

# Contributors



Dahnk



Coggins



Ullian



Gernhardt



Johnston



Lederer



Janto



Witthoefft



deLeon

**Jeannie P. Dahnk** received her undergraduate degree from George Washington University and her law degree from the College of William and Mary. She is a past president of the Virginia State Bar. She serves on the VSB Sixth District disciplinary committee and on the Special Committee for Lawyer Malpractice Insurance. She practices in Fredericksburg with her husband, William E. Glover, at Glover & Dahnk. [page 11]

**Timothy L. Coggins** is the associate dean for library and information services and a professor of law at the University of Richmond School of Law. He wrote the Alabama and Arkansas state chapters in the American Association of Law Librarians Report and served as the cochair of the planning committee for “Authentic Legal Information in the Digital Age: A National Summit,” which was sponsored by the AALL in April 2007. [page 35]

**Jeanne Ullian** is the firm librarian in the Norfolk office of Williams Mullen. She received her bachelor’s degree from the College of St.

Catherine in St. Paul, Minnesota, and her master of science degree in information sciences from the University of Tennessee at Knoxville. She is a member of the Virginia Association of Law Librarians. [page 38]

**Michele Gernhardt** is a reference librarian in the Richmond office of Hunton & Williams. She received her law degree from the University of Richmond and her master of science degree in library and information science from the Catholic University of America. She is a member of the executive board of the Virginia Association of Law Librarians. [page 41]

**Janean S. Johnston** is an attorney licensed in Minnesota, and she has conducted legal risk-management and ethics audits and reviews nationwide since 1987. She has recently returned to Virginia and has been retained by the VSB Lawyer Malpractice Insurance Committee to assist with its overall risk-management efforts on behalf of Virginia lawyers. [page 51]

**Gail Warren** is the Virginia state law librarian. She edited the law librarian feature articles for this issue. A profile on Warren appears on page 45.

**Frederic I. Lederer** is chancellor professor of law and director of the Center for Legal and Court Technology at William and Mary Law School. See <http://www.legaltechcenter.net>. [page 52]

**Joyce M. Janto** is the deputy director at the University of Richmond’s William Tyler Muse Law Library. She received a law degree from the University of Richmond, a master’s from the University of Pittsburgh, and a bachelor’s from Clarion University of Pennsylvania. She is a past president of the Virginia Association of Law Librarians and the Southeastern Chapter of the American Association of Law Librarians and a former treasurer of the American Association of Law Librarians. [page 53]

**Charles F. “Rick” Witthoefft** is a shareholder and chair of the litigation section of Hirschler Fleischer PC in Richmond. He

is a fellow of the American College of Trial Lawyers. Witthoefft has thirty-six years of trial experience representing both plaintiffs and defendants in commercial cases involving contract, business tort, antitrust, securities, landlord-tenant, land use, professional liability, employment, trust and estate, and environmental law issues. [page 54]

**Farrah G. deLeon** is an associate in the litigation section of Hirschler Fleischer PC. Her practice focuses on commercial, construction, and land use litigation, and immigration law. [page 54]

# Opinion: Legal Malpractice Insurance Should Not Be Mandatory

by Jeannie P. Dahnk

*Editor's Note: The Virginia State Bar Council is considering a proposal to require lawyers in private practice who regularly represent the public to carry legal malpractice insurance. An article in support of the proposal was published in the April 2008 issue of Virginia Lawyer. [http://www.vsb.org/docs/valawyer magazine/vl0408\\_debate-insurance.pdf](http://www.vsb.org/docs/valawyer magazine/vl0408_debate-insurance.pdf)  
The following article opposes making malpractice insurance mandatory.*

## **Mandatory insurance does not protect the public**

Mandatory legal malpractice insurance protects the lawyer. Malpractice insurance is not created nor designed to protect the public. An insurance company's interest is diametrically opposed to a claimant's. Malpractice insurance is not intended to pay a claimant, but to defend and protect the lawyer. Of twelve unpaid malpractice claims (for approximately twenty-six thousand lawyers in private practice), nine involved insured lawyers and three involved uninsured lawyers. Educating the public as to what malpractice insurance is and what it is not provides more benefit to the public than simply requiring a lawyer to be insured.

## **Cure in search of a disease**

There is no crisis regarding lawyers and malpractice insurance. Ninety percent of Virginia lawyers voluntarily carry malpractice insurance. The average in other states is approximately 67 percent. No other profession in Virginia, including the medical profession, requires malpractice insurance. Other professions regulated administratively by the state are not mandated to carry malpractice insurance because that insurance does not protect the public.

## **Mandatory insurance is already a remedy**

If a lawyer violates ethical rules, the Virginia State Bar already has the power to order as a requirement that the lawyer

carry malpractice insurance to continue practice or return to practice.

## **Disclosure already required**

Virginia is one of a few states that require lawyers to disclose whether they carry malpractice insurance. This information is easily and quickly obtainable by calling the bar at (804) 775-0530 or at <http://www.vsb.org/attorney/attSearch.asp?S=M>. The public can conveniently know whether a lawyer reports that he or she has insurance.

## **Violation of due process**

If a lawyer has been found fit to practice law and given a license but is required to obtain malpractice insurance and cannot, the lawyer is prevented from practicing law. This violates the due process clause of the U.S. Constitution. It is predictable then that the VSB would be successfully sued and would most likely be ordered to pay attorney's fees. The bar, improperly and unfairly, is abdicating to a private insurance carrier — whose motive is financial, not public protection — the decision as to who can and who cannot practice law. The VSB has no business doing this, and a private insurance carrier has no business making such a decision.

## **Making insurance mandatory will increase premiums for all lawyers**

If malpractice insurance is required, all premiums will go up. Whether the insurance is provided by a captive entity or private insurers, they will charge more

for "required" coverage. Insurers will raise the rates because we have to have it, because they can, and because they cover everyone. This may cause some lawyers to decrease the amount of their coverage because of increased premiums.

## **Outside the mission of the VSB**

The mission of the VSB is to regulate the profession, help the public with access to legal services, and improve the legal system. Requiring legal malpractice insurance does not fall into any of these duties. Not since the creation of the VSB in 1938 has mandating insurance ever been considered a duty of the VSB. If mandating coverage was part of the bar's duties, it would have been a requirement in 1938 or called for long before now, especially given the malpractice insurance crisis in the 1970s. The fact that it is not, nor has it ever been, required speaks volumes to its lack of application to either the bar's mission or protection of the public.

## **Frivolous lawsuits will result**

Mandatory malpractice insurance will generate unnecessary lawsuits. Claimants will file malpractice cases regardless of the merits because there is insurance. Claimants file these suits because lawyers hate to be sued and will settle just to get out of the suit. Insurance companies will pay nuisance settlements to keep their costs down, which will reflect poorly and incorrectly on the profession.

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# President's Message

by Manuel A. Capsalis



## So Begins the Task

*We cannot deny the need for a vigilant commitment to diversity.*

IT IS TRULY A HUMBLING HONOR to assume the presidency of the Virginia State Bar.

As I look forward to the year ahead, I must begin by looking at the bar year just ended. I succeed in the presidency (but do not replace) the quintessential Virginia gentleman, Howard Martin. I first met Howard years ago during our time on the executive committee of the Conference of Local Bar Associations (CLBA). We worked together on the many projects of the CLBA, including the impressive Bar Leaders Institute that continues to be held throughout the state. Over the years, Howard and I also served on Bar Council. It was not until this past year, however, that I had the opportunity to work with Howard on a consistent, almost daily basis, as an officer of the bar.

Recently someone asked a major-league manager to describe Bobby Cox, the longtime manager of my forever favorite team, the Atlanta Braves, and a certain Hall of Famer. The manager responded simply with two words: "the standard." For me, Howard Martin proved himself to be the standard against which I and future presidents must be judged. His dedication to public service is beyond reproach. His commitment to the ideals of our noble profession is inspiring. It has been my privilege to work with this gentleman. He has done our profession and the commonwealth proud. And yes, he has raised the bar yet higher for future presidents, including yours truly.

And now for me, so begins the task. I temporarily inherit the presidency of a bar with more than twenty-seven thousand active members, as well

as thousands more associate, retired, and judicial members. I am joined in service by many. The wonderful attorneys who devote thousands of hours of volunteer service to the bar continually remind me of all that is good and just about our profession. I know of no other profession that is as committed to public service, or any that accomplish so much for the collective good.

We have a bar staff without equal, and I am privileged to work with them. Whether it be organizing the annual meeting or the many other major events, or the logistical work of a conference, committee or section, or the daily running of the bar office, our staff is outstanding. They withstand the centrifugal forces constantly at work, and somehow make it look easy. I have no idea how they do it so well; I am just glad we have them.

For the year ahead, no doubt, the pressing issues are many. I have chosen in my first president's column to devote some thoughts on two of the issues we face, each of which will require resolve and good courage. Those issues are diversity and public protection.

### Diversity

I BELIEVE WE MUST RENEW our commitment and focus on diversity. For our legal profession and our judiciary to be properly responsive to the needs of society, we must be more reflective of the demographics of society. We are not. Our profession has made tangible improvement in better diversifying our ranks. To suggest that our work is done, however, is wrong.

Statistics from the American Bar Association indicate that the percent-

age of law students of color in recent years has leveled off, and in many cases, actually decreased. In Virginia, there remains a paucity of attorneys of color in state and local bar leadership. There continues to be a tangible shortage of attorneys capable of offering legal services to many of our fellow citizens who do not yet adequately speak, read, or write English.

Our profession is the guardian of the Rule of Law, the essence of our system of justice and what binds together our civil society. This is a glorious burden, and one which carries with it great responsibility. I believe the preservation of the Rule of Law is inextricably linked to diversity. Simply put, the Rule of Law without diversity is, at best, an incomplete principle, and at worst, a hollow promise to many who live among us.

We cannot deny the need for a vigilant commitment to diversity. The question, it seems to me, is whether we can live up to what Abraham Lincoln described as the "better angels of our nature." Can we make our profession more responsive to all segments of society? Can we better reach out to our fellow Virginians, especially our youth who feel alienated within our society? How can we expect to be more inclusive when those we should be focusing on feel nothing but exclusion?

Admittedly, these questions extend beyond the scope of a president's column. But these are the questions that we must ask, and for which we must earnestly seek answers. As this column is being written, I am authorizing the creation of a Diversity Task Force,

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# Executive Director's Message

by Karen A. Gould



## Our Budget Challenge: Cut Member Services?

THE VIRGINIA STATE BAR'S BUDGET continues to be a focus of the officers and staff. Current projections suggest that we will spend \$400,000 from the VSB reserve fund in fiscal year 2008–09. Should we cut programs and services in order to match expenses to revenue? If so, which ones should be cut? Every program has its advocates, with some programs, meetings, or services reaching "sacred cow" status.

Approximately 60 percent of the bar's revenue is spent on the disciplinary system, fulfilling the bar's mission of protecting the public from unethical attorneys. Approximately 25 percent of bar revenue is spent on expenses related to membership obligations, including administration of the mandatory continuing legal education requirement. The remaining 15 percent goes to fulfill the bar's mission of providing access to justice for all Virginians and enhancing the competence of Virginia's lawyers. A review of activities over the last year highlights many of the services the bar provides to its members, largely through the assistance of its volunteer lawyers. This list is not exhaustive and does not include the programs and expenses that the bar incurs for client protection and to serve the public.<sup>1</sup>

### **Admission & Orientation**

**Ceremony:** The Young Lawyers Conference of the VSB hosts Virginia's new lawyers twice a year at the Admission & Orientation Ceremony.

**Bar Leaders Institute:** The VSB's Conference of Local Bar Associations holds a Bar Leaders Institute to help new local and statewide bar officers plan their bar year. The BLI was held this year at George Mason University's

Prince William Campus on May 16, 2008.

### **Celebration of Women and Minorities in the Legal Profession**

**Bench-Bar Dinner:** Hosted by the VSB's Young Lawyers Conference, this dinner serves to highlight the accomplishments of women and minorities in our profession.

**Docket Call:** The Young Lawyers Conference publishes a newsletter for its 9,655 members to keep them posted on what the conference is doing.

**Fastcase:** The bar continues to offer the online legal research program, Fastcase, free to its members. To access the program, simply log in to <https://member.vsb.org/vsbportal/> with your member number and password and click on the Fastcase logo. In May 2008, 2,421 VSB members used Fastcase 11,603 times, with 28,464 searches and 45,581 documents viewed.

### **Fee Dispute Resolution Program:**

This voluntary program helps attorneys and clients resolve disputes over fees and costs paid, charged, or claimed for legal services. The VSB Committee on the Resolution of Fee Disputes administers panels across the state to mediate or arbitrate these disputes.

### **Indigent Defense Training**

**Program:** Sponsored by the Supreme Court of Virginia and the VSB, this training is held once a year to promote excellence in defense of the indigent in criminal cases. Lawyers who take court-appointed cases attend without charge.

**Legal Ethics Hotline:** The Legal Ethics Hotline, (804) 775-0564, is monitored during business hours by one of four ethics counsel. The hotline receives more than four thousand calls

per year from lawyers seeking advice on how to comply with the ethical rules. Information disclosed and advice provided is strictly confidential and is not disclosed to anyone without the written permission of the inquiring lawyer.

**Legal Ethics Opinions:** Legal ethics opinions, which are required by Court rule, are another source of help. The Standing Committee on Legal Ethics issues opinions responsive to hypothetical questions submitted by lawyers. These opinions are drafted by an individual member of the committee, then debated and revised by the Ethics Committee before being issued.

### **Minority Pre-Law Conference:**

The VSB's Young Lawyers Conference held two Minority Pre-Law Conferences during the 2007–08 fiscal year: one in November 2007 at the Washington and Lee School of Law; and the second in February 2008 at the George Mason School of Law. These excellent programs serve to further the bar's diversity initiative to encourage minorities to attend law school.

### **Planning Ahead: Protecting Your Clients' Interest in the Event of Your Disability or Death:**

The VSB's Senior Lawyers Conference promotes a program given through local bar groups by Richmond lawyer Frank O. Brown Jr. that educates lawyers on the need for succession planning in the event of death or disability. Approved for two hours of CLE credit, the program is free.

**Pro Bono Conference:** The VSB's Access to Justice Committee sponsors a yearly Pro Bono Conference, which was held this year on May 22–23, 2008, at

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Washington and Lee School of Law. This year's program featured a day of CLE programming related to supervising and mentoring law students, economic development, and the housing crisis. There was also a ceremony honoring Phyllis C. Katz with the 2008 Lewis F. Powell Jr. Pro Bono Award, and Ashley R. Brott with the 2008 Oliver White Hill Law Student Pro Bono Award.

**Risk Management Services:** The VSB has a risk management service funded by its endorsed legal malpractice insurance carrier, ALPS. John J. Brandt, an attorney in private practice, provides this service. He can be reached at (800) 215-7854 for free consultation regarding matters of malpractice prevention, law office management, claims repair, and liability insurance.

**Senior Citizens Handbook and Program:** The VSB's Senior Lawyers Conference publishes a *Senior Citizens Handbook* to help Virginians navigate through the many issues that affect them late in life. In addition, the conference offers local bars a template for sponsoring a community Senior Law Day.

**Solo & Small-Firm Practitioner Forum:** The VSB's Conference of Local Bar Associations held its Solo & Small-Firm Practitioner Forum in Richmond on May 1, 2008. This free CLE program was well-attended, with approximately two hundred lawyers registered from all over the state. At its conclusion, Chief Justice Leroy R. Hassell Sr. hosted a town hall meeting during which he responded to the audience's questions and concerns.

**Virginia Lawyer Referral Service:** Lawyers can register with the VSB's Lawyer Referral Service and get referrals from callers seeking legal advice.

The VLRS takes a prepayment of \$35, which entitles the caller to consult with an attorney for one-half hour. A caller who requires additional time and work is required to pay additional fees.

**Virginia Lawyer, Virginia Lawyer Register, and Professional Guidelines:** These publications keep our members informed about disciplinary actions, and changes to the *Rules of Professional Conduct*. They provide essential information about the courts and the bar, and features substantive law articles by VSB practice sections.

THE BAR LEADERSHIP HAS SUPPORTED these programs over the years as essential to the bar's mission. As the budget gets tighter, we need input from our members to determine the continuing value of the programs to the practicing lawyer and to the public. What we decide may shape the legal profession

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### **Conclusion**

Mandatory legal malpractice insurance does not protect the public. To impose mandatory insurance so the bar can appear to protect the public is disingenuous and misleading. The fact of the matter is that Virginia lawyers take their clients, the public, and their duties seriously. This is evidenced by the 90 percent of Virginia lawyers who voluntarily carry malpractice insurance and the extremely low number of malpractice claims. The statistical data shows that the greater problem is with insured lawyers, not uninsured lawyers. Mandatory insurance would not improve nor expand the current protection for the public. For the above reasons, mandatory legal malpractice insurance is a bad idea. ■

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in the future. Keeping this in mind, what would you cut?

