather than cringe-inducing.

I've been fortunate to spend time with Tom at VSB Council and Executive Committee meetings and dinners during the final months before his retirement. I have taken full advantage, questioning him relentlessly about his time with the bar and his thoughts on the YLC and the legal profession. He recently agreed to answer a few questions on the record, in response to my nagging and assurances that his wisdom wouldn't be lost on the newer members of the bar.

The Central Mission of the Bar

He told me the most important thing a young lawyer ought to know about the VSB: we're a regulatory body. "We tend to make a mistake in trying to soften the image as a regulatory state agency," he said. "The bar is directed to focus energy on regulation of lawyers. That's the first and foremost thing the legislature and public expect of the bar . . . [T]he principal responsibility is to weed out lawyers whose conduct does not conform to the Rules of Professional Conduct."

I asked where the Young Lawyers Conference fits in, given its focus on providing services to the bar and to the public. Where, for example, does a program like "Wills for Heroes," which provides free wills and advance medical directives to first-responders, fit into the regulatory mission? Isn't that afield of the core function?

He responded firmly, "Not at all. Public protection is the main thing. If you start talking about public education and access to lawyers and vindication of rights, all of that ties back into the public protection function. We protect the public by making sure competent and quality services are available to the public."

Young lawyers must understand this public protection concept, since it is the root of the structure, purpose, and funding of the bar, and it highlights the significant differences between the Virginia State Bar and bar organizations in some other states.

"About one-third of states have only voluntary bars where there is no regulatory function," Tom said. Of the remaining mandatory bars, not all regulate the profession as the Virginia State Bar does. "They may license attorneys and do some continuing legal education. [But regulation] is done directly by the Supreme Court of the state."

Self-governance by lawyers and the profession's willingness to provide resources for it set Virginia apart. "I don't know of a better model. Council, the General Assembly, and the Court have always been willing to provide the resources we need for discipline. We've never made a request that has not been met. That is unusual. Look at states like Louisiana or Montana that can't increase dues without a member referendum; these bars won't tax themselves to do their jobs." This self-governance is also unique to the legal profession: "Other professions do not have nearly the control . . . over policy and enforcement that we do."

Speaking Out

As a state agency, the bar is sometimes limited in what it can do.

I asked Tom about my perception that our more senior lawyers haven't been very vocal in terms of some of the major issues of the day: the war, rendition, torture, political influence on the administration of justice.

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He disagreed with my premise: "The [American Bar Association] has taken very clear positions on unlawful detainment. They have some strong leaders. The problem is that people in the rank and file—the membership is so large and diverse—they drop membership if they disagree with the group's position. There's no sense that if the organization is moving generally in the right direction, you should stay on . . . We've gotten so contentious and single-issue focused, it's hard for any organization to have a central message."

But what about the Virginia State Bar, specifically? "As a taxing entity, we're limited in what we can do. In our case, there's a line of authority of Supreme Court cases that says you can't take your members' money and articulate positions with which they disagree. The lobbying that we do has to be related to the regulatory mission, and it has to be an issue on which there is a consensus view."

Where does that leave a young lawyer who wants to take a position on important events? "Individual lawyers should articulate their views and take public positions, but the profession is overcrowded, [and] you have lawyers hustling for business. The lawyers that do speak up tend to be public-interest lawyers, and they get hammered for it."

The Root of the Perception Problem

When I asked Tom about the source of a lowered public perception of lawyers, he was clear: "When deTocqueville came and traveled and examined American culture, he was struck by the extent of the stature and influence of lawyers and how they were engaged in many things beyond monetary pursuits. They were involved in organizing schools and governments and oversight. Too many lawyers don't take the time to do that any more. There's been a huge decline in lawyer legislators. The economic pressures of law practice impact on this. Add debt service responsibilities for young lawyers."

Tom doesn't soft-peddle the problem of money as a central factor in the decline of the profession's esteem: "Money is the root of all evil. People want to make a million dollars a year. Look at the profits-per-partner statistics . . . That kind of avariciousness is antithetical to the history of the profession."

The reasoning goes something like this: Many lawyers are competing for lucrative business. They have to compete for that business because they are saddled with enormous educational debt. Taking a vocal stance on controversial issues may scare away business, and most of us can't afford to do that.

One possible solution is debt forgiveness for lawyers who devote several years to public-interest work.

"The level of debt is a huge problem," Tom said. "That really does impair independence and freedom of choice about employment. We ought to be thinking about loan forgiveness if you serve low-income people. The bar and law schools can't solve the problem. The loans are federally insured, so I'd like to think it could be resolved at the federal level."

Might such a program produce better lawyers, and lawyers who aren't restricted from active community participation because of financial concerns? It's not a new idea, but applied on a grand scale, it becomes an intriguing solution to an ongoing problem.

