Docket Call

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Spring 2007
Christopher E. Gatewood, Ed.

The newsletter of the Young Lawyers Conference of the Virginia State Bar

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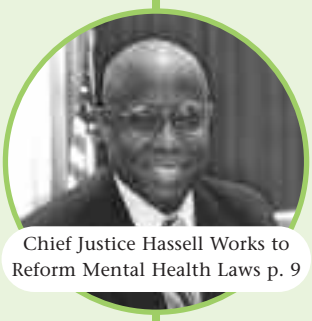

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Taking Back the Takings Clause

Backlash Against Public Land Grabs for Private Benefits to Be Addressed at YLC CLE

Meghan M. Cloud

It was among Thomas Jefferson's most cherished principles—the right to hold private property "free from intrusion." And although some of us may not remember where we were when the *Kelo v. New London* decision was handed down by the U.S. Supreme Court in June 2005, most of us probably do remember that the case was immediately and widely assailed as dealing a significant blow to Mr. Jefferson's multifaceted legacy.

Kelo held that the Connecticut city of New London's decision to take property for the purpose of economic development, including the creation of new jobs and increased tax revenue, qualifies as a public use under the Takings Clause of the Fifth Amendment to the U.S. Constitution. That was true even if the unvarnished effect was to take property from one private citizen and give it to another; the Court "decline[d] to second-guess" the means by which the city chose to implement its development plans.

Despite the outcry that greeted *Kelo*, its practical effect on property rights in the Commonwealth has been the subject of debate. Some observers insist that Virginia law has never permitted "abuses" like New London's. Others view such takings not as abuses, but as necessary evils without which local governments would be unable to combat urban decay. Still others, pointing to pre-*Kelo* cases in which Virginia courts rubber-stamped the seizure of property at least partially for the benefit of private interests, are convinced that the erosion of Virginia property rights was underway long before the U.S. Supreme Court weakened the Fifth Amendment with *Kelo*.

Whatever the practical consequences of *Kelo*, the decision certainly had a galvanizing effect. On February 24, the last day of the General Assembly's 2007 session, Virginia joined the numerous other states that have responded to the case with legislative action. One year after a similar measure had failed, lawmakers passed a bill which, in the words of its sponsor, Del. Rob Bell, will "significantly address the issues raised" by the *Kelo* case.

The bill, HB2954, is expected to take center stage at a YLC-sponsored panel discussion at this summer's annual meeting. The panel discussion is dedicated to the *Kelo* decision's effect on property rights. If signed into law by Governor Tim Kaine, HB2954 will replace existing code § 15.2-1900, which defines the phrase "public uses," as used in the state constitution's takings clause, as "all uses which are necessary for public purposes." The new bill pronounces the right to private property a fundamental right, and it permits the government to exercise the power of eminent domain only in furtherance of six precisely defined "public uses." The new bill expressly rejects several of the purposes deemed acceptable by the *Kelo* court, such as private gain, expansion of the tax base, and the creation of jobs. To address outrage over the seizure of homes in declining neighborhoods that are themselves in good condition, the bill also deems eminent domain appropriate to eliminate blight—"provided that the property itself is a blighted property," defined as one that actually endangers the public health and safety.

According to slated panelist James T. Waldo, whose Norfolk-based firm of Waldo & Lyle, P.C., practices exclusively in the area of property

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see you in court

Michael R. Spitzer II

News and Practice Tips for Virginia Litigators

Cutting and Pasting? Don't Get Stuck

Sanctions Opinion a Broadly Written Cautionary Tale, Based on Unusual Procedural History

Can you be sanctioned for filing standard affirmative defenses in response to a civil litigation complaint? Yep. In January of this year, lawyers across the Commonwealth of Virginia pored over the Virginia Supreme Court's decision in *Ford Motor Co. v. Benitez*, 639 S.E.2d 203 (2007) to figure out where and how. In *Benitez*, the plaintiff filed her original suit in 2002 alleging that she was injured by the deployment of a defective airbag. Extensive discovery was completed, including depositions of witnesses as to the facts of the accident, but the plaintiff filed for a nonsuit in 2003 shortly before the trial date. The same cause of action was filed a second time in 2004. Defendant, Ford Motor Co. ("Ford"), responded with thirteen affirmative defenses, including contributory negligence, failure to mitigate damages, and statute of limitations, among others.