Let us know what you think. My email address is [gould@vsb.org](mailto:gould@vsb.org). ■

Endnote:

- 1 Lawyers Helping Lawyers (LHL) is not included in this list. The bar contributes to LHL — a nonprofit program independent of the VSB — as part of the public protection mission. LHL helps lawyers recover from mental health problems and substance abuse.

chaired by past president Joe Condo. This task force will review the current state of diversity within our profession, both state and local, and report its findings and recommendations to Bar Council for consideration. What are we doing right? Certainly examples include the Minority Pre-Law Conference, organized and presented by the Young Lawyers Conference. What are we not doing well, or simply not doing at all? For example, I believe we need a stronger commitment to pipeline projects throughout the state, focusing on youth, educating them about the Rule of Law, and allowing more of them to meet judges and attorneys who can teach them what the legal profession does, and what they are capable of achieving as dedicated citizens. I want us to better challenge our youth to join our honorable profession, and seek to make this country better for all.

In this regard, I am very pleased to tell you that the October issue of *Virginia Lawyer* will be devoted to diversity. We intend to offer an honest dialogue. Where fault is due, let the chips fall where they may. It is my hope the issue will help us better understand the realities of this subject, and allow us to explore what each of us, individually, and collectively as a profession, must seek to achieve. The need is too great to ignore.

### **Public protection**

THE OTHER ISSUE I have decided to address in this column is public protection. It has become increasingly clear that we must continue to devote primary focus on protection of the public. The recent transgressions of a handful of attorneys, apparently leading to the defalcation of more than \$10 million, reminds us of the need to always search for ways to best fulfill the core regulatory mission of the bar, namely protection of the public. I fully endorse the actions taken by Howard Martin over the course of this past year, including consideration of the issue of random audits, review of the question of mandatory malpractice insurance, and analysis of payee notifica-

tion and other strategies to eliminate or reduce lawyer defalcations.

I believe we do a commendable job in protecting the public. The question properly framed, however, is whether we can do a better job. In this regard, I realized that the bar has never brought together the different entities, including the Office of Bar Counsel, the various committees, task forces, and other groups, that all play important roles in this endeavor. I believe it is necessary and appropriate for us to do so. Accordingly, I have scheduled a Public Protection Conclave to be held on July 10, 2008, in Portsmouth, to coincide with the annual Disciplinary Conference. I foresee the conclave as an opportunity to better educate ourselves on how the bar and our profession currently fulfill our mission of public protection, to assess our respective roles and responsibilities, and to work together to formulate how we can better achieve the highest level of public protection.

I envision the conclave as the beginning of a necessary dialogue from which we can seek better ways to fulfill our mission. As the only self-regulated profession in the commonwealth, the legal profession has the unique responsibility of public protection through the governance of its members. I believe this conclave can assist us in better meeting that responsibility.

I have no desire for the conclave to be an exercise in self-admiration. I do, however, look forward to the conclave as the opportunity to provide an objective review of what we do and how we can do it better.

Whether it be diversity or public protection, or any other issue that is of concern to our profession, I welcome your thoughts and suggestions. I do not profess to have the answers to all the issues. I do intend, however, to devote my best efforts.

I welcome the challenge of serving as your president, and I look forward to the year ahead. ■



# Highlights of the Virginia State Bar Council Meeting

## June 19, 2008

At its meeting on June 19, 2008, in Virginia Beach, the Virginia State Bar Council heard the following significant reports and took the following actions:

### Mandatory Malpractice Insurance Proposal

The council voted to publish for comment a proposed rule that would require certain lawyers to carry malpractice insurance and set minimal limits for that insurance. The requirement would be imposed on lawyers “engaged in the private practice of law *regularly* representing clients (individuals or entities) drawn from the public.” The word “regularly” was added to prevent a chilling effect on pro bono work by corporate attorneys and others who do not draw their paying clients from the public. The council instructed that the publication include a disclaimer that the proposal has not been endorsed by the council. The proposal will be published on the VSB website and in the *Virginia Lawyer Register* so that members can comment before the October council meeting.

### New Bar Counsel

Edward L. “Ned” Davis, a fifteen-year assistant bar counsel, was endorsed without opposition for the position of bar counsel. He succeeds George W. Chabalewski. (See story on page 21.)

### VSB Website More Interactive

Virginia State Bar members now can use the VSB website to change their addresses of record and certify attendance at VSB-approved continuing legal education courses. VSB Executive Director Karen A. Gould demonstrated the new services, accessible through the members-only section of the website, <http://www.vsb.org>.

### VSB Budget Approved

Budget and Finance Committee member Jan L. Brodie outlined measures the VSB has taken to decrease its expenses, as the agency is spending deeply out of its reserves and facing the likelihood of requesting authority to increase dues in the near future. Economies include the Supreme Court of Virginia’s decision to cut the VSB staff’s cost-of-living raise to 2 percent and eliminate exceptional performance raises proposed for this year.

### ALPS Financial Rating Improves

President Howard W. Martin Jr. reported that insurance evaluator A.M. Best has replaced the “negative outlook” with a “stable outlook” designation in its rating of ALPS, the bar’s endorsed legal malpractice insurance carrier. Best also affirmed ALPS’s A-minus (excellent) rating. Company officials hope that the “minus” designation will be lifted in the near future.

### Emergency Legal Services Rule

The council unanimously endorsed a proposed rule that would allow flexibility in providing legal services in the case of a declared disaster. Under the proposal, the Supreme Court of Virginia may allow out-of-state lawyers to provide pro bono legal services to Virginians. The Court also may allow out-of-state lawyers displaced by disaster to practice temporarily in Virginia so they can continue to serve clients in their home jurisdictions.

The proposal grew out of the experience after hurricanes Katrina and Rita, when unauthorized practice of law rules limited out-of-state lawyers’ ability to help residents of the affected Gulf Coast states. The Virginia proposal ([http://www.vsb.org/docs/ELS-Rule\\_](http://www.vsb.org/docs/ELS-Rule_)

022808.pdf) will now go to the Supreme Court of Virginia for its consideration.

### UPL Opinions Endorsed

The council endorsed:

- UPL Opinion 213—Attorney on Associate Status Representing Multiple Ownership Interest in Negotiation and Drafting of Easement (see [http://www.vsb.org/docs/UPL\\_213\\_draft\\_040808.pdf](http://www.vsb.org/docs/UPL_213_draft_040808.pdf)), by a vote of 45–1.
- UPL Opinion 214—Nonlawyer Representation, for Compensation, of a Party to Arbitration (see [http://www.vsb.org/docs/UPL\\_214\\_draft\\_040808.pdf](http://www.vsb.org/docs/UPL_214_draft_040808.pdf)), by a unanimous vote.

### Memorials and Resolutions

The council endorsed a resolution in memory of Fairfax Circuit Judge David R. Stitt, an active volunteer with the VSB. On the bench, Stitt “served with toughness, compassion, fairness, and humor,” the resolution stated.

Mark D. Braley, director of Legal Services Corporation of Virginia, was recognized for his successful efforts in the 2008 General Assembly to increase money available for legal aid through court filing fees. The increase “will ensure that fewer low-income Virginians will be turned away due to staff vacancies in legal aid offices, that legal aid attorneys earn a living wage and no longer need to work second jobs to make ends meet, and that a greater number of dedicated legal aid staff will be able to work and retire with dignity,” according to the resolution.

VSB Assistant Executive Director Susan C. Busch was commended for her

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## Leesburg Attorney Is President-elect of the Virginia State Bar

Jon D. Huddleston, a general practitioner with Sevila, Saunders, Huddleston & White PC in Leesburg, has become president-elect of the Virginia State Bar for the 2008–09 fiscal year.

He ran without opposition for the post, and assumed it during the VSB Annual Meeting June 19-22 in Virginia Beach. In June 2009 he will succeed Manuel A. Capsalis of Arlington as head of the agency of forty-two thousand lawyers.

Huddleston's practice focuses on family law, serious traffic offenses, and civil litigation.

He has been involved in Virginia State Bar activities since he was licensed in 1986. He served on the board of governors of the Young Lawyers Conference

in the 1990s, and he rose through the ranks of the Conference of Local Bar Associations to become chair in 1996.

He served seven years on the VSB Council, a year on its Executive Committee, and as vice chair of its Budget and Finance Committee. He also was on the faculty of the Harry L. Carrico Professionalism Course that all Virginia lawyers must take.

Huddleston also is a member of the board of directors of the Virginia Law Foundation and a member of the Virginia Trial Lawyers Association and the American Bar Association.

In Loudoun County, he has coached with the Central Loudoun Basketball League since 2003 and with Loudoun Soccer in the house and travel leagues

for more than fifteen seasons. He received a coach of the year award in 2006.

A native of Virginia Beach, he received bachelor's and law degrees from the College of William and Mary.

He and his wife, Cynthia N. "Cyndy" Huddleston, have two sons: Bobby, thirteen, and Jack, eight.



## Free Trust Account Software Created for Virginia Lawyers

A basic software program for lawyer trust account management based on Virginia's disciplinary rules has been developed by ALPS—the Virginia State Bar's endorsed legal malpractice insurance carrier—and is being distributed for free to VSB members.

The software, ALPS Trust Manager, was developed by the company in response to the VSB Committee on Lawyer Malpractice Insurance's request for more instruction and support in trust account management for Virginia lawyers.

"We are hopeful that Virginia's lawyers will find the software an easy way to do the necessary accounting in their trust accounts," said VSB Executive Director Karen A. Gould. "This product should help Virginia's solo and small-firm lawyers successfully negotiate the procedural requirements set forth in Rule of Professional Conduct 1.15."

ALPS's goal was to create a "stand-alone product, easy to use, with a couple of factors that enable lawyers to follow through with their ethical obligations," said Mark Bassingthwaighe, ALPS risk manager.

With the software, a lawyer's staff can perform the administrative duties associated with trust accounts. The lawyer has administrative privileges—he or she can oversee every change made to the account and print out a number of different activity reports.

Account reconciliations can be attached to the original bank statement, forming a paper trail that demonstrates the lawyer's compliance with rules of professional conduct that govern trust accounts.

The program was created based on Virginia's rules, which are included in the software.

ALPS Trust Manager is not a bells-and-whistles product, Bassingthwaighe said. "It's just a plain-Jane trust accounting package. ... It forces accountability and may be a tool to sometimes catch fraudulent activity."

The program works only on Microsoft XP. It will not work on a Mac.

ALPS distributed the software CDs at a recent VSB Solo & Small-Firm Practitioner Forum. It now also distributes it at "The Devil Wore Green," a trust accounting seminar the VSB offers free to local bar associations. [For information on "The Devil Wore Green," call (804) 775-0557.]

ALPS will make the software available to attorneys who call the company at (800) 367-2577. Those who are not ALPS policyholders will be asked to provide information for a quote.

—Dawn Chase

## Ned Davis Named Virginia State Bar Counsel



Edward L. “Ned” Davis of Richmond has been named by the Virginia State Bar Council to succeed George W. Chabalewski as bar counsel, effective immediately. The council took the vote at its June 19, 2008, meeting in Virginia Beach.

Davis, an assistant VSB bar counsel for fifteen years, was recommended by a search committee chaired by 2007–08 VSB President Howard W. Martin Jr.

The bar counsel supervises the VSB Department of Professional Regulation, which investigates and prosecutes lawyers in professional misconduct matters and oversees regulation of legal ethics, lawyer advertising and solicitation, and unauthorized practice of law. He reports to the VSB executive director and the Standing Committee on Lawyer Discipline.

As an assistant bar counsel, Davis has prosecuted many high-profile cases that involved receiverships and other complex matters. He has been assigned to VSB district disciplinary committees

throughout the commonwealth, and also has prosecuted before the VSB Disciplinary Board and three-judge circuit courts.

Before coming to the bar, he served six years in the U.S. Army Judge Advocate General’s Corps and he was deputy commonwealth’s attorney for York County and the city of Poquoson. From 1991 to 1993, he had a general practice with Stuart A. Simon & Associates in Richmond, with a focus on criminal defense and domestic relations law.

Davis also is a colonel, judge advocate, in the U.S. Army Reserve. He is active in the VSB’s Military Law Section and is scheduled to become section chair in June.

He holds a bachelor’s degree from the College of William and Mary, a law degree from the University of Richmond, and a master’s degree in strategic studies from the U.S. Army War College.

He and his wife, Amy Holt Davis — an in-house counsel to Anthem insurance company — have five children.

VSB Executive Director Karen A. Gould said, “I am delighted that the search committee recommended Ned. He has a proven record of prosecuting cases in the bar’s disciplinary system, as well as extensive management experience in the Army Reserve. He is a fair person who will oversee the disciplinary system with great strength of character.”

Martin also expressed delight at Davis’s selection. “I am confident that he will expedite movement of disciplinary cases through the system, so that the public will be protected and cases against lawyers will be handled fairly and expeditiously,” Martin said.

## Renu Mago Named Virginia State Bar Assistant Counsel



Renu Mago has joined the Virginia State Bar staff as an assistant bar counsel. She will prosecute professional disciplinary cases in the ninth and tenth districts.

Mago most recently was a litigation equity partner with Vandeventer Black LLP in Richmond, with a commercial litigation and professional liability defense practice that included representing attorneys, accountants, architects, and engineers in litigation.

She also has practiced with Wright Robinson Osthimer & Tatum PC in Richmond and Eppert & Richman in Los Angeles, California. She clerked for the Civil Law and Motion Court of the Los Angeles Superior Court.

She has a bachelor’s degree in foreign affairs from the University of Virginia and a law degree from Boston University.

She is a member of several bar associations — the Metro Richmond Women’s Bar; Asian Pacific American Bar Association of Virginia; and the American, Virginia, and Richmond bar associations.

Mago is married to Mark S. Brennan, a partner with Vandeventer Black, and has two sons, aged seven and eleven.

**Council Highlights** continued from page 19

work since 1979 with the Clients’ Protection Fund. “Mrs. Busch has dealt with poise and fairness with all participants in the claims process before the Clients’ Protection Fund, including petitioners, attorneys, third-party claimants, and all others she has encountered,” stated the resolution, presented by the CPF Board. Busch no longer serves as staff liaison to the board.

## Attorneys Learn to Stay Cool Under Media Pressure at BLI

Rustburg attorney George W. Nolley fields questions from media expert Margie Elsberg during a mock interview at the May 16 Bar Leaders Institute in Manassas. Elsberg, who has twenty-five years experience as a newspaper and television journalist, used the interview, which was taped and played for the audience, to offer practical insights for improving contact with reporters. Her tips included being honest and being yourself during interviews.



Sponsored by the Conference of Local Bar Associations, the BLI also featured sessions on resources available to

local bars, random audits, judicial selection, and effective communications.



## Gunn Discusses Guantanamo Defense at May Forum

Col. Will A. Gunn chats with Virginia State Bar President Howard W. Martin Jr. following Gunn's lunchtime speech at the May 1 Solo & Small-Firm Practitioner Forum in Richmond. Gunn, chief executive officer of the Boys & Girls Club of Greater Washington, in Washington, D.C., had a twenty-five-year career in the U.S. Air Force. His speech focused on his experiences and challenges during his last

assignment with the Air Force Judge Advocate General's Corps — directing the defense effort for more than five hundred detainees in Guantanamo Bay, Cuba.

The forum also featured an interactive trust accounting primer, tips on law practice management and disaster preparation, and a town hall meeting with Virginia Chief Justice Leroy R. Hassell Sr.

## National Council of Juvenile and Family Court Judges 2008 Annual Conference July 27–30, 2008

The NCJFCJ is holding its seventy-first conference focusing on juvenile and family law topics including custody and visitation, divorce, child abuse and neglect, domestic violence, juvenile delinquency, and substance abuse. Continuing legal education credits are pending.

Conference registration is open to all judges, prosecutors, defense counsel, administrators, planners, social workers, psychologists, mental health professionals, Court Appointed Special Advocates, and those interested in the improvement of the juvenile and family justice.

The conference will convene at the Marriott Norfolk Waterside and include a social trip to Colonial Williamsburg, a presidential reception, Spirit of Norfolk Cruise, and an installation banquet.

For more information, contact the NCJFCJ at (775) 784-6012 or go online at [www.ncjfcj.org](http://www.ncjfcj.org).