Past Successes and Future Challenges

What issues will today's young lawyers contend with in coming years? "Globalization. Not multidisciplinary practice, but multijurisdictional practice," Tom said. "Even local attorneys will be dealing with businesses that will enter into contracts with groups in foreign lands. More foreign lawyers will want what U.S. lawyers have been getting. We've been slow off the mark on MJP rules. We need to provide rules on this . . . [otherwise] other countries will start closing doors to foreign lawyers, including those from Virginia."

Tom is reluctant to crow about past successes, but when I asked him what achievements he thought were noteworthy, he cited changes tied directly to the bar's regulatory function: "Opening the disciplinary system to the public. Putting lay people on the panels . . . [T]he strengthening of the Clients' Protection Fund is important."

Speaking as an observer, I'll add that an organization's success starts with its leaders. Or, as Tom put it, "[y]ou need to role model the image at the top."

For nearly nineteen years, we've had an exemplary role model at the top. The Young Lawyers Conference loses a great friend and mentor at the end of the year, but Tom's influence continues in those of us whose work he inspired during his tenure.

Roby Greene Janney: A Remembrance

by George W. Shanks, 2007–08 Senior Lawyers Conference President

When Roby Greene Janney died on April 29, 2007, at age 87, he left a legacy of collegiality and compassion, of prosperity through perseverance, of dedication and devotion to our profession. But he took with him our last tangible connection to an era when law was a calling and not just an occupation.

Journalist Tom Brokaw called them The Greatest Generation. Roby was one of them, and exemplified all that they represent to us today.

Roby, affectionately known as "Papa" Janney at the Page County Courthouse, was possessed of a gentle character and subtle humor, dignity and decorum, probity, and devotion to his family and his faith. He was old school. You would not know, nor would he tell you, that he was among the Marines who witnessed the raising of the American flag on Iwo Jima in 1945. Mr. Janney repaid his good fortune by living each day as a gift to be savored and repaid with goodwill to his fellow man.

Educated at the University of Virginia, he chose to settle in Luray, at the time hardly more than a village and today still a small town of fewer than twenty-four thousand souls.

Mr. Janney was not about flash and glitter. While others were building stone-and-glass empires, he built a following that made him a local icon, synonymous with the law and its processes. His method was to persevere and to care. Any student of practice-building would perceive in his simple formula the path to success and personal fulfillment. His knowledge of the families of Page County was encyclopedic. In his routine query on meeting a client or examining a witness—"What's your daddy's name?"—was an understanding of all he was to hear and a road map for the questions to be asked to learn the things he was not hearing. Few out-of-town counsel tried cases successfully in Page County without first consulting Papa Janney. More's the pity if he was on the other side.

Mr. Janney passed his practice along to his son and saw him grow and prosper and become the attorney he would most want at his side—a reward that few can savor. Surely Mr. Janney savored this, even as his vigor declined.

He lived his faith, even if as a rock-ribbed Southern Baptist he was a little hard on the Methodists. He practiced what he preached and he was, without doubt, one of the most generous attorneys in the local bar. Judge John J. McGrath Jr., eulogizing his former law partner, recounted that recipients of Mr. Janney's monetary largess were legion and in many cases never knew the identity of their benefactor. In a day of nonprofits and deductible contributions, he preferred to bestow his gifts on those he personally knew to be in need.

He became a vital force within the community, leading many organizations. He gave back in full measure even as he served the community from his modest offices on South Court Street.

His relations with the bench were an extension of his character. He began practice in 1948, when dockets were not so overwhelming that judges didn't have time for informal chats with lawyers. He knew the judges. He liked them. And they liked him. Roby didn't win every case he tried. But he was unfailingly polite in victory or defeat to the court, to court personnel, and to opposing counsel. This conduct builds a reservoir of good will that can only be the envy of others less concerned about such niceties, and a model to be emulated by those wise enough to watch and to learn.

For Roby, mentoring was a part of who he was. His door was open, and any young lawyer was welcome to drop by for advice and counsel. He said to me, on the day I opened my practice in a converted garage, that I was welcome to use his library any time I liked, but he wouldn't send me any cases. When five years later he sent me one of his long-time clients whose hotly contested case he couldn't ethically handle, I knew I had been given a blessing of approval to be coveted as much as any award I could ever receive.

He was a marriage officiant by circuit court degree, and took special delight in performing ceremonies in his law office when a young couple, overcome with Luray's beauty and romance, would hurry to the clerk's office for a license and then half a block further to his door. One couple was a groom with

Janney *continued on page 57*

LAW OFFICE MANAGEMENT

An Ounce of Prevention . . . Concluded!

by Janean S. Johnston

The last installment of this series is about first impressions. If your firm and its members do not create a good first impression with potential clients, you may never be able to use any of the procedures—such as docketing and calendaring, conflicts checking, file management, and trust accounting—that were highlighted in earlier articles.

