

Caplin Center Volunteers, Oakey and Nolan Honored at VSB Pro Bono Conference

The Virginia State Bar's 2007 Pro Bono Conference, "Expanding Access to the Court," presented resources available for lawyers and programs that provide legal services to the poor.

Attorneys who work in public interest law and guardians ad litem from across the state met at the University of Richmond School of Law May 17–18 to discuss topics such as legal assistance to the armed forces, immigration rights, ethics of using electronic communications, and alternatives to court—including mediation, arbitration, restorative justice and collaborative law.

The lawyers also discussed preparing cases with special attention to transportation needs, physical barriers, interpreters and cultural differences. The conference is sponsored annually by the VSB Special Committee on Access to Justice.

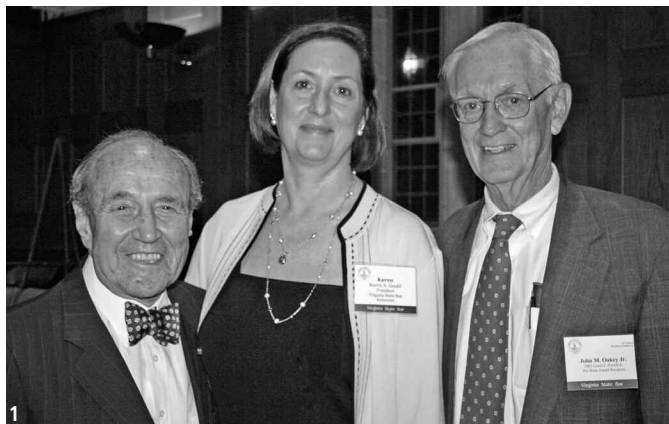
During the conference, the committee awarded its top honors for volunteers—the Lewis F. Powell Jr. Pro Bono Award and the Oliver White Hill Law Student Pro Bono Award.

In photo 1, Mortimer M. Caplin (left) and John M. Oakey Jr. pose with 2006–07 VSB President Karen A. Gould. Oakey, of Richmond, received the Powell Award for his commitment to pro bono causes after his retirement from firm partnership at McGuireWoods LLP. Caplin accepted the award on behalf a second winner of the Powell Award—volunteer faculty and cooperating counsel who mentor students and direct projects through the Mortimer Caplin Public Service Center, which Caplin established at the University of Virginia.

Oliver W. Hill Sr., who turned 100 on May 1, attended the conference in person to present the award named for him to Maryann Nolan, a third-year law student at the College of William & Mary. [photo 2] Nolan performed more than 1,000 uncompensated or minimally compensated work for the poor during her law schooling.

Hill, of Richmond, was a leader in many groundbreaking civil rights cases, including *Brown v. Board of Education*. The late Lewis Powell, also of Richmond, served on the U.S. Supreme Court.

In addition to formal programs, the conference offered opportunities for networking. In photo 3 are retired Judge Dale H. Harris, 2006–07 chair of the access committee, and attorney David P. Baugh of Richmond, recipient of the 2006 Powell Award.



Lawyers Receive Training on Indigent Defense: Free Program Supports Court-Appointed Cases

Nationally recognized practitioners of criminal defense gathered in Richmond May 4, 2007, to present the third annual seminar “Indigent Criminal Defense: Advanced Skills for the Experienced Practitioner.”

The daylong seminar drew 480 attorneys to the live presentation in Richmond and 100 to a simulcast in Abingdon. The seminar was sponsored by the justices of the Supreme Court of Virginia, the Chief Justice’s Indigent Defense Training Initiative and the Virginia State Bar.

Among the eight speakers was Lisa M. Wayne of Denver, Colorado, who addressed the question of how to handle voir dire when a judge allows only 30 minutes for jury selection. She advised the audience to file motions for more time, “get right to the heart of your case,” and note for the record physical reactions by potential jurors to questions.

“Don’t apologize about who you are, because you are defending someone who deserves to be defended,” she said. “You are a modern-day saint.”

Luncheon speaker Joshua I. Dratel of New York City described the challenges he faced defending a detainee at Guantanamo Bay, outside the jurisdiction of U.S. courts. He lamented disinterest from the news media, an uninformed public and bizarre occurrences that probably would not have occurred on American soil—for example, judges who had not yet been sworn in ruling on motions.

Dratel saluted the Virginia lawyers before him who represent indigent persons. “I got these accolades from representing just one person in this system,” he said. In the audience were people “who do it every day, anonymously, tirelessly, passionately, effectively.” He thanked them “for your righteous commitment to justice for those who cannot afford to purchase it.”

Colette Tvedt of Seattle, Washington described strategies for defending some of the most detested defendants in the criminal justice system: accused child molesters.

“When your client is charged with raping his daughter, you are starting with a deficit,” she said. But “we’re starting to win these cases more and more.” Successful strategies include getting to know the child and how evidence was collected, gathering impressions from friends and neighbors acquainted with the family, and bringing in experts who can opine on how children can receive certain injuries or be manipulated to lie.

The seminar was offered free of charge to public defenders and court-appointed counsel in criminal cases.



Shown clockwise from top left: Lisa M. Wayne of Denver, Colorado; Joshua I. Dratel of New York City; Colette Tvedt of Seattle, Washington, with Virginia Court of Appeals Judge Walter S. Felton Jr. (left) and Richmond attorney Steven D. Benjamin

Virginia Fair Trial Project Continues Indigent Defense Reform Efforts

by Betsy Wells Edwards
Executive Director, Virginia Fair Trial Project

A name can tell us a lot about a person or group. It should say who you are and what you do. Our new name, the Virginia Fair Trial Project, does just that. For three years, as the Virginia Indigent Defense Coalition, we worked to help reform Virginia's indigent defense system.