# In Memoriam

**Stephanie Todd Williams Buonasera**  
Spotsylvania  
April 1963–December 2007

**David Carliner**  
Washington, D.C.  
August 1918–September 2007

**G. Mason Connell Jr.**  
Richmond  
April 1924–November 2007

**Louis Elmer Conner Jr.**  
Virginia Beach  
October 1971–March 2008

**James T. Edmunds**  
Kill Devil Hills, N.C.  
September 1931–February 2008

**Ralph H. Feddersen**  
Las Cruces, N.Mex.  
May 1912–August 2007

**Norman D. Ferrari Jr.**  
Weirton, W.Va.  
December 1928–January 2008

**James A. Harper Jr.**  
Richmond  
December 1929–October 2007

**Richard Edwin Hill**  
Leesburg  
August 1928–February 2008

**Richard W. Hogan**  
Chesterfield  
September 1944–March 2008

**Ray Yeatts Jones**  
Newport News  
October 1933–February 2008

**Charles Warren Kramer**  
Alexandria  
February 1947–March 2008

**Hon. James A. Leftwich**  
Chesapeake  
June 1931–January 2008

**Warren Niles Low**  
Alexandria  
September 1932–December 2007

**Steve Allen Mandell**  
Washington, D.C.  
August 1947–April 2008

**Charles E. Martin Sr.**  
Springfield  
August 1926–December 2007

**Hon. George Mason III**  
Montross  
December 1948–March 2008

**Michael W. Maupin**  
Richmond  
July 1937–May 2008

**John M. McCarthy**  
Kents Store  
September 1941–May 2008

**William Thomas McDermott**  
Richmond  
January 1945–May 2008

**William J. McGhee**  
Christiansburg  
February 1927–March 2008

**James C. McIvor**  
Bedford  
March 1933–April 2008

**Charles James Peters**  
Alexandria  
December 1916–August 2007

**Eugene Schonberger**  
Fairfax  
August 1925–March 2008

**Hon. John Whittier Scott Jr.**  
Fredericksburg  
July 1948–April 2008

**William S. Smithers Jr.**  
Richmond  
June 1934–March 2008

**Royce A. Spence**  
Falls Church  
August 1937–January 2008

**Hon. David Tillman Stitt**  
Fairfax  
April 1943–May 2008

**Robert A. Taylor Jr.**  
Williamsburg  
November 1917–February 2005

**John Hines “Jay” Underwood III**  
Portsmouth  
August 1952–March 2008

**John Remon Wenzel**  
Arlington  
March 1941–December 2007

**Marilyn Lockwood Zorn**  
Richmond  
April 1936–February 2008

## VSB Presents Awards for Bar Service

The Virginia State Bar recently recognized several members with special awards presented at the 2008 Annual Meeting in Virginia Beach and the Family Law Seminar in Richmond.

The awards, their VSB sponsors, and their recipients are:

**Family Law Service Award** (Family Law Section): **Carol J. Schrier-Polak** of Arlington

**Local Bar Leader of the Year Award** (Conference of Local Bar Associations): **Jeannie P. Dahnk** of the Fredericksburg Area Bar Association

**R. Edwin Burnette Jr. Young Lawyer of the Year Award** (Young Lawyers Conference): **Kenneth L. Alger II** of Luray and **Hugo R. Valverde** of Virginia Beach

**Tradition of Excellence Award** (General Practice Section): **Roger C. Wiley Jr.** of Richmond

In addition, several local and specialty bars received recognition from the Conference of Local Bar Associations for programs that serve the bench, the bar, and the people of Virginia. The recipients and the programs for which they were recognized are:

**Awards of Merit** (for excellence):

**Virginia Women Attorneys Association, Loudoun County Chapter** — Adoption Day Fair

**Fredericksburg Area Bar Association** — Reviving Law Day project

**Prince William County Bar Association** — Middle School Court Tours

**Virginia Beach Bar Association** — Law Day Gala

**Local Government Attorneys Association** — Guide to Pro Bono Publico Services

**Certificates of Achievement** (for high achievement):

**Lynchburg Bar Association** — Wills for Heroes

**Virginia Women Attorneys Association, Northern Virginia Chapter** — Legislative Reception

**Metro Richmond Women's Bar Association** — Simplify Membership Registration Project

**Virginia Women Attorneys Association** — Votes for Women

**Roanoke Bar Association** — Trial Advocacy Program

**Arlington County Bar Association** — Green Initiatives and New Membership System

**Norfolk & Portsmouth Bar Association** — Middle School Mock Trial Project

For stories about the award recipients, see <http://www.vsb.org/site/members/awards-and-contests>.

### *Save the Date*

**Don't miss the 2008 Professional Development Conference  
sponsored by the Young Lawyers Conference of the Virginia State Bar**

**September 12, 2008**

Whether you are a senior associate or a newly minted attorney, at a large firm or a firm of one, you will find this year's program, "Learning from the Masters," to be incredibly worthwhile. Some of the best judges and attorneys in the Commonwealth will present their tips and advice for young attorneys on such topics as litigation, negotiation and mediation, what to do — and not do — in the courtroom, procedural practice tips, how to market your practice, and a rousing call for all of us to be citizen lawyers.

The program will be held at the Capitol Building in Richmond on September 12, 2008.

CLE credit for 5.0 hours (including 1.0 hour of Ethics pending)

For more information, contact Robert E. Byrne, Jr. at (434) 817-3100 or [byrne@mrlaw.com](mailto:byrne@mrlaw.com).

## Local Bar Elections

### Fairfax Bar Association

Julie Harry Heiden, President  
Corinne Neren Lockett, President-elect  
David John Gogal, Vice President  
Kelly Sweeney Hite, Secretary  
William Patrick Daly Jr., Treasurer

### Henrico County Bar Association

Christopher Hunt Macturk, President  
Stanley Paul Wellman, President-elect  
Donna Diservio Lange, Vice President  
James Walter Hopper, Secretary  
Michael James Rothermel, Treasurer

### Norfolk & Portsmouth Bar Association

John Lockley Deal, President  
David Wayne Lannetti, President-elect  
Nathaniel Beaman IV, Secretary  
Jeffrey Lance Stredler, Treasurer  
Caryn Rivett West, YLS Chair

### Old Dominion Bar Association

Beverly J. A. Burton, President  
Robert Allen Williams, President-elect  
Crystal Anita Gist Fisher, Vice President  
Regina Turner Sykes, Secretary  
Helivi Lue Holland, Treasurer

### Richmond Chapter, Old Dominion Bar Association

Kimberly Friend Smith, President  
Elizabeth Marie Ebanks, Vice President  
Sherry Ann Fox, Secretary  
Rondelle Dionne Herman, Treasurer

### Roanoke Bar Association

Mark K. Cathey, President  
Roy V. Creasy, President-elect  
Francis H. Casola, Secretary-Treasurer

### Salem-Roanoke County Bar Association

John Stuart Koehler, President  
Leisa Kube Ciaffone, 1st Vice President  
Compton Moncure Biddle,  
2nd Vice President  
Matthew Jason Pollard,  
Secretary-Treasurer  
Patricia Ann McGee Green,  
Judge Advocate

### The Alexandria Bar Association

Gwena Kay Tibbits, President  
Todd Allen Pilot, President-elect  
Barbara Sattler Anderson, Secretary  
Heather Nicole Jenquine, Treasurer  
Seth Mark Guggenheim, Director  
Kathleen Maureen Uston, Director  
Sean Peter Schmergel, Director  
Matthew Thomas Sutter, Director  
Sarah Elizabeth McElveen, Director

### The Bar Association of the City of Richmond

William Reilly Marchant, President  
Gregory Franklin Holland,  
President-elect  
Thamer Eugene Temple III,  
Vice President  
Hon. Beverly Warner Snukals,  
Honorary Vice President  
Tyler Perry Brown, Secretary-Treasurer  
Lelia N. Martin, Executive Director

### Virginia Trial Lawyers Association

Andrew Michael Sacks, President  
Sandra Martin Rohrstaff, President-elect  
Matthew B. Murray, Vice President  
Edward Lefebvre Allen, Vice President  
Barbara S. Williams, Vice President  
Lisa Palmer O'Donnell, Vice President  
Thomas Joseph Curcio, Treasurer  
Stephanie Elaine Grana, Parliamentarian

### Winchester-Frederick County Bar Association

Marc Herbert Abrams, President  
Neil Randolph Bryant, President-elect  
Mark Allen Vann, Secretary  
Barbara S. Williams, Treasurer  
Lawrence Pheteplace Vance,  
Member At-Large

## Join a VSB Section

There are twenty sections of the Virginia State Bar. Each is a separate group devoted to improving the practice of law in a particular substantive area or specialty practice. The sections operate under bylaws and policies approved by the Virginia State Bar Council. They elect their own officers and choose their own activities within the limits established by the Council. Section membership is open to all members in good standing of the Virginia State Bar. Many sections also have law student and associate memberships. The sections are supported by dues which range from \$10 to \$35.

Administrative Law  
Antitrust, Franchise &  
Trade Regulation  
Bankruptcy Law  
Business Law  
Construction Law &  
Public Contracts  
Corporate Counsel  
Criminal Law  
Education of Lawyers  
Environmental Law  
Family Law  
General Practice  
Health Law  
Intellectual Property Law  
International Practice  
Litigation  
Local Government Law  
Military Law  
Real Property  
Taxation  
Trusts and Estates

Find more information online at  
<http://www.vsb.org/site/members/sections/>.

# Law Day Features Conference, Dedication, and Rule of Law Award

Law Day—observed May 1—was a daylong observance at the Virginia Holocaust Museum in Richmond.

Events began with a Richmond Multidisciplinary Rule of Law Conference, part of the American Bar Association World Justice Project. The event drew dignitaries from the legal world and other professions.

William H. Neukom, 2007–08 president of the ABA, described the World Justice Project (see <http://www.abanet.org/wjp/>), designed to “lay the foundation for the opportunity of justice under rule of law. ... If you don’t lay a foundation, you’re much more vulnerable to the horrors of the human condition”—horrors that the Holocaust Museum memorializes.

“As citizens who care, it is incumbent upon us to educate our fellow Virginians ... about the rule of law,” said Virginia Chief Justice Leroy R. Hassell Sr. “Imagine, if you will, that we awaken tomorrow morning and there were no lawyers, there were no judges, and there were no courts. ... Who would preserve the liberties and freedoms that we enjoy? ...

“As lawyers, we don’t merely defend people. ... We represent and defend the Constitution. We represent and we defend the Bill of Rights.”

Virginia Justice Donald W. Lemons continued the rule of law theme during a lunch sponsored by the Richmond Bar Association.

The evening began with Yom HaShoah, a Holocaust remembrance service, followed by presentation of the newly established Virginia Law Foundation Rule of Law Award to Eli M. Rosenbaum, the U.S. Department of Justice’s longest-serving investigator and prosecutor of Nazis and other war criminals. Rosenbaum’s father was a U.S. Army intelligence officer who had been at the Dachau concentration camp within days of liberation.

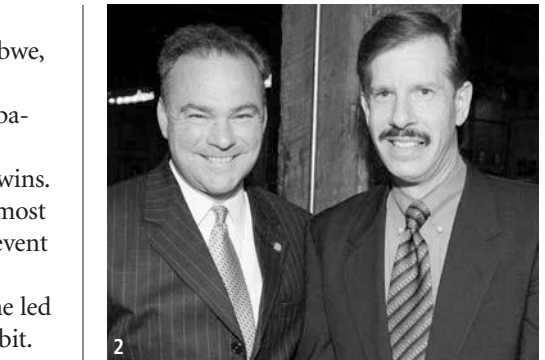
The museum then dedicated its new Nuremburg Courtroom Exhibit—a replica of the site where Nazi war criminals were prosecuted. The exhibit was funded in part by a \$100,000 grant from the Virginia Law Foundation.

Canadian Justice Rosalie Silberman Abella, the daughter of Holocaust survivors, recounted her family’s story and lamented post-World War II genocides in Rwanda, Bosnia, the Congo, Zimbabwe, Sudan, Indonesia, Iraq, and Darfur.

“Indifference is injustice’s incubator,” she said. “Silence in the face of intolerance means that intolerance wins. ... We have still not listened to the most important lesson of all: to try to prevent the abuses in the first place.”

Virginia Gov. Timothy M. Kaine led the ribbon-cutting to open the exhibit.

“Americans are enchanted by the spirit of place,” Rodney A. Smolla, dean of the Washington and Lee University School of Law, said at the conference that morning, paraphrasing D.H. Lawrence. As the Holocaust evolved, “law was pressed to service of that evil,” but the rule of law ultimately provided remedy. The Nuremburg exhibit “is dedicated to remembering the horrors and perversions of that event, but also the triumph that happened in that courtroom.”



**1:** (Left–right) Virginia Chief Justice Leroy R. Hassell Sr.; First Lady Anne B. Holton; William H. Neukom, president of the American Bar Association; and Roderick B. Mathews, a member of the ABA’s Board of Governors, a former president of the Virginia State Bar and the organizer of the conference.

**2:** Virginia Gov. Timothy M. Kaine (left) and Eli M. Rosenbaum, the 2008 recipient of the Virginia Law Foundation Rule of Law Award.

**3:** Canadian Justice Rosalie Silberman Abella described the rule of law in addressing genocide.

Photos by Dean A. Covey.



## Virginia Law Foundation Overhauls Grant-making Goals: Hopes to Improve Justice, Services for the Unrepresented

by Dawn Chase

The Virginia Law Foundation has a new message to future applicants for its law-related grants: Think big.

The foundation's directors emerged from a yearlong analysis of its grant-making process with renewed energy, ambitious aspirations, and a vision statement that, without being specific, tries to describe the high-impact types of projects they would like to fund.

The directors want statewide, multiyear, comprehensive projects that will have a measurable effect on the foundation's mission priorities: the rule of law, access to justice, and law-related education.

The overall objective: "The VLF shall strive to be recognized as the leading law-related philanthropic organization in Virginia, and respected as an innovator in the field," according to the vision statement.

The changes offer grant applicants an opportunity to form collaborations that address law-related challenges statewide with more resources than might previously have been available.

The VLF will make fewer small-ticket grants. Instead, it will spend more money to increase the influence of a smaller number of grants, said VLF Executive Director Sharon Tatum.

To accomplish this, the foundation has established a new category—"focus-area" support. The VLF will accept proposals from July 1, 2008, through March 31, 2009, as long as funds are available. Nonprofits that are preparing a proposal are encouraged to discuss their ideas with Tatum.

Grant application dollar amounts are not specified in the grant program guidelines or the mission statement—both of which are posted on the VLF website, <http://www.virginialawfoundation.org/vision.htm>.

But applicants can find clues in the VLF's recent activity: Most previous grants were one-year projects that averaged \$15,000 to \$17,000, with no one grant totaling more than \$30,000.

Last year, however, the foundation funded its first big project—\$100,000 toward creation of a permanent Nuremburg Courtroom exhibit at the Virginia Holocaust Museum in Richmond and establishment of an annual Virginia Law Foundation Rule of Law Award. The project satisfied the VLF's rule of law and law-related education goals.

Another indicator is how the VLF recently handled applications to support Court Appointed Special Advocates for Children (CASA) programs in several jurisdictions: It encouraged the programs to consolidate their requests and awarded \$48,940 to one project that benefitted all of them.

Also, the VLF's ongoing public service internships for law students—funded at \$9,000 for each of Virginia's eight law schools—is packaged as a \$72,000 grant "to encourage young lawyers toward careers in public service and to support universal access to legal representation," according to the VLF website.

While the focus for new grants will be large-scale projects, support of some projects that the VLF previously funded—including several from the Virginia State Bar and Virginia Bar Association—likely will continue. These smaller projects will not be paid for through the application process, but will be made



Virginia Law Foundation President Mary Ann Delano and Immediate Past President John L. Walker III helped lead the VLF Board of Directors as it developed a new approach to grant making.

available only by invitation from the VLF board.

In addition to changes in the size and scope of grants, the foundation will:

- Encourage its fellows to raise awareness and money for the VLF. The Fellows Council has added its separate account of \$89,000 to the VLF's corpus so that funds may be invested for a higher yield and more money will be available for annual giving, which totals between \$300,000 and \$400,000, depending on the year.
- Make more use of a program by the fellows to mentor young lawyers.
- Conduct a capital campaign in the near future. This will be its first fundraising effort. The foundation was established in 1974 with early funds from the Interest on Lawyers Trust Accounts program and sup-

plemented by donations. That investment portfolio has supported VLF's operations and grants since then.

VLF Director of Development Thomas W. Payne Jr. has begun the efforts to raise awareness of the foundation, encourage giving, and solicit projects that might fit the VLF vision.

For example, he is talking to deans of the law schools that receive internship grants, to encourage them to carefully select and provide ongoing mentorship of the interns, in hopes that more will go into public service law after graduation.

David P. Bobzien, the 2008–09 chair of the VLF grants committee, foresees that the committee “may end up being more proactive in identifying programs throughout the state that we find have interest to us. We may actually seek them out, as opposed to being passive.”

Money will be awarded contingent upon a time line and established goals and objectives, and grantees will be expected to provide training materials that can be made available to others who wish to replicate their projects, he said.

“You have to come up with a business plan,” Bobzien advised grant applicants.

Mary Ann Delano, who in June succeeded John W. Walker III as VLF president, described the excitement that grew among board members as they went through the strategic planning process and brainstormed about the kind of change they could bring about in Virginia.

“It has energized our board meetings,” she said.

For thirty-four years, the VLF has given more than \$22 million to law projects, “very quietly and almost behind the scenes,” Delano said. Now, “we want to be a bigger player, have a bigger role, and be the one to tie things together.”