Before trial, Plaintiff moved to have the defendants' affirmative defenses stricken on the grounds that Plaintiff had propounded interrogatories, requests for admissions, and document requests specifically asking for factual support for any of the affirmative defenses, and that the Defendant had not responded to such requests. The Plaintiff pointed out to the trial court that full discovery had occurred in the first case, and the trial court held a hearing where it asked counsel for Ford the factual basis for the affirmative defenses. Counsel for Ford responded that they did not have sufficient information at that time for the affirmative defenses, and the trial court granted the Plaintiff's motion to strike many of the affirmative defenses. At the end of the hearing, Plaintiff's counsel moved for sanctions on counsel for Ford pursuant to Virginia Code Section 8.01-271.1, arguing that the affirmative defenses had no factual basis. The trial court granted the motion for sanctions against counsel for Ford, and the trial court's decision on sanctions was appealed to the Virginia Supreme Court.

Even if you are only engaged in standard operating procedure with an eye toward not waiving issues that may arise later, Benitez encourages earlier consideration of the factual basis of all pleadings.

First, the Virginia Supreme Court noted that the standard for the review of an imposition of sanctions is abuse of discretion. The answer to that question turned strictly on whether Ford's counsel had sufficient information or belief to make the pleading well-grounded in fact. Unlike most cases, the case had already been nonsuited once, so discovery had already been completed before the answer was filed in the second case. Thus, because discovery in the first case had already made it apparent that most of the affirmative defenses asserted in the second case were groundless, the Supreme Court upheld the sanctions.

The language used by the Court in *Benitez* seems likely to cause a great deal of heartburn by using the case's unusual factual background to state a relatively broad conclusion. One of defense counsel's arguments against sanctions was that without asserting them in the initial responsive pleading, some of the arguments would have been waived (e.g., statute of limitations). In dismissing this anti-waiver argument, the Court stated that if new defenses become available during discovery, a defendant should seek leave to amend, which the Court stated would be almost universally granted.

This suggestion by the Court may provide rather cold comfort to practitioners, as amendment of pleadings is not a matter of right. A party must seek leave of court to amend pleadings. While in *Benitez* the litigants essentially knew everything that discovery would reveal before the second pleadings were filed, in the typical case, defendants do not know when the answer is filed whether certain defenses are viable but are loathe to waive them. Post-*Benitez*, defense counsel would do well to seriously review what may at time be formulaic pleading of affirmative defenses, so as to not run afoul of Code Section 8.01-271.1. In addition, defense counsel must make decisions regarding certain affirmative defenses (such as the statute of limitations) very quickly because they might be deemed waived.

While the merits of *Benitez* may be debated, what seems more certain is that the practice of defense counsel of asserting a laundry list of stock affirmative defenses will probably decrease. In addition, threats of sanctions and motions for sanctions may rise, with citations to *Benitez*. So trial courts already embroiled in the run-of-the-mill pre-trial disputes may increasingly referee more sanction motions.

A word to the wise in the wake of *Benitez* is to be more mindful of the pleading of affirmative defenses, or any other matters that find their way into pleadings by cutting-and-pasting. Even if you are only engaged in standard operating procedure with an eye toward not waiving issues that may arise later, *Benitez* encourages earlier consideration of the factual basis of all pleadings.

Mike Spitzer is a litigation associate at Hirschler Fleischer, P.C. in Richmond. He can be reached at mspitzer@hf-law.com.

message from the president

Maya M. Eckstein

Former United States Supreme Court Justice Sandra Day O'Connor has said:

> We have built a legal framework to protect the poor, and it's a structure we can be proud of. But it has a gate in the front, and lawyers hold the keys. Unless we're willing to unlock the gate for those who can't afford a key of their own, and let them into a shelter we've built for their protection, we might as well not have built it at all.

Attorneys are privileged members of society. Well educated and articulate, attorneys have a special skill that is reflected in a monopoly for exclusive access to the courts to represent clients and practice law. As a result, attorneys have a professional obligation to perform pro bono work on behalf of those who otherwise would not have access to the courts or other legal services.

Indeed, the Virginia Rules of Professional Conduct, Rule 6.1, states that "[a] lawyer should render at least two percent per year of the lawyer's professional time to *pro bono publico* legal services." These activities can include "poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services."[1] The comments to Rule 6.1 further note that "[e]very lawyer, regardless of professional prominence or professional work load, has a personal responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer."

The Virginia State Bar Young Lawyers Conference offers several opportunities for lawyers to fulfill their obligation of pro bono work. For example:

The **Wills for Heroes** program offers the opportunity to provide simple wills, powers of attorney and advanced medical directives on a pro bono basis to Virginia's heroes — firefighters, police officers, and other first responders. The program includes a free CLE on the pertinent areas of law. It currently is being offered in Richmond and will next be offered in Lynchburg. The program involves a substantial amount of work to set up. As a result, the YLC will soon hold a conference call with all parties interested in setting up the program in their jurisdiction. Anyone interested in organizing a Wills for Heroes program should contact Erin Whaley at Erin.Whaley@troutmansanders.com.