First impressions are created from the moment a potential client has contact, directly or indirectly, with your law office. Creating a positive impression depends upon the efforts of every member of the firm. Everyone—the receptionist, the secretary, the paralegal, the attorneys—must ensure that all client encounters are handled professionally and efficiently. If this first impression conveys competence, concern, and respect, your firm's client base will grow accordingly.

Is your firm creating a good impression on potential and current clients? The questions below will give you some excellent clues.

First Impressions

1. Does your firm have an adequate number of phone lines so that calls are answered without delay?
2. Does your staff make a positive, professional impression when answering the phone? (If you don't know, call your office when you are on vacation or at court.)
3. Does your staff avoid putting a call on hold for an unreasonable time?
4. Does your staff give the caller a chance to respond before shifting him or her to voice mail?
5. Are callers told approximately when their calls will be returned by the lawyer if they are not handled immediately?
6. Is your staff careful not to screen calls too aggressively?
7. Does your law office give a professional appearance, inside and out?
8. Do you or the receptionist greet clients promptly, pleasantly, and professionally?
9. Is the reception area neat and clean, with adequate space and comfortable chairs?
10. Is the reception area visible to the receptionist, so that all waiting clients and activity can be monitored?
11. Does the reception area contain current and relevant reading material?
12. Do all law office personnel present a professional image of the firm and treat clients with courtesy and concern?
13. Is your staff careful not to discuss confidential client information where the conversation can be overheard by other clients?
14. Are all legal questions, including why the potential client wants to see the lawyer, discussed in private, out of the hearing of others?
15. Are all billing matters discussed privately, where others cannot hear the discussion?
16. Does the firm have written materials available for clients that explain the firm's services, appointment procedures, billing practices, and other pertinent administrative practices of the firm?
17. Does the firm have a client complaint procedure that encourages the documentation and resolution of all client complaints?
18. Are all clients seen within thirty minutes of their scheduled appointment?
19. Are clients informed if their attorney is running late and given the opportunity to reschedule the appointment?
20. At the end of the representation, are clients encouraged to give constructive feedback to the firm regarding their level of satisfaction with the services provided?

If you have any questions after answering the questions above, please contact me at (703) 567-0088.

If you would like to have a private assessment of your law office practice on-site, please remember to call and indicate your desire to participate in the Virginia State Bar's Confidential Law Practice Management Review program. I am scheduling appointments for next year and will be happy to send the application materials to those firms that are interested. In the meantime, stay tuned for future risk management advice, and stay healthy!

Practical Issues with Laws Governing Electronic Records of State and Local Governments

by J. T. Tokarz

Like all modern businesses, state and local governments create a variety of electronic records. And like those businesses, their electronic records are subject to discovery, subpoena, and requests for production by regulatory agencies.

However, public agencies also are subject to statutory and regulatory requirements to facilitate citizen access to their records. Recent changes in the Federal Rules of Civil Procedure (the Rules)[1] have triggered hard thinking about these requirements as well as the maintenance and production of electronic information by other entities.

Virginia Freedom of Information Act

The Virginia Freedom of Information Act (FOIA)[2] expressly provides for access to electronic records of public bodies, and it addresses several questions unique to them. Nonetheless, difficult issues affecting them, as well as other entities, remain.

One is the burden of handling open-ended requests, e.g., "all documents and files of any agency employee regarding Joe Smith." In a large agency or local government, such a request could paralyze the organization while each employee searches his computer and collects relevant files for review by counsel for exempt or privileged information.

FOIA provides mechanisms to limit such paralysis. Agencies may charge actual costs for access and search time and may require advance payment of costs likely to exceed $200.[3] FOIA also allows the public body to seek additional time from the appropriate court "when the request is for an extraordinary volume of records" and a response within FOIA's time limits "will prevent the public body from meeting its operational responsibilities."[4]

Parties in litigation, including state and local governments, are not so lucky. Although they are entitled to seek protective orders against overbroad discovery,[5] parties may not recover search and production costs for most of their own records. This can be a major problem given the enormous volume of electronic records in large organizations. For example, in ongoing products liability litigation about its painkiller Vioxx, Merck has produced over two million documents and privilege logs for over thirty-thousand documents totaling over five hundred thousand pages.[6]

Another difficult issue involves deleted files or e-mails. Most users are unaware that files and e-mails they deleted days or even years earlier may still reside on their computers, agency servers, or centralized backup tapes. Is an extraordinary search for deleted e-mails in personal computers, in servers, and on backup tapes required? FOIA is silent on this issue, but it is unlikely to become a major issue under the act because of the agency's ability to demand reimbursement for search costs. On the other hand, some courts have required parties in litigation to pay for the restoration of backup tapes to find deleted files.[7] The test under the Rules is whether the electronic information is "reasonably accessible because of undue burden and cost."[8]