## VLF Officers, Directors

Officers and board members elected by the Virginia Law Foundation at its annual meeting on June 20 are:

**President** — **Mary Ann Delano** of Richmond, executive secretary of the International Association of Business Communicators—Richmond chapter

**President-elect** — **Whittington W. Clement** of Hunton & Williams in Richmond

**Vice President** — Fairfax County Attorney **David P. Bobzien**, a former president of the Virginia State Bar

**Secretary** — **Guy K. Tower**, executive director of The Virginia Bar Association

**Treasurer** — **Karen A. Gould**, executive director of the Virginia State Bar

**Assistant Treasurer** — **Sharon K. Tatum**, executive director of the Virginia Law Foundation

**Board Members** — **Clement**; **Monica Taylor Monday** of Gentry Locke Rakes & Moore LLP in Roanoke; **Anthony F. Troy** of Troutman Sanders LLP in Richmond; **James L. Banks Jr.** of Seyfarth Shaw LLP in Washington, D.C.; **Angelica D. Light** of the Norfolk Foundation; and **J. Page Williams** of Feil, Pettit & Williams PLC in Charlottesville

**Fellows Council** — **Howard C. McElroy** of McElroy, Hodges & Caldwell in Abingdon, chair; **Hon. Paul F. Sheridan** of Arlington; **George W. Shanks** of Miller, Earle & Shanks PLLC in Luray; **Hon. Diane M. Strickland** of Roanoke; and **Elizabeth D. Whiting**, a solo practitioner in Leesburg

### New Address

The Law Foundation has moved. Its new address is:

700 E. Main St., Suite 1501  
Richmond, VA 23219  
Phone: (804) 648-0112

## Nominations Sought For Disciplinary Board, MCLE Board, and Council Members at Large

President Manuel A. Capsalis has appointed a Nominating Committee to consider nominees for board vacancies in 2009 to be filled by the Supreme Court. The Nominating Committee consists of Howard W. Martin Jr., chair; Michael C. Guanzon; Judith L. Rosenblatt; Aubrey J. Rosser Jr.; and Edna Ruth Vincent.

Vacancies beginning on July 1, 2009, are listed below. Appointments are for the terms specified. The Nominating Committee's recommendations will be acted on by the Virginia State Bar Council in October 2008, and the names of the nominees will then be forwarded to the Supreme Court of Virginia for consideration.

**Council Members at Large:** 3 vacancies (of which 1 incumbent is eligible for reappointment to a second term). May serve 2 consecutive 3-year terms.

**Disciplinary Board:** 5 lawyer vacancies and 1 lay member vacancy (of which 3 lawyer members and 1 lay member are eligible for reappointment to a second term). District committee service is preferred. May serve 2 consecutive 3-year terms.

**Mandatory Continuing Legal Education Board:** 4 lawyer vacancies (of which 1 current member is eligible for reappointment to a second term). May serve 2 consecutive 3-year terms.

Nominations, along with a brief résumé, should be sent by **September 8, 2008**, to Howard W. Martin Jr., Chair, VSB Nominating Committee, Virginia State Bar, 707 E. Main St., Suite 1500, Richmond, VA 23219, or e-mailed to Valerie Breeden at [breeden@vsb.org](mailto:breeden@vsb.org).

## Professional Guidelines

The 2008–09 Professional Guidelines will be mailed to active members of the VSB in mid-October 2008, accompanying the October issue of *Virginia Lawyer*.

The 2007–08 are available online at <http://www.vsb.org>.

For amendments approved after September 1, 2007, see the supplement to the Professional Guidelines online at <http://www.vsb.org/site/regulation/amendments>.

## Juvenile Felony Court-appointed Fees Increased

Court-appointed lawyers now can bill up to \$770 for representing a defendant charged with a high-level felony in Virginia's juvenile and domestic relations district courts.

As a result of legislation passed by the 2008 Virginia General Assembly, court-appointed lawyers now can apply for fee-cap waivers of up to \$650 for serious felony cases in juvenile court. This waiver amount can be added to the capped fee of \$120 for those cases.

The waiver, which went into effect July 1, applies to juvenile offenses that could be punishable by twenty or more years in prison if they were tried in adult court.

Forms and other information on the waiver will be posted on the Virginia's Judicial System website at <http://www.courts.state.va.us/>. The information likely will be posted under the link to Waivers of Statutory Fee Caps for Court-appointed Counsel, on the right side of the home page.

## VSB Joins Just the Beginning Foundation as Conference Cosponsor

The Virginia State Bar has joined as a cosponsor the eighth biennial conference of the Just the Beginning Foundation, a nonprofit organization that tries to nurture an interest in the legal profession among students of color and other underrepresented groups.

The conference is scheduled for September 25–28, 2008, in Washington, D.C.

High school-aged youth from the Washington metropolitan area will be invited to attend the conference. They are referred by area schools and members of the task force that organized the conference. Some of the students are identified as at-risk because of a financial situation, neighborhood, poor grades despite high potential, or history of misconduct.

The program introduces the students to federal judges and others in the legal profession, who tell their stories — some of which are similar to those of the attendees — and how they became lawyers and judges.

The Just the Beginning Foundation tracks its students and has programs for them in middle and high school, college, and law school. Similar conferences have been held in other metropolitan areas, including Chicago and Cincinnati.

For more information on the foundation, see <http://www.jtbf.org>. The foundation is in the process of developing a section for students on its website, where information on future programs will be posted.

### Attorneys in Waynesboro, Staunton Recognized for Pro Bono Work

Attorneys Jeffrey A. Ward and K. Wayne Glass have been honored for their pro bono work by Blue Ridge Legal Services (BLRS).

Ward, who practices with Franklin, Denney, Ward & Lawson PLC in Waynesboro, and Glass, of the Staunton firm Vellines, Cobbs, Goodwin & Glass PLC, were recognized for “tackling difficult legal problems for their low-income clients referred to them by legal aid,” according to a press release from BLRS.

The clients were referred by a pro bono referral program cosponsored by the Augusta County Bar Association and BLRS. In the last decade, about five hundred low-income residents of Staunton, Augusta County, and Waynesboro have received assistance through the program, which serves the Shenandoah and Roanoke valleys.

## Volunteers Needed for Attorney Support Programs

Lawyers Helping Lawyers needs volunteers to start support groups for legal professionals throughout the commonwealth.

LHL — a nonprofit program that offers mental-health and substance abuse services to the legal community — wants to establish two types of groups:

- A peer-led support meeting for legal professionals who live with addictions such as alcoholism or other substance abuse.
- A meeting led by a mental-health professional for people who cope with the stresses of law practice — stresses that can contribute to depression, anxiety, or other disabling conditions.

In both cases, groups will be limited to people involved in the legal profession.

Such programs already have been established in three areas of the state. LHL sponsors substance abuse meetings weekly

in Northern Virginia and twice monthly in Roanoke. Mental health support is available in Roanoke (twice monthly), Northern Virginia (monthly), and Richmond (every two weeks).

That’s a start, but many more groups are needed to meet the needs of Virginia attorneys statewide, LHL Executive Director James E. Leffler said. The Hampton Roads area is in particular need of lawyer-focused support.

Any legal professional is welcome to volunteer. Lawyers who are familiar with twelve-step recovery programs are especially needed, Leffler said.

Volunteers will be put to work in a number of ways. They will be asked to attend support groups, work one-on-one with struggling attorneys, or provide telephone support to lawyers from another part of the state, for example.

Information exchanged is confidential, free, and not disclosed to the lawyer disciplinary system.

### To volunteer, or for information, contact:

James E. Leffler  
Executive Director  
Lawyers Helping Lawyers  
(877) 545-4682  
[JLeffler@ValHL.org](mailto:JLeffler@ValHL.org)  
<http://www.valhl.org/>

*The following judicial changes took place from January 23 through April 30, 2008:*

## Vacated Positions Filled by the General Assembly

### CIRCUIT COURT

1st Circuit: **Marjorie T. Arrington** of Norfolk succeeds **S. Bernard Goodwyn** of Chesapeake, who was elected to the Supreme Court, and **John W. Brown** of Chesapeake succeeds **Frederick H. Creekmore Sr.** of Chesapeake, who retired.

15th Circuit: Spotsylvania Juvenile and Domestic Relations Judge **Joseph J. Ellis** succeeds the late **George Mason III** of Montross ... Spotsylvania General District Judge **J. Overton Harris** succeeds **John Richard Alderman** of Hanover, who retired.

16th Circuit: **John G. Berry** of Madison succeeds **John R. Cullen** of Culpeper, who retired.

18th Circuit: Alexandria J&DR Judge **Nolan B. Dawkins** succeeds **John E. Kloch** of Alexandria, who retired.

24th Circuit: **John T. Cook** of Lynchburg succeeds **J. Samuel Johnston Jr.** of Rustburg, who retired.

25th Circuit: Waynesboro J&DR Judge **Victor V. Ludwig** succeeds **Thomas H. Wood** of Staunton, who retired.

26th Circuit: **Thomas J. Wilson IV** of Harrisonburg succeeds **John J. McGrath Jr.** of Harrisonburg, who retired.

29th Circuit: Buchanan General District Judge **Patrick R. Johnson** succeeds **Keary R. Williams** of Buchanan, who retired.

31st Circuit: Prince William J&DR Judge **Mary Grace O'Brien** succeeds **LeRoy F. Millette Jr.** of Manassas, who was elected to the Court of Appeals.

### GENERAL DISTRICT COURT

5th District: **W. Parker Council** of Smithfield succeeds **Robert B. Edwards** of Isle of Wight, who retired.

18th District: **Donald M. Haddock Jr.** of Alexandria succeeds **E. Robert**

**Giammittorio** of Alexandria, who retired. 19th District: **Penney S. Azcarate** of Falls Church succeeds **Robert J. Smith** of Fairfax, who retired.

29th District: **Gregory S. Matney** of Bluefield succeeds **Patrick R. Johnson** of Grundy, who was elected to circuit court.

### JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

13th District: **Marilynn C. Goss** of Richmond succeeds **Kimberly B. O'Donnell** of Richmond, who resigned.

15th District: **Patricia Kelly** of Fredericksburg succeeds **Joseph J. Ellis** of Spotsylvania, who was elected to circuit court.

25th District: **Laura L. Dascher** of Covington succeeds **Victor V. Ludwig** of Waynesboro, who was elected to circuit court.

31st District: **George M. DePolo** of Prince William succeeds **Mary Grace O'Brien** of Manassas, who was elected to circuit court.

## Other Judicial Elections

### SUPREME COURT

**S. Bernard Goodwyn** of Chesapeake, a pro tem appointee, was elected by the General Assembly.

### COURT OF APPEALS

**LeRoy F. Millette Jr.** of Manassas, a pro tem appointee, was elected by the General Assembly.

**Jean Harrison Clements** of Rappahannock and **Robert J. Humphreys** of Virginia Beach were reelected to new terms.

### GENERAL DISTRICT COURT

23rd District: **John Christopher Clemens** of Salem was elected by circuit judges to succeed **Julian H. Raney Jr.** of Salem, who retired.

### JUDICIAL INQUIRY AND REVIEW COMMISSION

Chesterfield Circuit Judge **Cleo E. Powell** was elected to serve the remainder of the term vacated by **LeRoy F. Millette Jr.**

when he was elected to the Court of Appeals.

**James P. Fisher**, a Leesburg attorney, was elected to the commission.

**William I. Fitzgerald** of Halifax was reelected to a new term as a lay member.

### WORKERS' COMPENSATION COMMISSION

**Roger L. Williams**, a Henrico attorney, succeeds **Lawrence D. Tarr**, who retired.

## Unfilled Vacancies

### CIRCUIT COURT

2nd Circuit: Virginia Beach seat vacated by **Thomas S. Shadrack**, who retired

4th Circuit: Three Norfolk seats vacated by **Jerome James** of Norfolk, who retired; **Alfred M. Tripp**, who resigned; and **Charles D. Griffith Jr.**, who was not reelected

8th Circuit: Hampton seat vacated by **William C. Andrews III**, who retired

15th Circuit: Seat vacated by **John W. Scott Jr.** of Fredericksburg, who died April 16

19th Circuit: Fairfax seats vacated by **David T. Stitt**, who died May 10, 2008, and **Robert W. Wooldridge Jr.**, who will retire August 31

### GENERAL DISTRICT COURT

8th District: Hampton seat vacated by **C. Edward Knight III**, who retired

19th District: Newly funded Fairfax seat

### J&DR COURT

8th District: Hampton seat vacated by **Nelson T. Durden**, who retired

18th District: Alexandria seat vacated by **Nolan B. Dawkins**, who was elected to circuit court

29th District: Seat vacated by **John M. Farmer** of Clintwood, who was not reelected

SOURCE: HUMAN RESOURCES OFFICE OF THE OFFICE OF THE EXECUTIVE SECRETARY, SUPREME COURT OF VIRGINIA

## Virginia Poverty Law Center Director Named Legal Aid Lawyer of the Year



James W. “Jay” Speer, executive director of the Virginia Poverty Law Center, is the 2008 recipient of the Virginia Legal Aid Award, presented by the Virginia State Bar Committee on Access to Legal Services.

Speer has devoted most of his career to serving low-income people, most recently through the Poverty Law Center, which provides advocacy on poverty issues of statewide importance and trains lawyers and clients on the legal rights of Virginia’s poor.

In 2000, he identified payday lending as a dangerous practice for low- and moderate-income people, and since then he has led challenges to the practices. His advocacy efforts at the Virginia General Assembly and in Washington, D.C., continue — particularly in predatory lending practices involving car title lending and abusive mortgage loans.

He also works closely with intervention specialists for Housing Opportunities Made Equal who are assisting clients victimized by predatory lending and foreclosure rescue scams.

State Sen. A. Donald McEachin of Richmond — one of several persons to nominate Speer for the award — wrote, “In my years of working with Jay, I am continually impressed and even overwhelmed by his dedication, his work ethic, his knowledge and, perhaps most of all, his compassion for his clients. . . . He brings all sides together and encourages everyone in the room to take a second and different look.”

Speer received a bachelor’s degree in foreign affairs from the University of Virginia and a law degree from the College of William and Mary. After four years in solo practice in Richmond, he became a staff attorney at the Central

Virginia Legal Aid Society in 1987. He has been at the Poverty Law Center since 2000.

The Virginia Legal Aid Award recognizes employees of legal aid societies licensed by the Virginia State Bar who have demonstrated innovation and creativity in advocacy, experience and excellence in service, and an impact beyond his or her program’s service area.

The award was presented June 20 at the VSB Annual Meeting in Virginia Beach.

## Freddie Mac Celebrates Pro Bono, Pledges to Keep Up the Good Work

McLean-based Freddie Mac, a Fortune 50 financial services company that is nationally recognized as a leader in corporate legal pro bono, recently renewed its commitment to give back to the community.

That reputation began in 1993, when the company authorized employees of its legal division to devote up to forty hours per year to pro bono projects in conjunction with Legal Services of Northern Virginia (LSNV).

The policy resulted in direct services to the poor, support of LSNV — one of the area’s licensed legal aid providers, and a sense of camaraderie among the now 150 people — ninety lawyers and sixty staff — in Freddie Mac’s legal division, according to Robert E. Bostrom, the company’s general counsel and head of its pro bono steering committee.

Freddie Mac’s pro bono program is designed to help corporate lawyers provide legal aid to LSNV’s clients, he said. The company and LSNV have developed continuing legal education programs to train the lawyers in legal aid practice areas such as consumer law and arranged for malpractice coverage for the volunteers’ activities.

Freddie Mac’s efforts have been recognized with a variety of awards, including the Virginia State Bar’s Lewis F. Powell Jr. Pro Bono Award, the American Bar Association’s Pro Bono Publico Award, and the Association of Corporate Counsel’s Pro Bono Award.

At a luncheon sponsored by the legal division in May, Bostrom recognized the important work done by LSNV. He pledged to increase the company’s pro bono activities and stressed in particular the efforts of the nonlawyer legal analysts, who assist the

lawyers and conduct their own programs, such as pro se divorce clinics.

Bostrom and LSNV Executive Director James A. Ferguson urged attendees to continue to help the most vulnerable Northern Virginians through direct client service and by acting as counsel to LSNV itself — by negotiating leases and other contracts, updating employee manuals, and revising bylaws, for example.

Lawyers who want more information about Freddie Mac’s corporate pro bono program should contact Andrea L. Bridgeman, associate general counsel at Freddie Mac, at (703) 903-2406 or [andrea\\_bridgeman@freddiemac.com](mailto:andrea_bridgeman@freddiemac.com).

## 2008 Indigent Defense Seminar Covers Evidence, Interrogation, and Strategy

The Chief Justice's Fourth Annual Indigent Defense Training Initiative: Advanced Skills for the Experienced Practitioner drew a capacity crowd, with 550 in attendance at the live location in Richmond and 100 at a simulcast in Abingdon.

Attorney Brad Bannon of Charlotte, North Carolina, whose scientific education consisted of a marine biology class in college, described how he taught himself about DNA with a textbook and went on to uncover manipulation and misleading reporting of laboratory results in the rape case against Duke University lacrosse players.

Bannon's research cleared his client and the charged defendants and contributed to the disbarment of prosecutor Mike Nifong.

Bannon told the Virginia defense lawyers that expert testimony by itself would not have uncovered the prosecutorial misconduct. Lawyers must educate themselves about the details of DNA reports and laboratory protocol. "The lawyer is the only person who can appreciate the facts and how they interact in the individual case," he said.

He also encouraged keeping detailed records of attempts to obtain a full lab report when the opposing party is not forthcoming. "You ask nicely for it, and then you ask nicely for it again, and then you create a record for it, so there is no place for somebody who's cheating to hide," he said. That record can be used as grounds to compel discovery and to appeal.

Bannon was followed in the program by Dr. John M. Butler, a research chemist for the National Institute of Standards and Technology, and the author of *Forensic DNA Typing: Biology, Technology, and Genetics of STR Markers (2nd edition)* — the book that Bannon relied on to educate himself. Butler provided information on DNA training and



1: (Left–right) Brad Bannon, Virginia Chief Justice Leroy R. Hassell Sr., Virginia Court of Appeals Chief Judge Walter S. Felton, and Dr. John M. Butler.