Attorneys have a professional obligation to perform pro bono work on behalf of those who otherwise would not have access to the courts or other legal services.

The **Domestic Violence Safety Program** offers lawyers the opportunity to represent domestic violence victims in protective order, custody, and support cases on a pro bono basis. The programs offers free CLEs to attorneys in exchange for their commitment to handle such cases on a pro bono basis. As part of the program, attorneys also distribute Safety Brochures, providing individuals affected by domestic violence with basic safety information, and Legal Pamphlets, providing information regarding the protective order process. Anyone interested in this program should contact Ken Alger at Kennethalger@shentel.net.

The **Emergency Legal Services Program** offers lawyers the opportunity to provide pro bono assistance to Virginians affected by mass emergencies and disasters. In a joint effort with the Virginia Bar Association Young Lawyers Division, the Emergency Legal Services Program is modeled after the ABA's Disaster Legal Services Program. The primary vehicle for accomplishing the Program's mission is the creation and maintenance of a network of volunteers throughout Virginia that, because of advanced training specific to disaster-related legal needs, is prepared to deliver emergency legal services when and where disaster strikes. Anyone interested in this program should contact Jeff Geiger at jgeiger@sandsanderson.com

No Bills Night provides lawyers the opportunity to provide pro bono legal advice to members of the public. The program provides a forum for the public throughout Virginia to raise legal issues and seek information regarding their legal rights, without cost. The program began in Richmond in 1984 and has grown statewide ever since. Several program are broadcast on local television stations. Anyone interested in this program should contact Darren Bentley at bentleyd@clementwheatley.com.

Not only does pro bono work fulfill attorneys' professional obligations, but pro bono work offers young lawyers the opportunity to gain valuable hands-on experience, assume greater responsibility, gain confidence, grow professionally, and become directly involved in trouble-shooting, problem-solving and decision-making. Most importantly, it offers all attorneys the opportunity of personal and professional satisfaction. The YLC is here to offer young lawyers an avenue for realizing that satisfaction and meeting their professional obligations.

Endnote

1 Rule 6.1 further states that "[d]irect financial support of programs that provide direct delivery of legal services to meet the needs described . . . is an alternative method for fulfilling a lawyer's responsibility under this Rule."

legal ethics corner

Jeffrey Hamilton Geiger

You Make the Call

Q *Sitting at his desk one Friday evening, Madison S. Trasse says to no one in particular, I am so tired of hearing about legal marketing. "Build relationships, not one client stands." "The best marketing I do is at my desk." I need clients, not platitudes! My partnership review is coming up next year and my client list has to go beyond people who share my last name. That being said, I have a surefire marketing campaign.*

Here it goes: I took a class in outer space law and got a C (or something like that), which makes me a specialist, right? Anyway, I've paid for a listing in a book to list me as an expert in "planetary/extraterrestrial/outer space law." Fortunately, my sister's car mechanic has an uncle who knows the agent of Kevin Bacon, who has agreed to appear in my next advertisement and highlight my space law experience. The television spot is truly out of this world!

A Trasse, you may want to know the speed limit on Madison Avenue. Even as the profession adopts conventional business practices, lawyers must be mindful of the higher degree of trust and confidence placed on them by the public and the concomitant ethical structures that provide a baseline for marketing activities. In Legal Ethics Opinion 1750, the Standing Committee on Lawyers Advertising and Solicitation provided a compendium opinion on advertisements.

First, a lawyer cannot anoint one's self as a "certified specialist" unless engaged in patent law, admiralty law or a certification recognized by the Virginia Supreme Court. While Trasse does not claim he is a "certified specialist" in outer space law, Rule 7.4 of the *Virginia Rules of Professional Conduct* only permits attorneys to hold themselves out as specialists in a certain branch of the law if it is not false and misleading as set forth in Rule 7.1 and 7.2. Without more, receiving a mediocre grade in law school falls short of one who devoted himself to a particular area of the law.

Second, Madison's payment to include himself as an expert is suspect. As the Committee notes a "lawyer may not ethically communicate to the public credentials that are not legitimate, such as, one that is not based upon objective criteria or a legitimate peer review process, but is available to any lawyer who is willing to pay a fee."