A major concern is e-mail—a phenomenon virtually unknown a little more than a decade ago. E-mail makes it easy to send messages and attachments to multiple persons with a single mouse click, and the volumes are staggering. A 2005 Microsoft study found that the average employee receives fifty-six emails a day.[9] Using Henrico County's various departments as an example yields an estimate of one million e-mails to county employees each year. It is critical to determine which e-

Electronic Record Keeping for State and Local Governments*

	Correspondence (including e-mails) must be kept:
Chairpersons of local boards and councils	permanently
Board members and department heads	three years
Other officials	two years

Lower-level employees may destroy routine, administrative correspondence when it is no longer administratively necessary.

*According to the Library of Virginia's E-mail Management Guidelines

mails must be retained and which may be permanently deleted.

Virginia Public Records Act

The Virginia Public Records Act (the Act)[10] specifies which records public bodies must keep. The State Library Board implements the Act through regulations for record retention and destruction.[11] In addition to other schedules of general applicability, the Library of Virginia (the Library) has issued guidelines for e-mails and general schedules for administrative and electronic records.[12]

The Act broadly defines a public record as "recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions."[13] The scope of this definition sometimes leads to retention of electronic files that are no longer necessary to carry out public business.

For example, the Library's *Q & A about E-Mail Retention* requires retention of e-mails that contain "policies and directives; correspondence or memos pertaining to the organization's business; work schedules and assignments; documents circulated for approval or comment; and any message that initiates, authorizes, or completes a business transaction, final report, or recommendation."[14] Taken literally, this formula encompasses most e-mails of every employee because they pertain to the organization's business. Although the Library's *E-mail Management Guidelines* advise employees to periodically clean up their e-mail, their examples of e-mails that may be legally deleted are relatively limited: copies of e-mails to primary recipients, non-final e-mails in a e-mail thread, announcements of social events, Listserv chats, etc.[15]

In the absence of legal requirements, basic efficiency would lead employees to print out or save e-mails they or their employer know are important or they need for their work, and to delete the rest of them. Unless there is a litigation hold for documents that might be needed in a lawsuit, this is preferable to keeping nonessential e-mails and records that clutter computers and make the task of reviewing and producing old e-mails for FOIA or discovery requests a nightmare.

The Library's guidelines classify most e-mails as correspondence and permit lower-level employees to destroy routine, administrative correspondence when it is no longer administratively necessary.[16] However, chairs of local boards and councils must keep their correspondence and e-mails permanently, even if routine or administrative, other board members and department heads must keep them for three years, and other officials must retain them for two years.[17] Equally important is the obligation to destroy records as provided in the Library's retention schedules.

These are not just issues for government agencies. Many corporations formerly limited retention of much of their data to six to nine months. However, the federal Sarbanes-Oxley Act[18] enacted after the massive Enron and WorldCom scandals has triggered greater retention of e-mails and other electronic files. Ironically, some analysts charge that simply storing more records actually makes fraud easier to conceal because the higher volume helps hide irregular transactions.[19] These critics think it is more important to decide what is necessary to keep and to get rid of the rest.

The increasing volume of electronic records, particularly trivial and routine e-mails, creates the need for hard choices about efficiency in electronic record keeping. Although the Virginia Public Records Act and FOIA (as well as Sarbanes-Oxley) have noble purposes, those purposes must be weighed against the costs of keeping thousands or millions of e-mails and electronic files unless the maker or recipient sees a particular need to do so.

Endnotes:

1 Extensive new e-discovery provisions in the Rules went into effect December 1, 2006. The Supreme Court of Virginia is considering similar provisions for state litigation.

2 VA CODE ANN. § 2.2-3700 et seq .(2007)

3 VA CODE ANN. § 2.2-3704 (H) (2007)

4 VA CODE ANN. § 2.2-3704 (C) (2007)

5 FED. R. CIV. P. 26 (b)(2)(C)

6 *In re: Vioxx Prods. Liab. Litig.*, No. 1657, Section L(3) at *1, 2007 U.S. Dist. LEXIS 60299, *1, *3 (E.D. La. August 14, 2007)

7 *See Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004)

8 FED. R. CIV. P. 26 (b)(2)(B)

9 **http://www.microsoft.com/presspass/press/2005/mar05/03-15ThreeProductiveDaysPr.mspx**.