2: Patrick Kent

other resources designed for officers of the court, and gave a brief overview of how DNA is analyzed and how lab reports are presented.

The forensics education continued with Patrick Kent, chief of the forensics division of the Maryland Office of the Public Defender in Baltimore. Kent defended Brendon Mayfield, who was falsely linked to the 2004 Madrid train bombings on the basis of a partial smudged fingerprint. The FBI later apologized and settled with Mayfield for \$2 million.

"Fingerprints do not belong in a courtroom," Kent said. He demonstrated ways defense counsel can challenge fingerprint identifications. Fingerprint

Other topics included police interrogation techniques; false confessions, and how to defend them in court; understanding and defending mentally impaired persons; and defense strategies in eyewitness identification cases.

The Indigent Defense Training Initiative is chaired by Chief Justice Leroy R. Hassell Sr. Richmond attorney Steven D. Benjamin was chair of the program committee, and Virginia Court of Appeals Chief Judge Walter S. Felton was vice chair.

*Lawyers must educate themselves about the details of DNA reports and laboratory protocol. "The lawyer is the only person who can appreciate the facts and how they interact in the individual case," he said.*

technology is "shaped more from an allegiance to dogma than a foundation of science," he said.

# Virginia Law: It's Online, But Should You Use It?

by Timothy L. Coggins

*An online official legal resource is defined as one that possesses the same status as a print official legal resource.*

A judge asks you to present her with a copy of the *Virginia Code* section you are referencing in court, or she asks you to provide a copy of the Supreme Court of Virginia opinion you cited. You used Virginia state government websites to find both the code section and the court opinion. This is easy, right? You give her the copy of what you found online. But could there be a problem? Is the court opinion that you retrieved from the court website considered an official version of the court opinion? Has the *Virginia Code* section that you provided been authenticated to establish its legitimacy? Do these issues matter, and do they have any practical effect on your work as an attorney?

In 2006 the American Association of Law Libraries (AALL) completed a fifty-state survey that investigated whether legal resources on government websites are official and capable of being considered authentic. The AALL published the results of this survey in its report *State-by-State Report on Authentication of Online Legal Resources*<sup>1</sup> in March 2007. The survey investigated six sources of law: statutes and session laws, administrative codes and registers, and intermediate and court of last resort opinions. The survey sought to determine the veracity of state-level primary legal resources on the Web. The AALL reported both good news and bad news:

A significant number of the state online legal resources are *official* but none are *authenticated* or afford ready authentication by standard methods. State online primary legal resources are therefore not sufficiently trustworthy. Citizens and law

researchers may reasonably doubt their authority and should approach such resources critically.<sup>2</sup>

How did Virginia stack up on this survey and report? Are the documents that you provided to the judge official and authentic? Before discussing Virginia's situation, two definitions used in the survey are necessary, and it is important to note the key findings from the AALL report.

What does "official" mean? An online official legal resource is defined as one that possesses the same status as a print official legal resource.<sup>3</sup> This means that an official version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It does not necessarily have to be produced by the government. This working definition of an official legal resource comes from the latest editions of *Black's Law Dictionary* and *The Fundamentals of Legal Research*.

An authentic text has been verified by a government to be both complete and unaltered when it is compared to the version approved or published by the content originator. Authentic text typically will bear a certificate or mark that conveys information as to its certification—the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An authentic text is able to be authenticated, which means that the particular text in question can be validated, ensuring that it is what it claims to be. Authentication could be done by encryption-based authentication methods, such as digital signatures and public key infrastructure.<sup>4</sup>

The key findings in the AALL report follow.

- States have begun to discontinue printing official legal resources. They are substituting online official legal sources.
- Ten states and the District of Columbia have deemed as official one or more of their online primary legal resources.



- One or more of the online primary legal sources of eight states have “official traits,” where evidence as to the actual status of the resources is conflicting.
- States have not acknowledged important needs of citizens and law researchers seeking government information; they have not been sufficiently deliberate in their policies and practices.
- No state’s online primary legal resources are authenticated or afford ready authentication by standard methods.
- Eight states have made arrangements for permanent public access to one or more of their online primary legal resources.<sup>5</sup>

Results from the survey show that online legal resources are more frequently the sole official published source. The laws referencing those resources and other online official sources are seriously deficient; they fail to require certification of completeness and accuracy for online resources that is comparable to that required for print official sources. The laws also do not recognize the authentication piece of the equation, which the survey indicates is essential to online official sources. The report, therefore, questions the fundamental trustworthiness of online legal information and raises concerns that need to be addressed by states at both the policy and practical levels.

***Virginia is a leader in one area: it is one of only three states ... that had considered the authentication issue at the time that the survey was completed.***

How did Virginia rate in the survey? Is the judge in Virginia going to accept your website-retrieved documents as official and authentic versions of the court opinion and the code section?

Gail Warren, state law librarian at the Virginia State Law Library, provided the survey information for Virginia. Warren concludes that “[g]enerally speaking, the Commonwealth of Virginia has not taken steps to designate legal resources on the Web as *official*.”<sup>6</sup> She notes one exception: the state administrative register. The *Virginia Register of Regulations* was created by statute, and the code section that created the *Register* requires that it be published on the Web.<sup>7</sup> Thus, following the definitions set out in the

AALL report, the *Register* is considered official. Other Virginia online primary law sources are a little less certain. The online *Code of Virginia* is “the actual text of the print version,” but the website includes no notice that addresses the status or accuracy of any of the three electronic publications: statutory code, session laws, and administrative code.<sup>8</sup> Warren points to a notice at the Division of Legislative Automated Systems website regarding the statutes: “The Virginia General Assembly is offering access to the *Code of Virginia* on the Internet as a service to the public. We are unable to assist users of this service with legal questions nor respond to requests for legal advice or the application of the law to specific facts.”<sup>9</sup>

The Virginia judiciary website offers electronic access to the opinions of the Supreme Court of Virginia and the Virginia Court of Appeals. Warren notes the opinions are uploaded to the website on the day that the court releases them. But there is no notice for users about the official or unofficial status of the opinions or about their accuracy. She reports that the text on the website is pulled from the original slip opinion electronically prepared by the court, but currently there are no steps taken to ensure that the slip opinion as released on the Web is the same as the final opinion published in the official bound *Virginia Reports*.

Virginia is a leader in one area: it is one of only three states — Minnesota and Vermont are the other two — that had considered the authentication issue at the time that the survey was completed. Eight other states — Alabama, Arkansas, Connecticut, Maryland, Montana, Ohio, South Carolina, and Tennessee — indicated that they

perceive authentication as a concern. Warren notes that a joint subcommittee of the General Assembly in 2004 studied issues relating to providing official authentication of state electronic records, as well as permanent public access to those documents, but it did not specifically address online legal sources.<sup>10</sup>

What’s the conclusion about Virginia and the answer to the questions posed in the first paragraph of this article? Warren concludes: “Virginia still publishes print *official* versions of its statutory code, session laws, administrative code, administrative register, and appellate court opinions.”<sup>11</sup> She continues, “[U]ntil the legislature and judiciary address the authentication or perma-

nency of electronic legal information produced by their respective branches of government, the use of legal information appearing on these websites is limited to locating relevant code sections, but not citing the electronic resource or relying on it as an *official* source.”<sup>12</sup> If the judge is looking for authentic and official copies of the documents that you presented in court, the copies that you supplied will not suffice.

The Honorable Herbert B. Dixon Jr. of the Superior Court of the District of Columbia, a leader in the area of technology in the judiciary, agrees with Warren. In a 2007 article about the “authentication” and “official” issues and the AALL report, he thanks the American Association of Law Libraries for its work, stating that “[t]he AALL study is a timely wake-up call for work that needs to be done to ensure the integrity and trustworthiness of electronically transmitted and maintained legal documents and information.”<sup>13</sup> ■

Endnotes:

1 Richard J. Matthews and Mary Alice Baish, *State-by-State Report*

*on Authentication of Online Legal Resources* (Chicago, IL: American Association of Law Libraries, 2007). The report can be purchased from the AALL or can be viewed in full at the AALL website — <http://www.aallnet.org>.) [hereinafter cited as *AALL Report*].

2 *Id.* at 7.

3 *Id.*

4 *Id.* at 8-9.

5 *Id.* at 10-14.

6 *Id.* at 185.

7 *Va. Code Ann.* § 2.2-4031.

8 *AALL Report* at 186.

9 *Id.*

10 H.J. Res. No. 6, Gen. Assem., Reg. Sess. (Va. 2004).

11 *AALL Report* at 186.

12 *Id.*

13 Herbert B. Dixon Jr., *The Lack of Effort to Ensure Integrity and Trustworthiness of Online Legal Information and Documents*, *The Judges Journal* (volume 46, no. 3, Summer 2007).

# Feeling Short-Circuited?

## Assessing the Availability of Virginia Circuit Court Opinions

by Jeanne Ullian

Virginia Chief Justice Leroy R. Hassell Sr. is determined that the Virginia State Bar fulfill its mission “to advance the availability and quality of legal services provided to the people of Virginia.”

Much to Hassell’s credit, the legal research product Fastcase was added as a VSB member benefit in 2006. At the March 1, 2008, Virginia State Bar Council meeting, Ed Walters, chief executive officer of Fastcase, reported that, as a result, almost ten thousand active-status Virginia lawyers have logged onto the service. Building upon this success “[t]he bar is looking at adding circuit court opinions and Virginia model jury instructions to the searchable database.” (Highlights of VSB Council Meeting, [http://www.vsb.org/docs/valawyer-magazine/vl0408\\_news.pdf](http://www.vsb.org/docs/valawyer-magazine/vl0408_news.pdf).) Virginia State Law Librarian Gail Warren confirmed that, based upon a fall 2007 request from Hassell, she has been exploring the feasibility of adding circuit court opinions to the Fastcase database.

Even though Virginia has the oldest continuous judicial system in the country, the number of reported cases is limited due to the structure of the court system. The Supreme Court of Virginia has always been a discretionary court that decides which appeals it will accept. Except in limited areas, appeal is not a matter of right — thus preserving the Court’s status as a single body concentrating on the development of the law. The Court of Appeals, instituted in 1985 as an intermediate appellate court between the circuit courts and the Supreme Court, has limited jurisdiction. It serves primarily to relieve the Supreme Court’s caseload of criminal, domestic relations, and workers’ compensation cases. Therefore, unless the circuit courts make an error for which one of the higher courts certifies an appeal, circuit court decisions remain as the sole judicial examination of many areas of Virginia

law. With 157 judges in 120 courts in 31 circuits, considerable law is being decided at this level.

William Hamilton Bryson, a professor of law at the University of Richmond and an eminent Virginia legal scholar, provides this perspective on the value of Virginia circuit court opinions:

Although these opinions may not be binding, they are nevertheless persuasive authority; certainly the opinion of a Virginia circuit court judge is better authority for the law of Virginia than an opinion by a judge from another state. *Virginia Circuit Court Opinions* (Preface), The Dietz Press Inc., 1985

Or consider the reasoning in this federal district decision:

[If] the Virginia Supreme Court has not ruled upon a case ... [a federal] Court must determine what the Virginia Supreme Court would do if presented with the question. One way of determining what the Court would do is to look at previous decisions of the Virginia Circuit Courts.” *Kollsman v. Cubic Corp.*, 800 F. Supp. 1381, 1382 (E.D. Va. 1992)

Circuit court opinions were published in several nineteenth century legal journals. However, the *Opinions of Brockenbrough Lamb*, which appeared in two volumes in 1955 and 1964, was the most significant collection within the current half-century until the publication in 1985 of the first volume of *Virginia Circuit Court Opinions*.

Edited by Bryson, *Virginia Circuit Court Opinions*, which by May 2008 numbered seventy-three volumes, began as a personal quest to find more case law examples for his course in civil procedure at the University of Richmond School of Law and for his treatise, *Bryson on Virginia Civil Procedure*.

The advent of desktop publishing made publishing these cases economically feasible for what

*Even though Virginia has the oldest continuous judicial system in the country, the number of reported cases is limited due to the structure of the court system.*

was perceived as a limited audience. However, after just three volumes, a major publisher assumed responsibility. Early volumes contain opinions from the Richmond court, as well as significant past opinions from as early as 1877. Through relationships established over the years with judges and lawyers all over the state, Bryson continues to read, edit, and headnote cases that meet the following selection criteria:

It is the purpose of this publication to furnish judicial authority where there is none and to provide more recent judicial opinions than the nineteenth century cases, which must still be resorted to. We have selected for inclusion as many opinions as possible dealing with points of civil procedure and discovery, which, being harmless error, are infrequently ruled upon by the Supreme Court. We have also looked for cases involving the Commercial Code. We have inclined towards opinions that analyze the law and away from those that primarily develop the facts. We have not included opinions that do not sufficiently state the facts of the case so that those not actively connected with the case can grasp the significance of the rulings of law. It is beyond our resources to summarize pleadings and arguments.  
*Virginia Circuit Court Opinions*  
(Preface), The Dietz Press, Inc., 1985

Lucinda Harrison-Cox, who has been working with Bryson since Volume 9, indexes each volume. She also compiles the cumulative index for the current publisher, LexisNexis  
Matthew Bender. Each volume contains approximately 125 cases; two to three volumes are issued each year.

Along with the print *Virginia Circuit Court Opinions*, two digital products developed in the early 1990s form the basis of the collections available today.

DiscLaw, developed by Ian Wilson, an attorney who formerly practiced at Hirschler Fleischer, entered the market in 1992 with his company, DiscSense. A 1997 Internet Archive (<http://www.archive.org>) of the DiscSense website describes the product as Virginia cases and

statutes on CD-ROM with Virginia circuit court decisions from 1980. Wilson and his marketing partner, Jim Renehan, contacted every circuit court in the state and inspected every local collection (readily accessible cases on file in the court, as opposed to all of the cases in the court's official files). Opinions with authority or analysis that would be useful to a researcher were added to the DiscLaw database. In late 1998, West Publishing acquired the DiscLaw opinions.

At about this same time, Geronimo Development Corporation, a Virginia corporation based in Minnesota, launched CaseFinder (<http://www.casefinder.com>), introduced as a CD-ROM research product targeted specifically to the Virginia legal community and Geronimo's only product. It is currently available as a CD-ROM and an online product (CaseFinder Web) by subscription to individuals or groups. Its Virginia circuit court opinion library includes an estimated 5,500 opinions that date back to 1992. CaseFinder collects new opinions through contacts within the legal community and adds opinions requested by its users or cited in other materials in the collection. CaseFinder is unique in that it provides a hierarchical view of each library in the collection, which means you can drill down into the circuit court library to see exactly which and how many cases are included from a specific circuit court.

To no one's surprise the largest collections of Virginia circuit court opinions are found in LexisNexis and Westlaw products. As part of the publishing family of *Virginia Circuit Court Opinions*, only the LexisNexis databases include all of the Bryson opinions. Today, both giants of legal publishing provide digital access to thou-

*Along with the print Virginia Circuit Court Opinions, two digital products developed in the early 1990s form the basis of the collections available today.*

sands of Virginia circuit court opinions in five products. Both services continue to build their databases by acquiring cases from the courts, from other legal professionals, and in response to user requests. The collections include:

- Lexis.com (<http://www.lexis.com>) — According to information provided by LexisNexis in March 2008, more than

ten thousand opinions and orders primarily from 1957 to current, with some earlier back to 1855, are included in the file VACIR (Virginia Circuit Court Cases from 1855).

- Westlaw.com (<http://www.westlaw.com>) — A search by a West reference attorney in May 2008 identified more than 9,000 circuit court opinions, which are found in the broader Virginia Cases (VA-CS) database, with “selective coverage of cases that are not scheduled to be reported by West, beginning 1976 through the most recently released cases.”
- LexisNexis — Virginia Primary Law (on CD) is updated quarterly and has the same Virginia circuit court opinions content and editorial enhancements found in Lexis’s online product.
- West — Virginia Reporter and West’s Annotated Code of Virginia Premise CD is updated quarterly. Disk 3 contains the opinions found in the online product but without editorial enhancements.
- lexisONE (<http://www.lexisone.com>) provides a five-year rolling database of the Virginia circuit court opinions found on Lexis.com. Only the text from the court is provided. Free registration is required.

One other new source of significant Virginia circuit court opinions is *Virginia Lawyers Weekly* (<http://www.virginialaw.com>). In February 2008 the publishers announced subscribers would have free access to PDF copies of all Virginia circuit court opinions digested in the paper from a database covering 2007 to current.

So, how does Fastcase — the provider of choice for the VSB and a product devoid of circuit court opinions — fit into this picture as a potential provider to the VSB legal community?

Fastcase, founded in 1999, is an online provider of state and federal legal materials, which are available to the public in a standard package via several subscription options. The company also partners with other legal providers to deliver customized content to specific subscriber groups, such as the product it provides to the VSB. On February 13, 2008, Fastcase launched the Public Library of Law (<http://www.plol.org>) — the largest free law library on the Web. Fastcase was also involved in a transaction with Public.Resource.org (<http://public.resource.org>), which has placed a database of 1.8 million pages of federal case law on the Web, free of copyright and ripe for use by developers. With this track record of partnering in both free and for-profit environments, it appears that Fastcase has the capability required to develop a methodology for adding Virginia circuit court opinions to its current databases.