Finally, the use of a celebrity endorsement (who is not a client) is violative of Rule 7.2 without disclosure (i) of the fact that the actor is not a client, and (ii) that the celebrity is receiving compensation. Obviously, we do not want potential clients swayed into an attorney-client relationship by the likes of Kevin Bacon.

Jeff Geiger is a shareholder in the Richmond office of Sands Anderson Marks & Miller, P.C. You may reach him at jgeiger@sandsanderson.com.

Young Lawyers Local and Specialty Bar Association of the Year Award

Purpose: The award would recognize outstanding projects and programs of local and specialty Young Lawyers bar associations and sections, encourage greater service to the bar and public, and inform the public about the excellent work of local and specialty Young Lawyers bar associations and sections and the legal profession in general.

Eligibility: Any local or specialty Young Lawyers bar association or section within the Commonwealth of Virginia.

Criteria: Bar associations and sections are encouraged to submit information regarding successful or unique new programs undertaken since July 1, 2006. Bar associations may submit separate entries for separate programs, but no more than 4 entries each. Entries will be judged according to the degree of innovation and originality of the program submitted; level of difficulty in implementing and/or sustaining the project; success of the project, including the scope, importance and duration of benefits derived by the public and/or the profession; and extent of membership participation in the project.

Entry Instructions: Each entry should include the following information:

- The project's objectives and intended scope;
- Nature and extent of planning and organization;
- Evidence of effectiveness and success of the project;
- Extent of membership involvement;
- Expenses and funding of the project; and
- If a similar project has been undertaken by another bar association of if this is a continuing project by a bar association, how this particular effort distinguished itself.

Supporting exhibits (i.e. photographs, newspaper clippings, pamphlets and other printed material) may be included. All entries should have a cover page with the following information:

- Name of bar association
- Name of project submitted
- Number of members in the bar association
- Name and phone number of bar president
- Name, title, and phone number of person submitting entry, if different from the president

Entries should not exceed 5 pages, not including the cover page. Supporting exhibits should not exceed 10 pages. **Entries must be received by May 1, 2007**, and should be sent to: Jimmy Robinson, LeClair Ryan, 951 East Byrd Street, 8th Flr., Richmond, Va. 23219, jrobinson@leclairryan.com.

Minority Pre-Law Conference Encourages Consideration of Legal Careers

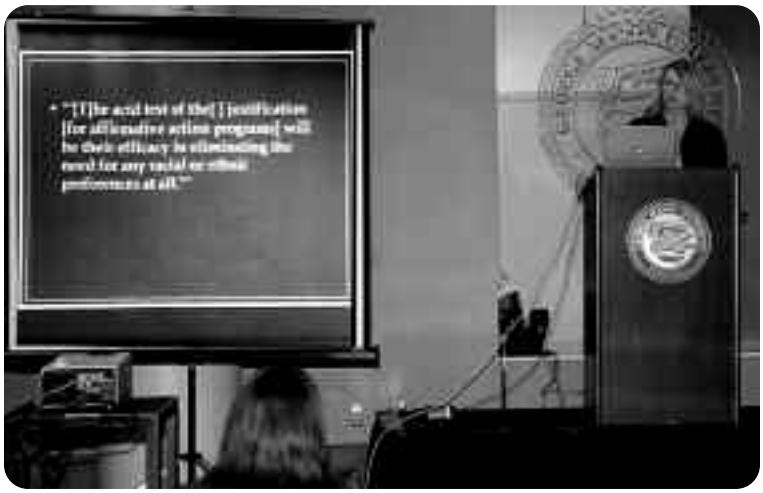
By Samantha Ahuja

The Northern Virginia Minority Pre-Law Conference returned on Saturday, February 17, 2007 to the George Mason School of Law in Arlington. More than 100 minority undergraduate students attended from various Virginia undergraduate schools. The Minority Pre-Law Conference aims to encourage minority undergraduates to consider the legal profession as a career. The Conference exposes students to all phases of legal education and beginning a career in the law, from law school admissions process to various legal career opportunities. This year the program included a panel of area law school directors and deans of admissions who provided an inside perspective to the law school admissions process. There were also workshops on financial aid, and Counsel on Legal Education Opportunity (CLEO), as well as a panel comprised of area law school students. The key note speaker for the Conference was the Honorable Jeri K. Somers, a judge on the U.S. Civilian Board of Contract Appeals, who spoke to the students about her own unique legal career.

▲ Monica Sanders, 2L student at Catholic University School of Law, addressed the conference.