10 VA CODE ANN. § 42.1-76 et seq. (2007)

11 VA CODE ANN. § 42.1-82. (2007)

12 The Library of Virginia Web site has a number of resources for electronic records at **http://www.lva.lib.va.us/whatwedo/records/electron/index.htm**.

13 VA CODE ANN. § 42.1-77 (2007)

14 Library of Virginia *Q & A about E-Mail Retention* (October 2006), #2

15 Library of Virginia *E-Mail Management Guidelines* (October 2006), #1

16 Records Retention and Disposition Schedule General Schedule No. 19 Administrative Records (February 1, 2001)

17 *Id.*

18 15 U.S.C. § 7262 (2007)

19 *Hidden fraud risk in Sarbanes-Oxley?* ZDNet News (March 7, 2007) found at **http://www.news.zdnet.com/2100-1009-5602776.html**.

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existing rules-based system. It also means taking greater advantage of the consultation stage in the dispute resolution system, where it can be more effectively utilized to settle contentious cases involving specific and divisive trade issues. This stage requires traditional diplomatic negotiations to occur in a confidential context. This reliance on more vigorous negotiations would be better for U.S.-China bilateral relations and enhance global governance of trade. Furthermore, it would strengthen the rules-based multilateral system.[50] The WTO Director-General Pascal Lamy recently concluded, "[T]he WTO is an engine, a motor energizing the international legal order . . . a catalyst for international mutual respect towards international coherence and even for more global governance, which I believe is needed if we want the world we live in to become less violent . . ."[51] ⚖

Endnotes

1 "The biggest challenge in international economic policymaking is the incorporation of China (into the trading system)." Martin Wolf, "The Right Way to Respond to China's Exploding Surpluses," *Financial Times* (May 30, 2007).

2 For a general review of WTO litigation and the role of the United States in it, *see* Malawer, "Litigation and Consultation in the WTO: 10th Anniversary Review," *Virginia Lawyer* (June/July 2005). *See also*, Lawrence, "The U.S. and the WTO Dispute Settlement System." (Council on Foreign Relations 2007).

3 "USTR Press Release—Remarks." (Feb. 22, 2007), "USTR Chinese Subsidy Fact Sheet." (February 2, 2007) and "USTR Press Release." (February 2, 2007). The status of four U.S. cases against China in the WTO/DSU is reviewed. "WTO Begins Formal Probe into Alleged Chinese Subsidies." *Wall Street Journal* (August 31, 2007). "Official China Reaction against Subsidy Case Filed in Feb. 2007." (China Embassy to the U.S.) (September 4, 2007).

4 DS 358.

5 DS 359.

6 Official USTR Releases: "U.S. Files WTO Cases Against China." (*USTR* April 9, 2007); "IPR Legal Regime." (*USTR* April 9, 2007); "Market Access Restrictions." (*USTR* April 9, 2007).

7 DS 362.

8 DS 363.

9 DS 309.

10 "U.S. and China Resolve WTO Dispute Regarding China's Tax on Semiconductors." (*USTR News* 9.15.06).

11 "U.S. Requests WTO Panel in China's Treatment of Auto Parts." (*USTR News* July 8, 2004).

12 EU and U.S. complaints against China concerning its tariffs on auto parts have caused China to react vigorously against it. *See*, "EU's Request for Panel" (*EU Press Release* September 5, 2006); "U.S. Auto Action Against China." (*USTR Press Release* September 25, 2006); "China's Reaction." China Ministry of Commerce (MOFCOM) *News Release* (September 20, 2006).

13 DS 340.

14 "China Threatens WTO Claim Over US Export Duties." *Financial Times* (September 17, 2007). "Official China Announcement—WTO & Paper Dispute Consultations." MOFCOM (September 17, 2007).

15 China was a complainant along with other nations against the United States concerning President Bush's safeguard measures on steel in 2003. (DS 252) It also has threatened to bring an action against the European Union over antidumping duties on shoe imports from China. "EU Faces Double Court Threat on Shoe Tariffs," *Financial Times* (October 5, 2006).

16 DS368 (Request for consultations received September 14, 2007).

17 The U.S. Court of International Trade refused to stop the action on subsidies against China that is pursuant to the U.S. government's new policy that imports from nonmarket economies (NME) may be considered a subsidy and subject to countervailing duties. *People's Republic of China v. U.S.* (Court No. 07-00010) (March 29, 2007). "China Dissatisfied with Trade Action." (China Ministry of Commerce, *Press Release* April 3, 2007).

18 "China Trade Mission to the WTO News Release." (April 25, 2007).

19 "China's Ministry of Commerce News Release." (April 3, 2007).

20 "Remarks by U.S. Trade Representative Susan C. Schwab on U.S.-China Relations." (October 23, 2007).

21 "China-U.S. Talks Continue, Amid Legal Volleys," *New York Times* (July 30, 2007).