On the VSB side, the project is moving forward. Warren, in response to Chief Justice Hassell’s request, has compiled extensive statistical data (courts currently included in existing data-

bases, number of cases, etc.) and is compiling lists of issues that may arise, with possible resolutions or compromises in order to get from “is this feasible?” to “this is how we can make this work.” On Warren’s short list are:

- Procedures for uploading cases from the courts
- Policies and procedures for adding cases
- Preservation of intellectual property rights by the VSB
- Potential costs at the local level
- Currency
- Authentication
- Editing and standard enhancements
- Consideration of existing intellectual property rights of current providers of circuit court opinions

Of utmost importance to the success of this endeavor is the cooperation of the Virginia circuit courts. Hassell has indicated he will seek the support of circuit judges, urging them to participate. Perhaps it would be persuasive to remind them that, since the days of St. George Tucker, “bar and bench cooperated with each other in circulating their notes, memoranda, and opinions.” (47 Wm. & Mary L. Rev. 1245, February 2006, Institute of Bill of Rights Law Symposium: St. George Tucker and His Influence on American Law, St. George Tucker’s Law Papers by Charles F. Hobson)

Virginia circuit court opinions are cited widely, including in hundreds of law review articles and a U.S. Supreme Court case last term (*Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1978 n.5 2007). The *Code of Virginia* now includes annotations of Virginia circuit court opinions — perhaps in reaction to an article in the April 2002 issue of *Virginia Lawyer* in which the authors pointed out that neither the “new” West code nor the official version was referencing these opinions. (West’s New Annotated Code of Virginia, *Virginia Lawyer*, April 2002, p.44, 47-49, by Virginia Association of Law Libraries Ad Hoc Committee on Annotated Codes – Kent Olson et al.) Donna Bausch, director of the Norfolk Law Library, ranks requests for these opinions at the top of her list of most requested cases.

It is said that information wants to be free. With more than ten thousand Virginia circuit court opinions available online, the time is ripe to free some up. I encourage bar members to use your collective power to help define where the bar should place its efforts in this endeavor.

Author’s note: Thank you to Professor Hamilton Bryson, Lucinda Harrison-Cox, and Lyn Warmath, and special thanks to Kent Olson for his diligent editorial suggestions. ■

# Locating and Using Internet Archives for Virginia Practitioners

by Michele Gernhardt

Legal information maintained in Internet archives is an essential tool for answering common legal research questions such as:

- What was the exact language of this statute or regulation ten years ago?
- How was this regulation interpreted at the time this permit was issued?
- What was the legislature intending to accomplish by incorporating this language into the statute?
- Where can I find this government document from 1987?

Answers to many of these questions can be found on the Web by locating and accessing the appropriate Internet archives. A variety of Internet archives also are useful in the context of investigation. They can be instrumental in locating

- biographical or background information on a potential employee, party-opponent, or witness;
- information about a company that is no longer in business;
- Web content that has been removed from a Web page.

This article provides an overview of Internet archives for primary Virginia and federal law. It also highlights additional tools and tricks that can assist a search for archived Web content helpful to your practice.

## Virginia Legal Internet Archives: Primary Law

### Legislation

The Legislative Information System (LIS) of Virginia's Division of Legislative Services (<http://leg1.state.va.us>) provides electronic access to historic versions of the *Code of Virginia* and all

House and Senate documents from 1994 to present. The *Code*, bills and resolutions, reports to the General Assembly, and floor minutes can be browsed and searched by legislative session. The LIS also supports searches across all sessions for bills, resolutions, and summaries.

Vendor coverage of historic legislation varies. Fastcase (available through the Members Only section of the Virginia State Bar website, <http://www.vsb.org>) directs researchers to the commonwealth's LIS. Lexis's *Code* archives coverage begins with 1991, and its Advance Legislative Service coverage begins in 1989. Westlaw's *Annotated Code of Virginia* archives go back further, to 1987.

### Administrative Agency Activity

Government-sponsored Internet archives are available for the *Virginia Administrative Code*, the *Virginia Register of Regulations*, and agency guidance documents. However, you'll have to visit a different archive for each document collection. *Virginia Administrative Code* archives from 1994 to the present are available through the LIS. The Virginia Code Commission provides access to archives for the *Virginia Register of Regulations* (<http://legis.state.va.us/codecomm/register/issfiles.htm>). The *Register* is fully browsable and searchable, with full text coverage beginning with Volume 14, June 22, 1998. Unless you're looking for greater search functionality, the commonwealth's resources are best.

When you're searching for guidance on how Virginia administrative agencies interpret regulations, your first stop should be Virginia Regulatory Townhall (<http://www.townhall.virginia.gov>). This website is an excellent resource for regulatory tracking and research. Applicable chapters of the *Virginia Administrative Code* or board, agency, or secretariat regulations can be browsed using this site's search engine. The guidance document archive includes documents that are more than twenty years old. Board meeting agendas and minutes from 1999 to present also are available. If you don't see what you need, try e-mailing the contact listed under the information tab for the agency or board you're researching.

*This article provides an overview of Internet archives for primary Virginia and federal law.*

*Local Government*

Local government Internet archives are scarcer and vary widely from one local government to the next. A listing of Virginia municipalities is available at <http://virginia.gov> (from the home page, click Government, then Local Government Websites). Some cities, counties, and towns don't maintain a website. The Richmond City Council's Ordinance and Resolution archive ([http://www.ci.richmond.va.us/citizen/city\\_gov/meetings/meetings\\_clerk.aspx#](http://www.ci.richmond.va.us/citizen/city_gov/meetings/meetings_clerk.aspx#)) provides access to all council papers, not just final laws. Coverage is comprehensive for recent years, and some documents are available from as early as 1993.

**Federal Legal Resources**

The U.S. Government Printing Office (GPO) public access website, GPO Access (<http://www.gpoaccess.gov>), offers an extensive archive of federal legislation, regulations, and legislative history. "The information provided on this site is the official, published version and the information retrieved from GPO Access can be used without restriction, unless specifically noted." <http://www.gpoaccess.gov/about/index.html> (accessed 5/8/08). All databases allow full-text searching and can be browsed by date and citation. Commercial providers are filling in some of the gaps in legislative and regulatory history coverage left by the GPO. Some providers are working to push back retrospective coverage, and others are adding more recent legislative and agency activity.

*Legislation and Legislative History*

GPO Access has archived all versions of the *U.S. Code* from 1994 through January 2006, as well as public and private laws, congressional bills, the *Congressional Record*, and conference reports. Congress's bill tracking system, THOMAS (<http://thomas.loc.gov>), works hand in hand with the GPO Access legislative archives. THOMAS obtains most of its electronic documents from the

*Some providers are working to push back retrospective coverage, and others are adding more recent legislative and agency activity.*

GPO, but there are some added features. Most notable is the bill summary and status page, which is available for every bill introduced since the 93rd Congress (1973).

The full text of legislation from the 101st (1989) through the current Congress is available and can be searched by a specific session or across all sessions. Searching THOMAS is often preferable to searching GPO Access, as THOMAS's searching and page and document loading is much faster. However, GPO Access offers PDFs of the actual documents, in addition to HTML and text.

A number of private vendors (e.g., Lexis, Westlaw, and Hein) collect legislative history compilations not otherwise available outside the collections of federal depository libraries. While there is overlap in coverage among vendors, the specific collections are not identical and therefore it may behoove you to check other resources if your first attempt is not successful.

*Regulatory Activity*

GPO Access's archives include all versions of the *Code of Federal Regulations* (CFR) from 1996 forward, as well as *Lists of Sections Affected* from 1986 to present. Its *Federal Register* coverage begins with Volume 59 (1994). If you need something older, HeinOnline (<http://heinonline.org>), a commercial database, is an online resource. Its coverage of the *Federal Register* and CFR each begins with volume one.

A growing number of federal rule-making documents are available from a single source, Regulations.gov (<http://www.regulations.gov>). The Regulations.gov archive includes docket items from nearly all federal departments and agencies. This resource was launched in 2003, so the date range of documents available is limited. Regardless, Regulations.gov is valuable. It provides instant access to not only regulations and public comments, but also to background documents, which include studies, reports, pleadings, and orders from adversarial proceedings concerning federal rule making.

Many state and federal administrative agencies have created Internet archives of news releases, guidance documents, decisions, and publications. There's far too much out there to provide even a broad overview here. Just be aware most agencies have Internet archives, some more structured and organized than others. Sometimes it's easier to track down an archived government document using Google than it is to search or browse the government archive.

### Internet Archive Tools and Resources

Attorneys need more than the black letter of the law. Fact-finding and investigation is often equally important. Internet research often can be quite intimidating. It's very discouraging when your Web searches return zero results or three million results. It's difficult to sift through the incomprehensible volume of Web content to find relevant, reliable information. Fortunately, there is some order amidst the chaos.

#### *Internet Archive*

If you know the URL (Web address) for the website you want to investigate, odds are the Internet Archive (<http://www.archive.org>) will oblige. "The Internet Archive is a 501(c)(3) non-profit that was founded to build an Internet library, with the purpose of offering permanent access for researchers, historians, and scholars to historical collections that exist in digital format." <http://www.archive.org/about/about.php> (accessed May 9, 2008). This resource allows you to explore old versions of websites and browse the content. Most of the hyperlinks will take you to the content originally linked to the older version of the Web page. I use this resource regularly to search for documents and background information on companies and individuals.

Recently an attorney asked me to obtain a guidance document issued by a federal agency. A hyperlink to the document was provided in an agency press release. However, a couple months after the release, the document had been removed from the Web page. What to do? Federal Freedom of Information Act (FOIA) requests can take forever. Searching the website was ineffective. The hyperlink reference made this an ideal candidate for the Internet Archive. I entered the URL, pulled up an older version of the website, and there was the document.

On another occasion, I received a request for biographical information on an attorney. We didn't have any information concerning her current employment, and she wasn't listed in any of the standard legal directories. Eventually, I found her name referenced in a case. Unfortunately, this case was a few years old and she was no longer with the firm. But fortunately, several versions of the firm's website were available through the Internet Archive. I browsed the attorney sections of some of the earlier versions and uncovered the attorney's biography.

I also use the Internet Archive to review older versions of company websites. You can locate websites for companies that have gone out of business, as well older versions of existing company websites containing content relevant to pending litigation, such as warranties or material that may infringe on your clients' intellectual property rights.

The Internet Archive is not a panacea. The volume of Web content and content changes is far too overwhelming for any current system to find everything. Even if a website archive is available, it is possible a particular version wasn't archived before the content was changed. And then there's robots.txt. Anyone can use this simple protocol to prevent his or her website's content from being archived. It's very effective, but not

perfect, so there's always hope the gem you're looking for escaped obliteration.

#### *Google Cache*

Did you ever run a Google search, click on the link provided, and come up with a "page cannot be found" message? Or was the content completely different than the descriptive blurb Google provided? Click the "Cache" link instead of the main hyperlink, and you will be directed to the archived content. At the top of the page, Google provides the date that the Web page was cached. Unlike the Internet Archive, only the most recent cache is available. Once Google's crawlers reach the website again, the cache is replaced.

#### *Journals*

The Internet is also a great place to locate journal archives. A number of journals provide access to their archives via their websites—often for a fee, but sometimes issues free of charge. Others are available through the publisher and commercial databases.

For articles from sources other than legal journals, try the OneFile periodicals database available through Find It Virginia (<http://www.finditva.com/cgi-bin/main.cgi>). Access to Find It Virginia is provided through the Library of Virginia and local public library systems. One only needs a public library card from any one of Virginia's many public libraries. Gale's General OneFile (<http://www.gale.cengage.com/onefile>) is a comprehensive periodical resource that searches more than sixty million articles with a single query.

LegalTrac is the equivalent archive for legal periodicals. Remote access generally is not available, but one can access this database at most law school libraries and at law firm and court libraries that maintain an annual subscription. HeinOnline's law journal archive is an excellent resource for finding older law journal articles, as its coverage generally begins with volume one of each title. Hein's, Lexis's, and Westlaw's coverage is not identical, so check each resource. Avoid search charges by calling customer service or checking the database coverage before performing a search that may not be supported.

#### **When All Else Fails ...**

If you can't find something online, it's important to know where to turn. Librarians can assist by searching the library's resources, performing additional online searches, and borrowing items from other libraries. For government documents you can always try a FOIA request. If you need the documents fast, commercial services will retrieve and deliver print archives for you by fax, overnight mail, or e-mail. There are many retrieval services for medical and other nonlegal journal articles. The Canada Institute for Scientific and Technical Information ([http://cisti-icist.nrc-cnrc.gc.ca/main\\_e.html](http://cisti-icist.nrc-cnrc.gc.ca/main_e.html)) and the University of Minnesota's Biomedical Information Service (<http://www.bis.lib.umn.edu>) are two such services with access to extensive collections.



For primary and secondary legal resources, if you haven't been successful locating your items locally, try the Social Law Library (<http://www.sociallaw.com>). Based in Massachusetts, it offers a nationwide document delivery service. It's hard to determine what is more impressive—its turnaround time (more than 90 percent of requests completed in less than an hour) or its collection, which includes current and retrospective versions of state and federal primary and secondary legal resources.

For a list of collection highlights, see <http://www.sociallaw.com/article.htm?cid=10358> (accessed 5/9/08). ■

# Librarian Protects and Defends Legal Documents

by Dawn Chase

*Editor's note: State Law Librarian Gail Warren regularly assembles and edits articles on information resources for attorneys for publication in Virginia Lawyer. A Virginia lawyer herself, she is committed to making sure attorneys are aware of and know how to access sources on law and other materials they need to prepare cases.*

When Gail Warren first went to work at the Virginia State Law Library in 1981, there was no fax machine in the Supreme Court building where the library is housed.

There was a dedicated computer terminal on which law clerks could access Westlaw on disc, but the computer was rarely used. Even young lawyers preferred books for legal research.

At the University of Richmond, where Warren had earned her law degree two months earlier, the law library didn't provide Westlaw at all.

Times have changed. During an interview this spring, the State Law Library was undergoing renovation and Warren, displaced from her office, was temporarily rolling her computer around on a book cart. While contractors abated asbestos, replaced carpet, and painted, she was purging books.

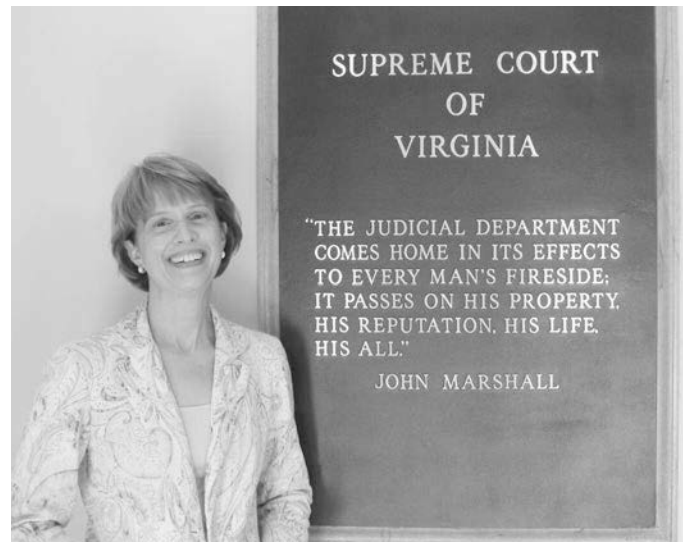
Destined for discard were generations of state reports and other now-unused volumes. "It's painful," she lamented. "This is not the best use of this space, but—all these books!"

On the other hand, the books' content "can be obtained in at least three other places in our library," she said. "This is not my library. This is the Court's library, ... but I am personally invested in this place."

Warren has been on the leading edge of technological change since she became state law librarian in 1982.

Warren promised when she got the job that she would get a master's degree in library science—which she did through a graduate program at The Catholic University of America in Washington, D.C. The program prepared her for a future library with no card catalogues, microfiche, or inky "date due" stamps.

Through the American Association of Law Libraries, she is tied into national efforts to expand digital access to library collections nationally and to preserve them for future generations, among other projects.



Gail Warren at the entrance to the Supreme Court of Virginia

The Virginia Law Library has several responsibilities:

- To preserve primary law—the *Code of Virginia*, Virginia cases, indexes, and treatises or monographs. This includes an archive of hard copy—i.e., books. "There's a very different quality to searching online versus hard copy," Warren said. Some of the collections extend back to the earliest Virginia law in the 1600s.
- To digitize and index Supreme Court of Virginia briefs—an ongoing project.
- To store and protect documents of historic importance. "The Virginia Judicial Branch website points out the Supreme Court of Virginia is one of the oldest continuous judicial bodies in the U.S.," Warren said. With that designation comes an archive of treasures that the library

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Warren continued from page 45

is enhancing with judicial biographies and by participating in an oral history project.

The mission and use of the State Law Library is governed by Virginia Code § 42.1-60-64. It is located in the secure building in Richmond that houses the Supreme Court and Virginia Court of Appeals, and it is not open to the general public.

But the library is available to lawyers in good standing from Virginia and elsewhere. To use the library in person, a lawyer needs photo identification to get through security and a bar card for access to library resources. Warren's team also will pull specific documents for lawyers — in person and by phone and e-mail.