▶ Conference Attendees were primarily undergraduate students considering a career in the law

Following lunch, the students attended a Law School Fair, with more than 30 law schools in attendance. The Conference also included a mock law class and information on the Virginia Character and Fitness requirement for admission to the bar. The students were able to take a free LSAT Diagnostic Test courtesy of Griffon Preparatory Services before the conference, and the test results were provided to the students during the Conference. Some Conference participants also toured law schools in the Washington, D.C. area.



▲ Keynote speaker Maureen Mahoney of Latham & Watkins. Mahoney successfully represented the University of Michigan in a key affirmative action case.

The night before the conference, the YLC hosted the Second Annual Minority Pre-Law Kick-Off Reception, also at the George Mason School of Law. The keynote speaker at that February 16th event was attorney Maureen Mahoney of Latham & Watkins. Mahoney successfully represented the University of Michigan before the Supreme Court, in the case where the Court upheld the constitutionality of admissions programs that consider race as one of many factors to ensure the educational benefits of a diverse student body. Dean Darrell D. Jackson of George Mason School of Law was the Master of Ceremonies.

The Reception also featured area law school students who have focused on

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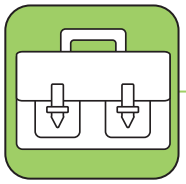

corporate corner

R. Willson Hulcher, Jr.

Issues of Interest for Virginia Transactional Attorneys

Right of First Refusal Helps Maintain Control Over Ownership

One of the basic issues confronted by companies that are just starting out is how to structure their ownership. In many instances that means negotiating among a handful of founders, each of whom has both his or her own and the company's interests in mind. The resulting ownership structure is frequently highly negotiated to reach an acceptable balance of power, risk and potential reward among the owners. Not surprisingly, once that balance is set each of the owners has an interest in making sure the structure cannot be disrupted without his or her input. At the same time, the company will need to be flexible enough to change its ownership structure when necessary. The proper balance of these interests is not easily achievable, especially since it must be done prospectively. One of the tools many companies rely on to help control the composition of the ownership group is the right of first refusal.

The right of first refusal is, on its face, a relatively straightforward concept. An owner wishing to sell an interest in the company will, once the owner has received a bona fide offer, be required to notify the company and other owners of the offer and its specific terms. The company and non-selling owners then have a right to buy that interest on those terms. If, and to the extent, they do not exercise this right, the seller can sell to the initial offeror.

The right is significant in itself, and its practical effect can be even more dramatic. A case just handed down by the Virginia Supreme Court, *Hamlet v. Hayes*, illustrates and further enforces, the power of the right of first refusal. The defendant intended to sell his shares in Commonwealth Wood Preservers, Inc. to another shareholder. There was a right of first refusal in place in a Shareholders Agreement, which the defendant triggered, and two of the non-selling shareholders tried to exercise their right to buy. At that point, instead of selling to them, the prospective seller simply rescinded his offer, arguing that he had no duty to complete the sale as he had not entered into a contract to sell the shares to the two shareholders. The Supreme Court had no trouble finding that the Shareholders Agreement's right of first refusal procedure could bind the offering shareholder to honor his offer once accepted by the other shareholders.

Hamlet v. Hayes is only unusual in that the seller thought he could abandon the transaction during the right of first refusal process and not be forced to sell to the other shareholders. Generally, a prospective seller anticipates (and the court has now affirmed this expectation) that once the right of first refusal is triggered, he or she will not be able to stop it unilaterally. Potential sellers and buyers are therefore faced with the knowledge that any deal they reach will have to be irrevocably offered to the other shareholders. Testing the waters in the hopes that no one will accept the offer is not now, if it ever was, a viable option. Buyers are unlikely to accept that level of risk and therefore usually require that the seller obtain waivers of the right of first refusal up front. As a consequence, the selling owner is forced to negotiate with the remaining owners who, in their right to disrupt the deal, have a meaningful lever in the negotiation. The right of first refusal ensures that all of the owners have a say in the structure of the company's ownership going forward.

The right of first refusal ensures that all of the owners have a say in the structure of the company's ownership going forward.

Will Hulcher is an associate in the Business and Corporate Finance & Securities sections at Williams Mullen. He can be reached at whulcher@williamsmullen.com

Young Lawyers Conference Events at the Annual Meeting

Each year at the Virginia State Bar Annual Meeting, lawyers from across the Commonwealth gather to conduct bar business, attend CLEs, participate in athletic competitions, and celebrate their outstanding members. At the center of the action is the Young Lawyers Conference (YLC).