22 "G-7 Steps Up Pressure on China on Currency," *Washington Post* (Oct. 22, 2007).

23 "The U.S.-China Joint Commission on Commerce and Trade (JCCT)—Outcomes on U.S. Request." (*USTR* April 11, 2006). The annual report concerning China's WTO compliance released by the USTR contends compliance has been a mixed picture. "2006 Annual Report on China's WTO Compliance." (*USTR* 2007). The USTR released the 2007 special intellectual property report, which singled out China and Russia as the main offenders. 2007 Special 301 Report (USTR 2007). *See also*, "U.S. China Trade Relations: Entering a New Phase of Greater Accountability and Enforcement—Top-to-Bottom Review." (*USTR* 2006).

24 "Antidumping—Initiations & Final Actions." *WTO News Release* (June 11, 2007). The WTO reported that the EU initiated the highest number of new cases for the last six months of 2006, and China remains the target of the most new investigations. However, it was India that launched the most new safeguard actions and applied such final measures from January 1, 1995, through October 23, 2006. "WTO Announces Latest Statistics on Safeguard Actions." *WTO News Release* (November 29, 2006).

25 "Nations Dust Off Their Antidumping Duties in Response to Chinese Pricing," *Financial Times* (October 24, 2007).

26 *See generally*, "Paulson Warns Against Legislation on China," *New York Times* (September 11, 2007); "Congressional Momentum Grows to Punish China Over Yuan Value," *Wall Street Journal* (August 2, 2007); "Showdown Looms on China Trade," *Wall Street Journal* (June 5, 2007).

27 Baucus, Grassley, Schumer and Graham, "We Must Act When Currencies Become Misaligned," *Financial Times* (July 6, 2007); "International currency exchange rate policies are contributing to global economic instability." *See also*, "Four in Senate Seek Penalty for China," *New York Times* (June 14, 2007).

28 Nicholas Kristof in "The New Democratic Scapegoat," *New York Times* (July 26, 2007) decries Hillary Clinton's and Barack Obama's China trade pronouncements as "cowboy diplomacy."

29 "Paulson Warns Against Legislation on China," *New York Times* (September 11, 2007).

30 "A Shift in Bush's Trade Politics," *Washington Post* (October 10, 2007).

31 "Showdown Looms on China Trade," *Wall Street Journal* (June 5, 2007).

32 "Administration Declines Section 301 Petition on China's Currency Policies." *USTR Press Release* (6.13.07).

33 "Free-Trade Fight Reflects Broader Battle," *Washington Post* (October 12, 2007); "How a Breakthrough in Trade Broke Down in Congress," *Washington Post* (November 22, 2007).

34 "A New Populism Spurs Democrats on the Economy," *New York Times* (July 16, 2007).

35 The issue of currency valuation in both international trade law and international finance law is complex and unsettled. It raises issues concerning the interplay of different international agreements. Neither the WTO Agreements nor the International Monetary Fund Agreement specifically addresses the issue of currency manipulation as a trade restriction or subsidy.

- WTO/GATT—Article XV ["Exchange Arrangements"] (4): "Contracting parties shall not, by exchange action, frustrate the intent of the provisions of this Agreement . . ."
- International Monetary Fund Agreement—Article IV ["Obligations Regarding Exchange Agreements"] (1)(iii): ". . . avoid manipulating exchange rates or the international monetary system in order . . . to gain an unfair competitive advantage over other members . . ."

36 "China's Economy Set to Grow by Over 11%," *Financial Times* (October 26, 2007).

37 "China on Course to Lead World IPO League," *Financial Times* (July 5, 2007).

38 "There's Peril in the Parallels as China Takes a Top Spot," *New York Times* (October 20, 2007).

39 "Transformed China is Ready for Overseas Investment," *Financial Times* (August 8, 2007). *See also*, "Treasury Official Warns Over Sovereign Wealth Funds," *Financial Times* (June 22, 2007).

40 Gideon Rachman, "Russia and China Challenge the West," *Financial Times* (October 23, 2007).

41 Gideon Rachman contends that both Russia and China present an ideological challenge to the West by relying on "authoritarian nationalism," rather than embracing liberal democracy for their economic prosperity. He poses the intriguing question, "Was it wrong to suppose globalisation and economic growth would eventually mean that Russia and China would become liberal democracies?" It seems wrong to conclude that the end of the Cold War meant that ideological arguments concerning economic prosperity were over.

42 Martin Wolf, "We Are Living in a Brave New World of State Capitalism," *Financial Times* (10.17.07). He states, "The big truth is that contemporary

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Janney *continued from page 52*

a Marine haircut and a demure bride in a yellow silk wedding kimono. Learning they had no plans for photographs, Roby would not let them depart until he had his faithful assistant, Jane Nichols, run down to the local drug store for Polaroid film so he could memorialize their union. Yes, Papa Janney was a romantic, too.