The library's primary function, however, is to serve Virginia courts. Its research role for the appellate courts has been established since it was officially recognized in 1902. Recently, though, Warren has been encouraging judges in the trial courts also to call on the library for original research, which on all levels can range from checking citations to specialized detective work.

As an example of the latter, Warren said a law clerk was seeking a section of a county's zoning ordinance. The assignment was trickier than it sounds — the section was buried in the county planning department's website. The librarians, long experienced in the peculiarities of Virginia jurisdictions, were able to ferret it out.

That challenge drives home one of Warren's mantras about information: "If you don't make it accessible, that's a huge obstacle." So on a state and national level, she participates in projects to collect, index, and store legal information for perpetuity.

Those projects include a national effort to preserve court records from all states in an underground archive to protect them from physical destruction; conversion of printed materials and microfiche to electronic versions; digitizing the Supreme Court of Virginia briefs; and collecting and indexing circuit court opinions on an unprecedented scale statewide.

Warren and a staff of four — assistant law librarians Terry Long and Dee Dee Dockendorf, technician Janet Holland, and administrative assistant/bookkeeper Vanessa Tee-Coles — serve the library's clients.

In the years since Warren has been there, the pace has increased. Formerly, the librarians would respond to a request by photocopying mountains of documents and mailing them off. Now e-mail is the preferred means of transmission, and

judges and clerks have come to expect immediate responses to their requests.

Warren meets the challenge with a cheerful, unflappable, and can-do demeanor that belies her dawn-to-dusk race to accomplish many projects.

When she started law school, "I was going to be Perry Mason. I was going to represent poor women and children, save the world," she said. But her need to pay off school loans and her fascination with the UR law librarian's unerring ability to find nuggets of information stored in dark caverns of bookshelves led her to this job.

One of her concerns in the electronic age is the authentication of information.

When dealing with the *Code of Virginia*, circuit court opinions, or any reference used in a court case, what is the authentic version? Where does the burden lie for assuring that the version filed with the court is the true one? And how is the true copy stored and transmitted in a way that prevents modification?

From her librarian's perspective, "It's important that we know what we're keeping is a true copy," Warren said.

As information is more widely disseminated in the digital age, those questions have gained new urgency. "Without the proper safeguards in place, technology permits anyone to edit and disseminate supposedly 'official' legal documents to suit their position or purpose," but her job is to protect the original words of law and the interpretations of it, she said.

So add to Warren's job description — along with archivist, digitizer, researcher, preservationist — a heroic role: Guardian of Truth, Defender of the Record. ■



## Take Your Pick

THE ABILITY OF LOCAL BARS to present programs that are important to the community is limited only by one's imagination.

The programs can be done with relatively little drain on financial resources, a factor important to all of us.

One of the annual projects of the Conference of Local Bar Associations (CLBA) is the drafting, publishing, and distribution of the pamphlet *So You're 18*, intended to reach those approaching adulthood. The publication describes the laws that apply to those aged 18 and older. In recent years we have provided the pamphlets to interested courts for distribution to teens receiving their driver's licenses. This has been well-received.

VSBA President Manuel A. Capsalis has attended many of the sessions in Arlington and personally presented the pamphlets to new drivers.

Another excellent program that many bars could adopt was developed by 2008–09 CLBA Chair William T. Wilson, who practices in Covington and is a member of the Allegheny, Bath, Highland Bar Association. On May 29, Bill oversaw a *So You're 18* program for Allegheny High School juniors and seniors cosponsored by the local bar and the CLBA. On the panel were representatives of the state bar staff, a general district court judge, the local bar president, the sheriff of Allegheny County, a Covington police patrolman, a local private attorney, and an Allegheny County assistant commonwealth's attorney. Each speaker

presented a legal issue such as driving under the influence, guns and hunting, and immigration and voting rights. The forum was followed by a question-and-answer session. The CLBA can furnish your bar association the necessary materials and an outline of prior programs.

Another program worth replicating is Campbell County's National Adoption Day Ceremony, now in its fifth year. It is run primarily by the Campbell County Bar Association and volunteers from the courts and supporting agencies. CLBA member and Campbell practitioner G.W. Nolley said that the program is presided over by a chief circuit court judge with a juvenile and domestic relations judge assisting. The adoption agencies recognize each adoptee and adopting family, as well as other participants. The session concludes with the families standing before the court, the court acknowledging the adoptions, and the execution of an appropriate decree. A reception with food and gifts for the children follows. G.W. points out the positive effect of the proceeding — not only for the adoptees and families, but also on the court personnel, the supporting agencies, and the lawyers. The scene of many hard-fought battles with few leaving unscarred becomes instead the place for new beginnings.

A program simple in concept but with rich benefits comes out of Luray. CLBA Immediate Past Chair George W. Shanks has been associated with the Page County Bar Association's sponsorship of a bus trip for high school

seniors to the U.S. Supreme Court. George also led a trip to the Supreme Court of Virginia that included lunch with Chief Justice Leroy R. Hassell Sr. AS WE PROMOTE THESE LOCAL BAR PROGRAMS, we also have to recognize that all programs are vulnerable to changes we cannot control.

### ADDED THOUGHTS:

In a December 2007 column I wrote about the Legal Information Network for Cancer (LINC) and Phyllis C. Katz, who helped create it. [http://www.vsb.org/docs/valawyer\\_magazine/vl1207\\_clba.pdf](http://www.vsb.org/docs/valawyer_magazine/vl1207_clba.pdf). Katz recently received the Virginia State Bar's 2008 Lewis F. Powell Jr. Pro Bono Award for her work with LINC and other similar efforts. She is a worthy recipient of that award.

For those who are interested, Edward L. Weiner did play hockey at the Verizon Center in Washington, D.C., in February, despite being sick for several days before. (See my column in the April 2008 *Virginia Lawyer*, [http://www.vsb.org/docs/valawyer\\_magazine/vl0408\\_clba.pdf](http://www.vsb.org/docs/valawyer_magazine/vl0408_clba.pdf).) Reports indicate he did not score but took several shots to the torso in order to stop the other team from scoring. The event was very successful, netting more than ten thousand dollars for the Recurrent Respiratory Papillomatosis Foundation.

AND, FINALLY, the CLBA will lose a valuable member in Tracy A. Giles, who goes off to serve other professional efforts. He will be missed.

# Senior Lawyers Conference

by George W. Shanks, Chair



## Time Off for Good Behavior

THE PAST YEAR HAS GIVEN ME the pleasant opportunity to write on a variety of topics near and dear to my heart, to exhort my senior (and not-yet-senior) colleagues to public and professional service, and to rededicate ourselves to the ennobling ideals that place us at the epicenter of our culture.

Now, in my last column, it is time to speak of rewards well-earned. In a life consumed with resolving the problems of others, it is often difficult to let go, even for a moment, to truly relax, refresh, and reflect. To that end, I offer the following:

Over the years the Virginia State Bar has sponsored travel experiences that are incredible values and still meet the requirements of the most fastidious and demanding traveler. Since the millennium, the bar has chosen venues that include Cabo San Lucas, Mexico; Rome and Florence, Italy; Scottsdale, Arizona; Bermuda; Barcelona, Spain; and Sintra, Portugal. This year, Puerto Rico becomes the worthy successor in a list of superlatives. If you have never availed yourself of these trips, begin a new tradition. Contact Stephany Pishko at Tour Plan International, [stephanytrvl@msn.com](mailto:stephanytrvl@msn.com), or visit the VSB website at <http://www.vsb.org/site/events/item/35th-annual-midyear-legal-seminar/> for more information.

If less exotic but equally sunny climes meet your requirements, the VSB also convenes annually at Virginia Beach. This is also a great time to bring the family, including grandchildren, since the annual meeting always occurs after schools have recessed for the summer. Watch the VSB's website—<http://www.vsb.org>—early next year for details.

Other Virginia professional organizations are no less attentive to the relaxation needs of practicing attorneys. The Virginia Bar Association has for years taken up residence in the summer at The Homestead in Hot Springs and in the depths of winter before the fireside in Colonial Williamsburg. The VBA's superb educational programs are matched by the familiar, breathtaking, and luxurious surroundings in which they are presented. <http://www.vba.org/calendar.htm>

The Virginia Trial Lawyers Association annually takes its show on the road to the roots of our jurisprudential heritage. In 2004 and 2005, the VTLA sponsored weeklong seminars in Cambridge, England. In 2007, the experience moved to Trinity College in Dublin, Ireland. This year the program was at the University of Edinburgh in Scotland. Brochures are posted at <http://www.vtla.com/VA/>.

Senior lawyers have other delectable choices through the American Bar Association's Senior Lawyers Division. These offerings are always well-planned and well-appointed. A few of the 2008 trips include a cruise on the Baltic Sea, the Verona Opera Festival, Oktoberfest in Germany and the Czech Republic, a cruise to the Mexican Rivera, an Eastern Seaboard cruise on the Queen Mary 2, and (my personal favorite) a rail journey from Denver to San Francisco on the GrandLuxe Express (formerly the American Orient Express Railway). <http://www.abanet.org/srlawyers/>

For something less ambitious but no less thrilling, consider joining the ABA's Senior Lawyers Division in an

annual pilgrimage to the United States Supreme Court to sponsor applicants for admission before our highest court. The division provides the sponsorship and arranges tours, dinners, and transportation around Washington, D.C., culminating with your swearing-in before the justices. Although membership in the bar of the Supreme Court is hardly a necessity for the vast number of practitioners in the United States, it is a delightful and moving gift to yourself (or someone you esteem) and a bit of recognition for a professional life well-lived. Contact Angela Boykin at the ABA at [boykinaa@staff.abanet.org](mailto:boykinaa@staff.abanet.org) for more information.

It seems so benign to say that all you have to do to become a senior lawyer in Virginia is to reach the age of fifty-five. For most of us who have done that, thirty of those fifty-five years were filled with sixty-plus-hour work weeks, missed meals, sleepless nights, and the emotional roller coaster from elation to despair and back again. Whether your professional life is at either of those extremes or on the level near the station, recall the advice of those great philosophers, the Eagles: *Lighten up while you still can.*<sup>1</sup> Book one of these trips—soon. And take some time off. You've earned it!

1 *Take It Easy*, The Eagles (lyrics by Jackson Browne and Glenn Frey), (1972)

## Volunteer Commitment Drives YLC Programs



BY THE TIME YOU READ THIS ARTICLE, I will be immediate past president, and Jennifer L. McClellan will be at the helm of the Young Lawyers Conference (YLC). This is to the immense benefit of the conference, as McClellan—a delegate in the General Assembly—possesses a perfect mixture of enthusiasm, vision, and eminent good sense. The commonwealth's young attorneys will have a very good year under her leadership.

I knew Jennifer as a bar acquaintance for many years, and got to know her well by volunteering to chaperone students at the Oliver Hill/Samuel Tucker Pre-Law Institute, which Jennifer founded. Spending the night monitoring smart and rambunctious high school students, I observed Jennifer's commitment to the state's children first hand. I've watched her rise through the ranks of the conference and am convinced that she will make an excellent YLC president. No one in the conference has been more innovative in creating programs aimed at bolstering our ranks with minority attorneys than Jennifer. Her year as YLC president will coincide with Manuel A. Capsalis's year as Virginia State Bar president. Manny's commitment to minority issues is known; you couldn't create a better partnership if you tried.

I've had a ball this year. The YLC presidency takes considerable time, but as I've said before in these pages, the conference runs itself on the energy and commitment of its volunteers. I've never served on a board that gets as

much done, and I've never worked with this caliber of committee chairs in any other organization. I could have gone to Jamaica for a year and the conference would be none the worse. Our volunteers take their roles that seriously, even as they manage to have a lot of fun working hard.

I learned a lot about how the bar operates from my vantage point as an ex officio member of the VSB Council. Nothing has impressed me more this year than the work of Carter Glass IV and the VSB Judicial Selection Committee. The level of analysis the committee gives to nominees and the quality of its reviews are remarkable. Regardless of what happens in the legislature after the bar has its say, members of the bar should be very proud of this vetting process.

I also have been impressed with the work of Darrel Tillar Mason and the VSB Legal Malpractice Insurance Committee. Each time the committee reported to the VSB Council, the council came up with a new angle to study or a new request for information. Darrel always took those instructions graciously and went right back to work on this critically important issue.

Council members and the VSB Executive Committee bent over backwards to make me feel welcome, and they cheered and supported the conference at all times. I never once felt like an interloper in their meetings; they listened to young lawyer concerns with eager ears.

This reception had a great deal to do with Howard W. Martin Jr., who, by

the time you read this, also will have passed back into the land of billable hours. Howard was always warm and gracious to me and all members of the VSB Council. He presided over a year of significant change, from the end of Tom Edmonds's tenure and the start of Karen Gould's as VSB executive director, to a change in bar counsel, to a consideration of mandatory malpractice insurance and random trust audits, to budgetary belt-tightening. At the VSB Admission & Orientation Ceremony recently, Howard gave me a sly, quiet smile when I told him that I guessed he had no idea what he was in for this past year. A good leader adjusts the sails when the winds require, and Howard did. He also can run a meeting; I will always remember watching him churn through an agenda while giving everyone their due.

The bar is run by a talented, committed cadre of staff who make the lives of attorneys, especially bar volunteers, much easier. Our YLC liaison, Maureen D. Stengel, gave me the world on a silver platter, and with a smile. Assisted by the always gracious Catherine D. Huband, my friend and colleague Maureen has done more for the YLC than any individual I can recall in my ten years of involvement.

Elizabeth L. Keller, Valerie L. Breeden, Dawn Chase, and Rodney A. Coggin have all helped me immeasurably this year.

Our YLC board bids farewell to several members this year: Rita P. Davis,

YLC continued on page 55

# Staff Members: Asset or Liability?

by Janean S. Johnston

ALMOST EVERY LAWYER who is about to embark on a legal career as a solo practitioner faces the dilemma of whether to opt for staff assistance.

It is probably safe to say that no one in law school explained that solos will spend more than 60 percent of their time on nonlegal, nonbillable administrative matters. Nor did law school mention the stress levels that result from doing everything alone. Solos do not even have the luxury of a second pair of eyes for proofreading documents before the client spots a typo your spell checker failed to catch. The pressure to perform nearly perfectly in order to avoid ethics complaints or — heaven forbid — malpractice suits can be overwhelming at times.

Is staff assistance a help or a hindrance? It all depends. The Virginia Rules of Professional Conduct will help bring some of these issues into focus.

Any time you have nonlawyers assisting you in your practice, you are responsible for properly supervising them as specified in Rule 5.3 of the Rules of Professional Conduct.

One of the most critical challenges for staff members is remembering Rule 1.6 and its requirement that no member of a firm disclose client secrets or confidential information. Violating this rule can be as simple as discussing a client matter with a fellow firm member in a public place where it can be overheard, with friends in a social setting, or even at home with family members. Staff members should be instructed that even the identification of a person as a client of the firm can present problems. Your staff's duty to protect client confidences must be kept for as long as the staff

member lives (unless the information becomes public through court records, newspaper articles, or the like). As attorneys, you should have staff sign agreements to maintain client confidences at the time of their hiring and remind them annually about this requirement.

Another pitfall for staff and attorneys involves Rule 5.5 and the unauthorized practice of law. Whenever receptionists, secretaries, or paralegals assist clients, you must caution them to be very careful in their communications — whether by phone, e-mail, or in person — to avoid any perception that they are giving “legal advice.”

As most of us already know, the number one ethics complaint nationwide is: “My lawyer doesn't return my phone calls.” Rule 1.4 concerning communication requires that an attorney keep a client reasonably informed about the case and promptly respond to requests for information. Staff members can offer tremendous assistance in meeting these requirements. They can provide written documentation (fee agreements, status reports, billing statements, etc.), copy clients on important documents received by the firm, initiate or return phone calls, and handle the attorney's mail. A potential client's impression of your firm is often made in the first contact, and a pleasant, patient receptionist or secretary can help calm a stressed person and make the ongoing legal experience as pleasant as possible.

Rule 1.1 regarding competence would appear to require the lawyer to provide the legal knowledge, skill, and preparation necessary to represent clients adequately and ethically. The rule does not seem to involve staff. However,

how many of you ask paralegals to assist you in conducting legal research? When they do, you must carefully review their work to ensure that the cites are appropriate and include the latest case law.

Staff members often assist with calendaring and docketing, file management, and mail handling. All of these are key elements in helping you meet the diligence standards in Rule 1.3. Staff members can be invaluable in helping you act with reasonable diligence and promptness in representing a client.

Certain staff positions are often the first line of defense in detecting potential conflicts of interest. If your secretary sets up consultations, do you have a procedure to alert her to a possible conflict? Have you advised her not to gather too much information until further research and advice is sought from you? A basic understanding of Rule 1.7 — the general rule concerning conflicts — should be required of all involved staff.

Most Virginia lawyers know and understand the specifics of Rule 1.15 (e) regarding record-keeping requirements for client trust accounts. A well-trained staff member can save you many hours each month performing these duties under your supervision.

My best-practices recommendation is to hire an experienced staff member — or take the time to train one — as soon as it becomes financially feasible. You will be amazed at how much less stress you will feel, and how much more you can accomplish at your billable rate with the added help.