Panelists for "The Effects of Kelo v. City of New London in the Commonwealth of Virginia and the Necessity of Legislative Reform"
▲ Delegate Terrie L. Suit
▼ Joseph T. Waldo
▶ Steven Anderson

This year in Virginia Beach, the YLC will host several events for bar membership, and specially invites all Virginia young lawyers to attend the Annual Meeting, June 14–16.

The YLC will present a CLE entitled, "The Effects of *Kelo v. City of New London* in the Commonwealth of Virginia and the Necessity of Legislative Reform." Annual Meeting Programs Chairman Demian J. "Dem" McGarry and his Annual Meeting Committee have gathered a diverse panel from the legal community affected by the high-profile eminent domain and condemnation decision. Much of the effects of *Kelo* will be borne out in state legislatures, and as such, the panel will include Delegate Terrie L. Suit of the Virginia House of Delegates, who represents parts of the cities of Virginia Beach and Chesapeake. Joseph T. Waldo of Norfolk, an attorney experienced in the areas of eminent domain, inverse condemnation and property

▼ The 25th annual Run in the Sun

rights litigation, will provide his insights from a practice perspective. Completing the panel will be Steven Anderson of the Institute for Justice, the organization that argued the *Kelo* case on behalf of the petitioners. Again, we are proud to have Tony Mauro of the *Legal Times* moderate this year's CLE. The presentation will take place on Friday, June 15, from 11:00 AM to 12:30 PM.

Following the Showcase CLE, the YLC invites you to attend its **Annual Reception and Meeting** Friday at 12:30 in the Cavalier Beach Club. Join us for lunch, bid farewell to outgoing YLC President Maya Eckstein, meet our Board of Governors, and help us honor our Young Lawyer of the Year. On Friday night, the Young Lawyers will sponsor the **TLC Band** on the deck of the Cavalier Beach Club immediately following the Annual Meeting Banquet.

For the athletically inclined, Annual Meeting Athletics chairwoman Maureen Danker and her committee have prepared our **26th Annual Run in the Sun and 23rd Annual Beach Volleyball Follies**. Join us on Friday, June 15 at 8:00 a.m. for a 5K race on the Boardwalk, and get your team together for the volleyball tournament on Saturday at 2:00 p.m.

Readers with questions about our CLE program may contact Demian McGarry at (703)549-5551. For questions about our athletics program, readers may contact Maureen Danker at (703)442-0888. We look forward to seeing you at Virginia Beach.

Taking Clause continued from front cover

rights, the new legislation will be a "big help," making pretextual takings more difficult in a state whose judiciary has traditionally displayed a laissez-faire attitude toward eminent domain. Fellow panelist Steven Anderson, with the Arlington-based Institute for Justice, agrees that the new legislation is a step in the right direction. In his view, the power of eminent domain, which is routinely characterized by housing authorities as an essential tool in the redevelopment toolbox, is too often used as a hammer.

If the new law makes sweeping redevelopment of blighted areas more difficult by enabling property owners to exercise their holdout power, say such advocates, that's a small price to pay in exchange for protection of a fundamental right. Plus, says Waldo, there's an affecting "human element" to takings cases that is easily overlooked. He recalls an 85-year-old widow who was uprooted from her well-maintained home after decades of attending the same church, shopping at the same grocery store, living among the same neighbors—all in the name of redevelopment. She died within a year of her relocation.

That was then, this is now. Still, many property advocates won't consider the job done until some of the principles in HB2954 are enshrined in the state constitution. Property rights, according to Anderson, are simply too important to leave to the whim of the legislature. (Delegate Bell also proposed a constitutional amendment, but that failed by a relatively narrow margin). Waldo agrees that a constitutional amendment would be the more thorough approach. He points out the bill's exception, through 2010, for existing development plans, as well as the fact that at least one senator, John Edwards of Roanoke, has already suggested the possibility of "tinkering" with eminent domain law in the future.

A precision tool it's not—just yet. But Mr. Jefferson would be proud.

Meghan Cloud is an associate in the litigation section of McGuireWoods, in Charlottesville. You may reach her at mcloud@mcguirewoods.com.

[Editor's note: As the *Docket Call* went to press, the governor had not acted on HB2954 or its Senate counterpart SB1296. This CLE will take place in Virginia Beach at the Annual Meeting on Friday, June 15, 11:00 am.]