The long career of Roby Greene Janney is an inspiration to the profession. We who knew him were privileged to have him walk among us. We shall not see his like again. ⚖

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globalization has brought players into the game that operate by different rules from those espoused by today's high-income countries; vast state-owned companies . . . countries that accept a bigger role of the state in markets than western countries do today."

43 "This would seem to be an odd time for Congress to start a trade war with China." "Wrong Target," *Washington Post* (June 22, 2007).

44 "Another Shot in Currency Fight: Chinese Threaten Divestment," *Washington Post* (August 10, 2007).

45 "U.S. industry is divided over a decision by the Bush administration to file two cases today against China at the World Trade Organization over restrictions on foreign media and piracy." "US Pressure on China Divides Industry," *Financial Times* (April 9, 2007).

46 "China and India Will Shield GE from U.S. Downturn, says Immelt," *Financial Times* (October 29, 2007).

47 For an earlier discussion of litigation versus negotiation within the WTO system *see*, Esserman and Howse, "The WTO on Trial," 82 *Foreign Affairs* 130 (January/February 2003). The authors state, "Less often considered is whether this ascendant legalism is good or bad for global prosperity and stability. In most cases, it turns out, it is still too early to say. There is one exception, however: the WTO. Nowhere else has international conflict resolution by judges emerged more forcefully or developed more rapidly . . . An accurate assessment of the WTO's judicial record finds that the system has indeed reduced the role of international diplomacy, while strengthening the rule of law." *See also*, "And if negotiations are fruitless, litigation takes over" in "How Lawsuits are Coming to Dictate the Terms of Trade." *Financial Times* (March 20, 2007). "[T]he World Trade Organization system has so far done a good job of holding protectionist sentiment in check." "Tight Rules are Keeping a Lid on Trade Wars." *Financial Times* (June 5, 2005).

48 Lawrence, "The U.S. & the WTO Dispute Settlement System." 6 (Council on Foreign Relations 2007).

49 *Id.* at 18 and 20.

50 Director-General of the WTO Pascal Lamy declares in "WTO & Global Governance" (November 1, 2006) that "The WTO is nevertheless a laboratory for harnessing globalization and contributing to the construction of a system of global governance. A place where evolving global governance can find some roots in ensuring legitimate decision-making."

51 Pascal Lamy, "The Place and Role of the WTO (WTO Law) in the International Legal Order." *WTO News Release* (May 19, 2006) (address before the European Society of International Law).

Clients' Protection Fund Board Petitions Paid

On September 21, 2007, the Clients' Protection Fund Board approved payments to eight claimants. The matters involved seven attorneys.

Attorney/Location	Amount Paid	Type of Case
Walter F. Green IV, Harrisonburg	$2,500.00	Unearned retainer/Habeas corpus matter
Walter F. Green IV, Harrisonburg	$2,500.00	Unearned retainer/Civil matter
Robert John Harris, Lovettsville	$750.00	Unearned retainer/Criminal (expungement) matter
John Coury Macdonald, Fairfax	$2,500.00	Unearned retainer/Estate matter
Brian Merrill Miller, Fairfax	$750.00	Unearned retainer/Divorce matter
John Henry Partridge, Herndon	$3,000.00	Unearned retainer/Medical malpractice case
Troy A. Titus, Virginia Beach	$50,000.00	Embezzlement/Trust funds
Rickey Gene Young, Martinsville	$13,333.33	Embezzlement/Personal injury settlement proceeds
Total	**$75,333.33**	

Proposed Amendments to Part 6, Section IV, Paragraph 5, Rules of Supreme Court of Virginia

On July 2, 2007, President Howard W. Martin Jr. appointed a task force to examine the current size of the Virginia State Bar Council and consider recommending changes in Paragraph 5. This provision governs the circumstances under which a circuit qualifies for additional representation on council beyond the one council member guaranteed for each of the 31 circuits.

The size of the elected component of council grew from 40 members in the late 1970s to 60 members by the early 1990s, when Paragraph 5 was last amended to increase the number of active members required for an additional seat in a given circuit from 300 to 400. At that time all circuits were grandfathered so that no circuit lost any council representation. This change arrested the size of council until quite recently, when additional seats were added in circuits 19 and 20.

At its meeting on September 20, 2007, the task force concluded that action should be taken to prevent the council from growing further in the foreseeable future in order to keep it a policy-making body of reasonable size where all members have an opportunity to speak and participate during meetings. It also was agreed that the current arrangement under which all circuits are guaranteed at least one member of the council should be retained.