Please call me at (703) 567-0088 if you would like more specifics.

# Enhancing Courtroom Presentation Through Technology

by Fredric I. Lederer

I CAN SEE IT IN MY MIND'S EYE:

Judge: *Very well, Mr. Jefferson, you may proceed with your examination.*

Jefferson: *Thank you, Your Honor. Let the record reflect that I am using the courtroom document camera to show Mr. Jones an image of plaintiff's exhibit one. What is the document I am showing you, Mr. Jones?*

Jones: *The deed to my farm.*

Jefferson: *Your Honor, may the record reflect that I am now using my computer to display to Mr. Jones Exhibit Two with the second paragraph enlarged — a call-out, I believe it is termed.*

Judge: *Certainly.*

Jefferson: *What is this, Mr. Jones?*

Jones: *The letter I received from Mr. Smith advising me in that paragraph that the deed was forged.*

Magically transported to the present, Mr. Jefferson, student of George Wythe and noted technologist, might well find himself drawn to trial practice enriched through technology. After all, Jefferson was intrigued by how technology could improve life.

There appears to be a consensus that evidence presentation technologies at least improve understanding by fact finders of the evidence and substantially shorten the time necessary to try a case. The key is the visual presentation of information: opening statement, evidence, and closing argument.

The adage has always been that "a picture is worth a thousand words." In

technology-augmented trial practice, we place the emphasis on image. Rather than have the fact finder focus on the description of a document by a witness, after admission of the exhibit we display the image of the document while the witness testifies about it. In closing argument, counsel anchors the summation with key images: evidence, key words and dates, and concepts.

The most basic way of doing this is to use a document camera — a television camera that displays paper or objects placed below it on a display monitor or television. More advanced presentations use notebook computers. Counsel can display images of documents, spreadsheets, pictures, multimedia depositions, or any other form of image. Of course, this type of presentation has requirements.

First, counsel must have access to the technology. If not practicing in one of the nation's increasingly high-technology courtrooms, with the court's permission counsel can bring this technology into the courtroom. Where displays are not installed, counsel can use a small but bright projection unit that displays images on a portable screen or a wall. If counsel is going to use a computer for courtroom presentation, counsel also has to have software. Although Word, WordPerfect, or Adobe Acrobat can be used, basic presentation ordinarily is based on PowerPoint. Technologically advanced lawyers tend to use specialized and powerful litigation software such as Trial Director or Sanction.

Second, counsel must have the ability and the self-confidence to use technology — unless of course counsel employs an assistant or a vendor to run the presentation. Technology use at trial

is an acquired skill that takes some training and practice, but it's not particularly difficult to learn. Getting the information into the computer in the desired way usually does take some specialized knowledge. The College of William and Mary Law School's Center for Legal and Court Technology offers basic courses for lawyers interested in learning these skills.

Keep in mind that in a time where nearly all evidence originates in computer form, using printed versions of that information is inefficient and sometimes insufficient. Sometimes the invisible metadata that supplies critical information about an exhibit — such as its author and date and time of creation — is important. That information cannot be communicated easily without showing the original digital document.

Technology is only a tool. But shouldn't lawyers who like to win use the best tools available?

## New Features in *Virginia Lawyers Weekly*

*Virginia Lawyers Weekly* has recently posted a new online user manual for its revamped website, available at <http://www.valawyersweekly.com/web-site-manual>. It features tips on how to get the most out of the site's features, including the archives of past stories, case digests, and verdict and settlement reports. The manual includes a series of hypotheticals showcasing the different legal research tools available on the site. The new site has a running compendium of each month's important opinions. VLW subscribers have access through the site to free full-text PDFs of these cases and all others digested in the newspaper.



# Building a Law Firm Library

by Joyce M. Janto

OPENING A LAW PRACTICE is a daunting task. Renting space, equipping an office, and hiring staff are obvious first steps. But what about assembling a library?

## Why Bother?

Last year I attended a conference on legal research at the Chicago-Kent College of Law. The most interesting session was the presentation by the school's legal writing faculty, who had surveyed alumni on their research habits. Two hundred attorneys responded, ranging in experience from fewer than five to more than twenty years in practice. All groups agreed that while the bulk of their research was done electronically, there was still a need for print resources.

## When Print is Better

The biggest complaint of experienced lawyers (those with more than fifteen years of experience) about their juniors was that the associates were too quick to jump online. Being unfamiliar with an area of law, the juniors' online searches took longer and returned less relevant results. The senior lawyers felt that some background research in secondary sources would result in more productive online time.

Statutes were seen as being easier to use in print. This makes sense because statutes tend to be interrelated. When doing statutory research, a researcher commonly will consult multiple sections. Also, when statutes are drafted, concepts can be expressed as a negative, i.e., "it is not unlawful." This can make searching in a full-text database difficult.

## When Online Is Better

There was universal agreement that some tasks, like Shepardizing, are accomplished more cost efficiently

online. Case research also can be more economical, depending on the skill of the searcher. Those without sufficient training in the use of fee-based databases quickly run up billable hours with inefficient searches.

## What Should You Own?

The *Code of Virginia*. Whether one purchases the LexisNexis or Thomson West version is a personal preference, as each has its own features. Either will provide an excellent index, the statutes, and annotations. If you are beginning practice in an area with a regulatory component, you also should have the *Virginia Administrative Code* and *Virginia Register of Regulations*.

When selecting secondary sources, a general practitioner should consider *Michie's Jurisprudence of Virginia* and *West Virginia and Virginia Forms*, both published by LexisNexis. A basic source is *The Virginia Lawyer: A Deskbook for Practitioners* edited by Thomas G. Voekler and published by Virginia CLE Publications. This how-to guide covers a variety of practice areas and has a companion CD containing forms. *The Virginia Practice* series, published by Thomson West, is very useful. Each title covers a specific practice area.

The choice of secondary materials is driven by the area of law as each has its bible. In personal injury law, they might be the *Personal Injury Valuation Handbooks*, published by Jury Research Verdict Service, and *Appleman on Insurance*, published by LexisNexis. How do you determine the bible in your field? You could ask an attorney well-established in that practice area. Or you could call your local law librarian for a recommendation.

## What Should You Bookmark?

Another complaint of seasoned lawyers about their juniors is an overreliance on fee-based services. Young lawyers forget that much of the information packaged so conveniently on Lexis and Westlaw is available for free at government sites. Federal statutes and regulations can be found at <http://www.gpoaccess.gov>. This site also is a gateway to websites of federal agencies. These websites contain agency decisions, rules, or reports. Federal legislative materials can be found at <http://thomas.loc.gov> and federal cases at <http://www.uscourts.gov>. The latter site links to district and appellate court websites where full-text opinions may be available. Virginia legislative and court materials can be found at <http://.leg1.state.va.us> and <http://www.courts.state.va.us> respectively.

Need to Shepardize but can't afford a Lexis contract? Consider signing up with lexisONE (<http://www.lexisone.com>). Along with free access to forms and the past five years of state and federal cases, this service provides twenty-four hours of access to Shepard's for thirty-two dollars.

Many localities in Virginia have given up publishing ordinances. Instead, you can find them at <http://www.municode.com>. This site offers free access to most of the local ordinances in the state.

## Conclusion

While electronic resources may predominate, there is still a place for print. A good library will contain a judicious mix of both.

## *Business and Commercial Litigation in Federal Courts, Second Edition*

Robert L. Haig, editor-in-chief, published by Thomson West and ABA Section of Litigation (2005)

Reviewed by Charles F. Witthoefft and Farrah G. deLeon

THE 1998 PUBLICATION of *Business and Commercial Litigation in Federal Courts* by the ABA Section of Litigation was met with acclaim by both bar and bench. The treatise has become a valued resource for trial lawyers because of its exceptional joining of procedural and substantive law with practical strategic and tactical considerations in all aspects of litigating business disputes.

Outstanding trial lawyers and federal judges provided the text and insightful practice aids, capably edited by Robert L. Haig of Kelley Drye & Warren LLP in New York. The success of this treatise led to the publication of a second edition in 2005, now expanded to eight volumes (from six) with sixteen new chapters written by 182 prominent practitioners and seventeen federal judges.

The second edition contains new chapters on the following: case evaluation, discovery of electronic information, litigation avoidance and prevention, techniques for expediting and streamlining litigation (especially pertinent to practice in the Eastern District of Virginia), litigation technology, litigation management by law firms and corporations, civility, director and officer liability, mergers and acquisitions, broker-dealer arbitration, partnerships, commercial defamation and disparagement, commercial real estate, government entity litigation, and e-commerce.

The treatise is well-organized, efficiently written, and pragmatic in discussing issues that confront commercial litigators. There is a chapter on arbitration versus litigation and a discussion of other alternative dispute resolution procedures and strategies. The treatise includes a comprehensive step-by-step

presentation of business disputes that includes elements of the claim, case assessment, pleading, discovery, trial, and appeal. It serves as a ready source for answers to client inquiries and a quick reference for newly raised issues as the commercial case unfolds. The treatise offers a thorough survey of substantive law for the federal court practitioner and cites leading cases and authorities on that topic for further research. The treatise also presents relevant forms, checklists, practice guidelines, and jury instructions. A CD-ROM with electronic copies of the checklists and form pleadings will aid litigators in double-checking important issues and filing deadlines. Using the templates provided could save significant time drafting motions and pleadings.

The chapter on trademark litigation combines strategic objectives in such cases with an overview of the Lanham Act. Guidelines on how to conduct a trademark search and an investigation of the facts surrounding an alleged infringement are set forth. That chapter also considers how to approach drafting a cease-and-desist letter, complaint, and answer. It then provides advice for claim-specific discovery, including topics for interrogatories and document requests, and for expert testimony on trademark infringement issues. The reader can consult separate chapters on selection and use of experts in federal court, expert disclosures, pretrial exclusion of expert testimony, and tips on cross-examining the opponent's expert.

What most distinguishes this treatise from other federal trial court resources is its practical, how-to advice for different stages of resolving a busi-

ness dispute. The chapter entitled "Litigation Avoidance and Prevention" provides sound advice on how to keep a commercial client out of court. The thorough treatment of preparation and trial issues will prove equally useful to inexperienced and seasoned trial lawyers.

Other challenging but rarely examined topics are presented in chapters about factual investigation and evaluation of a business claim; budgeting for, staffing, and ongoing management of the commercial case once filed; and related professional considerations, including ethics and civility.

As the title states, the focus of this treatise is on federal court practice, but many of the practical litigation topics would be relevant to business cases in state court. Given the increasing similarity of federal/state procedural practice, and the reliance Virginia courts often place on federal cases that interpret federal rules similar to Virginia's, this resource also would be of great value to trial lawyers who may appear infrequently in federal court.

The second edition of *Business and Commercial Litigation in Federal Courts* is an excellent collaborative effort and, with its regular supplements, will surely continue to be a helpful resource for business trial lawyers.

Maya M. Eckstein, Jacqueline McClenney Wallace, Kelly C. Ashby, and Joshua M. David. Each of these board members gave generously of their time and talents to the YLC, and each was extremely supportive of me this year. They have my undying gratitude.

My ten years with the YLC will officially end next June, and each year the conference has given me so much more than the effort I put in. I end my last article with a plea to all those who even remotely consider volunteering their time for this organization: Do it. You won't work with a better group of people anywhere, and I doubt you'd accomplish as much anywhere else. I've been privileged to serve as president this year and am grateful for the opportunity you gave me. ■



# 70th Annual Meeting

VIRGINIA BEACH, VIRGINIA

June 19–22, 2008

At the Virginia State Bar 70th Annual Meeting, Manuel A. Capsalis of Arlington was sworn in as president of the VSB, succeeding Howard W. Martin Jr. of Norfolk. Jon D. Huddleston of Leesburg became president-elect.

The agenda included a showcase program on “Initiatives in Mental Health Reform in the Aftermath of the Virginia Tech Shootings: The Legal, Policy and Administrative Implications,” sponsored by the VSB’s Young Lawyers Conference.

Other continuing legal education programs were “The Dos and Don’ts of Dealing with the Media in High Profile Cases,” sponsored by the Criminal Law Section, and “When and How to Use Mediation in Cases Involving Elderly Clients,” sponsored by the Senior Lawyers Conference, the General Practice Section, and the Virginia Joint Alternative Dispute Resolution Committee.

The conferences held special events to recognize outstanding achievements within their respective organizations. The Conference of Local Bar Organizations hosted its annual meeting and breakfast for local bar leaders and conference representatives and presented its Local Bar Leader of the Year Award. The Young Lawyers Conference hosted its annual membership reception to recognize lawyers with special service awards and to announce the Young Lawyer of the Year Award. The Senior Lawyers Conference hosted a special luncheon to honor its Fifty-Year Award recipients.



**1:** Manuel A. Capsalis of Arlington (center) assumes the role of VSB president, taking over from Howard W. Martin Jr. of Norfolk (left), who led during the 2007–08 bar year. Leesburg attorney Jon D. Huddleston (right) is now president-elect and will become president in 2009.

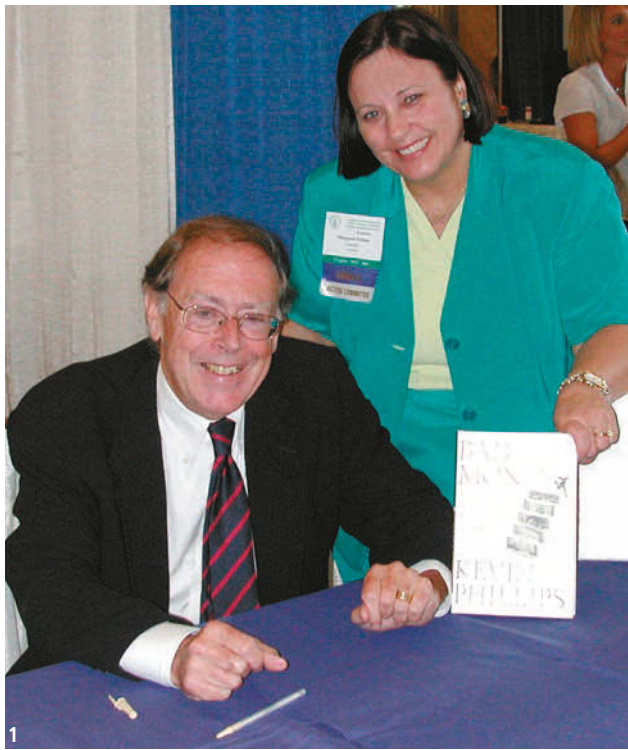
**2:** U.S. District Judge Gerald Bruce Lee of Alexandria (left) chats with Del. Jennifer L. McClellan of Richmond and her fiancé, David Mills, before the president’s installation banquet on June 20. On June 20, Lee spoke at the VSB Technology and Practice of Law Committee’s continuing legal education program on electronic evidence, and McClellan was installed as president of the Young Lawyers Conference.



**1:** The Virginia State Bar honors those who have been members in good standing for fifty years at a Saturday luncheon, sponsored by the Senior Lawyers Conference. The following members attended the lunch and received certificates commemorating their service: (left–right, front row) Douglas S. Mackall III; Terry H. Davis Jr.; Judge George W. Vakos; Robert L. Garian; Judge Leonard B. Sachs; Donald A. Stokes; Thomas W. Barham; H. Richard Chew; (back row) John G. Mizell Jr., 2007–08 SLC first vice chair; Frank O. Brown Jr., SLC past chair and newsletter editor; Manuel A. Capsalis, VSB president; Jay J. Levit; and George W. Shanks, 2007–08 SLC chair.

**2:** Virginia Assistant Attorney General Allyson K. Tysinger explains new state legislation concerning involuntary commitment and new standards for outpatient commitment during the Showcase CLE on mental health law reform in the aftermath of the Virginia Tech shootings. The program was sponsored by the Young Lawyers Conference.

**3:** William R. “Billy” Martin, a partner in the litigation group of the Sutherland law firm, answers a question during the Criminal Law Section’s continuing legal education program about dealing with the media in high-profile cases. Martin, who practices in Washington, D.C., represented now-suspended Atlanta Falcons quarterback Michael Vick in his federal dogfighting case last year.



**1:** Kevin Phillips — here with Margaret E. Nelson, co-vice chair of the Access to Justice Committee — signed copies of his new book, *Bad Money: Reckless Finance, Failed Politics, and the Global Crisis of American Capitalism*. The committee sponsored an Access to Justice Book Fair that also featured Professor Jonathan K. Stubbs of the University of Richmond School of Law and editor of *The Big Bang: Brown v. Board of Education and Beyond* — the autobiography of Oliver W. Hill Sr. Barnes & Noble sponsored the event.



**2:** William D. Dolan III, an Arlington attorney and VSB past president, announces his endowment in perpetuity of the David T. Stitt Memorial Volleyball Tournament. The tournament was renamed this year in memory of the Fairfax Circuit Court judge who, prior to his death in May, was active in the bar and a supporter of the annual sporting event.



**3:** The winners of the newly renamed tournament were The Llamas, who are (left–right, front row) Hannah Savage; Jack Huddleston, ball boy; Henry Martin, ball boy; Faith White, ball girl; (back row) Brad Martin; Jon D. Huddleston, VSB president-elect; Howard Martin, VSB immediate past president; Rick Sauders; Craig White; and Courtney Sump.

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