Minority Pre-Law Conference continued from page 5

▲ Conference attendees Donald Pritchett, Director of Admissions, University of D.C. School of Law; Mimi Glenn, attorney at McKenna Long & Aldridge; and Dean Reginald McGahee, Howard University School

▶ Conference co-chair Tamika Stevens and YLC President-Elect Dan Gray.

community service during law school. There were over 125 area professionals, undergraduate students, and law students in attendance. Sponsors for the reception included George Mason University School of Law, Law School Admissions Council as part of National Minority Law School Recruitment Month, Womble Carlyle Sandridge & Rice, PLLC, Northern Virginia Black Attorneys Association, Norfolk and Portsmouth Bar Association Foundation, Virginia Women Attorneys Association, Old Dominion Bar Association, and the Asian American Bar Association.

The YLC's Conference and Reception Co-Chairs were Samantha Ahuja and Tomika Stevens.

Samantha Ahuja is an associate in the Washington, D.C. office of Womble, Carlyle, Sandridge & Rice. She can be reached at sahuja@wcsr.com

Sign up!

YLC's listserv at www.vayounglawers.com

Chief Justice Hassell Creates Commission to Reform Mental Health Laws

By Christopher Armstrong

In an effort to combat deficiencies with Virginia's mental health services, Chief Justice Leroy R. Hassell recently launched the Commission on Mental Health Law Reform. The Commission will examine Virginia's mental health laws and policies, with the goal of presenting the 2008 legislature with a omnibus reform package. Speaking about the effort in late 2005, Chief Justice Hassell said, "I care. The courts care. We care because we are committed to improving the quality of mental health services provided to those Virginians who are least able to care for and help themselves."[1]

The commission's guiding principle is that the mental health services system "should assure access to recovery-oriented services needed by persons with severe mental illness, should facilitate consumer choice, and should protect consumers and others from harm."[5] Among other priorities, Chief Justice Hassell has asked the commission to reevaluate the criteria for committing an individual to involuntary emergency treatment, according to the Washington Post. Under current law, an individual must pose an "imminent danger" to themselves or others, a difficult standard to meet.

> "I care. The courts care. We care because we are committed to improving the quality of mental health services provided to those Virginians who are least able to care for and help themselves."
> — Chief Justice Leroy R. Hassell, Sr.

▲ Chief Justice Leroy R. Hassell, Supreme Court of Virginia

The commission will be lead by University of Virginia law Professor Richard J. Bonnie, who also serves as the director of the Institute of Law, Psychiatry & Public Policy at UVA.[2] Other members come from a wide range of fields and include jurists, Virginia legislators, law enforcement officials, medical doctors, and other members of the mental health services community.[3] Together, the commission will form task forces on service access, issues affecting children, commitment procedures, consumer employment, and criminal justice.[4]

Proposed solutions are the removal of the "imminent" requirement, as well as authorization for longer periods of temporary treatment.

According to recent studies, Virginia ranks 30th nationwide in per capita spending on mental health, and 47th in per capita spending on outpatient mental health services.[6] The same studies indicate that an increasing number of Virginians are dependent on outpatient care as their only means of mental health care.

Despite large growth in the population of Northern Virginia, the number of available psychiatric beds has decreased from 402 in 1990 to 196 today, according to a recent Washington Post story.[7] The Post also reported that 11 percent of people in Northern Virginia jails are currently on psychotropic medications, with many more in need of mental health services. Many claim that current laws, especially those regarding the involuntary commitment of individuals suffering from mental illness, have placed increasing burdens on the Virginia court system. Each year, Virginia courts address nearly 50,000 involuntary commitment hearings.[8]

Many of the proposed reforms have their critics. Mental health advocate Diane Engster, appearing recently before a Senate subcommittee, argued that policies such as mandatory outpatient treatment and forced medication carry too high a price in terms of individual rights. The Richmond Times-Dispatch quoted her as asking, "why should a judge be mandating my health care?"[9] Others have raised concerns about the due process of those committed under any new reforms.

Attempting to balance these concerns against the need for wide-scale reform will be the commission's difficult task in the coming year. The commission held its first meeting in Williamsburg late last fall, and plans to hold three more conferences before opening up to public comments during the summer. The commission is scheduled to produce its final report in October of this year, with the goal of incorporating its findings into legislative initiatives for the 2008 General Assembly session. More information on the commission and its progress can be found at http://www.dmhmrsas.virginia.gov/OMH-MentalHealthCommission.htm.

Christopher J. Armstrong
is an attorney with the United States Office of Special Counsel in Washington, D.C.