Accordingly, the task force voted with one member absent and one no vote to recommend that the number of active members required for an additional seat in a circuit again be increased from 400 members to 500 members, or major fraction thereof. In addition, the task force voted to change the date in the grandfather clause of the paragraph from July 1, 1992, to July 1, 2008, the anticipated effective date of the proposed rule changes. This will preserve the three additional seats that have been added since 1992 in circuits 19 and 20, as well as any that may be added during the 2007-08 bar year in any circuit.

The proposed rule change will be considered by the Council of the Virginia State Bar at its next meeting on March 1, 2008, and the proposed change is published below for comment. Any member of the bar having comments about the proposed change may direct those to: Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800, no later than February 1, 2008.

5. THE COUNCIL.—The powers of the Virginia State Bar shall be exercised by a Council composed of at least thirty-seven members in addition to the President, President-elect and Immediate Past President, as ex officio members, elected and appointed as follows:

   At least one active member from each of the thirty-one judicial circuits, elected for a term of three years by the members of the bar of each circuit, and nine members appointed by the Supreme Court of Virginia from the active members of the bar of the state at large. The Court shall appoint the at-large members to serve for a term of three years and, further, shall appoint in such a manner as to ensure that three members are appointed annually. A person who has served two successive full three-year terms as an elected or appointed member of Council shall not be eligible for election or appointment to a third successive term.

   For each additional judicial circuit, whenever created, there shall be a member of the Council, who shall be an active member of the bar of that circuit. An election shall be held in such circuit within sixty (60) days after the creation of such circuit or as soon thereafter as may be feasible in the manner provided at Paragraph 6. The Council at its meeting next thereafter shall determine the length of the term of the first member from that circuit so that, as nearly as possible, the terms of one-third of the members of the Council expire each year.

   Any circuit having as of the ~~15th~~ 1st day of March in any year more than ~~400~~500 active members in good standing who are domiciled or principally practice their profession in such circuit shall be entitled to one additional member of the Council for each additional ~~400~~ 500 members or major fraction thereof. In the event that the membership in a circuit as of March ~~15~~ 1 is such that it is no longer entitled to one or more additional members, the term of such additional member[s] of the Council shall end at the expiration of the term for which the member[s] was elected. Provided, however, that the number of Council members from each circuit as of July l, ~~1992~~ 2008, shall not be reduced unless the active membership in the circuit first increases to the number which will sustain its allocation of Council members as of July l, ~~1992~~ 2008, under the above formula, and subsequently falls below that number.

   Whenever a judicial circuit shall be abolished, the term of any member of the Council from that circuit shall end forthwith.

   The President of the Young Lawyers Conference shall serve as an ex officio member of the Council.

   The Chair of the Conference of Local Bar Associations shall serve as an ex officio member of the Council.

   The Chair of the Senior Lawyers Conference shall serve as an ex officio member of the Council.

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To All Members of the Virginia State Bar:

It has been a high honor and a privilege for me to serve as your Executive Director and Chief Operating Officer for the past nineteen years. You have been generous in allowing me to do the job with considerable independence and the freedom to tackle the issues we have faced in the way the bar's officers and I thought best—usually with your strong support and encouragement.

I am particularly proud of the outstanding bar leaders and staff with whom I have had the pleasure of working during these almost two decades, and I shall remember them with great respect and fondness as I move into retirement at the end of 2007. We have made major strides in the effective handling of all our regulatory work during this period, and the disciplinary system has been rendered more open and transparent, thus improving public confidence in our process. When additional resources were determined to be needed for this purpose by the bar staff and our regulatory committees, you, through approval by the VSB Council, the Supreme Court of Virginia, and the General Assembly, never failed to provide them.

The bar's information systems software has been completely rewritten and all databases integrated during the past several years, our hardware has been modernized, and a new and more functional telephone system is on order. All of this will enable the bar to deal more efficiently and effectively with its members and the public, as well as deliver more information and services electronically. More work in this area will need to be done in the future, but we have made a good start.

The significant strengthening of the Clients' Protection Fund is also a source of great satisfaction and pride for me, as we have worked to increase the corpus of the fund through frequent transfers from the bar's reserves or operating budgets over the years. Beginning this year, a special twenty-five dollar assessment was authorized for each of the next several years from all active members, with the funds earmarked for the CPF. At the end of that time, the Virginia State Bar will have one of the most secure of these funds in the country, assuring clients of those few lawyers who defraud or steal from them that all likely future claims can be satisfied from earnings on the fund without further contributions from bar members.

Thank you again for allowing me to serve the bar in this way. I hope you will all continue to insist on outstanding results and good stewardship of the bar's resource in the future, and that you will give my successor, Karen Gould, the same support you have given me during my tenure.

Sincerely,

Thomas A. Edmonds

Thomas A. Edmonds