The Virginia Fair Trial Project and its partner organizations—the Virginia Trial Lawyers Association (VTLA), Virginia Association of Criminal Defense Lawyers (VACDL), National Association of Criminal Defense Lawyers (NACDL), Virginia CURE and the Virginia Interfaith Center for Public Policy (VICPP)—will continue to improve the indigent defense system by collaborating with The Virginia Bar Association, the Virginia State Bar and the Virginia League of Women Voters.

Our mission hasn't changed. We communicate with the public, the media and policymakers about the need for a fair trial for everyone—no matter what the financial resources. The Virginia Fair Trial Project will conduct research and grassroots training, issue reports, and work with our partner organizations and others.

Our reform fight was carried this year to the General Assembly. During the 2007 legislative session, the Virginia Fair Trial Project worked with the governor, attorney general, VTLA, VBA, and VSB and a number of other groups on increasing indigent defense funding. At an April veto session, Virginia took an important step toward improving the indigent defense system in the commonwealth by approving waivers for court-appointed fee caps. For the first time, court-appointed lawyers in Virginia may request additional compensation for complicated or lengthy cases.

The final legislation included:

- 1) \$8.2 million in the final budget specifically allocated for waivers.
- 2) A first-round waiver up to an additional cap on all charges approved by the trial judge, subject to guidelines issued by the executive secretary of the Supreme Court.
 - An additional \$120 for misdemeanors and juvenile delinquency cases (fee cap was \$120), for a total of \$240.
 - An additional \$155 for lower- and mid-level felonies (fee cap was \$445), for a total of \$600.
 - An additional \$850 for high-level felonies (fee cap was \$1,235), for a total of \$2,085.
- 3) An unlimited waiver beyond the additional caps that can be granted by the chief judge in the circuit or district court, subject to guidelines issued by the executive secretary of the Supreme Court.
- 4) A requirement that all court-appointed attorneys submit a detailed accounting of the time expended for that representation.
- 5) Supreme Court tracking of hours worked, waivers requested and amounts paid.

Additional funding of \$3.7 million was provided for state public defender offices, where low pay has led to high turnover in recent years. The additional funding will allow the agency to fill 26 additional positions and provide a 9 percent raise, which will be added to a 4 percent raise for all state employees, yielding a total 13 per-

cent increase in November 2007 for public defender office attorneys administrative and support personnel. Starting salaries for public defenders will increase from \$42,600 to \$48,183. Capital public defenders will receive a 24 percent raise in base salary along with the 4 percent increase for all state employees, for a total of 28 percent.

There are 25 public defenders offices in Virginia. They handle about 60 percent of the indigent defense cases in the state. All other indigent defendants are represented by court-appointed attorneys—lawyers in private practice who take court-appointed criminal cases.

During the past three years, the General Assembly has appropriated nearly \$17 million to increase court-appointed fees (\$2.4 million in 2005, \$6.3 million in 2006 and \$8.2 million in 2007). These increases helped Virginia's underfunded indigent defense system, but much work remains to be done. The Virginia Fair Trial Project and its partners will continue to improve Virginia's indigent defense system so that fair trials are a reality for all Virginians.

The Virginia State Bar's
Special Committee on Access to Legal Services is sponsoring a

CALL FOR NOMINATIONS

Under Phase Two of a Pilot Project in the Twentieth, Twenty-first, Twenty-third
and 2A Judicial Circuits

to recognize

**Extraordinary Contributions made to the
Virginia Justice System
by Local Appointed Counsel or Pro Bono Attorneys**

Nominally compensated court-appointed attorneys or pro bono attorneys in civil or criminal matters who make extraordinary contributions to the Virginia Justice System are eligible for recognition. Members of the legal profession, bar associations and the general public may submit nominations. Among others, candidates who represent parents in removal and termination proceedings; act as guardians *ad litem*; function as mediators in court-annex programs; or who accept indigent criminal defense work as appointed counsel may be considered. Additional details about contributions that qualify as pro bono under Virginia Public Service Rules 6.1 and 6.2 may be viewed at http://www.vsb.org/docs/2006-07_pg.pdf.

Entries will be reviewed by the VSB Access to Legal Services Committee. Virginia attorneys selected as honorees will be presented with an embossed certificate jointly signed by the Chief Justice and VSB president **at a term of circuit court or other suitable occasion in the locality**. There is no official form to complete. Nomination letters describing the extent, quality and duration of contributions and any letters of endorsement should be forwarded by August 25, 2007, to:

VSB Special Committee on Access to Legal Services
c/o Maureen Petrini, Access to Legal Services Director
707 East Main Street, Suite 1500
Richmond, VA 23219

Phone inquiries may be directed to Maureen Petrini at the bar's Access to Legal Services Office at (804) 775-0522.

For phase two of the pilot, the committee has selected the following four judicial circuits or divisions: the Second (2A-Eastern Shore counties of Accomack and Northampton only); Twentieth (Fauquier, Loudoun and Rappahannock); Twenty-first (Martinsville and Patrick and Henry counties); and Twenty-third (Salem and Roanoke City and County.) They represent sample rural, urban and mixed jurisdictions where results from continuing initial efforts can help inform the bar's future planning if the pilot is expanded to other circuits in future years. As was the case in the inaugural year of 2005, participation in 2007 is and will remain optional.