ENDNOTES

1 Tom Jackman, *Commission Targets How State Treats Mentally Ill*, WASH. POST, Oct. 11, 2006, at B2.
2 *Id.*
3 http://www.dmhmrsas.virginia.gov/documents/OMH-CMHLRMembers.pdf
4 http://www.dmhmrsas.virginia.gov/OMH-MentalHealthCommission.htm
5 http://www.dmhmrsas.virginia.gov/documents/OMH-CMHLRPrincipleandGoals.pdf
6 Bill McKelway, *State to Begin Review of Mental Health Laws*, RICHMOND TIMES-DISPATCH, Oct. 11, 2006.
7 Jackman, *Supra* note 1.
8 McKelway, *Supra* note 6.
9 *Id.*

Seeking Nominations

The Virginia State Bar Young Lawyers Conference is seeking nominations for the R. Edwin Burnette, Jr., Young Lawyer of the Year Award.

This award honors an outstanding young Virginia lawyer who had demonstrated dedicated service to the YLC, the profession and the community.

The nomination deadline is May 1. Nominations should be sent to:

Jimmy F. Robinson
LeClair Ryan
951 E. Byrd Street
Richmond, VA 23219
804-783-7540
Fax: 804-783-7641
jrobinson@leclairryan.com

Previous Award Recipients

▲ Christy E. Kiely, the 2005–2006 R. Edwin Burnette Jr. Young Lawyer of the Year

▲ O'Kelly McWilliams, the 2004–2005 R. Edwin Burnette Jr. Young Lawyer of the Year

2003-2004	K. Brett Marston
2002-2003	Richard H. Ottinger
2001-2002	Jennifer L. McClellan
2000-2001	Edward B. Walker
1999-2000	Shawn A. Copeland
1998-1999	Maya M. Eckstein
1997-1998	Barry G. Logsdon
1996-1997	Pamela Meade Sargent
1995-1996	Tracy A. Giles
1994-1995	Julie D. McClellan
1993-1994	Scott D. Oostdyk

Bench-Bar Dinner

The YLC will hold its annual Bench-Bar Celebration Dinner in late spring/early summer in Richmond. This event honors women and minority judges newly elevated to the bench in Virginia and provides an opportunity for young lawyers to interact with judges from all corners of the Commonwealth in a casual atmosphere.

Watch for more details soon!

To get involved email Alana Malick amalick@lawmh.com.

YLC Community Law Week Educational Events Coming to Vienna and Clifton

YLC members will involve high school students as lawyers, witnesses, and jury members in mock trial cases this spring.

- James Madison High School in Vienna, Virginia, on April 24 and 26 , where the case is a criminal prosecution for vehicular manslaughter, and
- Centreville High School in Clifton, Virginia, April 30 and May 2, where the case determine the liability of a school district in the death of a student.

For more information on these events and Community Law Week, contact Nathan Olson, at Cooper Ginsberg Gray, PLLC, (703) 934-1480, nolson@cgglawyers.com

Save the Date!

June 14–17, 2007

Virginia State Bar

69th Annual Meeting

Cavalier Hotel & Holiday Inn Sunspree, Virginia Beach

YLC Board Elections

Young Lawyers Conference

Virginia State Bar

At its Annual Meeting on June 16, 2006, the Virginia State Bar Young Lawyers Conference will be electing member to the Board of Governors in the following districts:

1st, 3rd, 4th, 6th, 7th 8th, 10th, and two At-Large positions.

All nomination are due on May 1, 2007 and any letter of interest or nomination should be sent to:

Jimmy F. Robinson
LeClair Ryan
951 E. Byrd Street
Richmond, VA 23219
Fax: 804-783-7641
jrobinson@leclairryan.com

District	Circuits
1	1, 3, 5, 7, 8
3	6, 11, 12, 13, 14
4	17, 18
6	9, 15
7	16, 20, 26
8	23, 25
10	27, 28, 29, 30

Any active (in good standing) member of the bar under the age of 36 or in their first 3 years of practice may serve on the YLC Board.

Upcoming Events

04/14 | Minority Pre Law Conference
Washington & Lee School of Law, Lexington
Contact shyrell_reed@gentrylocke.com for more info.

04/17 | Second Annual Advance Directives Day
Contact nkottkamp@mcguirewoods.com for more info.

05/04 | Indigent Criminal Defense: Advanced Skills for the Experienced Practitioner
Go to www.vsb.com for more info.

05/17–18 | Annual VSB Pro Bono & Access to Justice Conference
Go to www.vsb.com for more info.

06/14–16 | Virginia State Bar Annual Meeting, Virginia Beach
Go to www.vsb.com for more info.

06/15 | YLC Annual Meeting, Virginia Beach

Address Change?

If you have moved or changed your address, please see the VSB Membership Department's page on the Web for an address update form at www.vsb.org/site/members/.

Docket Call

A quarterly publication of the Young Lawyers Conference of the Virginia State Bar.

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